

Approved: March 18, 1996
Date

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION.

The meeting was called to order by Chairperson Audrey Langworthy at 11:00 a.m. on March 13, 1996 in Room 519--S of the Capitol.

Members present: Senator Langworthy, Senator Corbin, Senator Martin, Senator Bond, Senator Clark, Senator Feleciano, Jr., Senator Hardenburger, Senator Lee, Senator Ranson, Senator Sallee and Senator Wisdom.

Committee staff present: Tom Severn, Legislative Research Department
Chris Courtwright, Legislative Research Department
Don Hayward, Revisor of Statutes
Elizabeth Carlson, Secretary to the Committee

Conferees appearing before the committee: Senator Anthony Hensley
Cedric Moege, KEPPT
Larry Fischer, D.V.M.
Gerald Frantz, Sedgwick County Appraiser
Chris McKenzie, League of Kansas Municipalities
Don Seifert, City of Olathe
Whitney B. Damron, Kansas City, Kansas

Others attending: See attached list

APPROVAL OF MINUTES

Senator Martin made a motion to approve the minutes of March 12, 1996. The motion was seconded by Senator Corbin. The motion passed.

SCR 1616--CONSTITUTIONAL AMENDMENT ESTABLISHING AGGREGATE PROPERTY TAX LIMITATIONS

Chris Courtwright, Research Department, explained the concept of **SCR 1616**. He said this amendment to the constitution would establish limitations upon the aggregate of property tax which may be levied upon property used for residential purposes, real property owned by certain not-for-profit organizations, real property used for commercial and industrial purposes and land devoted to agricultural use. The limitation with respect to residential property and real property owned by certain not-for-profit organizations would be 1 percent of its appraised valuation and with respect to commercial and industrial real property and land devoted to agricultural use would be 1.5 percent of its appraised valuations. These limitations could be suspended or adjusted upon approval of the electorate of a taxing district.

Senator Anthony Hensley, who requested the introduction of this resolution, introduced Cedric Moege.

Proponents

Cedric Moege, representing KEPPT, spoke in support of **SCR 1616**. (Attachment 1) He said this idea is not new. It would eliminate mill levies and classification for all real estate in computing property taxes due. Appraised value would be the only factor used. He said the tax cap proposal would shift less than \$400 million in revenue and he listed 3 ways to achieve this reduction; (1) some shift in tax revenue sources; (2) elimination of some present sales tax exemptions; and (3) cutting state spending--or a combination of all three items. With this resolution, taxpayers would know for sure what their tax bill would be each year. Mr. Moege said it is time to limit the reliance on real estate taxes to provide school finance and shift the burden to sales and income taxes so that those who are using the schools pay their fair share. He said all property tax reduction plans submitted this session only address the 35 mill state school levy. Allowing the people of Kansas to vote in November, 1996, on a real estate tax cap is as important or more important than voting to allow slot machines at race tracks and other locations.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ASSESSMENT AND TAXATION, Room 519-S
Statehouse, at 11:00 a.m. on March 13, 1996.

Larry Fischer, D.V.M. representing himself, spoke in support of **SCR 1616**. (Attachment 2) He said placing caps in the form of percentage of value represents a step toward a more equitable property tax system. But he said there are three other problems; (1) spending; (2) inaccurate value determinations; and (3) abatements and exemptions. Dr. Fischer said property should pay for what property uses. He also asked why does the city of Topeka fund golf courses. These kinds of entertainment should be privatized. The cities should only provide police protection, fire safety and infrastructures. The NCSL recommends taxes be generated on a percentage. He spoke of the founders of the United States of America and said life, liberty and property were the three fundamentals upon which the republican form of government was founded. In conclusion, he said the biggest cry will come from education and city governments. The five states that spend the least on education ranked at the top in academic testing. He listed some states which have switched to consumption taxes and he said their business climates are thriving. Dr. Fischer also included with his testimony an article from the Wall Street Journal and a graph which he had prepared.

Opponents

Gerald Frantz, Sedgwick County Appraiser, said he was speaking as an opponent to **SCR 1616** and he was representing himself and his office. (Attachment 3) He said the aggregate tax rate for residential properties in Wichita is 1.38 percent and for Wichita commercial/industrial properties is 3 percent. Agricultural property is 3.6 percent. The proposed amendment would have a 28.5 percent decrease in ad valorem tax revenue, exclusive of tax and tag, for Sedgwick County, its cities, townships and schools. This would have a devastating impact on the delivery of local services. The amendment would be a shift in the burden of property taxation. Commercial and industrial property would have their tax bills cut in half, agricultural properties would have a decrease of 58 percent while residential real properties would see only a 28 percent decrease. Vacant land and public utility properties were not addressed by this amendment. Personal property would receive no tax relief at all. He wondered how much the owners of business personal property, vacant land and public utilities would be forced to pick up because of the loss of revenue from the other sources. Mr. Frantz concluded by saying he believed Sedgwick County, the local cities, local townships and local schools have control over and are the local governments. The collective will is expressed in local elections and at open public meetings. He did not support any proposal to be handed down by the state that places the particular will of individuals over the general will of the people.

Chris McKenzie, Executive Director, League of Kansas Municipalities, said the league would have a formal position after Friday but he wanted to offer some brief comments. (Attachment 4) He said this proposal would significantly undermine the availability of property tax to fund the budgets of cities, especially smaller cities that do not have the market to support a sales tax. Mr. McKenzie said cities have done an outstanding job of controlling the growth in property taxes levied to support city government. In the percentage of most city budgets the property tax is declining. **SCR 1616** would lead to higher sales tax, income tax and fees, etc. He said it is necessary to ensure that needed public services continue.

Don Seifert, City of Olathe, said he spoke in opposition to **SCR 1616**. (Attachment 5) He said it appears to be the Kansas version of "Proposition 13" which was adopted in California in the 1980's. Many believe this amendment has been harmful to public services in that state. He said there is no mention of how the loss of revenue would be made up by local taxing jurisdictions or how a property tax roll back would be divided among local jurisdictions. Mr. Seifert said if the aggregate mill levy was lowered to 1 percent of total appraised valuation, that would represent a \$108 million property tax revenue loss. Since 1990, the city of Olathe has been able to reduce its property tax mill rate by approximately 13 percent. He said they are opposed to this proposal because it could lead to very significant losses of existing revenue. He urged the Committee not to recommend SCR 1616 but to give this matter further study.

Senator Ranson said although the city of Olathe had reduced the mill levy, she asked how much the assessed valuation has grown during this time. She thought she remembered that Johnson County assessed valuation had gone up approximately 12 percent per year. Mr. Seifert said the valuation had not gone up that much in Olathe and he thought it had gone up about 4 percent to 5 percent per year. Senator Ranson said people are paying more taxes even if the mill levy has gone down.

SUBSTITUTE FOR HB 2513--WYANDOTTE COUNTY LAND BANK

Whitney B. Damron, said he represented the city of Kansas City, Kansas, and he wanted to make the committee aware of **Substitute for HB 2513**. (Attachment 6) **HB 2513** authorizes the creation of a Wyandotte County Land Bank. This bill has been double referred in the House to the House Economic Development Committee and the House Taxation Committee. The House Economic Development Committee adopted the bill as amended and it is now in the House Taxation Committee. He listed the primary amendments made by the House Economic Development Committee. This bill is only applicable to Wyandotte

CONTINUATION SHEET

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Senator Bond spoke of bundling tax liens sales that some states permit but at this time Kansas does not have a provision for it. He thought Wyandotte County would receive some help from a provision like this.

Senator Langworthy said if the committee members had any concerns about this bill, she hoped they would contact either Mr. Damron or her because this is probably going to come up in Conference Committee.

The meeting adjourned at 11:55 a.m.

The next meeting was not scheduled.

SENATE ASSESSMENT AND TAXATION COMMITTEE GUEST LIST

DATE: March 13, 1996

NAME	REPRESENTING
Stan Dinnitt	TAX CAP 1616
Cedric Moege	SCR 16110- TEX cap
Regis L. Heimann	" " "
Blair Whitehead	" " "
JAMES ROBERT	" " "
Bordon Ensley	" " "
Paul Gall	" " "
Larry Fischer	SCR 1616
Guy A Matney	SCR 16110
D. Patten Michaelis	" " "
John L. Chesney	" " "
Martha Jean Smith	KMHA
Jennifer L. Brandberry	City of Overland Park
George Harrison	Tax Cap
Aelen W Matney	SCR 1616
E. Lisa S. Banning	SCR 1616 Tax Cap
Anne Spiess	Ks. Assoc of Counties
GERRY RAY	Johnson Co. Comm.
Don Seifert	City of Olathe

I am Cedric Moege, 3045 Kentucky, Topeka, Kansas. I have been a citizen lobbyist for 5 years for K.E.P.P.T. (Kansans for equal Property and Pension Taxes.) A recent newsletter from Dr. Larry Fischer quoted "You and I both know we have no control over the appraisal process, and history shows that taxes always go up unless an enraged citizenry demands otherwise. This is why appraisals and taxes go up -- the business of appraisers is to generate money and the business of government is to spend money. If these trends hold up, how many people on fixed incomes will be able to hold on to their homes?" It is time to limit the reliance on property taxes as a source of government revenue.

We at K.E.P.P.T. would like to submit Real Estate Tax Cap that is fair and equal and would apply evenly on a state-wide basis. This idea is not new. It was a major plank in Nestor Weigand's governor campaign in 1990 and he received over 125,000 votes in Kansas. Senator Dan Thiessen proposed a tax cap in 1992, sponsored by 10 Senators. Representative Marvin Smith introduced a bill in 1994.

In SCR 1616, we proposed a vote in November, 1996, on a state-wide Real Estate Tax Cap of 1% of appraised value on residential property, and 1½% of A.P.V. on all other classes of property. This plan would eliminate mill levies and classification from all real estate in computing property taxes due, as appraised value would be the only factor used and excessive appraised values can be legally protested under present law.

Our tax cap proposal would need to shift less than \$400 million in revenues (see flyer attached). We don't believe it is possible to achieve a significant reduction in Real Estate taxes without: (1) some shift in tax revenue sources; (2) elimination of some present sales tax exemptions; (3) cutting state spending or a combination of all three items. Please note that 75% of Real Estate tax relief would go to those who need it most, namely, home owners. Taxpayers would know for sure what their tax bill would be rather than the present uncertainty from year to year that now exists.

In Topeka USD 501, the 1996 school levy is 64 mills, which is a far cry from the 32 mills promised taxpayers under the 1992 school finance law. 80% of school property taxes are paid by taxpayers with no children in school. It is time to limit the reliance on Real Estate taxes to provide school finance and shift the burden to sales and income taxes so that those who are using the schools pay their fair share.

SEE BACK SIDE

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Attach 1-1

It is hard to feel all warm and fuzzy about government when everybody knows that the property tax burden paid by citizens is so out of whack that it is unfair, unconstitutional, and almost to the point of being unfixable.

It is convenient to peg 1989 as the date at when the mess began, but actually it was even earlier. The public vote on reappraisal and classification was in 1985, but there had been years of agony even before then. No matter how you look at it, this state has had 10 years, more or less, of bipartisan bungling on the property tax issue.

I would like to see a bold proposal essentially to scrap--or severely limit property taxes-- and replace them with higher, progressive income taxes and a higher sales tax that exempted food. Income and sales taxes aren't popular either, but at least they can be constructed in such a way that they are collected routinely, and unlike property taxes, they aren't subject to the arbitrary actions of bureaucrats who don't know what they are doing.

Which brings me to the best side-benefit of all: both the Property Valuation Division and the Board of Tax Appeals would lose most, if not all, of their workload under this plan. Maybe the legislature could figure out a way to have them stripped of whatever remains, and we can be done with these two excrescences.

A 1% of APV Cap on home taxes would eliminate the need for the Homestead Property Tax rebate program.

All property tax reduction plans submitted to date only address the 35 mill state school levy which continues to do nothing about the wide county mill levy variation throughout the state and thus continues to present tax inequity.

Tax lid laws are ineffective due to legislative loopholes lobbied into them and home rule powers exercised by local governments. Governor Graves has stated he does not favor initiative and referendum and prefers that the people vote on issues by constitutional mandate at election time.

We feel that letting the people of Kansas vote in November, 1996, on a Real Estate Tax Cap is equally or more important than voting to allow slot machines at race tracks and other locations.

There is no such thing as government money -- there's only taxpayer money.

Cedric Moeger
Kansas for Equal Property & Pension Taxes

U Urban <input checked="" type="radio"/> Rural	Classification of Property	Rate %	1993 Actual Assessed Valuation and Tax Dollars				1994 Actual Assessed Value, Tax Dollars, and Appraised Value					
			1993 Assessed Value	% of Total	1993 Tax Dollars	% of Total	Assessed Valuation	% of Total	Tax Dollars	% of Total	Appraised Valuation	% of Total
U - Real Estate												
1.1	Residential***	11.5	4,237,559,016	28.49	547,451,644.44	32.27	4,458,128,084	28.75	596,800,655.35	32.60	38,766,331,117	46.60
1.2	Agricultural**	30	5,854,835	.03	826,801.86	.04	6,281,907	.04	912,116.50	.04	20,939,684*	.02
1.3	Vacant Lots	12	109,670,413	.73	14,460,527.81	.85	101,359,974	.65	13,852,088.48	.75	844,666,415	1.01
1.4	Not-for-profit	12	0	.00	.00	.00	15,969,643	.10	2,172,744.78	.11	133,080,344	.16
1.6	Com/Indust	25	2,388,909,321	16.06	309,892,094.44	18.26	2,422,285,657	15.62	326,901,637.41	17.85	9,689,142,628	11.64
1.6	Ag Improvement	25	1,705,134	.01	236,478.57	.01	4,575,581	.02	625,738.94	.03	18,302,324	.02
1.7	All Other	30	23,956,955	.16	2,949,348.28	.17	10,124,987	.06	1,419,941.35	.07	33,749,947	.04
Total U - Real Estate			6,767,655,674	45.51	875,816,895.40	51.62	7,018,725,833	45.27	942,684,922.81	51.50	49,506,212,459	59.52
R - Real Estate												
1.1	Residential***	11.5	849,551,613	5.71	89,682,106.25	5.28	929,598,050	5.99	100,110,540.42	5.46	8,083,461,255	9.71
1.2	Agricultural**	30	1,322,537,084	8.89	138,141,134.79	8.14	1,321,621,247	8.52	143,296,247.07	7.82	4,405,404,136*	5.29
1.3	Vacant Lots	12	21,088,069	.14	2,148,110.90	.12	21,106,279	.13	2,222,027.54	.12	175,885,629	.21
1.4	Not-for-profit	12	0	.00	.00	.00	572,828	.00	61,700.02	.00	4,773,561	.00
1.6	Com/Indust	25	309,257,513	2.07	31,000,986.10	1.82	318,233,918	2.05	32,753,597.18	1.78	1,272,935,672	1.53
1.6	Ag Improvement	25	108,127,929	.72	11,120,398.80	.65	110,554,081	.71	11,734,144.92	.64	442,216,324	.53
1.7	All Other	30	17,144,267	.11	1,565,570.92	.09	16,546,989	.10	1,614,400.86	.08	55,156,615	.06
Total R - Real Estate			2,627,706,475	17.67	273,658,307.76	16.13	2,718,233,392	17.53	291,792,658.01	15.94	14,439,833,192	17.36
Total U/R - Real Estate												
1.1	Residential		5,087,110,629	34.21	637,133,750.69	37.55	5,387,726,134	34.75	696,911,195.77	38.07	46,849,792,372	56.32
1.2	Agricultural		1,328,391,919	8.93	138,967,936.65	8.19	1,327,903,154	8.56	144,208,363.57	7.87	4,426,343,820*	5.32
1.3	Vacant Lots		130,758,482	.87	16,608,638.71	.97	122,466,253	.78	16,074,116.02	.87	1,020,552,044	1.22
1.4	Not-for-profit		0	.00	.00	.00	16,542,471	.10	2,234,444.80	.12	137,853,905	.16
1.6	Com/Indust		2,698,166,834	18.14	340,893,080.54	20.09	2,740,519,575	17.67	359,655,234.59	19.64	10,962,078,300	13.18
1.6	Ag Improvement		109,833,063	.73	11,356,877.37	.66	115,129,662	.74	12,359,883.86	.67	460,518,648	.55
1.7	All Other		41,101,222	.27	4,514,919.20	.26	26,671,976	.17	3,034,342.21	.16	88,906,562	.10
TOTAL REAL ESTATE			9,395,362,149	63.18	1,149,475,203.16	67.76	9,736,959,225	62.81	1,234,477,580.82	67.44	63,946,045,651	76.88

105

1-3

REVENUE LOSS OF 400 Million may be 10% too high (360 million) due to higher 1995 appraised values statewide!

Cap Use value-not market value

**Includes Ag land only

***Includes Farm Homesites

****Retail cost when new, less depreciation.

$1\% \rightarrow 696,911,195 \times 60\% = 418,146,917$ - Rev Loss 300,000,000 approx
 $cap 1/2\% \rightarrow 537,566,385 \times 80\% = 430,053,108$ - Rev Loss 100,000,000 approx
 $1\% - 1/2\%$ Total Rev. Loss $\rightarrow 400,000,000$ APROX
 (Residential $\rightarrow 696,911,195$
 all other $\rightarrow 537,566,385$)
 $1,234,477,580$
 approx $1/3$ of Current Real Estate Tax collected

Before the Senate Assessment and Taxation Committee
concerning SCR-1616

presenter
Larry Fischer, D.V.M., as a citizen.

Subject: Assessing Property Taxes on a Percentage of Value

March 13, 1996

Placing caps in the form of percentage of value represents a step towards a more equitable property tax system.

However, this is not to subtract from three other problems: 1> **spending**, 2> **inaccurate value** determination, and 3> **abatements and exemptions**--property should pay for what property uses.

The National Conference of State Legislatures in their publication "Reforming State Tax Systems" say, "**It is a truism of property taxation that fractional assessment (mill levy concept) serves as a convenient graveyard in which assessors can bury their mistakes and acts of favoritism**" [pg. 35].

It is also true that the mill levy is the main method citizens judge the spending of local government and schools. They fail to realize the total tax collected is a multiplicand of the value times the assessment rate times the mill levy. This means that when values are rising the mill levy can remain artificially low. Switching to a percentage of value eliminates the multiplicand effect and more truly informs citizens of spending trends. **The N.C.S.L. recommends taxes be generated on a percentage.**

In any discussion of property taxation it is prudent for the legislator to know certain fundamental principles. **We are not a democracy.** Our founders feared the tyranny of the majority and opted for the rule of law with certain inalienable rights as the basis for those laws. It does not require that hoards of people be here to advocate SCR-1616--it requires only that legislators be well grounded in principles and that decisions are made on representation of those concepts.

One essential that certainly needs reviewing is the concept that **property rights are human rights.** Life, liberty, and property were the three fundamental upon which our republican form of government was founded. **It therefore is questionable as to whether one should tax a right.** A property tax is a direct tax upon property which is the extension of one's labor. **The founders preferred indirect taxes which were excises, duties, imposts, and consumption taxes.**

- The protection of the right to own property by men with different abilities (all men) is "the first object of government. James Madison, Federalist No. 10
- The power of direct taxation. will <cause the people to> have but this alternative, except to pay the tax, or let their property be taken, for all resistance will be in vain. The Address and Reasons of Dissent of the Minority of the Convention of Pennsylvania to the Constituents. Dec. 18 1787.
- "It is a signal advantage of taxes on articles of consumption that they contain in their own nature a security against excess. They prescribe their own limit; which cannot be exceeded without defeating the end proposed, that is, an extension of the revenue. When applied to this object, the saying is as just as

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it is witty, that, "in political arithmetic, two and two do not always make four." If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds. This forms a complete barrier against any material oppression of the citizens by taxes of this class, and is itself a natural limitation of the power imposing them...Imposition of this kind usually fall under the denomination of indirect taxes, and must for a long time constitute the chief part of the revenue raised in this country." *Federalist No. 21--*
Alexander Hamilton

Taxation by indirect taxes was never a direct affront to the three fundamental rights. **Something to think about when fixed incomes measure choices between a medicine and paying property taxes. Make no mistake, people are being taxed from their property:** California revolted against property taxes by responding with proposition 13. Kansas is one of only 5 states west of the Mississippi that does not have initiative. We are at a disadvantage. The philosophy of Proposition 13 is summed up in *SMALL PROPERTY VERSUS BIG GOVERNMENT, Social Origins of the Property Tax Revolt*, by Clarence Lo, University of California Press, 1990.

Page 160-161 The proper role of government is to protect small property, the homes and possessions that are the fruits of labor. If, on the contrary, the government fails to protect property or acts to take property from the deserving, hard-working owner, government has violated its fundamental purpose. The large jumps in property tax bills year after year threatened to do precisely this and actually forced some to sell their property in order to pay tax bills. Drastic measures were in order:

Everything that we have in this county flows from our right to own private property. When.. [that] right.. is taken, everything else, every other freedom falls behind it.. What the people.. in authority at that time were doing was tantamount to divesting us *en masse* of our private property.. [What got people the maddest was] the greed of government and the careless way they spent the fruits of our labors.

Upper-middle-class homeowners and community small businesses, in their own peculiar ways, agreed with the notion that government in America had a fundamental obligation to protect property. The homeowner thought of property as consumer property and felt that if the accountant went to night school and got his M.B.A., he was entitled to his condo and this BMW, without the burden of the property tax. The small business owner felt that the value of his enterprise was gained through entrepreneurial effort, and that he too was entitled to material rewards free from excessive taxation. When they both thought of property, **they envisioned small property, not corporate fortunes of unimaginable scale, but property of a human scale that was the clear result of a person's lifetime of work**. Small property was the magic meeting ground for the middle class, where business and consumer could stand proud and stand together.

pg. 166 Unfortunately, our lives are being now governed by people that we cannot elect. We have a bureaucracy that just won't quit.

pg. 167 Should there be any differential between commercial property and residential property? I don't think so... <T>he notion that we're gonna all of a sudden be relieved from our responsibility to pay by passing it on to someone else is terribly odious to me.

Please Note:

- People did lose property because of property taxation

- Protection of private property is the first object of government.
- Small property, not huge fortunes, are the building blocks of a community.
- Legislators are more responsive to the bureaucracy and special interests than to fundamental principles of governing.

Kansas' philosophy is the same. Without the initiative process, and without responsive elected officials and bureaucrats, disheartened citizens will continue to search for ways to protect their honor and their property. As Machiavelli said, "When neither their property nor their honor is touched, the majority of men live content." Natural law is on a collision course with positive law. The question is how far will each side go before lines are drawn?

The actual assessment of property taxation is very complex--too complex. This is why few legislators, judges, and citizens want to get involved. This complexity, under the control of the vast bureaucracy that supervises the collection and the bureaucracy that uses the proceeds, allows numerous infringements of the rights of property. As an example, one attachment to this presentation show values generated by the Computer Assisted Mass Appraisal system done by Shawnee County, one day apart, on the **same parcel of property**. Note there is **\$47, 300 difference**. Alarming? You bet, especially when it represents either a 23.5% change or a 60.4% change, neither of which are justifiable by standard appraisal techniques or standards. The **(CAMA) system has never worked**. It was designed as a beginning point in the appraisal process but is now the convenient method whereby a push of a button creates property tax values. It is skewing out of function because of poor technique. When innacurate numbers are in the computer and are re-used sequentially over time to re-establish newer values, the system necessarily suffers entropy. The over-reliance on this system is causing **arbitrary and capricious taxation**--it always has and it always will. To compound this problem is the lack of redress of grievance. Administrative law strongly protects the system and wins by attrition. It simply lacks substantive will.

In conclusion, the biggest cry will come from education and city governments. Education will say this measure will lead to a lack of funding. Remember, the 5 states that spent the least on education ranked at the top in academic testing. Money is not the answer. And, if education is such a sacred cow, why are zero Kansas lottery dollars spent on this endeavor?

Although the attempt to assess on a percentage of value is a step forward, legislators well grounded in fundamentals should **CONSIDER A PAPERLESS METHOD OF FUNDING BY SWITCHING TO CONSUMPTION TAXES**. Michigan has done it. South Dakota has no personal property taxes and no income taxes and their business climate is thriving. Arizona has an initiative this year to eliminate property taxes. **THE WEALTH OF OUR NATION IS RAPIDLY SWITCHING TO THE SERVICE SECTOR WHICH remains LARGELY UNTAXED. PROPERTY IS PART OF HUMAN RIGHTS--IT SHOULDN'T BE TAXED, ESPECIALLY IN ITS PRESENT ARBITRARY FORM utilizing the MILL LEVY SYSTEM.**

Attachments:

L & G Leasing 1996 Value Notifications with \$47,000 Difference for Same Property
 Newspaper Article. "Tax and Spend Virus is Spreading"--Ref. Home Loss.
 Property Rights Quotes
 Tax Primer: Property, Capital, Labor, Direct, Indirect
 Excerpts from *Takings* by Richard Epstein, Prof. of Law, Univ. of Chicago
 Excerpt from *The Theme is Freedom* by M. Stanton Evans

No New Construction
No Improvements

SHAWNEE COUNTY APPRAISER

VALUATION NOTICE

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TAX YEAR 1995
THIS IS NOT A TAX BILL

PARCEL IDENTIFICATION NUMBER:
389-598-33-0-30-08-004.00-0

PROPERTY OWNER:
L & G LEASING
5445 NW JENNINGS RD
TOPEKA, KS 33318
66618

TRACT DESCRIPTION:
BLK A LOT 1 WANAMAKER PLAZA
SUB LESS N 75' & S 75'

SEC-TWP-RNG: 33-11-15

PROPERTY ADDRESS:
1132 SW WANAMAKER RD

TAX UNIT: 014

THE REAPPRAISAL OF YOUR PROPERTY HAS BEEN COMPLETED AS REQUIRED BY K.S.A. 79-1476. This letter is your official notification of the county appraiser's estimate of value for your property identified above. **NEW VALUE**

1995 APPRAISED MARKET OR USE VALUE			*	1995 APPRAISED MARKET OR USE VALUE		
CLASS	TOTAL	ASSESSED VALUE	*	CLASS	TOTAL	ASSESSED VALUE
CU	127,300	31,825	*	CU	156,900	39,226
	0	0	*		0	0
	0	0	*		0	0
TOTAL	127,300	31,825	*	TOTAL	156,900	39,226
		x.170 \$5410			(23.5% change)	x.170 \$6668

Any taxpayer may complain or appeal the classification or appraisal of the taxpayer's property by giving notification of such dissatisfaction to the county appraiser's office on or before **April 15**. The county appraiser or the appraiser's designee shall arrange to hold an informal meeting with the aggrieved taxpayer with reference to the property in question.

8014

IMPORTANT

(24.71% change)

9994

\$1980 increase

PLEASE READ THE APPEAL INSTRUCTIONS AND EXPLANATION OF ASSESSMENT CLASSIFICATION ON THE REVERSE SIDE OF THIS NOTICE.

If you have questions or wish to appeal, you must first call the Taxpayer Service Number at (913) 232-4461

DATE MAILED: 03/02/96 LUG: 18 N6HD: 311.1 VALUATION AREA:

SHAWNEE COUNTY APPRAISER
1515 NW Saline
Topeka, Kansas 66618-2844

Rec. 36-96

(?)

No new construction
No improvements

Page 2 of 2

SHAWNEE COUNTY APPRAISER

VALUATION NOTICE

TAX YEAR 1996
THIS IS NOT A TAX BILL

PARCEL IDENTIFICATION NUMBER:
089-098-33-0-30-08-004.00-0

PROPERTY OWNER:
L & G LEASING
5445 NW JENNINGS RD
TOPEKA, KS 66618
66618

TRACT DESCRIPTION:
BLK A LOT 1 WANAMAKER PLAZA
SUB LESS N 75' & S 75'

SEC-TWP-RNG: 33-11-15

PROPERTY ADDRESS:
1132 SW WANAMAKER RD

TAX UNIT: 014

THE REAPPRAISAL OF YOUR PROPERTY HAS BEEN COMPLETED AS REQUIRED BY K.S.A. 79-1476. This letter is your official notification of the county appraiser's estimate of value for your property identified above. **NEW VALUE**

1995 APPRAISED MARKET OR USE VALUE			*	1996 APPRAISED MARKET OR USE VALUE		
CLASS	TOTAL	ASSESSED VALUE	*	CLASS	TOTAL	ASSESSED VALUE
CU	127,300	31,825	*	CU	204,200	51,051
	0	0	*		0	0
	0	0	*		0	0
TOTAL	127,300	31,825	*	TOTAL	204,200	51,051

x.170 4540 *<50.4% change>* *x.170 #8674*

Any taxpayer may complain or appeal the classification or appraisal of the taxpayer's property by giving notification of such dissatisfaction to the county appraiser's office on or before **April 15**. The county appraiser or the appraiser's designee shall arrange to hold an informal meeting with the aggrieved taxpayer with reference to the property in question.

IMPORTANT

PLEASE READ THE APPEAL INSTRUCTIONS AND EXPLANATION OF ASSESSMENT CLASSIFICATION ON THE REVERSE SIDE OF THIS NOTICE.

If you have questions or wish to appeal, you must first call the Taxpayer Service Number at **(913) 232-4461**

DATE MAILED: 03/01/96 LUG: 18 NBHD: 311.1 VALUATION AREA:

Rec 3-8-96

SHAWNEE COUNTY APPRAISER
1515 NW Saline
Topeka, Kansas 66618-2844

Tax-and-spend virus is spreading

By PAUL CRAIG ROBERTS
Scripps Howard News Service

The California Senate just voted to hike the state's sales tax from 6 percent to 7¼ percent. That follows an increase in the state's gasoline tax from 9 cents to 18 cents a gallon. The taxes are being piled on, because the state has been spending like crazy for the past decade and has no reserves to cover a \$14.3 billion budget deficit.

Though a big offender, California is not alone in its profligacy. As many as 35 states have spent their way into deficits. But politicians cannot admit that, because their solution to every problem is to spend more.

Instead of scrutinizing their own spending behavior, they blame cutbacks in federal aid, the recession and tax revolts that left their states "undertaxed." Instead, state politicians are praising one another for honesty in telling people how it is — taxes must go up.

But before buying this, consider these facts:

During the 1980s the states more than doubled their combined spending, which

Paul Craig Roberts is the William E. Simon professor of political economy at the Center for Strategic & International Studies in Washington and is a former assistant secretary of the U.S. Treasury.

rose from \$258 billion in 1980 to \$525 billion in 1989. Arizona led the pack with spending rising 177 percent, followed by Connecticut (173 percent), Florida (170 percent), New Jersey (145 percent) and Massachusetts (137 percent). California was eighth among the biggest spenders with an increase of 121 percent, ahead of New York's 116 percent increase.

All of this spending has not solved any social problems, reduced crime or improved education, but it has left some states bankrupt. As New York Gov. Mario Cuomo has admitted, "We're broke to the marrow of our bones."

The states got in this trouble despite strong revenue growth. California, for example, enjoyed a healthy 8 percent annual increase in tax revenues for the past decade. The problem is that spending is rising by 11 percent annually.

A recent report from the Cato Institute in Washington reveals a disturbing new trend. Formerly fiscally conservative states in the South have joined the ranks of the big spenders. Georgia, North Carolina and Virginia all managed to achieve higher spending increases than New York, and Texas wasn't far behind.

Not all states have spent themselves silly, and a few still have surpluses — which proves that it can be done. However, it is easier to spend to meet all those political needs, and then to raise people's taxes while making taxpayers

feel guilty about their "decade of greed" as a result of Reagan tax-cutting.

In truth, per capita state tax burdens have doubled since 1980. Ironically, states with the fastest revenue growth tend to be in the worst fiscal shape, while low tax states do a better job of controlling spending.

Neither is federal aid a blessing. Since federal grant programs usually require matching state funds, the states are lured by "free" federal money into hiking their spending.

The real problem is that the tax-and-spend virus has spread from Washington, D.C., into the states and localities. Recently, the city of Bridgeport, Conn., succumbed and filed for bankruptcy after pushing property taxes to the point that many old people can't keep their homes. The city's government lacked the will to face up to spending cuts and layoffs and simply gave up the ghost.

State and local tax hikes are complicating the economy's recovery from recession. The taxes are reducing people's disposable incomes just at the time when the economy needs a lift from consumer spending, and they could backfire if they push taxpayers and the economy down further.

Yes, greed is loose in America — but not so much among wage earners. Sooner or later voters will learn that government spending isn't free.

Have you ever heard of someone losing their home

2-6

TAX:

INTERNAL

1. DIRECT TAX:

A direct tax is one which is levied against a person (head tax), his property (property tax), or his income (personal income tax). Notice that in all these the taxpayer must pay directly. In other words, he cannot pass the tax along to anyone else. *The Making of America* by Cleon Skousen, pg. 478. A property tax or capitation tax. Must Constitutionally be apportioned among the states according to their respective populations.

CAPITATION: A tax or imposition on a person...as distinguished from taxes on merchandise.

2. INDIRECT TAX: A tax on things which can be passed on to a final purchaser.

EXCISE: *Excises are taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain (regulated) occupations and upon corporate privileges; the requirement to pay such taxes involves the exercise of a privilege.* Flint v Stone Tracy Co. 220 US 107

DUTY: A tax on imports; a synonym of imposts and customs

IMPOST: Taxes, duties, or impositions levied for divers (diverse) reasons.

EXTERNAL: An indirect tax. Impost or duty. Duties and Imposts are importation and exportation taxes laid by the government.

- **PROPERTY**: That which is peculiar or proper to any person; that which belongs exclusively to one. Blacks' Law Dictionary, 6th ed. pg. 1216.
- **CAPITAL**: Accumulated goods, possessions, and assets, used for the production of profits and wealth. Blacks' Law Dictionary, 6th ed. pg. 208
- **LABOR**: "Work, toil; service; mental or physical exertion. Blacks' Law Dictionary, 6th ed. pg. 874

RIGHTS vs PRIVILEGE—Can a sovereign tax an entity for existing? Can a sovereign tax a Right?

All subjects over which the sovereign power of the state extends (corporations) are objects of taxation but those (individual citizens) over which it does not extend are, upon the soundest principle, exempt from taxation. This proposition may almost be pronounced as self evident. The sovereignty of a state extends to everything which exists by its own authority or exists by its permission. McCullock v. the State of Maryland.

LABOR / PROPERTY RELATIONSHIP

The relationship of labor and property was best described by John Locke. Remember, his works were among the most widely read secular source for the Constitution.

"...<Y>et every man has a property in his own person...The labour of his body, and the work of his hands..are properly his. Whatsoever then he removes out of the state that nature hath provided..he has mixed his labour with and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature placed it in, it hath by this labour something annexed to it, that excludes the common right of other men. For this labour being the unquestionable property of the labour, no man but he can have a right to that what is once joined to."

And again, "His labour hath taken it out of the hands of nature where it was common, and belonged equally to all her children, and hath thereby appropriated it to himself."

And again, "As much as any one can make use of to any advantage of life before it spoils; so much may by his labour fix a property in."

And again, "God..commanded man also to labour...God and his reason commanded him to subdue the earth, i.e. improve it for the benefit of life, and therein lay out something upon it that was his own, his labor."

Finally, "And the condition of human life, which requires labor and materials to work on, necessarily introduce private possessions."

With regards to money, "I dare boldly affirm, that the same rule of propriety, that every man should have as much as he could make use of, would hold still in the world...had not the invention of money, and the tacit agreement of men to put a value on it, introduced.. larger possessions, and a right to them...And thus came in the use of money, some lasting thing that men might keep without spoiling, and that by mutual consent, men would take in exchange for the truly useful but perishable supports of life..." {did he say exchange?} Source: Second Treatise on Government. **John Locke**.

Among these inalienable rights, as proclaimed in the Declaration of Independence is the right of men to pursue their happiness, by which is meant, the **right to pursue any lawful business or vocation**, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give them their highest enjoyment...It has been well said that, the property which every man has is his own labor, as it is the original foundation of all other property so it is the most sacred and inalienable. *Butcher's Union Co. v. Crescent City Co.*, 111 U.S. 746, at 756-757.

Abolition of property in land and the application of all rents of land to public purposes.

First Plank of the Communist Manifesto.

A heavy and progressive or graduated income tax.

Second Plank of the Communist Manifesto

"It is a signal advantage of taxes on articles of consumption that they contain in their own nature a security against excess. They prescribe their own limit; which cannot be exceeded without defeating the end proposed, that is, an extension of the revenue. When applied to this object, the saying is as just as it is witty, that, "in political arithmetic, two and two do not always make four." If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is not so great as when they are confined within proper and moderate bounds. This forms a complete barrier against any material oppression of the citizens by taxes of this class, and is itself a natural limitation of the power imposing them...Imposition of this kind usually fall under the denomination of indirect taxes, and must for a long time constitute the chief part of the revenue raised in this country." *Federalist No. 21--Alexander Hamilton*

Money is also tender and tender is property. "Tender, though usually used in connection with an offer to pay money, is properly used in connection with offer of property or performance of duty..."
Black's Law Dictionary, 6th ed.

CONCLUSIONS:

Property tax is a direct tax.

An indirect tax is preferable.

Sales taxation is a form of indirect taxation.

Since money represents a different species of property, a tax on income is a direct tax.

The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice.

James Madison, Federalist No. 10

According to Plato, oligarchy arises when privilege based on wealth is fixed by statute. Republic. Plato

(Oligarchy--a government in which a small group exercises control esp. for corrupt and selfish purposes.)

The **three great and primary rights**: personal security, personal liberty, and private property. Blackstone, Commentaries.

"To secure their enjoyment, however, certain protection or barriers have been erected which serve to maintain inviolate the three primary rights of **personal security, personal liberty, and private property**. These in America be said to be:

1. The bill of rights and written constitution...
2. The right of bearing arms...
3. The right of applying to the courts of justice for the redress of injuries.

Henry St. George Tucker. Commentaries on the Laws of Virginia.

"The absolute rights of **personal security, personal liberty and the right to acquire and enjoy private property**, descended to the people of this government as a part of the common law of England...They were a part of the Magna Charta, the great charter of England, and form a part of the bill of rights in nearly all the constitutions of the states of this union, as well as of the federal constitution." Wisconsin Senate Journal (1867), Minority Report.

So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. Sir William Blackstone, Commentaries on the Law, 1783

The reason why men enter into society is the preservation of their property. John Locke, Treatises on Government, 1690

The property which every man has in his own labor, as it is the original foundation of all other property, so it is the most sacred and invariable. Adam Smith, The Wealth of Nations, 1776

The right to property being invariable and sacred, no one ought to be deprived of it except in cases of evident public necessity legally ascertained, and on condition of a previous just indemnity.

Declaration of the Rights of Man by the French National Assembly
1789 .

Every man has by nature the right to possess property of his own.
Pope Leo XIII, Rerum novarum, 1891

Property rights are of course human rights...The introduction of the wholly false distinction between property right and human rights in many policy discussions is surely one of the all time great semantic flimflams. **M. Jensen and W. Meckling, Journal of Financial Economics, 1976**

The right to hold property is a natural right. It is the safeguard of family life, the stimulus and the reward of work.

**Pastoral Letter of the French
Roman Catholic Hierarchy, 1919**

The security of property, next to personal security against the exactions of government, is of the essence of liberty.

Justice Joseph McKenna, Block v. Hirsh, 256 U.S. 135, 165

Our social system rests largely upon the sanctity of private property; and that state or community which seeks to invade it will soon discover the error in the disaster which follows.

**Justice William Henry Moody, Mayor v. Knoxville Water Co.
212 U.S. 1, 18**

Property is the fruit of labor. Property is desirable; is a positive good in the world: Let not him who is houseless pull down the house of another, but let him work diligently and build one for himself...

Abraham Lincoln, 1861

The moment the idea is admitted into society that property is not as sacred as the laws of God, and there is not force of law and public justice to protect it, anarchy and tyranny commence.

John Adams, 1821, Second President of the United States

It as an axiom of our Founding Fathers and free Englishmen before them that the right to own and control property was the foundation of all other liberties...

Ronald Reagan, 1988

We have rediscovered the idea that toppled the Berlin Wall...This system, built upon the foundation of private property, harnesses our powerful instincts for creativity. It gives everyone an interest in shared prosperity, in freedom, and in respect.

George Bush, 1991

The protection of the right to own property by men with different abilities (all men) is "the first object of government".

James Madison, Federalist No. 10.

"To kings belongs authority over all: to private persons property."

Seneca, De Beneficiis

"Legally...'property' is the right of any person to possess, use, enjoy, and dispose of a thing." Property Assessment Valuation

<T>he true freinds of liberty and the greatness of man ought

constantly to be on the alert to prevent the government's power from lightly sacrificing the private right of individuals to the general execution of its designs.

Alexis de Tocqueville

The rich and wealthy suitors would eagerly lay hold of the infinite mazes, perplexities and delays, which a court of chancery (equity), with the appellate powers of the supreme court in fact as well as law would furnish him with, and thus the poor man being plunged in the bottomless pit of legal discussion, would drop his demand in despair.

Samuel Bryan, December 18, 1787

Dissent of the Minority of the Convention of Pennsylvania

Different forms of government (are) assigned to each its characteristic principle: thus despotism depends upon fear, monarchy upon honor, aristocracy upon moderation, and democracy upon virtue...The really vicious situation is when insitutions which are fitted for one principle of government are forced to work although that principle has been replaced by another.

Montesquieu, Esprit de Lois

Mutability of the laws is an evil inherent in a democratic government...

Alexis de Tocqueville

In the United States the omnipotence of the majority...is favorable to the legal despotism of the legislature..

Alexis de Tocqueville

The principle of equality has prepared men for (government being the arbitrator of happiness); it has predisposed men to endure them and often to look on them as benefits.

Alexis de Tocqueville

Men accustom themselves to sacrifice private interests without (hesitation) and to trample on the rights of the individual in order to accomplish..public purpose.

Alexis de Tocqueville

The Ten CANNOTS by Abraham Lincoln

1. You CANNOT bring about prosperity by discouraging thrift.
2. You CANNOT help small men by tearing down big men.
3. You CANNOT strengthen the weak by weakening the strong.
4. You CANNOT lift the wage earner by pulling down the wage payer.
5. You CANNOT help the poor man by destroying the rich.
6. You CANNOT keep out of trouble by spending more than your income.
7. You CANNOT further the brotherhood of man by inciting class hatred.
8. You CANNOT establish security on borrowed money.
9. You CANNOT build character and courage by taking away man's initiative and independence.
10. You CANNOT help men permanently by doing for them what

they could and should do for themselves.

"A wise and frugal government...shall not take from the mouth of labor the bread it has earned." **Thomas Jefferson**

"That no free government, or the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue, **and by frequent recurrence to fundamental principles.**" Section 15, Virginia Bill of Rights

They seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.

James Madison, Federalist No. 48

The apportionment of taxes on the various descriptions of property is an act which seems to require the most exact impartiality; yet there is, perhaps, no legislative act in which greater opportunity and temptation are given to a predominant party to trample on the rules of justice.

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"It is a signal advantage of taxes on articles of consumption (sales tax) that they contain in their own nature a security against excess. They prescribe their own limit; which cannot be exceeded without defeating the end proposed, that is, an extension of the revenue. When applied to this object, the saying is as just as it is witty, that, "in political arithmetic, two and two do not always make four."

If duties are too high, they lessen the consumption; the collection is eluded; and the product to the treasury is no so great as when they are confined within proper and moderate bounds. This forms a complete barrier against any material oppression of the citizens by taxes of this class, and is itself a natural limitation of the power imposing them...Impositions of this kind usually fall under the denomination of indirect taxes, and must for a long time constitute the chief part of the revenue raised in this country..."

Alexander Hamilton

"Necessity is the plea for every infringement of human liberty; it is the argument of tyrants; it is the creed of slaves." **William Pitt**

According to Plato, oligarchy arises when privilege based on wealth is fixed by statute. Republic, **Plato**

. (Oligarchy--à government in which a small group exercises control esp. for corrupt and selfish purposes.)

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Wisconsin Senate Journal (1867), Minority Report.

And what country can preserve its liberties, if its rulers are not warned from time to time, that this people preserve the spirit of resistance? Let them take arms...

Thomas Jefferson, Letter to Wm. S. Smith

While the people have property, arms in their hands, and only a spark of noble spirit, the most corrupt Congress must be mad to form any project of tyranny.

Nicholas Collins

Fayetteville Gazette, 12 Oct 1789

It is never to be forgotten that, in the construction of the language of the Constitution...we are to place ourselves as nearly as possible in the condition of the men who framed the instrument.

Ex Parte Baine, 121 U.S. 1, 12 (1887)

The power to tax involves the power to destroy; (and) the power to destroy may defeat and render useless the power to create...

John Marshall

<W>hen neither their property nor their honor is touched, the majority of men live content. **Machiavelli**, The Prince

Property also is an appendage to liberty; and 'tis as impossible for a man to have a right to lands or goods, if he has no liberty, and enjoys his life only at the pleasure of another, as it is to enjoy either when he is deprived of them.

Algernon Sidney, Discourses Concerning Government, p. 403

The law must not be used to destroy equality and justice as it has in the past. Frederic Bastiat once described what has happened:

The law..has acted in direct opposition to its own purpose.

The law has been used to destroy its own objective: It has been applied to annihilating the justice that it was supposed to maintain; to limiting and destroying rights which its real purpose was to respect. The law has placed the collective force (of government) at the disposal of the unscrupulous who

wish, without risk, to exploit the person, liberty, and property of others. It has converted plunder (of property) into a right, in order to protect plunder. And it has converted lawful defense into a crime, in order to punish lawful defense. (Frederic Bastiat, The Law, Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1974, p. 9)

Cleon Skousen, The Making of America, p 355

* a tax—which the citizen can discharge from whatever assets he chooses. The element of choice added to this stage simply transforms the case from garden variety coercion—“your money or your life”—to one of duress of goods—“of your possessions, you may keep A or B, but not both.” The argument against the government, like that against the private party, is that no person is entitled to force any individual to forfeit one thing in order to keep another, when both are unconditionally his *as of right*. The restricted choice in the duress of goods situation is thus wholly different from the choice involved in a market exchange, where the question is always whether one individual wishes to surrender something he is entitled to keep in order to obtain something to which he has *no* claim of right—that is, to buy what he does not own. So long as the government forces the individual to make some transfer, it does not matter what particular thing is transferred.

Following the private analogies, then, private property has been taken, even under a restrictive view of the eminent domain clause which rejects the equation between loss and destruction of property. With a tax, the government takes property in the narrowest sense of the term, ending up with ownership and possession of that which was once in private hands. Anyone who wants to deny the conclusion need only consider the consequences of not paying taxes. Liens are attached to one's land or bank accounts, which are then taken and sold to satisfy the tax obligation. To be sure, there cannot be, either as a matter of general political theory or of constitutional law, any simple equation between taxation and government theft. Yet the analysis does establish that taxation is prima facie a taking of private property. The legitimacy of taxation does not flow from any artificial narrowing of the phrase “taking of private property,” but rather, from the justifications available for all other forms of taking: police power, consent, and compensation, typically either implicit or in kind. What cannot be said is that taxes are simply outside the scope of the eminent domain clause because they are not takings at all, when their effectiveness precisely depends upon coercive power clothed in official garb.¹¹

Regulation

The arguments about taxation and takings carry over with equal force to the government's efforts to regulate the possession, use, and disposi-

11. The point addressed thus far is not historical. Those matters are taken up in greater detail in Chapter 18.

Takings by Richard Epstein
Prof. of Law Univ. of Chicago

dential duties, defamation, treason, and incitement to riot are all very serious offenses that warrant the use of public force even in a society that respects the virtues of limited government. In the trade-off between political speech and treason, why is the intermediate test so inappropriate? The intermediate standard has costs, but it is doubtful that these are decisive in an imperfect world. Intermediate scrutiny always asks, is there some less restrictive alternative available? No major abridgment of speech is apt to survive that question. The intermediate standard allows one to weigh the strength of different forms of speech differently, just as it allows one to weigh differently the interests on the other side. It is better to be aware of the problem and to create responsible subcategories and rebuttable presumptions than it is to pretend that all speech is of equal importance, when it evidently is not.

The third response takes a different form and rests on the proposition that the classical protections for speech and for property have common roots. Lockean defenses of property, for example, evoke the images of personal independence and self-realization in which it has become so fashionable to couch the case for the constitutional guarantees of freedom of speech. The First Amendment argument is that individuals will be able to develop their full potential only if they enjoy a protected realm of autonomy in which they are free to act and experiment for themselves. But a system of private property, which also emphasizes individual autonomy, is designed to serve that same end. Property is defensive, not exploitive.

There is also a political dimension. A nation in which private property is protected contains independent, decentralized sources of power that can be used against the state, reducing thereby the possibility that any group will be able to seize control over the sources of information or the levers of political power. In addition, private property provides the private wealth necessary to support active participation in public debate. Private property, in a word, nourishes freedom of speech, just as freedom of speech nourishes private property. Can anyone find a society in which freedom of speech flourishes where the institution of private property is not tolerated? A country in which there is a free nationalized press? The debate over the extent to which the First Amendment protects individual access to a public forum²² in the end only amounts to a skirmish at the edges of free speech; the central objective is to guard against government favoritism in disposing of public resources, an issue

22. See, e.g., Geoffrey Stone, "Fora Americana: Speech in Public Places," 1974 *Sup. Ct. Rev.* 233.

with a clear eminent domain dimension. But think of the catastrophe that would result if political speech were banned on private property. The persistent skepticism about the government's role in regulating speech also applies to takings cases.

The need for common police power standards in the two areas is brought to the fore by recent Supreme Court cases that show how closely issues of speech and property are intertwined. For many years there appeared to be no necessary conflict between zoning cases and speech cases because it seemed possible to maintain the categorical division between them. But the clash has become evident, especially with the recent move to expand First Amendment protection to commercial speech. In *Metro-media, Inc. v. City of San Diego*,²³ the city passed a complex ordinance that sharply limited the types of signs that could be posted within city limits. Subject to a long list of exceptions for bus stop signs, temporary political signs, and the like, the ordinance banned all forms of noncommercial billboards and permitted only those commercial billboards that referred to the firm located or services rendered on the site where the sign was posted. The asserted justifications for the restrictions on signs were, first, traffic control and safety and second, aesthetic improvement. The California Supreme Court treated this as a *Euclid* case and found no reason to upset the determination of the city council, even though the ordinance was enacted without any hard evidence that it would achieve its professed goals.

The case received a very different treatment in the United States Supreme Court because the threshold question—was this a land use case or a speech case?—was taken seriously. Six justices, a plurality of four and a concurrence of two, found that more serious scrutiny was required because billboards are used to communicate information and thus fall within the ambit of the First Amendment. Denied the easy "out" of deference, the plurality opinion then held that the ban was unconstitutional for noncommercial speech. It further held that the California Supreme Court could sustain the ban on commercial speech on remand if it so chose. The concurrence of Brennan and Blackmun rejected all fine distinctions and urged that the entire ordinance be struck down on the ground that it was difficult to distinguish between commercial and noncommercial speech and that the ordinance as drafted cut too closely to the heart of the First Amendment.

Under the analysis that I have advanced here the case does have one clear outcome. The regulation is a taking of private property as well as a

23. 453 U.S. 490 (1981).

participants in the struggle were aware, royal officials could rule in true imperial fashion; much of the conflict, *e.g.*, about the Stamp Act, was prompted by these considerations. As in England, power over the purse-strings was decisive in establishing the locus of authority in the system.

The importance of defending property against arbitrary power remained a preoccupation of the Founders at the era of the Constitution. Hamilton and Madison were emphatic on the subject, as was John Adams: "The moment the idea is admitted into society that property is not as sacred as the laws of God and that there is not a force of law and public justice to protect it, anarchy and tyranny commence." Nor was this simply Federalist opinion; arch-"radical" Sam Adams believed the same. "It is an essential, natural right," he wrote, "that a man shall quietly enjoy, and have the sole disposal of his own property . . . The Utopian schemes of leveling, and a community of goods, are as visionary and impracticable, as those which vest all property in the crown . . ."⁷

In the framers' view, the point was not that property had "rights," but rather that *people* had a right to property, and that this was an essential aspect of a free society. The common concern among the founding generation was that a government which could at its discretion take private property could thereby control every aspect of existence. Property was thus a condition, and a product, of a regime of freedom. Such was the lesson of British constitutional history, the meaning of taxation by consent, and a principal reason for the Founders' high regard for Locke—who was above all a defender of the rights of property.

We are frequently told things have "evolved" since the old-fashioned era of the Constitution, that the lessons considered relevant then are now no longer binding. But all experience since bears out the Founders' warnings on this subject. "A power over a man's subsistence," as Hamilton put it, "amounts to a power over his will."⁸ Far from being disproved by latter-

day developments, this maxim has been repeatedly confirmed in the political history of our era. This has been most obviously the case with the totalitarian systems. As we have seen, all of these regimes set out to control or dominate economic life, and through that control to dictate all other facets of behavior: Where one could live and work, go to school or travel, worship or assemble, speak or publish one's opinions.

Such consequences have been apparent well short of the totalitarian outcome. To take an obvious example, authoritarian governments have found it a simple matter to control the press, merely by controlling the supply of newsprint. In our own society, government control in matters of finance or the material elements of communication has been used to inhibit voices of dissent—as in the "fairness doctrine" imposed by the Federal Communications Commission, antitrust actions against unfriendly media, or timely investigations by the IRS.

How do these considerations affect the ethics of economic freedom, and its relationship to our religion? One obvious answer is that if our ethical system supports the idea of political liberty, as most people would agree it does, then it must support as well the material factors by which that liberty can gain expression. To argue that freedom of the press is sanctioned by the Western ethic, but that the material elements needed to have a press are not, is a hopeless contradiction. The first is conditioned on the second, and to approve of one entails approval of the other. So likewise with other First Amendment liberties that have an economic basis.

These thoughts about the press translate to a more general consideration: The exercise of freedom in all its forms requires some kind of private space—a sphere in which the individual can enjoy a degree of independence, and thereby exercise his own ideas and judgments. A state that controls the material elements of life can, at its whim, deny this. Hence the need in a regime of freedom for a *material spot* on which the individual can stand, and which cannot arbitrarily be taken from him.

A Privileged Class

Even General Motors had to close plants as part of a widespread restructuring of U.S. business. But for the country's largest service businesses—state and local governments—no such reality check seems necessary. The extent to which government has avoided the innovation and streamlining of many private businesses is shown in a new study by the American Legislative Exchange Council, a Washington, D.C.-based group that represents more than one-fourth of state legislators.

It found that state and local public-employee compensation rose more than *four* times faster than that for private workers during the 1980s. The rate of increase was so large that average state and local employee wages and salaries now exceed average private-sector wages by 10%.

ALEC's findings go a long way toward explaining why 31 states raised taxes a total of \$29 billion in fiscal years 1991 and 1992. With wages and benefits making up 60% of state and local budgets, the explosion in public compensation makes tax increases inevitable. If public-sector wages and benefits had grown only as fast as those in the private sector during the past decade, the \$39 billion saved would have meant that far fewer states would have had to raise taxes last year.

Municipal unions, the engine driving much of the cost explosion in government, argue that public employees have higher skill and educational requirements. But only about one-eighth of the wage hikes for public employees can be explained by the differing compositions of the work forces. All categories of public employment did well during the 1980s. White-collar workers saw their wages rise 2.4 times faster than private white-collar employees. Service-employee wages rose 4.5 times as fast. Blue-collar workers (largely bus drivers and sanitation workers) had a percentage increase of more than 50 times their private counterparts.

State public employees ended the 1980s outstripping private-sector wage gains in 46 states. Local employees did better in 49 states. But the increases in some states were phenomenal. In Alaska, California, North Dakota and Rhode Island, both state and local employees receive compensation that exceeds their private-sector counterparts by an average of 20% or more.

Public employees are also often better off when it comes to benefits.

They average nationally 3.6 days more in paid holidays, 25% more in paid vacation time after one year of work, and pension and insurance benefits that average 28% higher than in the private sector.

Some public officials realize that their employee wages and benefits are bleeding their budgets dry. One of the most outspoken is the new Democratic Mayor of Philadelphia, Ed Rendell, who was elected on a platform of privatization and cost-cutting. Mayor Rendell has just announced a proposal to rescue his nearly bankrupt city. "Our plan makes the only choice there is—to cut the cost of city government," he said.

Unlike most other big-city mayors, Mr. Rendell says his city must fix its own problems. He expects no more money from the state or federal government. And raising taxes in Philadelphia, which already has the nation's highest wage and sales taxes, would be "unthinkable."

Mayor Rendell's plan calls for \$1 billion in savings over five years from union give backs on wages, benefits and work rules. The unions are already fighting back by filing lawsuits that claim the plan violates their collective bargaining rights.

Layoffs of public workers always pose difficulties. In Philadelphia, for example, big layoffs from a work force that already provides inefficient services will hurt city residents more than most union members and could reduce public support for Mr. Rendell's reforms. Mr. Rendell could propose opening up most city services to privatization and competitive contracting. Such reforms are frequently better than layoffs because they force *both* labor and management to streamline their operations, and end up providing better services at a lower cost.

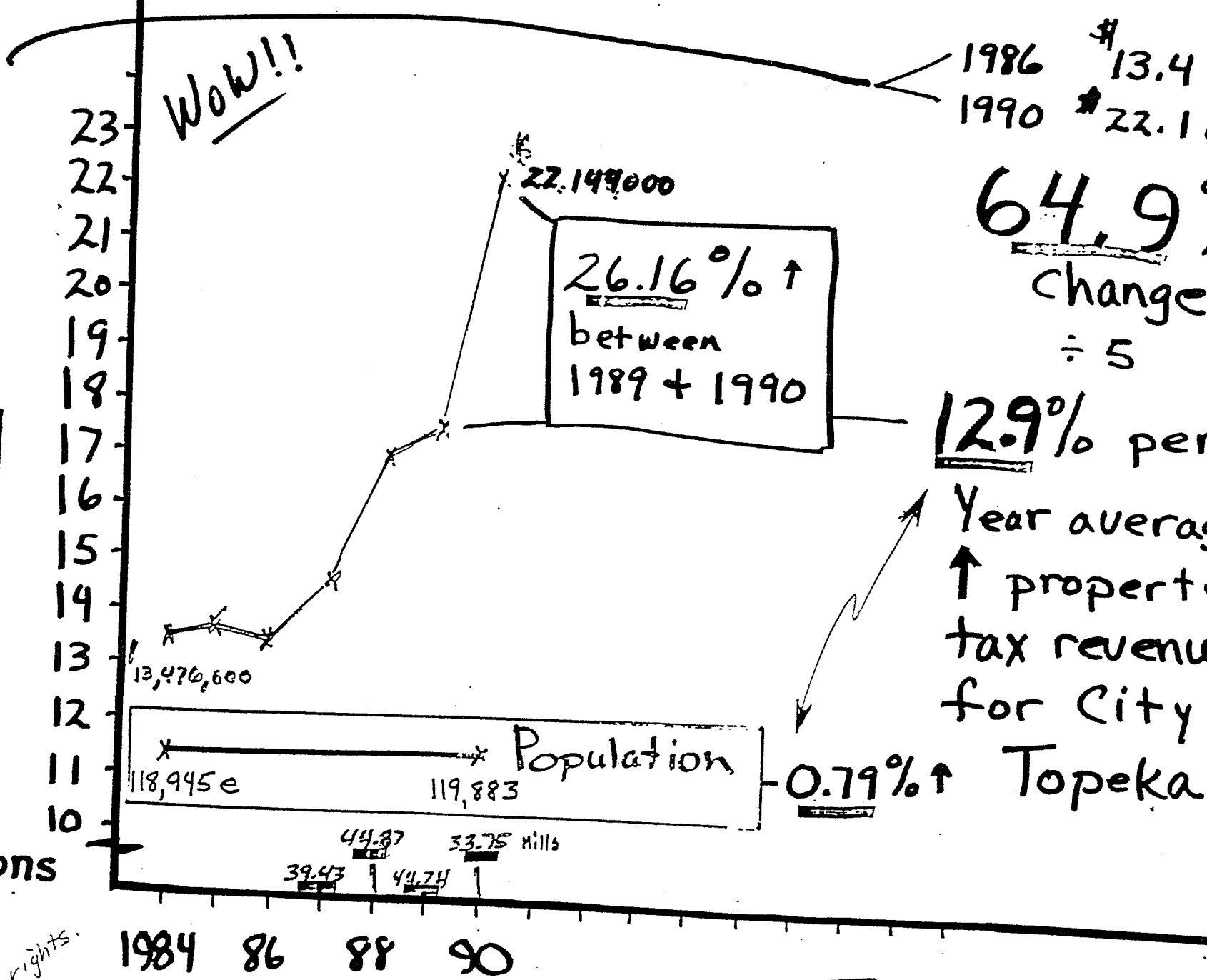
They also can force concessions. When Mayor Wilson Goode, Mr. Rendell's predecessor, went to the bargaining table in 1988 with two competitive bids for private garbage service, he won major wage and work rule concessions from city unions.

In the coming months, Philadelphia will provide a test case for whether or not a 40-year-old nationwide trend toward larger, increasingly inefficient and costlier public-sector work forces can be reversed. If it can't, citizens' faith in government will continue to fall as they conclude that their cities and states are being run more for the benefit of their employees than for their residents.

THE WALL STREET JOURNAL WEDNESDAY, MARCH 11, 1992

Property Tax Revenue

Wow!!



1986 \$ 13.4 Million
 1990 \$ 22.1 Million

64.9%
 change
 ÷ 5

12.9% per
 Year average
 ↑ property
 tax revenue
 for City of

0.79% ↑ Topeka

This is an
 ic on
 property rights.

Topeka, KS.

Year

**TESTIMONY TO THE
SENATE ASSESSMENT AND TAXATION COMMITTEE
MARCH 13, 1996**

HCR 1616

The aggregate tax rate for residential properties in Wichita is 1.38%. The aggregate tax rate for Wichita commercial/industrial properties is 3% and agricultural property has a 3.6% aggregate tax rate.

Assuming that those rates are constant throughout Sedgwick County, approximately \$62,000,000 in ad valorem taxes are collected from commercial properties, \$124,000,000 in property taxes are collected on residential properties and \$2,800,000 are collected from agricultural properties for all taxing jurisdictions. Total ad valorem taxes collected for all classes of property (excluding tax and tag) is approximately \$234,000,000. The proposed amendment would decrease the commercial/industrial revenue to \$31,000,000, the residential to \$90,000,000 and the agricultural to \$1,200,000. A net loss of \$66,600,000 in total revenue to all taxing jurisdictions. This computes to a 28.5% decrease in ad valorem tax revenue, exclusive of tax and tag, for Sedgwick County, its cities, townships and schools.

Needless to say, a 28.5% decrease in property tax revenue would have a devastating impact on the delivery of local services.

Another offshoot of this proposed amendment would be a shift in the burden of property taxation. Commercial and industrial properties would have their tax bills cut in half; agricultural properties would enjoy a 58% decrease in property taxes; while residential real properties would see only a 28% decrease. Vacant land and public utility properties are not addressed by this amendment. Personal property, indeed commercial and industrial machinery and equipment, would receive no tax relief at all, under this amendment.

We wonder to what extent the owners of business personal property (the state's business community), vacant land and public utilities will be forced to pick up the additional burden caused by the loss of revenue from the other sources.

We have seen no indications that Sedgwick County business and land developers are willing to pick up additional tax burden. While it is possible to assume that the owners of commercial and industrial property would pass their tax savings along to their tenants and customers, and they in turn would pass their savings along to households, the empirical evidence does not support that assumption. It is common knowledge that rents and prices are very sticky downward. There is no reason to believe that applying an effective tax

*Sew. Assess + Tax
3-13-96
attach 3-1*

rate of 1.5% to commercial and industrial property, while maintaining a 3% tax rate for the business that occupy them is going to benefit anyone other than the owners of the commercial and industrial real property.

We fully understand that the amendment allows the limitations to be suspended by a vote of the majority of the electors within a taxing district. We believe, however, that provision will only serve to encourage factions. Any law that inspires coalitions to form in order to maximize their benefit, to the peril of others, is not good public policy. We see nothing in this amendment that serves the general will of the people of Sedgwick County and the State of Kansas.

We believe that we and the communities that comprise Sedgwick County, our cities, our townships and our schools have control over and, indeed, are our local governments. Our collective will is expressed in our local elections and at our open public meetings. We do not support any proposal to be handed down by the state that places the particular will of individuals over the general will of the people.

post script: If it is the desire of the legislature to shift the burden of taxation away from commercial and agricultural properties and to the residential properties, why not just assess all property at 100% of market value? That is straight forward equity.



**League
of Kansas
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

TO: Senate Assessment and Taxation Committee
FROM: Chris McKenzie, Executive Director
DATE: March 13, 1996
RE: SCR 1616

Thank you for the opportunity to appear today and offer some comments on SCR 1616. I will be discussing this measure in depth with the League's Finance and Taxation Policy Committee this Friday, and we will then have a formal position on the measure to share with the Committee. On behalf of the League at this time, however, I would appreciate offering some brief comments.

This measure would impose an arbitrary cap on the aggregate property tax on residential and all other forms of real property of not to exceed 1% and 1.5%, respectively, of the property's appraised value. This proposal to constitutionally and in a classified way cap property taxes at a percent of market value could significantly undermine the availability of the property tax to fund the budgets of cities, especially smaller cities that do have the market to support a sales tax. These cities could lose substantial portions of revenue.

As I have shared with you previously, cities have done an outstanding job of controlling the growth in property taxes levied to support city government (see attached chart). As a percentage of most cities budgets, the property tax is declining. Notwithstanding this job, HCR 1616 would result in an approximate 25% reduction in my property taxes for my home if it was in effect today. The legislature would then decide how much of the reduced amount would go to the counties, schools, cities, etc.

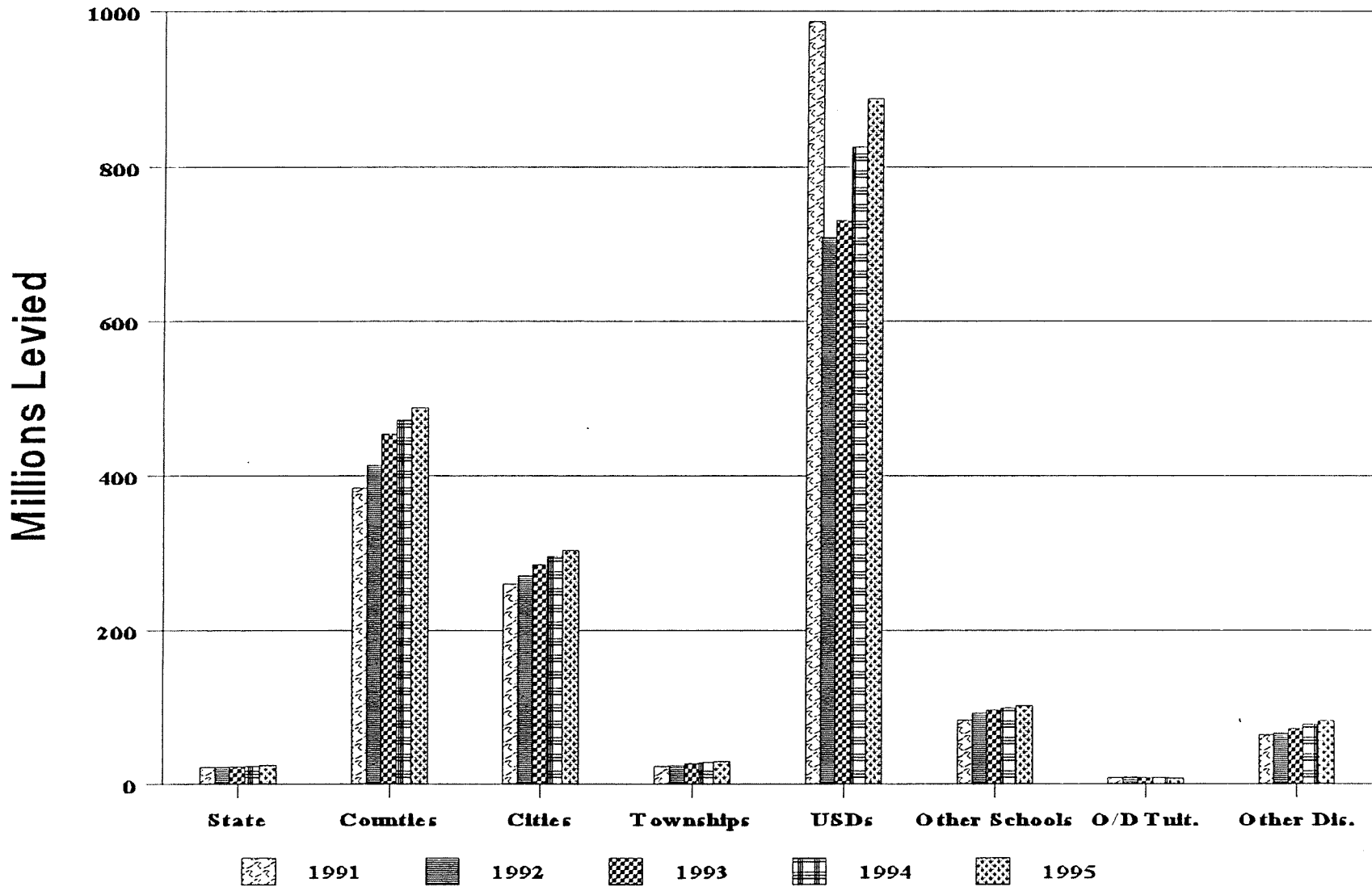
The arbitrary property tax limitations in SCR 1616 will simply lead to increased pressure to raise other taxes--sales, income, fees, etc. Should those decisions be accomplished in this manner, or should a more deliberate series of decisions be made to better balance property and the other taxes? SCR 1616 also will lead to intense competition for the limited local property taxes between and among local units. The principles for making such an allocation will have to be worked out painstakingly in order to ensure needed public services are not compromised.

Thank you for this opportunity to address just a few of the issues. I hope to have a more developed position after our policy committee meeting on Friday.

Please let me know if you have any questions about this matter. Thank you.

Sen. Cisneros + Jay
3-13-96
attach 4-1

Statewide Ad Valorem Tax Levies: 1991 - 1995



Source: League of Kansas Municipalities, based on data from Div. of Accounts & Reports, January, 1993 and 1996. Out-District tuition figures for 1991 extrapolated based on 1992 allocation between county and out-district tuition amounts.

4-3

Statewide Ad Valorem Levies By Type of Taxing District for 1991 to 1995
(Amounts are expected in millions)

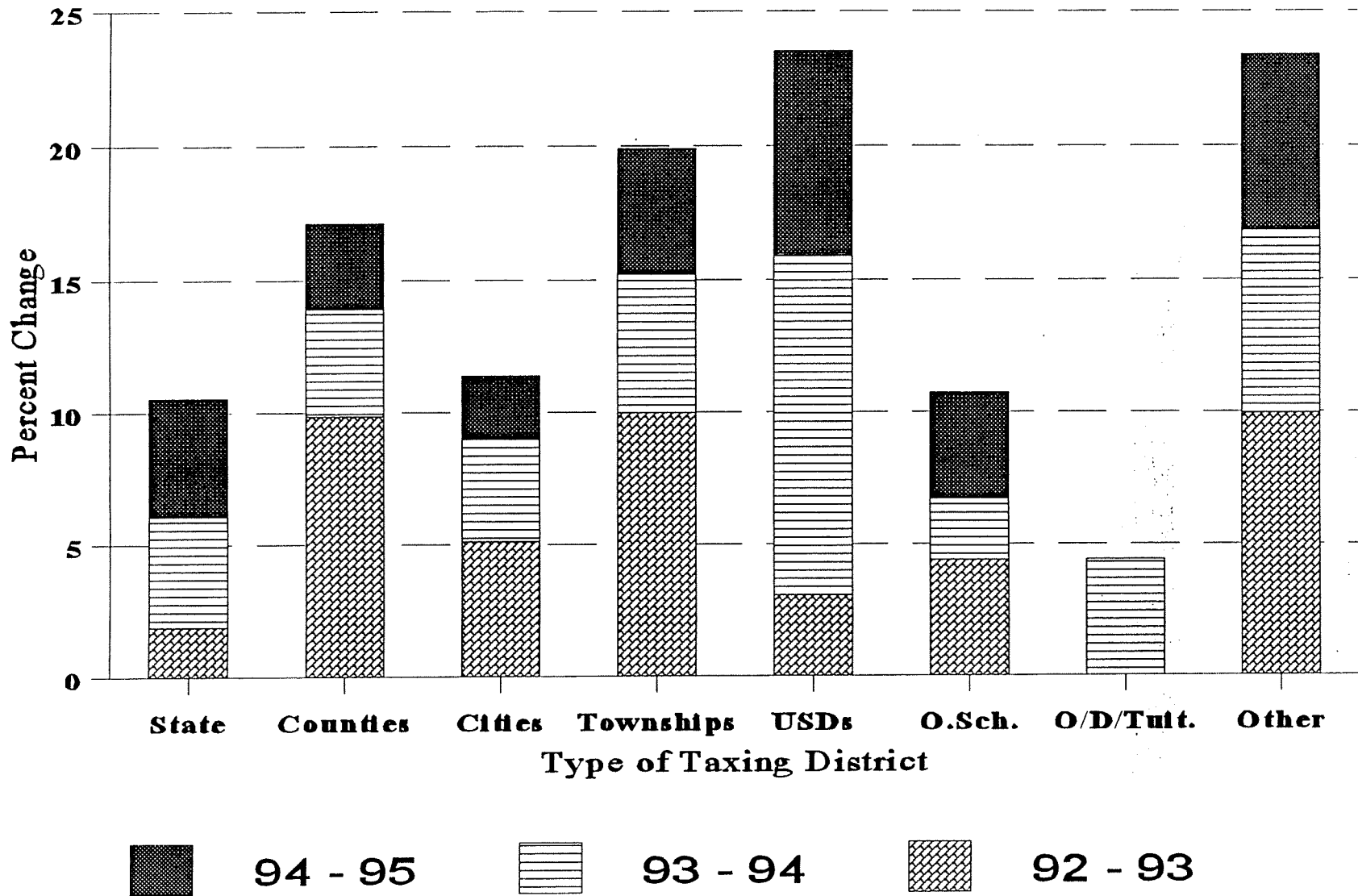
	<u>1991</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	Percent of <u>1995 Total</u>	Percent of Increase			
							<u>91-92</u>	<u>92-93</u>	<u>93-94</u>	<u>94-95</u>
State	21.95	21.90	22.31	23.24	24.29	1.26%	-0.21%	1.87%	4.21%	4.47%
County	384.3*	413.55	454.29	472.66	487.93	25.34%	7.61%	9.85%	4.04%	3.23%
City	260.61	271.42	285.32	296.60	303.52	15.76%	4.15%	5.12%	3.95%	2.33%
Township	23.44	24.05	26.45	27.83	29.14	1.51%	2.61%	9.98%	5.22%	4.71%
USD	987.24	709.68	731.33	825.80	888.15	46.12%	-27.01%	3.05%	12.92%	7.55%
Other Schools	82.97	92.35	96.42	98.66	102.61	5.33%	9.2%	4.41%	2.32%	4.00%
Out District Tuition	8.53*	9.18	8.14	8.50	7.79	0.40%	7.62%	-11.33%	4.42%	-8.35%
Other Districts	<u>63.6</u>	<u>65.60</u>	<u>72.12</u>	<u>77.08</u>	<u>82.14</u>	<u>4.27%</u>	3.12%	9.94%	6.88%	6.56%
Totals	<u>\$1,832.64</u>	<u>\$1,607.73</u>	<u>1,696.38</u>	<u>1,830.38</u>	<u>1,925.57</u>	<u>100.00%</u>				
Percent of Increase		-12.3%	5.5%	7.9%	5.2%					
CPI Increase		3.0%	3.0%	2.6%	3.0% Est					

The levy data was taken from the Department of Revenue's publication "Statistical Report of Property Assessment and Taxation" with adjustments by Kansas Legislative Research Department.

* 1991 data were reported for county only. Allocation between county and out-district tuition was done by League of Kansas Municipalities based on 1992 proration.

Division of Accounts and Reports
Municipal Services Team
January 1996
January 1993 (for 1991 data only)

Cumulative Percent Change In Statewide Ad Valorem Levies 1992 - 1995



Source: League of Kansas Municipalities, based on data supplied by Division of Accounts and Reports, January, 1996



MEMORANDUM

TO: Members of the Senate Assessment & Taxation Committee
FROM: Donald R. Seifert, Management Services Director *ms*
SUBJECT: HCR 1616; Constitutional Amendment Establishing Property Tax Limits
DATE: March 13, 1996

On behalf of the city of Olathe, thank you for the opportunity to appear today in opposition to HCR 1616 which would establish aggregate limits on the property tax that could be levied on various classes of property. As drafted, the limits would be 1% of appraised value for residential property and 1.5% of appraised value for non-residential property. This appears to be the Kansas version of the "Proposition 13" amendment adopted in California in the mid-1980's. Many believe this amendment has been extremely harmful to public services in that state.

By placing a ceiling on the property tax, HCR 1616 sounds like an attractive proposal. However, there is no mention in the amendment about how the loss of revenue would be made up by local taxing jurisdictions, or how a property tax roll back would be divided among local jurisdictions.

A quick look at the math shows the impracticality of this proposal. The 1995 appraised value of all residential property in Johnson County was about \$15.4 billion. Based on the 1995 abstract of taxes prepared by the Johnson County Clerk's Office, approximately \$263.4 million in ad valorem taxes, or 1.7% of total residential appraised value, was levied in 1995 to support 1996 budgets of all taxing jurisdictions in the county. Under HCR 1616, if the aggregate mill levy were lowered to 1% of total appraised valuation, that represents a \$108 million property tax revenue loss among all taxing jurisdictions that provide public services. Even making adjustments for the exceptions contained in HCR 1616, what would a loss of this magnitude mean to public education, public safety, and other essential public services?

The governing body of the city of Olathe takes its responsibility to levy property taxes very seriously. Since 1990, the city has been able to reduce its property tax mill rate by approximately 13%. Our opposition to this proposal is not because the city advocates higher property taxes, but because this proposal could lead to very significant losses of existing revenue. The city urges the Committee to not recommend HCR 1616, and give this matter further study.


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*Sen. Assess + Tax
3-3-96
attach 5-1*

WHITNEY B. DAMRON, P.A.
COMMERCE BANK BUILDING
100 EAST NINTH STREET - SECOND FLOOR
TOPEKA, KANSAS 66612-1213
(913) 354-1354 ♦ 232-3344 (FAX)

MEMORANDUM

TO: Chair Audrey Langworthy and Committee Members
Senate Committee on Assessment and Taxation

FROM: Whitney Damron 

RE: Substitute for HB 2513

**An Act concerning property subject to delinquent property taxes;
authorizing the establishment of the Wyandotte County Land Bank.**

DATE: March 13, 1996

Substitute for HB 2513 would allow the Board of County Commissioners of Wyandotte County to establish a land bank for the purposes of packaging for sale or transfer property acquired through foreclosure, gift, purchase or other means. Property could be consolidated, assembled or subdivided and sold or transferred to interested parties.

1. HB 2513 was adopted as amended by the House Economic Development Committee and remains in the House Taxation Committee (double referred).

2. HB 2513 authorizes the creation of a Wyandotte County Land Bank. Previous land bank bills have included provisions for statewide application. However, several organizations have suggested a pilot project approach in order to better evaluate the statewide implications.

3. The primary amendments made in the House Economic Development Committee to HB 2513 are as follows:

- Original bill (HB 2513) was replaced with the land bank language from SB 165 of last year which contained numerous other property tax issues which were considered in Conference Committee. The section dealing with land banks was eventually amended out in Conference Committee discussions.

- HB 2513 is only applicable to Wyandotte County.

Sen. Assess + Tax
3-13-96
attach 6-1

Senate Committee on Assessment and Taxation
Substitute for HB 2513
Page Two of Two
March 13, 1996

- Section requiring annual audit of land bank program (per request of Chairman Phill Kline and others). {New Section 3. (c)}

- Section prohibiting conflict of interest (per request of Chairman Phill Kline and others). {New Section 4. (e)}

- Permit the Wyandotte County Commission to serve as the land bank board or appoint others to do so (per request of Wyandotte County Commission). {New Section 2. (b)}

4. Language was added to the bill in Committee hearings which would prohibit the sale or transfer of any property acquired by the land bank until thirty days after publication in the official county newspaper. The purpose of this amendment is to allow for public input and/or scrutiny prior to the transfer of any properties. {Conceptually added to New Section 8.}

5. The bill requires the land bank to keep an inventory of all properties held by the land bank and make such list available for public inspection. {New Section 7. (b)}

6. Any property acquired by the land shall be exempt from the payment of ad valorem taxes levied by the state and any other political or taxing subdivision of the state, with the exception being special assessments levied by a municipality to finance public improvements, which may be exempted. In no event shall the payment of special assessments be required until such a time that the property is sold or otherwise conveyed by the land bank. {New Section 9. (a) - (d)}

7. The land bank may establish separate neighborhood or city advisory committees consisting of persons living or owning property within the county, city or neighborhood.

This information was prepared by Whitney B. Damron on behalf of the City of Kansas City, Kansas. Please contact me for additional information at (913) 254-1354 in Topeka.

Attachment: Unofficial copy of Substitute for HB 2513.

03-07-96

Draft 1/29/96

2513

SUBSTITUTE FOR HOUSE BILL NO. ~~2510~~

By COMMITTEE ON ECONOMIC DEVELOPMENT

AN ACT concerning property subject to delinquent property taxes; authorizing the establishment of the Wyandotte county land bank; amending K.S.A. 79-2804f and K.S.A. 1995 Supp. 79-2804g and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. As used in this act:

- (a) "County" means Wyandotte county, Kansas.
- (b) "Board" means the board of trustees of the Wyandotte county land bank.
- (c) "Bank" means the Wyandotte county land bank established pursuant to this act.

New Sec. 2. (a) The board of county commissioners of Wyandotte county may establish a county land bank by adoption of a resolution.

(b) The bank shall be governed by a board of trustees. The board of county commissioners of Wyandotte county may appoint the board. Commissioners may serve on or as the board of trustees. Vacancies on the board shall be filled by appointment for the unexpired term. (c) The board of county commissioners may advance operating funds to the bank to pay expenses of the board of trustees and the bank. Members of the board of trustees shall receive no compensation, but shall be paid their actual and necessary expenses in attending meetings and in carrying out their duties as members of the board.

(d) The bank may be dissolved by resolution of the board of county commissioners. In such case, all property of the bank shall be transferred to and held by the board of county commissioners of the county and may be disposed of as otherwise provided by law.

New Sec. 3. (a) The bank shall be subject to the provisions of the cash-basis law, K.S.A. 10-1101 et seq., and amendments thereto.

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(b) The budget of the bank shall be prepared, adopted and published as provided by law for other political subdivisions of the state. No budget shall be adopted by the board until it has been submitted to, reviewed and approved by the board of county commissioners.

(c) The board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the board shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the board.

(d) All records and accounts shall be subject to public inspection pursuant to K.S.A. 45-216 et seq., and amendments thereto.

(e) Any moneys of the bank which are not immediately required for the purposes of the bank shall be invested in the manner provided by K.S.A. 12-1675, and amendments thereto.

(f) The bank shall make an annual report to the board of county commissioners on or before January 31 of each year, showing receipts and disbursements from all funds under its control and showing all property transactions occurring in each year. Such report shall include an inventory of all property held by the bank. A copy of such inventory also shall be published in the official county newspaper on or before January 31 of each year.

(g) The bank shall be subject to the provisions of K.S.A. 9-1401 et seq., and amendments thereto.

New Sec. 4. (a) The board shall select annually, from its membership, a chairperson, a vice-chairperson, and a treasurer. The treasurer shall be bonded in such amounts as the board of county commissioners may require.

(b) The board may appoint such officers, agents and employees as it may require for the performance of its duties, and shall determine the qualifications and duties and fix the compensation of such officers, agents and employees.

(c) The board shall fix the time and place at which its meetings shall be held. Meetings shall be held within the county and shall be subject to the provision of K.S.A. 75-4317 et seq., and amendments thereto. Public notice shall be given of all meetings.

(d) A majority of the board shall constitute a quorum for the transaction of business. No

Draft 1/29/96

action of the board shall be binding unless taken at a meeting at which at least a quorum is present.

(e) The members of the board shall be subject to the provisions of the laws of the state of Kansas which relate to conflicts of interest of county officers and employees, including but not limited to K.S.A. 75-4301 et seq., and amendments thereto.

(f) Subject to the provisions of K.S.A. 75-6101 et seq., and amendments thereto, if any action at law or equity, or other legal proceeding, shall be brought against any member of the board for any act or omission arising out of the performance of duties as a member of the board, such member shall be indemnified in whole and held harmless by the board for any judgment or decree entered against such member and, further, shall be defended at the cost and expense of the bank in any such proceeding.

New Sec. 5. The board may:

(a) Sue and be sued;

(b) enter into contracts;

(c) appoint and remove staff and provide for the compensation thereof;

(d) acquire, by purchase, gift or devise, and convey any real property, including easements and reversionary interests, and personal property subject to the provisions of this act;

(e) rebate all, or any portion thereof, the taxes on any property sold or conveyed by the bank;

(f) exercise any other power which may be delegated to the land bank by the board of county commissioners and the governing bodies of the cities and other taxing subdivisions located in the county by interlocal agreement and other lawful means; and

(g) exercise any other incidental power which is necessary to carry out the purposes of the land bank and this act.

New Sec. 6. (a) Any property acquired by a county, city or other taxing subdivision within such county may be transferred to the bank. The board may accept or refuse to accept any property authorized to be transferred pursuant to this subsection. The transfer of any property

Draft 1/29/96

pursuant to this subsection shall not be subject to any bidding requirement and shall be exempt from any provision of law requiring a public sale.

(b) The fee simple title to any real estate which is sold to the county in accordance with the provisions of K.S.A. 79-2804 and , and amendments thereto, and upon acceptance by the board of trustees may be transferred to the bank by a good and sufficient deed by the county clerk upon a written order from the board of county commissioners.

New Sec. 7. The board shall assume possession and control of any property acquired by it under this act and shall hold and administer such property. In the administration of property, the board shall:

(a) Manage, maintain and protect or temporarily use for a public purpose such property in the manner it deems appropriate;

(b) compile and maintain a written inventory of all such property. The inventory shall be available for public inspection and distribution at all times;

(c) study, analyze and evaluate potential, present and future uses for such property which would provide for the effective reutilization of such property;

(d) plan for, and use its best efforts to consummate, the sale or other disposition of such property at such times and upon such terms and conditions deemed appropriate; and

(e) establish and maintain records and accounts reflecting all transactions, expenditures and revenues relating to the bank's activities, including separate itemizations of all transactions, expenditures and revenues concerning each individual parcel of property acquired.

New Sec. 8. (a) The board, without competitive bidding, may sell any property acquired by the board at such times, to such persons, and upon such terms and conditions, and subject to such restrictions and covenants deemed necessary or appropriate to assure the property's effective reutilization. The sale of any real property by the board under the provisions of this act on which there are delinquent special assessments to finance public improvements shall be conditioned upon the approval of the governing body of the municipality which levied the special assessments.

(b) The board, for purposes of land disposition, may consolidate, assemble or subdivide

New Section 8. Add provision requiring publication of intent to sell or transfer property in land bank thirty days before such transfer in official 6-6
(Conceptual)

Draft 1/29/96

individual parcels of property acquired by the bank.

New Sec. 9. (a) Until sold or otherwise disposed of by the bank and except for special assessments levied by a municipality to finance public improvements, any property acquired by the bank shall be exempt from the payment of ad valorem taxes levied by the state and any other political or taxing subdivision of the state.

(b) Except for special assessments levied by a municipality to finance public improvements, when the board acquires property pursuant to this act, the county treasurer shall remove from the tax rolls all taxes, assessments, charges, penalties and interest that are due and payable on the property at the time of acquisition by the board.

(c) Property held by the bank shall remain liable for special assessments levied by a municipality to finance public improvements, but no payment thereof shall be required until such property is sold or otherwise conveyed by the bank.

(d) The governing body of any municipality which has levied special assessments on property acquired by the bank may abate part or all of the special assessments, and the bank and governing body may enter into agreements related thereto. Any special assessments that are abated shall be removed from the tax rolls by the county treasurer as of the effective date of the abatement.

New Sec. 10. (a) Except as provided in paragraph (b), any moneys derived from the sale of property by the bank shall be retained by the bank for the purposes and operations thereof.

(b) The board may use all or any part of the proceeds from the sale described in paragraph (a) to reimburse any municipality for delinquent special assessments due on such property.

New Sec. 11. The board may establish separate neighborhood or city advisory committees consisting of persons living or owning property within the county, city or neighborhood. In the case of neighborhood advisory committees, the board shall determine the boundaries of each neighborhood. In the absence of a resolution by the board providing otherwise, each advisory committee shall consist of not less than five nor more than nine persons, to be appointed by the board for two-year overlapping terms. The board shall consult

Draft 1/29/96

with each advisory committee as needed to review the operations and activities of the bank and to receive the advice of the members of the advisory committee concerning any matter which comes before the committees.

Sec. 12. K.S.A. 79-2804f is hereby amended to read as follows: 79-2804f. (a) The county commissioners shall keep a record of all real estate acquired by the county under the provisions of K.S.A. 79-2804 ~~or, and~~ amendments thereto, showing: The case by name, title and number, together with the date of filing of the petition and of the sale and identifying the tract, lot or piece of real estate described therein; the amount of judgment lien and the amount set forth in the order of sale of the charges, costs, and expenses of the proceeding and sale paid by the county. Such record shall upon request be open to inspection at all reasonable times.

(b) Except as provided by subsection (c), such real estate shall be sold by the board of county commissioners of ~~said the~~ county at private or public sale for cash in hand; the consideration for the purchase to be at least the original amount of the judgment lien and interest thereon as provided by law, plus the amount of costs set forth in the order of sale and plus any and all subsequent taxes and special assessments on ~~said such~~ real estate that were not included in ~~said such~~ judgment. If in the discretion of the board of county commissioners it ~~be is~~ deemed necessary to prevent a menace to the public health or welfare, or that repair or rehabilitation of any structures thereon would be economically unsound, ~~said the~~ board may remove or cause to be removed any such improvements upon any property acquired by the county under the provisions of this act. The board of county commissioners may sell all or any of the salvaged materials therefrom at public or private sale, and after first deducting the cost of such removal, shall credit the remainder of such proceeds to the county general fund. Any deficiency shall be charged to such general fund.

If, at the end of six ~~(6)~~ months from and after the confirmation of ~~said the~~ sale to the county to any of ~~said the~~ real estate, any of ~~said the~~ real estate remains unsold, the board of county commissioners may reduce the price therefor and sell the same after first advertising the same once each week for three ~~(3)~~ consecutive weeks in ~~said the~~ county describing ~~said the~~ real estate, giving the location thereof and requesting sealed bids therefor on or before a specified

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date and ~~said the~~ board shall accept the highest cash bid received: ~~Provided, however,~~ The board of county commissioners may reject bids in an amount less than the current market value of ~~said the~~ real estate and if no bid ~~be is~~ accepted or received, such board may sell the same for such sum that, in ~~their the board's~~ judgment, would be the market value thereof, but no such sale shall be made for an amount less than the best bid received, if any, and rejected: ~~Provided, however,~~ The board of county commissioners, at any time after the end of six ~~(6)~~ months from and after the confirmation of ~~said the~~ sale to the county and after advertising such real estate at least three ~~(3)~~ times in the official county paper and such other papers as the board shall direct, describing the same, giving the general location thereof, and the time and place of sale, may sell such real estate at public auction for cash in hand to the highest bidder therefor.

All real estate sold by ~~said the~~ county as provided in this ~~section subsection~~ shall be conveyed to the purchaser by a good and sufficient deed by the county clerk of ~~said the~~ county upon a written order from the board of county commissioners. Such order shall be deemed conclusive evidence of the compliance with this section in any action challenging the validity of such deed. Immediately upon the execution of any such deed, the county clerk shall assess the real estate so conveyed and enter the valuation thereof on the assessment and tax rolls.

(c) Any property acquired by the board of county commissioners pursuant to K.S.A. 79-2804, and amendments thereto, may be transferred to the county land bank as provided by section 6.

Sec. 13. K.S.A. 1995 Supp. 79-2804g is hereby amended to read as follows: 79-2804g. (a) Whenever any tract, lot or piece of real estate is offered for sale at public auction pursuant to K.S.A. 79-2804, and amendments thereto, such tract, lot or piece of real estate shall not be sold, either directly or indirectly, to:

(1) Any person having a statutory right to redeem such real estate prior to such sale, pursuant to the provisions of K.S.A. 79-2803, and amendments thereto;

(2) any person who held an interest in a tract as owner or holder of the record title or any mortgagee or assignee who held an interest at any time when any tax constituting part of the county's judgment became due;

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(3) any parent, grandparent, child, grandchild, spouse, sibling, trustee or trust beneficiary of any person enumerated in paragraph (2); or

(4) with respect to a title holding corporation, any current or former stockholder, current officer or director, or any person having a relationship enumerated in paragraph (3) to such stockholder, officer or director.

(b) If any such real estate is acquired by a county pursuant to K.S.A. 79-2804, and amendments thereto, and, at the end of six months from and after confirmation of such sale to the county, such real estate is advertised for sale at public auction, as provided in K.S.A. 79-2804f, and amendments thereto, such real estate shall not be sold, either prior to or at such auction, to any person having a statutory right to redeem such real estate, under the provisions of K.S.A. 79-2803, and amendments thereto, for an amount less than the original judgment lien and interest thereon, plus the costs, charges and expenses of the proceedings and sale, as set forth in the execution and order of sale issued pursuant to K.S.A. 79-2804, and amendments thereto.

(c) If any tract, lot or piece of real estate purchased at public auction pursuant to K.S.A. 79-2804, and amendments thereto, is transferred, sold, given or otherwise conveyed to any person who had a statutory right to redeem such real estate prior to such sale pursuant to K.S.A. 79-2803, and amendments thereto, within 10 years of the date of the public auction, such person shall be liable for an amount equal to the original judgment lien and interest thereon from the date of the public auction.

(d) The provisions of this section shall apply to the sale or conveyance of any real estate by a county land bank established pursuant to section 2.

Sec. 14. K.S.A. 79-2804f and K.S.A. 1995 Supp. 79-2804g are hereby repealed.

Sec. 15. This act shall take effect and be in force from and after its publication in the statute book.

SUPPLEMENTAL NOTE ON SUBSTITUTE FOR
HOUSE BILL NO. 2513

As Recommended by House Committee on
Economic Development

Brief*

Sub. for H.B. 2513 would authorize the Wyandotte County Commission to establish a Land Bank. The Bank would be governed by a board of trustees. The board would be authorized to acquire, through purchase, gift, or through a will, any real property or personal property. Any property belonging to the county or any city or taxing subdivision within the county also may be transferred to the Bank. The board may accept or refuse to accept the transfer of any property to the Bank. Such transfer would not be subject to any bidding requirement and would be exempt from any law requiring a public sale.

The board of the Bank would be authorized, without competitive bidding, to sell any property acquired by the board in any manner so as to ensure the effective reutilization of the property. Notification in an official county paper of intent to sell would be a precondition for sale of the property. For purposes of disposing of the land, the board would be authorized to consolidate, assemble, or subdivide individual parcels of property acquired by the Bank.

The bill also specifies: (1) the composition of the board of directors, the method of selecting its officers and the board's duties, responsibilities, and conduct with respect to administering any acquired property; (2) treatment of ad valorem taxes, delinquent taxes, and special assessments on property acquired by the Bank; and (3) the establishment of separate neighborhood or city advisory committees to provide input to the board concerning the operations and activities of the Bank. The bill also would subject the Bank to a financial audit, to be included in the Bank's annual report. Finally, the bill would authorize any moneys derived from the sale of property by the Bank to be retained by the Bank for its operations.

Background

The concept for Sub. for H.B. 2513 originated with a proposal made to the Blue Highway Committee on Urban Revitalization during the interim of 1994. That proposal was based on a municipal land bank established in Cleveland as a means of disposing of tax delinquent vacant lots. The introduced version of H.B. 2513 was considered by the House Committee on Taxation during the 1995 Session. This bill was subsequently referred to the 1995 Special Committee on Assessment and Taxation (Proposal No. 10) for further review, together with a modified version of the land bank proposal contained in the House Committee of the Whole version of S.B. 165. The Special Committee considered the land bank bills and recommended further study in light of certain concerns raised by the Wyandotte County Commission about potential bureaucracy. According to proponents, such concerns were subsequently allayed. The House Committee on Economic Development recommended a land bank proposal that incorporated provisions of the House Committee of the Whole version of S.B. 165, with several modifications. One such modification was to confine the Land Bank to Wyandotte County, as was the intent in the introduced version of H.B. 2513.

Proponents of the bill included: Representative Pat Pettey; Kathy Wolfe, Administrative Aide to Mayor Carol Marinovich, Kansas City, Kansas; Nancy Burns, Wyandotte County Commissioner; Dave Holtwick, Area Manager-External Affairs with Southwestern Bell Telephone and Chairman of the Board of Kansas City, Kansas Area Chamber of Commerce; Mary Jane Johnson, Executive Director, Liveable Neighborhoods Task Force; Jeff Fendorf, Wyandotte County Counselor; Richard Malloy, Staff Planner for the Economic Opportunity Foundation, Inc.; and Julius G. Novak, Wyandotte County Legislative Liaison.

* Supplemental Notes are prepared by the Legislative Research Department and do not express legislative intent.

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