

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND TOURISM

The meeting was called to order by Chairman Ben Vidricksen at 9:05 a.m. on February 5, 1997 in Room 254-E of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department
Emalene Correll, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Marian Holeman, Committee Secretary

Conferees appearing before the committee: SueAnn V. Schultz

Others attending: See attached list

Members were provided with Fiscal Note for **SB-131** (Attachment 1) and Fiscal Note for **SB-118** (Attachment 2).

SB 118: CONCERNING VEHICLES - LEASING - TERMINAL RENT ADJUSTMENT

SueAnn V. Schultz, Senior Vice-President, General Counsel, Bank IV appeared on behalf of several financial institution speaking as a proponent for **SB 118** which deals with vehicle leasing and Terminal Rental Adjustment Clause (TRAC) (Attachment 3). Ms. Schultz advised that this bill amends present legislation to clarify that vehicles are leased - not owned and to spell out methods for determining fair market value under the TRAC lease clause. This deals with commercial transactions only. Federal law mandates TRAC leasing strictly in commercial transactions. This bill has nothing to do with the TRAC clause itself. This law is simply for the protection of those people who enter into leases and for some reason the lessor goes into bankruptcy. According to some bankruptcy courts, they may hold that just because this clause was in there that this was a sale and not a lease. Under the bankruptcy law, lease and sale are treated differently and this bill is to protect the lessee in the event of bankruptcy of the lessor. Thirty-five states now have this legislation and it will be proposed in all other states. Kansas financial institutions need this bill to enable them to compete on a level field.

SB-117: RE: LICENSE PLATES - CONGRESSIONAL MEDAL OF HONOR WINNERS

Scheduled hearings on **SB-117** relating to license plates for Congressional Medal of Honor winners did not have any conferees - neither proponents nor opponents of the bill. Senator Don Biggs requested the bill. Member discussion revealed that there are only two Medal of Honor winners in the state. Questions raised included: (1) why would it cost so much, and (2) why are 290 hours of programming needed to accomplish issuing two license plates. Ms. McBride, Division of Motor Vehicles, explained that all computer programs would have to be modified to allow issuance of these plates for the first time. After first issue, there would be no additional cost. It would cost approximately \$450 to make the plates. The Chair plans to reschedule hearings on this bill and would like to explore some way to finance it. The fiscal note (Attachment 4) was later revised to include the expenditure of \$7,084 in FY 1997.

Senator Greta Goodwin moved to recommend **SB-118** favorable for passage. Senator Jerry Karr seconded the motion. Motion carried. Senator Karr will carry the bill.

Meeting adjourned at 9:50 a.m.

The next meeting is scheduled for Thursday, February 6, 1997.

STATE OF KANSAS

DIVISION OF THE BUDGET
Room 152-E
State Capitol Building
Topeka, Kansas 66612-1504
(913) 296-2436
FAX (913) 296-0231

Bill Graves
Governor

Gloria M. Timmer
Director

January 31, 1997

The Honorable Ben Vidricksen, Chairperson
Senate Committee on Transportation and Tourism
Statehouse, Room 143-N
Topeka, Kansas 66612

Dear Senator Vidricksen:

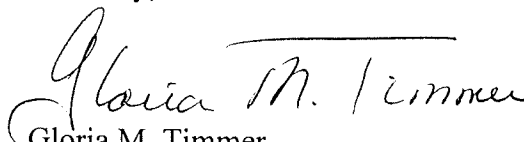
SUBJECT: Fiscal Note for SB 131 by Senator Karr

In accordance with KSA 75-3715a, the following fiscal note concerning SB 131 is respectfully submitted to your committee.

SB 131 amends the school transportation law to allow school districts to contract with the governing body of any township, city, or county for the transportation of individuals, groups, or organizations. Current law limits this authority to senior citizen groups.

The Department of Education indicates that passage of this bill would have no fiscal impact.

Sincerely,



Gloria M. Timmer
Director of the Budget

cc: Dale Dennis, Education

SENATE TRANSPORTATION & TOURISM
— DATE: 2/5/97
ATTACHMENT: # 1

1-1

STATE OF KANSAS



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Director

January 31, 1997

The Honorable Ben Vidricksen, Chairperson
Senate Committee on Transportation and Tourism
Statehouse, Room 143-N
Topeka, Kansas 66612

Dear Senator Vidricksen:

SUBJECT: Fiscal Note for SB 118 by Senate Committee on Transportation and Tourism

In accordance with KSA 75-3715a, the following fiscal note concerning SB 118 is respectfully submitted to your committee.

SB 118 would supplement the Uniform Commercial Code section concerning leases. The bill indicates if a lease is terminated, a motor vehicle is sold, and an agreement provides for an adjustment in the rental price of the motor vehicle based on the amount realized from the sale, this agreement does not solely constitute a sale or an interest which secures the payment of an obligation. The bill would be a new provision to the existing Uniform Commercial Code pertaining to leases.

SB 118 would have no fiscal impact upon state operations. The Office of the Secretary of State has indicated there would be no additional filing requirement as a result of passing the bill.

Sincerely,

A handwritten signature in cursive script that reads "Gloria M. Timmer".

Gloria M. Timmer
Director of the Budget

cc: Teresa Dean, Secretary of State's Office

SENATE TRANSPORTATION & TOURISM
— DATE: 2/5/97 —
ATTACHMENT: # 2

SENATE COMMITTEE ON TRANSPORTATION AND TOURISM

**Testimony of SueAnn V. Schultz,
Senior Vice President, General Counsel, BANK IV**

Senate Bill 118

2-5-97

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to address you today. I am SueAnn Schultz, Senior Vice President and General Counsel for BANK IV (in Wichita, Topeka and 34 other communities throughout Kansas). I also appear before you on behalf of Baystone Financial Group of Manhattan, Kansas, First National Bank of Hutchinson, Kansas, and Transamerica Business of Overland Park, Kansas. In addition, I am speaking on behalf of two national trade associations, the Equipment Leasing Association and the American Automotive Leasing Association. We all support this legislation.

Attached is our written explanation of Senate Bill 118 and of TRAC (Terminal Rental Adjustment Clause) vehicle leasing. I have a few comments in addition to our written testimony.

Senate Bill 118 clarifies the law regarding TRAC vehicle leasing, which is the way our company and those companies I am representing, have leased vehicles for years. TRAC vehicle leasing is the way that most commercial fleets of vehicles are leased throughout the United States. There are over 5 million vehicles on the roads operating under TRAC leases. We want to operate in Kansas without being at a competitive disadvantage to companies in other states that have already enacted this legislation, and 35 other states have already adopted this legislation.

What this bill will do is lower our costs of doing TRAC leasing. There has been some uncertainty in the law about whether TRAC vehicle leases should be treated as "true leases" in court cases where the lessee is in bankruptcy. Our position is that TRAC leases are, and should continue to be, recognized as true leases, and most courts agree with our position. But the uncertainty in the law has caused needless litigation and expense for TRAC vehicle lessors such as those I represent. Senate Bill 118 will help eliminate that uncertainty by clarifying that TRAC leases are "true leases". It will lower our costs of doing TRAC vehicle leasing, it will allow us to lower lease rental rates, and it will help commerce in the state of Kansas.

We support this legislation and ask that you adopt Senate Bill 118. Thank you for your attention. I am willing to answer any questions you may have.

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[2-5-97:7:30am]

SENATE TRANSPORTATION & TOURISM
— DATE: 2/5/97 —
ATTACHMENT: #3

TRAC VEHICLE LEASING IN KANSAS

o **TRAC vehicle leasing.** TRAC vehicle leasing is a well-established, decades-old business that involves the leasing of commercial fleets of motor vehicles (cars and trucks) by one business to another. While specific transactions vary, in general a Terminal Rental Adjustment Clause (TRAC) permits (or requires) an upward or downward adjustment of rent to make up for any difference between the projected value of a vehicle and the actual value upon lease termination. The objective of TRAC vehicle leases is to provide a financial incentive for the lessee/user, who is the party to the transaction best able to control the maintenance of the vehicle, to keep the vehicle in good repair.

TRAC vehicle leasing is limited by federal tax law (see 26 U.S.C. 7701(h)) to a commercial business context; TRAC vehicle leasing does not involve leasing to consumers.

TRAC motor vehicle leasing became increasingly popular after the end of World War II so that, today, most fleets of leased vehicles in America are covered by the TRAC form of lease. The Equipment Leasing Association (ELA) and the American Automotive Leasing Association (AALA) estimate that there are over 5 million leased vehicles now on the roads operating under TRAC leases.

o **TRAC legislation.** The objective of TRAC/state legislation is simply to ensure that TRAC leases are treated the same as all other leases for state law purposes and bankruptcy law purposes.

What the TRAC/state legislation says is that the mere presence of a TRAC clause in a vehicle lease will not destroy the "true lease" character of the TRAC lease. This clarifies the law and accords with tax law, accounting principles, and the trend in the court cases. See, e.g., 26 U.S.C. 7701(h) (federal tax law); Financial Accounting Standards Board Statement No.13 (accounting principles); Sharer v. Creative Leasing, 612 So.2d 1191 (Ala. 1993) (courts holds TRAC vehicle leases to be true leases, in lessor's suit for deficiency judgment).¹

The impact of the proposed TRAC/state law is particularly important when the lessee is in bankruptcy. If a TRAC lease is

¹ And see In re Otasco, Case No.90-C-300-E (N.D.Okl. 1991), overruling 111 Bk.Rptr. 976 (Bk.N.D.Okl. 1990) (TRAC leases held true leases in bankruptcy case); Basic Leasing v. Paccar, 1991 WL 117412 (D.N.J. 1991) (same); LMV Leasing, Inc. v. Conlin, 805 P.2d 189 (Utah App. 1991) (TRAC leases held true leases in lessor's suit for deficiency judgment); contrast In re Tillery, 571 F.2d 1361 (5th Cir. 1978) (TRAC leases held disguised security agreements, not true leases, in bankruptcy case).

suit for deficiency judgment).¹

The impact of the proposed TRAC/state law is particularly important when the lessee is in bankruptcy. If a TRAC lease is viewed as a "true lease," then the Trustee in Bankruptcy must pay the lessor full rental payments for using the vehicles, and the lessor may recover the leased vehicles from the Trustee in Bankruptcy and re-lease them. On the other hand, if the TRAC lease is viewed as a disguised security interest, then the Trustee in Bankruptcy may keep the vehicles, and pay the lessor only an amount representing the depreciation on the leased vehicles (about 50% to 80% of full rentals). The difference to the lessor is significant.

Thirty-five (35) other States and the District of Columbia have already enacted TRAC/state legislation. Major industrial States enacting TRAC legislation include (among others) California, Florida, Illinois, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, North Carolina, Pennsylvania, Tennessee, Texas, Virginia, Wisconsin. The States that adopted TRAC/state legislation in 1996 are Connecticut, Delaware, Massachusetts and West Virginia.

TRAC/state legislation in Kansas would clarify the law, make it uniform and predictable throughout the United States, lower transaction costs, and facilitate commerce in Kansas.

This legislation is supported in Kansas by Bank Four (Wichita), Baystone Financial Group (Manhattan), First National Bank of Hutchinson (Hutchinson), and Transamerica Business (Overland Park) and two national trade associations representing vehicle and equipment leasing (the Equipment Leasing Association and the American Automotive Leasing Association). We know of no opposition.

We respectfully urge the Kansas Legislature to enact TRAC/state legislation in the public interest.

¹ And see In re Otasco, Case No.90-C-300-E (N.D.Okl. 1991), overruling 111 Bk.Rptr. 976 (Bk.N.D.Okl. 1990) (TRAC leases held true leases in bankruptcy case); Basic Leasing v. Paccar, 1991 WL 117412 (D.N.J. 1991) (same); LMV Leasing, Inc. v. Conlin, 805 P.2d 189 (Utah App. 1991) (TRAC leases held true leases in lessor's suit for deficiency judgment); contrast In re Tillery, 571 F.2d 1361 (5th Cir. 1978) (TRAC leases held disguised security agreements, not true leases, in bankruptcy case).

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Bill Graves
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Gloria M. Timmer
Director

February 5, 1997

The Honorable Ben Vidricksen, Chairperson
Senate Committee on Transportation and Tourism
Statehouse, Room 143-N
Topeka, Kansas 66612

Dear Senator Vidricksen:

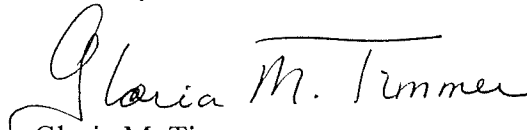
SUBJECT: Fiscal Note for SB 117 by Senate Committee on Transportation and Tourism

In accordance with KSA 75-3715a, the following fiscal note concerning SB 117 is respectfully submitted to your committee.

SB 117 would allow recipients of the congressional medal of honor to receive a distinctive license plate. Individuals would receive these types of license plates without paying the regular license fees.

The Division of the Budget has not received a fiscal impact statement from the Department of Revenue at this time. A revised fiscal note will be issued when information regarding the fiscal impact of SB 117 has been received. Any revenues or expenditures arising upon passage of SB 117 are not included in *The FY 1998 Governor's Budget Report*.

Sincerely,


Gloria M. Timmer
Director of the Budget

cc: Lynn Robinson, Department of Revenue

SENATE TRANSPORTATION & TOURISM
DATE: 2/5/97
ATTACHMENT: #4

4-1

STATE OF KANSAS



DIVISION OF THE BUDGET
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Bill Graves
 Governor

Gloria M. Timmer
 Director

February 21, 1997

REVISED

The Honorable Ben Vidricksen, Chairperson
 Senate Committee on Transportation and Tourism
 Statehouse, Room 143-N
 Topeka, Kansas 66612

Dear Senator Vidricksen:

SUBJECT: Revised Fiscal Note for SB 117 by Senate Committee on Transportation and Tourism

In accordance with KSA 75-3715a, the following revised fiscal note concerning SB 117 is respectfully submitted to your committee.

SB 117 would allow recipients of the congressional medal of honor to receive a distinctive license plate. Individuals would receive these types of license plates without paying the regular license fees.

Estimated State Fiscal Impact				
	FY 1997 SGF	FY 1997 All Funds	FY 1998 SGF	FY 1998 All Funds
Revenue	--	--	--	--
Expenditure	--	\$7,084	--	--
FTE Pos.	--	--	--	--

The Department of Revenue indicates passage of SB 117 would result in additional expenditures of \$7,084 in FY 1997. This estimate is based on 290 hours of programming time to

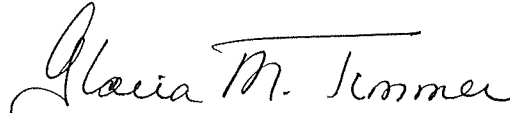
The Honorable Ben Vidricksen, Chairperson

February 21, 1997

Page 2

modify the existing Vehicle Information Processing System (VIPS). The cost of this time is estimated to be \$22.88 per hour. In addition, the Department estimates that it would cost \$450 to produce the plates. Any fiscal effect resulting from the passage of this bill would be in addition to amounts included in *The FY 1998 Governor's Budget Report*.

Sincerely,

A handwritten signature in cursive script that reads "Gloria M. Timmer". The signature is written in black ink and is positioned above the printed name and title.

Gloria M. Timmer

Director of the Budget

cc: Lynn Robinson, Department of Revenue