

Approved: 3/10/98
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on February 16, 1998 in Room 313-S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Powell (excused)
Representative Mayans (excused)
Representative Shriver (excused)
Representative Howell (excused)
Representative Presta (excused)
Representative Ruff (excused)
Representative Adkins (excused)
Representative Mays (excused)
Representative Wilk (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee: David Brant, Securities Commissioner, to introduce
Roger Walter, General Counsel, Securities Commission
Michelle Miller, Johnson County
Cyndi Beck, Kansas County Clerks Association
Judy Moller, Association of County Clerks
Marylin Nichols, Shawnee County Register of Deeds
Association

Others attending: See attached list

The Chair called the meeting to order and introduced Mr. David Brant, Securities Commissioner.

HB 2854 **Authentication of governmental records as a condition to their admission into evidence.**

Mr. Brant introduced Mr. Roger Walter, General Counsel to the Kansas Securities Commissioner. The conferee testified in support of **HB 2854**. The conferee stated that this bill will amend the current requirements of the Kansas Rules of Evidence which relate to the requirements for authentication of government records as a condition for their admission into evidence in judicial proceedings. The conferee explained the dual certification process currently necessary for records kept outside the state. The conferee stated that **HB 2854** would conform Kansas procedure to the better, more modern practice adopted in a number of other states by eliminating the unnecessary and burdensome practice of this dual certification. The conferee stated that the dual certification/authentication process provides little, if any, additional protection in ensuring the accuracy of records admitted into evidence. The conferee stated that this bill is to simplify the authentication process.

The conferee stated that the amendment provided by the Securities Commission struck out too much language and that needs to be adjusted. The conferee offered an amendment that would clean up the language in subparagraph 4. The conferee stated that consideration needs to be given to whether the certification is provided under a seal by the government agency, and the bill should be so amended. The conferee stated that the intent is to conform this bill to the federal rules of practice. The conferee stated that he was given authority to state that the Attorney General's office recognizes this problem and supports this bill. The conferee stated the Kansas County and District Attorneys Association also supports this bill. (Attachment 1)

There being no other conferees, the chair closed the hearing on **HB 2854**.

HB 2855 **Tax liens against personal property; exceptions; collections.**

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON Judiciary, Room 313-S Statehouse, at 3:30 p.m. on February 16, 1998.

Michelle Miller, Intergovernmental Relations, Johnson County Board of County Commissioners, testified in support of **HB 2855**. The conferee stated that this bill was requested as a means to close a tax loophole, provide a vehicle for collection of unpaid personal property tax, and promote fairness and uniformity in statewide property tax collection efforts. The conferee stated that the bill creates a priority tax lien against personal property and grants secured-creditor status to counties faced with tax collections in bankruptcy filings. The conferee discussed delinquency rates experienced in Johnson county and other counties across the state. The conferee stated that the Kansas Association of Counties also support this bill. (Attachment 2)

Judy Moller, Association of Counties, stated that group supports **HB 2855**.

The Chair closed the hearing on **HB 2855**

HB 2856 **County and court records reproduced and stored using current technology such as digital storage and retrieval.**

Cyndi Beck, Kansas County Clerks Association, testified in full support of **HB 2856**. The conferee stated that favorable passage of this bill would allow county clerks to utilize the technologies available for records retention. This would also make the retrieval of records easier. (Attachment 3)

Judy Moller, Association of Counties, introduced Marilyn Nichols, Register of Deeds Association.

Marilyn Nichols testified in support of **HB 2856**. The conferee stated that this bill would support the use of new technology in the performance of the retention duties in the Register of Deeds office. The office could adapt to technological changes which would enhance the performance of the staff. (Attachment 4)

During discussion with Committee members, the conferee acknowledged that this bill is written to allow for new types of technology. Representative Kirk discussed the need for schools to use new technologies in the keeping of records. Suggestions for broadening the scope of this bill were offered by the Revisor. Representative Kirk stated that she will offer an amendment to include schools in this bill. The Chair discussed with the conferee that this bill would apply to the dual record keeping system, and that both on site and off-site record storage could use digital or other new technological system to retain records.

The Chair noted that written testimony from Eileen King, President Kansas County Treasurer's Association was provided to the Committee in support of **HB 2856**. (Attachment 5)

The Chair closed the hearing on **HB 2856**.

The Chair discussed the Committee's agenda in which the subcommittee reports will be presented.

The Chair adjourned the meeting at 4:10 p.m.

The next meeting is scheduled for February 17, 1998.

HOUSE JUDICIARY COMMITTEE
GUEST LIST

DATE: 2-16-98

NAME	REPRESENTING
Michelle Miller	Johnson County
Janie Stramburg	Johnson County
Candi Beck	KCCA - Macon Co. Clerk
Marilyn L. Nichols	Register of Deeds Association
John U. Clark	KCDAA
Kathryn Olsen	KBA
Debbie Randall	Whitney Jensen, D.A.
DAVID BRANT	SECURITIES COMMISSIONER
ROGER WALTER	OFFICE OF KS SEC. COMM
Ann Dukes	DOB
Kathy Porter	OJA



KANSAS

Bill Graves
Governor

OFFICE OF THE SECURITIES COMMISSIONER

David R. Brant
Securities Commissioner

TESTIMONY IN SUPPORT OF HOUSE BILL NO. 2854

HOUSE JUDICIARY COMMITTEE

February 16, 1998

Roger N. Walter
General Counsel to the Kansas Securities Commissioner

Mr. Chairman and Members of the Committee:

I am Roger Walter, General Counsel to the Kansas Securities Commissioner. I am testifying in support of House Bill No. 2854.

In summary, H.B. 2854 would amend the current requirements of the Kansas Rules of Evidence which relate to the requirements for authentication of government records as a condition to their admission into evidence in judicial proceedings found in K.S.A. 60-465.

The current requirements differ depending on whether the office in which the records are kept is located in the state or outside the state. If the office is located in the state, the records must only be certified. If the office in which the records are kept is located outside the State of Kansas, they must be certified and authenticated.

Certified records are copies of official government records accompanied by an attestation by the record custodian that the records are a correct copy of records in his or her custody and that he or she is the person which has lawful custody of the records.

Certified and authenticated records are records which have been certified but which also contain a second certification or authentication in addition to the original attestation as described above. The second certificate authenticates that the attesting records custodian does indeed have custody of the records.

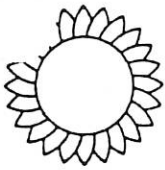
K.S.A. 60-465 requires that this second certificate be provided by a judge or other public officer having official duties and a seal of office.

The intent of H.B. 2854 would be to conform Kansas procedure to the better, more modern practice adopted in a number of other states, including Oklahoma and Colorado, and adopted by the Federal Rules of Evidence. It would eliminate the unnecessary and burdensome practice of this dual certification, which in reality provides little, if any, additional protection in ensuring the accuracy of records admitted into evidence.

The Office of the Kansas Securities Commissioner prosecutes criminal, civil, and administrative actions enforcing the provisions of the Kansas Securities Act and the Kansas Loan Brokers Act. We routinely submit government records of other states and the federal government as evidence in these proceedings. In obtaining these records, we always request that such records be certified and authenticated. However, custodians responding to these requests frequently, simply provide certified records. Subsequent inquiry often reveals that the agencies supplying the records do not understand the distinction which Kansas law creates for out-of-state records. The whole process becomes needlessly cumbersome and complex.

One anecdote which illustrates this point involves a recent attempt to get records regarding the nonexistence of a patent from the Library of Congress. True to form, our request was answered with a certified form. Getting a certified/authenticated form required additional time and effort.

The proposed amendment would simplify the authentication process required for such records without compromising the real safeguards ensuring their integrity. It would simply eliminate an additional, superfluous certification.



**TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE ON HB 2855 TAX LIENS
AGAINST PERSONAL PROPERTY; EXCEPTIONS; COLLECTIONS**

**ON BEHALF OF THE JOHNSON COUNTY BOARD OF COUNTY COMMISSIONERS
PRESENTED BY MICHELLE MILLER, INTERGOVERNMENTAL RELATIONS**

FEBRUARY 16, 1998

Johnson County respectfully requests your favorable consideration of HB 2855, which will close a tax-loophole, provide a vehicle for collection of unpaid personal property tax, and promote fairness and uniformity in statewide property tax collection efforts. The bill creates a priority tax lien against personal property and grants secured-creditor status to counties faced with tax collections in bankruptcy filings. Johnson County incurs about a 7% delinquency rate in personal property tax collections, which amounts to approximately \$2.5 million per year. Because of similar experiences in other counties across the state, the Kansas Association of Counties is also present today in support of this bill.

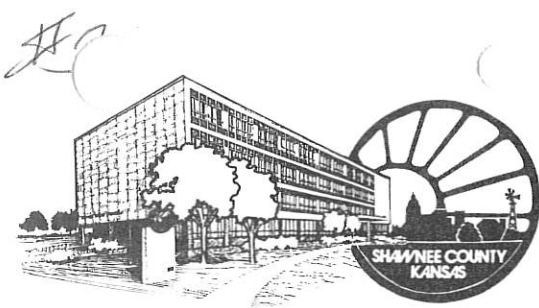
HB 2855 creates a tax lien against taxpayers' personal property, creating secured-creditor status for counties. Current statutory provisions exist to collect delinquent personal property taxes by creating liens against the taxpayers' real estate, (K.S.A. 79-2017). However, the taxpayer frequently has no real estate or has insufficient equity to secure payment of personal property taxes. Moreover, the tax collection provisions of K.S.A. 79-2109, 79-2110, 79-2111, and 79-2020 either seldom apply in bankruptcy situations, or create liens that are avoidable by the debtor or Chapter 7 Trustee.

For example, though K.S.A. 79-2020 creates a tax lien against a debtors personal property upon transfer of such assets into the bankruptcy estate when a bankruptcy petition is filed, such liens may be avoided under section 545(1)(A) of the bankruptcy code. Also, it has been held that a Chapter 7 Trustee need not satisfy personal property taxes from the proceeds of personal property sold by the bankruptcy estate on the basis that a bankruptcy proceeding does not constitute a seizure under K.S.A. 79-2111. Additionally, a recently reported case, High Plains Oil v. National City Bank, 925 P.2d 846 (Kans. App., 1996), details some of the problems associated with the application of the existing statutes to delinquent personal property tax collection efforts.

Therefore, in order for a county to qualify as an unavoidable secured creditor in a bankruptcy filing by a taxpayer, a new statute is required to create a tax lien against the personal property on a specific date, rather than one that attaches according to a specific occurrence, such as the sale, seizure, or other transfer of the personal property liable for the tax. Specifically, the tax lien should attach as of a date not tied to the date of the bankruptcy. HB 2855 provides for the date of November 1, which is the date of attachment for real estate liens.

In sum, HB 2855 is compatible with the provisions of the above-named statutes, and is based primarily on the language of 79-2020 which provides for the attachment of a personal property tax lien. HB 2855 also contains a provision similar to those found in K.S.A. 79-2110 and 79-2020, establishing the liability of the property in the hands of a transferee for the payment of delinquent personal property taxes. Therefore, this bill simply provides the narrowing, if not closing, of various tax loopholes often exploited by creditors with competing interests, and grants to the county the statutory means of delinquent property tax collection.

House Judiciary
2-16-98
Attachment 2



Shawnee County
Office of County Clerk
CYNTHIA A. BECK

233-8200
Ext. 4155 Main
Ext. 4159 Accounting

Courthouse - Room 107
Topeka, Kansas 66603-3963

M E M O R A N D U M

Date: February 16, 1998

To: Chairperson Tim Carmody, Judiciary Committee
Vice-Chairperson Terry Presta
Rep. Jim D. Garner, Ranking Minority Member
Members of the Committee

From: Cyndi Beck, Shawnee County Clerk
Chairperson, Kansas County Clerks Assoc. Legislative Comm.

Re: H.B. 2856

The Kansas County Clerks Association is in full support of H. B. 2856. As the "official record keeper" for the Board of County Commissioners, county clerks are responsible, under statute, to retain many records. In some instances, such as the Journals of the Board of County Commissioners, these records are kept indefinitely.

In this world of ever changing technologies, this is a very positive move. We county clerks are always looking for new and better ways to improve our service to the public. The county clerk's office is where "open record requests" are made. The favorable passage of this bill out of committee would allow us the capabilities of utilizing the technologies available for records retention. This in turn would make the retrieval of records easier.

We thank you for the opportunity to address this issue and request your support on the favorable passage of H. B. 2856. I would be happy to answer any questions the Committee may have.

House Judiciary
2-16-98
Attachment 3

#4
Marilyn Nichols

REGISTER OF DEEDS

KANSAS

PRESIDENT Linda Fincham
VICE-PRESIDENT Linda Massey

ASSOCIATION

Sally Acres SECRETARY
Marcia Johnson TREASURER

H.B. 2856

I am here today on behalf of the Kansas Register of Deeds Association. We thank you for addressing this issue and for the opportunity to provide input during your decision making process. The Register of Deeds Association supports this bill and asks that it be passed out of committee favorably.

This bill would support the use of new technology in the performance of the retention duties in the Register of Deeds office. There have been many transitions over the years in how documents are processed. In the mid 1800's the documents were hand copied into large ledger books. Later came printed forms and the pertinent information was filled in on the forms manually. The next generation was the photostat and then the microfilming process. With the technology today it is possible to utilize the imaging process to electronically digitize the documents.

This bill is a sound move into the technological world in which we live. The Register of Deeds have always been fully aware of their responsibilities concerning the retention of documents. Be assured that we would continue to put every emphasis necessary on that responsibility in utilizing any new technologies.

I would be happy to stand for any questions.

House Judiciary
2-16-98
Attachment 4

**KANSAS COUNTY TREASURERS' ASSOCIATION**1998
OFFICERS:EILEEN KING
RILEY COUNTY
PresidentLARRY TUCKER
RENO COUNTY
Vice PresidentKATHY TREMONT
GEARY COUNTY
SecretaryDENA McDANIEL
ANDERSON COUNTY
Treasurer

To: The Honorable Tim Carmody Chairman,
House Judiciary Committee and Committee members

From: Eileen King, ^{EK} President Kansas County Treasurer's Association

Date: February 13, 1998

Re: House Bill 2856

As President of the Kansas County Treasurer's Association, our association would like to express our support of HB 2856. This bill would allow counties to take advantage of the new technology that is available for reproducing and storing official records. Many counties have a problem with storing all of the documents that must be preserved. By allowing counties to have the opportunity to use the new technology, they would be able to make better use of the limited storage space that they have. The new technology would also allow us to provide more efficient service to our customers. We feel that it would be in the best interest of our taxpayers, to be able to use the latest technology available as we provide our services to them.

Our association is in full support of HB2856 and requests your support. If you have any questions, please feel free to call.

House Judiciary
2-16-98
Attachment 5