





# SENATE WAYS AND MEANS COMMITTEE GUEST LIST

DATE: 3/11/99

NAME	REPRESENTING
Ken Bahr	Ks. Governmental Consulting
Mayaom Surobo	Scy
Lued Faherty	Miami Co. Mental Health Ctr.
Joe Rossillon	E.S.U.
Carol McDowell	Kansas Preservation Alliance
Robert Johnson	Historic Topeka, Inc.
John Houlihan	Dof A
Dale Brunton	Dof A
Galen Greenwood	Dof A
John C. Botterby	Philip Morris
Marilyn Mussindorf	Ks St No Green

# HOUSE BILL No. 2230

By Representative Vickrey

2-2

9 AN ACT authorizing the secretary of the department of social and re-  
10 habilitation services to convey certain land.

11

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

13 Section 1. (a) The secretary of the department of social and rehabil-  
14 itation services is authorized to convey, without consideration, to the Mi-  
15 ami county mental health center the following described state property  
16 located in Miami county, Kansas, containing 12.34 acres more or less:

17 A tract of land in the Northeast Quarter of the Southwest Quarter of  
18 Section 1, Township 18 South, Range 22 East of the Sixth Principal Me-  
19 ridian, being more particularly described as follows:

20 Beginning at the Northwest corner of the Northeast Quarter of the  
21 Southwest Quarter of Section 1, Township 18 South, Range 22 East of  
22 the Sixth Principal Meridian;

23 THENCE South 01 degrees 43 minutes 24 seconds East for a distance  
24 of 229.70 feet, deed & measured, along the West line of the Northeast  
25 Quarter of said Quarter Section to the True Point of Beginning, said point  
26 being on the right of way line of Highway 169;

27 THENCE South 78 degrees 05 minutes 00 seconds East for a distance  
28 of 284.50 feet, deed & measured, along said Highway right of way;

29 THENCE South 57 degrees 38 minutes East for a distance of 509.2  
30 feet, by deed, South 57 degrees 23 minutes 21 seconds East for a distance  
31 of 509.24 feet, measured, along said right of way;

32 THENCE South 23 degrees 16 minutes West, by deed, South 23 de-  
33 grees 24 minutes 45 seconds West for a distance of 825.79 feet, measured,  
34 along said right of way to a point on the South line of the Northeast  
35 Quarter of said Southwest Quarter;

36 THENCE South 89 degrees 30 minutes 17 seconds West for a distance  
37 of 346.30 feet, deed & measured, along said South line to the Southwest  
38 corner of the Northeast Quarter of said Quarter Section;

39 THENCE North 01 degrees 43 minutes 24 seconds West for a distance  
40 of 1094.48 feet along the West line of the Northeast Quarter of said  
41 Quarter Section to the TRUE POINT OF BEGINNING;

Together with and subject to covenants, easements and restrictions of  
record.

For Consideration

by Senate Ways and Means Committee

Senate Ways and Means Committee

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1-2

1 (b) The deed conveying the real estate described under subsection  
2 (a) shall be approved by the attorney general and shall be executed by  
3 the secretary of the department of social and rehabilitation services.

4 Sec. 2. (a) The secretary of social and rehabilitation services is au-  
5 thorized to convey, without consideration, to the city of Osawatomie, Kan-  
6 sas, the following described state property located in Miami county, Kan-  
7 sas, containing less than one acre:

8 All that part of the East one-half of the Southwest ¼ Section of Section  
9 1, Township 18 South, Range 22 East of the 6th P.M., Miami County,  
10 Kansas and being more particularly described as follows: Beginning at the  
11 Northwest corner of the East one-half of said Southwest ¼, thence North  
12 89°20'00" East along the North line of said Southwest ¼, 250.00 feet;  
13 thence South 2°10'00" East parallel with the West line of said East ½ of  
14 said Southwest ¼, 96.40 feet to the North line of Highway No. 279;  
15 thence along said North line North 69°46'43" West (Measured) North  
16 70°09'00" West (Deed) 270.29 feet to the point of beginning. CON-  
17 TAINS: 12,046.05 sq. ft. = 0.28 acres.

18 (b) The deed conveying the real estate described under subsection  
19 (a) shall be approved by the attorney general and shall be executed by  
20 the secretary of the department of social and rehabilitation services.

21 Sec. 3. This act shall take effect and be in force from and after its  
22 publication in the Kansas register.

(c) The conveyance authorized by this section shall not be subject to the provisions of K.S.A. 75-3043a, and amendments thereto.



KANSAS DEPARTMENT OF SOCIAL  
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

ROCHELLE CHRONISTER, SECRETARY

March 11, 1999

Honorable Dave Kerr  
Chairman, Senate Ways and Means Committee  
Room 120-S  
State Capitol Building  
Topeka, Ks. 66612

Dear Senator Kerr:

SRS is supportive of the amendment being offered to HB 2230, which would exempt the Osawatomie State Hospital land transfer proposed in this bill, from the requirement for acquiring three (3) appraisals. Our understanding of the purpose of the requirement to have the appraisals is that these facilitate establishing the fair market value for the property. Since this land transfer does not necessitate establishing a purchase price, dropping the requirement for obtaining three appraisals would save money and speed up the transaction.

Please let me know if you would like more information.

Sincerely,

A handwritten signature in cursive script that reads "Rochelle Chronister".

Rochelle Chronister  
Secretary

RC:DAJ:ms

cc Senate Ways and Means Committee Members  
Representative Jene Vickrey  
Senator Robert Tyson  
Connie Hubbell, MH&DD Commissioner  
Robert Day, MH&DD Deputy Commissioner  
Randy Proctor, OSH Superintendent

Senate Ways and Means Committee

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Attachment # 2

**TESTIMONY BEFORE THE  
SENATE WAYS AND MEANS COMMITTEE**

**By  
Dan Stanley, Secretary of Administration**

**March 11, 1999**

Thank you for this opportunity to appear in support of SB 338. This bill provides needed flexibility for construction and renovation projects involving three state buildings with unique histories, uses, and characters. These three buildings, identified in the bill as "state historic buildings," are the Statehouse, Cedar Crest, and the Dillon House. Each of these buildings embodies a piece of our shared heritage as Kansans and serves as a highly visible focal point for our state government. Each is a unique landmark that must be accessible to citizens, while simultaneously functioning as a place of business, and in the case of Cedar Crest, as the private residence of the Governor's family. Careful maintenance and thoughtful development of each building as a beautiful setting for both the ceremonies and business of state government is essential. Projects involving these buildings must carefully balance public and individual needs as well as aesthetic, historical, and functional considerations. Moreover, the way we maintain and modify these buildings for current and new uses should reflect our pride in Kansas. Because of their significance, the Department of Administration has a responsibility to keep them available for use to the greatest extent feasible, despite the need to carry out maintenance, repairs, or renovations.

Given these factors, both the timing and quality of renovation, remodeling, and construction projects for the Statehouse, Cedar Crest, and the Dillon House are highly sensitive. Therefore, for state historic building projects sufficient latitude must be provided in planning, designing, selecting contractors, funding, managing, and overseeing these sensitive projects. SB 338 provides that flexibility by exempting state historic building projects from the statutes establishing design, purchasing, selection, and project review and management requirements for ordinary state contracts and construction projects. It also provides additional funding options for these projects by creating the state facilities gift fund and authorizing acceptance of gifts and donations on behalf of the state by the Secretary of Administration for the Statehouse and Cedar Crest and by the Dillon House Advisory Commission for the Dillon House.

The statutes from which these historical buildings would be exempted provide a sound framework for the conduct of routine state business. Many projects in the Statehouse, Cedar Crest, and Dillon House can be successfully completed under the competitive bid law and other exempted statutes. However, the following examples demonstrate that, in a number of instances, this framework makes it difficult to complete state historical buildings projects in a timely, cost effective manner with results of the highest quality.

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1. Preliminary work. Some projects involving unique, historical properties such as these require extensive, detailed preliminary studies, investigations, and exploratory work before the full scope of the work is really known. After this preliminary work is done, if the next phase of the work is then competitively bid, the project can lose the knowledge and expertise that was acquired by the personnel doing the preliminary work. Important time can be lost, first in the competitive bidding process and then as the new contractor becomes familiar with the preliminary work. The Statehouse projects done between legislative sessions are good examples of the need to avoid or reduce time delays.

2. Hidden elements. As was demonstrated in the House Chambers, projects can uncover hidden architectural and design elements either during preliminary studies or in the course of a project. Examples of hidden elements include murals, decorative painting and stencil work, and gold gilding. When such elements are discovered, it is necessary to re-evaluate and perhaps redefine the nature and scope of the project. When this occurs, time and expertise can be of the essence, as well as the flexibility to change the scope of existing contracts or quickly obtain the assistance of additional professionals. These kinds of mid-course corrections can be difficult within the competitive bidding and construction project statutes.

3. Limits on architectural fees. Statutory restrictions on architectural fees can prevent the State from hiring needed professionals who are skilled in the special design elements found in these buildings. For example, the work on the Statehouse dome has been delayed because the restriction on architectural fees prevented the State from hiring the skilled professionals who have solid experience with this type of project. Moreover, planning for projects involving buildings such as these requires a lot of onsite work to verify and correct existing drawings and to determine field conditions, thereby avoiding unnecessary surprises and costly change orders. Renovation also requires extensive historic research and investigation into alternate methods to obtain high quality, cost effective results. Therefore, these projects are labor intensive, which can tend to result in higher fees. The statutory constraints on architectural fees may limit our ability to obtain the full services needed for truly successful projects.

4. Skilled crafts. Certain aspects of restoration work do not lend themselves to competitive bidding. It can be very difficult to find qualified personnel for certain specialized crafts, such as mural restoration, copper restoration, the scagliola plaster techniques used in the House Chamber columns, or duplications of historical fabrics or carpets. With a limited supply of such skilled craft personnel, competitive bidding statutes limit the State's ability to identify, evaluate, and select personnel based upon their unique qualifications.

5. Continuity. K.S.A. 75-1250 through 75-1266 and K.S.A. 75-5801 through 75-5807 require that architects and engineers be selected for specific projects or, in the case of multiple small projects, for limited time periods. This limitation prevents expansion of a contract with a single firm to cover additional, unrelated work. Particularly in the case of the Statehouse, it would be highly desirable to select the most experienced and qualified



firm to handle an extended, multi-year renovation, thereby enabling the firm to build up experience and expertise that is specific to that building. Otherwise, each new firm must go through a learning cycle and the project will suffer from a lack of consistency.

6. Historic preservation reviews. The State must balance historic preservation concerns with making facilities accessible to the disabled, providing functional, high quality space for a variety of state functions and uses, and completing projects with a minimum amount of disruption to the buildings' users. K.S.A. 75-2724 requires that the state historic preservation officer must be given notice of any project that will "encroach upon, damage, or destroy" any historic property. The state historic preservation officer then has up to 30 days to decide whether to begin an investigation of the project. The officer may direct that one or more public hearings be held. There is no statutory deadline for completing the investigation and hearings. If the officer determines that a project will encroach upon, damage or destroy the property, the project is prohibited unless the governor determines that there is "no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to such historic property resulting from such use." Any person aggrieved by the governor's decision may seek judicial review of the decision under the act for judicial review and civil enforcement of agency actions. This extensive process can be costly and time-consuming. While preservation of the historical character of the buildings will be a top priority of design teams, exemption from K.S.A. 75-2724 is intended to balance the time constraints, the needs of the disabled, the ability to create safe, healthful, and useful work spaces that are consistent with standard life and safety codes, and the ability to deliver projects within the funds appropriated. An exemption from this statute was already granted by way of proviso for the renovations currently underway in Memorial Hall.

It is my understanding that the proposed exemption from K.S.A. 75-2724 has created serious concerns among some in the historical preservation community. As I have noted, the preservation of the historical character of these buildings will be a top priority. Our good faith has already been demonstrated in the manner for which we have undertaken and completed the House Chamber renovation, the plans that have been developed and are being executed at Cedar Crest, and the state's recognition of the importance of taking the Hiram Price Dillon House into the custody of the state. However, I am not hard over in my support for this exemption. It is simply my intent to explain existing statute and offer an alternative should the Legislature deem that an exemption of this provision be warranted.

Renovation projects in buildings of this type and historic preservation involve specialties that require different experience and knowledge than our usual projects. There is no substitute for experience in balancing conflicting requirements for historic preservation, present day code requirements, operational needs, and budget. The appropriate approach for such a renovation project is to select the team, including the contractors, based upon their previous experience and proven abilities rather than low cost. I ask you to consider what the ceiling of the House Chamber would look like if we had left it in the hands of a contractor selected by low bid.

Preservation of the heritage we have in these buildings and enhancing their aesthetic appeal while maximizing their usefulness to the officials and citizens of Kansas is a responsibility I take very seriously. SB 338 will enable us to carry out that duty with the latitude necessary to ensure that projects will not only fill the physical needs, but be an inspiration to future generations. I urge your support of this bill. Thank you for this opportunity to testify in support SB 338. I would be happy to stand for questions.

Committee on Ways & Means  
of the Kansas Senate  
The Honorable Dave Kerr, Chairman

Testimony of the  
Kansas Preservation Alliance, Inc.  
Regarding Senate Bill 338

March 11, 1999

Mr. Chairman and Members of the Committee:

The Kansas Preservation Alliance, Inc., is a statewide, private, not-for-profit corporation working in partnership with the National Trust for Historic Preservation and the Kansas State Historic Preservation Office to protect and rehabilitate Kansas historic places.

The Alliance is pleased to have this opportunity to appear before the Committee in opposition to Section 1(a)(3) [at page 1, lines 27,28] of SB 338.

This provision would exempt expenditures, contracts and capital projects for the renovations of the Capitol, Cedar Crest, and the Dillon House, from the provisions of KSA 75-2724, which permit the state historic preservation officer to investigate and comment upon a proposed government project to determine if it will "encroach upon, damage or destroy" a property listed on the National or Kansas Register of Historic Places.

SB 325 [at page 8, lines 32, 33], HB 2508 [at page 1, lines 28,29] and HB 2513 [at page 8, lines 32,33] also exempt renovations of the Capitol, Cedar Crest and the Dillon House from review by the state historic preservation officer.

The Kansas Preservation Alliance opposes all legislation which would exempt projects affecting Kansas historic places from review by the state historic preservation officer, for the following reasons.

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First, the state has not demonstrated the existence of urgent or extraordinary circumstances, which might justify permitting it to claim the equivalent of sovereign immunity, and treat itself differently from the way it treats all others.

Second, review by the state historic preservation officer exists to safeguard the fabric and integrity of historic Kansas places. Especially with regard to the renovation of our Capitol, those safeguards should be removed only when review has been demonstrated to be either impossible or unnecessary, and that has not occurred.

Third, the expertise of historic preservation professionals is integral to the appropriateness, integrity and quality of these renovations. Review by the state historic preservation officer contemplates cooperation, support and timely professional advice from the staff of the historic preservation office, whose salaries are funded, in part, by the taxpayers of Kansas.

Fourth, equipment, materials, techniques, processes, methods and personnel used in these renovations should be professionally documented by archival standards, which is unlikely to occur without review by the state historic preservation officer.

Fifth, the renovation and restoration of our Capitol is the most important historic preservation project of our lifetimes, and the State's goal should be excellence, not expediency.

The Kansas Preservation Alliance urges the Committee to delete from SB 338, all of Section 1 (a)(3), exempting the State of Kansas from compliance with its own historic preservation law.

Respectfully,



Carol Duffy McDowell  
President Kansas Preservation Alliance, Inc.



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**Truman gavel ?? - Official White House &more**

**Item #74950139**

Collectibles:Political



Currently	<b>\$560.00</b>	First bid	\$9.95
Quantity	<b>1</b>	# of bids	<b>19</b> (bid history) (with emails)
Time left	<b>2 days, 22 hours +</b>	Location	<b>Blissfield, MI</b>
Started	03/06/99 18:15:01 PST		(mail this auction to a friend)
Ends	03/13/99 18:15:01 PST		(request a gift alert)
Seller	<b><a href="mailto:antiques@tc3net.com">antiques@tc3net.com</a></b> (44) ☆	(view comments in seller's Feedback Profile) (view seller's other auctions)	
	(ask seller a question)		
High bid	<b>excellfmk</b> (96) ☆		
Payment	Visa/MasterCard, Discover, Money Order/Cashiers Checks, Personal Checks, See item description for payment methods accepted		
Shipping	Buyer pays fixed shipping charges, Seller ships internationally, See item description for shipping charges		

Seller assumes all responsibility for listing this item. You should contact the seller to resolve any questions before bidding. Currency is U.S. dollars (US\$) unless otherwise noted.

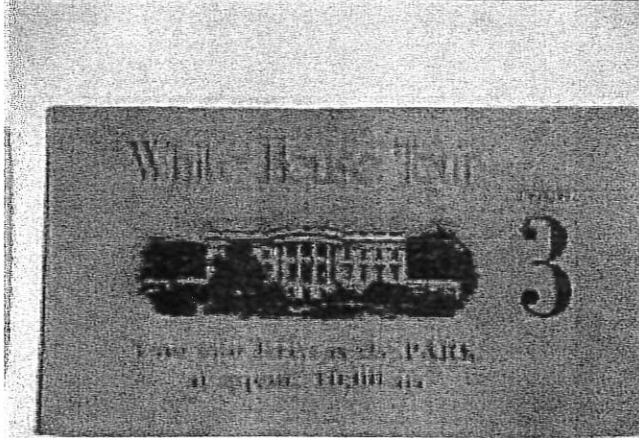
**Description**

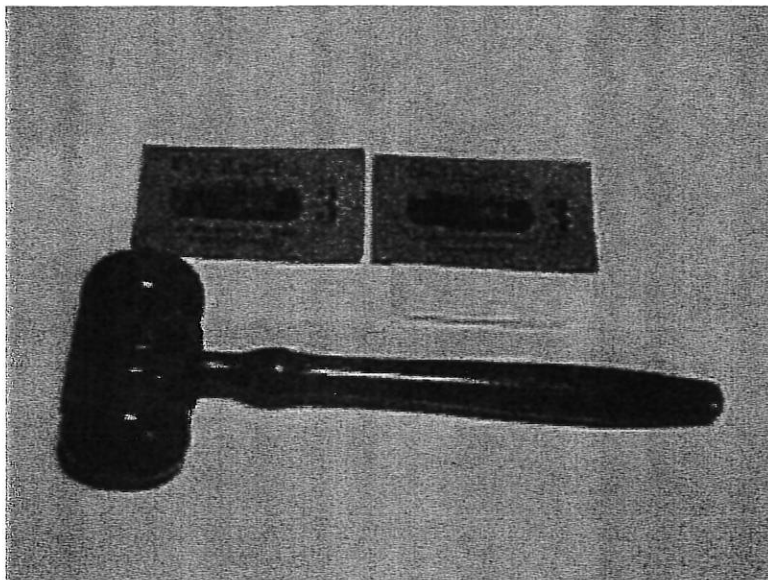
This is your chance to have a beautiful piece of WHITE HOUSE HISTORY. It is a GAVEL from the UNITED STATES WHITE HOUSE!! During the White House restoration during the Truman administration. They sold off items to help raise money. This is a great gavel with a RAISED PRESIDENTIAL SEAL and reads in raised lettering, "Original White House Material Removed in 1950" & I also have 2 White House Tour tickets that go with this gavel. Buyer pays \$5.00 UPS shipping. Ins. is your option. MICH buyers must pay sales tax.

Senate Ways and Means Committee

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Attachment # **5-1**





**Bidding**

Truman gavel ?? - Official White House &more (Item #74950139)

Current bid	\$560.00
Bid increment	\$10.00
<b>Minimum bid</b>	<b>\$570.00</b>

**Registration required.** eBay requires registration in order to bid. Find out how to become a registered user. It's fast and it's free!

<p><b>User ID</b> or E-mail address</p> <input style="width: 95%;" type="text"/>	<p><b>Password</b> (<u>forgotten it?</u>)</p> <input style="width: 95%;" type="password"/>
<p><input style="width: 20%;" type="text"/> <i>Current minimum bid is 570.00</i> <input style="border: 1px solid black; padding: 2px 10px;" type="button" value="review bid"/></p> <p>Your <b>maximum bid</b>.</p> <p>Please type only numerals and the decimal point (if required). Do <b>not</b> include currency symbols such as a dollar sign ('\$') or commas (',').</p> <p><b>Binding contract.</b> Placing a bid is a binding contract in many states. Do not bid unless you intend to buy this item at the amount of your bid.</p> <p><b>Proxy bidding for all bids</b> Please bid the <b>maximum amount</b> you are willing to pay for this item. Your maximum amount will be kept <b>secret</b>; eBay will bid on your behalf as necessary by increasing your bid by the current bid increment up until your maximum is reached. This saves you the trouble of having to keep track of the auction as it proceeds and prevents you from being outbid at the last minute unless your spending limit is exceeded. (See an <u>example of proxy bidding</u>). Also, in case of a tie for high bidder, <b>earlier</b> bids take precedence. And, keep in mind that you cannot reduce your maximum bid at a later date. Unless otherwise noted,</p>	



*Office of the First Lady  
Linda K. Graves*

March 9, 1999

The Honorable Dave Kerr  
Chairman, Ways and Means  
State Capitol, Room 120-S  
Topeka, Kansas 66612

RE: Senate Bill #338

Dear Mr. Chairman:

I understand you are meeting to have discussion on the above captioned Senate Bill (#338) on Thursday, March 11, 1999. Unfortunately, I am in Salina that day, making fund raising calls on behalf of Friends of Cedar Crest Association, the volunteer, not for profit group, which is raising funds to restore Cedar Crest once the State of Kansas completes its work on the replacement of the homes' infrastructure systems. Absent this conflict, I would be in attendance at the hearings before your committee on Senate Bill #338.

I request this letter be considered my testimony in support of Senate Bill #338 and my hope your committee and its members would consider prompt and favorable action on this matter. As you are aware Cedar Crest is currently in the construction process as a result of a legislative appropriation to replace the home's dated heating, plumbing, cooling, electrical and plumbing systems. Senate Bill #338 would be very helpful in expediting these renovations to our Governor's residence. Senate Bill #338 would allow this construction process to occur under the same construction oversight as currently in effect for our State Capitol. This flexibility (which Cedar Crest currently does not have) would help the Cedar Crest renovation equal that of the recent and very successful restoration of the House Chambers.

Cedar Crest was placed on the National Register of Historic

*One Southwest Cedar Crest Road*

*Topeka, Kansas 66606*

*(785) 287-2222*

Senate Ways and Means Committee

Date *3/11/99*

Attachment # *6-1*

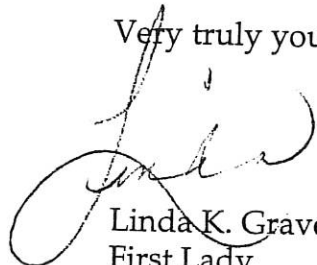


Kerr  
March 9, 1999  
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Places in 1982. The "low bid" construction process and a National Historic structure such as Cedar Crest, our Capitol or the Hiram Dillon House is simply put, not a good blend. I believe Senate Bill #338 speaks to that deficiency. Prompt and favorable action on this bill before your committee, would certainly result in a more expeditious and better product in the renovations occurring at Cedar Crest.

I thank you and your fellow committee members for allowing me to submit my thoughts by letter.

Very truly yours,



Linda K. Graves  
First Lady

LKG/ah

cc: The Honorable Dick Bond  
The Honorable Steve Morris  
The Honorable Jim Barone  
The Honorable Sandy Praeger  
Secretary of Administration Dan Stanley



**HISTORIC TOPEKA, INC.**

3127 sw Huntoon  
Suite 6  
Topeka, KS  
66604



PRESENTATION OF HISTORIC TOPEKA, INC. OPPOSING SENATE BILL 338

By Robert S. Johnson

I'm here in my capacity as Vice President of Historic Topeka, Inc. We wish to thank you, the Committee on Ways and Means, for the opportunity to be heard with respect to Senate Bill Number 338, which concerns specifically the Statehouse, the governor's residence, and Hiram Price Dillon house.

Before addressing my remarks to the Senate Bill itself, we wish to commend the legislature for the excellent job done in the restoration of the House of Representatives chamber, for which Bill Groth, the capitol architect, oversaw the effort and deserves much credit.

Historic Topeka, Inc. provides a variety of preservation services for the Topeka community. We also feel that our services benefit the whole state in such projects as the Ross Row Houses at 513-521 Van Buren, that we believe will aesthetically enhance the site of the state capitol by improvement of the corridor that follows Van Buren directly north of the state capitol. Those Row Houses were built by William Ross in the 1870s, the approximate time that the State Capitol was under construction. You will recall that it was William Ross's brother, Edmund Ross, who as a U.S. Senator from Kansas caste the vote that saved Andrew Johnson from impeachment.

The provisions of Section 1. (a) of Senate Bill 338 provides inter alia, that:

In the discretion of the secretary of administration he may exempt from the provisions of the Kansas Statutes the procedures stipulated in subparagraphs (1), (2), (3), and (4). Of those four paragraphs, (1), (2) and (4) all deal with the sections of the statutes that are concerned with notice prior to contracting and contracting with architectural services.

While our concerns are more related to subparagraph (3) than to (1), (2), and (4), we believe that the work to be done on the said three structures would benefit from the kind of procedures and safeguards required under those paragraphs, with modifications that would allow only the firms most qualified to bid and do the work, even if their proposed fees are not the lowest bid.

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It is subparagraph (3) which exempts the secretary of administration from the procedures to be followed under K.S.A. 75-2724 and amendments thereto, to which we wish to express our principal opposition.

That article is headed by the following summary as to its content: "Government projects; procedure for determining if threat to historic property; determination of whether to proceed; judicial review; penalty for failure to follow procedures; delegation of duties to cities, counties or state board of regents or institutions."

Generally speaking this section K.S.A. 75-2724 embodies the state historic preservation law and the role of the state historic preservation officer in the administration of that law.

Historic Topeka, Incorporated believes that all projects that affect historic buildings as well as the historic buildings themselves such as the State Capitol, the governor's residence, and Hiram Price Dillon house, and those having the responsibility for those buildings, should comply with the review procedures set forth in K.S.A. 75-2724, the legal mechanism providing for the state preservation office review of projects like these three, where the buildings are either on the national or state Register of Historic Places, or would qualify for such registration.

For a state agency or the legislature which enacted K.S.A. 75-2724 to seek exemption from its provisions is to weaken the future application of those procedures by the creation of a dangerous precedent, without significant justification.

In the years ahead we can see the need for continuing restoration of the State Capitol especially. Are Kansas citizens expected to forfeit to the discretion of one agency the safeguards that are embodied in K.S.A. 75-2724 in the methods employed in contracting for services, and in the safeguarding of state historical sites?

If such exemption provisions are applied to the three state properties included by this proposed act, then it is suggested that members of the general public might be discouraged from making grants or gifts to the secretary of administration and the State of Kansas for the purpose of restoring, renovating, furnishing, improving or beautifying the statehouse as contemplated by Sec. 3 on Page 2 at line 61 of this same Senate Bill No. 338.

Anyone interested in funding such future projects, it seems to us, would be reassured to know that their gift or grant would be administered under the protection of the state preservation laws as set forth in K.S.A. 75-2724 and that their gift or grant is not given carte blanche to the state and the department of administration to use as they please.

We would suggest, in fact, that without such assurance such benefactors might be discouraged from making such gifts.

We suggest further that such exemption, once the door is opened by such an act, would encourage other governmental bodies and agencies to seek exemptions from the preservation laws of the state and the cities of Kansas.

The city of Topeka has recently adopted a comprehensive Historic Preservation Ordinance with encouragement from the state historic preservation officer. Under that Ordinance, the state historic preservation officer may enter into an agreement authorizing the city to make recommendations or to perform any or all responsibilities of the state historic preservation officer under the provisions of K.S.A. 75-2724 paragraphs (e) (1) and (2). After expending this effort, are we to be faced with the state now seeking exemption from the state law that may very well impact the efficacy of our Topeka ordinance.

For these reasons we seek the support of your committee in structuring any legislation to omit the provisions at Section 1. (a) (3) which seeks to exempt the application of K.S.A. 75-2724 (the Historic Preservation Law) from the procedures to be followed by the secretary of administration involving the contract projects and donations for renovation, reconstructive repair and other improvements of the statehouse, governor's residence and Hiram Dillon house.

We support a modification of the provisions at Section 1. (a) (1); 1. (a) (2) and 1. (a) (4) as heretofore suggested; and

We support the other provisions of the Senate Bill No. 338.



State of Kansas

**Office of the Attorney General**

301 S.W. 10th Avenue, Topeka 66612-1597

**CARLA J. STOVALL**  
ATTORNEY GENERAL

**SENATE WAYS AND MEANS COMMITTEE**

MAIN PHONE: (785) 296-2215  
FAX: 296-6296  
TTY: 291-3767

**TESTIMONY IN SUPPORT OF**

**SENATE BILL 339**

**JOHN W. CAMPBELL**  
**SENIOR DEPUTY ATTORNEY GENERAL**

Mr. Chairman, members of the Committee, my name is John Campbell, I am the Senior Deputy Attorney General for the State. I am here today to testify in support of Senate Bill 339. This bill was requested by the Attorney General in order to provide protection to the State under the terms of the Tobacco Litigation Master Settlement Agreement (MSA) agreed to by the Attorney General on November 20, 1998.

The MSA provides that if the aggregate cigarette market share of the tobacco companies which participate in the MSA declines by more than 2% from the prior year, and that decline is determined by an independent team of economists to be because of the companies' participation in the MSA, then those companies' annual payments to the states would be reduced. This reduction would be 3% of the state's money for each percent lost over the 2% threshold.

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At this time, MSA participating manufacturers have a 99.8 % market share. If these companies' aggregate market shares in the next subsequent year were to decline to 96%, and it was determined by the independent economists that this entire decline was due to MSA participation, this decline of 4% would be 2% above the 2% threshold. Because payments would be reduced by 3% for each 1% by which the decline exceeds the threshold, payments would be reduced by a total of 6%.

Individual states can, however, nullify the potential of such a reduction in payments for their states by passing a model statute provided for in the MSA and having that model statute in effect during the year when the decline in an aggregate market share occurs. This model statute is in essence a bonding or escrow requirement applicable to tobacco manufacturers which do not participate in the MSA.

SB 339 largely is made up of the language of this model statute. If Kansas passes SB 339, and the statute is in effect, even if the participating manufacturers' aggregate market share were to decline, our payments would not be reduced under this provision of the MSA. Even in the unlikely event that a court was to strike down the model statute in Kansas, the MSA provides that because the state passed the model statute, its annual payments would not be reduced by more than 65%.

The model statute itself, embodied in SB 339, would require any non-participating manufacturer to either become a participating manufacturer under the MSA or place money as

set out in the bill into an escrow fund based on the number of cigarettes or other tobacco units sold. Such funds would accrue interest and would be available to pay any judgments or settlements on claims brought against the tobacco manufacturer by the state or other parties located or residing in the state. Interest earned on such funds would be paid to the non-participating manufacturer.

First funds in under this bill would be the first funds paid out, and after 25 years, if particular funds placed in escrow have not been used for such purposes as are provided for in the bill, they may be withdrawn from escrow by a non-participating manufacturer.

The Attorney General may enforce the provisions of the model statute by going to court to see that funds are placed in escrow and seek civil penalties against the non-participating manufacturer. Subsequent knowing violations may result in a manufacturer being prohibited from selling tobacco products in the state for up to two years.

To ensure that the model statute adopted by Kansas is found to be an effective bar from reducing payments of participating manufacturers under the MSA, it is essential that the bill be passed exactly as provided for under the MSA. I have been in contact with the attorneys for the tobacco companies. With a very few minor technical corrections, attached to this testimony, they are in agreement that SB 339 will be in full compliance with the MSA.

It is currently estimated that Kansas will receive \$1.5 billion from the tobacco settlement over the next 25 years. We urge the Committee to protect that money by passing SB 339.

# MEMO

**To:** Senate Ways and Means Committee  
**From:** John W. Campbell  
**Subject:** SB 339 - technical amendments  
**Date:** March 11, 1999

Requested amendments :

- p.1, ln. 10** ment; concerning payment of moneys ~~to the state~~ *into escrow*; concerning
- p.1, ln. 40** foundation devoted to the interests of public health; and to make sub-  
(add semicolon after word -"health")
- p.2, ln. 70** in the filler, or its packaging and labeling, is likely to be offered to, or  
(add comma after the word - "filter")
- p.2, ln. 73** type of tobacco used in the filler, or its packaging and labeling, is likely to  
(add comma after the word - "filter")
- p.2, ln. 102** sold in the United States through an importer except where such im-  
(strike comma after the word - "importer")
- p.4, ll. 142-3** ~~All per unit numbers under this paragraph (b)(1) are subject to  
verification.~~  
(strike lines entirely)
- p.5, ln. 194** shall constitute a separate violation. A tobacco products manufacturer  
(strike letter "s" in the word - "products")





Tobacco *Free* Kansas Coalition, Inc.

**For More Information Contact:**

*Terri Roberts J.D., R.N.*  
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*March 11, 1999*

**S.B. 339 Model Statue Regarding Non-Participating Manufacturers  
Multi-State Tobacco Settlement Agreement**

Chairman Kerr and members of the Senate Ways and Means Committee, my name is Terri Roberts and I'm the Executive Director of the KANSAS STATE NURSES ASSOCIATION and serve as the Chair of the Policy Committee for the Tobacco Free Kansas Coalition. **The Tobacco Free Kansas Coalition asks for your support in passing S.B. 339 as introduced.**

The Attorney General's office has provided an overview of the background and necessity of this bill to avoid the non-participating manufacturer (NPM) adjustment formula being applied to the Kansas tobacco settlement receipts.

I have attached a short synopsis prepared by Eric Lindbloom of the National Center for Tobacco Free Kids regarding the provisions of the Model Statue Regarding Non-Participating Manufacturers. It is written in less legalize than the Master Settlement Agreement (MSA) and may be helpful to you in considering the implications of this legislation.

**Thank you.**

Senate Ways and Means Committee

Date 3/11/99

Attachment # 9-1

TOBACCO FREE KANSAS COALITION, INCORPORATED OFFICERS

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CHRONIC DISEASE RISK REDUCTION

HEALTH PROMOTION COORDINATOR

MARION COUNTY HEALTH DEPARTMENT

When some questions raised about the Model Statute regarding  
tobacco manufacturers contained in the multistate settlement  
caused some misunderstandings.

We will address some of these  
questions and offer the following description and analysis of the  
issues in the settlement agreement.

Please let me know if you have any comments or questions -- and,  
ideally, if you have any corrections or clarifications. We hope to  
turn this text into a formal fact sheet available for wider distribution  
soon.

--Eric Lindblom

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#### Multistate Settlement Agreement:

##### State Option to Pass the Model Statute Regarding Non-Participating Manufacturers

Put simply, the tobacco companies' payments to the states in any given  
year may be reduced if total U.S. cigarette sales go down and the  
cigarette manufacturers that are not part of the multistate settlement  
agreement have taken business away from the manufacturers who have  
signed onto the agreement. [Sec. IX.(d)] The amount of these reductions  
depend on how much market share the non-participating manufacturers have  
taken away from the participating manufacturers, and is calculated  
through a somewhat complicated non-participating manufacturer (or NPM)  
adjustment formula. The big tobacco companies who have signed onto the  
agreement apparently fear the NPMs, but the possibility that the NPMs  
will take over a large part of the U.S. cigarette market in the  
foreseeable future seems small.

Nevertheless, states have the option of completely avoiding the risk of  
any such reductions to their settlement receipts. The NPM adjustment  
will not apply at all to the tobacco payments made to any states that  
have passed into law a "Qualifying Statute" that "effectively and fully  
neutralizes the cost disadvantages that the Participating Manufacturers  
experience vis-à-vis Non-Participating Manufacturers within such  
Settling State as a result of the provisions of this Agreement." [Sec.  
IX.(d)(2)(B)]

A Qualifying Statute must either be in the exact form of the Model  
Statute in Exhibit T to the settlement agreement -- with no additions or  
modifications and with not supplementary legislative or regulatory

Proposals attached -- or must be judged to qualify as a Qualifying Statute by the Independent Auditor overseeing the tobacco company payments and any related adjustments to them. [Sec. IX.(d)(2)(E-G)] The Independent Auditor is jointly chosen by the AGs and the participating manufacturers. [Sec. XI.(b)]

The Model Statute in Exhibit T gives non-participating manufacturers the option of either signing onto the settlement agreement or making annual payments into a special escrow account that are equal in amount to what they would pay the state each year if they did sign onto the multistate settlement agreement. The money a NPM pays into the escrow fund can be used only to pay a judgement or settlement brought against that specific NPM, and any not so used are given back to the NPM 25 years after they were paid into escrow. [Exhibit F.]

**Can the Tobacco Companies Add Preemption Language or Other Bad Terms to any Model Statutes Passed By States?**

The settlement agreement says that the Model Statute can serve as a Qualifying Statute that cancels the NPM adjustment only if it is "enacted without modification or addition (except for particularized state procedural or technical requirements) and not in conjunction with any other legislative or regulatory proposal." [Sec. IX.(d)(2)(E)] That means that any significant changes would stop the Model Statute from automatically serving as a Qualifying Statute. But it does not rule out the possibility that the Independent Auditor could still determine that Model Statutes passed with preemption language or other tobacco-company provisions added to them qualify as Qualifying Statutes.

The settlement agreement also states that "Each Participating Manufacturer agrees to support the enactment of such Model Statute if such Model Statute is introduced or proposed (i) without modification or addition (except for particularized procedural or technical requirements), and (ii) not in conjunction with any other legislative proposal." [Sec. IX.(d)(2)(E)] This language certainly means that the tobacco companies may choose to oppose any Model Statute that any states try to pass that are revised in any way or have additional provisions added to them. But it is not clear whether the language also blocks the tobacco companies from choosing to support Model Statutes that are revised in ways that they like. Given the stress the agreement language places on the Model Statutes not being changed, however, a decent argument could be made that the tobacco companies and the AGS are forbidden from promoting any changes whatsoever to Model Statutes.

Quite separately, the settlement agreements states that the tobacco companies "cannot oppose or cause to be opposed" any state or local proposals or administrative rules pertaining to certain measures listed in Exhibit F of the settlement agreement relating to reducing tobacco use by youth. [Sec. III.(m)1.] Although the Exhibit F list of items is short and not very comprehensive, any tobacco company efforts to pass broad new preemption language that would block local governments ability to pass the Exhibit F measures -- e.g., by adding broad preemption language to any Model Statutes -- would violate the terms of the settlement agreement.

Similarly, one of the other lobbying restrictions in the settlement agreement could also be used to interfere with tobacco company efforts to add undesirable terms to the Model Statutes. Any tobacco company representatives that supports such additional terms should be required to prove that they have complied with the settlement agreement by certifying in writing that they "will not support or oppose any state, local, or federal legislation, or seek or oppose any governmental action, on behalf of the Participating Manufacturers with the Participating Manufacturer's express authorization," and should be required to show that they have the PM's express authorization for supporting the revisions or additions to the Model Statute. [Sec. III.(m)2.]

#### How to Get More Information

For the Actual Text of the Settlement Agreement, please go to the National Association of Attorneys General (NAAG) website:  
<http://www.naag.org/tob2.htm>.

\*\*\*\*\*

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