Approved February 20, 2001
Date

MINUTES OF THE HOUSE COMMITTEE ON TAXATION

The meeting was called to order by the Chairman at 9:00 a.m. February 6, 2001 in Room 519-S of the Capitol.

All members were present except: Representative Mays, excused.
Representative Wilson, excused

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor
Winnie Crapson, Secretary

Conferees appearing before the committee:

Proponents: Representative Patterson
Janet Stubbs, Kansas Building Industry Assn
Karen France, Kansas Assn of Realtors
Erik Sartorius, Kansas City Regional Assn of Realtors

Opponents: Don Moler, Kansas League of Municipalities
Randy Allen, Kansas Assn of Counties
Mike Taylor, City of Wichita
David Corliss, City of Lawrence
Tom Kaleko, City of Lenexa
Bart Vudetti, City of Overland Park
Ashley Sherard, Johnson County
Donald Seifert, City of Olathe

Others attending: See attached list.

The Chairman opened the meeting by asking for bill introductions.

By unanimous consent bill will be introduced to piggy-back on federal child income tax credit as requested by the Representative Larkin. [**HB 2410** - Child income tax credit]

The Chairman appointed as a Subcommittee Representative Hutchins, Chair; Representative Osborne and Representative Flora to consider **HB 2128 -** Income tax credit for historic preservation project.

Hearing was opened on:
HB 2092 - City and County development activity excise tax act.

Dr. Doug Dotzour, Director of Research and Chief Economist of the Real Estate Center at Texas A&M University, made a background presentation.

Representative Patterson appeared in support of **HB 2092** (Attachment #1) and responded to questions from members of the Committee..

Janet Stubbs presented testimony in support of **HB 2092** on behalf of the Kansas Building Industry Association (Attachment #2) and responded to questions from members of the Committee.

Karen France presented testimony in support of **HB 2092** on behalf of the Kansas Association of Realtors (Attachment #3) and responded to questions from members of the Committee.

Eric Sartorius presented testimony in support of **HB 2092** on behalf of the Kansas City Regional Association of Realtors (Attachment #4) and responded to questions from members of the Committee.

CONTINUATION SHEET

Don Moler presented testimony in opposition to **HB 2092** on behalf of the Kansas League of Municipalities (Attachment #5) and responded to questions from members of the Committee.

Randy Allen presented testimony in opposition to **HB 2092** on behalf of the Kansas Association of Counties (Attachment #6) and responded to questions from members of the Committee.

Mike Taylor presented testimony in opposition to **HB 2092** on behalf of the City of Wichita (Attachment #7) and responded to questions from members of the Committee.

David Corliss presented testimony in opposition to **HB 2092** on behalf of the City of Lawrence (Attachment #8) and responded to questions from members of the Committee.

Tom Kaleko presented testimony in opposition to **HB 2092** on behalf of City of Lenexa (Attachment #9) and responded to questions from members of the Committee.

Bart Budetti and Jane Neff-Brain, Assistant City Attorneys, presented testimony in opposition to **HB 2092** on behalf of the City of Overland Park (Attachment #10) and responded to questions from members of the Committee.

Written testimony was presented in opposition to **HB 2092** by Ashley Sherard on behalf of Johnson County (Attachment #11).

Written testimony was presented in opposition to **HB 2092** by Donald Seifert on behalf of the City of Olathe (Attachment #12).

Hearing on **HB 2092** was concluded.

Meeting adjourned at 10:50 a.m. The next scheduled meeting is February 7.

HOUSE TAXATION COMMITTEE

GUEST LIST

DATE Feb. 6

NAME	REPRESENTING
Jane Neff-Brain	City of Overland Park
Kelly Kuetala	City of Overland Park
Tom Kaleko	City of Lenexa
Dennis Bush	City of Andover
Christy R Caldwell	Topeka Chamber of Com
Stan Parsons	HBA
LES MANGUS	CITY OF ANDOVER
Jeff Bridges	City of Andover
George Peterson	Ks Taxpayers Network
Erik Sartorius	K.C. Regional Assoc. of Realtors
Bill Vanek	KS Assn of REALTORS
Karen France	KS Assn of REALTORS
DAVID Reynolds	Apple Tree Homes, Inc Lawrence
~~KAREN FRANCE~~	IC
Martha Jane Phillips	KCMBA
Ed O'Malley	O.P. Chamber
Richard Cram	ICDOR
Randy Allen	Ks. Assoc. of Counties
Randy Stumpfhauser	Federal Consulting
Mike Ohl	Pinegar - Smith
Gregg Peterson	Dept 28
	LKM

HOUSE TAXATION COMMITTEE

GUEST LIST

DATE Feb. 6

NAME	REPRESENTING
Ann Dykes	DOB
Chris Wilson	RBIA

D PATTERSON
REPR ATIVE, 28TH DISTRICT
JOHNSON COUNTY
12712 EL MONTE
LEAWOOD, KANSAS 66209
(913) 897-6905
STATE CAPITOL, RM. 174-W
TOPEKA, KANSAS 66612-1504
(785) 296-7655

STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNM
MEMBER: BUSINESS, COMME LABOR
HEALTH & HUMAN S. CES
JUDICIARY

TESTIMONY IN SUPPORT OF HB 2092
2/6/01

Mr. Chairman and members of the Taxation Committee:

There appears no small amount of confusion as to the appropriate means of establishing a fair and equitable means of assessing builders and developers for the cost of infrastructure improvements, which residential and commercial developments cause. Because of the statewide concern for affordable housing, competitive development and quality of life issues, this enactment, applied uniformly to all cities of the same class concerns the levying of an excise tax on development where appropriate.

As a real estate attorney active in use matters, and also as a former City Councilman of Leawood Kansas, I am aware of the mismatched and confusing attempts of cities and counties to levy charges specifically attributable to the impact caused by development on the existing infrastructure. Some cities charge a flat tax, i.e., an excise tax based upon a fixed sum per square foot of the development. This type of excise tax often bears no relationship to be public works improvements sought to be constructed responsive to the burdens of the proposed development. Therefore, the most logical tool to be used is a form of "impact tax" or "excise tax" which:

1. Charges the builder and developer a sum of money specifically attributable to the public facilities necessary to serve the development, such as water lines, sewer facilities, roadways, parks and other public safety facilities. The developer pays a tax for the "IMPACT" of his development.

HB 2092 does this.

2. Sets aside the collected tax in a separate interest bearing account and allows the tax to be used only for the public improvements identified as necessary due to the development.

HB 2092 does this.

3. Establishes no constrains on the Home Rule sanctity of cities other that those already established by the Kansas Court of Appeals in the case of *Home Builders Ass'n v. City of Overland Park*, 921 P. 2d 649 (1996).

House Taxation
Date 2-06-01
AH No. 1
Page 1 of 2

HB 2092 does this.

4. Preserves the integrity of the city's use of capital improvement program as a flexible capital expenditure tool for budgetary purposes.

HB 2092 does this.

5. Establishes a vehicle by which the city may recoup all costs and expenses, including the recoupment of consulting and professional fees.

HB 2092 does this.

6. Gives the city time to review the specifics of the development, to lay out public works projects and to fund the same from this tax.

Arguing over whether cities should be authorized to levy an "Excise Tax" vs. an "Impact Fee" is a distinction without a difference, and has often been argued disingenuously so as to avoid accountability, financial responsibility and a sense of fair dealing with the development community.... All in the name of "lets go to court and figure this out". We don't need to go to court with a clear state wide guideline.

HB 2092 does this.

HB 2092 offers Kansas the ability to establish clear and good public policy in making sure the development community pays it's way, but at the same time, assuring that the governing body levies and earmarks a fair sum and no more.

Respectfully submitted,

Doug Patterson

Date 2-06-01
AH No. 1
Page 2 of 2

LEGISLATIVE TESTIMONY

KANSAS BUILDING INDUSTRY ASSOCIATION, INC.

2300 SW 29th St., Topeka, KS 66611 ◈ 785-267-2936 Fax 785-267-2959 ◈ E-mail: janetstubbs@worldnet.att.net

HOUSE TAXATION COMMITTEE
February 6, 2001
HB 2092

Mr. Chairman and Members of the Committee:

My name is Janet Stubbs appearing today as Executive Officer of the Kansas Building Industry Association asking your support of HB 2092.

HB 2092 was requested in response to events which have occurred in larger cities in Kansas the past 5 or 6 years. The most recent event was in the City of Derby. The City implemented an excise tax of 10 cents per square foot on the area of each lot for residential development, 12 cents per square foot for commercial., and 15 cents per square foot for industrial. The voters of Derby repealed this tax in early January by a vote of 58% to 42%.

HB 2092 is not an attempt to prohibit implementation of an Excise Tax by local units of government or to repeal those in effect currently. It is intended to establish guidelines which government must follow to enact a fair and equitable excise tax on one segment of the business community thereby increasing the cost of housing and making it less affordable. As you heard from Dr. Dotzour, the process is complex but possible and should be calculated individually per city due to policies and demands varying from city to city. Municipal revenue sources also vary by city.

HB 2092 is intended to establish the following guidelines and requirements.: Broadly explained, our intended requirements are as follows:

1. Identification of specific public infrastructure projects that are needed to support new, and I stress new, development. This would include streets, sewer, water, drainage, parks, police, fire protection, and library facilities.
2. Determination of which public improvements listed in item 1 will be paid exclusively by the private sector (developers and homebuilders), thus passed on to the homebuyer. .
3. Identify the infrastructure improvements which will be paid by the private sector, and the time frame in which these improvements will be built. This would be all of the projects in item 1, less item 2. The most likely projects in this category will be off-site sewer and water improvements, branch libraries, police substations, fire stations, and possibly some street improvements. (Some people are surprised to find that most infrastructure improvements are paid for by the purchasers of new homes.)

House Taxation
Date 2-06-01
AH No. 2
Page 1 of 3

4. For each of the projects identified in item 3 that are built by the municipality, thus paid by the homeowner, the next step is to estimate the actual cost to the city for each project. This would be done by consulting the various city agencies.
5. Once the city cost of the project is identified, then an estimate of the size of the area to be benefited by the improvements is estimated, then the number of households to be served by these improvements.
6. Once the cost of the project is determined and the number of households served by the improvements is determined, then the cost per household can be calculated.

HB 2092 states that the municipality may include a provision to exempt low income housing, and other developments with a "broad public purpose", from an excise tax and establish one or more other sources of funds to pay for that activity. Further, they may impose an excise tax for public facility costs previously incurred to the extent that new growth and development will be served by the previously constructed improvements, and may allow a credit against an excise tax for any dedication of land for improvement to or new construction of, any system improvements provided by the developer if the facilities are identified in the capital improvements plan, and are required by the municipality as a condition of approving the development activity.

Line 3 on page 5 prohibits the imposition of an excise tax to cure deficiencies in public facilities serving existing development.

Section 5, line 6 through 13, mandates the establishment of separate interest bearing accounts for each type facility for which an excise tax is collected and requires end of the fiscal year accounting for each account.

Section 6 provides that no excise tax may be implemented if the system improvement is not in the capital improvement plan. The city must utilize the funds generated within 6 years unless it identifies in writing an "extraordinary and compelling reason" why the funds should be held longer with an absolute date the moneys will be expended.

Section 7 mandates the refund of an excise tax to a developer, plus interest earned, when the developer does not proceed with the development activity and files a written request for the refund, IF no impact has resulted.

The act is to become effective upon publication in the statute book.

You will hear opponents of this legislation tell you that it is within the police power of units of government to levy a tax,. as with an Excise Tax. We certainly support Home Rule and the making of informed, responsible decisions by units of government. We agree that if a city conducts a fair and accurate study which proves that new development is not shown to pay its way under this proposed method of calculation, that an IMPACT FEE should be charged by the local unit of government.

(In the Derby case, a study done by the City Manager showed that new residential development alone generated approximately 5 ½ times more revenue to the city than it cost to provide needed services. Often the costs of building infrastructure improvements necessitated by new residential subdivisions and other such projects are repaid to the city, with interest, in the form of special assessments against the benefiting property. Any investment the city might choose to make when infrastructure is being built, such as the oversizing of pipes for water and sewer lines, are paid for by the city at large. However, the surplus revenues

received, as mentioned above, are over time, more than enough to pay for any shortfall the city might experience initially.)

You may hear or read testimony which alleges that proponents of this bill are not knowledgeable as to the difference between IMPACT FEES and EXCISE TAXES. On the contrary, we are very aware of the difference and the reason the units of government choose to levy an "excise tax". An IMPACT FEE , however, must bear a correlation between the cost of providing the amenity or service and the amount charged to the development and must be placed in a fund for that purpose. What the industry opposes is the levying of an EXCISE TAX which is not required to show this same correlation. When levying an EXCISE TAX, any amount can be pulled from the air and charged by the governing body with the proceeds put into the General Fund and budgeted and spent for any purpose approved by the governing body.

Opponents of this bill will tell you that they spend the revenue from the excise taxes which they levy on thoroughfares which they improve and that it pays for only a small percentage of the total cost. We believe that with the financial analysis being suggested, there would be no problem to continue with their current practices IF the revenue is expended as stated. However, we believe the new home purchaser has a right to know the reason his new residence is costing more. If the increased revenue from property, and other, taxes generated is not sufficient to support the budget adopted, the public has the right to know why the additional amount charged for his "dream home" (which may disqualify him for a loan, and certainly requires him to pay more interest and property taxes over the period he owns the home) was charged an IMPACT FEE and, the justification for that amount.

Opponents will say that the Derby issue was resolved in the appropriate manner---politically or at the ballot box. (In the Derby case, I am advised that open discussion took place as to how they could approve the excise tax while enabling a usage change later for the revenue generated.) This controversy cost the Derby taxpayers for a special election and the mayor and 4 city councilmen their positions. It cost the opponents to the tax thousands of dollars to mount the campaign to win the "war". How often does a governing body find opponents this determined? They hope the answer is "seldom".

You may hear that because we used the Utah IMPACT FEE law as a pattern for this proposed legislation that Utah case law would be brought to Kansas. I question the fact that Kansas courts would not have the ability to make Kansas case law regarding EXCISE TAX guidelines.

Committee, I urge you to pass this legislation and eliminate the opportunity for units of government to "tax without representation". The City of Derby leadership thought that they were taxing families who would be moving into the City. They did not want growth. However, a study revealed that a very high percentage of new home purchasers were really just relocating within the City. Homeowners who were already paying taxes to operate local government. If taxes are necessary to pay for services, let the taxpayers know for what & why.

Thank you for your consideration..

Date 2-06-01
AH No. 2
Page 3 of 3

Kansas Association of REALTORS®

3644 S.W. BURLINGAME ROAD • TOPEKA, KANSAS 66611-2098
TELEPHONE 785/267-3610 • 1-800-366-0069
www.KansasRealtor.com • FAX 785/267-1867

TO: HOUSE TAXATION COMMITTEE

FROM: KAREN FRANCE, Director of Governmental Relations

DATE: FEBRUARY 6, 2001

SUBJECT: HB 2092, CITY AND COUNTY EXCISE TAX

Thank you for the opportunity to present written testimony regarding HB 2092. The Kansas Association of REALTORS® supports the concepts in this proposal.

We believe that it is a reasonable request of taxpayers to have rules regarding the utilization of a tax assessed by a city or county. There are rules for property tax, local sales tax and other kinds of taxes. Why should excise taxes be treated any differently?

The 2001 Legislative Policy of the Kansas Association of REALTORS® states:

Impact and excise fees

"The Kansas Association of REALTORS® believes impact and excise fees should not hamper or deter development in our communities. We urge that governments limit any use of such fees to providing public capital improvements necessitated by new development. In no case should these fees be used to correct existing deficiencies.

Impact and excise fees must be reasonably based upon the actual cost of the service upon which the fee is assessed, and should be proportionate to the infrastructure and services directly related to the specific project/development. These fees should not be used to subsidize other programs and services that have no connection to the fee being imposed. Furthermore, the imposition of any fees should be accompanied by an ordinance defining the level of service to be provided in exchange for such fees."

There is a misconception that the Kansas Constitution prohibits you, the Kansas Legislature, from enacting legislation that limits home rule power in any way. However, both the Kansas Court of Appeals and the Kansas Supreme Court recognize that the legislature does have the ability to place limitations on home rule authority. An example is in a court case which the opponents to this bill will raise as the rationale for you to not support this legislation, *Home Builders Ass'n v. City of Overland Park*, 22 Kan. App. 2d. 649, 921 P. 2d 234 (1996). In that case the court quoted from a 1973 decision in the case of Claflin v. Walsh:

House Taxation
Date 2-06-01
AH No. 3
Page 1 of 2

"Drawing from the express language of Kan. Const. Art. 12, Sec 5(b), the Supreme Court in *Claflin* stated the general limitations on home rule authority:

'The home rule power is subject to optional control by legislative action in four specific areas:

(1) Enactments of statewide concern which are applicable uniformly to all cities.
(2) Other enactments of the legislature applicable uniformly to all cities.
(3) Enactments applicable uniformly to all cities of the same class limiting or prohibiting the levying of any tax, excise, fee, charge or other exaction.
(4) Enactments of the legislature prescribing limits of indebtedness.' 212 Kan. at 7.

The legislation before you falls under subparagraph 3. We are asking you to enact a statute which would apply uniformly to all cities of the same class which limits, ~~not prohibit~~ the levying of an excise tax. This is clearly within your power.

Additionally, we are doing nothing more than advocating the very rules that were recommended in an article that appeared in the Kansas Government Journal in May 1998. In an article titled "Comprehensive Infrastructure Financing Strategies", the authors discuss the distinctions between an impact fee and an excise tax. More specifically, they discussed the HBA court decision referenced above and made the following statements:

> "Following the decision in the Overland Park case, several cities have enacted, or are considering enactment of, excise taxes on development as an alternative to regulatory exactions. The greatest advantage of the excise tax is its flexibility. Because it is a tax, the revenues may be used for any legitimate governmental purpose, **although a city may, for policy reasons, elect to dedicate the revenues to a particular purpose, such as capital improvements.** There is no requirement for proportionality between the amount of an excise tax paid by a particular development and the impacts created by that development; once again, **however, for policy reasons the city may which to employ an impact-based methodology for determining the tax rate so as to ensure that the developer pays only its fair share of costs.**" (Emphasis added.)

What we are asking you to do in this legislation is exactly what the authors recommended "for policy reasons" in this article. We are asking for cities and counties to dedicate the excise tax revenues to a particular purpose and to utilize an impact-based methodology for setting the tax rate to make sure that the taxpayers pay their fair share of the costs. We believe that these rules constitute good public policy.

In summary, we think it is reasonable to have rules for cities and counties to play by when utilizing an excise tax. If there are amendments that need to be made to make it a more workable product, we will gladly consider them. We respectfully request your favorable consideration of this legislation.

Date 2-06-01
AH No. 3
Page 2 of 2

REALTOR®

Kansas City Regional Association of REALTORS®

6910 W 83RD St, Suite 1 Overland Park, KS 66204 913-381-1881 fax 913-381-4656
www.kcrealtorlink.com * e-mail: jcbr@kcrealty.org
6700 Corporate Dr, Suite 100 Kansas City, MO 66210 816-242-4200 fax 816-242-4212
www.kcboardofrealtors.org * e-mail: mkcbr@mkcbr.com

Testimony of Erik Sartorius
Governmental Affairs Director
Before the
House Taxation Committee
Regarding
House Bill 2092 Excise Tax Act

February 6, 2001

The Kansas City Regional Association of REALTORS® encourages passage of House Bill 2092. The bill extends onto excise taxes important analysis requirements for demonstrating the necessity of such taxes.

Current governance of excise taxes is lacking in two ways. First, municipalities and counties are not required to conduct the same analysis when levying an excise tax as they are when imposing an impact fee. Consequently, governments are being encouraged to utilize excise taxes, as they are "not subject to the same legal constraints as regulatory financing measures," such as impact fees, to quote an article from the May 1998 *Kansas Government Journal*.

The other area of concern is that funds from excise taxes can be placed in the General Fund of the city or county and do not have to be spent to benefit the people on whom the tax was levied. Impact fees, meanwhile, are spent for a specific purpose to benefit the payers of the fee.

We believe House Bill 2092 offers common sense rules for the imposition of an excise tax, including a comparison of the benefits and costs of current residents and the benefits and costs in new growth areas. Municipalities and counties wishing to impose an excise tax should be able to demonstrate the need for such a tax.

When excise taxes and impact fees are promulgated, the reasoning is almost always that "growth does not pay for itself." The validity of this notion, unfortunately, is often not known. The analysis required in this legislation might show that development needs to pay more toward infrastructure in some localities, or it may show that new development contributes its fair share. The important aspect is that the public will know that costs and benefits were actually considered in reaching any tax levied.

As laid out in the bill, excise taxes could not be used to correct existing deficiencies in an infrastructure system. Collecting funds from new residents who did nothing to create problems in an existing system is not an equitable answer. Unfortunately, we are seeing instances where growth and development is demonized while at the same time the excise taxes levied on developments are used to mask existing deficiencies. Although this route is much easier than raising revenues from all users of infrastructure, it is politics at its worst.

The Kansas City Regional Association of REALTORS® believes excise taxes and impact fees should not hamper or deter development in our communities. Excise taxes not developed through sound analysis, however, do hamper economic activity. Further, they arbitrarily punish individuals seeking to purchase a new home. New housing is made less affordable, without the guarantee that the newer area will receive the benefits of the excise tax levied against it.

We respectfully seek your support of this legislation.

Date 2-06-01
AH No. 4
Page 1 of 1
House Taxation

LKM
League of Kansas Municipalities

300 SW 8 nue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: House Taxation Committee

From: Don Moler, Executive Director

Date: February 6, 2001

Re: Opposition to HB 2092

First I would like to thank the Committee for allowing the League to appear today in opposition to HB 2092. As I know you are all aware, one of the cornerstones of local government in Kansas is constitutional home rule for cities. This power is not taken lightly by cities and we believe it is a very important aspect of the intergovernmental structure in this state. As a result, the League appears regularly whenever we believe there is a piece of legislation which will adversely impact constitutional home rule. Today I appear in opposition to HB 2092, a bill which clearly undermines local control and Constitutional Home Rule. On its face, HB 2092 appears to grant cities the ability to levy an excise tax. Nothing could be further from the truth.

I would point out to the committee that the League believes this piece of legislation to be totally unnecessary. As a result of the case of *Home Builders Association of Greater Kansas City v. City of Overland Park* 22 Kan.App. 2d 649 (1996) it is clear that cities in Kansas have the ability to impose an excise tax on real estate developments in Kansas. Since the time of that case, cities have had the clear authority to impose an excise tax on development within their city boundaries. While HB 2092 appears to be a grant of authority, it is the opinion of the League that it is in fact restricting the ability of cities to operate in this area. If adopted, it would create a "one size fits all statute" which would be very limiting in its nature. It is our belief that the underlying motive for this legislation is to make it virtually impossible for cities to levy excise taxes, in the nature of impact fees, on developers in this state. The old saying "if it isn't broken don't fix it" certainly applies today in the case of HB 2092. We urge the Committee to reject HB 2092 as unnecessary and an assault on the Constitutional Home Rule authority of cities in Kansas.

House Taxation
Date 2-06-01
AH No. 5
Page 1 of 1

KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY
concerning HB 2092
City and County Development Activity Excise Tax
Randy Allen, Executive Director, Kansas Association of Counties
House Taxation Committee
Tuesday, February 6,2001

Mr. Chairman and members of the Committee,

Thank you for the opportunity to submit testimony concerning HB 2092, concerning city and county development activity excise taxes.

The Kansas Association of Counties **opposes** HB 2092 for two reasons – one a substantive reason and another based upon a process consideration.

The ostensible purpose of HB 2092 is to grant counties the ability to impose an excise tax on development activity as a way of financing the cost of public facilities related to new development activity that is over and above the cost of existing public facilities.

In fact, counties already have the ability through their home rule powers to anticipate the public costs of private development and provide for public facilities through the imposition of development activity excise taxes or impact fees. At least two counties experiencing significant growth – i.e. Butler and Harvey Counties – have already imposed road impact fees paid at the time building permits are issued for the purpose of providing a financial mechanism for counties and townships to pay for improved roads necessitated by additional traffic generated by new development in unincorporated areas of the respective counties. Both counties enacted road impact fees through their home rule powers by action of the boards of county commissioners and did so in public meetings in the light of day.

What HB 2092 does is to define an exact, one-size-fits-all protocol for the imposition of development activity excise taxes. Experience tells us that the 105 counties are not universally prone to impose such taxes and, even if they were, HB 2092 is an unnecessary invasion into local control.

Equally objectionable to the substantive arguments concerning us about HB 2092 is the process (or lack thereof) by which our Association, representing all 105 counties, was never contacted in advance of bill introduction for the purpose of discussing the rationale for the proposed legislation. We have an exhaustive legislative study process not unlike other associations where we invite ideas to be brought forward and discussed. The concepts in HB 2092 were not brought to our attention by proponents, yet they deal squarely with counties. In our judgment, the discussion on this bill before this committee is premature because no prior dialogue with county government ever occurred. For this breach of reasonable process, we strongly object to HB 2092.

For these reasons, we urge the committee to reject HB 2092.

6206 SW 9th Terrace
Topeka, KS 66615
785•272•2585
Fax 785•272•3585
email kac@ink.org

House Taxation
Date 2-06-01
AH No. 6
Page 1 of 1

TESTIMONY

CITY OF WICHITA

City of Wichita
Mike Taylor, Government Relations Director
455 N Main, Wichita, KS. 67202
Phone: 316.268.4351 Fax: 316.268.4519
Taylor_m@ci.wichita.ks.us

House Bill 2092
Development Activity Excise Tax

Delivered February 6, 2001
House Tax Committee

The City of Wichita does not use the kind of development activity excise taxes I've heard proponents of House Bill 2092 talk about. But the City of Wichita does have a fee which could well be affected by this bill.

The City of Wichita uses special assessment taxes to help developers make the construction of new subdivisions more affordable. Streets, water and sewer lines and other amenities are financed up-front by the City, then paid for through special assessment taxes paid by the purchasers of the new homes or buildings. The City of Wichita has a very good relationship with the development and homebuilding industry. At least I thought so until I saw this bill.

While we don't charge some kind of general development fee, the Wichita Water and Sewer Utility does have a one time water treatment plant equity fee which is charged to any new home or business hooking up to the City of Wichita water system for the first time. This charge is generally paid by the home or business owner connecting to the water system, not the developer. But, House Bill 2092 would impose a number of procedural requirements and restrictions which would likely include these water system equity fees.

The revenues from the water system equity fees are figured in revenue forecasts and pledged to the debt service of water utility revenue bonds. There is an issue as to the bill's scope of exception for existing fees pledged to bond debt service. As a result, it is unclear whether the City would follow the current structure until existing bonds are paid off, or whether fees would have to be modified prospectively, so that only the fees already collected would remain under the financial forecasts and debt service pledge, but future fees could not be collected as forecast. The intent of the bill is not clear on this point. Either way, it causes serious problems with financial operation of the water utility and the contractual agreements for water utility bonds already issued.

The language in the bill is very broad and loose. It purports to deal only with development activity, yet in other sections, the bill discusses restrictions on "all excise taxes." The broad language has a real danger of spilling over into all statutory excise taxes. The bill also calls for a separate procedure for adoption of these types of excise taxes, but makes no reference to KSA 12-137 or KSA12-94.

Besides these concerns, the bill imposes a one size fits all formula on every community in the state and is clearly another attempt to restrict the decisions made by elected officials at the local level.

House Taxation
Date 2-06-01
AH No. 7
Page 1 of 1

City of Lawrence
KANSAS

CITY COMMISSION
MAYOR
JAMES R. HENRY

COMMISSIONERS
MIKE RUNDLE
ERVIN E. HODGES
MARTIN A. KENNEDY
DAVID M. DUNFIELD

MIKE WILDGEN, CITY MANAGER

CITY OFFICES
BOX 708 66044-0708
6 EAST 6th
785-832-3000
TDD 785-832-3205
FAX 785-832-3405

To: Members of the House Committee on Taxation
From: David Corliss, Assistant City Manager & Director of Legal Services
City of Lawrence
Date: February 6, 2001
Re: House Bill 2092

The City of Lawrence strongly opposes the enactment of House Bill 2092 (Senate Bill 91) concerning the authority of cities and counties to adopt development regulations and related "excise taxes." This legislation fails on every count: this is a local government matter not requiring State legislation; there is no evidence of a statewide problem that requires a State legislative fix; and the bill creates more problems than it seeks to solve.

State Legislation is Not Appropriate

Kansas cities and counties enjoy home rule powers ensuring that local decisions are made locally. The complex and important policy issues dealing with the appropriate mix of public funding and private development funding for infrastructure associated with new development is best left at the local level. Communities vary as to whether a new subdivision or commercial center should pay -- or taxpayers and ratepayers should pay -- for new roads, sewers, waterlines and other infrastructure associated with a development. Lawrence has comprehensive policy statement on this issue. Other communities -- because of decisions made by other locally elected officials -- will have different policies. House Bill 2092 seeks to impose a "one size fits all" approach for certain development fees. These decisions are best left to locally elected officials responsible to the citizens who pay the taxes and rates. For example, in Lawrence the City's stormwater utility and related stormwater management criteria mandate certain required improvements with certain types of new developments. The public policy goal is clearly desirable: avoid stormwater flooding and damage to people and property. House Bill 2092 would appear (see comments on clarity problems in the bill below) to mandate a "capital facilities plan" and/or "a written analysis of each excise tax" for each new development because of the connectivity of a watershed drainage system. This is a costly and time consuming process which will only delay development and add to the cost.

House Taxation
Date 2-06-01
AH No. 8

No Evidence of a Statewide Problem Requiring a State Mandate

This issue is related to the argument above: there is simply no evidence of a statewide problem requiring such a blunt state mandate. Again, communities may enact regulations, fees and taxes with which some would disagree. If the claim is that the fee or tax is unreasonable or unlawful, judicial relief can be sought. There are numerous state and nationwide examples of courts requiring fees and exactions to be both reasonable and proportionate. See for example *McCarthy v. City of Leawood*, 257 Kan. 566, 579 (1995).

Major Problems with House Bill 2092 Damaging Local Governments AND Local Developers and Builders

In Lawrence, city officials and the local development community have worked hard to accomplish similar goals: reasonable regulations, rules and fees that ensure quality development and appropriate construction or funding of necessary public improvements. There are occasional disagreements and questions for interpretation, but generally these are handled in a professional and expeditious manner. House Bill 2092 kills this relationship with no apparent benefit, except to those who can profit from delay and challenges.

Examples of problems for both public officials and developers/property owners under the new bureaucratic regime of House Bill 2092 are numerous, a few should suffice:

1) The excise taxes under this bill can also be one-time fees or exactions required from a development that are system improvements. The bill requires a capital facility plan (an undefined term) before imposing an excise tax. What is the length of the plan? What is the time limit to wait for the plan? weeks? months? For example, if a community wants a development to pay for a downstream stormwater improvement -- and the developer agrees to the condition -- must a study be done for this necessary public improvement? If the study is required and the delay costs the developer money, who should pay these costs?

2) Purportedly, under the bill exactions to pay for project improvements do not require the scrutiny of excise taxes for system improvements. The terms "project improvement" and "system improvements" are so vague as to mean almost anything or nothing. For example, is a fee for new stop signs in a new subdivision a new excise tax (because it relates to a traffic system) or a fee for a "project improvement ?" are off-site watershed drainage improvements a project improvement or a system improvement?

3) The bill attempts to claim that a municipality may not use excise tax revenue to "cure deficiencies in public facilities serving existing development." If the "deficiency" is the size of the waterline why wouldn't be appropriate to use the

revenue from new developments to increase the size of the line to serve the new development? Some developments will simply not occur because they are adjacent to, or served by, "deficient" facilities which need resources for repair.

In recent years Lawrence has been fortunate to have a growing community, with numerous quality developments and with both public and private resources to ensure adequate public facilities are in place for these new developments. Unfortunately, this bill -- and the confusion and delay it creates -- would negatively impact our community's ability to ensure necessary public improvements are in place as our community grows.

We urge your rejection of House Bill 2092.

Date 2-06-01
AH No. 8
Page 3 of 3

Testimony Before the
House Taxation Committee
HB 2092
February 6, 2001
Tom L. Kaleko, Assistant City Administrator

Thank you for giving me the opportunity to appear before you today and to present testimony on House Bill 2092. The City of Lenexa is opposed to this legislation for several reasons.

First, we feel that this legislation is unnecessary as cities are already empowered to enact excise taxes pursuant to Article 12, Section 5 of the Kansas Constitution. Further, enacting statewide legislation on a matter of local concern such as funding public improvements runs contrary to cities' powers of home rule and may lead to confusion for cities, such as Lenexa, that have already enacted an excise tax.

In addition, House Bill 2092, as written, appears to confuse excise taxes with impact fees. This is an important distinction and one that has been heavily litigated. Impact fees are one-time charges against new development for the purpose of raising revenue for new or expanded public facilities necessitated by the new development. The Kansas Supreme Court in a case involving the City of Leawood held that cities were empowered to enact such impact fees pursuant to their home rule powers provided such fees are reasonable. In determining the reasonableness of impact fees, courts will consider several factors, including: (1) spatial factors (the distance between the development paying the fee and the public facilities to be constructed with the fees paid); (2) temporal factors (the length of time elapsing between collection of the impact fee and the construction of the facilities); (3) amount (the amount of the fee in relation to the cost of the public facilities); (4) need (the relationship between the burden created by the development and the increased need for public facilities); (5) benefit (the ability of the public facilities to satisfy the needs resulting from the development); and (6) earmarking (an assurance that the impact fee collected from the development are restricted solely for the provision of public facilities of the type for which the fees were collected and for facilities serving new development.)

Conversely, an excise tax is a tax imposed upon a particular use of property or the exercise of a single power over property incidental to ownership. The tax is simply levied on one of the many incidents of ownership. To be valid, the excise tax must truly be a tax and *not* a regulatory or impact fee. In considering the validity of excise taxes, courts will consider the following criteria: (1) whether the tax is on the activity of development and not on the property or the property owner; (2) whether the tax is for the purpose of raising revenues and whether the revenues raised are earmarked for a particular purpose (in the case of a true tax, the funds are not specifically earmarked for a particular purpose but rather are levied for the purpose of raising general revenues and are deposited in the general fund); (3) whether the amount of the tax is reasonable and not confiscatory (This is not a proportionality test where the amount of the tax is weighed again the impact generated, but rather an overall fairness analysis;) (4) that the tax is not tied to regulatory purposes or imposed as a condition of planning approval; (5) that the tax is not

based upon the value of the property and (6) whether the tax is nondiscriminatory in its application.

A review of House Bill 2092, which purports to create an excise tax, reveals many of the characteristics of an impact fee. The "excise tax" proposed in this Bill requires, among other things, the establishment of service areas (which appears to ensure spatial connection between the "tax" and the public improvement); calculation of the amount of the "tax" in relation to the cost of the improvements; adjustment of the "fee" in "unusual circumstances" and a refund after six years if not used (which appears to ensure temporal connection between the collection of "tax" and the construction of the public improvement.) In fact, at one point in the bill, the tax is actually referred to as a "fee." The Bill, as proposed, blurs the line between excise taxes and impact fees and will, at a minimum, create confusion on the matter and invite unnecessary, expensive litigation.

The proposed Bill would require cities and counties to undergo an extensive financial analysis comparing the cost of public facilities to the demand generated by new development in justifying the "tax" imposed. I can only assume that the purpose of this provision is to ensure that developers do not pay more than their fair share of public improvement costs. While this is a legitimate consideration, requiring such calculations is completely unnecessary. Any excise tax imposed by a city or county must be "reasonable" or it will be found confiscatory and struck down in a court challenge. Furthermore, the competitive nature of development and cities' desire to remain competitive in attracting such development necessitate that excise tax rates are set as low as they possibly can be, while still ensuring that sufficient revenues are raised. While financial analyses like those proposed by HB 2092 are not required, the City of Lenexa, as well as many other local cities, have conducted their own extensive financial analyses in arriving at excise tax rates which ensure that developers pay their fair share of the cost of the public improvements that will serve their developments while not overburdening the property with a confiscatory tax. In fact, excise tax revenues in the City of Lenexa have been pledged to transportation improvements, but this is just one of many funding sources for these improvements and represents only a fraction of the total monies spent on capital improvements in the City.

On behalf of the City of Lenexa, I would respectfully urge the Committee to decline to enact this proposed statewide legislation affecting what is essentially a matter of purely local concern and to leave such decisions to the local elected officials. Kansas courts have already spoke on this issue and have set forth the framework within which excise taxes must be developed and evaluated. Thank you for your consideration.

The City of Overland Park KANSAS

Law Department

Robert J. Watson, City Attorney

City Hall•8500 Santa Fe Drive
Overland Park, Kansas 66212-2899
TEL 913.895.6080/6086•FAX 913.895.5095
E-MAIL jsneffbr@opkansas.org

TESTIMONY IN OPPOSITION TO HOUSE BILL NO. 2092

TO: The Honorable John Edmonds, Chair and
Members of the House Committee on Taxation

DATE: February 6, 2001

RE: House Bill No. 2092 – Pertaining to a city and county development activity excise tax.

Ladies and Gentlemen:

The City of Overland Park provided testimony in opposition to a bill of this substance last session, and for the benefit of new committee members, we are providing copies of those comments. The City would like to reiterate that testimony, and include several additional points.

1. In adopting its excise tax, the City of Overland Park utilized the home rule powers granted to it by the Kansas Constitution, wherein Kansas cities are empowered to determine their local affairs and government, including the levying of excise taxes, unless prohibited by an act of the Legislature. The principle that cities should be allowed to control their own affairs, unless the Legislature finds good and sufficient reason to remove or restrict that local authority, is one to which the legislature should continue to adhere. Only if there is widespread or repeated abuse of such municipal powers, to the established detriment of the welfare of the citizens of this state, would restraints on the exercise of home rule powers be justified. There has been no such abuse of municipal power by the City of Overland Park.

2. The City understands that testimony will be provided to the legislature by Dr. Mark Dotzour, alleging that cities, in general, do not need to use funding sources, such as excise taxes and impact fees, to partially fund the costs of new development, since new development, under certain circumstances, pays for itself. This conclusion, apparently reached after a study of new subdivisions in several Texas cities, is, by the author's own words, the first such analysis undertaken. However, even a cursory, non-expert analysis of these studies, makes it clear that they have very little applicability to the current issue. For example, among the many variables examined in these studies was the level of property taxes collected in those Texas cities. Certainly, the legislature would not intend, by adopting this proposed bill, to dictate that local governments forego taxing developers, but rather raise property taxes on all citizens of the community in order for new development to avoid imposing a net cost on the city.

   Furthermore, one of these studies by Mr. Dotzour, a copy of which is attached to this written testimony, admits that, in the five subdivisions studied in San Antonio, one did represent a net cost to the city, because in that subdivision the city did not require the developer to pay for the costs of widening the arterial street that supports that subdivision. The cost of the construction of arterial streets is the exact and only cost that the City of Overland Park

House Taxation
Date 2-06-01
AH No. 10
Page 1 of 8

partially funds with excise tax money. With respect to the facts and circumstances that exist in each city, and the need for excise tax money to help defray the local government's cost of meeting the needs created by new development, there are many policy issues that should be explored at the local government level, with no need for broad-brush statewide legislation based on generalities that may have no applicability to many communities in Kansas.

3. Using an excise tax to partially fund needed thoroughfare improvements occasioned by new development does not have the surgical precision and mathematical exactness of an impact fee. It is a tax and need not meet those standards. However, it is more equitable than raising everyone's property taxes to secure funds. Within proper bounds, issues of fairness and equity in the levying of taxes are policy decisions within the discretion of the local elected officials, to be debated and resolved by these local elected officials.

4. This state has a long history of opposition to unfunded mandates being imposed by the federal government, and the skepticism that a central government in the capitol knows best how to handle local affairs should not end at the state line. Where is the documented record of abuse of the excise tax power? Where has imposition of an excise tax led to the end of growth and development and the financial ruin of qualified developers? In fact, if proposed developments have to be disapproved because of the undue burden that would be added to inadequate roads, wouldn't that have a much greater effect on economic growth of the community and the developer? Or, conversely, if such developments are approved despite the pressing need for road improvements, and traffic safety and circulation problems on those overburdened roads become ever worse, what then is the remedy?

5. While it is true that large cities with substantial resources may be able to afford the cost and expense of the studies, staff work and expert consultants required to implement the proposed bill, most cities in Kansas may not have the wherewithal.

In conclusion, make no mistake about it. By adopting HB 2029, the legislature would be prohibiting cities from levying an excise tax, a power that the Kansas Court of Appeals explicitly stated that cities possess, leaving cities with the alternative either of adopting an impact fee if they can meet the onerous standards and requirements of this legislation, or of raising property taxes. The present excise tax system is working well in Overland Park and has been upheld, as constitutional, by the Kansas Court System. Overland Park respectfully requests that HB 2092 be defeated.

The City of Overland Park

Jane Neff-Brain

Jane Neff-Brain
Senior Assistant City Attorney

J. Bart Budetti

J. Bart Budetti
Senior Assistant City Attorney

Attachments

cc: Governing Body

Date 2-06-01
AH No. 10
Page 2 of 8

The City of Overland Park KANSAS

Law Department

Robert J. Watson, City Attorney

City Hall•8500 Santa Fe Drive
Overland Park, Kansas 66212-2899
TEL 913.895.6080/6083•FAX 913.895.5095
E-MAIL watson@opkansas.org

TESTIMONY IN OPPOSITION TO HOUSE BILL NO. 2692

TO: The Honorable Susan Wagle, Chair, and
Members of the House Committee on Taxation
Room 519-S

DATE: February 23, 2000

RE: House Bill No. 2692 -- Pertaining to a city and county development activity excise tax.

Ladies and Gentlemen:

The City of Overland Park opposes enactment of House Bill No. 2692 for the following reasons:

1. House Bill No. 2692 appears to be a blatant attempt to limit the home rule power of cities to enact excise taxes. That home rule authority of cities to enact excise taxes was upheld in *HBA v. City of Overland Park*, 22 Kan. App. 2d. 649, 921 P. 2d 234 (1996).

2. It confuses taxes and fees by attempting to mandate a proportional basis for determining the excise tax rate. In effect the so-called excise taxes are impact fees in disguise and as such would not meet the test for a tax established by either the Kansas or federal courts.

3. It is a virtual verbatim version of Utah's "Impact Fees Act," (See Section 11-36-102 *et seq.* of the Utah statutes); but instead of calling itself an impact fees act it grafts an impact fee methodology onto what is called an excise tax. Further, it grafts onto Kansas statutes, laws from another state whose cities have no home rule authority and whose cities have to rely on enabling legislation.

4. The Utah statute attempts to codify Utah case law prescribing a methodology for subdivision exactions and regulatory fees but fails to incorporate the flexibility into the process envisioned by the Utah Supreme Court in *Banberry Development Corporation v. South Jordan City*, 631 P. 2d 899 (1981) and its progeny.

5. It would likely wreak havoc on the City of Overland Park's capital improvement program. No fiscal impact on the City of Overland Park or on any other city has been prepared.

6. It is full of imprecise terms that are open to wide interpretation.

7. It is full of ambiguities as to how it applies to existing excise taxes in Johnson County cities.

Date 2-06-01
AH No. 10
Page 3 of 8

8. It is unclear whether the bill would allow cities to recoup consultant and other costs they must incur in crafting new or justifying existing excise taxes using the mandated methodology. The City of Salt Lake City was required to spend approximately $250,000 in order to comply with the mandate of the Utah statute.[1]

9. Even if enacted, the bill would not be effective to prevent cities from enacting excise taxes under their home rule powers because under established case law the bill will not be read in isolation but rather will be read *in pari materia* with K.S.A. 12-194, which is part of a non-uniform enactment.

Therefore, we respectfully ask you to reject House Bill No. 2692.

The City of Overland Park

Robert J. Watson
City Attorney

cc: Governing Body
John Nachbar, City Manager

[1] Ironically, impact fees paid in Utah have risen following enactment of the Utah statute, in part, because more cities in Utah are enacting impact fee ordinances in response to the codified law than took advantage of the methodology established by the Utah Supreme Court.

Date 2-06-01
AH No. 10
Page 4 of 8

Fiscal Impact Studies: Does Growth Pay for Itself

A study in Texas addresses the ongoing debate about the necessity of imposing impact fees in local communities.

By Mark Dotzour.

Does residential development pay for itself? Or is it a net cost to the community? These are the essential questions that drive the debate about the necessity of imposing impact fees in local communities.
In the political environment of the 1990s, local governments find it increasingly difficult to raise sufficient revenues to provide the services demanded by their citizens. Consequently, many municipalities are forced to look for alternative funding sources. One alternative calls for levying impact fees on every new home built in the community. The assumption behind impact fees is that local governments must recapture the costs of supplying the streets, sewer, water, drainage, libraries, parks, and police and fire stations needed to serve the new subdivisions.

If new subdivisions do not pay their own way, then existing community residents must bear the costs of providing needed services and capital improvements through higher taxes and lower-quality services. Conventional wisdom among urban planners has long held that new subdivisions do not pay their own way and that a method must be devised to recover local government's "costs" in providing services and capital improvements to new subdivisions.

Nonetheless, some in the development and home building community hold a different view. They are acutely aware of the broad range of taxes and fees already levied by municipalities on new homes. They recognize that developers and local governments pay for a large share of the capital improvements needed to support new subdivisions. According to this view, developers and home builders pay for most of the costs of installing streets, sewer, water, and drainage improvements while new homeowners pay substantial taxes each year for the services they demand.

Despite the ongoing debate over the "who pays" question, few studies provide empirical proof in support of either position. In fact, researchers at Harvard University's Kennedy School of Government and Graduate School of Design have indicated that "no systematic canvasses are available of the results of fiscal impact studies; they rarely are published or widely distributed."1 In response, the Texas A&M University Real Estate Center undertook a study to provide some new insights to inform the debate on the fiscal impact issue. The goal of the research was twofold: to develop a methodology to analyze equitably the costs and revenues generated from new subdivisions and to conduct case studies of two cities for the purpose of quantifying the actual costs and revenues generated by recently completed subdivisions.

More specifically, our research at Texas A&M looked at five recently completed subdivisions in San Antonio and another five subdivisions in Tyler, Texas. The analysis compared revenues from typical homes in the new subdivisions with the costs incurred by the municipalities to provide needed services. The San Antonio study results are presented here to illustrate how the study was performed and what the results indicated. The results of the Tyler study are essentially the same.

Typical Subdivisions Studied

In San Antonio, researchers set out to identify and quantify all revenues in the form of taxes, fees, and permits paid to the city by the developer, home builders, and homeowners in each of five subdivisions. The research team also attempted to identify and quantify all costs incurred by the city in providing new subdivisions with needed infrastructure and public services. The analysis measured the fiscal impact of the subdivisions on the city of San Antonio by comparing the revenue produced by an average household in each new subdivision with the amount paid by the average San Antonio household.

The subject subdivisions represent "typical" residential developments across a wide spectrum of price ranges in San Antonio in recent years. Researchers carefully selected the study subdivisions from a diverse group of new developments to ensure that conclusions derived from the case study analysis of each could be reliably generalized and applied to all new subdivisions in San Antonio.

Capital Improvements: Who Pays?

One-time capital improvements provide public utilities and infrastructure in each new subdivision. The costs for many of these improvements—for example, to connect the new subdivision to existing municipal facilities, including the sewer and water system, the stormwater drainage system, and the arterial road network—are paid by the developer during the subdivision process or by the home builder during home construction. The city pays for other essential capital improvements, including police substations, fire stations, branch libraries, neighborhood parks, arterial street improvements, and stormwater drainage projects that serve new development. When not paid out of federal funds or state grants, such improvements represent costs to existing city taxpayers as each new subdivision undergoes development. Surprisingly, perhaps, the case studies reveal that the developer pays the largest share of capital infrastructure expenses while other capital projects may be funded from state or federal sources. The city government pays for the remaining capital costs. Table 1 depicts the major capital expenditures required to support new residential development and identifies who typically pays for them in San Antonio.

New Subdivision Revenue

New residential subdivisions generate two important categories of city revenue that pay for ongoing municipal services and capital infrastructure improvements: annual tax revenues collected from households in new subdivisions and one-time revenues collected during the development process.
Annual Tax Revenues. Collected from each household, annual revenues flow into two city accounts that are critical to fiscal impact analysis: the general fund and the debt service fund.

The debt service fund pays for the principal and interest on a city's bonded indebtedness. When households in a new subdivision begin to pay property taxes, they generate new income for the debt service fund. The income can be used to pay the principal and interest on additional bonds used to finance capital improvements needed to connect the new subdivisions to existing public infrastructure and to pay for other capital improvements. Annual revenues come from the following sources:

Local sales tax. In fiscal year 1994-1995, the San Antonio sales tax rate was 7.75 percent. One percent of the local sales tax revenue went to the city's general fund; the remainder went to the state and to the local transit authority.

Franchise tax. Franchise taxes are analogous to a sales tax on utility bills. Although the franchise fee revenue is collected directly from utility companies, each customer pays it.
General property taxes. San Antonio collects a substantial portion of its annual revenues from general property taxes. Part of the property tax goes to the city's general fund and part to the debt service fund.
One-Time Revenues.

One-time revenues are collected from the developer and subdivision home builders in the form of various fees and taxes.

New subdivisions often incur two application fees: one to have the land properly zoned and a second to plat the land for residential development. Revenues from the application fees accrue to the city's general fund. Builders also pay a sales tax for the materials on an individual home. Although this is generally proprietary information, the 1 percent portion of the sales tax collected by the city's general fund is estimated to be 0.22 percent of the sales price of a new home. Funds generated from building, plumbing, and electrical permits as well as from inspection fees go to the general fund. These revenues are designed to match the costs the city incurs to provide inspection services.

Fiscal Impact of Five New Subdivisions

To examine the fiscal impact of new residential development on San Antonio, the research team analyzed the city's general fund, debt service fund, and water system budget. The results show that new subdivision development has a fiscal impact on all three. Moreover, the researchers performed three separate impact studies to reflect each fund's autonomous status; that is, revenues received in one account cannot be transferred to pay for activities funded out of another.

Fiscal Impact on General Fund. To determine the net fiscal impact of a new subdivision on the general fund, the team relied on the following premises:

Premise one. The average existing San Antonio household pays about $487 annually into the general fund, which purchases an average level of government services from the city.
Premise two. Each household created in a new subdivision within the city limits requires the same level of city services.

Premise three. Each new household creates a stream of revenue for the general fund, including revenues from property taxes, the sales tax, franchise fees, user fees, fines, penalties, and permits. Any additional revenue a household generates above the citywide average of $487 is available to provide enhanced services and improvements that benefit the rest of the community.

Table 2 compares the general fund revenue paid by an average new household with the revenue paid by the average existing San Antonio household. The conclusion supported by the data is that households in all five of the new subdivisions considered in the study pay considerably more into the general fund than the average San Antonio household.

Fiscal Impact on Debt Service Fund. Analysis of the fiscal impact of new subdivisions on the debt service fund was based on the following four premises (see Table 3):

Premise one. Each new household must pay its pro rata share of the capital improvements required to create the new subdivision and to connect it to the community's existing infrastructure.

Premise two. The developer, the home builder, or the new homeowner pays directly for many of these capital improvements.

Premise three. Some of the necessary capital improvements are paid for by the city's bonded indebtedness (or agencies owned or controlled by the city) in the form of general obligation bonds or revenue bonds. These bonds are often amortized over a term of ten to 20 years. Such capital improvements include new police substations, fire stations, parks, and branch libraries and additions to sewer treatment and water supply, storage, and distribution systems.

Premise four. Approximately 38 percent of general property tax revenue goes to the debt service fund, with the remaining 62 percent allocated to the general fund. If the revenues from new households are sufficient to amortize a level of debt that exceeds the capital improvement costs, then the subdivision is "paying its way" and is not a taxpayer burden. If not, then debt service funding supported by existing households that could be used for citywide improvements must be diverted to provide the improvements needed to support the new subdivision.

Capital Improvements from Debt Service Fund. An analysis of the debt service fund requires a comparison of the costs of capital improvements that benefit the subdivisions with the revenues generated by the same developments. Researchers asked San Antonio city officials to identify any capital improvements made (or planned in the near future) to support the five new subdivisions and to specify the actual costs of providing capital improvement to serve new subdivisions. Specific improvement costs include police substations, fire

substations, branch libraries, drainage projects, and park improvements. The goal for each capital improvement was threefold: to identify the cost of the improvement, to identify how many households are served by that capital improvement, and to estimate the cost per household for each. For example, city officials estimated the average cost of a police substation at $2 million. Each substation serves approximately 66,667 households; therefore, the average cost was estimated at $30 per household. Table 4 presents the summary results, which compare the amount of debt service that the average home in each new subdivision supports with the actual costs per household for capital improvements incurred by the city. For example, the Guilbeau Park subdivision pays enough property taxes into the debt service fund to support $1,974 in capital improvements. The city, however, has incurred approximately $398 in capital improvements for each lot in the subdivision.

Conclusion

The results clearly show that, as of the date of this study, the lots in four of five subdivisions have not represented a net "cost" to the city. Annual revenues contributed to the debt service fund support a bonded indebtedness far greater than the capital improvements made thus far by the city to benefit the subdivisions. The one exception is the Brookside subdivision where the city did not require the developer to pay for the cost of widening the arterial street that supports the subdivision

The impact on the operating budget is positive as well. Assuming that new subdivisions consume the same level of municipal services as the rest of the households in the community, then each of the five subdivisions produces a positive fiscal impact on the city's general fund account.

The fiscal impact of new residential growth on local municipal budgets continues to be a vigorously debated issue that has been largely informed by opinion rather than by fact. This article, however, presents factual case study evidence about the revenues and costs associated with providing municipal services to new subdivisions. The results of the two Texas case studies2 suggest that new subdivisions are not a fiscal drag on local government budgets. In fact, the revenues from the homes in the subdivisions pay for a level of capital improvements that is substantially higher than the cost incurred by the cities. Nonetheless, each city is unique. Each has its own policies about who pays for infrastructure, and each city has its own particular sources of revenue. Consequently, each city must be evaluated individually.

One of the principal goals of this research was to develop a model that can be used in other cities. Specific detail about how the case studies were conducted is provided in Real Estate Center technical reports. To order the $10.00 reports, call (800) 244-2144. The San Antonio study is report No. 1029; the Tyler report is No. 1204.

Dr. Mark Dotzour is chief economist with the Real Estate Center at Texas A&M University.

1.) Alan Altshuler and Jose Gomez-Ibanez, Regulation for Revenue (Washington, DC: The Brookings Institution, 1993), p.86
2.) Results of the Tyler case study are similar to the San Antonio results.
Table 1 San Antonio Subdivision Capital Improvements

Johnson County, Kansas

COUNTY ADMINISTRATOR'S OFFICE

To: The Honorable John Edmonds, Chairman
Members, House Taxation Committee

From: Ashley Sherard
Intergovernmental Relations Manager

Date: February 6, 2001

Subject: **Opposition to HB 2092 -- City and County Development Excise Tax Act**

I am writing to express the Johnson County Commission's strong opposition to HB 2092, which purports to enable cities and counties to impose an excise tax on development activity. As proposed, the bill would essentially require cities and counties to undergo an extensive financial analysis designed to justify the amount of tax being imposed.

First, this legislation is unnecessary. Kansas courts have already established the validity of excise taxes and declared such taxes must be "reasonable" or face being struck down during a court challenge. Therefore, current case law already creates a framework for the development and evaluation of excise taxes and establishes protections to ensure that developers do not pay more than their fair share of public improvement costs.

Second, this legislation would substantially undermine local control and home rule authority, key tenets of Kansas government. We believe it is critical local governments maintain the power to address matters of essentially local concern, such as funding public improvements, in a manner that best serves that community. HB 2092 runs contrary to that longstanding principle by unnecessarily imposing statewide legislation on an arena traditionally recognized as being within the purview of local government.

Lastly, the bill does not achieve its stated purpose. The financial analysis mandated in the bill is so onerous and complex that, rather than empowering local governments to utilize excise taxes, the tremendous time and expense that would be required almost prohibits it, even though an excise tax might be entirely appropriate. Further, even if a local government was to proceed, the bill is often vague or unclear on key provisions and terms, making interpretation very difficult and encouraging expensive litigation that ultimately hurts taxpayers.

For all these reasons, the Johnson County Commission would strongly urge you to respect this traditional area of local control and reject HB 2092. Thank you for your consideration.

House Taxation
Date 2-06-01
AH No. 11
Page 1 of 1

City of Olathe

MEMORANDUM

TO: Members of the House Taxation Committee

FROM: Donald R. Seifert, Policy Development Leader

SUBJECT: **House Bill 2092**; City and County Excise Tax Act

DATE: February 6, 2001

On behalf of the city of Olathe, thank you for the opportunity to present this statement in opposition to HB 2092. This bill would mandate an elaborate set of findings and procedures for a city or county to follow before establishing or modifying an excise tax on development.

Believing that new growth and development should not place unreasonable burdens on existing residents, the city of Olathe has imposed development related fees since the 1980's to support expansion of water and sewer facilities, neighborhood parks, and arterial street improvements. Much of the procedural content required by HB 2092 is contained in the various enacting ordinances and the financial and engineering research that supported the fee structures. Excise fees are reviewed periodically as is the city's capital improvements plan.

If the city already follows much of HB 2092, why then do we oppose it? Because we believe this bill fundamentally interferes with local home rule! The bill's complexities would also certainly invite opportunities for legal challenge. A decision whether or not to enact an excise fee should be a local one after public discussion with local stakeholders and understanding local conditions. There is no evidence of a statewide problem requiring a solution from Topeka.

Local officials in rapidly growing communities like Olathe are constantly balancing competing needs to finance operational and capital budgets. Excise fees are one component in a broad revenue mix. The city is very development oriented, so any new or modified excise fee must first pass the "common sense" test of the governing body. The committee can be assured that any change to these ordinances is thoroughly scrutinized.

The city respects the view of the building industry that taxes should only be imposed after careful analysis. The city of Olathe will continue to operate under this premise because it is good public policy, not because of a state mandate.

House Taxation
Date 2-06-01
AH No. 12
Page 1 of 1