Approved: February 13, 2001
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 11:00 a.m. on February 7, 2001, in Room 519-S of the Capitol.

All members were present except: Senator Jenkins - Excused

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Janet Stubbs, Kansas Building Industry Association
Karen France, Kansas Association of Realtors
Erik Sartorius, K.C. Regional Association of Realtors
Don Moler, League of Kansas Municipalities
Bart Budetti, Assistant City Attorney, Overland Park
Jane Neff-Brain, Assistant City Attorney, Overland Park
David Peel, Johnson County Planning Department
Mike Taylor, City of Wichita
Tim Howison, Re/Max Realtors, Salina
Stan Byquist, Salina developer
Robert Taggert, Topeka real estate appraiser
Lonie Addis, Kansas County Commissioners Association

Others attending: See attached list.

The minutes of the February 5, 2001, meeting were approved.

SB 91–Enacting the city and county development activity excise tax act.

Janet Stubbs, Kansas Building Industry Association, testified in support of **SB 91**. (Attachment 1) Before beginning her testimony, she distributed copies of written testimony in support of **SB 91** submitted by Representative Doug Patterson, who was unable to attend the meeting, (Attachment 2) and Tim Underwood, Executive Vice President of the Home Builders Association of Greater Kansas City (Attachment 3). Ms. Stubbs went on to say that **SB 91** was introduced in response to the implementation of an excise tax in the City of Derby, which the voters recently repealed by a vote of 58 percent to 42 percent. She emphasized that **SB 91** is not an attempt to prohibit implementation of an excise tax by local units of government or to repeal those currently in effect, but rather, 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. She noted that the process is complex and should be calculated individually per city due to varying policies from city to city.

Ms. Stubbs followed with an explanation of the guidelines and requirements which **SB 91** is intended to establish. She expressed support of home rule and the making of informed, responsible decisions by local units of government. She agreed that, if a city conducts a fair and accurate study which proves that new development is not shown to pay its way under the proposed method of calculation, an impact fee should be charged by the local unit of government. She emphasized that her association does not want the city at large to bear the burden of the new development, but at the same time, it does not believe it is fair for new development to be required to fund the city's general revenue fund.

Ms. Stubbs contended that new construction and new development more than pays its way in a city. She noted that in the Derby case, a study done by the City Manager showed that new residential development alone generated approximately five and one-half times more revenue to the city than the cost to provide needed services. In conclusion, she listed arguments by opponents to the bill and responded to each. She urged the Committee to pass the bill in the interest of eliminating the opportunity for local units of government to "tax without representation."

Karen France, Kansas Association of Realtors (KAR), testified in support of **SB 91**. She noted that the bill addresses accountability and rule making in the excise tax process. She stated that the 2001 KAR Legislative Policy states,"Impact and excise fees should not hamper or deter development in Kansas communities, and governments should limit use of fees to the provision of public capital improvements necessitated by new development, not to correct existing deficiencies. 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." Ms. France pointed out that both the Kansas Court of Appeals and the Kansas Supreme Court recognize that the Legislature has the ability to place limitations on home rule authority. She called attention to an article titled "Comprehensive Infrastructure Financing Strategies" which appeared in the *Kansas Government Journal* in May of 1998, noting that the authors discuss the distinctions between an impact fee and an excise tax. In conclusion, she said, "We think it is reasonable to have rules for cities and counties to play by when utilizing an excise tax." (Attachment 4)

Erik Sartorius, Kansas City Regional Association of Realtors, testified in support of **SB 91**. He maintained that current governance of excise taxes is lacking because municipalities and counties are not required to conduct the same analysis when levying an excise tax as they are when imposing an impact fee, and funds from excise taxes can be placed in the general fund of the city or county but are not spent specifically to benefit the people on whom the tax was levied. He believes that the bill 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. He reasoned, without a guarantee that a new area will receive the benefits of the excise tax levied against it, new housing will be less affordable. (Attachment 5)

Don Moler, League of Kansas Municipalities, testified in strong opposition to **SB 91** on the ground that it will adversely impact constitutional home rule. He commented that, on its face, **SB 91** appears to grant cities the ability to levy an excise tax; however, nothing could be further from the truth as it restricts the ability of cities to operate in this area. In addition, he said the bill is unnecessary because cities currently have the ability to impose an excise tax on real estate developments in Kansas. In his opinion, the underlying motive for the bill is to make it virtually impossible for cities to levy excise taxes, in the nature of impact fees, on developers in the state. (Attachment 6) With regard to the situation in Derby previously discussed, Mr. Moler pointed out that public's vote to remove the excise tax proves that the system currently in place works. In addition, he pointed out that cities which levy an excise tax use it to improve such things as arterial streets and services necessitated by the fact that many new homes are being built in the area. Mr. Moler also distributed copies of written testimony in opposition to **SB 91** submitted by Randy Allen, Kansas Association of Counties. (Attachment 7)

Bart Budetti, Assistant City Attorney for the City of Overland Park, followed with further testimony in opposition to **SB 91**. The written testimony he submitted is also signed by Jane Neff-Brain, also an Assistant City Attorney for the City of Overland Park. Mr. Budetti noted that the testimony includes comments from testimony presented last year in opposition to a similar bill and that a copy of the study by Dr. Mark Dotzour addressing the ongoing debate about the necessity of imposing impact fees in local communities was also attached to the testimony. He called attention to the conclusion section of Dr. Dotzour's study in which he admits that, in the five subdivisions studied, one did represent a net cost to the city because the city did not require the developer to pay for the costs of widening the arterial street that supports that subdivision. In this regard, Mr. Budetti explained that, in the City of Overland Park, the excise tax has been committed to the improvement of the arterial streets that service the various subdivisions. He went on to say that one of his key points of opposition to the bill is the question of home rule. He observed that there is a principal involved in terms of letting local governments deal with an issue first. He contended that, unless there is a demonstrated record of abuse or irresponsible activity by local governments, the Legislature should not exercise its power to limit home rule. (Attachment 8)

Jane Neff-Brain, Assistant City Attorney for the City of Overland Park, followed with further testimony in opposition to **SB 91**. In regard to the proponents' contention that low and moderate income individuals are forced to live on the fringe of the city because the excise tax makes it too costly to own a home in the city, she informed the Committee that in the heart of Overland Park includes lower and moderate income housing, and she believes those individuals would much prefer an excise tax, where at least part of the thoroughfares that are being constructed for new development are paid for by the new development, rather than being paid for from the city general revenues. She distributed a handout regarding the specific formula used to calculate the excise tax rate, which is based upon a cost per square foot of development. Also included in the handout was a chart regarding the cost to construct several thoroughfares in Overland Park. She noted that statistics show that the development communities pay a small percentage of the overall cost of thoroughfares in the city. Her hand out also included a comparison of several cities in Johnson County with regard to the overall and total fees that would be paid based on a $175,000 for single-family residential development. She pointed out that Leawood has an impact fee, and its overall charges are greater than Overland Park, based on an 18 cent excise tax. (Attachment 9)

David Peel, Johnson County Planning Office, testified in opposition to **SB 91.** He stated that the bill purports to be a city and county development activity excise tax act; however it reads like an impact fee act, not like an excise tax act. He said impact fees and excise taxes involve very different procedures and should not be interchanged. He explained that the purpose of an impact fee is to regulate, whereas the purpose of an excise tax is to raise revenue. He believes the bill would establish extensive and complicated requirements to adopt and administer an excise tax, and the cost, along with the fear of litigation, could cause many communities not to use excise taxes or impact fees. As a result, roads and other need infrastructure may not be built. (Attachment 10)

Mike Taylor, representing the City of Wichita, gave final testimony in opposition to **SB 91**. At the outset, he noted that Wichita does not use the development activity excise taxes addressed in the bill, but instead uses special assessment taxes to help developers make the construction of new subdivisions more affordable. He explained that his opposition is related to a concern relating to Wichita's 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. The city attorneys feel that the broad language in the bill could have an unintended consequence of effecting the water system plant equity fees; therefore, he suggested that the bill be amended. In addition, he said that he opposes the bill because it is clearly another attempt to restrict the decisions made by locally elected officials. (Attachment 11) With this, the hearing on **SB 91** was closed.

Written testimony in opposition to **SB 91** submitted by Tom Kaleko, Assistant City Administrator for the City of Lenexa, had been distributed to committee members. (Attachment 12)

SB 92–Property taxation; determination of fair market value.

In the interest of saving time, Janet Stubbs, Kansas Building Industry Association, asked that the Committee to review her written testimony in support of **SB 92**, which was requested due to a problem Saline County brought to the attention of Rep. Carol Beggs and the Association last spring. Her testimony indicates that the appraiser for Saline County was adding the debt of the special assessments on each lot to the sale price of each lot to arrive at a "fair market value" determination for purposes of taxation. Although the Board of Tax Appeals (BOTA) was not persuaded by the county's argument that the fair market value includes the special assessments, efforts to get a directive from the Property Valuation Division establishing the BOTA opinion as the correct method of appraisal of single vacant lots not used in agriculture has not been successful, and the Saline County appraiser advises he will continue to value property in the same manner until he receives a higher court's opinion to the contrary or until legislative action is taken. (Attachment 13) In further support of the bill, Ms. Stubbs distributed copies of a legal opinion by Timothy P. O'Sullivan with the firm of Husch & Epppenburger, LLC, which was prepared in connection with a similar bill, **HB 2064**. The analysis indicates the proposed amendment to the statute would clarify the statute, and it would lead to better uniformity in appraisals of real property throughout the state. (Attachment 14)

Karen France, Kansas Association of Realtors, testified in support of **SB 92** because it will protect taxpayers from having to expend time and money to take their appeals to BOTA again and again to dispute the way that a county appraiser values improved vacant lots. Further, the bill would make it clear, once and for all, that unpaid special assessments should not be included in the market value of a vacant lot. She pointed out that the bill codifies the correct methodology for valuing a particular kind of property, not a particular value arrived at by BOTA. (Attachment 15) At the conclusion of her testimony, Ms. France introduced Stan Byquist, a Salina developer, and Tim Howison, a Salina realtor, who support **SB 92**.

Mr. Howison explained that he has been a developer for approximately fourteen years and a real estate broker with RE/Max for approximately twenty-three years. His said he owns a substantial development in Salina, and the lots are currently sold in the $10,000 to $14,000 range. As special assessments continue to go up, the price for the lots are reduced just to get them marketed. For example, seven years ago, the special assessments were in the vicinity of $5,800 to $6,200 in a development in Salina. Today, the special assessment is $15,900. In his opinion, adding the value of the special assessments over and beyond the sale price of the lots constitutes double taxation, and it is crimping the real estate market substantially. He noted that the City of Salina owns the improvements, yet the developer is liable for payment. In his opinion, it is not fair to tax the developers for improvements which are not yet paid for.

Mr. Byquist said he has been in the real estate developer for approximately three years. He said the lots in his subdivision are selling in the neighborhood of $12,000 to $13,000. The total cost of the lot to the purchaser, including the specials, is approximately $24,000 to $25,000. He feels that the cost of the specials is enough of a burden on purchasers, and specials, which are considered as a debt and not a credit, should not be included in calculating the valuation for taxation purposes.

For the Committee's information, a Topeka real estate appraiser, Robert Taggert, explained the procedure used in the valuation of residential building sites in subdivisions. He said that appraisals are made in conformance to the uniform standards of professional appraisal practice and K.S.A. 79-501 and 503(a). Basically, the value of a residential site is determined by the sales comparison approach, which is the adjustment of known sales of similar sites in the subject subdivision adjusted to the subject property. In the appraiser's opinion, the market sets the site value. If a building site in a subdivision has no special assessments and sells for $35,000, and a site in a similar subdivision with special assessments sells for $25,000, those sales set a basis of valuing the sites in those subdivisions. If there are sufficient number of sites that would warrant a discounted cash flow, an appraiser would evidence that in the appraisal. The sale price of sites, plus special assessments, will generally exceed the market value of sites with all the improvements in and paid. Appraisers consider the actual sale price of the sites to be the market value.

Lonie Addis, Labette County Commissioners Association, testified in opposition to **SB 92**. He contended that, if passed, the bill would create inequities in the Computer Assisted Mass Appraisal System (CAMAS) and would curtail a county appraiser's performance in creating fair market values for Kansas property. Commissioner Addis contended that special assessments have value and must be construed as an improvement in determining value. He believes that legislating the removal of special assessments would place restrictions on appraisers which will hinder them from accomplishing the measure of fairness expected. He urged the Committee not to remove a tool appraisers use to make values equal. (Attachment 16)

Rod Broberg, Kansas Association of Counties, was scheduled to testify in opposition to **SB 92.** When he was called upon, he declined, stating that he preferred to testify at a later date when the Committee has more time to discuss the bill with him. Senator Corbin agreed to reschedule his testimony.

Don Moler, League of Kansas Municipalities, testified in opposition to **SB 92**. He believes that the bill could have a very large and unintended impact on property taxes. He said passage of the bill would result in a shift of property tax load from new homes in new subdivisions, which are subject to special assessments for a period of years, onto older properties on which there are no existing special assessments. In his opinion, the bill involves an inherent fairness issue which cannot be ignored. (Attachment 17)

With this, the hearing on **SB 92** was continued to February 19, 2001, and the meeting was adjourned at 12:05 p.m.

The next meeting is scheduled for February 8, 2001.

SENATE ASSESSMENT AND TAXATION COMMITTEE
GUEST LIST

DATE: February 7, 2001

NAME	REPRESENTING
CARL G. SLUME	COUNTY APPRAISER SN
Joleen Rankin	Dickinson Co Appraiser
Rick Stuart	Jefferson County Appraiser
GEORGE PETERSEN	Ks TAXPAYERS NETWORK
Rod Broberg	KCAA & KAC
Don Moler	LKM
Mike Taylor	City of Wichita
Natalie Bud[illegible]	WIBA / KOPE
[illegible] Johnson	KDOR-PVD
Byrd Burke	Issues Mgmt. Group
[illegible]	KDOR
Nini Kaup	City of Garden City
Christy Caldwell	Topeka Chamber of Commerce
[illegible] Smith	KMHA
Ed O'Malley	O.P. Chamber of Commerce
Marlee Carpenter	KCCI
Kathy Olsen	KS Bankers Assn.
Stan Parsons	KC HBA
Lonie R. ADDIS	Ks County Commissioners Assn.

SENATE ASSESSMENT AND TAXATION COMMITTEE
GUEST LIST

DATE: February 7, 2001

NAME	REPRESENTING
Tom Bruno	CPAK
Diane Hatthorn	WR
Stacy Kramer	WR
Chris Wilson	KS Building Industry Assn
Janet Stubbs	KS Building Industry Assn
Bob Taggart	
David Peel	Johnson County
Stan Byquist	Real Estate - Salina
Tim Howison	" " Development - " & Brokerage
Erik Sartorius	K.C. Regional Assoc. of Realtors
Karen France	KS Assn of Realtors
Bill Yanek	"
Bart Budeau	City of Overland Park
Jane Neff-Bacon	City of Overland Park
Kelly Kultala	City of Overland Park
Richard Cram	KDOR

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

SENATE ASSESSMENT & TAXATION COMMITTEE
February 6, 2001
SB 91

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 SB 91.

SB 91 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%.

SB 91 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.

SB 91 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.)

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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.

SB 91 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 may 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—overtime.)

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..

L s PATTERSON
REPRESENTATIVE, 28TH DISTRICT
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STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMEN.
MEMBER: BUSINESS, COMMERCE & LABOR
HEALTH & HUMAN SERVICES
JUDICIARY

TESTIMONY IN SUPPORT OF SB 91
2/7/01

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.

SB 91 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.

SB 91 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).

SB 91 does this.

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1-800-432-3924

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

SB 91 does this.

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

SB 91 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.

SB 91 does this.

SB 91 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

HOME BUILDERS ASSOCIATION
OF GREATER KANSAS CITY

Affiliated NAHB

600 EAST 103RD STREET • KANSAS CITY, MISSOURI 64131-4300 • (816) 942-8800 • FAX (816) 942-8367 • www.kchba.org

Senate Assessment and Taxation Committee
February 7, 2001
Testimony in Support of SB 91

Mr. Chair and members of the Committee:

On behalf of the Home Builders Association of Greater Kansas City, I encourage your support for SB 91. Current guidelines for the use of the excise tax for infrastructure needs (major thoroughfare construction) is bad public policy in many respects. Local governmental entities have numerous alternatives available for financing this type of infrastructure, however several cities have turned to the excise tax because they can establish the tax without regulation or responsibility to use the tax for infrastructure. In most cases, the tax money collected is placed in the general fund.

We understand the seductive lure of using the excise tax which include:

- No need to demonstrate actual need
- No tie to actual costs
- No requirement to spend the money in areas where it is collected
- No requirement to tie it to different types of development
- No requirement to even spend it on infrastructure

The use of excise taxes is unfair as they are presently implemented in our area. Our residential developers pay the same amount per square foot as multi-family, commercial, and retail development. The tax per square foot has escalated almost 100% in some instances in just a few years. As an industry, we have stated that we believe we should pay our fair share for this infrastructure, but under the current system of excise taxes we believe we are paying more than our fair share for residential development. Using a typical development of three dwelling units to an acre, we are being charged over $2500 per house in most cases. Also, the tax is paid at the time a plat is filed which is months, if not longer, away from any impact actually occurring.

SB 91 provides guidelines for the use of an excise tax providing accountability for collection and expending these funds. These requirements, which provide protection to those ultimately paying the fee, new homebuyers, are:

- The fee must be used to provide infrastructure in the general area it is collected in
- The fee must be based on the impact that a particular type of development causes
- The fee must be used to pay for added cost that development causes and not for deficiencies that already exist
- The fee must be spent in a reasonable amount of time after collected

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Our members, developers and builders, understand the importance of adequate infrastructure for new development and are willing to pay their fair share. However, when increases in the excise tax bear no nexus to additional infrastructure needs or increased costs, the tax appears jeopardizes their ability to provide affordable housing to the potential residents of these cities.

Thank you for consideration of my comments. I hope you will give strong support to this bill.

Sincerely,

Tim Underwood
Executive Vice-President

Kansas Association of REALTORS®

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TO: SENATE ASSESSMENT AND TAXATION COMMITTEE

FROM: KAREN FRANCE, Director of Governmental Relations

DATE: FEBRUARY 7, 2001

SUBJECT: SB 91, CITY AND COUNTY EXCISE TAX

Thank you for the opportunity to present written testimony regarding SB 91. 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 statutory 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:

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"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.

Comprehensive Infrastructure Financing Strategies

by Neil R. Shortlidge and Stephen P. Chinn

Local government fiscal obligations have become increasingly difficult to manage. In many communities, this is largely attributable to the financial burden of providing for the maintenance and upkeep of existing public facilities and services, while also keeping pace with the demand for construction of public facilities to serve new development. Keys to successful management of these obligations are capital facility planning and development of comprehensive, innovative financing strategies.

Before a public entity begins capital improvements, it generally engages in a capital planning process, but rarely does it take the process to the next level of developing a comprehensive financing strategy. If undertaken conscientiously, such a strategy will greatly assist in management of fiscal obligations, both over the short and the long term.

As part of the development of a comprehensive strategy, all available financing options should be analyzed to determine those that are viable, given all the relevant circumstances. It is from these options that the component parts of the strategy should be selected.

Many local governments are searching for financing mechanisms that allow revenue collected from new development to be spent on capital projects that traverse significant portions of the community without requiring earmarking of funds for improvements in a particular geographic area.

This article proposes a process for developing a comprehensive financing strategy, and highlights use of an excise tax as an alternative to regulatory fees as a funding vehicle for improvements to serve new development.

Definition of Capital Facility Financing and Financing Alternatives

Capital facilities financing involves payment of costs for facilities and services that have a useful life of five years or more, and often encompasses comprehensive planning, land acquisition, site preparation, engineering, and construction.

Capital facilities include:

- streets and bridges;
- water systems;
- storm and wastewater facilities;
- fire and police protection and stations;
- landfills;
- solid waste treatment facilities;
- schools;
- parks;
- libraries;
- and other public buildings.

The construction and upkeep of these facilities, as well as the correction of existing deficiencies, must be factored into annual budgets, and also must be scheduled as elements of the capital improvements program.

Infrastructure financing alternatives generally can be divided into two categories:

(1) funding mechanisms to finance public facilities throughout a municipality; and

(2) mechanisms that can be used only to finance facilities that are necessary to support new development.

Financing alternatives that may be used in Kansas to fund facilities throughout a municipality include:

- property taxes;
- sales taxes;
- debt obligations, including general obligation and revenue bonds;
- improvement districts (including "12-6a" benefit districts, business improvement districts, self-supported municipal improvement districts and neighborhood revitalization areas);
- federal and state government programs;
- tax increment financing; and
- excise taxes.

Some of these alternatives require the formation of districts or service areas limiting the geographic area within which facilities can be constructed.

Financing alternatives used in Kansas to finance facilities built to serve new development include:

- subdivision exactions, including dedications of land and fees-in-lieu;
- developer construction and reimbursement programs;
- benefit districts;
- impact fees; and
- excise taxes.

The Importance of a Comprehensive Infrastructure Financing Strategy

A comprehensive strategy ensures that costs for each type of facility financed and all related costs, including new construction, correction of existing deficiencies, and major maintenance, are appropriately budgeted, and allows for timely capital improvements plan implementation.

A comprehensive approach not only allows new development to occur at

manageable rates while ensuring that adequate facilities are available to serve that development, but also enables operational and physical deficiencies of existing facilities to be corrected to provide current facility users with adequate levels of services as well as the maintenance of those facilities.

Such an approach also provides a legal foundation for the strategy. The analysis that occurs by following the financing process described below serves as the basis for the necessary written documentation of the public entity's rationale and methodology for each individual component of the overall strategy.

This process also requires public entities to carefully balance the political implications of providing, or failing to provide, new and upgraded facilities at appropriate levels of service for its existing and future citizens, businesses, and visitors against the possible need to raise fees and taxes to achieve this goal.

Preparing a Comprehensive Strategy

Development of a strategy should include several steps. The following is an outline of an approach that enables local governments to address the variety of issues that may be encountered along the way.

1. ***Organizational effort***. Local government staff and any consultants involved should review all relevant data relating to the type of infrastructure for which a strategy is being developed, including relevant existing codes, comprehensive plans, and facility master plans.

The comprehensive plan should be reviewed to evaluate growth projections and determine resultant facility demand and whether the planned public infrastructure will serve demand at the appropriate level of service.

It is also advisable to establish a citizen advisory committee and conduct issue forums to fully inform the public and the development community regarding the concerns that give rise to the need to develop the strategy and to obtain their input and eventual concurrence in the selected strategy.

2. ***Issue and cost evaluation***. Total project costs through "full build-out" of the community or through a horizon year should be identified to establish necessary revenue goals. This analysis requires a determination of the different elements for each facility being planned (e.g., do streets include bike paths), as well as factors that should be included in total infrastructure costs, such as level of projected inflation and contingencies, appropriate level of service, and funding levels available from existing sources.

3. ***Assumptions, goals and policies***. The establishment of assumptions, goals and policies is a critical step in strategy development. Consensus should be reached among the entity's elected and appointed officials, consultants, and the advisory committee on each assumption, goal, and policy. These decisions guide selection of the strategy's component mechanisms, as well as its implementation.

4. ***Identification of financing options***. This task involves identification of all legally available financing options. A comprehensive evaluation of options should include identification of mechanisms authorized by state statutes or through exercise of home rule powers. It should include identification of options that may not be widely used in Kansas, but which may be determined to be available through creative and thorough constitutional and statutory analysis, utilizing home rule, police powers, or other express or implied powers.

5. ***Options evaluation***. Options determined to be legally available should be evaluated in relation to designated criteria, such as whether it generates sufficient revenues, timing of collection of revenues, ease of implementation and administration, predictability of cost to payers, restrictions on use of revenues, the need for voter approval, legal defensibility, appropriateness for different type development.

The criteria should be develope effectuate the previously establi assumptions, goals and policies. A stage, a rough determination respectin percentage share of facility costs to be by new development and to be paid b city-at-large should be made.

6. ***Develop comprehensive strategy***. financing strategy should be comprehe in the sense that it recognizes responsibility of both the city-at-larg the development community to partic in infrastructure improvements.

A recommendation should be made b staff and/or advisory committee a consultants regarding the financing op that best achieve the strategy's objec Some options may also require approval. Local staff or consultants sl provide all necessary information t governing body to allow a fully info decision. After thorough considerati any recommendations, the governing should approve a financing strategy.

7. ***Creation of the financing implement plan***. The implementation strategy sl address the overall impact of component mechanism on all aff parties. Concerns related to implement may include: relationships between use and funded infrastructure, incl land development patterns and effec zoning decisions; coordination amon strategy's component mechanisms so work in concert with one an methodology for integrating the str with other financing systems; appro exemptions; credits for infrastructure contributions; phasing of new fu measures, as appropriate, to allow development community to adjust t development costs; determinatio revisions to the existing code and provi required to implement the str methodology for calculating the appro proportionate share of contributions

all parties; impact of the new strategy on commercial, industrial, and residential development; and appeals and monitoring procedures.

8. ***Draft required ordinances***. This task involves drafting any required new ordinances and revisions to existing codes to implement each component of the strategy. Administrative policies to ensure efficient administration and community understanding of the strategy should also be prepared.

9. ***Adopt strategy***.The final step is the adoption of appropriate ordinances to effectuate the strategy. Adoption should carefully follow appropriate state notice, hearing and vote requirements, as well as any adoption requirements imposed by local ordinance.

The Excise Tax Alternative to Regulatory Exactions

Although there are many possible options to finance infrastructure improvements, one of the most underutilized is the excise tax. The remainder of this article discusses the excise tax as one vehicle to secure development community participation in a comprehensive strategy to fund infrastructure.

For many years, cities in Kansas relied almost exclusively on regulatory exactions as a means to obtain developer participation in the construction of infrastructure improvements needed to serve new development.

Regulatory exactions are predicated upon the exercise of the government's police powers and may be defined as any requirement to construct a public improvement, dedicate land for a public improvement or make a monetary contribution for a public improvement imposed as a condition of development approval.

Common examples would be the requirement to construct and dedicate to the public all streets, sewers, water lines, etc. within a subdivision; requirements to dedicate right-of-way for streets abutting, but not within the subdivision; requirements to construct off-site improvements, e.g., a traffic signal; and requirements to make a monetary contribution to pay a portion of the cost of some public improvement, e.g., fees for park and recreation facilities. In some instances, these regulatory exactions were implemented by or coordinated with the creation of benefit districts as a means of financing the improvements.

Due in large part to increasing judicial scrutiny of typical regulatory exactions, impact fees have emerged over the past 20 years as a more sophisticated method of assuring that a new development's financial participation in the cost of public improvements will be proportionate to the demand for such improvements created by the development.

This proportionality requirement, however, results in some inherent restrictions on the use of impact fees. An impact fee system requires earmarking of funds for the benefit of the properties charged, establishment of a precise impact fee formula to ensure a nexus between the fee charged and the infrastructure demand created by the development, and may require identification of service areas in which the fees can be spent. Further, impact fees must be spent within specified time limits, and a system of credits for payments for or contributions toward infrastructure improvements may be required. The impact fee is also closely tied to the regulatory process, and is characterized by the courts as a regulatory mechanism with fiscal benefits. In 1995, the Kansas Supreme Court upheld an impact fee for street improvements as a valid exercise of home rule authority.

In contrast to impact fees which, as mentioned previously, represent an exercise of police powers, excise taxes are adopted pursuant to a city's taxing powers. The Kansas Supreme Court has expressed the distinction between a tax and a regulatory fee as follows:

> Thus, a tax is a forced contribution to raise revenue for the maintenance of governmental services offered to the general public. In contrast, a fee is paid in exchange for a special service, benefit, or privilege not automatically conferred upon the general public.
>
> A fee is not a revenue measure, but a means of compensating the government for the cost of offering and regulating the special service, benefit, or privilege. Payment of a fee is voluntary—an individual can avoid the charge by choosing not to take advantage of the service, benefit, or privilege offered.

An excise tax is a method of raising revenue by levying a tax on a particular activity. An excise tax can be defined as a tax that is measured by the amount of business done, income received, or by the extent to which a privilege may have been enjoyed or exercised by the taxpayer, irrespective of the nature or value of the taxpayer's assets or investments in business. It is different than a property tax, which is a tax on the assessed value of property.

An excise tax is not subject to the proportionality requirement of a fee imposed pursuant to the police power. Thus, excise taxes do not require earmarking of funds or the creation of a detailed formula to ensure the existence of a nexus between the taxes charged and the impact caused by new development. Geographic service areas for collection or expenditure of excise taxes are unnecessary. Instead, revenues may be spent throughout the city for infrastructure improvements. The city may adjust the tax rates among distinct subclasses of taxpayers, so long as the bases for the subclasses are rational, to equalize the overall tax burden charged each type of property (residential, commercial and industrial). The courts generally will not subject tax ordinances to the same level of scrutiny as regulatory fees or exactions.

In a paper presented to the City Attorneys Association of Kansas in 1984, one of the authors of this article suggested that development excise taxes were a viable alternative to regulatory exactions for financing public facilities in Kansas.

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However, the first development excise tax was not adopted until 10 years later. In 1994, the City of Overland Park was faced with several lawsuits challenging its practices for financing major thoroughfare improvements, which involved a combination of city-at-large funding, subdivision exactions in the form of escrow payments, and benefit districts. After studying several alternatives, including impact fees, Overland Park enacted a development excise tax as a means of securing financial participation from developers toward the cost of thoroughfare improvements. The tax was enacted pursuant to K.S.A. 12-137, which specifies the procedures to be used in enacting home rule taxation ordinances. The excise tax rate was initially structured so as to raise an equivalent amount of money as would previously have been raised through the subdivision exaction process. The tax to be paid was based upon the total amount of square footage within a subdivision plat and was to be paid prior to recordation of the plat. The pending lawsuit which had been filed by the Home Builders Association of Greater Kansas City (HBA) was amended to include a challenge to the excise tax. Ultimately, the Kansas Court of Appeals upheld Overland Park's excise tax against a variety of legal and constitutional challenges. The Kansas Supreme Court denied the HBA's request to review the Court of Appeals' decision.

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 wish 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. Some of our client cities perceive the most beneficial attribute of excise taxes to be the freedom to utilize the revenues to pay for facilities in accordance with the city's capital improvements program, without the geographic and temporal limitations inherent to an impact fee system.

Conclusion

A comprehensive financing strategy, if properly enacted and implemented, can ensure that a local government will be able to collect sufficient revenue to pay for the full cost of new infrastructure, as well as provide for correction of existing facility deficiencies and ongoing maintenance. The process of creating such a strategy involves minimal time and cost, in comparison to the long-term revenues that may be generated by the strategy. It also adds a critical element by providing certainty respecting the cost of development for the development community. As an important component of that strategy, municipalities should consider the excise tax option as an alternative to regulatory exactions. The excise tax provides general revenues, and is not subject to the same legal constraints as regulatory financing measures.

Neil Shortlidge is City Attorney for the City of Roeland Park. Stephen Chinn is former Assistant City Attorney for the City of Kansas City. Shortlidge and Chinn serve as Co-Chairs for the Public Law Practice Group at Stinson, Mag, and Fizzell, P.C.

City Clerk of the Year: Mary Reed

The City Clerks and Municipal Finance Officers Association (CCMFOA) selected Mary Reed, City Clerk for the City of Parsons since 1987, as the recipient of the 1998 Mildred Vance City Clerk and Finance Officer of the Year award for the State of Kansas. The award was announced at the 47th annual CCMFOA conference held on March 12, 1998, in Wichita.

The Mildred Vance award is presented each year to a city clerk or finance officer in Kansas who has made significant contributions to the state association, the profession, and their city. To be eligible for the award, nominees must: 1) be a current city clerk or finance officer in Kansas who has held the position for at least three years; 2) be a member of CCMFOA for at least three years; and, 3) have attained the status of Certified Municipal Clerk (CMC) or have received the GFOA Certificate of Achievement in Financial Reporting. Nominations may be submitted by fellow city clerks, mayors, councilmembers, city managers/administrators, or fellow employees.

Reed will be presented a plaque in recognition of her accomplishments at the League of Kansas Municipalities Annual Conference, October 3-6, 1998, in Wichita.

Kansas City Regional Association of REALTORS®

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Testimony of Erik Sartorius
Governmental Affairs Director
Before the
Senate Assessment & Taxation Committee
Regarding
Senate Bill 91 Excise Tax Act

February 6, 2001

The Kansas City Regional Association of REALTORS® encourages passage of Senate Bill 91. 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 Senate Bill 91 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.

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LKM
League of Kansas Municipalities

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

To: Senate Assessment and Taxation Committee

From: Don Moler, Executive Director

Date: February 7, 2001

Re: Opposition to SB 91

First I would like to thank the Committee for allowing the League to appear today in opposition to SB 91. 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 SB 91, a bill which clearly undermines local control and Constitutional Home Rule. On its face, SB 91 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 SB 91 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 SB 91. We urge the Committee to reject SB 91 as unnecessary and an assault on the Constitutional Home Rule authority of cities in Kansas.

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KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY
concerning SB 91
City and County Development Activity Excise Tax
Randy Allen, Executive Director, Kansas Association of Counties
Senate Assessment and Taxation Committee
Wednesday, February 7,2001

Mr. Chairman and members of the Committee,

Thank you for the opportunity to submit testimony concerning SB 91, concerning city and county development activity excise taxes.

The Kansas Association of Counties **opposes** SB 91 for two reasons – one a substantive reason and another based upon a process consideration.

The ostensible purpose of SB 91 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 SB 91 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, SB 91 is an unnecessary invasion into local control.

Equally objectionable to the substantive arguments concerning us about SB 91 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 SB 91 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 SB 91.

For these reasons, we urge the committee to reject SB 91.

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The City of Overland Park KANSAS

Law Department

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TESTIMONY IN OPPOSITION TO SENATE BILL NO. 91

TO: The Honorable David R. Corbin, Chair and
Members of the Senate Committee on Assessment and Taxation

DATE: February 7, 2001

RE: Senate Bill No. 91 – 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 partially funds with excise tax money. With respect to the facts and circumstances that

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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 SB 91, 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 SB 91 be defeated.

The City of Overland Park

Jane Neff-Brain

Jane Neff-Brain
Senior Assistant City Attorney

J. Bart Budetti
Senior Assistant City Attorney

Attachments

cc. Governing Body

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Law Department
Robert J. Watson, City Attorney

TESTIMONY IN OPPOSITION TO SENATE BILL NOS. 474 and 477

TO: The Honorable Audry Langworthy, Chair, and
Members of the Senate Committee on Assessment and Taxation
Room 519-S

DATE: February 2, 2000

RE: Senate Bill Nos. 474 and 477 -- Pertaining to a city and county development activity excise tax.

Ladies and Gentlemen:

The City of Overland Park opposes enactment of Senate Bill Nos. 474 and 477 for the following reasons:

1. Senate Bill Nos. 474 and 477 appear to be a blatant attempt to limit the home rule power of cities to enact excise taxes that was upheld in *HBA v. City of Overland Park*, 22 Kan. App. 2d. 649, 921 P. 2d 234 (1996).

2. They confuse 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. They are virtual verbatim versions of Utah's "Impact Fees Act," (See Section 11-36-102 *et seq.* of the Utah statutes); but instead of calling themselves impact fees acts they graft an impact fee methodology onto what is called an excise tax. Further, they graft 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. They 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. They are full of imprecise terms that are open to wide interpretation.

7. They are full of ambiguities as to how they apply to existing excise taxes in Johnson County cities.

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, these bills would not be effective to prevent cities from enacting excise taxes under their home rule powers because under established case law these bills 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.

10. Cities are being asked to respond to the bills on a moment's notice. The bills appeared out of nowhere, with no advance warning to the affected cities.

Therefore, we respectfully ask you to reject Senate Bill Nos. 474 and 477.

The City of Overland Park

Robert J. Watson

Robert J. Watson
City Attorney

cc: Governing Body

[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.

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

The excise tax rate is based upon a cost per square foot of development.

Less the 60ft of RW, a square mile will have 5160 x 5160 square feet = 26,625,600 square feet. The length of the thoroughfare abutting the square mile (less one 60 ft length at each corner is (5280 - 60) x 4 = 20,880 feet.

We can therefore say that each square foot of development must pay for some fractional part of each abutting foot of thoroughfare:

20,880/26625,600 = 0.0007842077/ft

Assuming that a collector is 1/2 the cost of a thoroughfare (a well documented assumption) you would divide whatever thoroughfare costs determined by two.

The current excise tax rate can be expressed as:

(Current thoroughfare project cost/2) * 0.0007842077 * developer percentage

The new percentage was 43%

If you use the thoroughfare cost in the attached table of $1,118, the excise tax rate when the 43% becomes effective would be:

$1,118/2 * 0.0007842077 * 43% = $0.1885/square foot

Tax rate calcs May 2000.xls

Senate Assessment & Taxation
2-7-01
Attachment 9

January 3, 2001

	Year Bid	Engineering and Construction Costs	Right-of-way Acquisition Costs	Utility Relocation Costs	Street Lighting Installation Costs	Traffic Signal Installation Costs	Bridge Construction Costs	Total	Length of Project Centerline Foot	Cost Per Lineal Centerline Foot
151st Street: Antioch Road to Metcalf Avenue	1996	$ 6,945,306	$ 2,124,246	$ 237,010	$ 269,951	$ 486,717	$ -	$ 10,063,230	7,529	$ 1,337
Antioch Road: 135th Street to 143rd Street	1996	$ 4,398,641	$ 631,115	$ 301,738	$ 149,915	$ 187,985	$ 648,441	$ 6,317,835	6,374	$ 991
Antioch Road: 143rd Street to 151st Street	1997	$ 2,357,998	$ 136,744	$ 86,982	$ 100,856	$ 64,482	$ -	$ 2,747,062	4,325	$ 635
Metcalf Avenue: 151st Street to 159th Street	1998	$ 5,608,351	$ 1,178,774	$ 768,875	$ 108,805	$ 207,851	$ -	$ 7,872,656	5,913	$ 1,331
Pflumm Road: 127th Street to 135th Street	1998	$ 5,925,582	$ 23,785	$ 116,913	$ 157,600	$ 160,863	$ -	$ 6,384,743	5,768	$ 1,107
151st Street: Metcalf Avenue to Nall Avenue	2000	$ 6,577,969	$ 1,045,560	$ 310,410	$ 188,400	$ 166,875	$ -	$ 8,289,214	6,683	$ 1,240
127th Street: Quivira Road to Switzer Road	2000	$ 3,613,118	$ 66,843	$ 57,237	$ 110,150	$ 28,246	$ -	$ 3,875,593	4,565	$ 849
Quivira Road: 135th Street to 143rd Street	1999	$ 4,584,091	$ 774,790	$ 592,371	$ 161,200	$ 159,248	$ 744,348	$ 7,016,047	5696.00	$ 1,232
Pflumm Road: 119th Street to Indian Creek	2000	$ 4,356,244	$ 88,955	$ 506,772	$ 122,525	$ 9,483	$ -	$ 5,083,978	4,062	$ 1,252
Lowell Avenue: 119th Street to 123rd Street	1999	$ 986,215	$ -	$ -	$ 37,620	$ -	$ -	$ 1,023,835	1,980	$ 1,034
Costs adjusted for inflation (3%/year)										
151st Street: Antioch Road to Metcalf Avenue	1996	$ 7,778,743	$ 2,379,156	$ 265,451	$ 302,345	$ 545,123	$ -	$ 11,270,818	7,529	$ 1,497
Antioch Road: 135th Street to 143rd Street	1996	$ 4,926,478	$ 706,849	$ 337,947	$ 167,905	$ 210,543	$ 726,254	$ 7,075,975	6,374	$ 1,110
Antioch Road: 143rd Street to 151st Street	1997	$ 2,570,218	$ 149,051	$ 94,810	$ 109,933	$ 70,286	$ -	$ 2,994,298	4,325	$ 692
Metcalf Avenue: 151st Street to 159th Street	1998	$ 5,944,852	$ 1,249,500	$ 815,008	$ 115,333	$ 220,322	$ -	$ 8,345,015	5,913	$ 1,411
Pflumm Road: 127th Street to 135th Street	1998	$ 6,281,117	$ 25,212	$ 123,928	$ 167,056	$ 170,515	$ -	$ 6,767,828	5,768	$ 1,173
151st Street: Metcalf Avenue to Nall Avenue	2000	$ 6,577,969	$ 1,045,560	$ 310,410	$ 188,400	$ 166,875	$ -	$ 8,289,214	6,683	$ 1,240
127th Street: Quivira Road to Switzer Road	2000	$ 3,613,118	$ 66,843	$ 57,237	$ 110,150	$ 28,246	$ -	$ 3,875,593	4,565	$ 849
Quivira Road: 135th Street to 143rd Street	1999	$ 4,721,613	$ 798,034	$ 610,142	$ 166,036	$ 164,025	$ 766,678	$ 7,226,528	5696.00	$ 1,269
Pflumm Road: 119th Street to Indian Creek	2000	$ 4,356,244	$ 88,955	$ 506,772	$ 122,525	$ 9,483	$ -	$ 5,083,978	4,062	$ 1,252
Lowell Avenue: 119th Street to 123rd Street	1999	$ 1,015,801	$ -	$ -	$ 38,749	$ -	$ -	$ 1,054,550	1,980	$ 1,065
2000 adjusted costs per lineal foot										
151st Street: Antioch Road to Metcalf Avenue	1996	$ 1,033	$ 316	$ 35	$ 40	$ 72	$ -			$ 1,497
Antioch Road: 135th Street to 143rd Street	1996	$ 773	$ 111	$ 53	$ 26	$ 33	$ 114			$ 1,110
Antioch Road: 143rd Street to 151st Street	1997	$ 594	$ 34	$ 22	$ 25	$ 16	$ -			$ 692
Metcalf Avenue: 151st Street to 159th Street	1998	$ 1,005	$ 211	$ 138	$ 20	$ 37	$ -			$ 1,411
Pflumm Road: 127th Street to 135th Street	1998	$ 1,089	$ 4	$ 21	$ 29	$ 30	$ -			$ 1,173
151st Street: Metcalf Avenue to Nall Avenue	2000	$ 984	$ 156	$ 46	$ 28	$ 25	$ -			$ 1,240
127th Street: Quivira Road to Switzer Road	2000	$ 791	$ 15	$ 13	$ 24	$ 6	$ -			$ 849
Quivira Road: 135th Street to 143rd Street	1999	$ 829	$ 140	$ 107	$ 29	$ 29	$ 135			$ 1,269
Pflumm Road: 119th Street to Indian Creek	2000	$ 1,072	$ 22	$ 125	$ 30	$ 2	$ -			$ 1,252
Lowell Avenue: 119th Street to 123rd Street	1999	$ 1,026	$ -	$ -	$ 39	$ -	$ -			$ 1,065
Average 2000 adjusted cost/lf	2000	$ 907	$ 77	$ 58	$ 28	$ 20	$ 28			$ 1,118

The average adjusted cost excluded the 151st Street project. This project was atypical. It included modifications to an interchange, numerous side street relocations, and many existing driveway adjustments. It is shown for purposes of comparison only.
Costs/foot for Lowell were doubled since Lowell is a two-lane collector street.

		Engineering and Construction Costs	Right-of-way Acquisition Costs	Utility Relocation Costs	Street Lighting Installation Costs	Traffic Signal Installation Costs	Bridge Construction Costs	Total
Funding level:	50%	$ 0.178	$ 0.015	$ 0.011	$ 0.005	$ 0.004	$ 0.005	$ 0.219
	48%	$ 0.171	$ 0.015	$ 0.011	$ 0.005	$ 0.004	$ 0.005	$ 0.210
	46%	$ 0.164	$ 0.014	$ 0.011	$ 0.005	$ 0.004	$ 0.005	$ 0.202
	44%	$ 0.157	$ 0.013	$ 0.010	$ 0.005	$ 0.003	$ 0.005	$ 0.193
	42%	$ 0.149	$ 0.013	$ 0.010	$ 0.005	$ 0.003	$ 0.005	$ 0.184
	40%	$ 0.142	$ 0.012	$ 0.009	$ 0.004	$ 0.003	$ 0.004	$ 0.175
	38%	$ 0.135	$ 0.011	$ 0.009	$ 0.004	$ 0.003	$ 0.004	$ 0.167
	36%	$ 0.128	$ 0.011	$ 0.008	$ 0.004	$ 0.003	$ 0.004	$ 0.158
	34%	$ 0.121	$ 0.010	$ 0.008	$ 0.004	$ 0.003	$ 0.004	$ 0.149
	32%	$ 0.114	$ 0.010	$ 0.007	$ 0.003	$ 0.002	$ 0.003	$ 0.140
	30%	$ 0.107	$ 0.009	$ 0.007	$ 0.003	$ 0.002	$ 0.003	$ 0.132
	28%	$ 0.100	$ 0.008	$ 0.006	$ 0.003	$ 0.002	$ 0.003	$ 0.123

Ordinance EX-2016 was passed May 12th, 1997. At that time, the cost to construct one lane of a thoroughfare was determined to be $0.18/sq ft. The governing body set an excise tax rate of $0.130/sq ft for one year followed by $0.145/sq ft for one year. Those tax rates corresponded to funding levels of 40.2% and 43.3% at the time of passage of the ordinance.

COMPARISON OF TAXES AND FEES
SINGLE-FAMILY RESIDENTIAL DEVELOPMENT
BASED ON A $175,000 HOME
18,000 SQUARE FOOT LOT

CITY	EXCISE TAX	LINEAR FRONTAGE	IMPACT FEE PARKLAND	IMPACT FEE DETENTION	IMPACT FEE TRANSPORTATION	ENGINEERING SERVICES INSPECTION FEE	PROPERTY TAX MILL LEVY	TOTAL FEES
OVERLAND PARK	**14.5 cents/SF** ($2,610)	-0- ($0)	-0- ($0)	-0- ($0)	-0- ($0)	3% ($350)	8.033 ($162)	**$3,122**
GARDNER	13.6 cents/SF ($2,488)	-0- ($0)	$200/unit ($200)	-0- ($0)	-0- ($0)	-0- ($0)	23.824 ($479)	**$3,167**
OLATHE	13.6 cents/SF ($2,448)	-0- ($0)	$240/unit ($240)	-0- ($0)	-0- ($0)	2% ($233)	25.134 ($506)	**$3,427**
SHAWNEE	13 cents/SF (15 cents on 7/1) ($2,340)	-0- ($0)	$200/unit or dedication ($200)	$250/unit ($250)	-0- ($0)	2% ($233)	22.092 ($445)	**$3,468**
OVERLAND PARK	**18 cents/SF** ($3,240)	-0- ($0)	-0- ($0)	-0- ($0)	-0- ($0)	3% ($350)	8.033 ($162)	**$3,752**
LENEXA	15 cents/SF ($2,700)	-0- ($0)	$200/unit or dedication ($200)	-0- ($0)	$250/unit ($260 on 5/1) ($250)	2% ($233)	23.152 ($466)	**$3,849**
LEAWOOD	-0- ($0)	# of feet along unimproved roadway x $130 ($1,770)	$300/unit ($300)	-0- ($0)	# of miles from an improved arterial x $625 ($625)	7% ($817)	23.396 ($471)	**$3,983**

FIVE-YEAR CUMULATIVE FEE TOTAL

CITY	5 YEAR FEE TOTAL[1]
OVERLAND PARK	$4,400[2]
GARDNER	$5,083
OLATHE	$5,451
SHAWNEE	$5,608[3]
LENEXA	$5,723[4]
LEAWOOD	$5,867

1. Assumes property tax mill levy roll back to offset increases in assessed valuation in each city
2. Assumes 18 cents/SF Overland Park excise tax
3. Assumes 15 cents/SF Shawnee excise tax
4. Assumes Lenexa transportation impact fee of $260

Senate Assessment and Taxation Committee
Testimony regarding SB 91
February 7, 2001

Submitted by
David Peel, Principal Planner
for Johnson County Government

Mr. Chairman and members of the committee, my name is David Peel. I am a Principal Planner with the Johnson County Planning Office. I am representing Johnson County today to speak in opposition to Senate Bill 91 and to ask that you not support the legislation proposed in Senate Bill 91.

This legislation purports to be a "city and county development activity excise tax act." Yet, it reads like an impact fee act, not like an excise tax act. In fact, the text is very similar to impact fee legislation in the State of Utah.

Impact fees and excise taxes involve very different procedures. They serve different purposes, and the provisions for them should not be interchanged. The purpose of an impact fee is to regulate, while the purpose of an excise tax is to raise revenue.

Impact fees are required to be proportional to the impact of the development and the fees collected are to be expended within a reasonable period on the improvements that benefit the development that paid the fee.

Excise taxes are special taxes levied on specific items or actions such as the business of land development. The excise tax is to reflect the general costs imposed by development activities and not the actual costs that could be attributed to an individual development project at a specific location. Excise taxes like sales or property taxes can be used for general revenue raising purposes when there is some connection between the activity being taxed and the purpose for which the money is being spent. An excise tax does not have to be proportionate.

That said, let me briefly turn to some specific issues with Senate Bill 91. The bill purports to authorize excise taxes, but it would impose such extensive and complicated requirements to implement and administer an excise tax that only the most sophisticated local governments could do so. For example, the bill would require a Capital Facilities Plan that "…shall identify demands placed upon existing public facilities by new development activity, and the proposed means by which the local political subdivision will meet those demands." The Capital Facilities Plan also, "…shall generally consider all standard revenue sources to finance the system improvements." It mentions, but does not define, a "plan for financing system improvements" as a requirement. It would require a written analysis addressing eleven (11) detailed topics for each excise tax. These requirements are aspects of impact fee criteria that are aimed at assuring that new developments pay just their *pro-rata* share for needed capital improvements. Senate Bill 91 would establish such criteria for excise taxes even though excise taxes usually do not raise enough revenue to cover the *pro-rata* share of new developments.

In summary, Senate Bill 91 would establish an incredible amount of factors to be accomplished to adopt and administer an excise tax. The costs involved and fear of litigation could cause many communities to not use excise taxes or impact fees. Thus, roads and other needed infrastructure may not be built. The choice then may be to deny the developments unless the needed infrastructure can be built with general tax revenues instead.

Thank you for allowing us to share this testimony. On behalf of Johnson County, I would be happy to answer your questions.

Senate Assessment & Taxation
2-7-01
Attachment 10

TESTIMONY

City of Wichita
Mike Taylor, Government Relations Director
455 N Main, Wichita, KS. 67202
Phone: 316.268.4351 Fax: 316.268.4519
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Senate Bill 91
Development Activity Excise Tax

Delivered February 7, 2001
Senate Assessment and Tax Committee

The City of Wichita does not use the kind of development activity excise taxes I've heard proponents of Senate Bill 91 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, Senate Bill 91 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.

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Written Testimony to the
Senate Assessment and Taxation Committee
SB 91
February 7, 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 SB 91. 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, Senate Bill 91, 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 against 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

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not based upon the value of the property and (6) whether the tax is nondiscriminatory in its application.

A review of Senate Bill 91, 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 SB 91 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.

LEGISLATIVE TESTIMONY

KANSAS BUILDING INDUSTRY ASSOCIATION, INC.

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SENATE ASSESSMENT & TAXATION COMMITTEE
FEBRUARY 7, 2001
SB 92

MR. CHAIRMAN & MEMBERS OF THE COMMITTEE:

My name is Janet Stubbs, appearing today as Executive Director of the Kansas Building Industry Association in support of SB 92.

SB 92 was requested due to a problem our Saline County members brought to the attention of Rep. Carol Beggs and our Association last Spring. The problem is that the appraiser for Saline County was adding the debt of the special assessments, which had been placed on each lot, to the sale price of each lot to arrive at the "fair market value" determination for purposes of taxation.

Docket No. 1999-4007-EQ of the Board of Tax Appeals "In the Matter of the Equalization Appeal of Blue Beacon International, Inc. for the year 1999 from Saline County, Kansas" was brought to our attention. Further investigation revealed Docket No. 1999-2680-PR, for the 1998 taxes of Karl W. Boaz of Saline County. Docket Nos. 1998-4515-EQ Thru 1998-4523-EQ, the Saline County appeal of Valley View Estates. In addition, the 1997 appeal of Westview Development Corporation of McPherson County resulted in Docket Nos. 1997-4010 thru 1997 4017-EQ.

Quite simply, Committee, the Board of Tax Appeals Order for Docket No. 1999-2680-PR states,

> **"The Board finds that the value of the subject property should not include the cost of the special assessments. The purchase price for the subject property in May 1997 did not include the unpaid special assessments. It is unlikely that any subsequent purchase price would include any unpaid special assessments."**

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It further states, "Although the special assessment may add value to the subject property, it is not intrinsic to the market value of the subject property. A'well informed buyer' would not include the special assessments in the purchase offer. The special assessments would be deferred as long as possible. If a purchaser were to pay off the special assessments now, any subsequent selling price would have to include the special assessments. It would be difficult to sell a property for $29,400 (the County's value) when the neighboring lots are selling for approximately $10,000. Therefore, the special assessments do not inherently affect the market value of the subject property."

"An argument could be made that the unpaid mortgage on a personal residence should be added to the value for tax purposes if the Board were to adopt the County's analysis. For example, a person borrowing money to purchase a $100,000 home will pay approximately $275,000 for that home over a period of thirty years. The mortgage adds value to the residence in that it affords the purchaser enjoyment and use of the property now instead of waiting thirty years for that enjoyment and use. Without the mortgage, the purchaser could not acquire the residence. But the mortgage does not add to the market value of the residence if the purchaser attempted to sell the property at a later date. Furthermore, although the purchaser will pay approximately $275,000 for the $100,000 residence, the County more than likely has the property appraised for approximately $100,000."

"The Board finds that the Taxpayer has presented sufficient evidence to establish the value for 1998 at $16,000. .....The Board is not persuaded by the County's argument that the fair market value includes the special assessments."

Mr. Chairman and Committee members, this is more than I had intended to say about the opinions but, fortunately, states the exact argument I made before I read the BOTA opinion but with more credibility than my own words. The other decisions reach the same conclusion. However, our efforts to get a PVD directive establishing the BOTA opinions as the correct method of appraisal of single vacant lots not used in agriculture, has not been successful to this point and the Saline County Appraiser advises he will continue to value property in the same manner until he receives a higher Court's opinion to the contrary or Legislative action.

With the written presentation by former Rep. Tim O'Sullivan, now a member of the firm of Husch & Eppenberger, LLC, Attorneys and Counselors at Law in Wichita, Mr. Chairman, I am urging your Committee to pass SB 92 as written to enable Mr. Broberg to have a decision in accordance with the BOTA opinions referenced.

Husch & Eppenberger, LLC
Attorneys and Counselors at Law

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Memorandum

TO: Janet Stubbs
Kansas Building Industry Association

FROM: Timothy P. O'Sullivan

DATE: February 6, 2001

RE: ~~House Bill No. 2064~~ SB 92

You have asked our firm to provide you with a legal opinion regarding the effect an amendment to K.S.A. 79-503a your organization is supporting has on current Kansas property valuation law. K.S.A. 79-503a defines "fair market value" for purposes of assessing property taxes in the state. Your proposed amendment would add the following language to this statute:

> *In the determination of fair market value of any real property which is burdened by any special assessment, the sales value thereof, and the sales value of any comparable real property so burdened, shall not include the present value of any such special assessment.*

H.B. 2064. Our analysis indicates that the amendment proposed in this bill would clarify rather than substantively change K.S.A. 79-503a. The clarification appears to be in conformity with the interpretation this statutory provision is being given by the Kansas Board of Tax Appeals. The proposed amendment would no doubt lead to better uniformity in appraisals of real property throughout the state.

We were unable to find any Kansas appellate authority on the issue the role of special assessments play in the determination of fair market value of real property. Nor did a nationwide "key word" computer search turn up many decisions in other jurisdictions on this issue. In Gorz v. Gorz, 428 N.W. 2d 839 (Minn. App. 1988), the Minnesota Court of Appeals excluded special assessments from a valuation of real property disposed of in divorce proceedings. Similarly, in Indiana Department of Revenue v. Security Bank & Trust, 393 N.E.2d 197 (Ind. App. 1979), the Indiana Court of Appeals excluded specials from its calculation of fair market value for estate tax

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purposes. Thus, although only a few decisions were found which touched upon this issue, what research was found supported the position that special assessments are not to be taken into consideration in determining the fair market value of real property in any context.

In 1998, California amended its property valuation statute to include language very similar to that proposed in H.B. 2064. California's statute now contains the following provision:

> There is a rebuttable presumption that the value of improvements financed by the proceeds of an assessment resulting in a lien imposed on the property by a public entity is reflected in the total consideration, exclusive of that lien amount, involved in the transaction. This presumption may be overcome if the assessor establishes by a preponderance of the evidence that all or a portion of the value of those improvements is not reflected in that consideration.

Cal. Rev. & Tax. Code § 110(b). As a result of this amendment, California presumes the parties to a real estate transaction have taken the present value of any special assessments into account when they reach a purchase price for the property. The burden then shifts to the assessor to disprove this presumption if he or she disagrees with using purchase price to determine the fair market value. The California Court of Appeals recently affirmed § 110(b) as a valid means of assessing fair market value for property tax purposes. See Huson v. County of Ventura, 96 Cal. Reptr. 116 (2000).

Turning to Kansas, K.S.A. 79-503a already defines fair market value as "the amount in terms of money that a well informed buyer is justified in paying and a well informed seller is justified in accepting for property in an open and competitive market, assuming that the parties are acting without undue compulsion." This definition of fair market value is not singular to Kansas. To the contrary, the definition of fair market value shows virtually no substantive variation throughout the United States in a variety of contexts, both tax and otherwise. The Kansas statute adopts the sale value of property on the open market as one factor to use in assessing fair market value. K.S.A. 79-503(i). Certainly, one would expect such sales to be determinative if they were sufficient in number, very similar in type and location, and temporally close. It is in the normal circumstance when such data is not sufficiently available that other factors are given significant import in determining what a subject property would sell for on the open market. If one assumes, as California does, that arms length transactions on the open market take into account the full value of real property, including the present value of any special assessments, then H.B. 2064 would merely clarify what is already the law in Kansas.

It appears that the Kansas Board of Tax Appeals (BOTA) shares the interpretation of K.S.A. 79-503a outlined above. We are aware of at least two decisions by that body refusing to take the present value of special assessments into account when calculating fair market value for property tax purposes. See In re Tax Appeals of Westview

Development Corp., Docket Nos. 1997-4010-EQ through 1997-4017-EQ (1998); In re Tax Appeals of Valley View Estates, 1998-4515-EQ through 1998-4523-EQ (1999).

In Valley View Estates, BOTA stated its rationale for not including special assessments in its determination of fair market value as follows:

> [T]he Board finds that the selling prices of the properties that did sell are the best indication of value for the subject properties. . . . Typically, a buyer would pay less for a property with outstanding special assessments than he would for a property that was unencumbered. While it is true that the property does already benefit from the special assessments already present, the special assessments must still be paid off and remain a liability against the property. Therefore, the Board finds that the value of the subject property should not include the value of the outstanding special assessments.

There are additional arguments for not including special assessments in the determination of fair market value. First, fair market value is determined by application of the "willing buyer/willing seller" concept with respect to a given piece of property. The fair market value determination does not permit adjustments for factors which clearly are not a component of the selling price. Second, including special assessments as "add-ons" to the purchase price would improperly treat improvements such as streets and sewers as a physical part of the subject property itself, when in fact the improvements are owned by governmental entities. This would be analogous to adding in additional value to the already determined open market selling price for below market utility rates or sewer costs in the subject area. Third, it would be capricious to conclude, without corroborating underlying data, that an arbitrary determination of the present value of future payments on special assessments should somehow be a component of the fair market value of a given parcel of real property. Finally, as alluded to by BOTA in the Valley View decision, whatever role special assessments may play in fair market value are already factored into the price a "willing buyer" will pay for a given parcel of real property on the open market.

Given the language already present in K.S.A. 79-503a and BOTA's interpretation of that statute, it appears that H.B. 2064 would not change the administrative interpretation given the law but would instead clarify it to make explicit the prohibition against including as a separate factor the present value of special assessments in appraisals of fair market value for tax purposes. The fact there have been BOTA appeals demonstrates that different Kansas taxing authorities are handling this question in different ways, and H.B. 2064 thus would have the salutary effect of encouraging uniformity in the way property tax valuations are handled throughout the state.

If the firm can be of any further assistance to you, please do not hesitate to call.

K:\ksbldgas

Kansas Association of REALTORS®

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TO: SENATE ASSESSMENT AND TAXATION COMMITTEE

FROM: KAREN FRANCE, DIRECTOR OF GOVERNMENTAL RELATIONS

DATE: FEBRUARY 7, 2001

SUBJECT: SB 92, INCLUSION OF SPECIAL ASSESSMENTS IN VALUATION OF VACANT LOTS

Thank you for the opportunity to testify. The Kansas Association of REALTORS® supports SB 92.

This bill is important because it will protect taxpayers from having to expend time and money to take their appeals to the Board of Tax Appeals again and again to fight about the way that a county appraiser values improved vacant lots.

This bill would make it clear, once and for all, that unpaid special assessments should not be included in the market value of a vacant lot. Several of our members and their fellow taxpayers have had to appeal this issue again and again to the Board of Tax Appeals and have been successful. Yet the county appraiser keeps applying the same flawed methodology.

We are aware of at least four cases where the Board of Tax Appeals has ruled against the methodology of including the total costs of the special assessments in the value of a vacant lot. The BOTA has come to substantially the same conclusion in each of these cases. An excerpt from one of these decisions is as follows:

> "The Board finds that when a parcel sells having future special assessments, it sells at a reduced price due to the special assessments, and the buyer and seller exchange the reduced price as the transaction price. Although the special assessments due in the future may have been an important factor in determining the transaction price, the special assessment was not part of the consideration given to facilitate the purchase of the property."
>
> Docket Nos. 1998-4515 EQ-1998-4523 EQ

While the county appraiser has both the time and the budget and the legal counsel to continue to appeal these decisions over and over, taxpayers do not. Taxpayers should not have to continue to fight over the same issue again and again, using their personal time and resources to hire appraisers and attorneys.

We can appreciate that it is unusual for the legislature to be asked to codify BOTA decisions. We do not advocate this lightly. Please note that we are not asking you to codify a particular value arrived at by BOTA. We are asking you to codify the correct methodology for valuing a particular kind of property. Specifically, we are asking you to put this methodology into statute for all county appraisers to follow, so that taxpayers can get back to their own lives.

Thank you for the opportunity to testify.

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SB 92
POSITION STATEMENT
KANSAS COUNTY COMMISSIONERS ASSOCIATION

Dear Chairman Corbin and members of the Senate Committee on Assessment and Taxation:

As Past-President and current Legislative Chair of the Kansas County Commissioners Association, I wish to express our opposition to SB 92, wherein, *Special Assessments on Real Property* would no longer be allowed in determining *fair market value.* Such an initiative if passed, would create inequities in the Computer Assisted Mass Appraisal System and further curtail a county appraiser's performance in creating *fair market values* for Kansas property. All of us realize an appraiser's task is difficult enough without legislation restricting their professional approach to obtaining the *fair market value* on a parcel.

In my own county of Labette and in counties across the state, there are concerns about individual property values. We as elected officials, hear many complaints and concerns about property values and taxation. Regardless of the context of each discussion, my reply to the taxpayer is always, "We expect the county appraiser to always be fair." Every property owner should be treated equally and that two like properties should be valued in an equitable manner. Special Assessments have value and has to be construed as an improvement in determining value. We cannot start placing restrictions on appraisers that will hinder them from accomplishing the measure of fairness that we as elected officials expect for our constituents. To be fair with any appraisal is to have a good database from comparable sales that establishes *fair market value* for the subject property. By legislating the removal of *Special Assessments* would impede the process.

In this my nineteenth year as a county commissioner, I have come to respect the knowledge and integrity that accompanies the position of county appraiser. Whatever you as legislators or we as commissioners expect from them would seem small in comparison as to what they expect of themselves. In summation, I would request this committee to oppose SB 92. Appraisers across Kansas have a difficult, thankless job to do, and we should all recognize their level of professionalism and not remove a tool they use to make values equal.

Sincerely,

Lonie R. Addis

Lonie R. Addis
Labette County and Legislative Chair
Kansas County Commissioners Association

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LKM
League of Kansas Municipalities

300 SW 8th Avenue
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Phone: (785) 354-9565
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To: Senate Assessment and Taxation Committee

From: Don Moler, Executive Director

Date: February 7, 2001

Re: Opposition to SB 92

First I would like to thank the Committee for allowing the League to appear today in opposition to SB 92. Senate Bill 92 falls into the category of a very small bill that we believe could have a very large impact on property taxes in the State of Kansas. Specifically Senate Bill 92 adjusts the definition of "fair market value" to reduce it from what a well informed buyer is justified in paying and a well informed seller is justified in accepting in an open and competitive market, to a definition using that as a starting point but reducing the fair market value, for the purposes of computing property taxes, by the amount of any special assessments currently existing on the real property or on comparable properties which would be used in helping to determine fair market value. We believe the current definition clearly captures the "fair market value" and that any existing special assessments are already figured into a sale or purchase price.

Tax Shift

Senate Bill 92 has several unfortunate consequences. We suspect that its proponents see this legislation as a tax cut for properties which are burdened by special assessments. We would disagree in this characterization. Rather, it is a tax shift. Let us not kid ourselves, anytime you reduce property taxes on one or more parcels of property the property tax load does not go away, it is merely moved to other properties which are not able to avail themselves of the property tax exemption. Therefore what we would see, should Senate Bill 92 pass, would be a shift of property tax load from new homes in new subdivisions, which are subject to special assessments for a period of years, onto older properties on which there are no existing special assessment. We cannot believe that the state legislature would be interested in such a tax shift.

Fairness Issue

We believe there is an inheritent fairness issue here and one which cannot be ignored. To shift property taxes off of new homes onto existing older homes we believe would be adverse to a fair and equitable taxation concept and would have the unfortunate result of allowing more expensive properties, subject to special assessments in new subdivisions to push some of their rightful property tax load off on less expensive properties which have already paid for the specials they are enjoying. We would urge this Committee to reject Senate Bill 92 as merely a tax shift which will have unfortunate and unintended consequences. Thank you very much for allowing the League to appear today. I will be more than happy to answer any questions the Committee may have.

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