

MINUTES OF THE SENATE COMMITTEE ON ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Barbara P. Allen at 1:30 p.m. on February 11, 2002 in Room 245-N of the Capitol.

All members were present except: Senator Hueskamp - excused

Committee staff present: Ken Wilke, Revisor of Statutes
Mike Heim, Legislative Research
Dennis Hodgins, Legislative Research
Nancy Kirkwood, Committee Secretary

Conferees appearing before the committee: Senator David Jackson
David Miller, Board Attorney, North Topeka Drainage District
Frank Rice, Attorney, Kaw River Drainage District
Jim Keating, President, State Fire Fighters Association
Karl McNorton, Director, Division of Fire Prevention
Senator Chris Steineger
Don Moler, Executive Director, League of Kansas Municipalities
Martha Neu Smith, Executive Director, Kansas Manufactured Housing Association
Larry Eller, Director of Community Development, City of Parsons

Others attending: See attached list.

Hearing on SB 527 - Relating to the transfer of territory from one drainage district to another

Senator Jackson appeared before the Committee in support of **SB 527 (Attachment 1)**.

David Miller, Attorney, North Topeka Drainage District, also presented testimony in support of the bill (**Attachment 2**).

Frank Rice, Attorney, Kaw River Drainage District, spoke in opposition of **SB 527 (Attachment 3)**.

Hearing on SB 543 - Relating to compensation of volunteer members

Senator Jackson, as a proponent of **SB 543**, stated the bill would remove the restriction in some cases from fire districts having the ability to reimburse their fire fighters. He introduced Karl McNorton, Director, Division of Fire Prevention to the Committee.

Karl McNorton presented testimony in support of the bill on behalf of the Kansas State Fire Marshal's office (**Attachment 4**).

Jim Keating, President, State Fire Fighters Association, testified orally supporting **SB 543**.

After Committee questions, Chairperson Allen asked the Fire Marshal's office, Jim Keating, to meet with Ken Wilke, Revisor of Statutes, to work together and draft an amendment addressing the Committee's concerns.

There were no opponents to **SB 543**.

Hearing on SB 528 - Allowing cities or counties to enact zoning regulations excluding manufactured homes

CONTINUATION SHEET

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT at on February 11, 2002 in Room 245-N of the Capitol.

Senator Steineger presented testimony in support of **SB 528** (Attachment 5).

The Chair recognized Don Moler, Executive Director, League of Kansas Municipalities. He testified in support of **SB 528** (Attachment 6).

Martha Neu Smith, Executive Director, Kansas Manufactured Housing Association, appeared before the Committee in opposition of **SB 528** (Attachment 7).

Larry Eller, Director of Community Development, City of Parsons, presented testimony in opposition of **SB 528** (Attachment 8).

After Committee concerns regarding manufactured housing, Chairperson Allen requested Legislative Research to furnish the Committee the definition of such.

Adjournment

The meeting adjourned 2:30 p.m.

The next meeting is scheduled for Wednesday, February 13, 2002.

**SENATE
ELECTIONS AND LOCAL GOVERNMENT
GUEST LIST**

Date 2/11

David L Miller

Grant M Rice

Dale Sandberg

Dwight S. Jackson

Manny Redman

BRYAN A. CASKEY

Sally Finney

Kel W. McWorter

James W. Clure

Pat Lehman

Barb Conant

KTRA

Jim KEATING

Erik Sartorius

City of Overland Park

Don Volar

LKM

Anne Spiess

KCRAR - K.C. Realtors

Walter Lee Smith

KMHA



SENATE CHAMBER

DAVID D. JACKSON
 STATE SENATOR, 18TH DISTRICT
 NORTH SHAWNEE COUNTY
 HOME ADDRESS: 2815 NE ROCKAWAY TRAIL
 TOPEKA, KANSAS 66617-2305
 (785) 357-6538
 OFFICE: STATE CAPITOL BUILDING, ROOM 458-E
 TOPEKA, KANSAS 66612-1504
 785 296-7365

COMMITTEE ASSIGNMENTS
 WAYS AND MEANS
 ELECTIONS AND LOCAL GOVERNMENT
 TRANSPORTATION
 JOINT COMMITTEE ON SPECIAL CLAIMS
 AGAINST THE STATE

SB 527

Testimony for
 Senate Elections and Local Government Committee
 February 11, 2002

This bill is forwarded to provide a simplified procedure for transfer of territory between drainage districts by the County Commissioners. These territory transfers become necessary when the types of levees change. For example, in Shawnee County agricultural levees were reconstructed to become flood control levees after the '51 flood, and were extended beyond original district boundaries. The maintenance and upkeep of flood control levees is by necessity far greater, requiring manpower and equipment not usually possessed by drainage districts with agricultural levees.

David Miller, the attorney for the North Topeka Drainage District, is with us to further explain the process change outlined by this bill, and District Superintendent Dale Sandburg will provide further detail, if requested. Another district board member present is my father, Dwight Jackson, who has served on the Board since 1967.


 David D. Jackson

Senate Elec + Loc Gov
 02-11-02
 Attachment 1

NORTH TOPEKA DRAINAGE DISTRICT
2630 NW ROCHESTER ROAD
TOPEKA, KANSAS

Senator Barbara Allen
Chair Senate Elections and
Local Government Committee
Capitol Building
Topeka, Kansas 66612

Re Senate Bill 527

The North Topeka Drainage District is presenting this information to the Committee in support of passage of Senate Bill 527.

HISTORY

The North Topeka Drainage District was organized under the provisions of K.S.A. 24-401 et seq., in 1906.

Prior to the devastating flood of 1951 the west boundary of the North Topeka Drainage District and the east boundary of the Kaw River Drainage District along the north side of the Kansas River met a point approximately 1 mile east of the now US -75 Westgate bridge over the Kansas River. These levees were of agriculture type and were inadequate for the 1951 flood.

Prior to the 1951 flood North Topeka was connected to South Topeka in this area by the Brickyard bridge. The Brickyard bridge was washed out during the 1951 flood. It was determined that the new bridge built to replace the crossing of the Kansas River in this area would be built approximately 1800 feet to the west of where the Brickyard bridge was located prior to the 1951 flood. The new bridge, which is the Westgate bridge was constructed in connection with the construction of US 75 from Interstate 70 North. The construction of the Westgate bridge and US 75 going north from Interstate 70 was coordinated with the Army Corp of Engineers so the roadway would be built high enough to have the roadway of US 75 become the west levee protecting North Topeka.

At the same time the planning occurred for the construction of the Westgate bridge, the Army Corp of Engineers performed a study to build flood levees to protect North and South Topeka from flooding from the Kansas River. To build the flood levees, the Army

Senate Elec + Loc Gov
02-11-02
Attachment 2

Corp of Engineers required that a local agency be the "Sponsor" for the Construction of the flood levees. The City of Topeka was the sponsor of part of the project and the North Topeka Drainage District was the sponsor for the remainder of the project for the Corp of Engineers to construct levees of a much higher standard, built to Federal specification as flood levees, to protect the City of Topeka from flooding. The "Sponsors" were required to provide at no cost to the Army Corp of Engineers the following:

1. Provide without cost to the Federal government, free and unencumbered, all lands, easements, right-of-ways, any relocation or adjustment of facilities necessary for such construction, and for the ponding of interior drainage.
2. To hold and save harmless the United States from damages due to the construction or operation of the project.
3. Maintain and operate all the works after completion in accordance with regulations prescribed by the Secretary of the Army.

The North Topeka Drainage District was the sponsor of the Soldier Creek Diversion Unit. The City of Topeka was the sponsor of the North Topeka Unit. By contract between the North Topeka Drainage District and the City of Topeka, being contract #5535, the North Topeka Drainage District agreed to maintain the levees in the North Topeka Unit. Therefore the North Topeka Drainage District maintains all of the levees protecting Topeka built by the Army Corp of Engineers which are North of the Kansas River. As the construction of the levees North of the Kansas Rivers were completed the North Topeka Drainage District began maintenance of the levee and has continuously maintained the levee.

The North Topeka Drainage District received tax revenues from all of the real estate located in the former Industrial Park area after the Corps of Engineer levees were completed until 1987. In 1985 the Shawnee County Assessor requested the drainage districts to provide a legal description and maps of their district. When this was accomplished the Shawnee County Assessor discovered that most of the former industrial park land was within the boundaries of the Kaw River Drainage District. In 1987 the Shawnee County treasurer began paying the real estate taxes collected on the real estate striped in red which is in the former Topeka Industrial Park to the Kaw River Drainage District, even though the North Topeka Drainage District by City of Topeka Contract #5535 had the responsibility to maintain the levee protecting this land. The North Topeka Drainage District has continued the maintenance of the levee pursuant to the contract with the City of Topeka.

There is presently a study being conducted by the Corp of Engineers to determine if the levees protecting the Kansas River are adequate. The cost of this study will be approximately \$2,000,000.00 . The City of Topeka is the sponsor of this study. The sponsor of the study must pay one half of the cost of the study and the Corp of Engineers will pay the remaining one-half of the cost of the study. The North Topeka Drainage District has agreed with the City of Topeka to participate in paying part of the City of Topeka cost of this study. The North Topeka Drainage District contributed \$300,000.00 to the City of Topeka's cost incurred and the City of Topeka will pay the balance of the sponsors portion of the cost of the study. When the Corp of Engineers completes the study, they will determine what additional work will be required on the levees to comply with their study results. Only by meeting the requirements made by the Corp of Engineers will the land protected by the levee be eligible for certification by the Federal Emergency Management Agency, which is required to obtain flood insurance

PRESENT LAW INVOLVED

Drainage Districts in Kansas are organized under the provisions of K.S.A. 24-401 et seq. Under the provisions of these statues a petition is filed with the County Commission and a hearing is held by the County Commission. After a hearing is held by the County Commission, then the Commission votes to determine if the Petition filed proposing a Drainage District is approved or denied. If two Drainage Districts agree to a transfer of territory from one Drainage District to the other Drainage District, K.S.A. 24-127 et seq. is the procedure prescribed by statues. After a hearing is held by the County Commission, then the Commission votes to determine if the transfer of territory from one Drainage District to another Drainage District is approved. If a Drainage District desires to enlarge their territory, and the territory is not within the boundaries of another Drainage District, K.S.A. 24-463 et seq. is the procedure prescribed by statues. After a hearing is held by the County Commission, then the Commission votes to determine if the Drainage District is enlarged. There is a procedure for detachment of certain lands within a Drainage District, which is K.S.A. 24-498 et seq. After a hearing is held by the County Commission, then the Commission votes to determine if the land is detached from the Drainage District. There is a procedure for Dissolution of a Drainage District, which is K.S.A. 24-299 et seq. After a hearing is held by the County Commission, then the Commission votes to determine if there shall be Dissolution of the Drainage District.

There is no procedure for transferring territory from one Drainage District to another Drainage District when both Drainage Districts don't agree to the transfer.

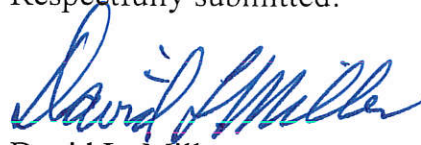
IF SENATE BILL 527 IS PASSED

If Senate Bill 527 is passed this would establish a procedure that would allow the County Commission to hear a petition to transfer territory from one Drainage District to another Drainage District when both Drainage Districts don't agree to the transfer. The County Commission presently is the body politic that:

1. Hears petitions to establishes Drainage Districts,
2. Hears petitions to transfer territory from one Drainage District to another Drainage District when both Districts agree to the transfer,
3. Hears petitions to enlarge a Drainage District when the territory being added to the Drainage District is not in another Drainage District.
4. Hears petitions to detach territory from an existing Drainage District.
5. Hears petitions to have Dissolution of a Drainage District.

Your favorable consideration of Senate Bill No. 527 will allow a Drainage Districts to have a forum to have a hearing to allow territory to be transferred from one Drainage District to another Drainage District, when the Boards of the Districts do not agree to the territory transfer.

Respectfully submitted:



David L. Miller
Board Attorney

COMMENTS OF KAW RIVER DRAINAGE DISTRICT
TO SENATE BILL NO. 527

The Kaw River Drainage District welcomes the opportunity to be allowed to provide information relative to Senate Bill No. 527.

The essence of this bill is to modify a statute that has been in effect for years and years. Under the present law, in order for one drainage district to acquire and attach to itself land that is presently in another district, both drainage districts must concur. That is a statute that has worked well for Kansas.

The proposed amendment, in accordance with Senate Bill No. 527, would allow one drainage district to acquire territory from another drainage district even though the second district opposed that transfer. All that would be required would be for a county commission to approve the transfer. In essence, two members of a county commission can transfer land from one drainage district to another drainage district.

The Kaw River Drainage District strongly opposes this bill. From information provided to the Legislative Committee by the North Topeka Drainage District, it would appear that this bill is driven by the peculiar facts relating to the North Topeka Drainage District, and not based on broad, overall public policy principals.

The Kansas laws provide for drainage districts to receive sand royalties for sand taken from the bed of a river. See K.S.A. 70a-105 and 82a-309. One of the adverse affects of the proposed bill upon the Kaw River Drainage District would be to take away a significant amount of the income it receives from sand royalties. This will result in a decrease in funds available to the Kaw River Drainage District to carry out its duty of protecting the dikes along the Kansas River. In addition, the loss of territory will result in a significant loss of tax base, thus resulting in a further reduction of funds available to the district.

In essence, the North Topeka Drainage District is complaining and seeks remedial action from the Legislature by reason of its having assumed responsibility based upon the erroneous assumption that certain lands were in its district when, in fact, they were not. It appears to the Kaw River Drainage District that this change in the law is designed only to benefit a particular problem in one particular drainage district, *i.e.*, the North Topeka Drainage District.

It is the position of the Kaw River Drainage District that the law presently on the books has worked well for several decades. What has worked well for that long should not be changed simply because of the problems created for the one drainage district which seeks the change. The suggested changes would deprive the members of a drainage district of even the right to have a say-so on whether or not their drainage district is reduced significantly simply by the vote of two members of a county commission. Under the present law requiring both drainage districts to consent to such transfer, all landowners in both districts have a voice, direct or

Frank Rice testimony

indirect, in that decision. They now have a voice, as in a democracy they should, whether they want to be in another district. The amendment as suggested, in the opinion of the Kaw River Drainage District, is contrary to good governmental policy by reducing the input of those citizens who could be forced into another drainage district against their desire.

The Kaw River Drainage District believes that this proposed change is bad law, proposed for the wrong reasons, and having an adverse affect on the public as a whole. At the very least, this drastic change in the law needs additional study before it is acted on.

In addition, we suspect that many drainage districts throughout the state are unaware of this proposed amendment to the law and should have the right to be heard.



ANDY LEWIS, President
Kaw River Drainage District

Testimony of the Kansas State Fire Marshal's Office
In Support of
SB 543
Presented February 11, 2002, Senate Elections & Local Government Committee

The Kansas State Fire Marshal's office requested this bill in response to Attorney General Opinion No. 2001-51 (attached), which concludes that since the statutes governing county fire districts (K.S.A.19-3601 *et seq.*) are silent regarding compensation of volunteer firefighters, while statutes creating other kinds of fire districts specifically allow for such payments, the county fire district is not authorized to pay volunteers.

The bill is aimed broadly at chapter 12 (cities), chapter 19 (counties), chapter 31 (fire marshal), and chapter 80 (townships) so that there is no mistaking the legislative intent to allow (not mandate) the payment of volunteer fire fighters.

The Fire Marshal's Office estimates no fiscal effect on this agency or the State of Kansas. Any fiscal effect on a local fire district would not be mandated, but would be within the governing body's discretion.

Senate Elec & Loc Gov
02-11-02
Attachment 4

Kansas Attorney General Opinions

[Previous Document in Book][Next Document in Book]

ATTORNEY GENERAL OPINION NO. 2001-51

December 18, 2001

John E. Lang
Pottawatomie County Counselor
County Office Building, P.O. Box 187
Westmoreland, Kansas 66549

Re: Counties and County Officers - Fire Protection -
Fire > <Districts>; Governing Body; Powers; Tax Levies; Use of
Proceeds, Limitations

Synopsis: A county <fire> <district> governing body organized pursuant to K.S.A. 19-3601 et seq. is not authorized to pay <volunteers> who respond to fire calls unless those <volunteers> are employees of the <fire> <district>. Portions of Attorney General Opinion No. 80-89 that discuss statutory authority for paying <fire> <district> employees are in conflict with subsequent amendments to K.S.A. 19-3601a and are therefore hereby withdrawn. Cited herein: K.S.A. 2000 Supp. 12-3915; K.S.A. 19-3601; 19-3601a; 19-3610; 19-3620; 80-1516; 80-1531; 80-1544; L. 1992, Ch. 132, § 1.

* * *

Dear Mr. Lang:

You indicate that Pottawatomie County has a number of <fire> <districts> comprised of <volunteer> firefighters. You ask whether a <fire> <district> governing body appointed pursuant to K.S.A. 19-3601 et seq. has the authority to pay a per diem allowance to <volunteer> firefighters.

K.S.A. 19-3601a outlines the powers of a <fire> <district> governing body as follows:

"Upon the creation of a <fire> <district> under the provisions of K.S.A. 19-3601 et seq., and amendments thereto, the governing body shall have the authority to:

"(a) Enter contracts;

"(b) acquire and dispose of real and personal property;

"(c) acquire, construct, reconstruct, equip, operate, maintain and furnish buildings to house fire fighting equipment;

"(d) acquire, operate and maintain fire fighting equipment;

"(e) issue bonds as provided in this act;

"(f) pay compensation and salaries to <fire> <district> employees;

"(g) exercise eminent domain;

"(h) pay the operation and maintenance expenses of the <fire> <district> and any other expenses legally

the <fire> <district> and any other expenses legally incurred by the <fire> <district>; and

"(i) do all other things necessary to effectuate the purposes of this act." [fn1]

K.S.A. 19-3610 authorizes an ad valorem tax levy on property within the <fire> <district> and limits the use of levy proceeds "to carry out the powers, duties and functions of the governing body of the <fire> <district> as specified in K.S.A. 19-3601a. . . ." K.S.A. 19-3601a authorizes a <fire> <district> governing body to pay compensation to <fire> <district> employees; however, it does not provide for paying compensation to <volunteer> firefighters who are not employees of the <fire> <district>. The word "employee" is not defined in Article 36 of K.S.A. Chapter 19. Whether a person is an employee within the meaning of a particular statute depends upon the facts and circumstances. [fn2] We do not have adequate information to make a determination of whether the <volunteer> firefighters in Pottawatomie County are employees of the various <fire> <districts>.

You draw our attention to a conflict between Attorney General Opinion No. 80-89 and K.S.A. 19-3601a(f). Attorney General Opinion No. 80-89 concludes that:

"There is no specific statutory authority providing for the payment of salaries and salary-related expenses of <fire> <district> personnel in <fire> <districts> created pursuant to K.S.A. 1979 Supp. 19-3601, and the proceeds from the levy authorized by K.S.A. 19-3610 may not be used for the payment of salaries and salary-related expenses."

When Attorney General Opinion No. 80-89 was written in 1980, K.S.A. 19-3601a did not authorize the payment of compensation to <fire> <district> employees. Paragraph (f) of K.S.A. 19-3601a was added by the Legislature in 1992. [fn3] Thus, the portion of Attorney General Opinion No. 80-89 that concludes that there is no statutory authority to use proceeds of the tax levied pursuant to K.S.A. 19-3610 to pay <fire> <district> employees is in conflict with the current provisions of K.S.A. 19-3601a and that portion of the Opinion is hereby withdrawn. The remaining portions of Attorney General Opinion No. 80-89 that discuss the home rule powers of a board of county commissioners to levy an additional tax on the property in a <fire> <district> remain viable.

A <fire> <district> is a creature of statute and has only such power and authority expressly granted by the Legislature. [fn4] Any exercise of authority by a <fire> <district> must come from within the statutes. While there are other statutes that authorize the organization of <fire> <districts>, some of which contain specific authority for paying <volunteer> firefighters, [fn5] K.S.A. 19-3601 et seq. does not include such authority. Because K.S.A. 19-3601 et seq. does not specifically authorize a <fire> <district> to pay <volunteer> firefighters, we opine that a county <fire> <district> governing body organized pursuant to K.S.A. 19-3601 et seq. may not pay a per diem allowance to <volunteers> responding to fire calls, unless those <volunteers> are employees of the <fire> <district>.

Very truly yours,

CARLA J. STOVALL
Attorney General of Kansas

Donna M. Voth
Assistant Attorney General

CJS:JLM:DMV:jm

[fn1] Emphasis added.

[fn1] Emphasis added.

[fn2] Black's Law Dictionary 525 (6th Ed. 1990).

[fn3] L. 1992, Ch. 132, § 1.

[fn4] *Petition of City of Shawnee*, 236 Kan. 1, 12 (1984).

[fn5] K.S.A. 2000 Supp. 12-3915(k); K.S.A. 19-3620; 80-1516; 80-1531; 80-1544(a).

[\[Previous Document in Book\]](#)

[\[Next Document in Book\]](#)

Copyright © 2001 Loislaw.com, Inc. All Rights Reserved

CHRIS STEINEGER
SENATOR, SIXTH DISTRICT
51 S. 64TH ST.
KANSAS CITY, KANSAS 66111
(913) 287-7636
STATE CAPITOL BLDG., ROOM 523-S
TOPEKA, KANSAS 66612-1504
(785) 296-7375
1-800-432-3924
(LEGISLATIVE HOTLINE DURING SESSION)
steineger@senate.state.ks.us



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

MEMBER: COMMERCE
FINANCIAL INSTITUTIONS AND
INSURANCE
PUBLIC HEALTH AND WELFARE
LEGISLATIVE POST AUDIT
RULES AND REGULATIONS
HEALTH CARE REFORM
ARTS AND CULTURAL RESOURCES
INFORMATION AND TECHNOLOGY
SRS TRANSITION OVERSIGHT

SB 528 TALKING POINTS

- ◆ This is strictly an issue of local control.
- ◆ Under current law, cities may put restrictions on manufactured housing, but are prohibited from banning manufactured housing.
- ◆ Local government is in the best position to decide what type of housing they want in their community.
- ◆ The state should not legislate such issues.
- ◆ This bill is strictly a repealer. It repeals a state statute on the books since the early '90s, which regulates and restricts a city's ability to determine what type of housing they can have in their community.

Senate Elec & Loc Gov
02-11-02
Attachment 5



League of Kansas Municipalities

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

To: Senate Elections and Local Government Committee
From: Don Moler, Executive Director
Re: Support for SB 528
Date: February 11, 2002

First of all I would like to thank the Committee for allowing the League to testify today in support of SB 528. SB 528 is a very simple bill which merely repeals K.S.A. 12-763 which allows manufactured housing to be exempted from the zoning regulations of cities and counties. Specifically K.S.A. 12-763 now requires that a city may not exclude manufactured housing from an R-1 (single-family housing) district. This has been a cause for concern of cities and counties since its enactment in 1991.

What this legislation would allow is the exercise of local control and home rule in the placement of manufactured housing. It would not, in and of itself, exclude manufactured housing from R-1 residential districts, but would allow local choice as to their placement within the community. We believe this legislation makes good policy sense and places the determination about placement of manufactured housing at the appropriate level of government. We would urge the committee to favorably recommend SB 528 for passage. I would be happy to answer any questions the Committee may have.



214 SW 6th St., Suite 206
Topeka, KS 66603-3719
785-357-5256
785-357-5257 fax
kmha1@mindspring.com

TESTIMONY
BEFORE THE
SENATE
ELECTIONS AND LOCAL GOVERNMENT

TO: Senator Barbara Allen, Chairwoman
And Members of the Committee

FROM: Martha Neu Smith
Executive Director

DATE: February 11, 2002

RE: Senate Bill 528

Madam Chairwoman and Members of the Committee, my name is Martha Neu Smith and I am the Executive Director of the Kansas Manufactured Housing Association (KMHA) and I appreciate the opportunity to comment. KMHA is a statewide trade association representing all facets of the manufactured housing industry (i.e. manufacturers, retailers, community owners, suppliers, finance and insurance companies and transporters).

I am here today to oppose Senate Bill 528, which repeals the statute that prohibits local governments from excluding manufactured housing. (K.S.A. 12-763 Attached)

I feel it is important for the committee to know the history of this statute as well as what the statute does. KMHA worked in cooperation with the Kansas Chapter of the American Planners Association, the League of Kansas Municipalities, the Kansas Association of Counties, Kansas Building Industries and other interested parties on the comprehensive re-write of Kansas planning and zoning laws. This process took approximately six years of hard work and compromise, the result, Senate Bill 23 that was introduced in the 1991 Legislative Session. The bill was debated in depth, including Section 20, which is the same section we are discussing today. The end result was that SB 23 passed the Senate on a roll call vote of 40 to 0. It later passed the House on a roll call vote of 93 to 28.

The statute you have before you was a compromise between local governments and the manufactured housing industry.

*Senate Elec & Loc Gov
02-11-02
Attachment 7*

So what was the compromise?

The Industry received:

- The ability to place Residential Design Manufactured homes in any single-family residential district. To be considered Residential Design the home would have to be at least 22 feet wide, be on a permanent foundation and have siding and roofing materials customarily used on site-built homes and be compatible to site built homes in that district. This definition is statutory, and is found in K.S.A. 12-742(7). (Attached)
- Non-residential design manufactured homes (homes not 22 feet wide and not on a permanent foundation) shall not be excluded from the entire zoning jurisdiction but local government regulated placement.

Local Government maintained:

- Control of placement of non-residential design manufactured homes
- Control of what defined "permanent foundation"
- Ability to set architectural or aesthetic standards to ensure manufactured housing compatibility with site built housing in that same zoning district.
- Set and enforce development standards (lot size, set backs, side and rear yard requirements, etc.)
- Local governments ability to control the placement of manufactured home communities (mobile home parks). In fact most local governments address these proposals through the zoning process and have either "Manufactured Home Districts" or "Planned Unit Developments" to regulate the placement of manufactured home communities. (Attached letter from Bob Alderson, Attorney at Law reviewing K.S.A. 12-763 and manufactured home communities)

To my knowledge this statute has never been challenged in the ten years that it has been in effect.

While the statute does not specifically address affordability, manufactured housing is one of the only forms of unsubsidized affordable housing. For example, in 2000 the national average cost per square foot for a new site built home was \$71.66 (excluding land), the national average cost per square foot for a new manufactured home was \$32.18 (excluding land).

Like most states, Kansas has shown concern with the availability of affordable housing. In fact in 1999 and again in 2001 the Joint Committee on Economic Development's Interim Committee studied the function of housing as an economic development activity. Here is an excerpt from their report "*According to testimony received by the Committee, there are many communities in Kansas that have lost the opportunity to lure a business to their community primarily because of the inability to offer affordable housing options.*" So if communities are still looking for affordable housing sources, why would Kansas revert back to a time where one of the most affordable housing options was zoned out?

While the elimination of K.S.A. 12-763 does not eliminate manufactured housing per se it does give local government the authority to zone out manufactured housing, which is exactly why this law was passed. In 1986, prior to the enactment of K.S.A. 12-763, KMHA surveyed Kansas Cities and Counties to see how they regulated manufactured housing. Eighty-three percent of the Kansas cities and 50% of the Kansas counties that responded prohibited manufactured housing from single-family districts.

This situation was not or is not unique to Kansas. In fact the American Legislative Exchange Council (ALEC) the nation's largest bipartisan, individual membership association of state legislators in 2001, adopted model state legislation called the Factory-Built Housing Act. This legislation was designed to help state legislatures as they work to create statutory language that would accommodate factory-built housing in all areas zoned for single-family residential housing. Under the terms of the model legislation, local governments would be able to establish aesthetic standards for factory-built homes so long as they are not more restrictive than those for site-built housing. (Model attached) The State of Kansas had the foresight back in 1991 to develop and successfully implement almost identical legislation to what ALEC adopted in 2001 and that is – K.S.A. 12-763.

In closing, if this is only a local control issue why is manufactured housing being singled out? Why are we not looking at all the statutes that have a local control issue?

Since the passage of K.S.A. 12-763 ten years ago, what horrible housing situation has occurred in Kansas that would cause us to eliminate this statute? With that I appreciate the opportunity to comment and I would respectfully ask that you **oppose the passage of SB 528** and continue to allow the citizens of Kansas to select the type of housing they feel is best for them. Thank you.

(h) The provisions of this section shall become effective on and after January 1, 1992.
 History: L. 1991, ch. 56, § 20; July 1.

12-760. Same; appeals to district court.
 (a) Within 30 days of the final decision of the city or county, any person aggrieved thereby may maintain an action in the district court of the county to determine the reasonableness of such final decision.

(b) The provisions of this section shall become effective on and after January 1, 1992.
 History: L. 1991, ch. 56, § 23; July 1.

12-761. Same; violations; penalties; actions. (a) Any violation of any regulation adopted under the authority of this act shall be a misdemeanor and shall be punishable by a fine of not to exceed \$500 or by imprisonment for not more than six months for each offense or by both such fine and imprisonment. Each day's violation shall constitute a separate offense.

(b) Any city or county, and any person the value or use of whose property is or may be affected by such violation, shall have the authority to maintain suits or actions in any court of competent jurisdiction to enforce the adopted zoning regulations and to abate nuisances maintained in violation thereof.

(c) Whenever any building or structure is or is proposed to be erected, constructed, altered, converted or maintained or any building, structure or land is or is proposed to be, used in violation of any zoning regulations, the city or county, or in the event the violation relates to a provision concerning flood plain zoning, the attorney general and the chief engineer of the division of water resources of the Kansas state board of agriculture, in addition to other remedies, may institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use or to correct or abate such violation or to prevent the occupancy of such building, structure or land.

(d) Any person, company, corporation, institution, municipality or agency of the state who violates any provision of any regulation relating to flood plain zoning shall be subject to the penalties and remedies provided for herein.

(e) The provisions of this section shall become effective on and after January 1, 1992.
 History: L. 1991, ch. 56, § 24; July 1.

12-762. Same; existing plans effective until change adopted under act. (a) Any comprehensive plan or part thereof, subdivision regulations, zoning regulations or building or setback lines adopted by the governing body or planning commission of any city adopted prior to the effective date of this act and which are consistent with the provisions of this act shall continue in force and effect the same as though adopted under the provisions of this act, until the same is modified or a new comprehensive plan or part thereof, subdivision regulations or building or setback lines are adopted as provided in this act.

(b) The provisions of this section shall become effective on and after January 1, 1992.
 History: L. 1991, ch. 56, § 25; July 1.

12-763. Same; exclusion of manufactured homes prohibited, when. (a) The governing body shall not adopt or enforce zoning regulations which have the effect of excluding manufactured homes from the entire zoning jurisdiction of the governing body. In addition, the governing body shall not adopt or enforce zoning regulations which have the effect of excluding residential-design manufactured homes from single-family residential districts solely because they are manufactured homes.

(b) Nothing in this section shall be construed as precluding the establishment of architectural or aesthetic standards applicable to manufactured homes so as to ensure its compatibility with site-built housing in the same zoning district.

(c) Nothing in this section shall be construed to preempt or supersede valid restrictive covenants running with the land.

(d) The provisions of this section shall become effective on and after January 1, 1992.
 History: L. 1991, ch. 56, § 19; July 1.

12-764. Same; development rights, vesting of. (a) For the purpose of single-family residential developments, development rights in such land use shall vest upon recording of a plat of such land. If construction is not commenced on such land within five years of recording a plat, the development rights in such shall expire.

(b) For all purposes other than single-family developments, the right to use land for a particular purpose shall vest upon the issuance of all permits required for such use by a city or county and construction has begun and substantial amounts of work have been completed under a validly issued permit.

History: L. 1988, ch. 142, § 1; L. 1989, ch. 58, § 1; L. 1991, ch. 63, § 1; July 1.

Attorney General's Opinions:

Special or conditional use group home permit: validity. 89-99.

12-737 to 12-740. Reserved.

**PLANNING, ZONING AND SUBDIVISION
REGULATIONS IN CITIES AND COUNTIES**

Cross References to Related Sections:

Planning and zoning in counties designated as urban areas, see 19-2956 et seq.

Planning and zoning in improvement districts, see 19-2950 et seq.

12-741. Planning and zoning in cities and counties; authorization. (a) This act is enabling legislation for the enactment of planning and zoning laws and regulations by cities and counties for the protection of the public health, safety and welfare, and is not intended to prevent the enactment or enforcement of additional laws and regulations on the same subject which are not in conflict with the provisions of this act.

(b) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 1; July 1.

12-742. Same; definitions. (a) When used in this act:

(1) "Base flood" means a flood having a 1% chance of being equaled or exceeded in any one year;

(2) "floodway fringe" means those portions of a flood plain outside of the boundaries of a regulatory floodway and within stream reaches where such a floodway has been established;

(3) "flood plain" means land adjacent to a watercourse subject to inundation from a flood having a chance occurrence in any one year of 1%;

(4) "governing body" means the governing body of a city in the case of cities and the board of county commissioners in the case of counties;

→ (5) "manufactured home" means a structure which is subject to the federal manufactured home construction and safety standards established pursuant to 42 U.S.C. § 5403;

(6) "planning commission" means a city, county, regional or metropolitan planning commission;

→ (7) "residential-design manufactured home" means a manufactured home on permanent foundation which has (A) minimum dimensions of 22 body feet in width, (B) a pitched roof

and (C) siding and roofing materials which are customarily used on site-built homes;

(8) "subdivision" means the division of a lot, tract or parcel of land into two or more parts for the purpose, whether immediate or future, of sale or building development, including resubdivision;

(9) "subdivision regulations" mean the lawfully adopted subdivision ordinances of a city and the lawfully adopted subdivision resolutions of a county;

(10) "zoning" means the regulation or restriction of the location and uses of buildings and uses of land;

(11) "zoning regulations" mean the lawfully adopted zoning ordinances of a city and the lawfully adopted zoning resolutions of a county.

(b) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 2; July 1.

12-743. Same; notice to other units of government. (a) Before any city adopts a comprehensive plan or part thereof, subdivision regulations, zoning regulations or building or setback lines affecting property located outside the corporate limits of such city, written notice of such proposed action shall be given to the board of county commissioners of the county in which such property is located. Such notice also shall be given to the township board of the township in which such property is located if the township is located in a county not operating under the county unit road system. Such notice shall be given at least 20 days prior to the proposed action.

(b) Before any county adopts a comprehensive plan or part thereof, subdivision regulations, zoning regulations or building or setback lines affecting property located within three miles of the corporate limits of a city, written notice of such proposed action shall be given to the governing body of such city. In any county not operating under the county unit road system, before any county adopts a comprehensive plan or part thereof, subdivision regulations or building or setback lines, written notice of such proposed action shall be given to the township board of such township in which the affected property is located. The notice required by this subsection shall be given at least 20 days prior to the proposed action.

(c) The provisions of this section shall become effective on and after January 1, 1992.

History: L. 1991, ch. 56, § 3; July 1.

ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.
ATTORNEYS AT LAW

W. ROBERT ALDERSON, JR.
ALAN F. ALDERSON*
JOSEPH M. WEILER
DARIN M. CONKLIN
MARK A. BURGHART*
DANIEL W. CROW**
LESLIE M. MILLER
MICHELLE L. MILLER

2101 S.W. 21ST STREET
TOPEKA, KANSAS 66604-3174
MAILING ADDRESS: P.O. BOX 237
TOPEKA, KANSAS 66601-0237

(785)232-0753
FACSIMILE: (785)232-1866
WEB SITE: www.aldersonlaw.com

e-mail: boba@aldersonlaw.com

OF COUNSEL:
BRIAN FROST
THOMAS C. HENDERSON
JOHN E. JANDERA (RETIRED)

LL.M., TAXATION
*LICENSED TO PRACTICE IN
KANSAS AND MISSOURI

February 11, 2002

Martha Neu Smith, Executive Director
Kansas Manufactured Housing Association
214 S.W. 6th Street, Suite 206
Topeka, Kansas 66603-3719

RE: Senate Bill No. 528

Dear Martha:

You have contacted me regarding Senate Bill No. 528, which repeals K.S.A. 12-763. You indicate that the person requesting introduction of this bill believes that the repeal of this statute is necessary, because he believes it precludes a city from exercising its zoning authority with respect to mobile home parks. You have asked my opinion as to whether the statute has that effect.

The portion of K.S.A. 12-763 having relevance to your inquiry is subsection (a), which reads as follows:

"(a) The governing body shall not adopt or enforce zoning regulations which have the effect of excluding manufactured homes from the entire zoning jurisdiction of the governing body. In addition, the governing body shall not adopt or enforce zoning regulations which have the effect of excluding residential-design manufactured homes from single-family residential districts solely because they are manufactured homes."

The first sentence of the above-quoted subsection does not operate to preclude a city from exercising its zoning authority to regulate the location of mobile home parks. It simply provides that a city shall not exercise its zoning

Martha Neu Smith, Executive Director
February 11, 2002
Page 2

powers to totally exclude manufactured homes from the entire zoning jurisdiction of the city.

Similarly, the second sentence of this subsection does not preclude a city from regulating through its zoning authority the location of mobile home parks within the city's zoning jurisdiction. It simply states that a city shall not exercise its zoning powers to exclude "residential-design manufactured homes from single-family residential districts" solely because they are manufactured homes. The key to understanding the implications of this sentence in relation to the problem that SB 528 was intended to address is the fact that it deals only with single-family residential districts, and it governs the placement of a "residential-design manufactured home" (a defined term) within an area zoned for single-family residences. It does not apply to mobile home parks. Even though a mobile home park is comprised of mobile homes and manufactured homes used as single-family dwellings, the mobile home park itself would be subject to a zoning classification separate and apart from single-family residential districts.

Accordingly, it is my opinion that K.S.A. 12-763(a) does not operate to prevent a city from exercising its zoning powers to regulate the location of mobile home parks.

I trust this letter adequately responds to your request. If I can be of further assistance, please do not hesitate to call on me.

Very truly yours,



W. Robert Alderson
ALDERSON, ALDERSON, WEILER,
CONKLIN, BURGHART & CROW, L.L.C.

WRA:fm\bjb

The Factory-Built Housing Act
Approved by the ALEC Board of Directors, January 2001

Summary

This bill would allow factory-built housing in all areas zoned for single-family residential housing. Local governments would be able to establish aesthetic standards for factory-built homes so long as they are no more restrictive than those for site-built housing.

Model Legislation

(Title, enacting clause, etc.)

Section 1. This Act may be cited as the **Factory-Built Housing Act**.

Section 2. (Definitions.) As used in this Act, the following terms have the following meanings:

- (A) "Factory-built housing" means manufactured and modular housing;
- (B) "Manufactured housing" means housing built in a factory according to the Federal Manufactured Home Construction and Safety Standards which went into effect on June 15, 1976;
- (C) "Modular housing" means housing built in a factory that meets the state, local or regional building codes where the home will be sited.

Section 3. (Non-discrimination clause.)

Factory-built housing shall be considered a permitted use in all residential districts established by political subdivisions of this state and shall be accepted at the permitted density for the district.

Section 4. (Exceptions.)

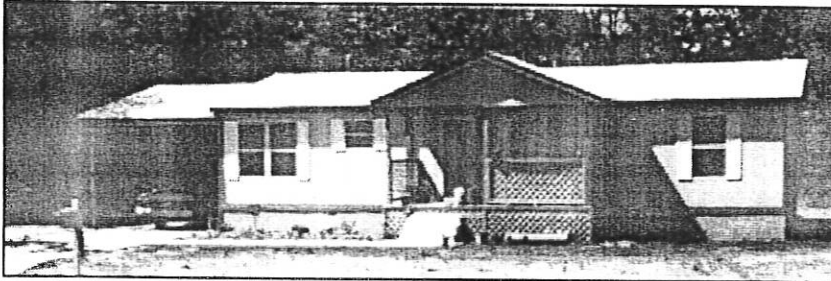
- (A) Political subdivisions are permitted to establish reasonable aesthetic standards for factory-built housing within their jurisdiction, including foundation requirements, building setbacks, subdivision control, architectural landscaping, square footage and other local site requirements applicable to single-family dwellings. However, these standards and the process for applying them shall be no more restrictive for factory-built housing than for housing units constructed on site.
- (B) Political subdivisions may be permitted to establish reasonable standards for manufactured housing for unique public safety requirements such as wind, snow and roof loads in accordance with 24 CFR Ch. XX § 3280.305.
- (C) Nothing in this Act shall be deemed to supersede any valid covenants or deed restrictions.

Section 5. (Severability clause.)

Section 6. (Repealer clause.)

Section 7. (Effective date.)

RENTERS, PICTURE YOUR FAMILY IN YOUR OWN HOME!



City/Local Industries
New Home Program
Changes Renters to
Home Owners!

Purchase a new \$53,207, 3 bedroom, 2 bath, 1,344 sq. ft.
Manufactured Home with carport in Parsons for 2% Down and
Monthly Payments Under \$350.00 per month!*

Income Guidelines
for New Home Program

<u>Family Size</u>	<u>Maximum Incomes</u>
1 person	\$21,650
2 persons	\$24,750
3 persons	\$27,850
4 persons	\$30,950
5 persons	\$33,450
6 persons	\$35,900
7 persons	\$38,400
8 persons	\$40,850

HOW TO APPLY:

Step 1 - Your household income must be under the income guidelines set by HUD

Step 2 - Identify a qualified property

Step 3 - Contact HOME Program Manager at 421-7031 for a list of participating lenders

Step 4 - Apply for a first mortgage loan with a participating lender

Step 5 - Direct local lender to initiate HOME application process

*Depends on Applicant's Family Income

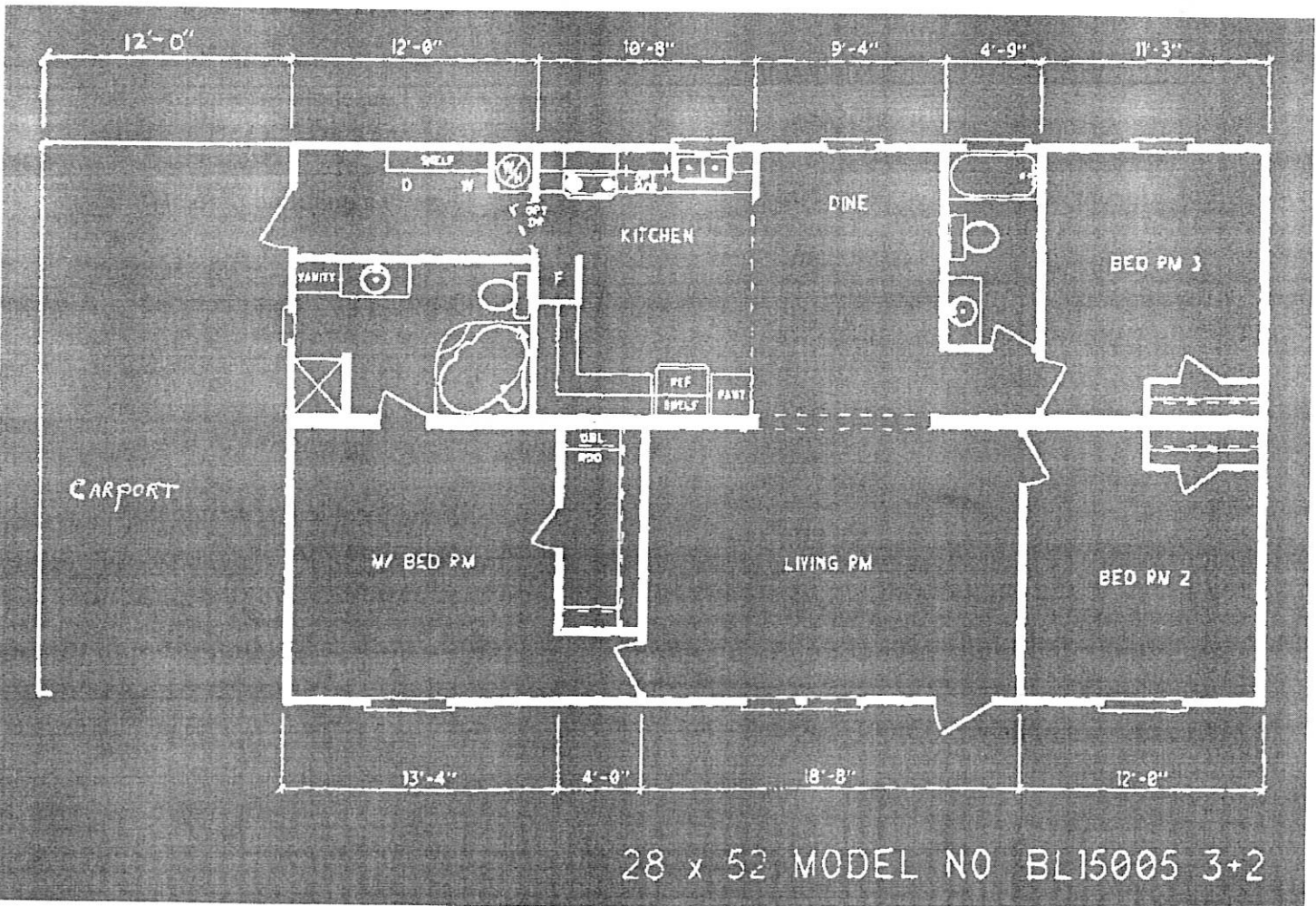
Senate Elec & Loc Gov
02-11-02
Attachment 8

Program Features

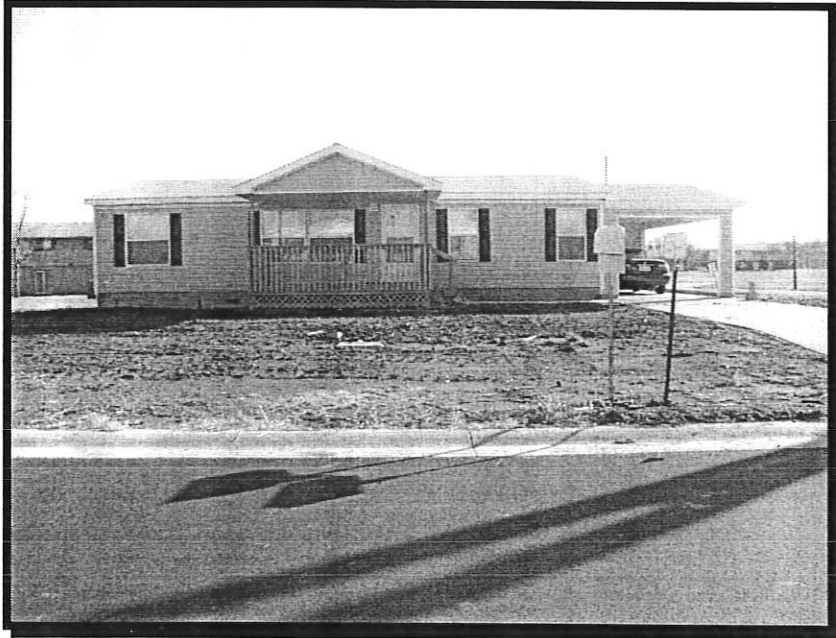
- 2nd Mortgage for Downpayment Assistance & Closing Costs (15% - 30% of purchase price depending on past 12 month income - forgiven after 5 years).
- \$12,000 3rd Mortgage at 0% interest. If you live in the house for 10 years this loan will be forgiven.
- 95% Property Tax Rebates for 5 years.
- Employer Downpayment Program - Check to see if your employer is participating.

THIS IS AN OPPORTUNITY OF A LIFETIME! We have funds available for only 12 houses! (Questions - City of Parsons Community Development 421-7031)

- Made possible by State of Kansas HOME First Time Homebuyer Program
- Kansas Community Service Tax Credit Program
- Kansas Neighborhood Revitalization Plan



City of Parsons Manufactured Homes-Residential Neighborhoods



**Manufactured Home Utilized Under the City's
Affordable Housing Program**



**Manufactured Home Used As A Replacement Home for A Family Who Lost Their
Home in the Tornado of April, 2000**



New home built by Labette County Conservation Camp Inmates
21st Century Homestead, Inc.