

MINUTES OF THE HOUSE ECONOMIC DEVELOPMENT COMMITTEE

The meeting was called to order by Chairperson Lana Gordon at 3:30 P.M. on March 15, 2005 in Room 526-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Susan Kannarr, Kansas Legislative Research Department
Renae Jefferies, Revisor of Statutes
Helen Pedigo, Revisor of Statutes
Carlene Maag, Committee Secretary

Conferees appearing before the committee:

Barbara Hinton, Legislative Post Audit

Others attending:

See attached list.

A motion was made by Representative Treaster and seconded by Representative Novascone to approve the minutes of the March 8, 2005 meeting. The minutes were approved.

HB 2012 - Sales tax and revenue bonds; clarification of language

Chairperson Gordon ask Staff to give a brief review of **HB 2012**. This bill, which pertains to STAR bond legislation, had been heard earlier in the session. The Post Audit Report suggested changes needed to be made to the bill. Staff has drafted amendments to the bill.

HB 2012 is a bill that was recommended by the Interim Committee as a recommendation for clarification of the Tax Increment Financing Statutes. The bill amends the feasibility study requirement and also reorganizes the existing statutes for ease of use by cities. (Attachment 1) Copies of previous testimony was handed to the committee. (Attachments 2, and 3)

Staffed presented amendments as drafted to the Committee.

Page 4 of **HB 2012** refers to the feasibility study. An oversight that was not included in the original bill is:

- (H) the expected return on state and local investment that the project is anticipated to produce;
- (I) the projected payback in tax dollars for the local community; and
- (J) an explanation of whether the project will provide unfair competition to existing businesses in the community

Some of the concerns listed in the Post Audit report were:

- Page 4, line 30 with the phrase "but not limited to". Staff has suggested striking that language.
- Line 32, concern of payment of relocation assistance not only to the people from who ground was taken thru eminent domain but also was used in terms of bringing their employees into that area. Staff suggested on line 32 adding the phrase "for persons dispossessed of their land pursuant to K.S.A. 12-1773, and amendments thereto.

In relation to KSA 12-1777, "C", Staff tried to make it clear that only those people being moved out, are eligible for relocation assistance.

Page 5 of the bill, from line 10 after "however, the redevelopment project costs," thru line 16 could be taken out and have a statement that says, redevelopment project cost shall not include, cost incurred in connection with construction of buildings or structures to be owned or leased by a developer. Items from the Post Audit Report that could be added here are:

- Fees and commissions paid to real estate agents, financial advisors and consultants who are

CONTINUATION SHEET

MINUTES OF THE House Economic Development Committee at 3:30 P.M. on March 15, 2005 in Room 526-S of the Capitol.

- employed by and represent the businesses considering location in a development
- Salaries for local government employees who work on redevelopment projects if the local government does not incur any out-of-pocket costs
- Moving expenses for employees of the businesses locating within the redevelopment district
- Property taxes for businesses that locate into the redevelopment district
- Lobbying cost

Page 12 of the bill deals with the Kansas Speedway. In an attempt to draw an end to that project, put a date certain on that project.

Another amendment given to Staff for consideration has to do with redevelopment projects that are not necessary a new project.

Sections 10 and 11 would be new to the bill. (Attachment 4)

Barbara Hinton from Legislative Post Audit presented comments concerning **HB 2012**. (Attachment 5)

Due to lack of time, testimony from Eric Sartorius, representing the City of Overland Park, (Attachments 6 and 7) and Dorothea Riley, Bond Counsel to the City of Lenexa (Attachment 8) was not heard.

After a lengthy discussion, it was decided there were a lot of amendments to consider.

Representative Roth made a motion to move that representatives from the Department Commerce, Department of Revenue, Legislative Post Audit and Staff from the Office of Revisor of Statutes meet before the next meeting, to discuss all amendments being considered. The motion was seconded by Representative Holmes. A vote was taken, motion passed. This information would then be brought to the next meeting for further discussion and possible passage by the committee.

The meeting adjourned at 5:15 p.m. The next meeting is scheduled for March 17, 2005.

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January 31, 2005

To: House Committee on Economic Development
From: Kathie Sparks, Principal Analyst
Re: HB 2012

HB 2012 is the work of the Joint Committee on Economic Development and a copy of the Committee's report is attached. The bill amends the feasibility study requirement to include:

- A statement of how the jobs and taxes obtained from the project will contribute significantly to the economic development of the state and region;
- A statement concerning whether a portion of the sales tax to be collected is committed to other uses and unavailable as revenue for the project, and the details about the committed funds;
- The anticipated principal and interest payment schedule for the bonds;
- A copy of the minutes of the governing body meeting or meetings of any city whose bonding authority will be utilized in the project to provide evidence that a redevelopment plan has been created, discussed, and adopted by the city in a regularly scheduled open public meeting;
- For a proposed major commercial entertainment and tourism area, the feasibility study must also include:
 - visitation expectations;
 - economic impact;
 - the unique quality of the project; and
 - the ability of the project to gain sufficient market share to remain profitable past the term of repayment and maintain status as a significant factor for travel decisions.
- An explanation of the integration and collaboration with other resources or businesses; and
- An explanation of the quality of service and experience provided, as measured against national consumer standards for the specific target market and project accountability, measured according to best industry practices.

The bill also reorganizes the existing statutes for ease of use by cities, as requested by the interim committee.

40921~(1/31/5{11:32AM ;})

House Economic Development
Attachment 1
3-15-05

Joint Committee on Economic Development

SALES TAX AND REVENUE (STAR) BONDS

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends a bill draft be prepared that clarifies the current STAR Bond statutes and that the feasibility study also is required to provide the following information:

- the return on investment for the State of Kansas;
- the projected payback in tax dollars for the local community; and
- an explanation of whether or not the project will provide unfair competition to existing businesses in the community.

Proposed Legislation: The Committee recommends one bill on this topic.

BACKGROUND

The Joint Committee on Economic Development is a statutorily authorized committee charged with maintaining and promoting economic development in Kansas. The Committee also is charged with receiving annual reports from the Department of Commerce and Kansas, Inc. During the 2004 interim, the Legislative Coordinating Council (LCC) charged the Committee with reviewing the use of sales tax and revenue (STAR) bonds by local units of government to ensure that the original legislative purpose for this economic development tool is being utilized appropriately.

COMMITTEE ACTIVITIES

Current Projects and Proposed Projects

In compliance with the LCC directive, the Committee heard testimony from representatives of the Wyandotte County project, the only approved project as of this date, and from representatives of the following proposed projects in Olathe and Wichita.

The Committee was fully informed about the expansion of the racetrack and the construction of the Legends Shopping Center including the tenants who have committed for space in the Center or free-standing buildings within the 400 acres of the racetrack STAR bond project. The total project, when completed, is projected to generate the following:

- Ten million visitors annually;
- Two million square feet of development;
- \$870 million in combined public and private investment;
- \$450 million in annual sales;
- \$53 million in annual tax revenue;
- \$7 million in new property taxes; and
- 4,000 new jobs (1,100 construction jobs).

In addition, during 2003, the Kansas Speedway accounted for \$114 million in new housing construction in Wyandotte County.

The City of Olathe has submitted a proposal to the Lt. Governor's Office for tentative approval of a 9,000 seat, community-owned arena. The arena project is estimated to create 650,000 square feet of new retail stores, jobs,

and a regional destination for those seeking shopping and entertainment opportunities. The City hopes to use STAR bonds to finance site preparation, infrastructure, land acquisition, and relocation costs.

The City of Wichita project, known as the downtown WaterWalk, is described as a public-private partnership that will combine public improvements including a waterway, parking facilities, street improvements, plaza areas, an outdoor amphitheater, and riverbank improvements with the private development of shopping, restaurants, offices, apartments, and condominiums. The project area is located in a deteriorated area immediately south of the City's Century II Convention Complex and is to be financed with tax increment financing, general obligation bonds, and private sector financing. The conferee explained that STAR Bonds will not be used to finance any buildings or structures that will be owned by or leased to any private business entity, but the bonds will be used for infrastructure and other costs specifically authorized in the statutes. The conferee also requested that no change in the legislation be made except that the "marketing study" requirement could use refinement.

State Approval Process

Representatives of the Kansas Department of Commerce explained that the Secretary had established a review committee to assist in the evaluation of STAR Bond applications. In addition to the Secretary, members of the evaluation committee include the Secretary of Revenue; President of Kansas Technology Enterprise Corporation; President of Kansas, Inc.; President, Executive Vice President, and General Counsel of Kansas Development

Finance Authority; and Deputy Secretary and Director of Business Development for Kansas Department of Commerce. The Department of Commerce has received applications from Edwardsville, Wichita, and Olathe; a draft feasibility study from Abilene; and a letter referencing a proposal by Overland Park; however, no proposal has yet been approved.

The Secretary of Commerce has suggested that a minimum of 20 percent of the annual visitations to any major entertainment and tourism area be multi-state visitors and 30 percent come from more than 100 miles from the project site as a guideline for units of government. In addition, the rules and regulations are awaiting approval from the Kansas Department of Administration and the Attorney General's Office. The intent of the Department of Commerce is to appear before the Joint Committee on Administrative Rules and Regulations for approval of the rules and regulations by the end of 2004.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends a bill draft be prepared that clarifies the current STAR Bond statutes and that the feasibility study also is required to provide the following information:

- the return on investment for the State of Kansas;
- the projected payback in tax dollars for the local community; and
- an explanation of whether or not the project will provide unfair competition to existing businesses in the community.



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Testimony
Before The House Economic Development Committee
Regarding
House Bill 2012

February 3, 2005

The City of Overland Park appreciates the opportunity to appear before the committee on House Bill 2012.

Originally, we were going to appear before the committee with a neutral position on the bill. While we wish to retain that position, recent reviews of the bill by a number of individuals have raised concerns as to whether HB 2012 does indeed reflect the committee's intent.

The primary focus of our concern is whether the expanded feasibility study requirements of HB 2012, as seen on page three of the bill (A through G), are intended to apply to all local projects that utilize tax increment financing (TIF). It was the City's understanding that only those TIF projects that were part of a STAR bonds project were to have expanded feasibility study requirements. The report of the Joint Committee on Economic Development to the 2005 Legislature does recommend the changes encapsulated in House Bill 2012; however, the suggested changes are all discussed in the context of STAR bond projects.

The issue raised above lends itself to a broader point the City wished to make regarding House Bill 2012. Namely, the City would ask the legislature to proceed cautiously as it considers changing the STAR bonds statute. While legislation is certainly the legislature's prerogative, we believe that the Secretary of Commerce, via rules and regulations, has been able to be responsive to direction from the legislature. Given the delicate nature of STAR bonds projects, we would hate to see our project, or any project, jeopardized by changes to the statute that caused unintended consequences.

Thank you for providing the City an opportunity to share our concerns regarding House Bill 2012. We look forward to working with the committee to ensure that legislation regarding STAR bonds does indeed address the legislature's concerns as intended.



DEPARTMENT OF COMMERCE
HOWARD R. FRICKE, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

February 3, 2005

Testimony to the House Committee on Economic Development
Matt Jordan, Director of Operations

House Bill 2012

Chairperson Gordon and members of the committee, the Department of Commerce appreciates the opportunity to share its views regarding HB 2012 and potential changes to the STAR Bonds statutes. Commerce is neutral with respect to this bill in its current form and simply wishes to offer thoughts for the committee to consider.

As you are aware, in 2003, the Legislature granted the Secretary of Commerce the authority to approve the use of STAR Bonds for economic development projects that rise to regional or statewide significance. In particular, KSA 12-1770 outlines the intent to promote, stimulate, and develop the general and economic welfare of the state of Kansas and its communities. This tool is scheduled to sunset as of July 1, 2007.

As you know, the agency is working through the process to create rules and regulations to help guide the application of STAR Bonds statutes. Commerce appreciated the opportunity to review and discuss those regulations with this committee. Please note that additional input and advice are certainly welcome as discussions of this subject move forward throughout the session.

Commerce wishes to note that communities considering or actively pursuing use of this financing tool consistently have requested that the rules be clearly defined and fairly enforced. Furthermore, they have increasingly resisted changes to the statute as such actions create uncertainty, cause delays, and increase costs for projects actively in the planning phases.

As you are aware, Commerce has received formal applications from six communities. A number of other communities are in the pre-application phase. This point is raised to serve as a reminder that changes to the statutes will have a ripple effect across the state in ways that are probably not known at this time.

Commerce wishes to request, if changes are deemed necessary to the STAR Bonds statute, that your intent is clearly delineated and that the Secretary of Commerce is empowered to carry out responsibilities directed to the agency.

Commerce believes STAR Bonds offer an important tool to help finance major economic development projects in our state. Therefore, the Secretary of Commerce welcomes any actions this body may take to clarify and improve their use.

I wish to thank the committee for its time and would now stand for questions.

House Economic Development
Attachment 3
3-15-05

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HOUSE BILL No. 2012

By Joint Committee on Economic Development

12-17

9 AN ACT regarding tax increment financing; clarification of statutes;
10 amending K.S.A. 12-1774a and K.S.A. 2004 Supp. 12-1770a, 12-1771,
11 12-1771b, 12-1773, 12-1774, 12-1780b and 12-1780c and repealing the
12 existing sections.
13

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

15 Section 1. K.S.A. 2004 Supp. 12-1770a is hereby amended to read
16 as follows: 12-1770a. As used in ~~the bioeconomy development~~ *this* act, and
17 amendments thereto, the following words and phrases shall have the fol-
18 lowing meanings unless a different meaning clearly appears from the
19 content:

20 (a) "Auto race track facility" means: (1) An auto race track facility and
21 facilities directly related and necessary to the operation of an auto race
22 track facility, including, but not limited to, grandstands, suites and viewing
23 areas, concessions, souvenir facilities, catering facilities, visitor and retail
24 centers, signage and temporary hospitality facilities, but excluding (2) ho-
25 tels, motels, restaurants and retail facilities, not directly related to or nec-
26 essary to the operation of such facility.

27 (b) "Base year assessed valuation" means the assessed valuation of all
28 real property within the boundaries of a redevelopment district on the
29 date the redevelopment district was established.

30 (c) "Blighted area" means an area which:

31 (1) Because of the presence of a majority of the following factors,
32 substantially impairs or arrests the development and growth of the mu-
33 nicipality or constitutes an economic or social liability or is a menace to
34 the public health, safety, morals or welfare in its present condition and
35 use:

36 (A) A substantial number of deteriorated or deteriorating structures;

37 (B) predominance of defective or inadequate street layout;

38 (C) unsanitary or unsafe conditions;

39 (D) deterioration of site improvements;

40 (E) tax or special assessment delinquency exceeding the fair market
41 value of the real property;

42 (F) defective or unusual conditions of title including but not limited
43 to cloudy or defective titles, multiple or unknown ownership interests to

PROPOSED AMENDMENT
POST AUDIT RECOMMENDATIONS
March 14, 2005

House Economic Development
Attachment 4
3-15-05

1 (F) the quality of service and experience provided, as measured
 2 against national consumer standards for the specific target market; and
 3 (G) project accountability, measured according to best industry
 4 practices.

5 (l) "Historic theater" means a building constructed prior to 1940
 6 which was constructed for the purpose of staging entertainment, includ-
 7 ing motion pictures, vaudeville shows or operas, that is operated by a
 8 nonprofit corporation and is designated by the state historic preservation
 9 officer as eligible to be on the Kansas register of historic places or is a
 10 member of the Kansas historic theatre association.

11 (m) "Historic theater sales tax increment" means the amount of state
 12 and local sales tax revenue imposed pursuant to K.S.A. 12-187 et seq.,
 13 79-3601 et seq. and 79-3701 et seq., and amendments thereto, collected
 14 from taxpayers doing business within the historic theater that is in excess
 15 of the amount of such taxes collected prior to the designation of the
 16 building as a historic theater for purposes of this act.

17 (n) "Major tourism area" means an area for which the secretary has
 18 made a finding the capital improvements costing not less than
 19 \$100,000,000 will be built in the state to construct an auto race track
 20 facility.

21 (o) "Real property taxes" means all taxes levied on an ad valorem basis
 22 upon land and improvements thereon, except that when relating to a
 23 bioscience development district, as defined in this section, "real property
 24 taxes" does not include property taxes levied for schools, pursuant to
 25 K.S.A. 72-6431, and amendments thereto.

26 (p) "Redevelopment project area" or "project area" means an area
 27 designated by a city within a redevelopment district.

28 (q) "Redevelopment project costs" means those costs necessary to
 29 implement a redevelopment project plan or a bioscience development
 30 project plan, including, but not limited to, costs incurred for:

- 31 (1) Acquisition of property within the redevelopment project area;
- 32 (2) payment of relocation assistance;
- 33 (3) site preparation including utility relocations;
- 34 (4) sanitary and storm sewers and lift stations;
- 35 (5) drainage conduits, channels, levees and river walk canal facilities;
- 36 (6) street grading, paving, graveling, macadamizing, curbing, gutter-
- 37 ing and surfacing;
- 38 (7) street light fixtures, connection and facilities;
- 39 (8) underground gas, water, heating and electrical services and con-
- 40 nections located within the public right-of-way;
- 41 (9) sidewalks and pedestrian underpasses or overpasses;
- 42 (10) drives and driveway approaches located within the public right-
- 43 of-way;

;

(H) the expected return on state and local investment that the project is anticipated to produce;

(I) the projected payback in tax dollars for the local community; and

(J) an explanation of whether the project will provide unfair competition to existing businesses in the community

for persons dispossessed of their land pursuant to K.S.A. 12-1773, and amendments thereto

- 1 (11) water mains and extensions;
- 2 (12) plazas and arcades;
- 3 (13) parking facilities;
- 4 (14) landscaping and plantings, fountains, shelters, benches, sculp-
- 5 tures, lighting, decorations and similar amenities; and
- 6 (15) all related expenses to redevelop and finance the redevelopment
- 7 project.

8 Redevelopment project costs shall not include costs incurred in con-
 9 nection with the construction of buildings or other structures to be owned
 10 by or leased to a developer, however, the "redevelopment project costs"
 11 shall include costs incurred in connection with the construction of build-
 12 ings or other structures to be owned or leased to a developer which in-
 13 cludes an auto race track facility or is in a redevelopment district including
 14 some or all of the land and buildings comprising a state mental institution
 15 closed pursuant to section 2 of chapter 219 of the 1995 Session Laws of
 16 Kansas.

17 (r) "Redevelopment district" means the specific area declared to be
 18 an eligible area in which the city may develop one or more redevelopment
 19 projects.

20 (s) "Redevelopment district plan" or "district plan" means the pre-
 21 liminary plan that identifies all of the proposed redevelopment project
 22 areas and identifies in a general manner all of the buildings, facilities and
 23 improvements in each that are proposed to be constructed or improved
 24 in each redevelopment project area.

25 (t) "Redevelopment project" means the approved project to imple-
 26 ment a project plan for the development of the established redevelop-
 27 ment district.

28 (u) "Redevelopment project plan" or "~~project plan~~" means the plan
 29 adopted by a municipality for the development of a redevelopment pro-
 30 ject or projects which conforms with K.S.A. 12-1772, and amendments
 31 thereto, in a redevelopment district.

32 (v) "Secretary" means the secretary of commerce.

33 (w) "Substantial change" means, as applicable, a change wherein the
 34 proposed plan or plans differ substantially from the intended purpose for
 35 which the district plan or project plan was approved.

36 (x) "Tax increment" means that amount of real property taxes col-
 37 lected from real property located within the redevelopment district that
 38 is in excess of the amount of real property taxes which is collected from
 39 the base year assessed valuation.

40 (y) "Taxing subdivision" means the county, city, unified school district
 41 and any other taxing subdivision levying real property taxes, the territory
 42 or jurisdiction of which includes any currently existing or subsequently
 43 created redevelopment district including a bioscience development

In addition, redevelopment project costs shall not include:

- (1) Fees and commissions paid to real estate agents, financial advisors and consultants who are employed by and represent the businesses considering locating in a development;
- (2) salaries for local government employees who work on redevelopment projects if the local government does not incur any out-of-pocket costs;
- (3) moving expenses for employees of the businesses locating within the redevelopment district;
- (4) property taxes for businesses that locate in the redevelopment district;
- and
- (5) lobbying costs.

1 select qualified developers pursuant to a request for proposals in accord-
 2 ance with written official procedures approved by the governing body of
 3 the city. Any project within such additional area that is financed in whole
 4 or in part by special obligation bonds payable from revenues derived from
 5 subsection (a)(1)(D) or (a)(1)(G) of K.S.A. 12-1774, and amendments
 6 thereto, shall not be entitled to any real property tax abatements or the
 7 revenues described in K.S.A. 12-1775, and amendments thereto. Any pro-
 8 ject within such additional area must be approved by the governor and
 9 construction must be commenced by July 1, 2002. Any business located
 10 in Kansas within 50 miles of a major tourism area that relocates into a
 11 major tourism area shall not receive any of the benefits of K.S.A. 12-1770
 12 et seq., and amendments thereto.

13 (c) If a city determines that revenues from sources other than prop-
 14 erty taxes will be sufficient to pay any special obligation bonds issued to
 15 finance a redevelopment project for an auto race track facility as de-
 16 scribed in subsection (a) of K.S.A. 12-1770a, and amendments thereto,
 17 and the secretary of commerce makes a finding that such project will
 18 create a major tourism area pursuant to subsection (n) of K.S.A. 12-1770a,
 19 and amendments thereto, all real and personal property, constituting an
 20 auto race track facility described in subsection (a) of K.S.A. 12-1770a, and
 21 amendments thereto, in such redevelopment district shall be exempt
 22 from property taxation for a period ending on the earlier of (1) the date
 23 which is 30 years after the date of the finding by the secretary of com-
 24 merce with respect to such major tourism area; or (2) the date on which
 25 no such special obligation bonds issued to finance such auto race track
 26 facility in a major tourism area remain outstanding.

27 (d) The city which is authorized to issue bonds pursuant to the pro-
 28 visions of K.S.A. 12-1770 et seq. in order to finance a redevelopment
 29 project in a major tourism area as defined by K.S.A. 12-1770a, and
 30 amendments thereto, shall obtain underwriting services required by the
 31 city for the issuance of such bonds pursuant to written proposals received
 32 in accordance with this section.

33 (e) Each city which is authorized to issue such bonds shall establish
 34 written official procedures for obtaining underwriting services required
 35 for the issuance of such bonds, including specifications for requests for
 36 proposals and criteria for evaluation of proposals on a competitive basis.
 37 The proposal evaluation criteria shall include factors based on cost, ca-
 38 pacity to provide the required services, qualifications and experience.

39 (f) Prior to the issuance of any such bonds to finance a redevelopment
 40 project in a major tourism area after the effective date of this act, the city
 41 shall publish notice of a request for proposals to provide the underwriting
 42 services that are required by the city with regard to the proposed bond
 43 issuance and shall mail requests for proposals to qualified interested par-

On and after July 1, 2005, any project or phase of a project initiated under this section shall be considered a special bond project and shall be subject to the documentation requirements and approvals required for a special bond project, pursuant to K.S.A. 12-1770a, and amendments thereto.

1 the project is the restoration of a historic theater as defined in subsection
 2 (l) of K.S.A. 12-1770a, and amendments thereto, or the project has been
 3 designated as a special bond project as defined in subsection (z) of K.S.A.
 4 12-1770a, and amendments thereto, ~~except that, with respect to a rede-~~
 5 ~~velopment district established prior to January 1, 2003, for which, prior~~
 6 ~~to January 1, 2003, the secretary of commerce made a finding as provided~~
 7 ~~in this subsection that a redevelopment project would create a major~~
 8 ~~tourism area for the state, such special obligation bonds shall be payable~~
 9 ~~both as to principal and interest, from a pledge of all of the revenue from~~
 10 ~~any transient guest, state and local sales and use taxes collected from~~
 11 ~~taxpayers as provided in this subsection whether or not revenues from~~
 12 ~~such taxes are received by the city. The proceeds of special obligation~~
 13 ~~bonds issued pursuant to this paragraph after the effective date of this~~
 14 ~~act, shall not be used to finance personal property as defined in K.S.A.~~
 15 ~~79-102, and amendments thereto;~~

16 (E) (i) from a pledge of a portion or all increased revenue received
 17 by the city from franchise fees collected from utilities and other busi-
 18 nesses using public right-of-way within the redevelopment district: (ii)
 19 from a pledge of all of the revenue received by the city from sales taxes;

20 (F) with the approval of the county, from a pledge of all of the rev-
 21 enues received by the county from any transient guest, local sales and use
 22 taxes which are collected from taxpayers doing business within that por-
 23 tion of the redevelopment district established pursuant to K.S.A. 12-1771,
 24 and amendments thereto; ~~or~~

25 (G) *from a pledge of all of the revenue received by the city from any*
 26 *state sales and use taxes which are collected from taxpayers doing business*
 27 *within that portion of the city's redevelopment district occupied by a*
 28 *redevelopment project if the secretary finds that, based upon the feasi-*
 29 *bility study, the redevelopment project will create a major tourism area*
 30 *for the state: is the restoration of a historic theater as defined in subsection*
 31 *(l) of K.S.A. 12-1770a, and amendments thereto; or has been designated*
 32 *a special bond project as defined in subsection (z) of K.S.A. 12-1770a, and*
 33 *amendments thereto. The proceeds of special obligation bonds issued pur-*
 34 *suant to this paragraph after the effective date of this act, shall not be*
 35 *used to finance personal property as defined in K.S.A. 79-102, and amend-*
 36 *ments thereto;*

37 ~~(G)~~(H) by any combination of these methods except that for a project
 38 which has been designated as a special bond project as defined in sub-
 39 section (z) of K.S.A. 12-1770a and amendments thereto, 100% of city and
 40 county sales taxes shall be pledged for such project except for amounts
 41 committed to other use by election of voters prior to the effective date
 42 of this act.

43 The city may pledge such revenue to the repayment of such special

With respect to such redevelopment project that is intended to improve or update a prior project, only the increased portion of the transient guest, state and local sales and use taxes collected due to the improvement, based upon the collections in the year before the special obligation bonds were issued for the improvement, shall be used to pay the principal and interest on the special obligation bonds issued for the project.

1 commissioners of the county and the board of education of any school
 2 district levying taxes on property subject to the special bond project. The
 3 resolution shall be published once in the official city newspaper not less
 4 than one week nor more than two weeks preceding the date fixed for the
 5 public hearing. A description in sufficient detail to advise the reader of
 6 the particular proposed special bond project shall be published with the
 7 resolution.

8 (3) At the public hearing, a representative of the city shall present
 9 the city's proposed project plan. Following the presentation of the project
 10 plan, all interested persons shall be given an opportunity to be heard. The
 11 governing body for good cause shown may recess such hearing to a time
 12 and date certain, which shall be fixed in the presence of persons in at-
 13 tendance at the hearing.

14 (d) The public hearing records and feasibility study shall be subject
 15 to the open records act, K.S.A. 45-215, and amendments thereto.

16 (e) *Posthearing procedure.* Following the public hearing, the govern-
 17 ing body may adopt the project plan by ordinance passed upon a 2/3 vote.

18 (f) Any substantial changes as defined in K.S.A. 12-1770a, and
 19 amendments thereto, to the project plan as adopted shall be subject to a
 20 public hearing following publication of notice thereof at least twice in the
 21 official city newspaper.

22 (g) Any project shall be completed within 20 years from the date of
 23 the approval of the project plan. Kansas resident employees shall be given
 24 priority consideration for employment in construction projects located in
 25 a special bond project area.

26 (h) Any developer of a special bond project shall commence work on
 27 such project within two years from the date of adoption of the project
 28 plan. Should the developer fail to commence work on the special bond
 29 project within the two-year period, funding for such project shall cease
 30 and the developer of such project shall have one year to appeal to the
 31 secretary for reapproval of such project and the funding for it. Should
 32 the project be reapproved, the two-year period for commencement shall
 33 apply.

34 (i) *The secretary of revenue shall determine when the amount of sales*
 35 *tax and other revenues that have been collected and distributed to the*
 36 *bond debt service or reserve fund is sufficient to satisfy all principal and*
 37 *interest costs to the maturity date or dates, of any special obligation bonds*
 38 *issued by a city to finance a special bond project. Thereafter, all sales tax*
 39 *and other revenues shall be collected and distributed in accordance with*
 40 *applicable law.*

41 ~~(j)~~ (j) The provisions of this act regarding special bond projects shall
 42 expire on and after July 1, 2007.

43 Sec. 9. K.S.A. 12-1774a and K.S.A. 2004 Supp. 12-1770a, 12-1771,

Insert K.S.A. 12-1777 as Sec. 9 and New Sec. 10 here. Renumber remaining sections.

- 1 12-1771b, 12-1773, 12-1774, 12-1780b and 12-1780c are hereby repealed.
- 2 Sec. 10. This act shall take effect and be in force from and after its
- 3 publication in the statute book.

2-7

Sec. 9. K.S.A. 12-1777 is hereby amended to read as follows:
12-1777. Before any redevelopment project shall be initiated under this act a relocation assistance plan shall be approved by the governing body proposing to undertake the project. Such relocation assistance plan shall:

(a) Provide for relocation payments to be made to persons, families and businesses who move from real property located in the redevelopment district or who move personal property from real property located in the redevelopment district as a result of the acquisition of the real property by the city in carrying out the provisions of this act. With respect to any redevelopment project other than one which includes an auto race track facility, such payments shall not be less than \$500;

(b) provide that no persons or families residing in the redevelopment district shall be displaced unless and until there is a suitable housing unit available and ready for occupancy by such displaced person or family at rents within their ability to pay. Such housing units shall be suitable to the needs of such displaced persons or families and must be a decent, safe, sanitary and otherwise standard dwelling; and

(c) provide for the payment of any damages sustained by a retailer, as defined by K.S.A. 79-3702, and amendments thereto, by reason of the liquidation of inventories necessitated by relocation from the redevelopment district.

New Sec. 10. For projects involving the use of financing pursuant to K.S.A. 12-1774(a)(1)(G), the secretary shall set a limit on the total amount of such special obligation bonds that may be issued for a redevelopment project. Such special obligation bonds must be sold on the open market and may not be sold in a private issue.

New Sec. 11. Redevelopment projects using financing pursuant to K.S.A. 12-1774(a)(1)(G), and amendments thereto, shall be subject to an audit by legislative post audit every two years from the date the project is approved for such financing. The results of the audit shall be reported to the house economic development committee, the senate commerce committee, the governor and the secretary of commerce during the legislative session immediately following the audit.

(b) Such audit shall determine whether bond financing obtained pursuant to K.S.A. 12-1774(a)(1)(G) is being used only for the authorized purposes or if the funds are being used for ineligible or questionable purposes.

(c) If audit findings indicate that bond funds have been used for unauthorized, ineligible or questionable purposes, the responsible party shall repay to the bond fund all such unauthorized, ineligible and questionable expenditures. Such responsible party shall enter into a repayment agreement with the secretary of commerce specifying the terms of such repayment obligation. In addition, the division of post audit shall report any evidence of criminal activity, in the opinion of the division of post audit, to the attorney general for consideration with regard to pursuing criminal charges.

**Legislative Post Audit Comments on
Amendments to House Bill 2012
March 15, 2005**

PAGE 4

1. **Stricken Language under part (q)** – From a statutory construction perspective, does the phrase, “including costs incurred for:” actually limit the costs that can be paid for? Should the language say that such costs are “limited to the following:”?

PAGE 5

2. **Balloon** – We would propose the following changes:
 - Under Item 1, change to “. . . real estate agents, financial advisors, and other consultants . . .”
 - Under Item 1, strike the words “are employed by”.
 - Strike Item 3, as it is already addressed by the second balloon on page 4.
3. **In addition** – Modify item #15 in the list of permissible uses of STAR bonds to say something like the following:

(15) expenses incurred by the local government in issuing the bonds necessary to finance the project. Such expenses shall not include fees or commissions paid on behalf of persons purchasing the bonds.

Then insert a provision that any other expenses would need to be specifically approved by some authority such as the Secretary of Commerce.

NEW SECTION 10

4. While private bond sales are a concern, prohibiting them may be too strong. There may indeed be instances where this is the best way to issue the STAR bonds.

NEW SECTION 11

5. **Section (a)** – These redevelopments are already “subject to” an audit under the Legislative Post Audit Act. If this section is mandating an audit, the language should say an audit “shall be conducted” rather than subject to.
6. We would suggest that the statute require an independent audit commissioned by the local government to ensure compliance with the State’s laws.

7. If the legislature would prefer that the audit be conducted through Legislative Post Audit, we would suggest the following:
 - The requirement be tied to redevelopment districts, not projects
 - Instead of an audit every two years, the law should require at least one audit at the direction of the Legislative Post Audit Committee
 - Language should be included that would allow us to contract the audit out to an audit firm
 - Provisions should be included to pay for the audit with STAR bond proceeds.
 - The Department of Commerce would need to be required to notify Legislative Post Audit of all approved redevelopment projects.

8. **Section (c)** – Questionable expenditures are still legal expenditures. It seems that shouldn't be subject to a recoupment mechanism.

In addition, the Post Audit Act already requires any instances of misfeasance, malfeasance or nonfeasance found in one of our audits to be reported to the Attorney General.

OTHER GENERAL COMMENTS

9. The amendments don't address Rec (1)(c) of the audit report which would make a State official responsible for reviewing and approving the terms of major agreements.
10. The amendments don't address Rec (1)(f) of the audit report which would place a limit on the total amount of STAR bonds that can be issued for Village West.
11. The amendments wouldn't prevent lease agreements (like the theater lease) from being used to circumvent the statute. The policy issue to consider is:

Should revenues derived from a facility owned by a local government and built with STAR bonds only be used for (1) facility operating expenditures or (2) STAR bond repayment?

Explanation of Balloon Amendments to HB 2012

1. Section 1

12-1770a(k)(1)(B) – amended to clarify that the additional information required for feasibility studies will only apply to bioscience projects and STAR bond projects, not to the typical TIF projects that may be proposed. It also makes the substance of (B) actually a subparagraph (i) reflecting the effect of the project on outstanding special obligation bonds payable from the same revenues within the redevelopment district. (B) now becomes the introductory paragraph for subparagraphs (B)-(E) which have been renumbered (i) – (iv).

12-1770a(k)(1)(C), (D) and (E) – converts (C),(D) and (E) to subparagraphs (ii) – (iv) under 12-1770a1(k)(1)(B) as described above. These are all items to be included in the feasibility study.

12-1770a(k)(1)(E) (now (B)(iv)(aa) and (bb) –“sales tax” has been amended to reflect “local sales and use taxes”. In the 2004 Legislative Session, 12-1774 was amended to specifically broaden the local sales tax references to include local sales tax collected under home rule authority. This makes the feasibility study information consistent with the revenues being pledged.

12-1770a(k)(2)(G) was deleted. The redevelopment plan will not have been approved when the feasibility study is prepared. The feasibility study must occur prior to the adoption of the project plan. In fact, a summary of the feasibility report must be included in the project plan that is adopted. (See KSA 12-1772(a)(1) and (b)(4)).

2. Section 2

12-1771(a) – amended to add Kansas Bioscience authority as the entity that adopts a resolution indicating consideration of a bioscience development district. This is consistent with the first sentence in this section.

12-1771(m) – amended to clarify that when working with a “county” as opposed to a “city”, references to “ordinances” shall mean “resolution” because the governmental bodies use different terminology for their official documents.

3. New Section 4

12-1772 – This new section was added to correct an error in K.S.A. 12-1772 as a result of last year’s adoption of HB 2647. That bill added all bioscience provisions and inadvertently modified 12-1772(c)(2) to require cities to provide notice of the public hearing on redevelopment project plans to K DFA, as well as the county, school district and owners/occupants in the project area. The notice

to KDFA was intended to apply only to bioscience TIF projects, not regular TIF or STAR Bond projects as KDFA is not involved in those type of projects.

4. Old Section 4 (new Section 5)

The term "redevelopment" was inserted before the "project plan" reference because HB 2012 deletes "project plan" as part of the "redevelopment project plan" definition.

5. Old Section 5 (new Section 6)

12-1774(a)(1)(E) and (H) – amended to provide that cities may pledge just a portion, and not all of their sales tax for regular (non-STAR TIFs). This corrects an error in last year's legislation which inadvertently deleted the ability for cities to pledge on a portion of their local sales tax to non-STAR TIF projects. The requirement that all local sales tax be pledged was intended to apply only to STAR TIF projects where State sales tax was also being used. This change was inadvertently made to the portion of the statute that deal with TIFs that do not utilize State sales tax, as well as the portion of the statute that deals with TIFs utilizing State sales tax. Not only do cities need the flexibility to be able to pledge a portion of their local sales tax (when there is not State sales tax involved) in order to meet the particular needs of their community, the current language creates a problem for cities that have already pledged, by voter approval, a portion of their local sales tax to a particular purpose, such as law enforcement. If it is already pledged, the change in this subsection made last year makes it impossible for those cities to utilize any local option sales tax for new TIF projects. In addition, the amendment clarifies that cities and counties can pledge sales tax revenue via procedures other than an election and in those instances, those sales tax revenues should also be exempt from pledge for the special bond project. (See, for example K.S.A. 12-195, 12-195b and 12-197).

12-1774(b)(3) and 12-1774(e) – Another example where the term "redevelopment" was inserted before the "project plan" reference because HB 2012 deletes "project plan" as part of the "redevelopment project plan" definition.

6. Old Section 6, 7, 8 and 10 (all renumbered to New Sections 7,8, 9 and 11)

7. Old Section 9 (new Section 10)

Also repealed K.S.A. 12-1772 which is necessitated by the proposed new Section 4 in these amendments.

HOUSE BILL No. 2012

By Joint Committee on Economic Development

12-17

AN ACT regarding tax increment financing; clarification of statutes; amending K.S.A. 12-1774a and K.S.A. 2004 Supp. 12-1770a, 12-1771, 12-1771b, ~~12-1773, 12-1774, 12-1780b and 12-1780c~~ and repealing the existing sections. **12-1772**

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

Section 1. K.S.A. 2004 Supp. 12-1770a is hereby amended to read as follows: 12-1770a. As used in the ~~bioscience development~~ this act, and amendments thereto, the following words and phrases shall have the following meanings unless a different meaning clearly appears from the content:

(a) "Auto race track facility" means: (1) An auto race track facility and facilities directly related and necessary to the operation of an auto race track facility, including, but not limited to, grandstands, suites and viewing areas, concessions, souvenir facilities, catering facilities, visitor and retail centers, signage and temporary hospitality facilities, but excluding (2) hotels, motels, restaurants and retail facilities, not directly related to or necessary to the operation of such facility.

(b) "Base year assessed valuation" means the assessed valuation of all real property within the boundaries of a redevelopment district on the date the redevelopment district was established.

(c) "Blighted area" means an area which:

(1) Because of the presence of a majority of the following factors, substantially impairs or arrests the development and growth of the municipality or constitutes an economic or social liability or is a menace to the public health, safety, morals or welfare in its present condition and use:

- (A) A substantial number of deteriorated or deteriorating structures;
- (B) predominance of defective or inadequate street layout;
- (C) unsanitary or unsafe conditions;
- (D) deterioration of site improvements;
- (E) tax or special assessment delinquency exceeding the fair market value of the real property;
- (F) defective or unusual conditions of title including but not limited to cloudy or defective titles, multiple or unknown ownership interests to

- 1 the property;
- 2 (G) improper subdivision or obsolete platting or land uses;
- 3 (H) the existence of conditions which endanger life or pr
- 4 fire or other causes; or
- 5 (I) conditions which create economic obsolescence; or
- 6 (2) has been identified by any state or federal environment
- 7 as being environmentally contaminated to an extent that requ
- 8 medial investigation; feasibility study and remediation or oth
- 9 state or federal action; or
- 10 (3) previously was found by resolution of the governing bod
- 11 slum or a blighted area under K.S.A. 17-4742 *et seq.*, and amendments
- 12 thereto.
- 13 (d) "Conservation area" means any improved area comprising 15%
- 14 or less of the land area within the corporate limits of a city in which 50%
- 15 or more of the structures in the area have an age of 35 years or more,
- 16 which area is not yet blighted, but may become a blighted area due to
- 17 the existence of a combination of two or more of the following factors:
- 18 (1) Dilapidation, obsolescence or deterioration of the structures;
- 19 (2) illegal use of individual structures;
- 20 (3) the presence of structures below minimum code standards;
- 21 (4) building abandonment;
- 22 (5) excessive vacancies;
- 23 (6) overcrowding of structures and community facilities; or
- 24 (7) inadequate utilities and infrastructure.
- 25 (e) "De minimus" means an amount less than 15% of the land area
- 26 within a redevelopment district.
- 27 (f) "Developer" means any person, firm, corporation, partnership or
- 28 limited liability company, other than a city and other than an agency,
- 29 political subdivision or instrumentality of the state or a county when re-
- 30 lating to a bioscience development district.
- 31 (g) "Eligible area" means a blighted area, conservation area, enter-
- 32 prise zone, historic theater, major tourism area or, a major commercial
- 33 entertainment and tourism area or bioscience development area as de-
- 34 termined by the secretary.
- 35 (h) "Enterprise zone" means an area within a city that was designated
- 36 as an enterprise zone prior to July 1, 1992, pursuant to K.S.A. 12-17,107
- 37 through 12-17,113, and amendments thereto, prior to its repeal and the
- 38 conservation, development or redevelopment of the area is necessary to
- 39 promote the general and economic welfare of such city.
- 40 (i) "Environmental increment" means the increment determined
- 41 pursuant to subsection (b) of K.S.A. 12-1771a, and amendments thereto.
- 42 (j) "Environmentally contaminated area" means an area of land hav-
- 43 ing contaminated groundwater or soil which is deemed environmentally

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contaminated by the department of health and environment or the United States environmental protection agency.

"Feasibility study" means:

(A) A study which shows whether a redevelopment project's, special bond project's or bioscience development project's benefits and tax increment revenue and other available revenues under K.S.A. 12-1774 (a)(1), and amendments thereto, are expected to exceed or be sufficient to pay for the redevelopment or, special bond or bioscience development project costs ~~and~~; ~~and~~;

~~(B) the effect, if any, the redevelopment project costs or, special bond project or bioscience project will have on any outstanding special obligation bonds as authorized pursuant to subsection payable from the revenues described in subsections (a)(1)(D) and (a)(1)(G) of K.S.A. 12-1774, and amendments thereto;~~

(C) a description of any project submitted under K.S.A. 12-1771d, and amendments thereto, to satisfy the requirements of paragraph (i) of this section;

(D) a statement of how the jobs and taxes obtained from the project will contribute significantly to the economic development of the state and region;

(E) a statement concerning whether a portion of the sales taxes collected pursuant to K.S.A. 12-187, and amendments thereto, is committed to other uses and unavailable as revenue for the redevelopment project. If a portion of sales taxes is so committed, the applicant shall describe the following:

(i) the percentage of sales taxes collected that are so committed; and
(ii) the date or dates on which this diverted revenue can be pledged for repayment of special obligation bonds;

(F) an anticipated principal and interest payment schedule on the bonds;

~~(G) a copy of the minutes of the governing body meeting or meetings of any city whose bonding authority will be utilized in the project, evidencing that a redevelopment plan has been created, discussed, and adopted by the city in a regularly scheduled open public meeting.~~

(2) For a proposed major commercial entertainment and tourism area, the feasibility study must also include:

(A) Visitation expectations;
(B) economic impact;
(C) the unique quality of the project;
(D) the ability of the project to gain sufficient market share to:
(i) remain profitable past the term of repayment; and
(ii) maintain status as a significant factor for travel decisions;
(E) integration and collaboration with other resources or businesses;

for any redevelopment, special bond, or bioscience project payable from the revenues described in subsections (a)(1)(D) and (a)(1)(G) of K.S.A. 12-1774, and amendments thereto, the feasibility study should also include the following: (i) the projected effect, if any, the project will have on any outstanding special obligations bonds payable from the same revenues within the redevelopment district; (ii) a description of any project submitted under K.S.A. 12-1771d, and amendments thereto, to satisfy the requirements of paragraph (i) of this section;

(iii) a statement of how the jobs and taxes obtained from the project will contribute significantly to the economic development of the state and region;
(iv) a statement concerning whether a portion of the local sales and use taxes received by the city from the redevelopment district is pledged to other uses and unavailable as revenue for the redevelopment project. If a portion of local sales and use taxes is so committed, the applicant shall describe the following:

(aa) The percentage of local sales and use taxes that are so committed; and

(bb) The date or dates, if any, on which the local sales and use taxes which are pledged for other uses can be pledged for repayment of special obligation bonds.

(v) an anticipated principal and interest schedule on the bonds.

~~(G) a copy of the minutes of the governing body meeting or meetings of any city whose bonding authority will be utilized in the project, evidencing that a redevelopment plan has been created, discussed, and adopted by the city in a regularly scheduled open meeting.~~

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TESTIMONY

to

HOUSE ECONOMIC DEVELOPMENT COMMITTEE

**Dorothea K. Riley, Bond Counsel
to the City of Lenexa, Kansas
March 15, 2005**

HOUSE BILL NO. 2012

Honorable Chairperson Gordon and Committee Members:

On behalf of the City of Lenexa, Kansas, Kutak Rock LLP, as the City's Bond Counsel is submitting this testimony with regard to House Bill 2012.

We recommend an addition to the definition of feasibility study included in Section 1 of the Bill and appearing in K.S.A. 12-1770a(k)(2)(3) which reads as follows: "(3) The failure to include all information enumerated in K.S.A. 12-1770a(k) in the feasibility study for a redevelopment, special bond or bioscience project shall not effect the validity of bonds issued pursuant to this act."

This addition is intended to give participants in a tax increment financing, including the bondowners, assurance that the feasibility study cannot be challenged as inadequate after bonds have been issued. Absent this addition, we are concerned that the subjective nature of items required to be included in the feasibility study can create opportunities for challenges to the compliance by the issuing city of required statutory procedures after bonds have been issued. This uncertainty may create difficulties in marketing bonds or may increase the interest rate on bonds.

For further comment or questions, do not hesitate to contact me:

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