Approved: April 27, 2005
Date

MINUTES OF THE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 P.M. on February 22, 2005 in Room 519-S of the Capitol.

All members were present except:
Representative Frank Miller- excused
Representative Tom Holland- excused
Representative Oletha Faust-Goudeau- excused
Representative Melody Miller- excused

Committee staff present:
Mike Heim, Legislative Research Department
Martha Dorsey, Legislative Research Department
Norm Furse, Revisor of Statutes Office
Theresa Kiernan, Revisor of Statutes Office
Maureen Stinson, Committee Secretary

Conferees appearing before the committee:
Phill Kline, Attorney General
Doug Anstaett, Kansas Press Association
Mike Kautsch
John Lewis, Kansas Press Association
Harriet Lange, Kansas Association of Broadcasters
Danielle Noe, Johnson County Board of County Commissioners
Mark Tallman, Kansas Association of School Boards
Sandy Jacquot, League of Kansas Municipalities
Sam Alpert, Heartland Apartment Association
Dave Holtwick, Homebuilder's Assoc. Of Greater Kansas City
Chris Erdley, Tower Properties
Rick Oddo, Oddo Development Company
Jim Beverlin, Cohen-Esrey Real Estate Services, Inc.
Chris Wilson, Kansas Building Industry Assoc.
Kim Gulley, League of Kansas Municipalities
Randall Allen, Kansas Association of Counties
Dennis Schwartz, Kansas Rural Water Association
Erik Sartorius, City of Overland Park

Others attending:
See attached list.

HCR 5006 Constitutional amendment providing access to public records and public meetings

Phill Kline, Attorney General, testified in support of the bill (Attachment 1). He explained that the proposed amendment would not open up any meetings/discussions or public records that are currently closed by Kansas or federal laws. He said it would, however, require a 2/3 Legislative vote to enact any new laws creating exceptions to the general requirement that public meetings (as defined by K.S.A. 75-4317a) or public records (as defined by K.S.A. 45-217) be open to the public.

Doug Anstaett, Kansas Press Association, testified in support of the bill (Attachment 2). He said the bill is the result of a cooperative effort between the Kansas Press Association, Kansas Attorney General's Office, and a bipartisan coalition of state legislators and the governor. He explained that the bill reinforces the fundamental right of all citizens to participate as full and equal partners in the governmental process.

Mike Kautsch testified in support of the bill (Attachment 3). He said that if the proposed constitutional amendment is adopted, the state's value on openness would be fully protected.

John Lewis, Kansas Press Association, testified in support of the bill (Attachment 4). He said a constitutional amendment will raise the awareness among citizens and records custodians that open government is not, merely, a statutory privilege, but rather is the public policy of our state.

Harriet Lange, Kansas Association of Broadcasters, testified in support of the bill (Attachment 5). She said the constitutional amendment will increase awareness of the public's right to access and will heighten the importance of open government in public officials' minds.

Danielle Noe, Johnson County Board of County Commissioners, testified in opposition to the bill (Attachment 6). She said they believe that **HCR 5006** will only complicate issues surrounding open records and open meetings rather than solve them.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

MINUTES OF THE House Governmental Organization and Elections Committee at 3:30 P.M. on February 22, 2005 in Room 519-S of the Capitol.

Mark Tallman, Kansas Association of School Boards, testified in opposition to the bill (Attachment 7). He said they oppose the measure because they believe it is unnecessary to amend the Kansas Constitution to provide open government.

Sandy Jacquot, League of Kansas Municipalities, testified in opposition to the bill (Attachment 8). She said adopting a constitutional amendment to do what statutes are already doing very effectively is unnecessary.

Chairman Vickrey closed the hearing on **HCR 5006**.

HCR 5006 Constitutional amendment providing access to public records and public meetings

Rep. Goico made a motion for the favorable passage of **HCR 5006**. Rep. Lane seconded the motion.

Rep. Swenson made a motion to table the motion for the favorable passage of HCR 5006. Rep. Yonally seconded the motion. Motion failed.

Interim Study Topic Request

Rep. Sawyer made a motion to request an interim study topic concerning counties and awarding of contracts, when bids required. Rep. Lane seconded the motion. Motion carried.

HB 2281 Disposition of gubernatorial records

Rep. Yonally made a motion to adopt the balloon amendment (Attachment 9) to make several detailed records-related concerns as suggested by the State Archivist. Rep. Goico seconded the motion. The motion carried.

Rep. Goico made a motion for the favorable passage of **HB 2281** as amended. Rep. Oharah seconded the motion. The motion carried.

HB 2230 Unilateral annexation; boundary commission

At the Chairman's request, the Committee discussed an attachment submitted by Dennis Schwartz (Attachment 10) relating to unilateral annexation.

Rep. Lane made a motion for the favorable passage of HB 2230. Rep. Otto seconded the motion.

Rep. Lane withdrew his motion.

Rep. Lane made a motion to adopt the balloon amendment (Attachment 11) to require the three members representing the landowners be selected by the board of county commissioners in the county, and require the seventh member be selected by the other six members. Rep. Otto seconded the motion. The motion carried.

Rep. Lane made a motion for the favorable passage of **HB 2230** as amended. Rep. Beamer seconded the motion. The motion carried.

Chairman Vickrey opened the hearing on:

HB 2321 Municipalities; user fees or charges

Sam Alpert, Heartland Apartment Association, testified in support of the bill (Attachment 12). He said the measure illustrates a way in which state government can best assure its citizens that local "user fees", regularly enacted to augment general tax revenues in support of public services and infrastructure, are being equitably conceived and justly administered. Included in his testimony are suggested amendments to the bill.

Dave Holtwick, Homebuilder's Association of Greater Kansas City, testified in support of the bill (Attachment 13). He said adoption of the bill would be a major step forward for providing a measure that would remind municipalities of their responsibilities to invest their tax dollars prudently, and that there are no simple funding remedies for irresponsibility.

Chris Erdley, Overland Park, testified in support of the bill (Attachment 14). He said the adoption of the bill would be a major step forward for providing a measure that would remind municipalities of their responsibilities to invest their tax dollars prudently and that there are no simple funding remedies for irresponsibility.

Rick Oddo, Oddo Development Company testified in support of the bill (Attachment 15). He said municipalities are increasing and adding user fees on many occasions as revenue increasers, and they are not always applied fairly nor are they able to justify what the fees are for.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

MINUTES OF THE House Governmental Organization and Elections Committee at 3:30 P.M. on February 22, 2005 in Room 519-S of the Capitol.

Jim Beverlin, Cohen-Esrey Real Estate Services, Inc. testified in support of the bill (Attachment 16). He distributed to the Committee information concerning sample user fees for their business.

Chris Wilson, Kansas Building Industry Association, testified in support of the bill (Attachment 17). She said the bill requires that municipalities think through the costs of providing service and determine at what level a service fee should be in order to recoup the cost of providing the service. She offered an amendment within her testimony allowing analysis to be done by any staff member or officer of the city.

Kim Gulley, League of Kansas Municipalities, testified in opposition to the bill (Attachment 18). She said the bill would have a serious, negative impact on all of the 627 cities in the State.

Danielle Noe, Johnson County Board of County Commissioners, testified in opposition to the bill (Attachment 19). She said that Counties, like other municipalities, often use more than one funding stream to pay for services.

Randall Allen, Kansas Association of Counties, testified in opposition to the bill (Attachment 20). He urged the Committee to reject the bill, and allow local accountability in local government to continue to work.

Dennis Schwartz, Kansas Rural Water Association, testified in opposition to the bill (Attachment 21). He said the bill appears to require for, yet, further analysis by another accountant, thus adding further to the cost of public water systems' operations.

Mark Tallman, Kansas Association of School Boards, testified in opposition to the bill (Attachment 22). He said because the bill defines "municipalities" as any political subdivision of the State, it would appear to apply to school districts.

Erik Sartorius, City of Overland Park, testified in opposition to the bill (Attachment 23). He said they believe the legislation will needlessly drive up the cost of government while not providing any measurable benefits to taxpayers.

Written testimony in opposition to the bill was submitted by Michael Boehm, Mayor, City of Lenexa (Attachment 24).

Chairman Vickrey adjourned the meeting.

The next meeting will be Thursday, March 3, 2005.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

House Governmental Organization and Elections Committee

Date 2-22-05

Name	Representing
CHRIS ERDLEY	TOWER PROPERTIES
SAM ALPERT	HEARTLAND APT. ASSOC.; BUILDING OWNERS; CONST. USERS
Jim Beverlin	Cohen Esrey Real Estate
Rick Oddo	Oddo DEVELOPMENT
Chris Neal	Home Builders Assn. Kansas City
Dave Holtwick	" " " " "
Chris Wilson	Ks Building Industry Ass'n
Danielle Noe	Johnson County
Mike Peppa	Sedgwick County
Mary Ellen Conlee	REAP
Pat Lehman	KRWA
Dennis Schwartz	KRWA
Beth Lange	SRS
Tim Madden	KDOC
Molly Deckert	City of Lenexa
Michael Boehm	City of Lenexa
Steve Scanlon	Dept of Army
LARRY BEEB	MIDWEST ENERGY
Whitney Damron	City of Topeka
DICK CARTER	CITY OF MANHATTAN
DAVE HOLTHAUS	Ks Electric Co-ops
RYAN THORNBURG	INTERN FOR REP. HOLLAND
Kim Gulley	LKM
Sandy Jacquot	LKM
Scot Schneider	CITY OF WICHITA
John Lewis	Lewis Legal News, Inc.
Mike Kautsch	Searching Gallivan
Richard Gannon	KPA
Doug Anstaett	KBA

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.KSAG.ORG

HOUSE GOVERNMENT ORGANIZATION AND ELECTIONS COMMITTEE
TUESDAY, FEBRUARY 22, 2005
PRESENTATION BY
ATTORNEY GENERAL
PHILL KLINE

HCR 5006

I support passage of this amendment to the Kansas Constitution.

This proposed amendment, if passed by the Legislature and the voters of Kansas, would elevate the importance of open government from a statutory right to a Constitutional right. Making open government a Constitutional right would increase the scrutiny given to such matters and emphasize the role that open government plays in public accountability.

The proposed amendment would not open up any meetings/discussions or public records that are currently closed by Kansas or federal laws. It would, however, require a 2/3 Legislative vote to enact any new laws creating exceptions to the general requirement that public meetings (as defined by K.S.A. 75-4317a) or public records (as defined by K.S.A. 45-217) be open to the public.

Currently, 5 other states have such Constitutional provisions. It is our hope that Kansas will lead the way in insuring that public business is conducted according to applicable open government laws. This Constitutional amendment would be a valuable tool in providing that right to Kansans, and I strongly support its passage.

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 1

Kansas Press Association, Inc.

Dedicated to serving and advancing the interests of Kansas newspapers

5423 SW Seventh Street • Topeka, Kansas 66606 • Phone (785) 271-5304 • Fax (785) 271-7341 • www.kspress.com

Feb. 22, 2005

To: Rep. Jene Vickrey, chairman, House Governmental Organization and Elections Committee

From: Doug Anstaett, executive director, Kansas Press Association

Re: HCR 5006/Constitutional Amendment for Open Government

Mr. Chairman and Committee Members:

I am Doug Anstaett, executive director of the Kansas Press Association. For 17 years, I was editor and publisher of The Newton Kansan. I am here today to enthusiastically support House Concurrent Resolution 5006, which would elevate the right to know what our government is doing in Kansas to constitutional status.

HCR 5006 is the result of a cooperative effort between the Kansas Press Association, Kansas Attorney General's Office and a bipartisan coalition of Kansas state legislators and the governor to reinforce the fundamental right of all citizens to participate as full and equal partners in the governmental process. I'm proud that a number of you stood with us on Jan. 27 to announce this important initiative.

Even though we have statutes that provide a strong framework for open government in the Kansas Open Records and the Kansas Open Meetings Acts, newspaper reporters and individuals in our state still face numerous impediments when trying to view public records and attend public meetings.

That we are here today asking for a constitutional amendment for open government speaks volumes. If KOMA and KORA were working as they were intended, this constitutional amendment would not be necessary. Sadly, that isn't the case.

Almost daily, my office and that of our counsel, Mike Merriam, receive calls from newspaper reporters and editors who have encountered obstacles to retrieving records and attending public meetings. This confusion is partly the result of ignorance of the law, but often it is because some public officials don't believe that open government is synonymous with good government.

Just in the past couple of years, newspapers have had to go to court and spend tens of thousands of dollars to gain access to public records, records the courts later decided they had a right to view. I'll not bury you with examples, but I believe two high-profile cases in recent years are instructive:

• In Lawrence last year, the Journal-World, KPA and the Associated Press spent $40,000 to win a lawsuit to gain access to the employment contracts of KU Athletic Director Lew Perkins. The court, after hearing from both sides, ruled that the records were clearly of public interest and should never have been denied.

• Before that, the Garden City Telegram spent about $15,000 to win access to records about railroad crossing accidents from the Kansas Department of Transportation. In that case, the newspaper won and KODT was told its decision to deny the records was made in bad faith and without basis in fact or law.

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 2

There is not just a cost to those who want access to the records. There's also a huge public cost to the taxpayers of Kansas when records are unfairly denied or meetings unjustly closed. In those two cases, the taxpayers ended up paying well over $50,000 to public and private attorneys working for KU and KDOT.

So why is constitutional status critical? Because the average Kansas citizen could never even consider challenging a public official for a record or attendance at a meeting because of the exorbitant cost. Raising the bar — putting the right to open government into the Kansas Constitution — would send an emphatic and crystal-clear message to those who would hide what the government does from the citizens of Kansas. The requirement of a two-thirds vote of both the House and Senate to add exceptions to openness would also raise the stakes on future efforts to close records and doors.

While most of us believe government best serves the citizenry when it takes place in the sunshine rather than in the proverbial smoke-filled rooms and behind closed doors, strong forces still try to block the public from what is rightfully theirs.

Just four weeks ago, we packed the Kansas attorney general's office with Democrats, Republicans, elected officials and others who said — one after another — that openness is fundamental to our system of government.

I believed what was said that day. Today we ask for more than lip service about the importance of shining a bright light on government; we ask for the constitutional protection that will make it happen.

Thank you.

Mike Kautsch
Lawrence, Kansas
February 22, 2005

Law does much more than regulate behavior. It plays a key role in knitting the very fabric of society, creating the background against which people conduct their lives. It helps to determine the technological tools we have available to address the problems we face, and how we deploy those tools. It shapes the institutions, formal and informal, that govern our communities. It influences the physical form of those communities, the skills developed by community members, and relationships within the community and with outsiders. In a variety of subtle ways, law influences the values that communities espouse and follow. Law is, in a word, constitutive, meaning that it determines the essential qualities of human communities. (From "Constitutive Law and Environmental Policy," by Holly Doremus, Stanford Environmental Law Journal, June 2003 - 22 Stan. Envtl. L.J. 295, 296-297)

The proposed constitutional amendment to guarantee open government in Kansas, not only would be a manifestation of existing values, but it would also enhance legislative consideration of the appropriate balance between access to government information and such competing interests as privacy and security.

In Kansas, existing law and public policy call powerfully for government to be accessible to the public. Both state and local governments are to conduct their official business in the open, not in secret.[1] The Kansas Legislature has recognized that "a representative government is dependent upon an informed electorate."[2] At the same time, Kansas requires that government records be open–a policy that the Legislature has declared "shall be liberally construed and applied."[3]

Throughout American history, the need for open government has been strongly felt. As far back as the American Revolution, there were complaints about lack of public access to governmental proceedings. In 1776, the Declaration of Independence included a grievance that the King of England had denied the Colonists access to government proceedings and records. The Declaration charged that the King had "called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures."[4] Since then, a hallmark of American democratic society has been the value it places on open government.

Nevertheless, law and policy favoring openness are not always fulfilled. In Kansas, officials sometimes close the doors of government to the public, suggesting that openness is impractical or too costly or citing privacy and security interests. To be sure, there are limited circumstances in which the public interest in open government must be weighed against other concerns. Yet, questions often arise about whether the balance is tipped unduly against openness. Controversies about access to government have sparked litigation for years in Kansas,[5] and the state Attorney General has issued numerous opinions on the subject of openness.[6]

Most important, the Legislature often has entertained bills that propose exemptions to requirements that government be accessible. Meanwhile, numerous exemptions have been

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 3

enacted, and may be found scattered throughout Kansas statutes. If the proposed constitutional amendment is adopted, the state's value on openness would be fully protected. The requirement that exemptions be enacted only upon a two-thirds vote would prevent undue and unreasoned barriers to access from being raised and would keep government fully in the sunshine.

Notes

1. The Kansas Constitution provides the basis for open government by declaring that: "All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit...." (K.S.A. Const. Bill of Rights, §2); "The people have the right to assemble, in a peaceable manner, to consult for their common good, to instruct their representatives, and to petition the government...." (K.S.A. Const. Bill of Rights, §3); "The liberty of the press shall be inviolate; and all persons may freely speak, write or publish their sentiments on all subjects...." (K.S.A. Const. Bill of Rights, §11).

Also note that the Kansas Supreme Court has found that, when the means to be informed are available, the public gains confidence in government, and government becomes more accountable. *See* State Dept. of S.R.S. v. Public Employee Relations Bd., 249 Kan. 163, 170 (1988), interpreting Kansas open government requirements; *see also* State v. Board of County Comm'rs of Sedgwick, 244 Kan. 536, 539 (1989) (citing Deanell Tacha, "The Kansas Open Meeting Act: Sunshine on the Sunflower State?," 25 Kan.L.Rev. 169, 170-71 (1977)).

2. The Kansas Legislature's recognition that "a representative government is dependent upon an informed electorate" appears in the Kansas Open Meetings Act, requiring that government meetings be open (K.S.A. §75-4317).

3. The value placed by the Kansas Legislature on keeping the public informed is indicated in the Kansas Open Records Act, requiring liberal construction and application of a requirement that official records be open. (K.S.A. §45-216)

4. *See* the Declaration of Independence: "IN CONGRESS, July 4, 1776 / The unanimous Declaration of the thirteen united States of America."

5. An online search of a data base containing Kansas court opinions, using such key terms as "open meetings" and "open records," indicates that roughly 150 cases have addressed access to meetings and records.

6. An online search of a data base containing Kansas Attorney General opinions, using such key terms as "open meetings" and "open records," indicates that approximately 200 opinions have dealt with Kansas Open Records and Open Meetings laws.

Testimony on HCR 5006
John G. Lewis, President, Lewis Legal News, Inc.
Chairman, Legislative Committee, Kansas Press Association

Kansas is in great need of a higher profile for its open government laws. People feel disconnected from their public servants. Kansas does not have initiative and referendum. Government lobbyists have for too long held sway over a policy that seeks to inhibit openness. It is time to announce to Kansas citizens, loudly and clearly, that it is their government – that they do have a voice and therefore a right to an informed voice.

And what a wonderful way to engage the citizens of this state by presenting to them the opportunity to vote for openness. Yes, there will surely be inexplicable and mystifying "No" votes on the day that our citizens exercise their privilege to vote on this landmark measure. But what is truly thrilling, even now, is the reaction that I expect almost everyone else to have on that day. "Gosh, I'm not being asked to vote for a tax increase or on some other matter that is generally distasteful. They're actually asking me if I want to guarantee my right to know what they're doing. They're actually inviting me into their club." I truly believe most people will be flattered just to be asked. I can't imagine that the citizens of this state would not be delighted to vote on this constitutional amendment. Nor can I imagine that they would not eagerly vote for it.

Why not simply rely upon our existing open government statutes? Quite simply, they too often do not facilitate a culture of openness in our state. My newspaper company publishes public records information from 11 Kansas counties. Rarely has the system worked as it should when our initial request is made to view the records to which we are, by law, entitled to see. Records custodians simply do not always follow the laws that require them to provide access. And if it's a struggle for a newspaper business that does understand that we have a right to view public records, then you can be very sure that Joe Citizen usually just gives up when he is told "No." A constitutional amendment will raise the awareness among citizens and records custodians that open government is not merely a statutory privilege, but rather is the public policy of our state.

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 4

KAB
KANSAS ASSOCIATION OF BROADCASTERS

1916 SW Sieben Ct, Topeka KS 66611-1656
(785) 235-1307 * FAX (785) 233-3052
Web site: *www.kab.net* * E-mail: *harriet@kab.net*

Testimony – HCR 5006
Before House Committee on Governmental Organization and Elections
February 22, 2005
By Harriet Lange, President
Kansas Association of Broadcasters

Mr. Chairman, Members of the Committee, I am Harriet Lange with the Kansas Association of Broadcasters. Our membership is comprised of free-over-the-air radio and television stations which serve Kansas. We appreciate the opportunity to appear before you today in support of HCR 5006.

This amendment will provide a "constitutional right of access to information concerning the conduct of the people's business". What could be more important in a representative republic than the electorate's ability to inform itself about the workings of its government? An informed citizenry through public access is the cornerstone of our form of government.

Openness in government at all levels has been declared the policy of this state. We believe the majority of public officials in Kansas do comply with Kansas Open Records Act and Kansas Open Meetings Act. Yet on too many occasions legitimate requests for records or access are denied. A constitutional amendment will increase awareness of the public's right to access and will heighten the importance of open government in public officials' minds.

Since public access is so basic and essential to our form of government, KAB believes "openness" in government merits constitutional protection.

We urge your favorable consideration of HCR 5006.

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 5

Johnson County, Kansas

BOARD OF COUNTY COMMISSIONERS

Testimony in opposition to HCR 5006

presented to the

House Governmental Organization and Elections Committee

by Danielle Noe

Intergovernmental Relations Manager

February 22, 2005

Mister Chairman and Members of the committee:

Thank you for the opportunity to testify in opposition to HCR 5006, creating a constitutional right to access public documents and meetings. Johnson County believes that HCR 5006 will only complicate issues surrounding open records and open meetings rather than solve them.

The current laws regarding open records and open meetings are already difficult for local governments to interpret and apply. For example, the Kansas Open Records Act (KORA) is not written in a plain manner and is not easily understood by the average records custodian. Under provisions of KORA each local governing body has appointed a Freedom of Information Officer who has been through significant training on open records. Still, the county's legal staff answers numerous open records questions from other county staff every week because they are uncertain as to what records are or are not open.

Adding this constitutional amendment into the mix of current statutes will cause much confusion because the proposed amendment seems to contradict the statutory language. It does this by using different terms and provisions than are found in the statutes. It appears that subsections (b) and (c) are an attempt to acknowledge these differences; however, they do not actually help.

For example, consider the statement regarding copies of any public record for the "cost of duplication." Does this mean we can still charge for staff time as permitted by KSA 45-219? Would this amendment overturn the provision in KSA 45-219(a) stating that we don't have to provide copies of tapes, videos, pictures, etc.? Is KSA 45-219 rendered unconstitutional under the narrow construction required by this proposed amendment?

Second, is the exception for cases where the demand for privacy exceeds the merits of public disclosure intended to be an additional exemption from KORA and the Kansas Open Meetings Act (KOMA)? Is this additional grounds for recessing into executive session? Is this intended to be a different privacy exemption than the general KORA personal privacy exemption in KSA 45-221(a)(30)? There are already a lot issues with interpreting the current personal privacy exemption. In other words, it seems the proposed amendment may unintentionally be creating a new and broader exemption for personal privacy. It is not limited to "personal" privacy, like 45-

111 S. Cherry, Suite 3300 • Olathe, Kansas 66061 • (913) 715-0725 • (913) 715-0727 fax

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 6

221(a)(30), which could open up a whole new wave of privacy demands by both individuals and businesses.

Third, what is a "reasonable attempt" and what are "adequate meeting accommodations"? This undefined terminology is just an invitation to litigation. Is this creating a constitutional right to certain accommodations at open meetings?

If KOMA and KORA need to be tightened up, then the legislature should do so by amending the statutes. The contradictory and vague language in the proposed amendment will only make it more difficult for public agencies to interpret and apply KOMA and KORA. Creating confusion as to open records and meetings only brings on more litigation. What is needed is clarity. The proposed amendment does not provide that clarity. Furthermore, rather than making records and meetings more open, the last phrase in subsection (a) of the amendment may lead to more records and meetings being closed because of the "demand of privacy."

The Kansas Open Records Act the Kansas Open Meetings Act strike an important balance between openness in government and protecting the private information of individuals. For these reason, Johnson County respectfully requests that you do not pass HCR 5006.

111 S. Cherry, Suite 3300 • Olathe, Kansas 66061 • (913) 715-0725 • (913) 715-0727 fax

KANSAS ASSOCIATION OF SCHOOL BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony on
HCR 5006 – Constitutional Amendment for Open Government

Before the
House Committee on Governmental Organization and Elections

By Mark Tallman, Assistant Executive Director/Advocacy
February 22, 2005

Mr. Chair, Members of the Committee:

Thank you for the opportunity to comment on **HCR 5006.** KASB appears in opposition to this measure because we believe it is unnecessary to amend the Kansas Constitution to provide open government.

We believe that constitutional amendments should be considered only when there is an urgent public problem that can be solved in no other way. There is no evidence of a "crisis" regarding open meetings and open records. To the extent concerns have been raised recently in the case of open records, they have involved enforcement and understanding of existing laws that would not be affected by this amendment.

Exceptions to open meetings and records almost always reflect a common sense understanding that effective government sometimes requires protecting private rights or other matters in the public interest. The recent review of exemptions to open records resulted in few changes. We suspect most exceptions to either the Open Records or Open Meetings Acts have passed with more than the two-thirds voting requirements proposed in this amendment. However, we believe it is usually inappropriate to require "supermajorities" in the conduct of legislative business.

In conclusion, the members of KASB support open government. Training for local board members regarding open meetings and records is an important function of our association. However, we do not believe that a change in the state constitution is required or appropriate.

Thank you for your consideration.

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 7

LKM
League of Kansas Municipalities

300 SW [illegible]enue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: House Governmental Organizations and Elections Committee

From: Sandy Jacquot, General Counsel

Date: February 22, 2005

Re: Opposition to HCR 5006

On behalf of the League of Kansas Municipalities I want to thank the committee for the opportunity to appear before you today in opposition to HCR 5006. This concurrent resolution proposes to amend the Kansas constitution to memorialize what is currently in the Kansas Open Records Act (KORA) and Kansas Open Meetings Act (KOMA) with some striking additions and omissions. The League has always been a proponent to both open public meetings and open public records, so long as the right of the public's access is balanced with the need to protect individual citizens' privacy. In fact, it was the League that proposed to add the requirement that each political subdivision appoint a local freedom of information officer and keep a brochure explaining citizens' rights under KORA anywhere records are kept. The process currently in place has worked well for the past five years. This constitutional amendment, however, takes the process too far in the opinion of the League.

Constitutional amendments have been used over the years to provide a framework for our state on important social issues such as alcoholic liquor and gambling, for the operation of the various branches of government and local government, and to grant individual rights and freedoms. Most of these amendments are on issues that are timeless where the need for flexibility and change is not a consideration. This proposal does not have such characteristics. Since the adoption of the KORA and KOMA, there has been a need to add provisions and delete provisions. For example, before 9/11, there was no need to spell out limits on the public's access to certain security information. Over the years, the type of records kept by public agencies has changed and evolved. Now public agencies keep more and more records electronically and the laws probably need to evolve with the type of data being kept. It is hard to imagine what the future holds for public records storage and for communications. Statutory requirements are more appropriate in the area of public records and meetings and have been working quite well. This is solution looking for a problem.

Further, this proposed amendment is unclear and would likely create a morass of litigation. First, in paragraph 16(a), there is a limitation on the cost for public records to the "cost of duplication." This would apply to all public records, as contrasted with open records, which are defined in K.S.A. 45-217. These consist of basically all recorded information in any form kept by a public agency. Of course, not all public records are open records. The cost of duplication would mean that regardless of the time or cost to the agency to obtain the record, only the actual flash charge on the copier could be the charge. For most high speed copiers, this would be well under one cent per copy. Therefore, the State could no longer charge $10.00 for a duplicate car title, a $12.00 birth certificate charge, a $13.00 death certificate charge and so on. It would merely be the flash charge on the copier. In addition, no staff time could ever be charged. What could be charged for copies of signed

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 8

and enrolled bills, currently at $1.00 per page. What could be charged for the results of a background check or the Legislative packets?

Paragraph 16(b),(c), and (d) are a trial attorney's dream. First, it is unclear what the policy is on exemptions already in place in the law. It is unclear how those exemptions are to be construed and arguably a court could overturn many exemptions based upon the policy expressed in the proposed amendment. In addition, a two-thirds majority of the Legislature would have to adopt any further exemptions, and would have to put the legislative history in the actual statute. In no other circumstance has it been required that "such law shall state with specificity the public necessity justifying the exemption." It is also an anomaly for a regular statute to require a two-thirds majority vote.

The League respectfully opposes this unnecessary step of adopting a constitutional amendment to do what statutes are already doing very effectively, assuring the public's right of access to open records and meetings, with the ability of the law to adjust and change as the needs of the public and public agencies change. The League urges this committee to defeat HCR 5006.

Balloon Amendment

Submitted by: Norm Furse - Office of Revisor of Statutes

State Archivist
Suggested Amendments

Submitted by:
Norm Furse
Office of
Revisor
of
Statutes

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 9

Session of 2005

HOUSE BILL No. 2281

By Committee on Governmental Organization and Elections

2-3

AN ACT concerning governor's records; providing for the disposition of gubernatorial records; amending K.S.A. 75-104 and repealing the existing section.

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

Section 1. K.S.A. 75-104 is hereby amended to read as follows: 75-104. (a) The governor shall keep and maintain a full and complete record of the following applications or petitions made to the governor:

(1) Applications or petitions for executive pardon, commutation of sentence or clemency;

(2) applications or petitions for the appointment of a named individual to public office when a vacancy occurs and when the governor is restricted to the appointment of nominees so submitted;

(3) applications or petitions for the appointment of a person from a list of persons submitted by an association, agency or committee where the governor is limited to make an appointment only from that list;

(4) applications for the approval of grants where the governor's approval is a condition precedent to the making of such grants either by a state agency or by the federal government;

(5) applications or petitions for declarations of emergency;

(6) petitions for the calling of a special session of the legislature pursuant to section 5 of article 1 of the constitution of the state of Kansas; and

(7) applications or petitions directed to the governor and requesting that the governor take action in accordance with subsection (c) of K.S.A. 75-3711 and amendments thereto and exercise a function otherwise specified by statute for the state finance council.

(b) The record required to be kept under subsection (a) and all records of the financial affairs and transactions regarding the receipt and expenditure of state moneys shall remain on file in the office of each governor during the governor's term of office ~~and for a period of three years following the expiration of such term~~.

(c) ~~Following the three-year period prescribed in subsection (b), all records kept and maintained pursuant to subsection (a) shall be transferred to the custody of the state historical society and the records of the~~

Submitted by:
Norm Furse

~~financial affairs and transactions kept and maintained pursuant to subsection (b) shall be kept in the office of the governor, subject to disposal as may be authorized by the state records board.~~

~~(d) Records, correspondence and other papers of the governor which are not required to be kept and maintained under subsections (a) or (b) shall not be subject to review or audit by the legislative post auditor under the legislative post audit act.~~

~~(e)~~ Upon completion of the term of office as governor, all ~~records, correspondence and other papers~~ *gubernatorial records, as defined in section 2, and amendments thereto,* of the former governor ~~not required to be kept and maintained under subsections (a) or (b) which relate to the former governor's public duties while governor~~ shall be transferred to the custody *of the state archivist* of the state historical society *as provided in section 2, and amendments thereto.* ~~During the lifetime of the former governor, no person shall have access to any such records, correspondence or other papers which are not required to be disclosed under K.S.A. 45-221 and amendments thereto, except upon consent of the former governor, and the former governor shall be considered the official custodian of such records, correspondence and other papers which are not required to be disclosed.~~

~~(f)~~ *(d)* Upon the death of a governor while in office, all ~~records, correspondence and other papers~~ *gubernatorial records, as defined in section 2, and amendments thereto,* of such deceased governor ~~not required to be kept and maintained under subsections (a) or (b) which relate to such governor's duties while governor~~ shall be transferred to the custody *of the state archivist* of the state historical society *as provided in section 2, and amendments thereto.*

~~(g)~~ *(e)* A person elected or succeeding to the office of governor shall be governed by the provisions of this section as it existed at the time such person was elected or succeeded to such office.

New Sec. 2. (a) as used in this section:

(1) "Documentary material" means all books, correspondence, memorandums, documents, papers, pamphlets, works of art, models, pictures, photographs, plats, maps, films, and motion pictures, including, but not limited to, audio, audiovisual or other electronic or mechanical recordations. regardless of physical form or characteristics or storage media

(2) "Gubernatorial records" means documentary materials, or any reasonably segregable portion thereof, created or received by the governor, the governor's immediate staff, or a unit or individual of the office of the governor whose function is to advise and assist the governor, in the course of conducting activities which relate to or have an effect upon the carrying out of the constitutional, statutory or other official or ceremonial duties of the governor. Such term (A) includes any documentary materials

9-2

relating to the political activities of the governor or members of the governor's staff, but only if such activities relate to or have a direct effect upon the carrying out of constitutional, statutory or other official or ceremonial duties of the governor; but (B) does not include any documentary materials that are (i) official records of an agency; (ii) personal records; (iii) stocks of publications and stationery; or (iv) extra copies of documents produced only for convenience of reference, when such copies are clearly so identified.

(3) "Personal records" means all documentary materials, or any reasonably segregable portion thereof, of a purely private or nonpublic character which do not relate to or have an effect upon the carrying out of the constitutional, statutory or other official or ceremonial duties of the governor. Such term includes: (A) Diaries, journals or other personal notes serving as the functional equivalent of a diary or journal which are not prepared or utilized for, or circulated or communicated in the course of, transacting government business; (B) materials relating to private political associations and having no relation to or direct effect upon the carrying out of constitutional, statutory or other official or ceremonial duties of the governor; and (C) materials relating exclusively to the governor's own election to the office of governor and materials directly relating to the election of a particular individual or individuals to federal, state or local office, which have no relation to or direct effect upon the carrying out of constitutional, statutory or other official or ceremonial duties of the governor.

(4) "State Archivist" means the archivist of the state employed under K.S.A. 75-3148, and amendments thereto.

(5) "Former governor", when used with respect to gubernatorial records, means the former governor during whose term or terms of office such gubernatorial records were created.

(b) The state of Kansas shall reserve and retain complete ownership, possession and control of gubernatorial records, and such records shall be administered in accordance with the provisions of this section.

(c) Through the implementation of records management controls and other necessary actions, the governor shall take all such steps as may be necessary to assure that the activities, deliberations, decisions and policies that reflect the performance of such governor's constitutional, statutory or other official or ceremonial duties are adequately documented and that such records are maintained as gubernatorial records pursuant to the requirements of this section and other provisions of law.

(d) Documentary materials produced or received by the governor, the governor's staff, or units or individuals in the office of the governor the function of which is to advise and assist the governor, to the extent practicable, shall be categorized as gubernatorial records or personal re-

9-3

cords upon their creation or receipt and be filed separately.

(e) During the governor's term of office, the governor may dispose of those gubernatorial records that no longer have administrative, historical,informational or evidentiary value if (1) the governor obtains the views, in writing, of the state archivist concerning the proposed disposal of such gubernatorial records; and (2) the state archivist states that the state archivist does not intend to take any action under subsection (g).

(f) In the event the archivist notifies the governor under subsection (e) that the state archivist does intend to take action under subsection (g), the governor may dispose of such gubernatorial records if copies of the disposal schedule are submitted to the legislative coordinating council at least 60 calendar days in advance of the proposed disposal date.

(g) The state archivist shall request the advice of the legislative coordinating council with respect to any proposed disposal of gubernatorial records whenever the state archivist considers that (1) these particular records may be of special interest to the legislature; or (2) consultation with the legislative coordinating council regarding the disposal of these particular records is in the public interest.

(h) (1) Upon the conclusion of a governor's term of office, or if a governor serves consecutive terms upon the conclusion of the last term, the state archivist shall assume responsibility for the custody, control and preservation of, and access to, the gubernatorial records of that governor. The state archivist shall have an affirmative duty to make such records available to the public as rapidly and completely as possible consistent with the provisions of this act.

(2) The state archivist shall deposit all such gubernatorial records in a gubernatorial archival depository established by the state historical society. The state archivist is authorized to designate, after consultation with the former governor, a director at each depository or facility who shall be responsible for the care and preservation of such records.

(3) The state archivist is authorized to dispose of such gubernatorial records which the state archivist has appraised and determined to have insufficient administrative, historical, informational or evidentiary value to warrant their continued preservation. Notice of such disposal shall be published in the Kansas register at least 60 days in advance of the proposed disposal date.

(i) (1) Prior to the conclusion of the governor's term of office or last consecutive term of office, as the case may be, the governor shall specify durations, not to exceed 12 years, for which access shall be restricted with respect to information, in a gubernatorial record, within one or more of the following categories:

(A) Specifically authorized under criteria established by an executive order to be kept secret in accordance with federal or state law for security

in accordance with a records retention and disposition schedule developed by the state archivist in cooperation with the governor

at

an employee of the state historical society

9-4

purposes and in fact properly classified pursuant to such executive order;

(B) relating to appointments to state office;

(C) specifically exempted from disclosure by statute so long as such statute (i) requires that the material be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of material to be withheld;

(D) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(E) confidential communications requesting or submitting advice, between the governor and the governor's advisers, or between such advisers; or

(F) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(2) (A) Any gubernatorial record or reasonably segregable portion thereof containing information within a category restricted by the governor under this subsection shall be so designated by the state archivist and access thereto shall be restricted until the earlier of (i) (a) the date on which the former governor waives the restriction on disclosure of such record, or (b) the expiration of the duration specified under this subsection for the category of information on the basis of which access to such record has been restricted; or

(ii) upon a determination by the state archivist that such record or reasonably segregable portion thereof, or of any significant element or aspect of the information contained in such record or reasonably segregable portion thereof, has been placed in the public domain through publication by the former governor, or the governor's agents.

(B) Any such record which does not contain information within a category restricted by the governor under this subsection, or contains information within such a category for which the duration of restricted access has expired, shall be exempt from the provisions of subsection (i)(3) until the earlier of (i) the date which is five years after the date on which the state archivist obtains custody of such record pursuant to subsection (f); or (ii) the date on which the state archivist completes the processing and organization of such records or integral file segment thereof.

(C) During the period of restricted access specified pursuant to this subsection, the determination whether access to a gubernatorial record of reasonably segregable portion thereof shall be restricted shall be made by the state archivist, in the state archivist's discretion, after consultation with the former governor, and, during such period, such determinations shall not be subject to judicial review, except as provided in subsection(i)(5). The state archivist shall establish procedures whereby any person denied access to a gubernatorial record because such record is re-

9-5

stricted pursuant to a determination made under this paragraph, may file an administrative appeal of such determination. Such procedures shall provide for a written determination by the state archivist or the state archivist's designee, within 30 working days after receipt of such an appeal, setting forth the basis for such determination.

(3) (A) Subject to the limitations on access imposed pursuant to this section, gubernatorial records shall be administered in accordance with the Kansas open records act. Access to such records shall be granted on nondiscriminatory terms.

(B) Nothing in this act shall be construed to confirm, limit or expand any constitutionally-based privilege which may be available to an incumbent or former governor.

(4) Upon the death or disability of a governor or former governor, any discretion or authority the governor or former governor may have had under this section shall be exercised by the state archivist unless otherwise previously provided by the governor or former governor in a written notice to the state archivist.

(5) The district court of Shawnee county shall have jurisdiction over any action initiated by the former governor asserting that a determination made by the state archivist violates the former governor's rights or privileges.

(j) Notwithstanding any restrictions on access imposed pursuant to subsection (i):

(1) The state archivist and persons employed by the state historical society who are engaged in the performance of normal archival work shall be permitted access to gubernatorial records in the custody of the state archivist;

(2) subject to any rights, defenses or privileges which any agency or person may invoke, gubernatorial records shall be made available:

(A) Pursuant to subpoena or other judicial process issued by a court of competent jurisdiction for the purposes of any civil or criminal investigation or proceeding;

(B) to an incumbent governor [is] such records contain information if that is needed for the conduct of current business of the governor's office and that is not otherwise available; and

(C) to either house of the legislature, or, to the extent of matter within its jurisdiction, to any committee or subcommittee of the legislature if such records contain information that is needed for the conduct of its business and that is not otherwise available; and

(3) the gubernatorial records of a former governor shall be available to a representative of the former governor to such former governor or [the former governor's] designated [representative] by letter from the former governor

(k) The state archivist shall promulgate rules and regulations neces-

9-9

sary to carry out the provisions of this section. Such regulations shall include:

(1) Provisions for advance public notice and description of any gubernatorial records scheduled for disposal pursuant to subsection (h)(3);

(2) provisions for providing notice to the former governor when materials to which access would otherwise be restricted pursuant to subsection (i)(1) are to be made available in accordance with subsection (j)(2)(B);

[(3) provisions for notice by the state archivist to the former governor when the disclosure of particular documents may adversely affect any rights and privileges which the former governor may have;] and

[(4)] provisions for establishing procedures for consultation between the state archivist and appropriate state and federal agencies regarding materials which may be subject to state or federal law. (3)

Sec. 3. K.S.A. 75-104 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

Submitted by:
Dennis Schwartz,
Rural Water Dist.#8 714

Sec. 5 (a). The legislature shall provide by general law, applicable to all cities, for the incorporation of cities and the methods by which city boundaries may be altered, cities may be merged or consolidated and cities may be dissolved: Provided, That existing laws on such subjects not applicable to all cities on the effective date of this amendment shall remain in effect until superseded by general law and such existing laws shall not be subject to charter ordinance.

The phrase "by general law applicable to all cit seems to imply that the law on incorporation, annexation deannexation, consolidation or dissolution, to be passed a July 1, 1961, by the Legislature, must be a law unifor applicable to all cities.

The Legislature in 1967 did enact a uniform annexat law but did not repeal several special laws on annexation. 1967 law authorized all cities to annex land unilaterally ordinance when territory met any one of several crite which included: (1) the land was platted and some part of land adjoins the city; (2) the land was owned by or hel trust for the city or any agency thereof; (3) the land adjoi the city and is owned by or held in trust for any governm unit other than the city; (4) the land had common perim with the city boundary line of more than 50 percent; (5) land if annexed would make the city boundary line straigh harmonious and some part thereof adjoins the city, except land in excess of 20 acres shall be annexed for this purpose the tract was so situated that two-thirds of any boundary adjoins the city, except no tract in excess of 20 acres shall annexed under this standard; and (7) the land adjoined the and a written petition for or consent to annexation is fi with the city by the owner.

In addition, if the governing body of any city found advisable to annex land which did not conform to any of seven conditions specified above, they could in the name the city present a petition to the board of county comm sioners in which the land sought to be annexed was locat

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 10

The county commissioners were to conduct a hearing to determine the advisability of such annexation, and if satisfied that such annexation or the annexation of a lesser amount of land would cause no manifest injury to the owners, they were required so to find and grant the city annexation by order. Thereupon the city could annex the land by ordinance.

As a result of criticism of the annexation law and concerns that certain provisions may have been unconstitutional since property owners had no individual right to appeal to the courts regarding annexation decisions, an interim Special Committee on Local Government in 1973 was assigned the task of reviewing the annexation law. The 1973 Committee recommended the following changes, all of which were enacted by the 1974 Legislature:

1. retain the right of cities to annex unilaterally by ordinance, but restrict this right in certain areas;

2. define agricultural land and restrict the annexation of agricultural land in excess of 55 acres unless petitioned for by the property owner or owners or unless approved by the board of county commissioners;

3. provide that a municipality must give notice of its intent to annex land and require the holding of a public hearing (notice was to include a sketch or sketches of the land to be annexed and be published in a newspaper of general circulation in the county and was to include the sending of a copy of such notice by certified mail to all property owners of the area to be annexed);

4. provide for the annexation of noncontinguous property if the owners of such land petition for such annexation and if the board of county commissioners approve such annexation (noncontiguous annexations were not to be used as a base for further annexations, however, until

10-2

10-2

such time as they become part of the city proper);

5. require a municipality to formulate a plan for the extension and financing of major services to the area to be annexed;

6. provide that any property owner of land annexed by any city may seek recourse in the district court by challenging the authority of a city to annex and the regularity of such proceedings;

7. provide that any city may petition the board of county commissioners to annex land which it was unable to annex under any conditions specified in K.S.A. 12-520 and amendments thereto and require essentially the same notice and hearing requirements under this procedure as under the unilateral procedure; and

8. repeal of all special annexation laws.

In 1980, a law was passed prohibiting cities from annexing a county owned and operated airport without the permission of the county.

Again, in 1981 an interim Special Committee on Local Government again was assigned the task of reviewing the Kansas annexation law and annexation practices as a result of continued criticisms of annexation practices of cities.

Conferees in 1981 opposing city annexation practices recommended a number of possible changes including a mandatory vote on all annexations or a vote when a protest petition was filed, and county commission approval of all annexations. Representatives of cities proposed that acreage limitations be increased from 20 to 40 acres under the unilateral annexation procedure; that cities be permitted to petition any county commission (not just the county in which

the city is located) to annex land not adjoining the city; that counties rejecting city requests to annex lands not meeting unilateral criteria be required to submit written findings of fact as to the manifest injury that would result to the affected property owners; and that a technical amendment to K.S.A. 12-521 be made so that county commissions would not grant or deny a city's annexation request but only make a finding of whether a manifest injury would occur to property owners affected.

The 1981 interim Committee concluded the annexation law provided an adequate means for cities to expand their boundaries and provided sufficient safeguards for citizens living in areas subject to annexation. The report stated the Committee did not believe that any major changes in the annexation law, such as mandatory referendum or protest petition procedures, were warranted.

The 1981 Committee did recommend, however, that a county which rejects a city's annexation request under K.S.A. 12-521 should provide written findings of fact as to their determination that manifest injury to property owners would result. In addition, the Committee noted that a county commission's function should be properly limited to the determination of whether manifest injury would occur and not formal approval or denial of the annexation itself. The report stated that a city should be able to petition any county commission (not just the county commission in which the city is located) to annex land not adjoining the city under K.S.A. 12-520c. Under this procedure, landowners must petition for or consent to the annexation and the county commission must make a finding that the annexation will not hinder or prevent the proper growth and development of the area. Finally, the Committee saw merit in requiring a city to mail notice to the board of county commissioners and to affected township boards concerning the city's proposed annexations of lands.

The above conclusions and recommendations were incorporated in 1982 H.B. 2618. The bill passed the House but died in the Senate Local Government Committee. In 1982, however, the Legislature did prohibit the annexation of United

States military reservations by cities as a result of a controversy over an attempted annexation of Fort Riley by the city of Junction City.

Since 1982, bills have been considered each year to restrict city annexation powers. Suggested amendments have included granting property owners in areas slated for annexation the right to bring a protest petition and require an election on the issue and the right of landowners inside a city to petition for deannexation if major city services have not been provided within a certain time frame.

Legislation was enacted in 1984 providing a minor clarification of K.S.A. 12-520a and modifying procedures regarding the deannexation of territory. The deannexation law is described later.

Current Kansas Annexation Law

A uniform law (K.S.A. 12-519 et seq.) for the annexation of territory by cities in accordance with the home rule constitutional amendment provides for three separate methods for annexing lands. Under the first method, cities may unilaterally annex land if it meets one or more of the criteria found in K.S.A. 12-520 (a) through (f), i.e., the land is platted and some part adjoins the city; the land is owned by or held in trust for the city; the land adjoins the city and is owned by or held in trust for any governmental unit; the land lies within or mainly within the city and has a common perimeter with the city of more than 50 percent; the land if annexed will make the city boundary line straight or harmonious (limited to 20 acres); or two-thirds of the land's boundary line adjoins the city (limited to 20 acres).

Upon making this initial determination, the city then must adopt a resolution (see K.S.A. 12-520a) stating that the city is considering annexation which shall include: (1) notice of time, date, and place of the public hearing; (2) a description of the boundaries of the land proposed to be annexed; and (3) a statement that a plan for the extension of services is available for inspection in the city clerk's office. The plan for extension

of services is covered by K.S.A. 12-520b. A copy of the resolution, including a sketch delineating the land to be annexed, must be mailed by certified mail to each owner of land proposed to be annexed. The resolution must be published in the official newspaper. Following the public hearing, the city may adopt the annexation ordinance. Within 30 days any owner of land annexed may challenge the city's authority in the district court.

The second method of annexation may be utilized, if the land cannot be annexed under K.S.A. 12-520 (a) through (f), by the city petitioning the board of county commissioners. The city submits a petition to the board that includes a legal description of the land and requests a public hearing on the advisability of such annexation. A report on plans for the extension of services must be filed with the petition. Notice must be mailed to each owner of land proposed to be annexed and must be published. The county commissioners then must hold a public hearing and unless it is determined that the proposed annexation will cause manifest injury to the property owners, the annexation must be granted. An order either approving or denying the city's petition is issued by the board. If the order is approved by the county board, the governing body of the city adopts an annexation ordinance. Any owner or any city aggrieved by the decision of the board may appeal to the district court.

The third annexation method allows for annexation by petition or consent of owners in two situations: (1) if the land adjoins the city it may be annexed by ordinance on submission of a petition or consent form (see K.S.A. 12-520(g)); or (2) if the land is noncontiguous but within the same county, it may be annexed under certain conditions if the board of county commissioners approves (see K.S.A. 12-520c).

K.S.A. 12-529 prohibits the annexation of any territory of a United States military reservation.

Statutes relating to deannexation of land and vacation of plats were amended in 1984. The law provides (see K.S.A. 12-504 and 12-505) that upon petition for deannexation by the landowner or landowners, published notice must be given of a

10-6

public hearing to be conducted by the city governing body. The city governing body then decides whether the territory should be deannexed.

Several other statutes relate to annexation. K.S.A. 12-503a deals with taxation after annexation and provides that whenever all or any part of any township, improvement district, or other governmental unit is annexed, the governmental unit may continue to furnish services for the year in which taxes have been levied or collected to those annexed or as an alternative shall surrender the tax money to the city. No improvement district shall continue to make a levy after the annexation.

K.S.A. 12-527 deals with the annexation of territory of water districts. It provides all water facilities shall become property of the city upon payment by the city to the water district. K.S.A. 12-528 permits the city to issue bonds to pay these costs.

K.S.A. 19-3616 deals with the annexation of territory of certain fire districts in Johnson County. The statute provides the territory annexed shall remain a part of the fire district unless otherwise agreed by the city and fire district.

Finally, K.S.A. 12-517 and 12-518 require cities to declare annually their boundaries by ordinance and to file this ordinance with certain officials.

Committee Activity and Testimony of Conferees

The Committee held four days of hearings on this issue including one hearing in Wichita. Staff presented a memorandum reviewing the history of the Kansas annexation law, court decisions, and Attorney General opinions on this subject and the annexation laws from the four surrounding states. Staff reviewed a memorandum prepared by the League of Kansas Municipalities reviewing local boundary commission laws of 12 states. In addition, staff reviewed the annexation laws of Indiana, Ohio, and Wisconsin.

Four members of the Committee also served on a State-Local Annexation Task Force which held periodic meetings during the summer and fall. The Task Force and its activities will be summarized in more detail in the next section of this report.

Conferees for cities included representatives of the League of Kansas Municipalities and the Kansas Association of Realtors and 16 cities. The cities included: Bonner Springs, Dodge City, Emporia, Great Bend, Hutchinson, Kansas City, Lawrence, Lenexa, Olathe, Ottawa, Overland Park, Plainville, Russell, Shawnee, Topeka, and Wichita.

Conferees who advocated changes restricting city annexation powers included those representing the Kansas Association of Counties, the Kansas Rural Water Association, and the Kansas Electric Cooperatives, State Representatives Ginger Barr, Fred Rosenau, Dennis Spaniol, and Marvin Smith, a Sedgwick County commissioner, a Bel Air City councilman, and township trustees from Johnson, Sedgwick, and Shawnee counties. A number of conferees representing suburban and rural areas outside of cities in Johnson, Wyandotte, and Sedgwick counties, an area near Plainville in Rooks County, and a resident of Winfield also appeared.

The representatives of 16 cities generally agreed that contested annexations constituted only a small portion of the total number of annexations by their cities. For example, the Public Works Director of Olathe said only 8 percent of the city's total annexations in the past ten years were disputed. The Director of Planning and Economic Development of Shawnee said only three out of 18 annexations since 1973 involved opposition. A representative of Lawrence said only a fraction of 1 percent of the land annexed by the city had involved protests by citizens over the past ten years. The mayor of Wichita noted that the city had grown by over 20 square miles in the past 20 years and less than 10 percent of this territory was added by unilateral action of the city.

The city representatives all agreed that the current annexation law was working well and that city unilateral annexation powers should not be restricted. None of these

officials thought cities were engaged in capricious or unnecessary annexations or annexed lands merely to increase their local tax base.

Some city officials stated that residents of fringe areas near cities were not paying their fair share of taxes for the benefits they received from living near the cities which are centers for employment, retail trade, cultural and educational opportunities, and other municipal services. One city official said single family residences did not pay for themselves through increased property tax collections by the cities when annexed and that the more important concern for some cities is the location of retail shopping malls due to the impact of local sales taxes on local economies.

Several city officials said that development standards of counties were less stringent than those of cities and that cities, in order to insure the orderly development of fringe areas, needed to be able to annex at a relatively early stage of development. Otherwise, many public improvements may have to be redone at a later date when the density of the population increases. A suggestion made by the representative of Olathe was that cities should be given the power to control development within three miles of their limits and that cities and counties should jointly agree on development standards for areas between three and five miles from the city. Other city officials concurred that more coordinated planning by cities and counties was needed and that cities should be given control over the three-mile ring surrounding its boundaries.

A representative of the League of Kansas Municipalities stressed that annexation powers of cities is only one aspect of an urban growth policy that the state controls. Other major aspects include laws governing the incorporation of cities, planning and zoning laws, and laws governing the establishment of special district governments. The representative noted that urban growth was a fact of life and that it would occur in areas either controlled by a general purpose local government, i.e., a city, or in a hodgepodge fashion where various special districts and limited purpose governments provide the needed services.

The cities, the League of Kansas Municipalities, and the Kansas Association of Realtors all urged the Committee not to restrict cities' powers to annex lands.

The Committee also was briefed on the annexation efforts of both Overland Park, which petitioned Johnson County for permission to annex 7.8 square miles of land, and Kansas City, which petitioned Wyandotte County for permission to annex 16.9 square miles.

Common concerns of those who thought city annexation powers should be curtailed were that people in areas to be annexed were disenfranchised in the annexation process since they did not vote for city governing body members who make unilateral annexation decisions and that they had no avenue of protest by way of an election to express their views on the matter. They noted the current right of appeal to the courts is very limited in scope since a court can only review whether statutory procedures and unilateral criteria were met. The courts have no power to weigh the merits of the annexation itself whether the annexation occurs under a city's unilateral power or under the county commission procedure where the county must permit the city to annex unless they find the annexation will cause "manifest injury" to the property owners. They noted the term "manifest injury" is not defined in the statute and it can mean whatever a county commission or a court decides it means. (The term "manifest injury" was defined in In Re Appeal of City of Lenexa, 232 Kan 568 (1983).)

The conferees were in agreement that cities often annexed land that was only sparsely populated and which included farm lands. They said that the benefits a city had to offer were minimal or nonexistent and that taxes would often increase for little or no improvement in services. Some said snow removal would actually be worse when that responsibility was taken over by a city from a township. They also stated annexations were often motivated by a city's desire to increase its tax base.

Several persons testified including several state representatives that there were major delays in the delivery of

services to some areas of cities which had been annexed number of years ago. Certain areas in Kansas City, Kan Topeka, and Wichita were cited as examples of locatio where certain basic services such as sewer lines, pav streets, and drainage works were still lacking.

Representatives of several townships, the Rural Wat Association, and the Kansas Electric Cooperatives said ci annexations could disrupt the delivery of services to th remainder of residents of the township or special districts su as fire districts or to the remainder of customers of a rur water district or an electric cooperative service area. Th Rural Water Association representative said the current la requiring a city to compensate the water district for facilitie annexed was weighted too heavily in favor of the cities an that the law ought to be amended to insure water district were adequately compensated and remaining water distric customers would continue to be adequately served.

The Rural Electric Cooperatives representative propose legislation to require cities to grant franchises to utilitie whose territory is annexed or, in the alternative, a require ment that municipally-owned utilities be made subject to th jurisdiction of the State Corporation Commission.

A representative of the Kansas Association of Counties stated the Association's position was that annexations of cities should be approved by county commissioners unless the annex- ation was petitioned for by residents of the area. Suggestions from other conferees supported the idea of the board of county commissioners overseeing annexations. Other sug- gestions made were that persons in an area to be annexed be given the right to vote on the issue, that "manifest injury" be defined to include some specific standards, that a deannex- ation procedure be established if cities fail to provide major services to an area within a certain length of time, and that cities be given the power to enter into binding annexation agreements with one another about future annexations so premature annexations would not be instituted for fear another city may grab the land first. A state representative also suggested that local boundary commissions be established to decide disputed annexation issues.

State-Local Annexation
Task Force

A State-Local Annexation Tax Force was formed in midsummer following a suggestion made by the League of Kansas Municipalities last session that such a group be created. The Task Force, styled as an unofficial ad hoc group of state and local officials, included the following members: Senator Don Montgomery, Chairman of the Senate Local Government Committee and the 1985 Special Committee on Local Government; Representative Ivan Sand, Chairman of the House Local Government Committee and Vice-Chairperson of the Special Committee; Senator Norma Daniels, member of the Senate Local Government Committee and the Special Committee; Representative R. D. Miller, Vice-Chairman of the House Local Government Committee and member of the Special Committee; Mayor Doug Wright of Topeka; Mayor John Carder, Iola; Don Gragg, Sedgwick County Commissioner; Marvin Perkins, Topeka Township Trustee; Ernie Mosher, Executive Director of the League of Kansas Municipalities or his designee; and Fred Allen, Kansas Association of Counties or his designee.

The State-Local Task Force after several meetings discussing annexation issues recommended the following:

1. amend K.S.A. 12-520a to require cities to hold a public hearing on annexations in or near the site of the land proposed to be annexed, except upon a formal finding of the governing body that no adequate facilities are available, and at a time intended to enable maximum participation by interested parties;

2. amend K.S.A. 12-520c, K.S.A. 12-521, and K.S.A. 1984 Supp. 12-520a to require the annexing city to provide timely notice of its intent to annex certain territory to:

   a. the county (K.S.A. 1984 Supp. 12-520a annexations only),

   b. townships,

c. any special district governmental unit providing municipal services (e.g., sewer districts, rural water districts, improvement districts, fire districts, etc.),

d. utilities providing services to the area, and

e. any city, county, or joint planning commission having jurisdiction over any of the affected territory;

3. amend the various statutes governing the creation and adjustment of the boundaries of special district governments which provide municipal-type services in unincorporated fringe areas where city subdivision regulations are in effect to:

a. permit cities to require a unanimous vote of the board of county commissioners when the affected territory is in the path of municipal development, and

b. require any special district government which seeks to expand its boundaries to notify each city in the county or counties in which it is established of its intent to change its boundaries;

4. amend K.S.A. 12-520 and 12-520c to explicitly authorize preannexation agreements for municipal services to serve as consents to annexation and thereby reduce the need for premature annexations;

5. amend K.S.A. 12-519 to provide more specificity regarding the definition of land used for agricultural purposes that is subject to annexation, and to make the definition consistent with 1985 statutory language relative to the use value appraisal of such property for tax purposes;

6. amend K.S.A. 12-520 to:

   a. limit the annexation of part of an agricultural tract of land without the owner's consent,

   b. reduce from 55 to 20 acres the amount of agricultural land that may be annexed without the owner's consent, and

   c. authorize the annexation of land which is completely surrounded by a city, regardless of its size or use;

7. enact legislation providing for landowner-initiated deannexation of annexed land by order of the board of county commissioners (or boundary commission) when certain findings are made regarding a city's failure to meet major municipal service obligations;

8. create by statute a state-local task force, with representatives of state and local government appointed by the Governor, the President of the Senate and the Speaker of the House, to study and report to the Legislature on the financing of local public services, including tax disparities which may result from farm land and property within cities being taxed to finance the provision of services to unincorporated urban fringe areas; and

9. establish an interim legislative study of Kansas planning and development laws, including the possible mandate of a process for city-county cooperation to secure minimum land use and development regulations applicable to the fringe areas of cities, so as to discourage premature annexations.

In addition, the following proposal was submitted for Committee consideration which the Task Force had discussed, but upon which no consensus had been achieved. The proposal is to amend K.S.A. 12-520, 12-520c, and 12-521 to require the governing body of any city having a planning commission with members from both within and outside the city to submit to the Commission, for its review and comment, any proposal for annexation other than those petitioned for prior to the adoption of the resolution of intent to annex.

League of Kansas Municipalities
Annexation Policy Statement

The following is a portion of the League of Kansas Municipalities' policy statement adopted at its annual convention in the fall of 1985, regarding annexation.

> . . . We believe that the owners or residents of land adjoining a city should not be granted a statutory right to vote on or consent to annexation. It is essential that the long-term public interest of the whole community be given priority in municipal growth, in the same manner that other, over-all community needs in our society occasionally require the sacrifice of some private goals and interests in order to achieve the greatest social utility of the area and benefits to the many. It is untenable to us that the owners of land within the fringe area, whose location has benefits and value primarily in relation to the existence of the city, should be given veto power over the geographic, economic and governmental destiny of the whole community.

The League statement goes on generally to support recommendations which were proposed by the State-Local Task Force.

Conclusions

The Committee concludes that city annexation laws should be amended to give persons residing in areas to be annexed more of a voice in and access to the process. The Committee does not believe current law permits residents of an area to be annexed an effective avenue to have the annexation question decided by a neutral body. Nor does the limited review process by the courts for unilaterial annexations afford citizens an effective manner of appealing unilateral decisions. The Committee believes that certain standards or criteria should be the basis for review. Further, the Committee concludes that the integrity of farmlands needs to be further protected.

The Committee also believes that property owners once annexed should be afforded a vehicle for having their property excluded from the city, if the city has failed to provide services as promised.

The Committee further finds that annexations can be burdensome on certain special districts and other units of governments and utilities serving areas which are annexed. The Committee believes better notice provisions are needed to these entities and certain territorial protections are needed in regard to utilities.

On the other hand, the Committee does not believe city annexation powers should be unduly restricted. Further, the Committee believes that additional controls over developing areas surrounding cities are warranted. Specifically, the Committee believes that the creation of an extension of boundaries of special benefit districts within the three-mile fringe area of a city by a county should be more closely scrutinized by counties.

Further, the Committee believes that those property owners who directly benefit from city provided services should

10-16

not be permitted to protest a subsequent annexation if that is made a part of a services agreement with the city.

Recommendations

Local Boundary Commissions. The Committee recommends a bill that a five-member local boundary commission be created to consider disputed city unilateral annexations. As a part of this recommendation, the Committee recommends repeal of K.S.A. 12-521, which permits cities to request permission of the county to annex lands. Only city unilateral annexation (K.S.A. 12-520) or annexation of noncontiguous territory which is subject to county commission approval (K.S.A. 12-520c) will remain.

Boundary commissions shall be created whenever 51 percent of the landowners or owners of 51 percent of the land file a petition with the county clerk protesting a city's unilateral annexation. The boundary commission shall consist of five members including two members of the annexing city's governing body, two county commissioners including the commissioner representing the area to be annexed, and an impartial fifth member to be selected by the other four. The boundary commission shall hold a public hearing in the area to be annexed or in a location as near as possible. (A city annexation hearing must also be held in the area to be annexed or as near as possible.) Notice of the public hearing must be published in the official newspaper of the city and mailed by certified mail to all property owners in the area to be annexed. The boundary commission shall base its decision on 16 factors which are listed. The decision of the boundary commission shall be quasi-judicial in nature and shall be in writing and shall contain specific findings of fact and conclusions. The decision may be appealed to the district court. Costs of the boundary commission are to be borne equally by the city and the county.

Also recommended is a provision allowing cities when delivering municipal services to an unincorporated area to tie the delivery consent to annexation. The annexation agreement must be filed with the register of deeds in the county where the property is located.

The bill alters the definition of land devoted to agricultural use to conform with the definition adopted by the Legislature regarding use value appraisal of farmland may be unilaterally annexed and lowers the acreage limitation from 55 acres to 20 acres without the written consent of the owner. Agricultural land completely surrounded by a city, however, may be annexed. The bill also expands annexation notice requirements to include notice to other political and taxing subdivisions and utilities serving the area. All of these recommendations are included in S.B. 427.

The Committee recommends that boundary commission legislation be made retroactive to August 15, 1985. This recommendation is included in a separate bill, S.B. 426. The Committee belives that certain cities recently have annexed land which was not ready for annexation because of the cities years of restrictions by the Legislature. The Committee believes it is only fair that persons living in these areas be given an effective avenue to protest these annexations.

Deannexation of Land. The Committee recommends a procedure whereby property owners annexed may apply to the board of county commissioners for deannexation after seven and one-half years if services have not been provided as stated in the city's timetable for extending services. A public hearing would be required. Deannexation shall not be ordered if this plan for extension of services conditions such extension on the petition by owners for the creation of an improvement district and a petition has not been filed. Nor will deannexation be ordered if landowners blocked the creation of an improvement district by a protest petition, or if the deannexation would result in the land being completely surrounded by the city or if the deannexation would have an adverse affect on the health, safety, or welfare of residents of the city or the area. These recommendations are incorporated in S.B. 424.

Utility Franchises. The Committee recommends S.B. 428 that would require cities to grant franchises after annexation to those entities furnishing water, gas, electric

power, telephone service, and other utilities listed in K.S.A. 12-2001 to the area prior to annexation.

Creation of Special Districts Near Cities. The Committee recommends that boards of county commissioners be required to approve the creation of or the extension of boundaries of any sewer, water, fire, industrial, improvement, drainage, groundwater management, and cemetery districts by a three-fourths vote when the proposed district lies within three miles of a city. These recommendations are incorporated in S.B. 425.

All of the above cited bills would be effective upon publication in the Kansas Register.

Respectfully submitted,

December 4, 1985

Sen. Don Montgomery, Chairperson
Special Committee on Local Government

Rep. Ivan Sand,
Vice-Chairperson
Rep. Elizabeth Baker
Rep. Nancy Brown
Rep. Carl Holmes
Rep. Mary Jane Johnson
Rep. Robert D. Miller
Rep. L. V. Roper
Rep. Judith Runnels

Sen. Jim Allen
Sen. Norma Daniels
Sen. Audrey Langworthy
Sen. William Mulich

Amendment Drafted at Request of Rep. Vickrey

Balloon Amendment Submitted by: Norm Furse

Session of 2005

HOUSE BILL No. 2230

By Committee on Governmental Organization and Elections

1-31

AN ACT concerning cities; relating to annexation; amending K.S.A. 12-520 and repealing the existing section.

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

New Section 1. (a) No land located in a township shall be annexed pursuant to subsection (a) (1) of K.S.A. 12-520, and amendments thereto, unless the city adopts a resolution stating its intent to annex such land. Such resolution shall be published at least once in a newspaper of general circulation within the city and in the area sought to be annexed. If within 30 days after the publication of such resolution, a petition requesting the appointment of a boundary commission and signed by at least 50% of the landowners in the area sought to be annexed is filed with the city clerk, no land shall be annexed unless such annexation, or portion thereof, is approved by a boundary commission as provided by this section. The petition shall include the names of the landowners who will serve as those members of the boundary commission representing the owners of land in the area proposed to be annexed.

(b) The mayor shall convene a boundary commission composed of seven members as follows:

(1) Three members appointed by the governing body of the city desiring to annex such land;

~~(2) one member appointed by the board of county commissioners; and~~

~~(3)~~ three members selected by the ~~landowners~~ from the Landowners by County Commissioners in the area proposed to be annexed as specified in the petition;

(2) appointed and selected

; and

(3) one member selected by the six members pursuant to paragraphs (1) and (2).

(c) The boundary commission shall determine whether the proposed annexation is in the public interest and in the best interest of the city, county and other political subdivisions in the area sought to be annexed. The governing bodies of the city, county and other political subdivisions in the area sought to be annexed shall assist the board in making its decision. Such governing bodies shall provide all relevant information and records requested by the boundary commission. In making its determination, the boundary commission shall consider the following:

(1) The immediate and prospective populations of the area to be

Submitted by: Norm Furse

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 11

HEARTLAND
Apartment Association

P.O. Box 30097 • Kansas City, Missouri 64112 • (816) 561-9958 • Fax (816) 561-9927 • haaunits@sbcglobal.net

Samuel V. Alpert
Executive Director

BOARD OF DIRECTORS

Douglas M. Price
Price Development Co.
President

Ward A. Katz
Katz Residential Services, Inc.
1st Vice President

Chris Erdley
Tower Properties
Vice President

Rick Oddo
Oddo Development Co.
Secretary

Kenneth L. Riedemann
The Peterson Companies
Treasurer

Jim Adams
Maxus Properties
Director

Jim Beverlin
Cohen-Esrey Real Estate Services, Inc.
Director

Michael Cassin
Trinity Property Management
Director

Bill P. Charcut
The Neighborhood Group
Director

Peter Engleman
Nolan Real Estate Services, Inc.
Director

R. Lee Harris
Cohen-Esrey Real Estate Services, Inc.
Director

Ralph E. Lewis, II
Attorney at Law
(Vendor Associate Advisory Member)
Director

Jerry Miller
Prudential Signature Real Estate Services
Director

Dennis Watts
Aimco
Director

February 22, 2005

Re: HB-2321

Mr. Chair and Members of the Committee:

The measure before you today **(HB-2321)** illustrates a way in which state government can best assure its citizens that local "user fees", regularly enacted to augment general tax revenues in support of public services and infrastructure, are being equitably conceived and justly administered.

In recent years the business and development communities have been given to understand that if public coffers are running low, the easiest fix by far is to impose "user fees". On the surface it is hard to dispute the specific merits of a user fee that is predicated upon the delivery of a valuable service that directly benefits a business owner . The difficulty comes when any number of historically taxpayer funded public services suddenly qualify as direct "user" supported activities.

The "user fee" approach, which almost never requires a vote, and usually singles out a fairly small constituency segment (i.e. housing providers or real estate developers), is extremely expedient, but is commonly absent any sensitivity to basic fairness of application or unintended negative economic consequence. This is especially evident when long term economic development considerations are subordinated to the immediate need for funding in support of inefficient, but non the less, institutionalized municipal and county departments and programs.

On a nationwide basis the seriousness of this situation was recently pointed up in a U.S. Department of Housing and Urban Development study entitled ***"Why Not In Our Community?", Removing Barriers to Affordable Housing*** (excerpts attached), which indicates that housing affordability has been adversely affected through the imposition of local "user fees" amounting to as much as $10,000 per single family dwelling unit. The greater implication of this trend is that the production of dwelling units intended to house a qualified local work force is becoming more difficult to achieve; and as you are aware, to remain competitive, it is necessary to attract and retain a qualified work force. The point here is that "user fee" impositions or increases in existing fees do

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 12

not occur in a vacuum, and in fact, can prove to be detrimental to long-term growth potential.

In addition to the Heartland Apartment Association, I have been asked to speak today on behalf of the Building Owners and Managers Association of Greater Kansas City and the Greater Kansas City Construction Users Council. In support of **HB-2321**, it is our collective hope that the committee can agree that while a new local "user" or "impact fee", or a fee increase may serve to meet an immediate critical funding requirement, **before such a fee or increase can be enacted,** long-term objectives can be best served only through a detailed analysis of the economic impact to all who will be affected. In order to ensure that the bill effectively addresses these issues, I would like to read the proposed attached balloon amendment into the record.

Your attention to and consideration of this matter are greatly appreciated.

Thanks,
HEARTLAND APARTMENT ASSOCIATION

Samuel V. Alpert
Executive Director

SVA/sva
Cc: file

12-2

HB-2321- KANSAS USER FEE LEGISLATION
Balloon Amendment

Amending Section 1. (b)

(1). Before imposing or increasing any user or impact fee or charge, the governing body of the municipality shall prepare a statement of economic impact of such fee or charge upon all persons who will be subject thereto, and upon the general public. The economic impact statement shall include: (i) a brief description of the proposed user fee or charge, and what is intended to be accomplished by the imposition of, or increase in the amount of the fee; (ii) a description of the service for which the fee is imposed; (iii) whether the service is mandated by federal or state law as a requirement for participating in or implementing a federally or state subsidized or assisted program, and whether the service provided exceeds the requirements of applicable federal or state law; (iv) a detailed description of the cost of providing such service, the persons who will bear the cost, and those who will be affected by the imposition of or increase in the amount of the fee, including private citizens and persons for whom the service is provided; (v) a description of any less costly or less intrusive methods that were considered by the municipality for achieving the stated purpose of imposing or increasing the amount of the fee, and why such methods were rejected; and (vi) a detailed statement of the data and methodology used in estimating the costs used in the statement. The municipality shall reevaluate and, when necessary, update the statement at the time of giving notice of hearing on the proposed imposition or increase. A copy of the current economic impact statement shall be available from the municipality upon request by any party interested therein.

"Why Not In Our Community?"

Removing Barriers to Affordable Housing

An Update to the Report
of the Advisory Commission
on Regulatory Barriers
to Affordable Housing

U.S. Department of Housing and Urban Development
Office of Policy Development and Research

PD&R

12-4

Trends in the Regulatory Environment Affecting Housing Development

Since 1991, regulatory barriers to development of market rate, rental, and affordable housing have become more widespread in suburban regions and some rural areas as communities seek to limit population growth. Generally, regulatory tools that were barriers then remain barriers today. Regulatory mechanisms, such as restrictive zoning, excessive impact fees, growth controls, inefficient and outdated building and rehabilitation codes, multifamily housing restrictions, and excessive subdivision controls have been in use for decades. These controls have become more sophisticated and prevalent. The current regulatory framework makes building a range of housing types increasingly difficult, if not altogether impossible, in many areas. Although some recent market research appears to indicate a greater willingness by the general population to accept affordable housing for moderate or middle income families in their communities, no evidence exists that such abstract acceptance has translated into large-scale action at the local level to undertake significant regulatory reform.

The following trends stand out:

- *Increased complexity of environmental regulation.* Over the past decade, environmental protection regulation has increased in complexity, resulting in lengthy review and approval processes, additional mitigation requirements, and new requirements for consultants. Although environmental protection is an important national objective, inefficient implementation of environmental regulations results in higher development costs and restricted development opportunities.
- *Misuse of smart growth.* A major change in the development climate over the past decade is the rapid emergence of the smart growth movement. Some smart growth principles, such as higher density development, can facilitate the development of affordable housing. A number of communities, however, have used smart growth rhetoric to justify restricting growth and limiting developable land supply, which lead to housing cost increases.
- *Still NIMBY in the suburbs.* Many suburban communities continue to enact affordable housing restrictions, use exclusionary zoning practices, impose excessive subdivision controls, and establish delaying tactics for project approvals. These development barriers can effectively exclude rental and affordable housing development in a community.
- *Impact fee expansion.* Impact fees are an accepted and growing mechanism to finance the infrastructure and public services associated with new development. Although some impact fees reflect actual front-end infrastructure development costs, others are disproportionate to communities' actual costs, reflect an unnecessarily high level of infrastructure investment, or are assessed in a regressive manner.
- *Urban barriers—building codes, rehabilitation, and infill development.* Slow and burdensome permitting and approval systems, obsolete building and rehabilitation codes, and infill development difficulties remain serious impediments to affordable housing development in cities. Obsolete building and rehabilitation codes are one of the most widespread urban regulatory obstacles, requiring old-fashioned and expensive materials, outdated construction methods, and excessive rehabilitation requirements that make construction and rehabilitation more expensive in certain regions.

Each trend is described in detail below.

Increased Complexity of Environmental Regulation

Environmental protection regulation is essential to building healthy and sustainable communities. Environmental protection and affordable housing development need not be competing objectives. How these regulations are implemented, however,

public benefit in streamlining the processes, even though each day of unnecessary delay eventually raises development costs with subsequent increases to housing prices and rents. In some cases, an unnecessarily complex approval system may be consciously used by communities and opponents of affordable housing as a growth management tool, a way to extract greater concessions from the developer, or a method for keeping out affordable housing.

Excessive Subdivision Controls. Subdivision ordinances, which regulate the land development, infrastructure, and site design characteristics of new housing, are a primary tool communities use to plan and regulate residential development. Some of these controls unnecessarily raise the cost of housing. Such excessive controls, often referred to as "gold-plated" standards, may mandate excessively wide streets or require, for example, at least 4.5 parking spaces per dwelling unit, even for multifamily development. Many communities require excessively rigorous standards to reduce long-term maintenance costs on the infrastructure they will eventually inherit from developers or to preclude lower cost developments. The new homebuyer, however, is the one who eventually pays the price in higher initial costs for a home.

Inefficient Permitting and Approval Systems. The land development review process also has become more complicated and contentious. Among other issues, the increased use of discretionary approvals, planned unit developments (PUDs), and layered approval systems have added to the burden and complexity of the approval process. More and more, approvals require a complex negotiating process between the developer and the community. Some communities have eliminated zoning "as of right" and treat all new development as a PUD for review and approval. Time is critical in housing development, because financing and profitability depend on keeping to the schedule. It is no longer unusual, however, for it to take developments 5 years or more to gain all the necessary permits and approvals.

Impact Fee Expansion

A dramatic change in the regulatory environment since the release of the 1991 Report has been the widespread adoption of impact fees. Using local power to regulate land use, communities are asking developers to bear a larger share of the front-end burden of supplying new infrastructure and added services as a means of paying for continued growth. Although not new, impact fees are becoming a prevalent financing strategy for new development almost everywhere across the United States—and they are often a significant impediment to the development of affordable housing. The higher costs of building homes due to impact fees are passed on to the homebuyers. In many communities, these fees exceed $10,000 per unit; a number of communities in California now report fees of $45,000 per unit and higher.

While all impact fees increase the cost of new housing, some are more reasonable than others. Localities are often constrained in setting property tax levels by state taxation limits and have little choice but to impose impact fees to help pay for rapid growth. Other communities are unwilling to raise property taxes to provide schools or more services. Impact fees have increased in popularity because they provide a politically attractive mechanism for raising revenue. When they are set at a fair, reasonable, and predictable level, they can be an efficient means of paying for growth-related infrastructure costs.

Impact fees pose the greatest barrier to affordable housing when they are regressive or disproportionate to actual development costs. Unlike property taxes, which are based on home value, impact fees can be regressive if they are assessed on a per-unit basis. In such cases, a home built for $80,000 is subject to the same fees as a $300,000 home. Regressive impact fees can pose an insurmountable barrier to affordable housing development. In 2001, for example, the Waukesha, Wisconsin, chapter of Habitat for Humanity sat idle because it could not afford to build affordable units as a result of skyrocketing impact fees.

12-6

Far too often, impact fees are used to pay costs unrelated to the development. This forces developers to pay not just for the marginal costs of the housing they produce (that is, the costs associated directly with the new housing), but also for public goods for the entire community.

Urban Barriers—Building Codes, Rehabilitation, and Infill Development

Despite some progress in reducing regulatory barriers in a number of cities, urban centers generally continue to rely on an assortment of obsolete building regulations that impede infill development. These barriers continue to exist, despite the demand for new and rehabilitated residential units. Regulatory barriers to urban development include a diverse and often archaic and complex mixture of building codes, labor ordinances, and local tax provisions. In cities particularly, the development approval process tends toward a multilayered approach requiring coordination among various dissimilar agencies. Maneuvering through such processes typically adds significant additional time and cost constraints to projects already hampered by the challenges of site assembly, obtaining clear title, and the unique challenges of urban sites.

Despite a growing need for housing rehabilitation, many cities continue to use building codes that emphasize criteria more suitable for new construction to the detriment of rehabilitation activities. In a 1998 survey of building code authorities, respondents cited regulatory requirements as frequent impediments to increased rehabilitation. Of 223 officials surveyed, more than 80 percent reported building requirements requiring a review by two or more city agencies that often failed to communicate during the approval process.

Infill development, the method by which housing is generally built in older cities, involves a complicated and time-consuming process of land acquisition and regulatory approvals. Difficulties in acquiring a sufficient number of parcels for infill development continue to prevent many builders from using the economies of scale that they rely on when developing affordable housing in the suburbs. Such acquisitions are complicated by the tedious, antiquated procedures many cities employ for delinquent tax foreclosures or condemnations. In concert with the additional difficulties builders encounter when attempting to obtain clear title to various unrelated parcels, these complexities continue to bog down time-sensitive projects to the point of infeasibility.

HOME BUILDERS ASSOCIATION
OF GREATER KANSAS CITY

Affiliated NAHB

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

Testimony in support of HB 2321
Governmental Organizations and Elections
February 22nd, 2005

Chairman Vickrey, Vice-Chair Huy and Committee members:

Thank you for the opportunity to appear before you today because this is an issue of growing concern to the residential construction industry in the state of Kansas. My name is Dave Holtwick and I am with the Home Builders Association of Greater Kansas City where I serve as Staff Vice-President of Governmental Affairs. Our association consists of over 1,100 member companies engaged in the home building industry in the Kansas City area.

We have an interest in this legislation because our association supports uniform and consistent rules and regulations that affect our members. That applies to building codes, development fees and taxes and we believe passage of HB 2321 will help remove the inconsistency we see now. I believe this bill is about adding fiscal responsibility and accountability for local units of government in how they collect and expend user fees and charges.

We hear often that new development should pay its fair share and we agree...but only it's fair share. We know that development requires infrastructure, as well as other municipal services, to be successful but we also know residential construction makes a significant financial contribution to the economy in the form of increased sales taxes, property taxes and new jobs.

As budgets for local municipalities have become increasingly strained, most have opted to increase revenues by collecting new fees and taxes, especially on development. Perhaps it is time to focus on "needs" rather than "wants".

Interestingly, the front page of the Kansas City Star for this past Sunday featured an article entitled, "Could Debt Sink Us?" It spoke of the incredible spiraling debt for consumers but also for government. One sentence in the multi-page article seemed to summarize the situation all to well. "Part of the problem...is that Americans seem incapable of fiscal discipline." Perhaps it is time to focus on "what we need" rather than "what we want".

Too many times, we receive a call or e-mail, as we did last Friday, announcing that a local city council will be discussing raising an existing fee or enacting a new one at a meeting in a day or two. In this case, the fee in question would raise the Park Excise Tax, a tax charged on new residential development to provide additional parks, from $260 per

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 13

home to $700 immediately and to $1,200 over the next two years. This was not really a surprise because we have been talking with this group for over a year now. What is a surprise is that we don't see them open to any option other than simply raising the fee higher and higher.

Our members are business men and women and so they try to sell their products for more than the cost of providing or building them. After all, that's what successful business people do. As part of that equation, increased fees and taxes become part of the new home sales price. Our concern, besides making sure the fee or tax is warranted, is to make sure there is enough lead time to include the increase or new fee in the sales price. An even larger concern is to make sure that new home prices do not increase so far that they are out of reach for those seeking to buy them.

Far too often, we see staff recommendations for council to consider that justify the new or increased fee with the words, "This fee increase would bring the fee for (you fill in the blank) in line with most cities in Johnson County." Some cities may determine how much they should charge for the service they are rendering but that doesn't mean all other cities should have the same fee structure because they are not providing consistent services. Additionally, we are concerned when we see words like, "Using this fee, the City will be more than covering its costs on each application." The fee should be commensurate with the service provided.

As I said before, our members are willing to pay their fair share but it's sometimes hard to determine just what that is. HB 2321 would help provide that information. I believe this bill provides fiscal responsibility and accountability and that just makes sense

Thank you, again, for your interest and attention. I hope you will support HB 2321. I would be glad to answer any questions you might have of me.

Sincerely,

Dave Holtwick
Staff VP-Kansas Governmental Affairs

Mr. Chair & Members of the Committee **February 22, 2005**

My name is Chris Erdley of Overland Park and I am here today in support of House Bill 2321. In recent years, many of us in the real estate industry have seen first hand the effects of local municipalities implementing additional taxes in order to compensate for budget shortfalls caused by a lack of fiscal responsibility or just plain mismanagement of funds. This mismanagement and basic lack of accountability has caused the services and infrastructure of these municipalities to deteriorate while taxes are increased under the guise of "user fees" or "impact fees". Recently, property owners in Johnson County have been charged for newly implemented storm water fees and wastewater fees that will generate millions of additional dollars of revenue. These additional costs were implemented without an educated rationalization of how the fees would be calculated or a pre-determined analysis of what costs the fees are to be used for.

This bill will allow for full disclosure of the intention of potential fees, permits, licenses and inspection costs and will cause open discussion between government officials and those persons affected. Furthermore, the disclosure of other methods considered and the way the fees were calculated can lend credibility to the jurisdiction by removing the perception of the citizenry that these fees are implemented without debate or careful consideration. The adoption of House Bill 2321 would be a major step forward for providing a measure that would remind municipalities of their responsibilities to invest their tax dollars prudently and there are no simple funding remedies for irresponsibility. What's more, this bill gives each municipality the credibility to remind it's citizens that they had every opportunity to voice dissenting opinions to each tax measure at its inception rather than after it's implementation.

Thank you for hearing my testimony and consideration of this bill.

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 14

Oddo
DEVELOPMENT COMPANY, INC.
8460 Nieman Rd. Lenexa, Kansas 66214 • Phone: (913) 894-ODDO (6336) • Fax: (913) 894-9100

ENTREPRENEUR OF THE YEAR®

February 22, 2005

Re: HB-2321

Mr. Chair and Members of the Committee:

My name is Rick Oddo and I am the President of Oddo Development Co., which is located in Lenexa Kansas. Our company owns approximately 1000 apartment units in Overland Park, Kansas and 20 warehouse buildings throughout the Kansas City area.

I am here today in support of **HB-2321**. As a business owner I see the local governments instilling more regulations and additional user fees every month. These user fees are applied disproportionately to businesses as compared to homeowners. I feel this is because the municipalities don't feel sorry if they charge businesses more. The municipalities also know that, as a rule, business owners and renters are only a small percentage of the voters. Therefore, municipalities cater to the homeowners by charging them a minimal amount, while overcharging the business and apartment industry. After speaking with employees of the City of Overland Park, I feel my thoughts are justified. I was told that it is easier to have higher user fees on the apartments than the homeowners. "Your tenants will not see the fees and you can simply pass on the cost to the renters and they will blame you not us (the City)."

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 4 of 5

The following are some of those examples.

The building permit on an average house of 2000 square feet in Overland Park cost $300.00, or $.15 per square feet. There is a design review fee of $100.00, and a processing fee of $15.00, for a total of $415.00. An apartment community of similar construction has to pay design review fees of $.095 per square foot, and building permits of $.19 per square foot. Our company paid $64,600.00 for building permits and $32,300.00 for design review fees on the last apartment community that was completed. While apartment plans are a little more detailed than homes, it takes about two weeks to review the plans. As you can see $32,300.00 is somewhat out of balance for reviewing plans. The user fee should accurately reflect the time spent and not be used to pad the general fund for the City.

In addition, the cost of a building permit is supposed to cover the cost of the inspector's fees. We had inspectors on site an average of 4 to 8 hours per week. For this type of money I could have had one full time engineer inspecting the community for the 18 months of construction. I was told that we "subsidize the single family houses." This is completely unfair to my residents, who cannot afford to subsidize homeowners. Once again, the time spent doesn't justify the amount charged. $64,600.00 not only subsidizes, but is clearly adding to the general fund.

Storm water fees on apartments were taxed at almost double the rate of homeowners based on land area or impervious area, whichever method that you would use.

Municipalities are increasing and adding user fees on many occasions as revenue increasers and they are not always applied fairly, nor are they able to justify what the fees are for. I do believe in the use pay method as long as the fees are proportionate for all parties involved, businesses, apartments and homeowners alike and the fees are being used for the actual project and not for adding to the general fund. To do this I firmly believe in the need for the bill before you today **HB-2321.**

Thank you,

Rick Oddo
President
Oddo Development Co, Inc.

NAI COHEN·ESREY
REAL ESTATE SERVICES INC.

Submitted by:
Jim Beverlin
Cohen-Esrey

Cohen♦Esrey Multi-Family Management
Sample User Fee's-Kansas Portfolio
February 22, 2005

Wichita, KS		
Westar Energy	Franchise fee	Based on usage
Wichita Water	Base meter charge	$6.69 per meter
Wichita Sewer	Base meter charge	Based on usage
	Consumption charge	Based on usage
	Storm water charge	Based on usage
Overland Park, KS		
KCPL	Base customer charge	$12.58 per meter
	City franchise fee	
Kansas Gas	Service charge	
	Delivery charge	
	Franchise fee	
Johnson County Water	Water plan fee	
Ottawa, KS		
City of Ottawa	Energy adjustment fee	
Aquilla	Customer charge	$11.20
City Water	State water fee	
	Water surcharge	
	Water transportation surcharge	
Hays, KS		
City Water	City business tax	
Midwest Energy-Elec	ECA charge	
	Local generation charge	
	Transmission charge	
	Distribution charge	
	Franchise tax	
Midwest Energy-Gas	Delivery charge	
	Gas hedge	
	Franchise fee	
DeSoto, KS		
Atmos Energy-Gas	Facility charge	
	Franchise fee	
Westar Energy	Customer charge	$8.50
	Franchise fee	

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 16

1100 Main Street, Suite 2700 • Kansas City, Missouri 64105
Telephone (816) 531-8100 • Fax (816) 531-4470

All information furnished regarding property for sale or lease is from sources deemed reliable, but no warranty or representation is made as to the accuracy thereof, and the same is submitted subject to errors, omissions, changes of prices, rental or other conditions prior sale, lease or withdrawal without notice.

Lenexa, KS

KCPL-Elec	Customer charge	$12.58
	Franchise fee	
Atmos Energy-Gas	Facility charge	
	Franchise fee	
Water One	Service charge	$14.70
	Kansas water plan	
Kansas Gas	Service fee	$17.00
	Delivery charge	
	Weather Normalization charge	
	Franchise fee	

Olathe, KS

KCPL-Elec	Customer charge	$12.58
	Franchise fee	
Water One	Service charge	$14.70
	Kansas water plan	
Johnson County Waste	Service charge	

Mission, KS

KCPL-Elec	Customer charge	$5.78
	Franchise fee	
Kansas Gas	Service charge	$8.95
	Delivery charge	
	Weather Normalization charge	
	Franchise fee	
Water One	Service fee	$14.70
	Kansas water plan	

BUILDING INDUSTRY
ASSOCIATION, INC

212 S.W. 8th Avenue, Suite 201, Topeka, KS 66603 785/232-2131

STATEMENT OF THE KANSAS BUILDING INDUSTRY ASSOCIATION

TO THE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE

REPRESENTATIVE JENE VICKREY, CHAIR

REGARDING H.B. 2321

FEBRUARY 22, 2005

Mr. Chairman and Members of the Committee, I am Chris Wilson, Executive Director of the Kansas Building Industry Association (KBIA). KBIA is the statewide trade and professional association of the home building industry in Kansas. We are in support of H.B. 2321.

This bill makes good common and fiscal sense. It simply requires that municipalities think through the costs of providing a service and determine at what level a service fee should be in order to recoup the cost of providing the service.

The bill as written requires that this audit be done by an internal auditing department, and we recognize that would not be feasible for many municipalities. We would suggest amending the bill so that the analysis could be done by any staff member or officer of the city. For instance, I thought about my local community and a common fee, which would be for utilization of recreational programs. So, for instance, this analysis be done regarding the admission fee for the municipal pool by the part-time student who runs the swimming pool? I think so. We see it similar to having a business plan. You would analyze what your costs were going to be to provide the service, i.e. cost of water, chemicals, lifeguards and other staff, and so on. The bill requires no more, but there would be a benefit to the city council in knowing what those costs would be, and that information would be helpful in determining what the admission fees would be.

This seems like a good, common sense approach that would serve communities well, without providing a substantial burden. Thank you for your consideration.

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 7

LKM
League of Kansas Municipalities

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

To: House Governmental Organization & Elections
From: Kim Gulley, Director of Policy Development & Communications
Date: February 22, 2005
Re: Opposition to HB 2321

Thank you for the opportunity to appear today on behalf of the 565 member cities of the League of Kansas Municipalities. HB 2321 would have a serious, negative impact on all of the 627 cities in the state. We offer the following specific concerns:

- **Applies to Nearly All Services.** HB 2321 applies whenever a political subdivision has a "user fee or charge." Nearly all government services would fall within the category of a user fee or charge. It would certainly include water service, sewer service, trash service, electric service, gas service, swimming pool fees, park and recreation fees, and many, many more services. Most city fees and charges are by their very nature based on usage by the individual citizen. Therefore, a separate audit would have to be conducted every time a city wanted to alter one of those fees.

- **Unfunded Mandate.** HB 2321 represents an unfunded mandate of the highest order. There are 627 cities in Kansas and all of them have some kind of user fee or charge. Most of them have many such charges and fees. Requiring a professional audit to be conducted in order to raise the swimming pool fee from $1.50 to $2.00 seems an unconscionable waste of taxpayer dollars. Both large and small cities would be negatively affected by this bill. In large cities, where there are many different government services and fees, the number of audits required by this legislation would be staggering. In smaller cities, the cost of conducting a professional audit would make it nearly impossible to alter existing fees.

- **Local Officials are Directly Accountable.** Locally elected officials set the fees and charges which are imposed by a city. These officials are directly accountable to the public that they serve. Locally elected officials use their best judgment to manage their cities, including the setting of fees and charges. We oppose substituting the judgment of a hired CPA for that of locally elected officials.

For these reasons, we respectfully request that you do not recommend HB 2321 for passage. I would be happy to stand for questions at the appropriate time.

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 18

Johnson County, Kansas

BOARD OF COUNTY COMMISSIONERS

Testimony in opposition to HB 2321

presented to the

House Governmental Organization and Elections Committee

by

Danielle Noe

Intergovernmental Relations Manager

February 22, 2005

Mister Chairman and Members of the committee:

Thank you for the opportunity to testify in opposition to HB 2321, relating to audits of municipal fee increases.

Counties act as an important provider of a number of important government services; many of which are mandated by the state or federal governments. While many of these services are funded to some degree by the state or federal government, others must be subsidized or fully funded by local tax revenues. Counties, like other municipalities, often use more than one funding stream to pay for services. Most fees, or service charges, do not fully recover the cost of the service. This is an intentional decision due in large part to fact that most users of the service also pay taxes to help support those same services. Likewise, many charges are based on factors other than cost, including ability to pay.

Johnson County has several concerns with HB 2321, which follow:

- First, the legislation requires the audit, but it does not require that anything in particular be done with the audit. If the purpose of the audit is informational only, it is a lot of work and cost for little benefit.

- Second, the term "municipality" is oddly defined and would likely lead to some confusion over who is actually covered. The definition should be more consistent with other areas of the law.

- Third, the language of the bill is extremely broad. It covers every fee and charge for any service, which would include everything from building inspections to copying charges, from restaurant inspections to airport service fees, from park fees to septic tank permit fees, and everything in between. It would have the effect of requiring numerous audits with no actual benefit.

House Gov. Org. & Elections
Date: 2-22-05
Attachment # ~~12~~ 19

111 S. Cherry, Suite 3300 • Olathe, Kansas 66061 • (913) 715-0725 • (913) 715-0727 fax

House Gov. Org. & Elections
Date:

- Fourth, this type of "cost of service" audit is expensive. Moreover, the cost is disproportionate to need. For example, if a county department wanted to increase its service charge by one dollar per inspection. Even if we were to have 10,000 of the inspections, generating an additional $10,000, the increase in revenue would not justify and probably not pay for the audit.

- Fifth, these types of audits are not exact. What costs should be included within a service are always based on professional judgment. For example, a number of our fees take into account the ability of a person to pay. These types of considerations would greatly impact any conclusions drawn from an audit.

- Finally, we believe legislation will have the unintended consequence of increasing either taxes or the service charges because someone will have to pay for the audits. And in fact, we are concerned that the audits will generate lawsuits challenging the service charges, either because an audit was not done or because the payer now believes that the charge is not justified.

For these reasons, Johnson County respectfully requests that you do no pass HB 2321.

19-2

KANSAS
ASSOCIATION OF
COUNTIES

Testimony on HB 2321
House Governmental Organization and Elections Committee
Randall Allen, Executive Director
Kansas Association of Counties
February 22, 2005

Chairman Vickrey and members of the committee, I am Randall Allen, Executive Director of the Kansas Association of Counties. I appreciate the opportunity to submit testimony in strong opposition to HB 2321, which appears to us as the "Auditors and Accountants Full Employment Act of 2005."

HB 2321 would require that, prior to imposing a new user fee or charge, or increasing the amount of any user fee or charge, the governing body of any municipality (including all counties) to conduct an audit to examine and analyze the costs directly related to the service for which such user fee or charge is imposed. The audit could be done by an independent internal auditing department or by a licensed accountant external to the agency.

We oppose the legislation for two main reasons:

1) It is offensive to all those elected and appointed officials in local governments whose actions and decisions are scrutinized daily, if not hourly, by the citizens. If a fee increase is proposed, it has to meet the public's understanding of appropriateness. In most cases, there is no reason for an audit. There is, of course, room for financial analysis, with a little common sense and financial prudence added in. These resources are always available without special legislation or mandates from the State.

2) The legislation would have a chilling impact on the imposition of user fees, suggesting to local officials almost implicitly that the ad valorem property tax is an "easier" way to finance certain services that in reality should be financed from user fees. Almost no counties in Kansas have internal audit departments, and the expense of engaging an outside auditor to examine the costs directly related to a service would generate unnecessary costs.

Counties impose all kinds of user fees to offset the costs of providing services. These fees range from sewer fees to overdue library book fees to ambulance fees to airport hangar rental fees to coliseum rental fees to park and recreation fees. If fee structures are out of line, participation in services will suffer and/or the public will let county officials know the fee is unreasonable. We urge the committee to reject HB 2321, and allow local accountability in local government to continue to work. Thank you for the opportunity to comment on this legislation.

300 SW 8th Avenue
3rd Floor
Topeka, KS 66603-3912
785•272•2585
Fax 785•272•3585

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 20

KANSAS
RURAL
WATER
association
Quality water, quality life

P.O. Box 226 • Seneca, KS 66538 • 913/336-3760 • FAX 913/336-2751

Comments on House Bill 2321
Before the House Committee on Governmental Organization & Elections
Tuesday, February 22, 2005

Mr. Chairman and Members of the Committee:

I am Dennis Schwartz, a member of the Board of Directors of the Kansas Rural Water Association, and the General Manager of Rural Water District No. 8 of Shawnee County. The Association provides training and technical assistance to public water supply systems and has more that 750 rural water system and city members.

The governing bodies of all of the 300 rural water districts are comprised entirely of participating members, or users. The same holds true for the 450 municipal members. The governing bodies of these utilities take the responsibility of setting rates and user fees very seriously, in as much as they, like all of their neighbors, will be paying those rates and fees. Additionally rates in Kansas' rural water districts and municipalities are typically only set after review of the financial statements and budgets, and many times with the recommendations of their accountant or financial advisor.

HB 2321 appears to require for yet further analysis by another accountant, thus adding further to the cost of these public water systems' operations. Any conclusions or recommendations by a reviewing accountant would still be subject to consideration of the governing body whose decision would then necessarily be final.

Rural Water Districts are non-profit quasi-public entities that have a tradition of setting rates and other user fees in a responsible manner to ensure the long-term viability of the public water system. These utilities work diligently to minimize the cost of providing service to their members. It would seem that the requirements of HB 2321 would do little if anything to reduce costs for the patrons of these utilities, and more likely would result in increased rates and fees to the consumers.

Kansas Rural Water Association opposes HB 2321.

Respectfully,

Dennis F. Schwartz, Director, KRWA

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 2021

KANSAS ASSOCIATION OF SCHOOL BOARDS

1420 SW Arrowhead Road • Topeka, Kansas 66604-4024
785-273-3600

Testimony on
HB 2321 – Municipalities, User Fees and Charges

Before the
House Committee on Governmental Organization and Elections

By Mark Tallman, Assistant Executive Director/Advocacy
February 22, 2005

Mr. Chair, Members of the Committee:

Thank you for the opportunity to comment on **HB 2321**. This bill would require municipalities to have an audit conducted before imposing a new user fee or charge, or increasing such fees. Because the bill defines "municipalities" as any political subdivision of the state, it would appear to apply to school districts.

School boards set fees and charges for meals, books, supplies, activity programs, lockers and towels, parking and other reasons. At a time when many legislators decry administrative costs and want to direct dollars to those things which improve student learning, we do not believe that school districts should be required to conduct the kind of audit required by the bill before setting fees. Most school districts to do not have an "independent auditing department," and hiring a licensed municipal public accountant or certified public accountant would increase non-instructional costs.

Are there reasons for concern about the expansion of fees in school districts? Certainly. Many school board members are very concerned about the growing reliance on student fees to fund what is supposed to be a free public education. However, the Legislature has the opportunity – and court-ordered duty – to address this concern by increasing state funding.

If the committee wishes to advance this bill, we would respectfully request that school districts be removed from its application.

Thank you for your consideration.

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 22

The City of
Overland
Park
KANSAS

8500 Santa Fe Drive
Overland Park, Kansas 66212
• Fax: 913-895-5003
www.opkansas.org

Testimony Before The
House Governmental Organization and Elections Committee
Presented by Erik Sartorius
Regarding House Bill 2321
February 22, 2005

The City of Overland Park appreciates the opportunity to share with the committee its opposition to House Bill 2321. We believe this legislation will needlessly drive up the cost of government while not providing any measurable benefits to taxpayers.

The City of Overland Park conducts a fee analysis approximately every two years. This includes a recommended rate of recovery that is reviewed by the Governing Body for their approval. Additionally, departments within the City also conduct their own analysis.

For instance, consider the City's Parks & Recreation Department. The Governing Body approves via various resolutions the fees for the swimming pools, shelter and garden space rentals at the Arboretum, golf course memberships and green fees, rental fees for the Community Center, and fees for other classes programs and events put on by the department. The department considers expected rates of recovery as well as unusual costs increases (staffing, energy, fuel, insurance) before making their recommendation.

Providers of municipal services have other factors to consider when setting fees. For park and recreation programs, one of the challenges is to provide programs of interest to the community at an affordable price that allows broad participation. Not taking this into consideration could prevent the participation of some residents. In some programs requiring minimum numbers of participants, this could cause all residents to have no program in which to participate.

Departments often also consider the frequency in which the fee is raised, as well as the amount. Given the desire of residents and businesses located in the City of Overland Park to have a reasonably stable fee structure, the City tries to not raise fees with great frequency. In both of these instances, the department may not recommend, or the Governing Body may not approve, the increasing the fees to cover the entire cost.

The City of Overland Park believes that its current process for analyzing and approving fees serves well both those paying the fees and residents of the City at large. We respectfully request that the committee not recommend House Bill 2321 favorably for passage.

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 23

TESTIMONY IN OPPOSITION TO HOUSE BILL 2321

To: The Honorable Jene Vickrey, Chair
Members of the House Committee on Governmental Organization and Elections

From: Michael A. Boehm, Mayor, City of Lenexa, Kansas

Date: February 22, 2005

The City of Lenexa is opposed to HB 2321, which requires municipalities to conduct an independent audit on any user fees prior to imposing or modifying such fees. This bill is an unnecessary burden on cities resulting in additional costs for citizens.

User fees are an important revenue tool allowing cities to assess the costs of a service to those who benefit from it, rather than the public as a whole. Most cities do not have an independent auditor on staff. Given the requirements of HB 2321, cities will be forced to add staff positions or hire outside consultants. Citizens will be required to fund these additional administrative costs through higher taxes or fees. Additionally, imposition of this audit requirement will slow the City's ability to adjust fees to reflect changing costs.

User fees are already established in a very public setting. When the Lenexa considers assessing or modifying any user fee, the same cost-analysis and justification considered by the Governing Body is available to the general public. Annual financial reports already include sufficient review and auditing. If citizens disagree with the imposition or management of a user fee, they can express dissatisfaction through traditional democratic mechanisms. Because the requirements of HB 2321 are cumbersome, unnecessary, and impose additional costs on citizens, the City of Lenexa urges you to oppose this bill.

House Gov. Org. & Elections
Date: 2-22-05
Attachment # 24