

MINUTES OF THE HOUSE ELECTIONS AND GOVERNMENTAL ORGANIZATION COMMITTEE

The meeting was called to order by Chairman Mike Burgess at 3:30 P.M. on January 24, 2007 in Room 231-N of the Capitol.

All members were present except:

Representative Steve Huebert- excused
Representative Ronnie Metsker- excused
Representative Mike Peterson- excused

Committee staff present:

Martha Dorsey, Legislative Research Department
Matt Spurgin, Legislative Research Department
Mike Heim, Revisor of Statutes Office
Maureen Stinson, Committee Assistant

Conferees appearing before the committee:

Rep. Don Schroeder
Judy Moler
John Waltner
David Van Parys
Randy Waldorf

Others attending:

See attached list.

Bill Requests

Harriet Lange requested a committee bill concerning open records.

Rep. Vickrey requested a committee bill concerning counties.

The Committee approved the requests.

HB 2058 Counties - Courts for enforcement of county codes and resolutions, removal of restriction

Chairman Burgess opened the hearing on HB 2058.

Rep. Schroeder testified in support of the bill (Attachment 1).

Judy Moler, Kansas Association of Counties, testified in support of the bill (Attachment 2).

John Waltner, Harvey County Special Projects, testified in support of the bill (Attachment 3).

David Van Parys, Leavenworth County Counselor, testified in support of the bill (Attachment 4).

Randy Waldorf, Butler County Commission, testified in support of the bill (Attachment 5).

Written testimony in support of the bill was submitted by Vicki Koepsel, Saline County Planning and Zoning (Attachment 6).

Written testimony in support of the bill was submitted by John Todd (Attachment 7).

Chairman Burgess closed the hearing on **HB 2058**.

Rep. Pottorff made a motion for the favorable approval of the minutes for the January 11, 2007 meeting. Rep. Brunk seconded the motion. The motion carried.

The meeting was adjourned.

CONTINUATION SHEET

MINUTES OF THE House Elections and Governmental Organization Committee at 3:30 P.M. on January 24, 2007 in Room 231-N of the Capitol.


The next meeting is scheduled for Thursday, January 25, 2007.

House Bill 2058

House Bill 2058 is a modification to existing codes court statute, KSA 19-101d. Allowing a codes court enables counties to streamline the process of resolving zoning issues and also could save money for counties through a simplified court process. The current statute allows only certain counties above a specified population to establish a codes court and is unequal in that regard. The two counties I represent in the 74th District have expressed a desire for codes court but are currently below the population threshold. Both counties, Harvey and McPherson, are experiencing some growth and could benefit from codes court to resolve zoning issues in a more timely, less expensive manner. A resolution must be passed by the County Commissioners, so the local control element is in tact.

Thank you for your time.

Respectfully,



Don Schroeder

74th District

House Elections & Gov. Org.
Date: 1-24-2007
Attachment # 1



KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY

Before the House Elections and Governmental Organization
Committee

January 24, 2007

HB 2058

By Judy A. Moler, General Counsel/Legislative Services Director

Thank you, Chairman Burgess and Members of the Committee for allowing the Kansas Association of Counties to provide testimony on HB 2058.

The Kansas Association of Counties is in support of HB 2058. The KAC has introduced legislation in the past to extend the ability to all counties. Currently, the statute limits code courts ten counties. Presently, the other counties enforce county codes through the already beleaguered district court. Cases involving murder, burglary and the like take priority in district court. Code cases fall to the bottom of the barrel in the docketing of cases. This bill is not extending to the other 95 counties any new powers for code enforcement...only a method to expedite hearings for those found in violation of county codes. The KAC would like to see this afforded to all counties. We have long had this position on our adopted Policy Statement. We strongly support HB 2058.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, education and technical services, and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randy Allen or Judy Moler by calling (785) 272-2585.

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

House Elections & Gov. Org.
Date: 1-24-2007
Attachment # 2

**TESTIMONY PRESENTED TO THE COMMITTEE ON
ELECTIONS AND GOVERNMENTAL ORGANIZATION**

January 24, 2007

**By John Waltner
Harvey County Special Projects Director**

Good afternoon. My name is John Waltner. I am the Special Projects Director for Harvey County, and I appreciate this opportunity to appear before you today to speak in support of House Bill 2058. We support this proposed legislation and would encourage you to favorably consider it as well. We believe that allowing all counties, regardless of population, to establish code courts is a very positive step.

Let me briefly describe an incident we recently faced in Harvey County. An urban realtor/auctioneer owned a small acreage in the unincorporated area of Harvey County. This tract is located approximately one-half mile from a new municipal golf course and an attractive housing development. Over time, the owner of this property stored all manner of items left over from sales in a metal shed on the property—until it overflowed.

Cars, junk metal, shopping carts, shelving, abandoned semi-trailers, cans, rolls of wire, telephone poles, boxes, and other miscellaneous trash accumulated. As the complaints of neighbors mounted, the county code enforcer made numerous phone calls to the owner and wrote numerous letters outlining steps for compliance. Receiving no favorable response from the owner, the code enforcer finally filed a formal complaint and the case was heard in district court.

Upon appearance in court, the property owner contended that the property was used for agricultural purposes and showed an officer of the court a couple of bales of hay stored in the back of one of the junked semi-trailers. The judge ruled against the

House Elections & Gov. Org.
Date: 1-24-2007
Attachment # 3

county—and the property continues to accumulate junk. The nearest neighbor lives within 500 feet of this eyesore and health threat.

Currently our code enforcer is dealing with numerous violations, including the following:

--One property owner has accumulated scores of junked cars. These escaped detection for some time, as the owner placed them near the center of a section. Following detection, the owner is now applying for a salvage permit from the state and a conditional use permit from the county. Should either or both be denied, clean-up enforcement will be very problematical.

--Another property owner simply abandoned a mobile home in very poor condition. The neighbor informed the code enforcer that the owner had tried to move the home off of its foundation, only to have the structure fall apart. It has been abandoned, the basement is full of water, and people now dump trash there as they drive by. The owner has been located, but any remedy is difficult.

--Sanitary code violations are numerous and include illegal sewer discharges, water well violations, and owners who simply refuse to fence or gate sewage lagoons.

It is difficult to deal satisfactorily with these violations under the current system. Judges are busy and dockets are full of more conventional criminal matters. Code violations seem low on the list of priorities—yet they do profoundly affect public health, property values, and quality of life. As would be allowed under HB 2058, an arm of the district court dedicated to address code violations would be a welcome and much-needed tool for local government as we seek to balance the rights of individual property owners with the good of the larger community.

Thank you for your time this afternoon. I will be glad to respond to any questions you might have.

SUMMARY OF TESTIMONY IN SUPPORT OF HB 2058

Submitted on behalf of the Board of County Commissioners of Leavenworth County, Kansas

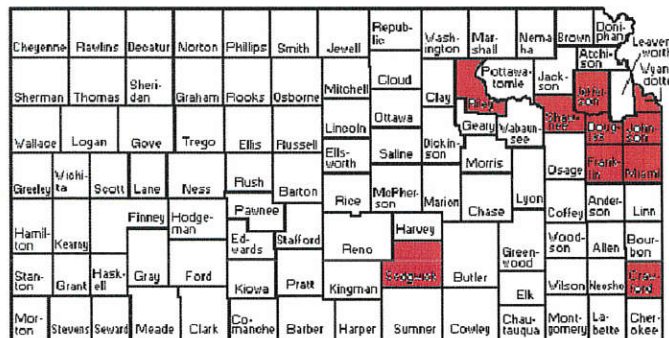
*Before the House Elections and Local Government Committee,
Representative Mike Burgess, Chairman*

Dear Chairman Burgess and Members of the Committee,

Leavenworth County supports House Bill No. 2085 (HB 2058) for the following reasons:

1. The use of the codes court procedures to enforce county resolutions is far more time efficient than the use of the code of civil procedure or code of criminal procedure.
2. The codes court procedures are less burdensome on the district court.
3. There are ample due process protections contained in the codes court statutes.
4. Only 10 counties are currently authorized to use the codes court procedures.

Figure 1. Counties with Codes Court Privileges in 2006



5. HB 2058 extends the discretionary authority to utilize the codes court procedures to the other 95 counties of the state.
6. HB 2058 has no adverse fiscal impact on either the state or counties.

Points of Contact:

David Van Parys
Leavenworth County Counselor
(913) 684-0415
dvanparys@leavenworthcounty.org

Christopher W. Dunn, AICP
Planning Director
(913) 684-0465
cdunn@leavenworthcounty.org

Leavenworth County Kansas
300 Walnut Street
Leavenworth, Kansas 66048

House Elections & Gov. Org.
Date: 1-24-2007
Attachment # 4

TESTIMONY IN SUPPORT OF HOUSE BILL NO. 2058

Submitted on behalf of the Board of County Commissioners of Leavenworth County, Kansas

Before the House Elections
and Local Government Committee,
Representative Mike Burgess, Chairman

Dear Chairman Burgess and
Members of the Committee,

Please accept the following as testimony in support of the approval of House Bill No. 2058. It is the belief of the board of county commissioners of Leavenworth County, Kansas, that the passage of H.B. No. 2058 will benefit the citizens of the state residing in the unincorporated areas of the state by allowing for an expedited and self-funding mechanism for the enforcement of local regulations.

HISTORY

In 1976 the legislature created K.S.A. 19-101d in order to allow for the enforcement of county resolutions passed pursuant to county home rule powers. In 1988 the legislature created the provisions of K.S.A. 19-4701 et seq., which set out the procedures for the enforcement of county resolutions through a codes court. The authority to use such a codes court was limited by an amendment to K.S.A. 19-101d to counties with a population in excess of 300,000 (L.1988 ch. 102). Subsequent to the creation of the codes court procedures several counties have been specifically authorized to utilize the codes court procedures through amendments to K.S.A. 19-101d, specifically through amendments to section (b) (1) of that statute.

Under the current version of K.S.A 19-101d(b)(1) Crawford, Douglas, Franklin, Jefferson, Johnson, Miami, Riley, Sedgwick, Shawnee and Wyandotte counties are authorized to utilize the codes court procedures. Leavenworth county also wishes to be given the discretionary authority to utilize the codes court procedures to enforce local resolutions and believes that it would be an economical use of the time of the legislature to **extend this discretionary authority to all counties** rather than a series of amendments to K.S.A. 19-101d(b)(1) expanding the list of counties so authorized.

EFFECT OF THE BILL

The effect of the proposed legislation is to authorize the boards of county commissioners throughout the state to elect to utilize the codes court procedures to enforce locally adopted resolutions. This will generally involve actions taken to remedy nuisance situations (illegal dumps, auto graveyards, vicious dogs, burn ban violations, etc.) The legislation **does not require** that a county use the codes court procedures, **but allows the use as an option.**

In the absence of the bill, counties not listed in K.S.A. 19-101d(b)(1) must currently use the code of civil procedure or criminal procedure to enforce resolutions, a more time consuming procedure rather than the procedures utilized under the codes courts statutes.

The codes court statutes provide adequate notice and due process and, in a simplified explanation, alleged violations of county resolutions are handled much in the way of traffic violations. A citation is issued detailing the alleged violation, notice to appear is provided and a hearing before a judge conducted. There do not appear to have been any endemic problems with the system in the counties that have been authorized to utilize the codes courts system of enforcement.

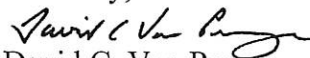
FISCAL IMPACT

Under the procedural provisions set out in K.S.A. 19-4701 et seq. the fiscal impact to the state would be nominally positive. Under K.S.A. 19-4707(b) a \$20 assessment for costs of each filing is provided for. Of that assessment, \$2 is remitted to the state treasurer for disbursement on a 50%-50% basis to the protection from abuse fund and the crime victims assistance fund. The local fiscal impact, in the anticipation of Leavenworth county, would be neutral in that the system would be designed to be self-funding. Leavenworth county does not anticipate a "flood" of filings that would burden the district court. Rather, the use of the codes court procedures is less burdensome to the district court system than the current enforcement procedure available to the county.

Leavenworth county would anticipate utilizing the code courts procedures to address several road advertising sign and automobile graveyard violations along state highways and within the county that have been brought to the attention of the county by KDOT. In that respect, H.B. No. 2058 could actually lessen the enforcement burden on a state agency.

In closing I would ask, on behalf of the board of county commissioners of Leavenworth County, Kansas, that this committee consider favorably H.B. No. 2058. I wish to express the thanks of the board for your time and consideration.

Sincerely,



David C. Van Parys
County Counselor, Leavenworth County
300 Walnut
Leavenworth, KS 66048
913-684-0415

Leavenworth County
Planning & Zoning
300 Walnut
Leavenworth, KS 66048

Session of 2007

HOUSE BILL No. 2058

By Representatives Schroeder, Bowers, Goico and Vickrey

1-11

9 AN ACT concerning counties; relating to enforcement of county codes
10 and resolutions; amending K.S.A. 2006 Supp. 19-101d and repealing
11 the existing section.

12

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

14 Section 1. K.S.A. 2006 Supp. 19-101d is hereby amended to read as
15 follows: 19-101d. (a) (1) The board of county commissioners of any county
16 shall have the power to enforce all resolutions passed pursuant to county
17 home rule powers, as designated by K.S.A. 19-101c, and amendments
18 thereto. Resolutions may be enforced by enjoining violations, by prescrib-
19 ing penalties for violations by fine, by confinement in the county jail or
20 by both fine and confinement. Unless otherwise provided by the resolu-
21 tion that defines and makes punishable the violation of such resolution,
22 the penalty imposed shall be in accordance with the penalties established
23 by law for conviction of a class C misdemeanor. In no event shall the
24 penalty imposed for the violation of a resolution exceed the penalties
25 established by law for conviction of a class B misdemeanor.

26 (2) Prosecution for any violation shall be commenced in the district
27 court in the name of the county and, except as provided in subsection
28 (b), shall be conducted in the manner provided by law for the prosecution
29 of misdemeanor violations of state laws. Writs and process necessary for
30 the prosecution of such violations shall be in the form prescribed by the
31 judge or judges of the courts vested with jurisdiction of such violations
32 by this act, and shall be substantially in the form of writs and process
33 issued for the prosecution of misdemeanor violations of state laws. Each
34 county shall provide all necessary supplies, forms and records at its own
35 expense.

36 (b) (1) In addition to all other procedures authorized for the enforce-
37 ment of county codes and resolutions, ~~in Crawford, Douglas, Franklin,~~
38 ~~Jefferson, Johnson, Miami, Riley, Sedgwick, Shawnee and Wyandotte~~
39 ~~counties, in any county~~ the prosecution for violation of codes and reso-
40 lutions adopted by the board of county commissioners may be com-
41 menced in the district court in the name of the county ~~and may be con-~~
42 ~~ducted.~~ Except as otherwise provided in this section, ~~in the manner~~
43 ~~provided for and such prosecution may be conducted~~ in accordance with

1 the provisions of the code for the enforcement of county codes and res-
2 olutions *set forth in article 47 of chapter 19 of the Kansas Statutes An-*
3 *notated and amendments thereto.*

4 (2) For the purposes of aiding in the enforcement of county codes
5 and resolutions, the board of county commissioners may employ or ap-
6 point code enforcement officers for the county who shall have power to
7 sign, issue and execute notices to appear and uniform citations or uniform
8 complaints and notices to appear, as provided in the appendix of forms
9 of the code contained in this act to enforce violations of county codes and
10 resolutions, but shall have no power to issue warrants or make arrests.
11 All warrants shall be issued and arrests made by law enforcement officers
12 pursuant to and in the manner provided in chapter 21 of the Kansas
13 Statutes Annotated.

14 (3) The board of county commissioners may employ or appoint at-
15 torneys for the purpose of prosecuting actions for the enforcement of
16 county codes and resolutions. The attorneys shall have the duties, powers
17 and authorities provided by the board that are necessary to prosecute
18 actions under the code.

19 (4) All costs for the enforcement and prosecution of violations of
20 county codes and resolutions, except for compensation and expenses of
21 the district court judge, shall be paid from the revenues of the county.
22 The board of county commissioners may establish a special law enforce-
23 ment fund for the purpose of paying for the costs of code enforcement
24 within the county. In addition, the board of county commissioners is au-
25 thorized to levy a tax not to exceed $\frac{1}{2}$ mill upon all taxable tangible prop-
26 erty within the county to pay the costs of code enforcement.

27 (c) Notwithstanding the provisions of subsection (b), any action com-
28 menced in the district court for the enforcement of county codes and
29 resolutions, in which a person may be subject to detention or arrest or in
30 which an accused person, if found guilty, would or might be deprived of
31 the person's liberty, shall be conducted in the manner provided by law
32 for the prosecution of misdemeanor violations of state laws under the
33 Kansas code of criminal procedure and not under the code for the en-
34 forcement of county codes and resolutions.

35 Sec. 2. K.S.A. 2006 Supp. 19-101d is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its
37 publication in the statute book.



BUTLER COUNTY
BOARD OF COMMISSIONERS

January 24, 2007

Elections and Governmental Organization Committee
Representative Burgess – Chairperson

Dear Committee Members:

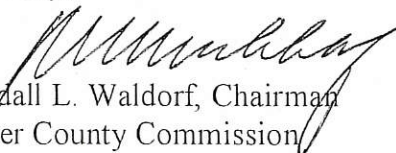
Butler County would like to thank you for this opportunity to testify on behalf of House Bill 2058. With the removal of population limits concerning a Codes Courts program, Butler County would have the ability to implement such a program.

Generally speaking, Butler County does not promote population or specific county restrictions in legislation, and believes HB 2058 resolves the inequity of current legislation. As you are aware, currently only ten counties in our state are allowed to enforce county codes and resolutions through a special court docket with the district court, some with populations greater than Butler County while others have significantly smaller populations.

Although Butler County is undecided on whether or not to implement a codes court program, the County would like to have the opportunity to do so. Butler County is the largest county in the State. We are also arguably the most diverse county in Kansas, with urban growth on the west side abutting Sedgwick County and rural living in the eastern half. With Butler County's current growth and proximity to Sedgwick County, the demand for such a program continues to escalate. Problems such as animal control, illegal dumping, and non-compliance with building codes are just a few examples of issues that could be handled with a Codes Court. Issues such as animal control have always been an issue in Butler County. In our opinion, the most cost effective way to implement such a program is through a Codes Court program, which would allow the County to implement and enforce an animal licensing program. Currently, should the County desire to implement such a program we could not, due to the population restrictions of the current legislation.

Speaking directly now to the change of language specified as part of House Bill 2058, Butler County will typically support abolishment of population limits such as this in future legislation. Butler County ranks in the top five counties in the State in rural population. When population levels such as this are placed in Bills, the majority of the counties affected have less rural population than Butler County. We feel this puts Butler County at a disadvantage in most instances. We continue to be against population restrictions in the establishment of policy effecting County Government. We support the changes proposed and appreciate the opportunity offered today to testify.

Sincerely,


Randall L. Waldorf, Chairman
Butler County Commission

Randy Doll, 1st District
1157 Ginkgo, Andover, KS 67002

Randy Waldorf, 2nd District
2110 Loomis Dr., Augusta, Kansas, 67010

House Elections & Gov. Org.
Date: 1-24-2007
Attachment # 5

Will Carpenter, 3rd District
6965 SW 18th, El Dorado, Kansas 67042

Mike Wheeler, 4th District
1951 Chelsea Dr., El Dorado, Kansas 67042

Dan Woydziak, 5th District
320 N. Driftwood Ct, Rose Hill, KS 67133

SALINE COUNTY
PLANNING & ZONING
300 W. ASH ROOM 217
P.O. BOX 5040
SALINA, KS 67402-5040
785/309-5813
FAX: 785/309-5811

"Written Only"

Before the House Elections and Local Government Committee,
Representative Mike Burgess, Chairman

Dear Chairman Burgess and Members of the Committee,

Saline County supports House Bill No. 2085 (HB 2058) for the following reasons:

- The use of codes court procedures to enforce county resolutions is far more efficient than the use of the code of civil procedure or code of criminal procedure.
- The codes court procedures are less burdensome on the district court.
- There are ample due process protections contained in the codes court statutes.
- Only 10 counties are currently authorized to use the codes court procedures.
- HB 2058 extends the discretionary authority to utilize the codes court procedures to the other 95 counties of the state.
- HB 2058 has no adverse fiscal impact on either the state or counties.

Point of Contact:

Vicki R. Koepsel, Director
Saline County Planning & Zoning
300 West Ash
Salina, KS 67401

(785) 309-5813
vicki.koepsel@saline.org

House Elections & Gov. Org.
Date: 1-24-2007
Attachment # 6

"Written Only"

1559 Payne
Wichita, Kansas 67203
(316) 312-7335 cell

January 23, 2007

Chairman and Committee Members
House Elections and Governmental Organizations Committee
State Capitol
Topeka, Kansas 66612

Subject: My testimony offering **Conditional support of HB-2058 with amendments.**
The Committee hearing is scheduled on January 24, 2007, at 3:30 p.m., in room 231-N.

Dear Committee Chairman and Members,

I am a Wichita real estate broker and developer. I have personally observed the Sedgwick County (Code Enforcement) Court in session several times, and would offer my support of HB-2058 if the following amendments were added.

1. **Code complaints shall be in writing** and signed by the person reporting the alleged code violation with the stipulation that the property owner whom the complaint is against receiving a copy. In this country we have a right to "know our accuser". This will stop the anonymous neighbor "snitching" on neighbor that has been going on in Sedgwick County that actually undermines any sense of community that might exist.

2. **The County Code enforcement "County Court" needs to be eliminated and replaced with mandatory mediation** between the parties involved in the complaint. The County Court is not a court of record and there is no stenographic record of the proceedings, and that allows the judge to say or do anything he or she desires with impunity, and this practice tends to make a mockery of our judicial system.

3. **In the event Code complaints cannot be resolved through mediation, then the District Court is the natural place to adjudicate these complaints** giving the defendant an opportunity to face a real judge with a stenographic record and the right to demand a jury trial.

These are important private property rights and court reform issues that need to be addressed before you expand the system from the current 10 counties to all 105 counties in Kansas with the ½ mill additional taxing authority and the creation of another layer of government to administer this system.

Sincerely,

John Todd

House Elections & Gov. Org.
Date: 1-24-2007
Attachment # 7