

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on January 29, 2007 in Room 313-S of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research
Athena Andaya, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Duston Slinkard, Office of Revisor of Statutes
Cindy O'Neal, Committee Assistant

Conferees appearing before the committee:

Representative Kenny Wilk
David Van Parys, Leavenworth County Counselor
Judy Moler, Kansas Association of Counties

The hearing on **HB 2161 - counties; enforcement of county codes and resolutions**, was opened.

Representative Kenny Wilk appeared before the committee as the sponsor of the proposed bill. He explained that it would allow Leavenworth County to set up a county code court, therefore allowing the county to productively manage county code issues. (Attachment 1)

David Van Parys, Leavenworth County Counselor, stated that currently ten other counties are using a similar county code system. The proposed legislation would not require Leavenworth County to use the county code court but simply allows for the option. It would also provide a positive fiscal impact on the state. 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 crimes victims assistance fund. (Attachment 2)

Judy Moler, Kansas Association of Counties, supported the proposed bill and informed the committee that **HB 2058**, which is in House Elections and Governmental Organizations, includes all counties in Kansas. (Attachment 3)

The hearing on **HB 2161** was closed.

HB 2010 - Uniform anatomical gift act

Representative Watkins made the motion to report **HB 2010** favorably for passage. Representative Colloton seconded the motion.

Chairman O'Neal announced he had communicated with the National Conference of Commissioners on Uniform State Laws (ULC) with regards to the committees concerns from the January 24th meeting.

Their response was that they had no problem with reassigning the priority of who can donate organs on behalf of others and also about mirroring the Uniform Health Care Decisions Act "...an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values..."

Representative Kinzer made a substitute motion to switch the priority of #8 & #9 and to adopt the proposed language in the above paragraph. Representative Owens seconded the motion. The motion carried.

New Section 7 had confusing language by using the word "individual" many times. The ULC didn't like the proposed change of using "person" as the one who would be able to sign. The ULC suggested that in line 23 "individual" be changed to "another".

Representative Colloton made the motion to have the above changes be made in new section 7. Representative Owens seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on January 29, 2007 in Room 313-S of the Capitol.

The ULC believes that new section 18 simply clarifies what is current Kansas standard by adding "attempts" before good faith. Some committee members believed that this would expand immunity in Kansas.

Representative Ward made the motion to reword new section 18(a) to read "...or in good faith attempts to do so is not liable..." Representative Colloton seconded the motion. The motion carried.

Representative Pauls made the motion to strike, in new section 12, "...by subject to administrative sanctions.." Representative Kuether seconded the motion. The motion carried.

Chairman O'Neal stated that new section 15 repeals Kansas protocol and replaces it with federal laws. The ULC explained that Kansas regulations are outdated and that federal regulations supercedes it anyways.

Representative Kinzer made the motion to change the penalty to a severity level 5, non-person, in new section 16. Representative Hodge seconded the motion. The motion carried.

Representative Owens made the motion to report **HB 2010** favorably for passage, as amended. Representative Colloton seconded the motion. The motion carried.

The committee meeting adjourned at 5:00 p.m. The next meeting was scheduled for January 30, 2007.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

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State Representative
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CHAIRMAN
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COMMITTEE ASSIGNMENTS
Governmental Efficiency and
Technology
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HB 2161

Mr. Chairman & Members of the Committee:

Thank you for the hearing on HB 2161. I am here in support of the bill. HB 2161 simply allows Leavenworth County to have a county codes court. Leavenworth County is one of the more rapidly growing counties in the state. This legislation would help more productively manage county code issues.

Leavenworth County Counselor, Mr. David VanParys, has joined us today to share more details and specifics behind the need for Leavenworth County to be added to this legislation.

I would appreciate your consideration and favorable passage of the HB 2161.

House Judiciary
Date 1-29-07
Attachment # 1

SUMMARY OF TESTIMONY IN SUPPORT OF HB 2161

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

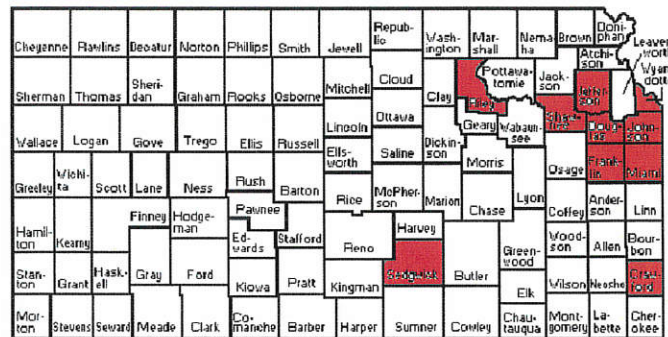
*Before the House Judiciary Committee,
Representative Michael O'Neal, Chairman*

Dear Chairman O'Neal and Members of the Committee,

Leavenworth County supports House Bill No. 2161 (HB 2161) 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. Leavenworth County is the only county in the Kansas City Metro Area without access to a county codes court.

Figure 1. Counties with Codes Court Privileges in 2006



5. HB 2161 extends the discretionary authority to utilize the codes court procedures only to Leavenworth County.
6. HB 2161 has no adverse fiscal impact on the state or Leavenworth County.

Points of Contact:

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Leavenworth County Kansas
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Leavenworth, Kansas 66048

House Judiciary
Date 1-29-07
Attachment # 2

TESTIMONY IN SUPPORT OF HOUSE BILL NO. 2161

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

Before the House Judiciary Committee,
Representative Michael O'Neal, Chairman

Dear Chairman O'Neal and
Members of the Committee,

Please accept the following as testimony in support of the approval of House Bill No. 2161. It is the belief of the board of county commissioners of Leavenworth County, Kansas, that the passage of H.B. No. 2161 will benefit the citizens of the county 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.

EFFECT OF THE BILL

The effect of the proposed legislation is to authorize the board of county commissioners of Leavenworth County 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 Leavenworth county use the codes court procedures, **but allows the use as an option.**

In the absence of the bill, Leavenworth county 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.

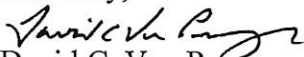
FISCAL IMPACT

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. Leavenworth county anticipates that the local fiscal impact 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. 2161 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 favorably consider H.B. No. 2161. 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

HOUSE BILL No. 2161

By Committee on Judiciary

1-23

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, *Leavenworth*, Miami, Riley, Sedgwick, Shawnee and
39 Wyandotte counties, the prosecution for violation of codes and resolutions
40 adopted by the board of county commissioners may be commenced in
41 the district court in the name of the county and may be conducted, except
42 as otherwise provided in this section, in the manner provided for and in
43 accordance with the provisions of the code for the enforcement of county

1 codes and resolutions.

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

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

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

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

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

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



KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY
Before the House Judiciary Committee
January 29, 2007
HB 2161

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

Thank you, Chairman O'Neal and Members of the Committee for allowing the Kansas Association of Counties to provide testimony on HB 2161.

The Kansas Association of Counties is in support of HB 2161. The KAC has introduced legislation in the past to extend the ability to all counties. As we speak, there is a bill doing this in House Elections and Governmental Organization, HB 2058 which had a hearing last week.

Currently, the statute limits code courts to ten counties. Presently, the other counties, including Leavenworth, 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 Leavenworth County 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 so we certainly support this for Leavenworth County. We have long had this expansion of code courts on our adopted KAC Policy Statement. We strongly support HB 2161.

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.

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House Judiciary
Date 1-29-07
Attachment # 3