

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 30, 2007 in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Dennis Hodgins, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Connie Burns, Committee Assistant

Conferees appearing before the committee:

Dale Goter, City of Wichita
Tom Palace, Petroleum Marketers & Convenience Store Association of Kansas

Others attending:

See attached list.

Senator Brungardt requested two bill introductions:

1. To grant reasonable discretion to cities and counties regarding revocation of cereal malt beverage licenses.

Senator Vratil made the motion that this request should be introduced as a committee bill. Senator Retiz seconded the motion. The motion carried.

2. Expanding the use of benefit districts to all improvements, not just water and sewer.

Senator Reitz made the motion that this request should be introduced as a committee bill. Senator Barnett seconded the motion. The motion carried.

Dale Goter, City of Wichita, appeared before the committee to request several bill introductions:

The bills have to do with Foreclosure, Civil Nuisance Authority, abandoned delinquent property, notice of acquisition, and non-profits allowed to stabilize the property in the transition. (Attachment 1)

Senator Barnett made the motion that this request should be introduced as a committee bill. Senator Retiz seconded the motion. The motion carried.

Tom Palace, Petroleum Marketers and Convenience Store Association of Kansas, requested a bill introduction on a conceptual bill on single strength beer, and changing the definition of Cereal Malt Beverage to 5%.

Senator Vratil made the motion that this request should be introduced as a committee bill. Senator Gilstrap seconded the motion. The motion carried.

The meeting was adjourned at 10:46 am. The next scheduled meeting is January 31, 2007.

1. Civil Nuisance Authority

"Give the City the additional authority to use civil nuisance procedures through District Court to enter, inspect, and abate properties that constitute a nuisance or are a dangerous to the public health. In addition, give the City Council the authority under the unsafe and dangerous structure statutes to repair or remove material from lots in addition to removing structures."

Section 1. 12-1617e. Abatement of nuisances; notice; assessment and collection of costs; procedure; disposition of motor vehicles. (a) The governing body of any city may have removed or abated from any lot or parcel of ground within the city any and all nuisances, including rank grass, weeds or other vegetation, **and including tree waste, solid waste, junk, litter, refuse, trash, and other items or conditions described as a nuisance by state or local law.** The governing body may have drained any pond or ponds of water, at the cost and expense of the owner of the property on which the nuisance is located, whenever the city, county or joint board of health or other agency as may be designated by the governing body of the city files with the clerk of such city its statement in writing that such nuisance, rank vegetation or pond of water, describing the same and where located, is a menace and dangerous to the health of the inhabitants of the city, or of any neighborhood, family or resident of the city. The governing body of the city, by resolution, also may make such determination.

(b) Except as provided by subsection (c), the governing body of the city shall order the owner or agent of the owner of the property to remove and abate from the property the thing or things therein described as a nuisance within a time, not exceeding 10 days, to be specified in the order. The governing body of the city shall grant extensions of such ten-day time period if the owner or agent of the property demonstrates that due diligence is being exercised in abating the nuisance. The order shall state that before the expiration of the waiting period or any extension thereof, the recipient thereof may request a hearing before the governing body or its designated representative. The order shall be served on the owner or agent of such property by certified mail, return receipt requested, or by personal service. If the property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested, to the last known address of the owner.

(c) If the owner or agent of the owner of the property has failed to accept delivery or otherwise failed to effectuate receipt of a notice sent pursuant to this section during the preceding twenty-four month period, the governing body of a city may provide notice of the issuance of any further orders to abate or remove a nuisance from such property in the manner provided by subsection (b) or as provided in this subsection. Except as specifically provided in this subsection, the governing body may provide notice of the order by such methods including, but not limited to, door hangers, conspicuously posting notice of such order on the property, personal notification, telephone communication or first class mail. If the property is unoccupied and the owner is a nonresident, notice provided by this section shall be given by telephone communication or first class mail.

(d) If the owner or agent fails to comply with the requirement of the order for a period longer than that named in the order, the city shall proceed to have the things described in the order removed and abated from the lot or parcel of ground. If the city abates or removes the nuisance, the city shall give notice to the owner or agent by certified mail, return receipt requested, of the total cost of such abatement or removal incurred by the city. Such notice also shall state that payment of such cost is due and payable within 30 days following receipt of such notice. The city also may recover the cost of providing notice, including any postage, required by this section. If the cost of such removal or abatement and notice is not paid within the thirty-

day period, the cost shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed and charged against the lot or parcel of ground on which the nuisance was located. If the cost is to be assessed, the city clerk, at the time of certifying other city taxes to the county clerk, shall certify such costs, and the county clerk shall extend the same on the tax roll of the county against the lot or parcel of ground, and it shall be collected by the county treasurer and paid to the city as other city taxes are collected and paid. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full.

(e) Any city may remove and abate from property other than public property or property open to use by the public a motor vehicle determined to be a nuisance. Disposition of such vehicle shall be in compliance with the procedures for impoundment, notice and public auction provided by paragraph (2) of subsection (a) of K.S.A. 8-1102, and amendments thereto. Following any sale by public auction of a vehicle determined to be a nuisance, the purchaser may file proof thereof with the division of vehicles, and the division shall issue a certificate of title to the purchaser of such motor vehicle. If a public auction is conducted, but no responsible bid received, the city may file proof thereof with the division of vehicles, and the division shall issue a certificate of title of such motor vehicle to the city. Any person whose motor vehicle has been disposed of pursuant to this subsection shall be eligible for a refund of the tax imposed pursuant to K.S.A. 79-5101 *et seq.*, and amendments thereto. The amount of such refund shall be determined in the manner provided by K.S.A. 79-5107, and amendments thereto.

Section 2. KSA 12-1617f. Weeds, removal or destruction; assessment and collection of costs; notice; procedure. (a) The governing body of any city is hereby authorized to provide for and require the cutting or destruction of all **rank grass, weeds, noxious weeds as defined by state law, or other vegetation** on lots or pieces of land within the city. Except as provided by subsection (b), the city clerk shall issue a notice to the owner, occupant or agent by certified mail, return receipt requested, or by personal service to cut or destroy such weeds. If the property is unoccupied and the owner is a nonresident, such notice shall be sent by certified mail, return receipt requested, to the last known address of the owner. The notice shall state that before the expiration of the waiting period provided herein the recipient thereof may request a hearing before the governing body or its designated representative. If the occupant, owner or agent fails to request a hearing or refuses to cut or remove such weeds **or other vegetation**, after five days' notice by the city clerk, or in cases where the owner is unknown or is a nonresident, and there is no resident agent, 10 days after notice has been published by the city clerk in the official city paper, the city shall cut or destroy such weeds **or other vegetation** and shall keep an account of the cost of same and report to the city clerk. Except as provided by subsection (b), the city shall give notice to the owner, occupant or agent by certified mail, return receipt requested, of the total cost of such cutting or removal incurred by the city. The city also may recover the cost of providing notice, including postage, required by this section. Such notice also shall state that payment of such cost is due and payable within 30 days following receipt of such notice. If the cost of such removal or abatement is not paid within the thirty-day period, the city may levy a special assessment for such cost against the lot or piece of land in the same manner as provided in K.S.A. 12-1617e, and amendments thereto, or the city may collect the cost in the manner provided by K.S.A. 12-1,115, and amendments thereto. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full.

(b) In lieu of giving notice as provided by subsection (a), a city may give notice as provided by this subsection. The governing body shall adopt an ordinance which states its weed removal policy and notification procedure. Such procedure shall provide for a minimum one-time yearly written notification by mail or personal service to the owner, occupant or agent. Such notice shall include the same information required by subsection (a). In addition, such notice shall include a statement that no further notice shall be given prior to removal of weeds **or other vegetation**.

If there is a change in the record owner of title to property subsequent to the giving of notice pursuant to this subsection, the city may not recover any costs or levy an assessment for the costs incurred by the cutting or destruction of weeds **or other vegetation** on such property unless the new record owner of title to such property is provided notice as required by this section.

Section 3. KSA 12-1750. Unsafe or dangerous structures; abandoned property; definitions. As used in this act:

(a) "Structure" means any building, wall or other structure.

(b) **"Materials" shall mean tree waste, solid waste, junk, trash, litter, refuse, and other items or conditions described as a nuisance by state or local law.**

(c) "Enforcing officer" means the building inspector or other officer designated by ordinance and charged with the administration of the provisions of this act.

—(c) (d) "Abandoned property" means any residential real estate for which taxes are delinquent for the preceding two years and which has been unoccupied continuously by persons legally in possession for the preceding 180 days.

—(d) (e) "Organization" means any nonprofit corporation organized under the laws of this state and which has among its purposes the improvement of housing.

—(e) (f) "Rehabilitation" means the process of improving the property into compliance with applicable fire, housing and building codes.

—(f) (g) "Parties in interest" means any owner or owners of record, judgment creditor, tax purchaser or other party having any legal or equitable title or interest in the property.

—(g) (h) "Last known address" includes the address where the property is located, or the address as listed in the tax records.

Section 4. KSA 12-1751. Same; powers of governing body. (a) The governing body of any city shall have the power to cause the repair or removal of, or to remove any structure **or materials** located within the city, which may have become unsafe, or dangerous **or injurious to the public health**.

(b) The governing body of any city shall have the power to cause the rehabilitation of or to rehabilitate any abandoned property located within the city.

Section 5. KSA 12-1752 Same; notice and hearing. Whenever the enforcing officer files with the governing body of the city a statement in writing that any structure **or materials**, describing the same and where located, is unsafe, or dangerous, **injurious to the public health** or is abandoned property, the governing body, by resolution, shall fix a time and place at which the owner, the owner's agent, any lienholders of record and any occupant of such structure may appear and show cause why such structure should not be condemned and ordered repaired or demolished in the case of unsafe or dangerous structures, **or why such materials should not be ordered cleaned-up, abated or removed in the case of unsafe, dangerous, or injurious materials** or rehabilitated in the case of abandoned property, . Such resolution shall be published once each week for two consecutive weeks on the same day of each week. At least 30 days shall elapse between the last publication and the date set for the hearing. A copy of the resolution shall be mailed by certified mail within three days after its first publication to each such owner, agent, lienholder and occupant, at the last known address and shall be marked "deliver to addressee only."

(b) After notice has been given and before the date set for hearing, the enforcing officer shall be authorized to enter the property on which the structure or materials are located, to further determine the condition of the structure or nature of the materials, if the enforcing office is not able to make a full determination from observations off the property. Any information or determination made from such a viewing may be submitted as evidence at the hearing by the enforcing officer.

Section 6. KSA 12-1753 Same; findings; resolution; contents; notice. On the date fixed for hearing or any adjournment thereof, the governing body shall hear all evidence submitted by the owner, the owner's agent, lienholders of record and occupants having an interest in such structure **or the property on which the materials are located**, as well as evidence submitted by the enforcing officer filing the statement and shall make findings by resolution. If the governing body of the city finds that such structure is unsafe or dangerous, such resolution shall direct the structure to be repaired or removed and the premises made safe and secure. **If the governing body of the city finds that such materials are unsafe, dangerous or injurious to public health, such resolution shall direct the materials be cleaned-up, abated or removed and the premises made safe and secure.** If the governing body of the city finds that such structure is abandoned property, the governing body may authorize the rehabilitation of such property as provided by K.S.A. 12-1756a. Such resolution shall be published once in the official city paper and a copy mailed to the owners, agents, lienholders of record and occupants in the same manner provided for the notice of hearing. The resolution shall fix a reasonable time within which the repair or removal of such structure **or clean-up, abatement or removal of such materials** shall be commenced and a statement that if the owner of such structure fails to commence the repair or removal of such structure **or clean-up, abatement or removal of such materials** within the time stated or fails to diligently prosecute the same until the work is completed, the governing body will cause the structure to be repaired or razed and removed in the case of unsafe or dangerous structures, **materials be cleaned-up, abated or removed in the case of injurious materials** or rehabilitated in the case of abandoned property.

Section 7. KSA 12-1755. Same; salvage, sale; assessment and collection of costs; procedure. (a) If the owner of any structure has failed to commence the repair or removal of

such structure **or clean-up, abatement or removal of such materials** within the time stated in the resolution or has failed to diligently prosecute the same thereafter, the city may proceed to raze and remove such structure, **clean-up, abatement or removal of such materials**, make the premises safe and secure, or let the same to contract. The city shall keep an account of the cost of such work and may sell the salvage from such structure **or materials** and apply the proceeds or any necessary portion thereof to pay the cost of removing such structure and making the premises safe and secure. All moneys in excess of that necessary to pay such costs and the cost of publications of notice and any postage for mailing of notice, after the payment of all costs, shall be paid to the owner of the premises upon which the structure **or materials** was located.

(b) The city shall give notice to the owner of such structure **or the owner of the property on which such materials are located** by restricted mail of the total cost incurred by the city in removing such structure **or materials** and making the premises safe and secure and the cost of providing notice. Such notice also shall state that payment of such cost is due and payable within 30 days following receipt of such notice. If the cost is not paid within the thirty-day period and if there is no salvageable material or if moneys received from the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901 *et seq.*, and amendments thereto, are insufficient to pay the cost of such work, the balance shall be collected in the manner provided by K.S.A. 12-1,115, and amendments thereto, or shall be assessed as a special assessment against the lot or parcel of land on which the structure **or materials** was located and the city clerk at the time of certifying other city taxes, shall certify the unpaid portion of the costs and the county clerk shall extend the same on the tax rolls of the county against such lot or parcel of land. The city may pursue collection both by levying a special assessment and in the manner provided by K.S.A. 12-1,115, and amendments thereto, but only until the full cost and any applicable interest has been paid in full.

Whenever any structure is removed from any premises under the provisions of this act, the city clerk shall certify to the county appraiser that such structure, describing the same, has been removed.

(c) If there is no salvageable material, or if the moneys received from the sale of salvage or from the proceeds of any insurance policy in which the city has created a lien pursuant to K.S.A. 40-3901 *et seq.*, and amendments thereto, are insufficient to pay the costs of the work and the cost of providing notice, such costs or any portion thereof in excess of that received from the sale of salvage or any insurance proceeds may be financed, until the costs are paid, out of the general fund or by the issuance of no-fund warrants. Whenever no-fund warrants are issued under the authority of this act the governing body of such city shall make a tax levy at the first tax levying period for the purpose of paying such warrants and the interest thereon. All such tax levies shall be in addition to all other levies authorized or limited by law and shall not be subject to the aggregate tax levy prescribed in article 19 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto. Such warrants shall be issued, registered, redeemed and bear interest in the manner and in the form prescribed by K.S.A. 79-2940, and amendments thereto, except they shall not bear the notation required by that section and may be issued without the approval of the state board of tax appeals. All moneys received from special assessments levied under the provisions of this section or from an action under K.S.A. 12-1,115, and amendments thereto, when and if paid, shall be placed in the general fund of the city.

2. Recovery of Expenses for Improvements while Property held for Sale.

NEW SECTION. Judicial Foreclosure and Sale of Real Estate by County -- Maintenance and Repairs. *During the period any real estate sold for delinquent taxes and bid in by the county is held by the county pending redemption or sale, pursuant to K.S.A. 79-2801, and amendments thereto, the county may make, or may cause or permit any city within the county or any organization described in K.S.A. 12-1750(d), and amendments thereto, to make, such repairs to any structure upon or included within such real estate as may be needed to bring or maintain such structure in compliance with minimum housing code standards. Provided, that as a precondition of causing or permitting such repairs, the board of county commissioners shall, at least 30 days prior to the date such repairs are to be made, cause actual notice of the proposed date, description and estimated cost of the repairs to be given to all parties having or claiming an interest in said real estate whose addresses are reasonably ascertainable, and also by publication in a newspaper of general circulation within the county. The content of the notice shall include a statement of the board's intent to cause or permit the proposed repairs on the date stated in the notice unless an action seeking hearing with respect to any matter related to the proposed repairs has theretofore been filed in the district court within the county and served upon the board. If notice has been given as required herein and no such action has been filed and served upon the board prior to the date of the proposed repairs as stated in the notice, the board may proceed to cause or permit such repairs pursuant to this section on or after the date stated in the notice. The cost of such repairs shall become part of the payment required for the exercise of any redemption right prior to the date of any sale under K.S.A. 79-2803, and amendments thereto, and after the date of any such sale, shall be treated as a cost incident to the sale under K.S.A. 79-2805(a), and amendments thereto, and shall, in all cases, be repaid after the date of redemption or sale to the county, city or organization that made the repairs.*

3. Provision of Proper Notice

Section 1. KSA 79-2811. County sale for affordable low-income housing; abatement of taxes. (a) If real estate has been or shall be sold and bid by the county, and the redemption period has expired, the board may sell such real estate to provide affordable low-income housing or for community development or economic development purposes which are hereby declared to be public purposes. Any such sale shall not be subject to the provisions of K.S.A. 79-2801 *et seq.*, and amendments thereto. ***However, at least 30 days prior to the proposed date of sale, the board shall cause actual notice of the date and terms of the proposed sale to be given to all parties having or claiming an interest in said real estate whose addresses are reasonably ascertainable, and also by publication in a newspaper of general circulation within the county. The content of the notice shall include a statement of the board's intent to proceed with the proposed sale on the date stated in the notice unless an action seeking hearing with respect to any matter related to the sale has theretofore been filed in the district court within the county and served upon the board. If notice has been given as required herein and no such action has been filed and served upon the board prior to the date of the proposed sale as stated in the notice, the board may proceed with such sale pursuant to this section on or after the date stated in the notice.***

(b) The board of county commissioners may abate any delinquent ad valorem property taxes, special assessments or other special taxes on any property sold pursuant to subsection (a). If such taxes or assessments are not abated, any moneys received from the sale of such property shall be apportioned in the manner provided by K.S.A. 79-2805, and amendments thereto.

4. Petitioned Specials/Foreclosure Period

Section 1. KSA 79-2401a. Redemption of real estate bid off by county; partial redemption; period of redemption; interest. (a) (1) Except as provided by paragraph (2) and subsection (b), real estate bid off by the county for both delinquent taxes and special assessments, as defined by subsection (c), shall be held by the county until the expiration of two years from the date of the sale, subject only to the right of redemption as provided by this section. Any owner or holder of the record title, the owner's or holder's heirs, devisees, executors, administrators, assigns or any mortgagee or the owner's or holder's assigns may redeem the real estate sold in the sale at any time within two years after the sale by paying to the county treasurer the amount for which the real estate was sold plus the interest accrued, all delinquent taxes and special assessments and interest thereon that have accrued after the date of such sale which remain unpaid as of the date of redemption and costs and expenses of the sale and redemption, including but not limited to, abstracting costs incurred in anticipation of a tax sale.

(2) Any abandoned building or structure and the land accommodating such building or structure bid off by the county for ~~both either~~ delinquent taxes ~~and or~~ special assessments, as defined by subsection (c), shall be held by the county until the expiration of one year from the date of the sale, subject only to the right of redemption as provided by this section. Any owner or holder of the record title, the owner's or holder's heirs, devisees, executors, administrators, assigns or any mortgagee or the owner's or holder's assigns may redeem the real estate sold in the sale at any time within one year after the sale by paying to the county treasurer the amount for which the real estate was sold plus the interest accrued, all delinquent taxes and special assessments and interest thereon that have accrued after the date of such sale which remain unpaid as of the date of redemption and costs and expenses of the sale and redemption, including but not limited to abstracting costs incurred in anticipation of a tax sale.

When used in this subsection "abandoned building or structure and the land accommodating such building or structure" shall mean a building or structure which, for a period of at least one year, has been unoccupied and which there has been a failure to perform reasonable maintenance of such building or structure and the land accommodating such building or structure.

(b) (1) Except as provided by paragraph (2), real estate which is a homestead under section 9 of article 15 of the Kansas Constitution and all real estate not described in subsection (a) shall be held by the county until the expiration of three years from the date of the sale and may be redeemed partially by paying to the county treasurer the amount of taxes for which the real estate was sold for one or more years, beginning with the first year for which the real estate was carried on the tax-sale book of the county plus interest at the rate prescribed by K.S.A. 79-2004, and amendments thereto, on the amount from the date the same was carried on the sale book. Upon payment and partial redemption, the time when a tax foreclosure sale may be commenced shall be extended by the number of years paid in the partial redemption.

(2) In Johnson county, real estate which is a homestead under section 9 of article 15 of the Kansas constitution and all real estate not described in subsection (a) shall be held by the county until the expiration of three years from the date of the sale and may be redeemed partially by paying to the county treasurer the amount of taxes for which the real estate was sold

for one or more years, beginning with the most recent year for which the real estate was carried on the tax-sale book of the county plus interest at the rate prescribed by K.S.A. 79-2004, and amendments thereto, on the amount from the date the same was carried on the sale book.

(c) For the purpose of this act, the ~~term~~ **terms** "real estate bid off by the county for both delinquent taxes and special assessments" **and "real estate bid off by the county for either delinquent taxes or special assessments"** shall include only real estate on which there are delinquent taxes of a general ad valorem property tax nature and delinquent special assessments or other special taxes levied by a city, county or other municipality in response to a petition or request of the landowners. Upon publication of the listing of real estate subject to sale under the provisions of K.S.A. 79-2302, and amendments thereto, the clerk of any city, county or other municipality which has levied special assessments during the past 10 years shall certify to the county treasurer those listed parcels of real estate which are located within a special assessment district, but no parcel shall be so certified unless the public improvement was constructed pursuant to a petition or request of one or more landowners sufficient to authorize the improvement under the applicable statutory special assessment procedure used by the city, county or other municipality.

(d) If at the expiration of the redemption period, the real estate has not been redeemed, the real estate shall be disposed of by foreclosure and sale in the manner provided by K.S.A. 79-2801 *et seq.*, and amendments thereto.