

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 February 7, 2007 in Room 231-N of the Capitol.

All members were present except:
Senator Anthony Hensley

Committee staff present:
Kathie Sparks, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Connie Burns, Committee Assistant

Conferees appearing before the committee:
Jason Gage, City of Salina
Senator Derek Schmidt

Others attending:
See attached list.

Senator Brungardt, requested a bill introduction for Senator Barone that would create the Fort Scott/Bourbon County Riverfront Authority. (Attachment 1)

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

SB 226 - Cereal malt beverages; discretion regarding suspension or revocation of license

Chairman Brungardt opened the hearing on **SB 266**.

Jason Gage, City Manager, city of Salina, spoke in favor of the bill. (Attachment 2) The bill would provide discretion to the local licensing authority regarding the following two actions:

1. Section 1 of the current statute requires that a cereal malt beverage (CMB) license not be issued if the applicant is in violation of any provision contained in subsections (b)(1) through (b)(11).
2. Section 2 currently requires that a license be revoked or suspended if the licensee is in violation of any provision contained in subsections (2)(1) through (2)(13).

The specific request as provided for under the bill is that the local licensing authority be granted reasonable discretion with regards to CMB license issuance, suspension and revocation actions and to ensure the penalty applied is fair and equitable with regard to the violation of the license holder. The city believes that reasonable licensing discretion would ensure an equitable penalty is applied to CMB license holders in violation of the CMB statute, but would also prevent the double jeopardy or creative restructuring scenarios. The city is in no way lessening the CMB enforcement action, only administrative flexibility to better administer the CMB enforcement.

Without objection the Revisor will amend the bill so that "city" and the board of county commissioners will be referenced on page 1 in both lines 15 and 21.

Gary Widget, Kansas for Addiction Prevention, felt that loosening the law was not the way to go.

Chairman Brungardt closed the hearing on **SB 266**

SB 244 - Funeral picketing; crime charges; libel and slander charge

Chairman Brungardt opened the hearing on **SB 244**.

Senator Derek Schmidt appeared in support of the bill. (Attachment 3) The bill contains language similar to funeral picketing bills in the past, in addition the bill contains two provisions which make it a stronger

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on February 7, 2007 in Room 231-N of the Capitol.

bill than its predecessors and establishes a 300 foot barrier around a funeral or procession in which picketing is not allowed. The bill also criminalizes blocking public streets, sidewalks or other public space.

There are two new provisions that strengthen the proposal; the bill directs the attorney general to bring declaratory judgment in court to challenge the constitutionality of the barrier; in order to reduce delays in implementing a protective barrier, the district court's decision could then be directly appealed to the Kansas Supreme Court. The bill allows a defamation lawsuit to be filed on behalf of the deceased individual or their family for any slander or libel that occurs at the funeral.

Mrs. Helen Stiffler, (Attachment 4) and Kimberly Cochran, (Attachment 5) provided written testimony in support of the bill.

Gary Widget, Kansas for Addiction Prevention, and a United Methodist Minister, asked that the committee move on this bill and spend his tax money to get rid of the protesters, he is a grandfather of a young man serving in downtown Bagdad, and an old air force serviceman.

Chairman Brungardt closed the hearing on **SB 244**.

The meeting was adjourned at 10:10 am. The next scheduled meeting is February 8, 2007.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE 2-7-07

NAME	REPRESENTING
Eric Montgomery	Senate
Mike Padilla	ABC
Phil Wilke	"
MARY FEIGHNY	AG
Garry Winget	KAP
Neal White Key	KBWA
Amy Campbell	KABR
Donna Casement	Senate
Rebecca Rice	KBWA

By Committee on Federal and State Affairs

AN ACT enacting the Fort Scott/Bourbon county riverfront authority act; creating a riverfront authority and prescribing the powers and duties thereof.

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

Section 1. This act shall be known and may be cited as the Fort Scott/Bourbon county riverfront authority act.

Sec. 2. As used in this act:

(a) "Authority" means the riverfront authority created by this act.

(b) "Board" means the riverfront board created by this act.

(c) "City" means the city of Fort Scott.

(d) "Commission" means the county commission of Bourbon county.

(e) "Council" means the city council of Fort Scott.

(f) "County" means Bourbon county.

(g) "Manager" means the city manager of Fort Scott.

(h) "Mayor" means the mayor of Fort Scott.

(i) "Metropolitan area" includes the area within the corporate limits of the city of Fort Scott.

(j) "Riverfront" means all real estate, equipment, rights and property useful for the purpose of recreation, along the banks of the Kansas river that runs through the city of Fort Scott and Bourbon county.

Sec. 3. There is hereby created the Fort Scott/Bourbon county riverfront authority. The purpose of the authority is to promote the general welfare and encourage private capital investment by fostering the creation of recreational, retail, entertainment, economic development and housing within the riverfront.

Sec. 4. The authority may sue and be sued in its corporate name but execution shall not in any case issue against any property of the authority. The authority may adopt a common seal and change the same at pleasure.

Sec. 5. For the first three years of its existence, the authority shall engage in planning and design of the riverfront. At all times the authority shall have power to acquire, construct, own, operate and maintain for public service a riverfront system in the metropolitan area and all the powers necessary or convenient to accomplish the purposes of this act, including, without limiting the generality of the foregoing, the specific powers enumerated herein.

Sec. 6. (a) Except as provided by subsection (c), the authority shall have power to acquire by purchase, lease, gift or otherwise all or any part of real property, property, rights in property, for the purpose of planning, development and creation of a riverfront within the metropolitan area as herein defined.

(b) Except as provided by subsection (c), the authority shall have power to acquire by purchase, lease, gift or otherwise any property and rights useful for its purposes and to sell, lease, transfer or convey any property or rights when no longer useful or exchange the same for other property or rights which are useful for its purposes.

(c) The authority shall not have the power to take property by eminent domain.

Sec. 7. (a) The authority shall have power to purchase equipment such as land, riparian rights, water rights, dams and docks, recreational equipment and public improvements, and may execute agreements, leases and equipment trust certificates. All money required to be paid by the authority under the provisions of such agreements, leases and equipment trust certificates shall be payable solely from the revenue or income to be derived from the riverfront authority and from grants. Payment for such equipment, or rentals therefor, may be made in installments, and the deferred installments may be evidenced by equipment trust certificates payable solely from such revenue or income, and title to such equipment shall not vest in the authority until the equipment trust certificates are paid.

(b) The agreement to purchase may direct the vendor to sell

and assign the equipment to a bank or trust company, duly authorized to transact business in the state of Kansas, as trustee, for the benefit and security of the equipment trust certificates and may direct the trustee to deliver the equipment to one or more designated officers of the authority and may authorize the trustee simultaneously therewith to execute and deliver a lease of the equipment to the authority.

(c) The agreements and leases shall be duly acknowledged before some person authorized by law to take acknowledgments of deeds and in the form required for acknowledgment of deeds and such agreements, leases and equipment trust certificates shall be authorized by vote of the board and shall contain such covenants, conditions and provisions as may be deemed necessary or appropriate to insure the payment of the equipment trust certificates from the revenue or income to be derived from the riverfront authority.

(d) The covenants, conditions and provisions of the agreements, leases and equipment trust certificates shall not conflict with any of the provisions of any trust agreement securing the payment of bonds or certificates of the authority.

(e) An executed copy of each such agreement and lease shall be filed in the office of the city and county clerk of the city and county in which said authority is operating and such filing shall constitute notice to any subsequent judgment creditor or any subsequent purchaser.

Sec. 8. The authority shall have power to apply for and accept grants from the federal or state government or any local government, or any agency thereof, or from any other public or private entity, to be used for any of the purposes of the authority and to enter into any agreement with the federal or state government or any local government, or any agency thereof, or any other public or private entity, in relation to such grants; provided that such agreement does not conflict with any of the provisions of any trust agreement securing the payment of bonds or certificates of the authority.

Sec. 9. The authority shall have power to invest and reinvest any funds held in reserve or sinking funds not required for immediate disbursement, in investments authorized by K.S.A. 12-1675, and amendments thereto, in the manner prescribed therein or in bonds or notes of the United States, bonds of the state of Kansas or bonds of any county, unified school district or city of the first class in which said authority is operating a system or in bonds or certificates of the authority at not to exceed their par value or their call price and to sell these securities whenever the funds are needed for disbursement. Such investment or reinvestment of any funds shall not be in conflict with any provisions of any trust agreement securing the payment of bonds or certificates of the authority.

Sec. 10. The authority shall have power to procure and enter into contracts for any type of insurance and indemnity against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any person, against employers' liability, against any act of any member, officer or employee of the board or of the authority in the performance of the duties of his or her office or employment or any other insurable risk.

Sec. 11. (a) The governing and administrative body of the authority shall be a board consisting of six members, to be known as the riverfront board. Members of the board shall be residents of Kansas. No member of the board shall be an elected official.

(b) Members shall not be paid a salary, but shall be reimbursed for actual expenses incurred by them in the performance of their duties.

(c) Members of the board shall be appointed as follows: Three shall be appointed by the mayor with the approval of the council and three shall be appointed by the commission. Of the first appointees, the council and mayor shall designate one member to serve a term of one year, one to serve two years and one to serve a three-year term. The commission shall designate the terms of its appointees likewise. Should the city and county

consolidate, then the members shall be appointed by the governing body of the consolidated government as set forth above.

(d) Upon the expiration of the term of any member, all successor members of the board shall be appointed and hold office for terms of three years from the date of appointment. The city clerk or county clerk shall certify the action of the respective governing body with respect to such appointments and file such certificates as a part of the records of the office of either the city or county clerk. Before entering upon the duties of office, each member of the board shall take and subscribe the constitutional oath of office and same shall be filed in the office of the city clerk and county clerk.

(e) Any member may resign from office to take effect when a successor has been appointed and has qualified. The mayor, with the approval of the council and the commission, may remove any member of the board in case of incompetency, neglect of duty or malfeasance in office. The member shall be given a copy of the charges and an opportunity to be publicly heard in person or by counsel upon not less than 10 days' notice. In case of failure to qualify within the time required, or of abandonment of office, or in case of death, conviction of a crime involving moral turpitude or removal from office, the office of a member shall become vacant. A vacancy shall be filled for the unexpired term by appointment in the same manner as the original appointment.

(f) As soon as possible after the appointment of the initial members, the board shall organize for the transaction of business, select a chairperson and a temporary secretary from its members and adopt bylaws, rules and regulations to govern its proceedings. The initial chairperson and successors shall be elected by the board from time to time for the term of the chairperson's office as a member of the board or for the term of three years, whichever is shorter.

(g) Regular meetings of the board shall be held at least once each calendar month, the time and place of such meetings to be fixed by the board. Four members of the board shall constitute

a quorum for the transaction of business.

(h) All action of the board shall be by resolution and the affirmative vote of at least three members shall be necessary for the adoption of any resolution. All such resolutions before taking effect shall be approved by the chairperson of the board and, if the chairperson approves thereof, the chairperson shall sign the same. If the chairperson does not approve any such resolution, the chairperson shall return it to the board with the chairperson's written objections thereto at the next regular meeting of the board occurring after the passage thereof. If the chairperson fails to return any resolution with the objections thereto by the prescribed time, the chairperson shall be deemed to have approved the same and it shall take effect accordingly. Upon the return of any resolution by the chairperson with the chairperson's objections, the vote by which such resolution was passed shall be reconsidered by the board. If upon reconsideration the resolution is passed by the affirmative vote of at least five members, it shall go into effect notwithstanding the veto of the chairperson. All resolutions and all proceedings of the authority and all documents and records in its possession shall be public records, and open to public inspection, except such documents and records as shall be kept or prepared by the board for use in negotiations, actions or proceedings to which the authority is a party.

Sec. 12. (a) The board shall appoint a secretary and a treasurer, who need not be members of the board, to hold office during the pleasure of the board, and fix their duties and compensation. Before entering upon the duties of their respective offices they shall take and subscribe the constitutional oath of office, and the treasurer shall execute a bond with corporate sureties to be approved by the board. The bond shall be payable to the authority in whatever penal sum may be directed by the board conditioned upon the faithful performance of the duties of the office and the payment of all money received by the treasurer according to law and the orders of the board. The board at any

time may require a new bond from the treasurer in such penal sum as may then be determined by the board. The obligation of the sureties shall not extend to any loss sustained by the insolvency, failure or closing of any national or state bank wherein the treasurer has deposited funds if the bank has been approved by the board as a depository for these funds. The oaths of office and the treasurer's bond shall be filed in the principal office of the authority.

(b) All funds deposited by the treasurer in any bank shall be placed in the name of the authority and shall be withdrawn or paid out only by check or draft upon the bank, signed by the treasurer and countersigned by the chairperson of the board, except that the board may designate any of its members or any officer or employee of the authority to affix the facsimile signature of the chairperson and another to affix the facsimile signature of the treasurer to any check or draft.

(c) In case any officer whose signature appears upon any check, draft, bond, certificate or interest coupon, issued pursuant to this act, ceases to hold such officer's office before the delivery thereof to the payee or the purchaser of any bond or certificate, the officer's signature nevertheless shall be valid and sufficient for all purposes with the same effect as if the officer had remained in office until delivery thereof.

Sec. 13. The board may appoint a general manager and such other persons who are necessary to make the authority succeed. The general manager shall hold office at the pleasure of the board. The general manager shall manage the properties and business of the authority and the employees thereof, subject to the general control of the board, shall direct the enforcement of all resolutions, rules and regulations of the board, and shall perform such other duties as may be prescribed by the board. No discrimination shall be made in any appointment or promotion because of race, creed, color, disability, religious or political affiliations.

Sec. 14. The board shall make all rules and regulations

necessary to govern the operation of the riverfront and its property and facilities and to exercise the powers granted to the authority.

Sec. 15. (a) The board shall establish a fiscal operating year. At least 30 days prior to the beginning of the first full fiscal year after the creation of the authority, and annually thereafter, the board shall cause to be prepared a tentative budget which shall include all operation and maintenance expense for the ensuing fiscal year. The tentative budget shall be considered by the board and, subject to any revision and amendments as may be determined, shall be adopted prior to the first day of the ensuing fiscal year as the budget for that year. No expenditures for operations and maintenance in excess of the budget shall be made during any fiscal year except by the affirmative vote of at least four members of the board. It shall not be necessary to include in the annual budget any statement of necessary expenditures for pensions or retirement annuities, or for interest or principal payments on bonds or certificates, or for capital outlays, but it shall be the duty of the board to make provisions for payment of same from appropriate funds.

(b) As soon after the end of each fiscal year as may be expedient, the board shall cause to be prepared and printed a complete and detailed report and financial statement of its operation and of its assets and liabilities. A reasonably sufficient number of copies of such report shall be printed for distribution to persons interested and copies of such report shall be filed with the city and county clerks of the city and county.

Sec. 16. (a) The board shall withdraw from the gross receipts of the authority and charge to operating expenses such an amount of money as in the opinion of the board shall be sufficient to provide for the adjustment, defense and satisfaction of all suits, claims, demands, rights and causes of action and the payment and satisfaction of all judgments entered against the authority for damage caused by injury to or death of

any person and for damage to property resulting from the construction, maintenance and operation of the riverfront and the board shall deposit such moneys in a fund to be known and designated as the damage reserve fund.

(b) The board shall use the moneys in the damage reserve fund to pay all expenses and costs arising from the adjustment, defense and satisfaction of all suits, claims, demands, rights and causes of action and the payment and satisfaction of all judgments entered against the authority for damages caused by injury to or death of any person and for damage to property resulting from the construction, maintenance and operation of the authority. At any time and from time to time the board may obtain and maintain insurance coverage or protection partially or wholly insuring or indemnifying the authority against loss or liability on account of injury to or death of any person and for damage to property resulting from the construction, maintenance and operations of the authority. The cost of obtaining and maintaining such insurance shall be paid out of the moneys in the damage reserve fund. All moneys received from such insurance coverage or protection shall be paid into the damage reserve fund.

Sec. 17. The authority pursuant to resolutions adopted from time to time by the board may establish and create such other and additional special funds as may be found desirable by the board and in and by such ordinances may provide for payments into all special funds from specified sources with such preferences and priorities as may be deemed advisable and may also by any such resolution provide for the custody, disbursement and application of any moneys in any such special funds consistent with the provisions of this act.

Sec. 18. The authority is a municipality as defined by the Kansas Tort Claims Act, K.S.A. 75-6101 et seq., and amendments thereto, and entitled to avail itself of the protections therein. No civil action shall be commenced in any court against the authority by any person for any injury to such person unless it

is commenced within two years after the date that the injury was received or the cause of action accrued.

Sec. 19. If any provision of this act is held invalid, such provision shall be deemed to be excised from this act and the invalidity thereof shall not affect any of the other provisions of this act. If the application of any provision of this act to any person or circumstance is held invalid, it shall not affect the application of such provisions to persons or circumstances other than those as to which it is invalid.

Sec. 20. This act shall take effect and be in force from and after its publication in the statute book.

CITY MANAGER'S OFFICE
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SB 226 Testimony to Senate Committee on Federal and State Affairs

By: Jason A. Gage - Wednesday, February 7, 2007

LEGISLATIVE REQUEST:

The City of Salina is respectfully requesting that you consider amending K.S.A. 2006 Supp. 41-2703 and 41-2708 by supporting the passage of Senate Bill 226 for the following reason. Section 1 of the current statute requires that a cereal malt beverage ("CMB") license not be issued if the applicant is in violation of any provision contained in subsections (b)(1) through (b)(11). Section 2 currently requires that a license be revoked or suspended if the licensee is in violation of any provision contained in subsections (2)(1) through (2)(13). Neither of these two sections provides any discretion to the local licensing authority regarding these actions.

Our specific request as provided for under SB 226 is that the local licensing authority be granted reasonable discretion with regards to CMB license issuance, suspension and revocation actions. This is to ensure the penalty applied is fair and equitable with regard to the violation of the license holder.

ISSUE OR CHALLENGE:

The City of Salina is properly enforcing the CMB statute as written. This has resulted in numerous hearings with CMB license holders, including those that have sound, documented management policies and practices. From these hearings, multiple suspensions against local CMB license holders have been issued due to the prescriptive penalty requirements in the current statute. While Salina's CMB license holders are in agreement with the City that these actions are statutorily required, they are also in agreement that the prescribed penalties for CMB violations are extremely inequitable and overly burdensome when compared to the statewide enforcement of alcoholic liquor violations.

Sen Fed & State

Attachment 2

2-7-07

REASON FOR CHANGE:

Most of our concerns are related the provision restricting the sale of CMB products to minors. The reason is that this is one of the most distinctive and common violations we see. The City of Salina believes strongly in preventing sales to minors, which is very much in accordance with the current CMB statute.

However, I would like to provide an example of the difficulty in enforcing the current CMB penalty provisions. Under the current statute Section 1(b)(8)(B), the City could not issue a CMB license to a corporation if a manager, officer, director or stockholder holding in aggregate more than 25% of the stock were convicted of the CMB laws or drinking establishment laws of the State, without reference to the prior date of the conviction. This provides a scenario in which a license holder could be suspended under Section 2(a)(5) for "the sale of cereal malt beverages to any person under the legal age for consumption of cereal malt beverage", retain their license for the duration of the year, and then not be issued a license for the ensuing year. This scenario did occur in Salina in 2006. With regard to a similar penalty situation in Salina last year, a company chose to reorganize its corporate structure to get around the statutory provisions and obtain a new license.

We believe that reasonable licensing discretion would ensure an equitable penalty is applied to CMB license holders in violation of the CMB statute, but would also prevent the double jeopardy or creative restructuring scenarios as previously described. In addition, providing discretion to City and County boards of commissioners for applying penalties to the prescribed violations found in K.S.A. 2006 Supp. 41-2703 and 41-2708 will provide for a more effective use of warnings, probationary periods, relevant CMB training, and other similar actions for minor violations.

FINANCIAL AND/OR TAXING IMPLICATIONS:

We do not find that this item will have any negative financial or taxing impact on the State of Kansas, any other municipality or CMB retailers.

Thank you once again for taking the time to consider SB 226, which we believe to be a very timely and worthwhile statutory revision request.

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Senator Derek Schmidt
Majority Leader

Committee Assignments

Chair: Confirmation Oversight
Vice Chair: Assessment & Taxation
Organization Calendar & Rules
Member: Judiciary
Agriculture
Legislative Post Audit

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Senate Federal & State Affairs
Testimony on SB 244
Funeral Picketing
2/7/07

D. Schmidt

Mr. Chairman, members of the committee, thank you for this opportunity today to express my support of SB 244.

The freedom of speech embodied in our nation's Constitution is a great privilege that we are able to enjoy. However, rights bring responsibility; a responsibility to not infringe on the freedoms of others. I come before this committee today in support of a bill that would ensure that a mourning family has a proper opportunity to say farewell to their loved one.

SB 244 contains language similar to funeral picketing bills we have seen in the past. In addition, SB 244 contains two provisions which make it a stronger bill than its predecessors. SB 244 establishes a 300-foot barrier around a funeral or procession in which picketing is not allowed. The bill also criminalizes blocking public streets, sidewalks or other public space.

There are two new provisions to SB 244 that I would like to make you aware of, provisions which I feel strengthen this proposal. SB 244 directs the attorney general to bring declaratory judgment in court to challenge the constitutionality of the barrier. This mitigates the concerns expressed last year that an adverse court decision could result in an order for the state to pay the plaintiffs' attorney fees. In order to reduce delays in implementing a protective barrier, the district court's decision could then be directly appealed to the Kansas Supreme Court. Lastly, SB 244 allows a defamation lawsuit to be filed on behalf of the deceased individual or their family for any slander or libel that occurs at the funeral.

I urge this committee to favorably consider SB 244. I thank you for your time.

①

2/6/06

Testimony on Behalf
of Helen M. Steffler for
the Senate Federal and
State Committee.

God Bless
Helen M Steffler
Dolan, Ka.

②

2/5/06 HS

2/6/06

Dear Mr. Chairman,

I am writing in behalf
of the Bell SB. 244.

I attended a funeral
here in Topeka, Ks. for one of
our American soldier and
my friend Spc John Wood
and his death brought me
to the point where I
was made aware of Rev.
Fred Phelps and the
Westboro Baptist Church
members hate tactics. This
made me sad, so very sad
that our young men and
women died for our country
and have their rights
taken away to graduate in
privates.

There is a time to die,
a time to Mourn, a time
to believe that our country
stands for the right thing.
I say to Rev. Fred Phelps
and the Westboro Baptist
Church members, Lets Roll
and pray for peace and

(3)

2/6/06

Comfort in this Great
Country we call the United
States of America in
God we Trust

Thank you Mr.
Chairman & Committee
for listening to my testimony,
and our petition.

①

Testimony on Behalf
of:

Kimberly A. Cochran

For the:

Senate, Federal and State affairs
Committee

Date: Feb. 6, 2007

Dear Mr. Chairman and Committee,
I write today in support of
Bill SB244

This passed year I lost a
good friend of the family.

S.P.C. John Wood, a Soldier
who fought and died for our country.
I was then at that point in my
life made aware of the shelter
groups and Westlona church.

The night of John's resuscitation I and my parents and 11 year old daughter had to be escorted by our local police department into the funeral home. Before the funeral a day or two, I did some reading up on Mr. Phelps and his group. When my daughter looked at me that night and ask, "why do these people hold signs and why do they call John and our troops these names, mom." I looked at her and I could not answer that question. This is wrong this is not "freedom of speech" This is harassment during a time when a family member and/or friend has died fighting for our country, our freedom.

This Bill SB244 needs to pass. There needs to be respect showed for the troops and their grieving family and friends.

Thank you Mr. Chairman and
the Committee for listening to
my letter. Thank you also to
our patriot riders and local
Fire and Police departments
for there great support.

God Bless,

Kimberly A. Cochran

Date Feb. 6, 2007

Iola, Ks.