

MINUTES OF THE SENATE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Roger Reitz at 9:30 a.m. on February 3, 2009, in Room 446-N of the Capitol. Senator Kultula moved to approve the January 26<sup>th</sup> minutes. Senator Marshall seconded the motion. Motion carried.

All members were present.

Committee staff present:

Mike Heim, Office of the Revisor of Statutes  
Ken Wilke, Office of the Revisor of Statutes  
Martha Dorsey, Kansas Legislative Research Department  
Reed Holwegner, Kansas Legislative Research Department  
Noell Memmott, Committee Assistant

Conferees appearing before the committee:

Melissa Wangemann, Legislative Service Director/General Counsel, KS Association of Counties  
Marjorie Phelps, Director of Re-Entry Program, Department of Corrections  
Phil Perry, Home Builders Association of Greater Kansas City  
Eric Stafford, Association of General Contractors  
Chris Wilson, Kansas Building Industry Association  
John Frederico, Home Builders of Greater Kansas City

Others attending:

See attached list.

Melissa Wangemann, Legislative Service Director/General Counsel, KS Association of Counties, explained the purpose of **SB 129 - State medicaid program; county jail inmates; changes** which requires suspension - rather than termination- of medicaid eligibility for persons who are incarcerated in county jails or state correctional facilities (Attachment 1).

Marjorie Phelps, Director of Re-Entry Program, Department of Corrections, testified in support of **SB 129** addressing the problems caused by delay in reestablishing medicaid eligibility (Attachment 2).

Additional written testimony for **SB 129** was provided by Elizabeth Gillespie, Director, Johnson County Department of Corrections (Attachment 3), and Michelle Sweeney, Policy Analyst, Association of CMHC's of Kansas. (Attachment 4).

Phil Perry, Home Builders Association of Greater Kansas City, spoke in favor of **SB 91 an act concerning vesting rights of developers.**(Attachment 5).

Eric Stafford, Association of General Contractors, supported **SB 91**. The Associated General Contractors supports legislation which prevents local government from rezoning property once construction has begun. (Attachment 6). He offered a balloon amendment to **SB 91**.

Chris Wilson, Kansas Building Industry Association, expressed concerns about **SB 91**. First, that the current law has worked well since passage in 1992 and that the bill would create more problems that it would solve. (Attachment 7)

John Frederico, Home Builders of Greater Kansas City, reemphasized that **SB 91** is about "property rights" and encouraged the Committee's support of the bill.

The next meeting is scheduled for February 9, 2009.

The meeting was adjourned at 10:23 a.m.

# LOCAL GOVERNMENT GUEST LIST

DATE: ~~February~~ 3, 2009

NAME	REPRESENTING
Derek Hein	Hein Law Firm
ERIK SARTORIUS	City of Overland Park
Melissa Wagemann	KAC
PHIL PERRY	MBA + GKC
Chad Austin	Ks Hosp Assoc



TESTIMONY TO THE SENATE LOCAL GOVERNMENT COMMITTEE  
ON SB 129

FEBRUARY 3, 2009

Mr. Chairman and Members of the Committee:

The Kansas Association of Counties appreciates the opportunity to appear on SB 129, a bill we requested from this committee. The purpose of SB 129 is simple: it requires suspension—rather than termination—of Medicaid eligibility for persons who are incarcerated in county jails or state correctional facilities. The purpose of the legislation is to make it faster and easier for the released inmate to obtain Medicaid coverage upon release.

Federal law (i.e., Social Security Act) precludes the use of Medicaid funds for health care or services to those housed in public institutions. Often states *terminate* the person's Medicaid eligibility upon entry into the penal institution in response to this federal law. The Centers for Medicaid and State Operations (CMS) issued a memorandum to State Medicaid Directors in 2004 saying that the Medicaid payment exclusions for incarcerated individuals does not affect the eligibility of those individuals, and encouraged states to adopt a policy of suspending rather than terminating Medicaid coverage upon incarceration.

KAC believes proper health care is necessary upon re-entry into the community after discharge. Otherwise, the community will see a higher use of hospital-based care, increased mental illness, destabilization of health and medical problems, infection of family and others with communicable diseases. Roughly one-third of state prison inmates have some physical or mental condition.<sup>1</sup> The rates of schizophrenia and other mental disorders are estimated to be two to three times higher in the prison population than the general population.<sup>2</sup> Quick re-enrollment in Medicaid without recertification ensures quicker and easier access to health care and will go a long way in preventing health and mental problems that ultimately lead to recidivism.

My research indicates that seven states now suspend Medicaid instead of terminating it. There may be more, however, I was able to confirm seven: Florida, Iowa, Maryland, New York, Oregon, Texas, and Washington.

Thank you for the opportunity to appear today. I would be happy to answer any questions.

Melissa A. Wangemann  
General Counsel

<sup>1</sup> "Medical Problem of Inmates," Bureau of Justice Statistics Special Report, Washington D.C. (1997).  
<sup>2</sup> "The Prevalence of Several Mental Disorder Among Male Urban Jr of Public Health 80, (June 1990).

Senate Local Government

2/03/09

Attachment   1



Center for Medicaid and State Operations  
Disabled and Elderly Health Programs Group (DEHPG)

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**TO:** State Medicaid Directors  
CMS Associate Regional Administrators for Medicaid

**CC:** Charlene Brown, CMSO Deputy Director

**FROM:** Glenn Stanton  
Acting Director  
Disabled and Elderly Health Programs Group (DEHPG)

**SUBJ:** Ending Chronic Homelessness

**DATE:** May 25, 2004

The United States Interagency Council on Homelessness, recently chaired by HHS Secretary Thompson, is working to develop and implement a comprehensive national approach to end chronic homelessness in the United States through interagency, intergovernmental, and intercommunity collaborations. CMS has been supporting the efforts of the council in several ways. First, we worked with our federal partners to release a new tool on our website entitled *First Step on the Path to Benefits for People who are Homeless*. The *FirstStep* product is an easy-to-use, interactive tool designed to assist case managers and outreach workers in helping people who are homeless to gain access to mainstream programs. The tool may be found on the CMS website at <http://www.cms.hhs.gov/medicaid/homeless/firststep/index.html>.

Second, I am pleased to announce that we have posted a report on our website that is entitled *Improving Medicaid Access for People Experiencing Chronic Homelessness: State Examples*. This report focuses on practices that have increased Medicaid access for people experiencing chronic homelessness, including assisting people leaving psychiatric facilities and correctional facilities to obtain Medicaid quickly. We hope this report will provide useful information about state efforts as you address chronic homelessness issues in your state. The report may be found on CMS's website at <http://www.cms.hhs.gov/promisingpractices/> or at <http://www.cms.hhs.gov/medicaid/homeless/>.

Finally, CMS is encouraging states with this letter to "suspend" and not "terminate" Medicaid benefits while a person is in a public institution or Institute for Mental Disease (IMD). Persons released from institutions are at risk of homelessness; thus, access to mainstream services upon release is important in establishing a continuum of care and ongoing support that may reduce the demand for costly and inappropriate services later.

As a reminder, the payment exclusion under Medicaid that relates to individuals residing in a public institution or an IMD does not affect the *eligibility* of an individual for the Medicaid program. Individuals who meet the requirements for eligibility for Medicaid may be enrolled in

the program before, during, and after the time in which they are held involuntarily in secure custody of a public institution or as a resident of an IMD. The statutory federal financial participation (FFP) exclusion applying to inmates of public institutions and residents of IMDs affects only the availability of federal funds under Medicaid for health services provided to that individual while he or she is an inmate of a public institution or a resident of an IMD.

Thus, states should not terminate eligibility for individuals who are inmates of public institutions or residents of IMDs based solely on their status as inmates or residents. Instead, states should establish a process under which an eligible inmate or resident is placed in a suspended status so that the state does not claim FFP for services the individual receives, but the person remains on the state's rolls as being eligible for Medicaid (assuming the person continues to meet all applicable eligibility requirements). Once discharge from the facility is anticipated, the state should take whatever steps are necessary to ensure that an eligible individual is placed in payment status so that he or she can begin receiving Medicaid-covered services immediately upon leaving the facility. If an individual is not already eligible for Medicaid prior to discharge from the facility, but has filed an application for Medicaid, the state should take whatever steps are necessary to ensure that the application is processed in a timely manner so that the individual can receive Medicaid-covered services upon discharge from the facility.

Given the high incidence of substance abuse, mental illness, and physical illness among those who have been incarcerated or otherwise held in involuntary custody, I encourage states to coordinate prison health services and other health care services provided during involuntary confinement with Medicaid services. By working with parole officers and other social services professionals who deal with inmates and residents of IMDs who are to be released, State Medicaid programs can assure that eligible persons are enrolled in Medicaid prior to release and can create an ongoing continuum of care for these individuals, regardless of the source of funding for such care.

In closing, I want to thank you for your ongoing efforts to improve access to Medicaid for all persons, and particularly for those who are homeless.



# KANSAS

KANSAS DEPARTMENT OF CORRECTIONS  
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on SB 129  
to  
The Senate Committee on Local Government

By Roger Werholtz  
Secretary  
Kansas Department of Corrections  
February 3, 2009

The Department of Corrections supports SB 129. SB 129 provides that for persons receiving Medicaid benefits prior to being incarcerated in a county jail or state correctional facility, their Medicaid eligibility will be suspended rather than terminated while they are incarcerated for as long as permitted by federal law. SB 129 permits termination of eligibility if the person no longer meets the Medicaid eligibility criteria.

SB 129 addresses the problems caused by the delay in reestablishing Medicaid eligibility for persons who met the eligibility requirements for Medicaid assistance prior to incarceration and meet those same criteria at the time of their release from prison. Currently, 12% of released offenders who had received Medicaid benefits due to Supplemental Security Income (SSI) did not have Medicaid benefits reestablished until 4 to 6 months after release. For released offenders receiving Medicaid for reasons other than SSI prior to incarceration, it took 4 to 6 months for 10% of that population to have their Medicaid eligibility reestablished after release.

The disruption caused by the delay in reestablishing Medicaid assistance can be life threatening in the case of chronic medical conditions and impacts public safety in the case of those suffering from severe mental health conditions. The need for continuity of medical and mental health care once a person is released from incarceration was illustrated when according to an article in the *Wichita Eagle*, United States District Judge Wesley Brown presided over the sentencing of a man who robbed a Wichita bank. The defendant, diagnosed with schizophrenia and released from state prison just 4 months before the robbery, had told the bank clerk that he needed money for his medications and that the voices told him to come there. Though the defendant had applied for a state medical card to pay for his medications, he was not approved until after the robbery.

The Department of Corrections has dedicated resources to address public safety in regard to the transition of offenders from correctional facilities back into the community, including discharge planners and specialized parole officers with caseloads of offenders with mental illness, as well

as contract medical/mental health providers who address medication needs for the first thirty (30) days after release. Successful reentry simply means that released offenders are not returned to prison and most importantly, they are not committing new crimes. The Department's reentry efforts has resulted in the KDOC facility population dropping while at the same time the State has experienced a decrease in the number of felony convictions for crimes committed while offenders are on parole.

#### KDOC Performance Measures

- 8,514 – Facility Population on 1/12/09 (9,251 on 2/19/04)
- 5,875 – Parole Population on 1/12/09 (4,261 on 2/19/04, 4,167 on 6/30/03)
- 106 - FY 2008 monthly parole revocation rate (FY 2003 rate = 203/month)
- 99 – FY 2009 to date monthly parole revocation rate
- 217 – Number of parole absconders on 1/12/09 (739 on 6/30/00, 467 on 6/30/03, 248 on 6/30/08, 197 on 12/11/08)
- 35% reduction in felony convictions for crimes committed on parole (FY 1998 – 2000 avg. compared to FY 2004 – 2007 avg.)

Successful reentry requires that offenders be able to access needed medical care particularly mental health care and psychotropic medications in a timely manner. Offenders with mental illness experience some of the highest return rates upon release, so an array of strategies are needed to help establish a continuity of care to stabilize this population safely in the community upon release. Risk reduction work with very high risk/need offenders has found a decrease in returns from over 60% to under 30%, and this bill would help sustain these reduced return rates.

Offenders confined in correctional facilities receive medical care including mental health treatment and medications. However, once released from prison, those needs must be met through the services available in the community. The needs of persons requiring medical care while in prison do not end merely because the person is now in the community. It is imperative that appropriate medical and mental health care be continued without interruption when the offender is released into the community. Medical assistance provided prior to confinement needs to be resumed immediately upon the person's return to the community.

In order to evaluate the scope of the need for medical assistance for persons returning to the community, the Department of Corrections and the Department of Social and Rehabilitation Services reviewed the public assistance history of persons being admitted in to KDOC facilities from during FY 2008 by cross referencing to SRS benefit records from January 2007 through August 2008. During FY 2008, 4460 offenders were admitted into the Department of Corrections facilities. Of that population, 532 offenders received medical benefits either before or after incarceration. 27% (147) of those persons received Medicaid benefits due to their receiving Supplemental Security Income (SSI); 51.3% (273) received Medicaid benefits due to

their eligibility for an assistance program other than SSI; 24.8% (132) received MediKan benefits.

These statistics do not include family members who were getting benefits or whose children were in foster care while the offender was incarcerated.

The Department of Corrections support favorable consideration of SB 129





## Johnson County Department of Corrections

206 West Loula Street • Olathe, KS 66061  
Elizabeth Gillespie, Director of Corrections  
(913) 715-4500 Fax (913) 829-0107

DATE: February 3, 2009

TO: Honorable Members  
Senate Local Government Committee

FROM: Elizabeth Gillespie, Director *Elizabeth Gillespie*  
Johnson County Department of Corrections

SUBJECT: **Senate Bill No. 129**

On behalf of Johnson County, I am submitting my written testimony **in support** of Senate Bill 129. This bill will require full restoration of Medicaid benefits to offenders who were previously enrolled in Medicaid prior to their periods of incarceration. This restoration will take place immediately upon the offender's release from custody.

Currently, Medicaid eligibility is terminated when the offender is incarcerated. This results in extended time periods in which the recently released offender has no way to access necessary medical services and prescription medications. This delay in receipt of necessary services frequently results in the deterioration of the offender and significantly endangers his/her successful reentry to the community. This change is very welcome to corrections professionals who supervise offenders once they are released. They have long recognized the need to reinstate benefits immediately.

It appears to me that Senate Bill 129 will provide for immediate restoration of benefits upon release without the need to complete a lengthy restoration of benefits application. This is a very good change. As I understand the process, currently even a person who has had his/her Medicaid benefits suspended must go through a lengthy application process that is nearly as time-consuming as the original application for benefits.

While I do not have data that verifies how many offenders who are being supervised in the community are eligible for Medicaid benefits, staff of Johnson County's Community Corrections program estimate that 10 to 15% of offenders under their supervision qualify for Medicaid. Considering Johnson County's average daily population of approximately 800 adult offenders in the community, approximately 120 offenders will be affected on a daily basis. Obviously, anything that expedites an offender's access for necessary medical and mental health services and prescription drugs will greatly increase the offender's chance of becoming a law-abiding, productive citizen.

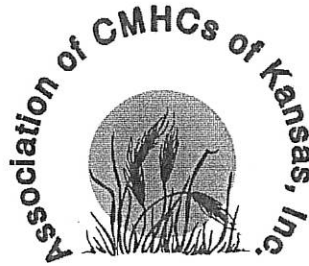
Thank you for your time and consideration.

Senate Local Government

2/03/09

Accredited by the American Correctional Association

Attachment 3



***Association of Community Mental Health Centers of Kansas, Inc***  
***720 SW Jackson, Suite 203, Topeka, Kansas 66603***  
***Telephone: 785-234-4773 / Fax: 785-234-3189***  
***Web Site: www.acmhck.org***

## **Senate Local Government Committee**

### **Testimony on Senate Bill 129**

February 3, 2009

Presented by:

Michelle Sweeney, Policy Analyst  
Association of CMHCs of Kansas, Inc.

Senate Local Government

2/03/09

Attachment 4

Mister Chairman and members of the Committee, my name is Michelle Sweeney, I am the Policy Analyst for the Association Community Mental Health Centers of Kansas, Inc. The Association represents the 27 licensed Community Mental Health Centers (CMHCs) in Kansas who provide home and community-based, as well as outpatient mental health services in all 105 counties in Kansas, 24-hours a day, seven days a week. In Kansas, CMHCs are the local Mental Health Authorities coordinating the delivery of publicly funded community-based mental health services. The CMHC system is state and county funded and locally administered. Consequently, service delivery decisions are made at the community level, closest to the residents that require mental health treatment. Each CMHC has a defined and discrete geographical service area. With a collective staff of over 4,500 professionals, the CMHCs provide services to Kansans of all ages with a diverse range of presenting problems.

Together, this system of 27 licensed CMHCs form an integral part of the total mental health system in Kansas. As part of licensing regulations, CMHCs are required to provide services to all Kansans needing them, regardless of their ability to pay. This makes the community mental health system the "safety net" for Kansans with mental health needs, collectively serving over 123,000 Kansans with mental illness. I stand before you today to discuss Senate Bill 129, which, if passed, would allow individuals enrolled in Medicaid who are incarcerated to have Medicaid benefits suspended rather than terminated.

It is important to note that one in four adults—approximately 57.7 million Americans—experience a mental health disorder in a given year.<sup>1</sup> Twenty-four percent of state prisoners and 21 percent of local jail prisoners have a recent history of a mental health disorder.<sup>2</sup>

Treatment, care and medications allow those with mental illness to remain stable. If Medicaid benefits are suspended rather than terminated, they can be reactivated immediately upon an individuals release from jail or prison. If they are able to receive the treatment and medications they need to be stable, they have a much better chance on not offending again, and staying out of the corrections system.

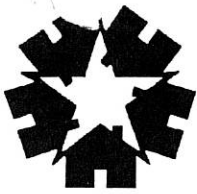
The current State Medicaid Plan requires that an individual enrolled in Medicaid who is placed in county jail or a correctional institution, have their Medicaid benefits terminated. The Association supports amendments to the State Medicaid Plan to allow suspension of Medicaid benefits upon conviction and incarceration of individuals in the corrections system—whether at the federal, state and local levels. Suspension of benefits allows for an individual to immediately receive physical and mental health care treatment and medication benefits upon release from prison. Treatment and medications for those with mental illness are especially critical, since they are likely to reoffend when unstable due to lack of medication and treatment.

Please consider passage of Senate Bill 129. Thank you for your continued support of mental health care for all Kansans, and for allowing me to appear before you today.

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<sup>1</sup> U.S. Department of Health and Human Services. *Mental Health: A Report of the Surgeon General*. Rockville, MD: U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Mental Health Services, 1999; pp. 408, 409, 411.

<sup>2</sup> Skowrya, K.R. & Coccozza, J.J. (2007) *Blueprint for change*. National Center for Mental Health and Juvenile Justice; Policy Research Associates, Inc. The Office of Juvenile Justice and Delinquency Prevention. See at <http://www.ncmhji.com/Blueprint/default.shtml>.



**HOME BUILDERS ASSOCIATION  
OF GREATER KANSAS CITY**



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

**Testimony on SB 91  
Phil Perry, Staff VP, Governmental Affairs  
Senate Committee on Local Government  
February 3, 2009**

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today. My name is Phil Perry and I am the Staff VP of Governmental Affairs for the Home Builders Association of Greater Kansas City and I am appearing before you today to speak in favor of SB 91, an act concerning vesting of development rights.

The Home Builders Association of Greater Kansas City believes that these changes proposed in SB 91 will create a “regulatory certainty” in the development process. These changes will allow developers, investors, and financial institutions to achieve a greater level of comfort in making the necessary investment towards helping our economy recover.

The current law was written in 1991 and 18 years later the marketplace for housing and development in general is decidedly different. In the past single family developments were the norm, financing was less complicated, and the approval process was much simpler, resulting in projects that were completed in a shorter time frame.

In today’s market, projects typically include a variety of housing types and often include a retail and/or an office component, financial deals are complex and time consuming, and the approval process has been complicated with additional requirements for codes and environmental issues. All of these changes have lengthened the time required to get projects started and the current market place has only complicated these issues. Our members believe that the time has come to create greater certainty in the development process.

The changes proposed in SB 91 treat all residential property as the same, regardless of zoning classification and extends the time of vesting to ten years, creating a more sensible time frame in today’s markets. In addition the bill provides more certainty to all other projects by creating a defined percentage for completion of the project as opposed to the undefinable “substantial amount of work”.

*Do Business With A Member*

Senate Local Government

2/03/09

Attachment 5

I would be glad to answer any questions and I would also direct to you to the written testimony of Rick Oddo, Oddo Development, that tells his story, an example of “regulatory uncertainty” that will certainly cost him hundreds of thousands of dollars. Mr. Oddo planned to be here today, but is spending the day in depositions in his case against the City of Leawood on this same issue.

Thank you very much for your time.



*Building a Better Kansas Since 1934*  
200 SW 33<sup>rd</sup> St. Topeka, KS 66611 785-266-4015

**TESTIMONY OF  
ASSOCIATED GENERAL CONTRACTORS OF KANSAS  
BEFORE SENATE COMMITTEE ON LOCAL GOVERNMENT  
SB 91**

February 3, 2009

By Eric Stafford, Associated General Contractors of Kansas, Inc.

Mister Chairman and members of the committee, my name is Eric Stafford. I am the Director of Government Affairs for the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

**The AGC of Kansas supports Senate Bill 91 and asks that you recommend it favorably for passage.**

AGC fully supports legislation which prevents local governments from rezoning property once construction has begun. Several AGC members develop commercial property in addition to their role as general contractors.

If a government pulls the permits or rezones the property on which a company is building, the consequences could be great enough to put a company out of business. At this point, a contractor has already signed multiple contracts with subcontractors and suppliers and has scheduled crews for the duration of the project. The contractor would have to break those contracts, try to reschedule crews and most importantly, fight with the owner to receive money for the completed work.

SB 91 would establish clear guidelines for local governments to follow regarding development rights for residential and commercial property.

**Again, the AGC of Kansas respectfully requests that you recommend SB 91 favorably for passage.**  
Thank you for your consideration.

Senate Local Government

2/03/09

Attachment 6



**STATEMENT OF THE  
KANSAS BUILDING INDUSTRY ASSOCIATION  
TO THE SENATE LOCAL GOVERNMENT COMMITTEE**

**SENATOR ROGER REITZ, CHAIR**

**REGARDING S.B. 91**

**TUESDAY, FEBRUARY 3, 2009**

Chairman Reitz and Members of the Committee, thank you for the opportunity to provide comments regarding Senate Bill 91, which concerns the vesting of development rights. I am Chris Wilson, Executive Director of Kansas Building Industry Association (KBIA), the state association of the residential construction industry, with over 2300 members. In particular, several of our members are involved in serving on city and county planning commissions, so are very knowledgeable regarding this statute. Our legislative committee has consulted with Wichita-Sedgwick County Metropolitan Area Planning Commission regarding this legislation and as a result would offer these comments.

Our Association has several concerns with S.B. 91 in its current form. First, there is a strong opinion that the current law has worked well and smoothly since its passage in 1992. There is a concern that this bill would create more problems than it would solve.

Under current law in KSA 12-764, vesting occurs: 1) for the purpose of single-family residential development, development rights for land shall vest upon recording of the final plat for such land. If construction has not begun within five years of recording the plat, the development rights created thereby shall expire and become null and void unless an extension of the development rights is granted as provided for by the local government.

For all non-single-family development, development rights for land shall vest upon the final approval of a site plan. If all permits required for such development have not been issued and the start of the construction and the completion of substantial amounts of work completed under the validly issued permits, the site plan and development rights shall expire unless an extension is provided for and granted by the local government.

The current law also allows the governing bodies to provide in zoning regulations for earlier vesting of development rights.

Additional concerns with this bill include:

1. It expands the five year vesting for single-family residential development to all residential developments. I believe the intent of those requesting the bill was to have this apply to multi-family development, but that is not effected by this language. Cities have a variety of definitions of residential – that may be 1-4 units or include single-family and

Senate Local Government

2/03/09

Attachment 7

duplexes, and may or may not include dwellings of more than 4 units. State statutes generally consider residential 4 units or less, but that varies at the local level.

So, this bill addresses two classes of property for vesting: “residential” in Section 1(a) and “other than residential” in Section 1(b), but what properties would be included in (a) and in (b) is unclear, ambiguous and would vary from local government to local government.

2. S.B. 91 strikes the word “all” from before permits, which at least introduces ambiguity regarding whether all applicable permits must be issued or one permit. The only appellate case addressing the application of this statute is a case dealing with this statute was an unpublished decision of the Kansas Court of Appeals in 2008. In that case an adult business got a building permit, and then 6 months later, Shawnee County adopted adult business licensing regulations. The developer argued he had a vested right prior to the licensing change, but there was an older resolution that required this business to obtain an adult entertainment studio permit, which it had not done. The court found that since the business had not obtained “all” required permits, it did not have a vested right. So, this is a change that we think might result in more cases and ambiguity in the statute rather than solving problems.
3. The bill changes the test for when the rights vest from “construction has begun and substantial amounts of work have been completed,” to a test of 35% of the work being completed within 10 years. This would expand vesting of development rights for nonresidential developments and make it more difficult for local governments to address changes in development patterns to avoid nonconforming uses.
4. The bill appears to make this change retroactive to 1992 since it does not amend the effective date, but that may not be the intent.
5. The bill eliminates the section providing authority for cities and counties to provide for earlier vesting through zoning regulations and the requirement that vesting occur in the same manner for all uses of land within a land-use classification.

Again, we would just caution the Committee that this is a statute which has worked well over time. We would not want to rush to change it due to one problem, only to create more problems than would be solved. If there is a need to change the statute, we believe there should be a working group including representatives from cities and counties and planning commissions to come to agreement on what if any changes may be needed and to carefully develop consensus legislation that accomplishes its purpose and does not create problems.

Thank you for the opportunity to provide these comments regarding S.B. 91.