

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:00a.m. on February 16, 2010, in Room 548-S of the Capitol.

All members were present.

Committee staff present:

Ken Wilke, Office of the Revisor of Statutes
Reed Holwegner, Kansas Legislative Research Department
Kathie Sparks, Kansas Legislative Research Department
Marilyn Arnone, Committee Assistant

Conferees appearing before the Committee:

Ken Wilke, Office of the Revisor of Statutes
Robert North, Chief Counsel, Department of Commerce Legal

Others attending:

See attached list.

SB 495 - STAR bonds; use of sales tax revenue; approval of certain projects.

Chairperson Brownlee ask Ken Wilke, Revisor of Statutes, to explain the balloon for **SB 495**. Mr. Wilke said the balloon incorporates amendments that have been offered by the Department of Commerce. There will be an additional section added that will be K.S.A. 2009 Supp.12-17-162. Language has been changed on page 2, lines 37-41 to provide a base for calculating the revenues so there isn't a zero base in some instances. Under the definitions section (dd) wording has been changed to read "a STAR bond project plan or an addition to or an expansion of an existing STAR bond project is approved by the secretary." (Attachment 1)

Senator Wagle ask if the new language would put the Water Park in Wichita in jeopardy. Robert North, Commerce Legal Counsel, stood to address the question. Potentially it could have some effect on the amount of revenue that would be favorable to Wichita. The language creates a different timing mechanism to define the tax increment whereas currently it goes back two years from the date the project was created and the new language says it will go back two years from the date the project was approved by the secretary.

Senator Kelsey asked why is this bill is needed. Chairperson Brownlee responded that in 2007 we amended the STAR bonds statute to communicate that we did not want the sales tax to continue to roll over and the bonds to continue to roll over and the sales tax never get back to the governmental units. In the Wizard project, they are capturing the sales tax and utilizing that. If there is incentive to bring sales tax in to the state coffers and the tax keeps rolling over to where the tax never comes into the coffers, where is the incentive. The bill is to address that situation.

Senator Reitz asked if the bill was a threat to the Manhattan Project as it progresses and would like total assurance there would be no ill effect before he votes on the bill. Mr. North said it would have no effect on the Manhattan project as bonds have already been issued. The law that is in effect at the time of issue of bonds will be the law that governs that project. Manhattan likely will not be adversely affected by this bill

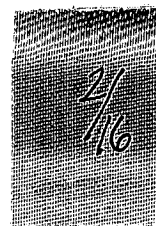
Senator Schodorf expressed that she didn't want any existing projects jeopardized that have already been approved. The language should be worked out so there was no possibility that might happen.

Chairperson Brownlee said the goal of the bill was to make sure the goal of 2007 was met and the bonds were not just rolled over.

Senator Emler voiced concern rolling over projects. It is great that projects exceeded expectations and that is a good thing, but it is not a good thing to roll a new project into an existing one. A new project that qualifies is great, but do it under a separate cover as opposed to rolling it into an existing project. But the collection of sales tax needs to be a consideration for the State of Kansas.

Senator Wagle ask if the language allowed on page 2 would suffice and not adopt the language regarding time.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.



CONTINUATION SHEET

Minutes of the Senate Commerce Committee at 8:00a.m. on February 16, 2010, in Room 548-S of the Capitol.

Chairperson Brownlee agreed it would. It was agreed to strike the language on page 3. Senator Wagle so moved. Senator Emler seconded. The motion passed.

Senator Wagle moved that SB 495 as amended be favorably passed. Seconded by Senator Lynn. The motion carried. Senator Schodorf and Senator Kelsey voted no and asked that their votes be recorded.

SB 482 - Community improvement district act; reallocation of assessments on certain exempted property.

The Committee's attention turned to **SB 482**. Chairperson Brownlee said there had been amendments to the bill at the last meeting. She had talked to Dotty Riley, a proponent of the bill, who was concerned about the 5% limitation put back into the statute. (Attachment 2) But that portion of the bill has been adopted.

There have been other amendments to the bill but the language on page 13, line 33-36 had not been discussed. Senator Schodorf asked if the infrastructure such as traffic lights would never be constructed if it wasn't for the new district. Mr. Wilke questioned the term contiguous as to whether or not this would provide any limits. Chairperson Brownlee said that a somewhat limiting factor in the language is infrastructure necessary for implementation of the project as determined by the city, so the city would have to indicate that the infrastructure was truly necessary. That in itself is somewhat limiting.

Senator Lynn moved that SB 482 favorably pass out of committee. Seconded by Senator Reitz. Motion carried.

The next meeting is scheduled for February 17, 2010.

The meeting was adjourned at 8:35am

COMMERCE COMMITTEE GUEST LIST

DATE: TUES, FEB 16

NAME	REPRESENTING
SEAN MILLER	CAPITOL STRATEGIES
JOHN BOTTENBERG	K'S SPEEDWAY
ERIK SARTORIUS	CITY OF OVERLAND PARK
LARRY R BAER	LKM
Ron Sechen	R/G FA

SENATE BILL No. 495

By Committee on Commerce

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9 AN ACT concerning STAR bonds; concerning use of sales tax revenues;
10 concerning approval of certain projects; amending K.S.A. 2009 Supp.
11 12-17,164 and 12-17,168 and repealing the existing sections.

12-17,162,

12
13 *Be it enacted by the Legislature of the State of Kansas:*

Insert K.S.A. 2009 Supp. 12-17,162 as a new section 1 and renumber the remaining sections accordingly.

14 Section 1. K.S.A. 2009 Supp. 12-17,164 is hereby amended to read
15 as follows: 12-17,164. (a) The governing body of a city may establish one
16 or more STAR bond projects in any area within such city or wholly outside
17 the boundaries of such city. A STAR bond project wholly outside the
18 boundaries of such city must be approved by the board of county com-
19 missioners by the passage of a county resolution.

20 The governing body of a county may establish one or more STAR bond
21 projects in any unincorporated area of the county.

22 The projects shall be eligible for financing by special obligation bonds
23 payable from revenues described by subsection (a)(1) of K.S.A. 2009
24 Supp. 12-17,169, and amendments thereto.

25 (b) Each STAR bond project shall first be approved by the secretary,
26 if the secretary determines that the proposed project or complex suffi-
27 ciently promotes, stimulates and develops the general and economic wel-
28 fare of the state as described in K.S.A. 2009 Supp. 12-17,160, and amend-
29 ments thereto. The secretary, upon approving the project, may approve
30 such financing in an amount not to exceed 50% of the total costs including
31 all project costs and any other costs related to the project. The proceeds
32 of such STAR bond financing may only be used to pay for incurred project
33 costs.

34 (c) For a city proposing to finance a major motorsports complex pur-
35 suant to subsection (a)(1)(C) or (a)(1)(E) of K.S.A. 2009 Supp. 12-17,169,
36 and amendments thereto, the secretary, upon approving the project, may
37 approve such financing in an amount not to exceed 50% of the STAR
38 bond project costs.

39 ~~(d) The secretary may approve a STAR bond project located in a~~
40 ~~STAR bond project district established by a city prior to May 1, 2003.~~

41 ~~(e)~~ A project shall not be granted to any business that proposes to
42 relocate its business from another area of the state into such city or
43 county, for the purpose of consideration for a STAR bond project pro-

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1 vided by K.S.A. 2009 Supp. 12-17,160 et seq., and amendments thereto.
 2 ~~(f)~~ (e) A project shall not be approved by the secretary if the market
 3 study required by K.S.A. 2009 Supp. 12-17,166, and amendments thereto,
 4 indicates a substantial negative impact upon businesses in the project or
 5 complex market area or the granting of such project or complex would
 6 cause a default in the payment of any outstanding special obligation bond
 7 payable from revenues authorized pursuant to subsection (a)(1) of K.S.A.
 8 2009 Supp. 12-17,169, and amendments thereto.

9 ~~(g)~~ (f) The maximum maturity of special obligation bonds payable
 10 primarily from revenues described by subsection (a)(1) of K.S.A. 2009
 11 Supp. 12-17,169, and amendments thereto, to finance STAR bond pro-
 12 jects pursuant to this section shall not exceed 20 years.

13 ~~(h)~~ (g) The secretary shall not approve any application for STAR bond
 14 project financing which is submitted by a city or county more than one
 15 year after the STAR bond project district in which the STAR bond project
 16 is located has been established.

17 Sec. 2. K.S.A. 2009 Supp. 12-17,168 is hereby amended to read as
 18 follows: 12-17,168. (a) Any city or county which has received approval for
 19 a STAR bond project may request STAR bond issuance authority to issue
 20 additional STAR bonds in an amount in excess of the amount previously
 21 approved by the secretary. Any city or county requesting such additional
 22 STAR bond issuance authority shall make application for approval to the
 23 secretary. Such application shall include all information required to be
 24 submitted to the secretary for initial approval of a STAR bond project,
 25 including, but not limited to, a feasibility study as required by K.S.A. 2009
 26 Supp. 12-17,166, and amendments thereto.

27 (b) The secretary shall review all of the information submitted by the
 28 city or county in the request for additional STAR bond issuance authority
 29 and determine whether to approve a request, and, if approved, issue an
 30 approval letter for additional STAR bond issuance authority based upon
 31 the requirements within this act and rules and regulations developed by
 32 the secretary.

33 (c) The secretary may approve such additional STAR bond issuance
 34 authority in an amount not to exceed 50% of the total costs of the addition
 35 or expansion to the STAR bond project for which the additional STAR
 36 bond issuance authority is sought, including all project costs and any other
 37 costs related to the project addition or expansion The revenues used for
 38 the repayment of the original issue of the STAR bonds pursuant to sub-
 39 section (a)(1) of K.S.A. 2009 Supp. 12-17,169, and amendments thereto,
 40 shall not be used in any manner to finance or pay for any project cost of
 41 such addition or expansion. The proceeds of such additional STAR bond
 42 financing may only be used to pay for incurred project costs of such
 43 addition or expansion.

After the initial approval of a STAR bond project by the secretary, then any addition to or expansion of such STAR bond project or new project within such STAR bond project district shall be financed solely from the tax increment revenues, as defined in subsection (dd) of K.S.A. 2009 Supp. 12-17,162, and amendments thereto, generated from such addition to or expansion of such STAR bond project or new project within such STAR bond project district. The proceeds of such additional STAR bond financing may only be used to pay for such addition to or expansion of such STAR bond project. This provision shall apply to all existing STAR bond projects.

1 Sec. 3. K.S.A. 2009 Supp. 12-17,164 and 12-17,168 are hereby
2 repealed.
3 Sec. 4. This act shall take effect and be in force from and after its
4 publication in the statute book.

12-17,162,

Sec. 1. K.S.A. 2009 Supp. 12-17,162 is hereby amended to read as follows: 12-17,162. As used in this act, and amendments thereto, the following words and phrases shall have the following meanings unless a different meaning clearly appears from the context:

(a) "Auto race track facility" means:

(1) An auto race track facility and facilities directly related and necessary to the operation of an auto race track facility, including, but not limited to, grandstands, suites and viewing areas, concessions, souvenir facilities, catering facilities, visitor and retail centers, signage and temporary hospitality facilities, but excluding (2) hotels, motels, restaurants and retail facilities, not directly related to or necessary to the operation of such facility.

(b) "Commence work" means the manifest commencement of actual operations on the development site, such as, erecting a building, excavating the ground to lay a foundation or a basement or work of like description which a person with reasonable diligence can see and recognize as being done with the intention and purpose to continue work until the project is completed.

(c) "De minimus" means an amount less than 15% of the land area within a STAR bond project district.

(d) "Developer" means any person, firm, corporation, partnership or limited liability company other than a city and other than an agency, political subdivision or instrumentality of the state.

(e) "Economic impact study" means a study to project the financial benefit of the project to the local, regional and state economies.

(f) "Eligible area" means a historic theater, major tourism area, major motorsports complex, auto race track facility, river walk canal facility, major multi-sport athletic complex, or a major commercial entertainment and tourism area as

determined by the secretary.

(g) "Feasibility study" means a feasibility study as defined in subsection (b) of K.S.A. 2009 Supp. 12-17,166, and amendments thereto.

(h) "Historic theater" means a building constructed prior to 1940 which was constructed for the purpose of staging entertainment, including motion pictures, vaudeville shows or operas, that is operated by a nonprofit corporation and is designated by the state historic preservation officer as eligible to be on the Kansas register of historic places or is a member of the Kansas historic theatre association.

(i) "Historic theater sales tax increment" means the amount of state and local sales tax revenue imposed pursuant to K.S.A. 12-187 et seq., 79-3601 et seq. and 79-3701 et seq., and amendments thereto, collected from taxpayers doing business within the historic theater that is in excess of the amount of such taxes collected prior to the designation of the building as a historic theater for purposes of this act.

(j) "Major commercial entertainment and tourism area" means an area that may include, but not be limited to, a major multi-sport athletic complex.

(k) "Major motorsports complex" means a complex in Shawnee county that is utilized for the hosting of competitions involving motor vehicles, including, but not limited to, automobiles, motorcycles or other self-propelled vehicles other than a motorized bicycle or motorized wheelchair. Such project may include racetracks, all facilities directly related and necessary to the operation of a motorsports complex, including, but not limited to, parking lots, grandstands, suites and viewing areas, concessions, souvenir facilities, catering facilities, visitor and retail centers, signage and temporary hospitality facilities, but excluding hotels, motels, restaurants and

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retail facilities not directly related to or necessary to the operation of such facility.

(l) "Major tourism area" means an area for which the secretary has made a finding the capital improvements costing not less than \$100,000,000 will be built in the state to construct an auto race track facility.

(m) "Major multi-sport athletic complex" means an athletic complex that is utilized for the training of athletes, the practice of athletic teams, the playing of athletic games or the hosting of events. Such project may include playing fields, parking lots and other developments including grandstands, suites and viewing areas, concessions, souvenir facilities, catering facilities, visitor centers, signage and temporary hospitality facilities, but excluding hotels, motels, restaurants and retail facilities, not directly related to or necessary to the operation of such facility.

(n) "Market study" means a study to determine the ability of the project to gain market share locally, regionally and nationally and the ability of the project to gain sufficient market share to:

(1) Remain profitable past the term of repayment; and

(2) maintain status as a significant factor for travel decisions.

(o) "Market impact study" means a study to measure the impact of the proposed project on similar businesses in the project's market area.

(p) "Museum facility" means a separate newly-constructed museum building and facilities directly related and necessary to the operation thereof, including gift shops and restaurant facilities, but excluding hotels, motels, restaurants and retail facilities not directly related to or necessary to the operation of such facility. The museum facility shall be owned by the state, a city, county, other political subdivision of the state or a non-profit

corporation, shall be managed by the state, a city, county, other political subdivision of the state or a non-profit corporation and may not be leased to any developer and shall not be located within any retail or commercial building.

(q) "Project" means a STAR bond project.

(r) "Project costs" means those costs necessary to implement a STAR bond project plan, including costs incurred for:

- (1) Acquisition of real property within the STAR bond project area;
- (2) payment of relocation assistance pursuant to a relocation assistance plan as provided in K.S.A. 2009 Supp. 12-17,173, and amendments thereto;
- (3) site preparation including utility relocations;
- (4) sanitary and storm sewers and lift stations;
- (5) drainage conduits, channels, levees and river walk canal facilities;
- (6) street grading, paving, graveling, macadamizing, curbing, guttering and surfacing;
- (7) street light fixtures, connection and facilities;
- (8) underground gas, water, heating and electrical services and connections located within the public right-of-way;
- (9) sidewalks and pedestrian underpasses or overpasses;
- (10) drives and driveway approaches located within the public right-of-way;
- (11) water mains and extensions;
- (12) plazas and arcades;
- (13) parking facilities and multilevel parking structures devoted to parking only;
- (14) landscaping and plantings, fountains, shelters, benches, sculptures, lighting, decorations and similar amenities;
- (15) auto race track facility;
- (16) major multi-sport athletic complex;
- (17) museum facility;
- (18) major motorsports complex;

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(19) related expenses to redevelop and finance the project, except that for a STAR bond project financed with special obligation bonds payable from the revenues described in subsection (a)(1) of K.S.A. 2009 Supp. 12-17,169, and amendments thereto, such expenses shall require prior approval by the secretary of commerce; and

(20) except as specified in subsections (1) through (19) above, project costs shall not include:

(A) Costs incurred in connection with the construction of buildings or other structures;

(B) fees and commissions paid to developers, real estate agents, financial advisors or any other consultants who represent the developers or any other businesses considering locating in or located in a STAR bond project district;

(C) salaries for local government employees;

(D) moving expenses for employees of the businesses locating within the STAR bond project district;

(E) property taxes for businesses that locate in the STAR bond project district;

(F) lobbying costs;

(G) any bond origination fee charged by the city or county;

(H) any personal property as defined in K.S.A. 79-102, and amendments thereto; and

(I) travel, entertainment and hospitality.

(s) "Projected market area" means any area within the state in which the project is projected to have a substantial fiscal or market impact upon businesses in such area.

(t) "River walk canal facilities" means a canal and related water features which flow through a major commercial entertainment and tourism area and facilities related or contiguous thereto, including, but not limited to, pedestrian walkways and promenades, landscaping and parking

facilities.

(u) "Sales tax and revenue" are those revenues available to finance the issuance of special obligation bonds as identified in K.S.A. 2009 Supp. 12-17,168, and amendments thereto.

(v) "STAR bond" means a sales tax and revenue bond.

(w) "STAR bond project" means an approved project to implement a project plan for the development of the established STAR bond project district with:

(1) At least a \$50,000,000 capital investment and \$50,000,000 in projected gross annual sales; or

(2) for areas outside of metropolitan statistical areas, as defined by the federal office of management and budget, the secretary finds:

(A) The project is an eligible area as defined in subsection (f), and amendments thereto; and

(B) would be of regional or statewide importance; or

(3) is a major tourism area as defined in subsection (l), and amendments thereto; or

(4) is a major motorsports complex, as defined in subsection (k), and amendments thereto.

(x) "STAR bond project area" means the geographic area within the STAR bond project district in which there may be one or more projects.

(y) "STAR bond project district" means the specific area declared to be an eligible area as determined by the secretary in which the city or county may develop one or more STAR bond projects. A STAR bond project district includes a redevelopment district, as defined in K.S.A. 12-1770a, and amendments thereto, created prior to the effective date of this act for the Wichita Waterwalk project in Wichita, Kansas, provided, the city creating such redevelopment district submits an application for approval for STAR bond

financing to the secretary on or before July 31, 2007, and receives a final letter of determination from the secretary approving or disapproving the request for STAR bond financing on or before November 1, 2007.

(z) "STAR bond project district plan" means the preliminary plan that identifies all of the proposed STAR bond project areas and identifies in a general manner all of the buildings, facilities and improvements in each that are proposed to be constructed or improved in each STAR bond project area.

(aa) "STAR bond project plan" means the plan adopted by a city or county for the development of a STAR bond project or projects in a STAR bond project district.

(bb) "Secretary" means the secretary of commerce.

(cc) "Substantial change" means, as applicable, a change wherein the proposed plan or plans differ substantially from the intended purpose for which the STAR bond project district plan was approved.

(dd) "Tax increment" means that portion of the revenue derived from state and local sales, use and transient guest tax imposed pursuant to K.S.A. 12-187 et seq., 12-1692 et seq., 79-3601 et seq. and 79-3701 et seq., and amendments thereto, collected from taxpayers doing business within that portion of a STAR bond project district occupied by a project that is in excess of the amount of base year revenue. For purposes of this subsection, the base year shall be the 12-month period immediately prior to the month in which the STAR bond project district is established. The department of revenue shall determine base year revenue by reference to the revenue collected during the base year from taxpayers doing business within the specific area in which a STAR bond project district is subsequently established. For purposes of this subsection, revenue collected from taxpayers doing business within a STAR bond project district, or

a STAR bond project plan or an addition to or an expansion of an existing STAR bond project is approved by the secretary.

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within a specific area in which a STAR bond project district is subsequently established shall not include local sales and use tax revenue that is sourced to jurisdictions other than those in which the project is located.

(ee) "Taxpayer" means a person, corporation, limited liability company, S corporation, partnership, registered limited liability partnership, foundation, association, nonprofit entity, sole proprietorship, business trust, group or other entity that is subject to the Kansas income tax act, K.S.A. 79-3201 et seq., and amendments thereto.

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February 15, 2010

The Honorable Senator Karin S. Brownlee, Chairperson,
Honorable Senator Julia Lynn, Vice Chairperson
and Members of the Senate Commerce Committee
Statehouse, Room 548-E
Topeka, KS 66612

Re: Senate Bill No. 482

Ladies and Gentlemen:

This testimony is submitted on behalf of the City of Lenexa in response to two amendments that were added to SB No. 482 last Friday during the Committee's continued hearing on this bill. Our concerns with the two proposed amendments to the bill are as follows:

Page 1, lines 41 and 42 – The proposed amendments puts the “not to exceed 5% of the total cost of the project” limitation back into the statute. This is a problem for municipalities because the amount of administrative work required by municipalities for similar public/private projects has historically been substantial and the nature of the “project” under this statute can include a wide variety of administrative and supervisor responsibilities for a municipality. The language, with the proposed amendment, limits the amount of a municipality can charge for such administrative and supervisor functions as building permits, building inspections, zoning applications, code enforcement, city/county engineer design review and inspections, as well as all the work typically performed by municipalities in these types of public/private partnerships such as drafting development agreements, certifying and levying assessments, administering the receipt and disbursement of the CID sales tax and or special assessments over a time period which can exceed 22 years, providing primary and secondary market disclosure required by the municipality under federal securities law if bonds are issued, monitoring federal tax compliance under federal tax law if bonds are issued, etc. The likely result of this limitation will be that (1) municipalities will require all administrative work to be outsourced to consultants which in all probability will result in higher administrative costs, or (2) municipalities will decline to use this method of financing because they cannot be reimbursed for their expenses, or, (3) in a worse case scenario, some municipalities may proceed and end up failing to adequately protect their citizenry. Also, because the same amount work required for a large project is frequently

The Honorable Senator Karin S. Brownlee, Chairperson,
Honorable Senator Julia Lynn, Vice Chairperson
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required for a small project, this proposed amendment will create a disproportionate hardship on smaller projects which are more likely to occur in small communities.

Finally, the language of the bill, prior to the amendment putting the 5% limit back in, already limited a municipality to reimbursement "for services by the municipality in the administration and supervision of such project and the bonds." There is no authority for a municipality to charge a profit. Further, the market will control any misuse of this provision. If a municipality proposes charges that are in excess of what a developer believes is reasonable, the developer always has the ability to go to another municipality to pursue development.

Page 6, line 14 – The proposed amendment requires "all property owners that signed the petition creating the original district" to sign any petition that would add property to the district. The problem with this proposal is that the owners of property can change over time and the owners that signed the original petition may no longer exist, be able to be found or be interested in signing a petition relating to property they don't own. If the Committee wants to add this concept, I suggest language that requires the petition for the addition to the district to be signed by the current owners of the property in the original district and the owners of property in the proposed addition to the district using the same percentage of owners required for approval of the original petition.

We believe these two amendments to bill will not result in the objectives sought by their proponent and will limit the usefulness of this Act to both municipalities and property owners seeking development and recommend that these two amendments be deleted..

If we may be of any assistance to the committee on this matter, please let me know.

Very truly yours,


Dorothea K. Riley