

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:30 a.m. on Tuesday, March 9, 2004, in Room 123-S of the Capitol.

All members were present except:

Senator David Haley - Arrived 9:40 a.m.
Senator Greta Goodwin (E)

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Chris Schneider, Asst. District Attorney, Wyandotte County
Chief Judge Larry Solomon, 30th Judicial District (written testimony)
Kevin Graham, Assistant Attorney General (written testimony)
Senator Robert Tyson
Robert D. Tolbert, General Building Contractors
Professor Geo. Bittlingmayer, KU School of Business
Terry Holdren, Kansas Farm Bureau
Allie Devine, Kansas Livestock Association
Charles Benjamin, Kansas Chapter of the Sierra Club
Bob Vancrum, Blue Valley School District
Sally Howard, Kansas Department of Transportation
Sandy Jacquot, Kansas League of Municipalities
Randall Allen, Kansas Association of Counties
Rich Eckert, Shawnee County Counselor
Mike Taylor, Unified Government of Wyandotte County/Kansas City, KS (written testimony)
Herbert Graves, Jr., State Association of Kansas Watersheds (written testimony)
Ashley Sherard, Lenexa Chamber of Commerce (written testimony)
Dr. Gary George, Olathe School District (written testimony)
Jane Neff-Brain, Sr. Assistant City Attorney, City of Overland Park (written testimony)
Matt Jordan, Director of Community Development for the Kansas Department of Commerce
(written testimony)
Wes Ashton, Director of Government Relations, Overland Park Chamber of Commerce (written testimony)
Whitney Dameron, City of Topeka (written testimony)
Allen Bell, Economic Development Director, City of Wichita (written testimony)
Galen Biery, Sr. Attorney, ONEOK Services Co. (written testimony)

Others attending: See attached list.

HB 2312 - Time limitations for defendant to be brought promptly to trial

Chairman Vratil opened the hearing on **HB 2312**. Chris Schneider, Assistant District Attorney, Wyandotte County, testified in support of the proposed bill. He explained that the current version of KSA 22-3402 sets specific time limits in which a defendant must be brought to trial, but leaves in confusion the question of what time limits apply when a defendant causes a delay in the trial. The present situation is a problem for the courts in large jurisdictions and in small, multi-county judicial districts. He asked for an amendment which would strike changes made by the House. To address the concerns of the House, Mr. Schneider would support shortening the extension of time from 90 to 60 days in cases where the competency of the defendant is at issue. (Attachment 1)

Chief Judge Larry Solomon, 30th Judicial District and President of the Kansas District Judges Association, submitted written testimony in support of **HB 2312**. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE SENATE JUDICIARY COMMITTEE at 9:30 a.m. on Tuesday, March 9, 2004, in Room 123-S of the Capitol.

Kevin Graham, Assistant Attorney General, submitted written testimony in support of **HB 2312**. (Attachment 3)

There being no other conferees to testify before the Committee, the Chairman closed the hearing on **HB 2312**.

SB 547 - Limitation on exercise of eminent domain

Chairman Vratil opened the hearing on **SB 547**. Senator Robert Tyson testified in support of the proposed bill which addresses the problem of misuse of eminent domain. He explained that the State Legislature's authority has been delegated so much in recent years that the Legislature has lost oversight of that process. Local units of government in Kansas may exercise eminent domain only where the Legislature has delegated this authority to such units. Individual property rights need to be protected, and **SB 547** would restore a little bit of that individual freedom for Kansans. (Attachment 4)

Robert Tolbert, General Building Contractors, Inc., spoke in favor of **SB 547**, and described his concerns about the blatant misuse of the power of eminent domain in Kansas for economic development. He shared his story of having a successful business uprooted and private ownership rights taken away by the power of big business and political pressures in Shawnee County. (Attachment 5)

Professor George Bittlingmayer, University of Kansas, testified in support of the proposed bill. He stated that "public use" as interpreted by the courts has extended beyond circumstances justified by economic analysis. In conclusion, he stated that eminent domain has legitimate uses but these arise primarily when the government faces a holdout problem in executing transportation or other projects involving rights of way. Professor Bittlingmayer added that eminent domain has been abused when government acts on behalf of private interests forcing the sale of properties from one private entity to another. (Attachment 6)

Terry Holdren, Kansas Farm Bureau (KFB), spoke in favor the **SB 547**. He stated that KFB's policy clearly states that eminent domain procedures should be used only for legitimate governmental purposes, and **SB 547** would not prohibit such use. (Attachment 7)

Allie Devine, Kansas Livestock Association (KLA), testified in support of **SB 547**. Ms. Devine suggested the Kansas Legislature look at recent court decisions and consider the public policy implications the current eminent domain practices. Ms. Devine suggested the following modified language be added to the bill: "No property, land, or site, shall be taken through the exercise of the right of eminent domain prior to a showing that all required state and federal permits to use or develop any such land or site have been obtained." KLA also asked that property revert to the landowner if the "public purpose" project does not take place. (Attachment 8)

Charles Benjamin, Kansas Chapter of the Sierra Club, spoke in favor of **SB 547**, and expressed concern about urban sprawl. The Sierra Club does not object to county commissions improving infrastructure to accommodate retail or industrial development in a county or giving property tax breaks to encourage development. He said his organization objected to a county condemning someone's land when that landowner does not want to sell it to a private developer. (Attachment 9)

Brief Committee comments and discussion followed the proponents' testimony.

Chairman Vratil called upon Robert Vancrum, Blue Valley Unified School District No. 229, to testify as the first opponent. Mr. Vancrum stated that Blue Valley objected to the bill because the language is over-broad. It bars leases of school facilities. It effectively puts an end to the use of school facilities during nights, weekends and other hours by groups. Mr. Vancrum stated that Blue Valley opposes the 30 year period set forth in the bill even with regard to sale or transfer. (Attachment 10)

Sally Howard, Kansas Department of Transportation (KDOT), testified in opposition to **SB 547**. She explained KDOT's opposing position regarding the prohibition period of 30 years for the sale, lease, or transfer of property acquired by a condemning authority. The 30 year prohibition would adversely impact KDOT's ability to manage its right-of-way, and will have a negative impact on revenues generated from KDOT right-of-way. (Attachment 11)

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Sandy Jacquot, League of Kansas Municipalities (LKM), spoke in opposition to **SB 547**. She said that LKM has a specific policy statement in support of continued eminent domain authority which ensures a timely process. Ms. Jacquot stated that this bill has the potential to either eliminate or greatly reduce economic development in the State of Kansas. ([Attachment 12](#))

Randall Allen, Kansas Association of Counties, testified in opposition to **SB 547**. He stated that the bill would forestall any ability of a city or county to acquire land for purposes of economic development. He asked that the Committee exercise caution in interfering with cities' and counties' powers affecting economic development. ([Attachment 13](#))

Rich Eckert, Shawnee County Counselor, spoke against **SB 547**. Under Item 7 of his testimony, the bill would affect KSA 19-4101 which explicitly allows counties to create industrial parks and use eminent domain for economic development purposes. ([Attachment 14](#))

The following submitted written testimony in opposition of **SB 547**:

Mike Taylor, Unified Government of Wyandotte County/Kansas City, Kansas ([Attachment 15](#))

Herbert R. Graves, Jr., State Association of Kansas Watersheds ([Attachment 16](#))

Ashley Sherard, Lenexa Chamber of Commerce ([Attachment 17](#))

Dr. Gary George, Olathe School District ([Attachment 18](#))

Jane Neff-Brain, City of Overland Park ([Attachment 19](#))

Matt Jordan, Kansas Department of Commerce ([Attachment 20](#))

West Ashton, Overland Park Chamber of Commerce ([Attachment 21](#))

Whitney Damron, City of Topeka ([Attachment 22](#))

Allen Bell, City of Wichita ([Attachment 23](#))

Galen Biery, ONEOK Services Company ([Attachment 24](#))

Chairman Vratil directed the Committee members to read all of the testimony carefully, and be prepared to work **SB 547** within the next week.

Minutes for the February 3, 2004, meeting were presented for approval. Senator Donovan moved to approve the minutes as written, seconded by Senator Umbarger, and the motion carried.

The Chair adjourned the meeting at 10:30 a.m. The next scheduled meeting is March 10, 2004.