

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairman David Wysong at 8:30 a.m. on February 11, 2009, in Room 545-N of the Capitol.

All members were present except:
Senator Jay Emler- excused

Committee staff present:

Ms. Margaret Cianciarulo, Committee Assistant
Mr. Norm Furse, Office of the Revisor of Statutes
Mr. Ken Wilke, Office of the Revisor of Statutes
Mr. Reed Holwegner, Kansas Legislative Research Department
Mr. Julian Efird, Kansas Legislative Research Department

Conferees appearing before the Committee:

Mr. Gary Anderson,, Attorney, Gilmore & Bell Law Firm, Kansas City, MO
Mr. John Peterson, of Polsinelli Shughart PC Law Firm
representing The Community Improvement Coalition
Mr. Karl Capps, MG Management
Ms. Christy Caldwell,, Vice President of Government Relations,
Greater Topeka Chamber of Commerce
Mr. Dave Holtwich, Vice President of Government Affairs, Overland Park Chamber of Commerce
Mr. Lavern Squier, Senior Vice President, Overland Park Chamber of Commerce,
Economic Development Council representing Kansas Economic Development Alliance
Mr. Luke Bell, Vice President of Government Affairs, Kansas Association of Realtors
Mr. Richard Kram, Director of Policy & Research, Department of Revenue

Others attending:

Please see attached list.

Minutes for Approval

The minutes of February 2, 3, 4, and 5 were distributed on February 10, 2009 for the Committee's approval. If no changes are received by the end of the day on Friday, February 13, 2009, they will stand as approved.

Hearing on SB138 - An act concerning tax increment financing, regarding bond revenue sources

Chairman Wysong opened the meeting by announcing to the Committee that they would be hearing two bills, the first being **SB138** and called upon Mr. Ken Wilke, Office of the Revisor of Statutes to explain the bill. Highlights included:

- New language was introduced on page 4 in Sub paragraphs © through (K) inclusive that allows for activity described to occur either inside or outside the redevelopment district as determined by the city. (Mr. Wilke stated this is a policy question for the Committee.)

- At the bottom of page 7, line 42 referencing a "K.S.A. 2007 Supp" should read "K.S.A. 2008 Supp." and went on to say this technical change appears in several areas throughout the bill including page 12, line 29, 33 & 38, page 13 lines 28 & 32, and page15, lines 31.

- Referring to page 16, line 9 and 10 inserts an additional reference to "pursuant to *either* subsection s (a)(1)(E) *or subsection (a)(1)(F)*" stating this is a technical change relating back to the 7-1-05 date, so there is no real effect since nothing started until 2007.

- Referring to page 17 lines 19 & 20 added in "bond project" as a technical clean up to make sure the star bond projects were properly described

CONTINUATION SHEET

Minutes of the Senate Commerce Committee at 8:30 a.m. on February 11, 2009, in Room 545-N of the Capitol.

Page 2

Chairman Wysong asked Mr. Wilke to explain Section 2 on page 8 and 9.

Basically, Mr. Wilke stated that on page 8, line 43 “from a pledge of a *portion or*” in so far how much the pledge of the revenue must be similar on page 9 line 31.

As there were no other questions for Mr. Wilke, the Chair called upon the only conferee to testify, Mr. Gary Anderson, Attorney, Gilmore & Bell Law Firm who stated the changes Mr. Wilke had just described are generally technical in nature, with the most controversial being the definition, but will be very helpful for the use of tax increment financing as an effective economic development tool in Kansas.

A copy of Mr. Anderson’s testimony is (Attachment 1) attached and incorporated into the Minutes as referenced.

The Chair thanked Mr. Anderson and asked for questions or comments from the Committee which came from Senators Lynn and Reitz including what are the parameters around this extension of this definition and bring us up to date on the TIF projects because projects in Manhattan require permission from the school board as well as the county to deal with these issues and nothing has been mentioned so far in testimony that these TIF projects do not need to be passed by these other people that deal with tax abatement?

Before closing the hearing, the Chair stated he planned to work the bill on Friday, February 13, 2009 and believes, after researching with the Revisors, that the technical changes Mr. Wilke brought up regarding the dates and Mr. Anderson’s testimony regarding pages 15, 16, and 17 are all technical clean ups. He suggests the Committee look into them but not concern themselves with these, but, since there is some discussion regarding page 4, lines 13 through 34, he does suggest the Committee study this before they meet on Friday. As there was no further discussion, he closed the hearing on **SB138**.

Hearing on SB119 - An act enacting the community improvement district act

Chairman Wysong announced the next order of business would be a hearing on **SB119** and called on Mr. Norm Furse Office of the Revisor of Statutes to explain the bill. Highlights of this new bill included:

Sec. 2 - definitions such bonds, municipalities governing body (city or county) pay-as-you-go financing & projects, which includes a long list of definitions on pages 2 & 3 such as transit facilities, railroads, music, new, etc.

Sec. 3 - one of the two triggers of the act is a petition is signed by all the owners of the land within a proposed district asking a municipality to modify or create a district. This section sets out procedures for the petition and provides the governing body may proceed w/o notice or hearing. (The creation of the district is for financing the project.)

Sec. 4 - the second trigger - upon receipt of petition signed by owners of more that 50 percent of the land area w/I proposed district governing body may establish the district. Petition may ask for financing in whole or in part from a community improvement district sales tax (Sec.6) or issuance of full faith and credit bonds (Sec.11) Currently have full faith and full faith and credit tax improvement bonds in statutes. Note and public hearings required under this trigger.

Sec. 5 - authorize the governing body to levy and collect special assessments on property in the district to pay in whole or in part for the project.

Sec. 6 - Limitations on aggregate amount of retailers sales tax in K.S.A. 12-187 through 12-197 does not apply to community improvement district sales tax.

Sec. 7 - No suit to set aside the assessments or question the validity of the proceeding for creation of the district allowed after 30 days from publication of ordinance or resolution creating the district or 30 -days after resolution or ordinance declaring intent to impose a community improvement district sales tax.

CONTINUATION SHEET

Minutes of the Senate Commerce Committee at 8:30 a.m. on February 11, 2009, in Room 545-N of the Capitol.

Page 3

Sec. 8 - sets out sources for paying for the project.

Sec. 9 - Provide for a separate fund to be created for each district.

Sec.10 - authorizes the issuance of special obligations bonds to pay in whole or part the costs of the project & shall not be general obligation bonds. Provisions of 10-106 requiring public sale of bonds does not apply to those bonds. Those bonds income or interest is exempt from all state taxes except the inheritance tax. Not subject to the statutory limitations on bonded indebtedness.

Sec.11 - Full faith and credit bonds authored by this sec. 6 finances a project. 10-106 requiring public sale of bonds not applicable to bonds. Issued under this sec. Bonds exempt from sales taxes except inheritance taxes. Amount of full faith and c bonds exceeds 3 percent of the assessed valuation of the municipality shall be within the bonded debt limit applicable to the municipality. Protest petition allowed w/I 60 days hearing under sec.4. Failure of voters to oppose ff & c bonds shall not prevent a municipality from issuing special obligation bonds.

Sec.12 - statute book

He concluded by offering what does not apply including:

- provisions of 10-106 requiring public sale of bonds as shown in Sec.10 (a) special obligation bonds (sob) and Sec.11(b) ff & c bonds
- bonds issued not subject to statutory limitation on bonded indebtedness of municipality as shown in Sec.10 (e) sob
- municipality not required to refund any prepayments of assessments as shown in Sec.6 (a)
- notwithstanding limitations on aggregate amount of sales tax municipality may impose a community improvement district sales tax as shown in Sec. 6 (a)

The Chair thanked Mr. Furse and asked the Committee for questions which came from Senators Reitz and Faust-Goudeau including in Sec. 7 regarding publication, will this be publicized in the newspaper or on a web page? And, on page 8, Sec.9, line 37 can you elaborate more regarding the pay issue.

The Chair then called on the first of six proponents, Mr. John Peterson of Polsinelli Shughart PC Law Firm representing The Community Improvement Coalition who stated that they had the pleasure of creating the initial drafts of this legislation and offered a broad overview of A Community Improvement District or CID's key provisions including:

- allows new revenue sources to be established within the District for purpose of paying certain development costs incurred within the District.
- will not divert any sales tax or property taxes away from taxing jurisdiction unlike Tax Increment Financing or STAR Bond Financing
- mirroring the Transportation Development District Act, the CID legislation will allow for the imposition of an additional sales tax (of up to 2%) and/or special assessment within the District (collectively "CID Revenues")
- it is an additional financing tool for existing and new real estate projects.
- may be used to finance land acquisition and horizontal development costs.
- a municipality may issue special or general obligation bonds to finance CID Projects.

CONTINUATION SHEET

Minutes of the Senate Commerce Committee at 8:30 a.m. on February 11, 2009, in Room 545-N of the Capitol.

Page 4

A copy of Mr. Petersen's testimony is (Attachment 2) attached and incorporated into the Minutes as referenced.

The Chair asked Mr. Peterson to give the Committee an illustration of how this would work. Senators Lynn and Reitz followed with questions including what happens if sales taxes are not what is expected and what is the liability on the part of the city or the district? If 100 percent of the people take on this project it is a go, but what if only 50 percent or less, how do they deal with this issue?

The second proponent conferee called upon was Mr. Karl Capps, MD Management, who stated that this type of economic development tool has been available to a number of states for several years and he has been involved in a number of CID's in Missouri. He went on to say the bill allows a City to tailor incentives based on the type of project, the location, and the goals of the local government that would be the most effective for their particular situation.

A copy of his testimony is (Attachment 3) attached and incorporated into the Minutes as referenced.

The next to testify was Ms. Christy Caldwell, Vice President Government Relations, Greater Topeka Chamber of Commerce who stated that the bill would create an opportunity for a municipality and a developer to coordinate developments within a defined district utilizing new revenues generated within the district (New revenues = special assessments on property owners within a district, a special sales tax, and/or full faith and credit bonds or "pay as you go".)

A copy of Ms. Caldwell's testimony is (Attachment 4) attached and incorporated into the Minutes as referenced.

The fifth proponent conferee recognized was Mr. Dave Holtwich, Vice President of Government Affairs, Overland Park Chamber of Commerce who stated that Overland Park is part of a larger metropolitan area that is split by a state line, meaning they share a border with a state that allows this tool to be used. He went on to say that he believes this places Kansas cities and counties at a competitive disadvantage with their Missouri neighbors. He concluded by offering the benefits, with one being set apart from some other current tools because of its flexibility for use of the revenues derived through creation of a CID district.

A copy of Mr. Holtwick's testimony is (Attachment 5) attached and incorporated into the Minutes as referenced.

Next was Mr. Lavern Squier, Senior Vice President, Overland Park Chamber of Commerce, representing the Kansas Economic Development Alliance, who said there are many advantages to this tool that merit its approval including the importance that Kansas attract capital investment and development, including increased retain activity that stabilizes local property taxes and that a tool such as **SB119** will assist their efforts and that it is not surprising for these tools to leverage private funds at a 4 to 1 ratio.

A copy of his testimony is (Attachment 6) attached and incorporated into the Minutes as referenced.

The last proponent to testify was Mr. Luke Bell, Vice President of Governmental Affairs, Kansas Association of Relators who stated in a time of great turmoil and hardship in the real estate development community, this new tool would be of an enormous benefit to economic development in this state. He went on to say that given the current conditions in the credit markets, it is increasingly difficult to obtain financing for infrastructure improvements tied to new real estate development.

A copy of Mr. Bell's testimony is (Attachment 7) attached and incorporated into the Minutes as referenced.

The Chair then referred the Committee to four written proponent testimonies including:

- 1) Mr. Jason Hilgers, Assistant City Manager - Manhattan, Kansas
- 2) Mr. Dennis Lauver, President & CEO, Salina Area Chamber of Commerce, Ms. Rita Deister,

CONTINUATION SHEET

Minutes of the Senate Commerce Committee at 8:30 a.m. on February 11, 2009, in Room 545-N of the Capitol.

Page 5

Administrator, Saline County, and Jason Gage, City Manager, City of Saline

3/ Ms. Ashley Sherard, Vice President Lenexa Chamber of Commerce

4) Mr. Phil Perry, Staff Vice President, Governmental Affairs, Home Builders Association of Greater KC

A copy of their testimonies are (Attachment 8) attached and incorporated into the Minutes as referenced.

The Chair then call on the only opponent of the bill, Mr. Richard Kram, Director of Policy & Research, Department of Revenue who stated that since this proposal would authorize a special local sales tax rate as high as 2% within the CID on top of any other applicable local sales tax rates, it could effectively “crowd out” the State’s ability to raise additional revenue through state sales tax rate increases..

He went on to say that the Department believes this proposal will likely cause significant proliferation of special taxing jurisdictions for the purposes of financing a greatly expanded list of types of potential projects with special local sales taxes imposed within those jurisdictions, even when there are businesses objecting to the imposition of those taxes. And he said, as the fiscal note (attached) indicates, the Department is requesting an additional FTE to implement this proposal due to the fact that they can expect a resulting large increase in the number of special taxing jurisdictions and local sales taxes.

He concluded by stating that if the proposal advances, the Department requests an amendment that would allow the State to retain two percent of the sales tax revenue collected from the CID to cover the Department’s administration costs and suggests that:

- at Line 1, Page 7 in Subsection 6 (a) of the bill, the following language be added “The director shall retain 2% of such sales tax collected as reimbursement for expenses in administering

-at line 1, page 7, after “22 years from the date the state director of taxation begins collecting such tax”, the following language be added”or when the project bonds or pay-as-you-go costs have been paid.”

A copy of his testimony & a revised fiscal note attached are (Attachment 9) attached and incorporated into the Minutes as referenced.

The Chair thanked all of the conferees and then asked for questions or comments from the Committee which came from Senators Lynn, and Kelsey including this sounds like a computer problem here are you saying you cannot program your computers well enough to handle this? Regarding the information you are needing, can’t the city be responsible to get it to you? When you suggest 2 percent be collected as reimbursement are you singling out just the CID’s so this would be something new or are you going to include all other transportation districts?

The Chair then called on Mr. Anderson for questions of Senators Holland and Wagle including asking for an explanation of the two trigger mechanisms and what if a person is renting a business, could there be a sales tax on his/her goods? How about just making a 100 percent requirement and have just fifty percent? Do you have CID’s that get a 100 percent petition? And, are the thresholds on this bill the same as what was enacted Missouri?

The Chair announced that he was closing the bill and that they would be working the bill tomorrow

Adjournment

As there was no further discussion, the Chair adjourned the meeting. The time was 9:26 a.m.

The next meeting is scheduled for Thursday, February 12 2009.