

## MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Nancy Brown at 1:30 p.m. on February 24, 1993 in Room 521-S of the Capitol.

All members were present.

Committee staff present: Michael Heim, Legislative Research Department  
Theresa Kiernan, Revisor of Statutes  
Lois Hedrick, Committee Secretary

Conferees appearing before the committee: Representative Gwen Welshimer  
Art Brown, Kansas Retail Lumberman's Association  
Terry Humphrey, Kansas Manufactured Housing Association  
Janet Stubbs, Home Builders of Kansas  
Donald Seifert, Assistant Director of Services, City of Olathe  
Ross Stiner, Fishman & Company, Olathe  
Lynn Overholser, City of Olathe  
Tom Rendleman, Southview Business Association, Olathe  
John Torbert, Kansas Association of Counties

Others attending: See Guest List, (Attachment 1).

Representative Gwen Welshimer testified in favor of **HB 2312** (concerning contractors required to post bond), see Attachment 2. As an example of the need for the legislation, Representative Welshimer reported that the Wichita City Attorney reported one city lost a quarter of a million dollars with contractors who charged their clients up front for materials and services, and then left town without performing any of the contracts. She has requested a copy of the North Dakota law to determine the method they use to control these kinds of situations.

Mr. Art Brown, representing the Kansas Retail Lumberman's Association, spoke as a proponent of the concept contained in **HB 2312** (see Attachment 3). Representative Wempe questioned the terms of such performance bonds, whether they are renewable annually; and how effective they are. Representative Bryant questioned applicability of the bill in rural areas where fewer building inspectors are to be found.

Terry Humphrey, Kansas Manufactured Housing Association, spoke in opposition to the bill as it would apply to manufactured housing. She described the warranties mandated by federal law and how regulated the business is, and stated that retailers of manufactured housing are not permitted by federal law to alter such housing.

Janet Stubbs, representing Home Builders of Kansas, testified in opposition to **HB 2312**, and particularly questioned the bonding requirements. Surety bonds are not applicable; performance bonds insure only that a job is completed. She stated she understood the quality of workmanship is the point of the suggested legislation; but does not believe surety or performance bonds will assure that quality. Ms. Stubbs stated, too, that written examinations for such contractors would not resolve the problems. She expressed interest in learning the terms of the bond sold in Goodland.

There were no others present to testify on **HB 2312**; therefore, the hearing was closed. The committee decided to hold the bill for future consideration.

Chairman Brown opened the hearing on **HB 2433** (concerning special assessments; payments by owners of property within a benefit area outside improvement district). Donald Seifert, Assistant Director of Administrative Services for the City of Olathe, testified in favor of the bill (see Attachment 4). He stated the bill, if enacted, would provide the authority for the City of Olathe to recoup its investment in the sanitary sewer benefit district in southern Olathe as future hook ups occurred; and the bill would be effective statewide for similar projects. The chairman asked if there would be an inequity in its effect to those who chose to later hook up to the system. Mr. Seifert explained that the costs payable would be equal to those assessed at the start of the project except that a time interest charge would apply. There were questions about inflated property values if the sewer is available (which value would depend upon the decision of the county

appraiser).

Ross Stiner, of Fishman & Company of Olathe, reported that he developed the idea for funding the sewer project. He testified in support of **HB 2433**, stating that this is a city benefit district which cannot require the county to join. Mr. Stiner stated the bill is important to Olathe to allow the city to build the sewer and have a chance to recoup their investment costs. He believes the bill would be a benefit to other areas in the state as cities expand.

Lynn Overholser, City of Olathe, testified in support of **HB 2433**. He indicated the availability of a sewer system will cause property values to appreciate.

Tom Rendleman, representing the Southview Business Association, in Olathe, encouraged approval of **HB 2433** (see Attachment 5).

There being no others present to testify, the Chairman closed the hearing on **HB 2433**.

The Chairman then opened the hearing on **HCR 5018**, concerning a constitutional amendment requiring state funding of mandates imposed on cities and counties. John Torbert, Kansas Association of Counties, presented testimony supporting the bill (see Attachment 6). Chris McKenzie, League of Kansas Municipalities, presented the League's support of **HCR 5018**, stating it represents a significant policy question to the Legislature. (See Attachment 7.)

No others were present to testify so the hearing on **HCR 5018** was closed.

Draft copies of the amendment to **HB 2470** (concerning historic property; notice requirements; delegation of powers to cities and counties), developed by Ramon Powers, Executive Director of the Center for Historic Research, was distributed for review. Action on the bill is scheduled for the next committee meeting (see Attachment 8).

Representative Hayzlett presented the Subcommittee Report (Attachment 9) relating to **HB 2405** (counties; sale or disposition of property), stating that the Subcommittee recommendations were to (1) eliminate the provision for sale of property surrounded by county-owned property (recommended by Representative Correll); (2) establish the value at \$1,000 (but is amenable to the situation); (3) to amend the bill to "clean up" the current law. Basically the subcommittee encompassed **House Bills 2149, 2169, 2248 and 2318** into **HB 2405**. On motion of Representative Donovan, seconded by Representative Ballard, the Committee adopted the subcommittee's amendments and passed **HB 2405**, as amended.

The committee then considered proposed amendments to **HB 2325** (concerning township and township fire districts; fire vehicle, machinery and equipment rescue fund). Theresa Kiernan, Revisor's Office, stated that cities and counties have the power to budget to such a reserve fund, and townships want the same authority. After full discussion, Representative Macy moved that **HB 2325** be amended by striking "acquisition of land or buildings." Representative Wempe seconded the motion; the motion carried. Representative Macy moved, and Representative Wootton seconded, that **HB 2325** be passed, as amended. Motion carried.

The meeting was adjourned at 3:32 p.m. The next meeting is scheduled at 1:30 p.m., February 25, 1993, in Room 521-S of the State Capitol.

# GUEST LIST

COMMITTEE: House Local Government

DATE: February 24, 1993

24,

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
JOHN TORBENT	TOPEKA	KAC
Paul Flowers	Topeka	KAC
Janet Stubbs	Topeka	HBAK
Bob Brown	- -	KS LSR Dealers
Wes Holt	Westmoreland	Pottawatomie Co.
Thom Humphrey	TOPEKA	LMHT
Chris McKenzie	Topeka	Lease
Don Siefert	Olathe	City of Olathe
ROSS STINER	OLATHE	Fishman & Company
Tom Rundleman	Olathe	Trend Plastics
Lynn Overholser	Overland Park Kans	Olathe Mo.
Cindy Kelly	Topeka	KASB
		ATTACHMENT 1
		2-24-93

GWEN WELSHIMER  
REPRESENTATIVE, EIGHTY-EIGHTH DISTRICT  
SEDGWICK COUNTY  
6103 CASTLE  
WICHITA, KANSAS 67218  
316-685-1930  
  
DURING SESSION  
LEGISLATIVE HOTLINE  
1-800-432-3924



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: TAXATION  
INSURANCE  
LOCAL GOVERNMENT  
ADMINISTRATIVE RULES & REGULATIONS

FEBRUARY 24, 1993

*Gwen Welshimer*

HB 2312 BY COMMITTEE ON LOCAL GOVERNMENT

BONDS COMES INTO PLAY IN COMMERCIAL CONSTRUCTION TO GUARANTEE PERFORMANCE AND PAYMENT. HB 2312 SHOULD NOT ADDRESS PERFORMANCE BONDS AT ALL.

A DIFFERENT TYPE OF BOND IS NEEDED TO PROTECT CONSUMERS WHEN CONTRACTING FOR REPAIRS/CONSTRUCTION WITH CONTRACTORS WHO MAY NOT BE RELIABLE, SUCH AS A "LICENCE BOND" WITH RECOURSE IN THE EVENT A CONTRACTOR DOES NOT COMPLY WITH STATE STATUTES AND LOCAL CODES, A PROCEDURE TOTALLY SEPARATE FROM A "PERFORMANCE BOND."

LIABILITY INSURANCE AND THE LICENSE BOND SHOULD BE REQUIRED TO BE GRANTED A LICENSE. THE BOND COULD BE ACQUIRED FROM THE INSURANCE AGENT WHO WRITES THE LIABILITY INSURANCE AND GUARANTEE COMPLIANCE WITH STATE STATUTES AND CITY CODES. ALL CONTRACTOR JOB CONTRACTS SHOULD BE REQUIRED IN WRITING. THEN, IF A CITY CODE OR STATE STATUTE IS VIOLATED, WITH THE BOND IN PLACE, THE INJURED PARTY COULD GO BACK THROUGH THE CITY, PROVE NON-COMPLIANCE WITH CITY CODE OR STATUTE, CLAIM BREECH OF DUTY UNDER LICENSING REQUIREMENTS, AND THE CITY COULD FILE SUIT.

THE BOND COULD BE WRITTEN ON JOBS OVER \$500, GRADUATE UPWARD IN "CLASSES," SUCH AS A,B,C,D,E,F. CONTRACTORS PROVEN RELIABLE AND IN BUSINESS FIVE YEARS WOULD BE EXEMPT, AND NEW LICENSEES WOULD CARRY THE BOND FOR THREE YEARS. IF THE CONTRACTOR OPERATES THREE YEARS WITHOUT EVIDENCE THAT HE IS NOT RELIABLE, NO MORE BOND.

IF A CONTRACTOR ACHIEVES A LICENSE IN ONE CLASSIFICATION AND CONTRACTS FOR A JOB OVER THE DOLLAR AMOUNT OF THAT CLASSIFICATION, HE MUST GET A NEW BOND FOR THE NEW CLASSIFICATION. SOME CITIES MAY HAVE ADDITIONAL REQUIREMENTS. SOME KANSAS CITIES MAY ALREADY HAVE SOME OR MANY OF THESE REQUIREMENTS.

A DRAFT OF THIS CONCEPT SHOULD BE REVIEWED BY SEVERAL SURETY COMPANIES IN KANSAS. MOST OF THEM HAVE STANDARD LICENSE BOND FORMS. LIABILITY IS READ INTO THE BOND FORMS FROM THE STATUTE. IT COULD BE HAZARDOUS IF THIS WAS NOT COORDINATED. WE SHOULD ALLOW PLENTYOF TIME FOR INPUT FROM MEMBERS OF THE CONSTRUCTION INDUSTRY AS WELL.

*ATTACHMENT 2*  
*2-24-93*





## MID-AMERICA LUMBERMENS ASSOCIATION

### TESTIMONY TO THE HOUSE LOCAL GOVERNMENT COMMITTEE

HOUSE BILL 2312

RM. 521-S

February 24, 1993

Madame Chair, members of the Local Government Committee:

It is my pleasure, and with appreciation, that I speak to you today on House Bill 2312. My name is Art Brown and I represent the Retail Lumber Dealers.

This bill, as written, is starting to go in a direction we would like to pursue. If I may, with the indulgence of the committee, I would like to take this concept in a little different direction and give an example of a program in place, which has had very good success in a community here in Kansas.

Goodland, as we all know, is subject to great fluctuations in weather patterns. One would say it would be a lumber dealers dream to live in Goodland. Hail storms, blizzards, tornadoes; for example, last year they had four storms where the wind speeds were in excess of 80 miles per hour. This lends itself to a considerable amount of reconstruction work, particularly in roofing.

This also lends itself to several out-of-state roofing companies coming in to "assist" in getting the community on its feet by re-roofing private and commercial residences. For some of you that followed the activity in Wichita this last spring, this is not always the best of news to have these out-of-state companies perform these services. Complaints of shoddy workmanship and homeowners being "fleeced" by these out-of-town contractors are, at varying times, always making the papers. Yet, in Goodland, there was not one complaint about workmanship after these storms, and not one lien filed against homeowners for non-payment of material, and the lumber dealers in Goodland did not lose one penny on material they sold last year in relation to these storms. How did this happen? Three years ago, due to the fact that in the past all of the above-mentioned items were a problem, the city of Goodland decided to do something about getting the "jakeleg" contractors out of Goodland. This is the plan they have devised, and it has been accepted by both the local contractors in Goodland, the citizens and the lumber dealers, all of which have been pleased with the results to date.

Any contractor who wants to do business in Goodland must go to the City Clerk and obtain a license. No lumber dealer in the community can sell to any contractor without this license. License requirements are broken down into categories as to the type of work to be performed. They are as follows:

**UNLIMITED** — This allows any General Contractor to build in the city at any level of project, regardless of the cost of the project. To obtain this license requires proof in insurability up to one million dollars, the posting of a \$5,000 performance bond, and taking a test to prove they are capable of performing the job. The test is administered out of the Uniform Building Code, which is the standard building code used in the construction industry. They have to pay a \$40 fee to obtain this license.



CLASS "A" PERMIT — This allows a contractor to build in the city on projects up to a \$120,000 bid. Again, they must take a test, prove that they have up to \$500,000 of insurance, and post a \$5,000 performance bond. They pay a \$35 fee for this license.

CLASS "B" PERMIT — This covers such areas as re-roofing, room additions and such, but not up to bigger projects such as Class A permits. The test they take is only given in scope to the project they are doing. If it is roofing, then the test pertains to that. If it is general framing work, then it pertains to that alone. The fee for this is \$25, and again, they have to have proof in insurability up to \$500,000, and post a \$5,000 bond.

CLASS "C" PERMIT — This permit generally is designed for fence builders and very small repair jobs. Again, a test is administered for that particular skill, proof in insurance up to \$100,000 is required, as well as posting a \$1,000 bond.

The proof in insurability shows that the contractor has general liability insurance, as well as covering his workers under workers' compensation requirements. Currently, there is a building administrator that administers this program in Goodland.

Now, let's take this program one step further. If the tests mentioned were set up in such a way as to be a multiple choice test, then anyone could administer, not necessarily someone who is a building or construction expert, and if it were administered by the clerk of the district court on a county-wide basis, you could qualify contractors, not on a city level, where in the rural areas of the state there are not building inspectors as a rule, but on the county level where it could be administered in a very simplistic form. This also generates a new source of revenue to the local options and protects the integrity of the contractor who is a quality professional, does good work, takes pride in his craft, and is representative of the vast majority of general and subcontractors in the state. There is no harm done to this individual under this system.

The downside is, of course, the cost of the bond is passed through to the consumer. Currently, a \$5,000 performance bond will cost \$125 (current levels are \$25 per thousand). This bond is only purchased once, and on the local level, is renewable once a year.

The alternative to such a system which is now in place is the mechanics lien law. Simply put, this law puts the materialman and the subs in direct confrontation with the homeowner. It is totally amazing to us how the contractor has absolutely no responsibility for his financial responsibilities or workmanship under this law. He just merrily goes on his way, leaving the materialmen and homeowner to fight it out, which causes hard feelings and is extremely expensive to both. Many surrounding states make the contractor inform owners of lien rights, because after all, they are the ones that are on the job sites performing the construction services. Not so in Kansas, and thus it is a problematic situation for both us, as dealers, and the homeowners.

This solution that we have proposed as an alternative to the lien situation looks like a much fairer and less expensive solution to all, particularly the materialmen and the homeowners. It kicks out the "jakeleg" contractors, protects the integrity of the contractors who are performing their trade in a professional manner, protects the homeowners, generates funds to the local unit, and cuts down on complaints of poor workmanship.

The results have been that when these “jakelegs” go to Goodland and are told they have to get a license, they generally just leave town. To them, and speaking for Goodland, we say, “Good riddance.” Certainly, there are some “grandfathering” considerations that can be given to existing local contractors. As it stands, and the way implementation was utilized in Goodland, all local contractors had to take the written test initially, and the performance bond and proof on insurability is renewed once a year. They never have to take the written test again. This can be fine-tuned by each county, and county option tax on a program such as this can be considered.

The bottom line is this, it has cleaned up the way construction is done in Goodland. The contractors, dealers, and homeowners all like it. If it works in Goodland, it can be implemented elsewhere. Because of the logistics of Goodland to Topeka, and a conflict from the building administrator in Goodland, he could not be available to tell you about this program himself, but a copy of these tests are being sent to me, and if the committee would like, I can make them available to you.

A solution such as this, where people get together to work out their own problems to suit their community makes sense to us. This way, you as a legislator have the solution, all you have to do is pass it into a law.

We hope you see merit in such a program. Whether this solves the direct problem that is being addressed in this bill in the area of “after-the-fact” application problems of material, is an answer I cannot give the committee, but it looks to be a step in the right direction as a long-term solution to this problem.

I have enjoyed visiting with you about this issue today. I stand ready to assist you in any way to help you with this issue and would gladly entertain questions on my testimony or comments on same. I thank you for your time today.

ORDINANCE NO. -----

AN ORDINANCE OF THE CITY OF GOODLAND, ADOPTING THE 1991 VERSION OF THE UNIFORM BUILDING CODE AND THE 1991 EDITION OF THE UNIFORM BUILDING CODE STANDARDS REGULATING THE ERECTION, CONSTRUCTION, ALTERATION, REPAIR, MOVING, REMOVAL, DEMOLITION, CONVERSION, OCCUPANCY, EQUIPMENT, USE, HEIGHT, AREA AND MAINTENANCE OF ALL BUILDINGS OR STRUCTURES WITHIN THE LIMITS OF THE CITY OF GOODLAND, KANSAS; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES THEREOF; PROVIDING FOR THE PENALTIES FOR THE VIOLATION THEREOF; REPEALING ORDINANCE NO. ---- OF THE CITY OF GOODLAND AND ALL OTHER ORDINANCES AND PARTS OF THE ORDINANCES IN CONFLICT THEREWITH.

The City Commissioners of the City of Goodland does ordain as follows:

Section 1. The Uniform Building Codes, 1991 Edition, published by The International Conference of Building Officials, including the generic fire-resistive assemblies listed in the Fire Resistance Design Manual, Twelfth Edition, dated August 1988, published by the Gypsum Association as referenced in tables nos. 43-A, 43-B and 43-C of the specified Uniform building Code, including all the Appendix Chapters excluding the following:

- A. Chapters 1, 11, 12, 23 Division II, 38, and 57.
- B. Appendix Chapter 53 shall be amended by adding the minimum energy conservation for new construction and major remodeling of residential occupancies, including:
  - 1. Roofs/Ceilings Insulation R-30
  - 2. Outside wall insulation R-11
  - 3. Floor insulation over unheated area R-19
  - 4. Outside walls of unheated areas below grade shall include 2 inches of rigid foam insulation up to two feet below grade.
  - 5. All window units shall embody a full thermo-break construction.

Section 2. The Uniform Building Codes Standards, 1991 Edition, published by the International Conference of Building Officials, including Standard for buildings and Facilities- Providing Accessibility and Useability for Physical Handicapped People, A117.1-1986 (U.B.C. standard No 31-1) published by the American National Standards Institute, as modified or amended in the Uniform Building Code Standards referenced herein.

Section 3. The Guidelines for Manufactured Housing Installations, 1991 Edition, published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601, shall be adopted in its entirety excluding Appendix B the Alternate Fee Schedule.



Section 4. The Uniform Code for Building Conservation, 1991 Edition, as published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601, shall be adopted in its entirety including Appendix Chapter 3, and Chapter 4, but excluding Appendix Chapters 1 and Chapter 2.

Section 5. As established by Section 204 of the Uniform Building Codes the Board of Appeals shall consist of five members who are qualified by experience and training to pass on matters pertaining to building construction and code interpretation, and shall be known as the Building Board of Appeals. Upon the expiration of the terms of each member the appointments shall be made for three year terms for all members.

Section 6. Any person intending to engage in the trade or business of building construction, concrete, or placing of preconstructed structures, signs and installation of fences, shall be licensed to work in the City of Goodland. A license can be obtained by filing an application with the Building Official, taking the prescribed test as provided by the City, and receiving a minimum passing grade of 75 percent. License classifications and costs are as follows:

Unlimited Contractor		\$ 40.00
Class 'A' Contractor - Limited up to \$250,00 construction costs		\$ 35.00
Class 'B' Contractor - Limited to Roofing, Duplex Remodeling, and Mobile Home Repair and Maintenance.		\$ 25.00
Class 'C' Contractor - Limited to Fencing, Patio Private Garages to 650 Square Feet		\$ 15.00
Residential Rental Maintenance - Limited to properties owned by person doing work.		\$ 15.00
Insurance Requirements include:		
Contractor	Liability Insurance	Bond
Unlimited contractor	\$1,000,000	\$5,000
Class 'A' Contractor	\$ 500,000	\$5,000
Class 'B' contractor	\$ 500,000	\$5,000
Class 'C' Contractor	\$ 100,000	\$1,000
Rental Maintenance	\$ 100,000	\$1,000

Exemptions include any homeowner intending to do their own work on his or her's own private property, may waive all license requirements. All construction must be done according to the 1991 Uniform Building Codes and with permit and inspections as required.

Section 7. Any person who shall violate any of the provisions of this ordinance or fail to comply with any order made thereunder, or who shall build in violation of any detailed statement or specifications for each such violation and noncompliance respectfully shall be guilty of a misdemeanor, punishable by a fine of not less than \$10.00 nor more than \$300.00 or by imprisonment for not less than one day or more than 30 days or by both such fine and imprisonment.

Section 8. that if any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of the ordinance. the City of Goodland hereby, declares that it would have passed this ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

Section 9. Ordinance No. 1281 and all other ordinances or parts of ordinances in conflict herewith of the City of Goodland are hereby repealed.

Section 10. That the City Clerk is hereby ordered and directed to cause this ordinance to be in full effect after being published in the official City newspaper and adoption by the Governing Body of the City of Goodland.

Passed and Adopted *fp* by the Governing Body of the City of Goodland, Kansas this *fp* day of December, 1991.

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Wade Barnett, Mayor

ATTEST:

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Archie Wicke, City Clerk

*Signed Copies  
at City Clerk's  
Office*



City of Olathe

MEMORANDUM

**TO:** House Local Government Committee

**FROM:** Donald R. Seifert, Assistant Director, Administrative Services *DRS*

**SUBJECT:** HB No. 2433 - Benefit District Buy-In Procedure

**DATE:** February 24, 1993

On behalf of the city of Olathe, I want to thank the Committee for introducing this bill and for the opportunity to appear today in its support. The purpose of HB 2433 is to clarify the buy-in procedure at K.S.A. 12-6a19 for a water or sewer benefit district when property not in the original district desires to be served by the improvement.

As you know, benefit districts are financing tools whereby cities can issue bonds for construction of public improvements and assess the cost to properties that benefit. The bonds are then retired through special assessments paid by these benefitting properties. The current buy-in procedure at K.S.A. 12-6a19 is confusing to administer, allows property owners that delay using the improvements to shift their fair share to others, and fails to recognize that a city's general taxpayers may have been a financial participant in the project. We believe this bill will assist any community that builds a utility improvement near a city boundary by providing a mechanism where future users of the improvement can buy-in at a later date.

Why does Olathe wish to use the procedure contained in HB 2433? Our governing body has received a petition from property owners to create an approximately \$2.6 million sanitary sewer benefit district in southern Olathe known as the Upper Cedar Creek sewer. The project is important to our community from both a public health and economic development perspective. It would provide public sewers in one of the last watersheds in the community unserved by public sewers. The district is predominantly nonresidential, consisting generally of undeveloped land and warehouse and light manufacturing development. It includes an industrial park containing 56 buildings, employing nearly 1500 persons in roughly 850,000 sq. ft. of space. It also includes the Olathe School District athletic complex and a water theme park now under construction. Without sewers, all of this development currently uses either septic systems or holding tanks to handle wastewater.

ATTACHMENT 4-1  
2-24-93

House Local Government Committee  
February 24, 1993  
Page 2

As shown on the attachment, part of the Upper Cedar Creek watershed lies outside the Olathe city limits. The benefit district petition proposes that the city at large pay approximately 13.5%, or \$350,000 of the total project cost. This represents the cost of the property outside the city not in the district, but expected to connect to the sewer in the future. HB 2433 would provide authority for the city to recover its investment as future hookups occur.

Why do we need your help with this legislation? The authority for a city to establish its own local buy-in procedure under home rule was clouded by a 1991 Kansas Supreme Court decision arising from Douglas County, Blevins v. Hiebert. Our governing body supports this sewer project, but needs assurance that it can recover its investment and protect the interest of the general Olathe taxpayer, which will be paying the debt service on the project bonds during the interim period. Thus, the amending language in HB 2433 provides for buy-in fees to be retained by the city at large, which loaned the funds for the project on behalf of those properties that will use the improvement in the future.

Again, thank you for consideration of this issue, and we urge the Committee to recommend this bill favorably.

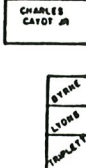
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Attachment

ATTACHMENT 4-2  
2-24-93

**UPPER CEDAR CREEK  
SANITARY SEWER  
SYSTEM**

**COST DISTRIBUTION  
FOR "SEWER MAIN":**



ATTACHMENT 4-3  
2-24-93

Benefit District  
Boundary



# SOUTHVIEW BUSINESS ASSOCIATION

OLATHE, KS 66062

"THE VOICE OF BUSINESS AND PROPERTY OWNERS IN SOUTHVIEW BUSINESS PARK"

February 22, 1993

House Local Government Committee  
Topeka, KS

Re: House Bill 2433

Southview Business Park, located on So. Keeler within the city limits of Olathe, has presented a petition signed by 80% of the land owners to encourage you to consider a main sewer for our 120 acre area. Currently all 56 buildings within this area are either on holding tanks or holding tanks with lateral fields. This type of septic system slows our long term business decisions.

Southview Business Park's 854,193 square feet qualify it to be the largest business park in Olathe and would be #8 in the metropolitan Kansas City area according a Kansas City Business Journal survey. Our association believes this area is Olathe's most successful business incubator and didn't cost the city anything. The business park contains buildings of all sizes and allows businesses to start here and stay here during their growth period. The addition of sewers to this area would only enhance the ability to stay in the same area during growth. There are an additional 80 undeveloped acres, zoned industrial, adjacent to the park.

The Southview Business Park has paid in excess of \$3,500,000 in real estate taxes during the past 6 years. In 1991 we paid \$879,668 and 1992 paid \$734,063. In 1991 there were 1,434 people employed in the park.

We have identified two things necessary for our continued long term growth:

1. City Sewer (currently presented for your approval)
2. South Entrance (best option would be from 159th Street)

The Board of Directors for Southview Business Association believe our businesses, property values, the City of Olathe, and the State of Kansas will benefit more than the cost of the sewers over the ten year financing period.

We suggest you give a high priority to approving H.B. 2433.

Sincerely,



Tom Rendleman, P.E.

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## DIRECTORS AND OFFICERS

President	Jack Paradise	Jayhawk Plastics, 15285 S. Keeler	(913) 764-8181
Vice President	Tom Rendleman	Trend Plastics, 15665 S. Keeler	(913) 782-3080
Treasurer	Spencer Hawerlander	Trend Plastics, 15665 S. Keeler	(913) 782-3080
Secretary	Cameron Mott	Mott Signs, 15150 S. Keeler	(913) 782-2468
At-Large	Wes York	K & W Underground, 15608 S. Keeler Terr.	(913) 782-7387



"Service to County Government"

1275 S.W. Topeka Blvd.  
Topeka, Kansas 66612-1852  
(913) 233-2271  
FAX (913) 233-4830

#### EXECUTIVE BOARD

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Johnson County Commissioner  
9021 W. 65th Dr.  
Merriam, KS 66202  
(913) 432-3784

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Nancy Hempen  
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Mary Ann Holsapple  
Nemaha County Register of Deeds  
(913) 336-2120

Harvey Leaver  
Leavenworth County Engineer  
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Mark Niehaus  
Graham County Appraiser  
(913) 674-2196

Vernon Wendelken  
Clay County Commissioner  
(913) 461-5694

Darrell Wilson  
Saline County Sheriff  
(913) 826-6500

**Executive Director**  
John T. Torbert, CAE

February 24, 1993

#### Testimony

For: House Local Government Committee

By:  John T. Torbert, CAE  
Executive Director

Subject: House Concurrent Resolution 5018 (Mandates)

The Kansas Association of Counties, at their annual platform discussion which was held last November, unanimously adopted the following statement of position on mandates:

"Out of a sense of fiscal fair play and truth in taxation, a constitutional amendment is needed to give local governments relief from mandates. Such an amendment would specify that any new law or regulation that required additional expenditures by local government, either in terms of human or monetary resources, should be fully funded by the state."

In our opinion, this will be the most important piece of legislation that you will deal with this year. It will return accountability and fairness to the property tax structure.

In the current intergovernmental system, counties are often asked to administer state policy. As you know, we are the only system of local government that covers the entire state. We readily accept this role and realize that it is one of the reasons that counties were created in the first place. The problem comes when the state either has policy initiatives that it wants to see developed or, it has a mandate forced on to it by the federal government and it doesn't have the money or want to raise the taxes to pay for that initiative or mandate. When that happens, the urge to pass that cost on to local level, and thus the property taxpayer, can become overwhelming. It provides the legislature with what can be the best of both worlds - being able to take credit for good programs while not having to find the dollars to pay for them.

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The idea of state government taking on the issue of unfunded mandates is not new or untested. There are at least 14 states that have some sort of mandate reimbursement program. In some states, the provisions are statutory. In others, they are part of the constitution. We believe that because of the gravity of the issue, the mandate provisions need to be incorporated into the constitution.

This proposal is experience based. As part of a general research project that KAC is conducting on the issue of mandates, we surveyed those states that already have either legislation or a constitutional amendment on the books. We then asked them what worked and what didn't. Based on those answers, we tried to fashion an approach that accomplished two goals: 1) Provided cities and counties protection from unfunded mandates and, 2) Provided the legislature with the necessary "safety valve" protection to deal with emergencies or unforeseen circumstances. This amendment clearly does both. And, it does so without the necessity and cost of a new state bureaucracy to oversee the process. Be mindful too that this amendment would not have any impact on mandates that are already in place. It only affects those actions which would take place after this amendment is added to the constitution.

In the past, the legislature has usually approached the issue of unfunded mandates by exempting that activity out from under the tax lid. Prime examples are the exemptions for payment of out-district tuition costs and costs relating to the detention of juveniles. A new exemption has been added in this year's tax lid legislation - an exemption for the cost of compliance with the new solid waste regulations. These exemptions do allow us the ability to raise taxes to pay for these costs. That misses the basic point though. That is, when the state or federal government wants to do something, they should have the political wherewithal to also figure out how to either raise revenue or cut other spending to pay for it. I find it interesting to note that in the house floor debate on the local tax lid law last week, the house first added, then removed, language which provided a general tax lid exemption for the costs of complying with state and federal mandates.

Chris McKenzie, Executive Director of the League, will explain the actual working mechanics of the amendment in his testimony. I would like to close by emphasizing the fact that in requesting this constitutional amendment, neither KAC or the League intend it to be punitive. We view it as a very positive way of reestablishing an equitable state and local partnership.

Thank you.

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# THE LEAGUE OF KANSAS MUNICIPALITIES

## Municipal Legislative Testimony

AN INSTRUMENTALITY OF KANSAS CITIES 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: House Local Government Committee

FROM: Chris McKenzie, Executive Director 

DATE: February 24, 1993

RE: Support for House Concurrent Resolution No. 5018

I appreciate the opportunity to appear today in support of HCR 5018. John Torbert already has explained some of the historical background for this measure. My job today will be to explain the mechanics of the measure and the basic reasons for the League's support.

### I. LEAGUE POLICY CONCERNING MANDATES

I believe it is accurate to say that the question of unfunded state and federal mandates has become the policy issue of most interest to the city officials of Kansas. While the problem of unfunded federal mandates has now grown to astronomical proportions, I will share with you information today which demonstrates the same trend can now be seen in the evolution of state-local relations—a trend which we find alarming for both cities and counties and the local taxpayers who pay for these services.

In October, 1992 at the League's Annual Convention in Wichita the following policy statement was adopted by the League's Convention of Voting Delegates:

**"We oppose the imposition of additional state-mandated functions or activities on local governments. State-mandated programs without state funding is contrary to the spirit of constitutional home rule. Any function or activity deemed of sufficient state-wide concern or priority to justify its required local performance should be fully financed by the state on a continuing basis."**

We believe HCR 5018 represents a sincere effort to respond to the fundamental question of intergovernmental relations raised by the issue of unfunded mandates: Should one level of government be able to mandate a function be performed by another level of government by ordinary statute or administrative action without funding? We respectfully submit that it is contrary to accepted principles of fairness and the concept of home rule to allow unfunded mandates to become accepted practice. It prevents local officials from controlling local budgets and taxes, and it puts other governmental officials, many of whom are administrative appointees of state government, in the position of controlling how local governments set their spending priorities.

### II. EXAMPLES OF UNFUNDED STATE MANDATES

Since the 1991 legislative session a number of unfunded mandates have been adopted by either the Kansas legislature or the administrative agencies of state government. Some examples are as follows:

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(1) **Animal Shelter Regulations.** The 1991 legislature passed legislation which made the state's animal shelter regulations applicable to cities of the second and third class. As a result, these cities were faced with upgrading their animal shelter facilities at considerable cost or closing them. Cities followed both courses of action, resulting in increased local property taxes in cities that chose to comply and reductions in the control of animals in cities that chose to not comply. Compliance costs ranged anywhere from \$6,000 to \$18,000 per city. In many of these cities that is the equivalent of one or more mills of property taxes. I will leave it to your imagination what now happens to stray animals in those cities that discontinued their animal shelters.

(2) **Infection Control Regulations.** In May, 1992 the Kansas Department of Human Resources notified cities and counties of the need to comply with an OSHA regulation concerning the need to comply with a **federal** OSHA regulation concerning "bloodborne pathogen control". This mandate required cities and counties to vaccinate their employees who came into contact with human blood at \$125 - \$150 per vaccination, purchase expensive infection control supplies and equipment, and develop infection control plans. Both Junction City and Pittsburg estimate they were required to spend \$10,000 to comply with this mandate which came with little, if any, notice.

(3) **Building Inspection and ADA Compliance.** The 1992 legislature enacted so-called building accessibility "clean-up" legislation which requires local building inspectors to enforce the **federal** Americans with Disabilities Act accessibility standards in all inspections of permitted residential and commercial structures. Interestingly the federal ADA does **not** require such enforcement. The cost of this enforcement is financed with the property tax and other local revenues.

(4) **Victims Rights Amendment.** The 1992 legislature submitted to the voters and the voters approved an amendment to the state constitution guaranteeing victims of crime certain rights in the judicial process. Unfortunately it appears the amendment could apply to municipal courts, requiring municipal taxpayers to shoulder significant notice costs for rather insignificant offenses. The source of funding for compliance is local property taxes, fines and fees.

(5) **Fire Protection.** The Kansas Department of Human Resources has advised the city and county fire departments of the state that it has adopted by reference Regulation 1500 of the National Fire Protection Association (NFPA)--a private association. NFPA 1500 not only requires the purchase of certain protective fire gear (Comanche County recently spent \$15,000 to replace certain gear to meet the standard), but it appears to set a standard for civil liability that cities and counties have to meet or face significant damage awards in court suits. The costs of compliance with this mandate comes from the property tax and other local revenue sources.

(6) **Collection of State Levied Fees.** In recent years cities have been mandated to collect certain fees for state government to avoid increases in state taxes to fund such programs. Today we are collecting the state water plan fee on the sale of water, fees in municipal court for the law enforcement training center, a fee on the sale of municipal water to finance the regulation by the state of municipal water system, and a fee and the training of judges on solid waste at the landfill. The sources of funding for these fees themselves and the administrative costs associated with the collection of them are the property tax, user fees and other local revenues.

These are but a few of the growing number of mandates facing municipal governing bodies every year--and each one costs property tax dollars to finance. Unfunded and underfunded state



mandates increase the local property tax--increases that can not be avoided by local governing bodies. In some states the cities and counties call this a problem of the legislature **PASSING THE BUCK, BUT NOT PASSING THE BUCKS.**

### **III. THE MECHANICS OF THE AMENDMENT**

As John Torbert explained, the League and KAC drafted HCR 5018 with a number of considerations in mind, including the experiences with similar amendments in other states in recent years. I am going to walk you through each paragraph of the amendment and attempt to explain the basic principles at work and the implications of each section.

**—Paragraph (a).** This paragraph contains the major provisions of the amendment. It would prohibit the enactment of any law or administrative rule/regulation which requires a city or county to use its personnel, facilities or equipment or requiring the expenditure of a local governmental unit's funds to provide a new service or program or which imposes a direct service or cost obligation on a city or county. This paragraph also defines what a mandate is by saying it is something that a city or county is required to do **under penalty of civil or criminal sanction**. In other words, something that the legislature simply authorizes cities or counties to do would not be included. Further, legislation which requires something to be done, but for which there is no civil or criminal sanction, would not be considered a mandate. It includes only those things we are **required** to do in the strictest sense of the word. This paragraph also requires reimbursement (not advance funding) for the cost of such mandates in each year in which the mandate applies. The cost of compliance with the mandate would be certified to the state by the city or county.

**Paragraph (b).** This paragraph addresses the subject of lost revenue due to tax exemptions and restrictions on local taxing authority. It simply would require the state to reimburse cities and counties for lost property tax authority as a result of property tax exemptions and limitations on their taxing ability such as property tax lids. In effect, it would require improvements to the Local Ad Valorem Tax Reduction Fund (or something equivalent to it) to compensate cities and counties for the loss of tax base and taxing authority.

**Paragraph (c).** This paragraph makes it clear that funding provided for new mandates shall not be in lieu of existing state aid to cities and counties. In other words, it prevents redirecting existing state aid to finance new mandates. If this is allowed, it will not stem the tide of rising local property taxes caused by state mandates.

**Paragraph (d).** This paragraph recognizes the logical result of nonfunding of any new mandates: that cities and counties may choose not to comply with such unfunded mandates.

**Paragraph (e).** This paragraph provides a valuable release valve for unfunded state mandates which the legislature deems to be of paramount importance. By a two-thirds vote the legislature could enact an unfunded mandate.

**Paragraph (f).** This paragraph contains some necessary definitions for "local governmental unit" and "civil or criminal sanction". Please note that the latter definition includes ouster from office and mandamus (i.e., an order from a court to do something).

#### **IV. CONCLUSION**

The League of Kansas Municipalities strongly supports legislative approval of HCR 5018. We understand there will be some significant concerns about its impact, and we look forward to discussing the issues it raises with you today and in the future. We strongly believe it is an issue which deserves legislative attention.

*Draft*

(e) The state historic preservation officer may enter into an agreement delegating to a city or county any or all responsibilities of the state historic preservation officer under subsections (a), (b), and (c) if the state historic preservation officer determines that the city or county has enacted a comprehensive local historic preservation ordinance, established a local historic preservation board or commission, and is actively engaged in a local historic preservation program. The agreement shall specify the authority delegated to the city or county by the state historic preservation officer, the manner in which the city or county shall report its decisions to the state historic preservation officer, the conditions under which the city or county can request assistance from the state historic preservation officer in performing certain project reviews, the length of time the agreement is to be valid, and provisions for termination of the agreement.

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## HOUSE BILL No. 2405

By Committee on Local Government

2-8

AN ACT concerning counties; relating to the sale of property; amending K.S.A. 1992 Supp. 19-211 and repealing the existing section.

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

Section 1. K.S.A. 1992 Supp. 19-211 is hereby amended to read as follows: 19-211. (a) Except for any property belonging to a county law enforcement department and as otherwise provided in this section, no property, the value of which is more than \$50,000, belonging to any county shall be sold or disposed of by any board of county commissioners without a unanimous vote of such commissioners and public notice of such sale or disposition ~~containing the time, place and conditions thereof having been given~~. *Such notice shall state the time or date of the sale or disposition or the date after which the property will be offered for sale or disposal, the place of the sale or disposition and the terms and conditions of the sale or disposition. Such notice shall be published at least once each week for three consecutive weeks prior thereto to the sale or disposition in the official newspaper of the county. Such sale shall be made to the highest bidder except that The property shall be sold or disposed of publicly, in the manner deemed prudent by the board of county commissioners, to the person or entity tendering the highest and best bid as determined by the board.* The board of county commissioners shall have the right to reject any or all bids.

If, within 45 days after the first publication of such notice the notice of sale or disposition a petition signed by not less than 2% of the qualified electors of the county is filed with the county election officer, such ~~sale~~ property shall not be sold or disposed of unless the proposition of sale or disposal of such property shall first be submitted to a vote of the electors of the county at a question submitted election called therefor. The election shall be called, noticed and held in the manner provided by K.S.A. 10-120, and amendments thereto, or at a general election. If a majority of the votes cast at any such election authorizes any sale or disposition, such sale or disposition shall be made upon the notice hereinbefore prescribed by publication, to the highest bidder, except that person or entity tendering the highest and best bid, as determined by the board. The

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1 board of county commissioners shall have the right to reject any or  
2 all bids.

3 (b) If the board rejects all bids or if no bids are received, the  
4 board may proceed to sell or dispose of the property publicly or  
5 privately, in whatever manner the board deems prudent and advis-  
6 able. If the notice of sale or disposition has been previously published  
7 in the manner set forth in subsection (a), no further notice of sale  
8 shall be published before the property is sold or disposed of pursuant  
9 to this subsection.

(subsection (b): Sedgwick Co.)

(d)

10 (b) (c) Upon a finding by the board that any property is no  
11 longer required, or cannot prudently be used for public purposes of  
12 the county, the board, by a unanimous vote, may sell or dispose of  
13 such property, the value of which does not exceed \$50,000, by public  
14 or private sale or by negotiation, as determined by the board. Notice  
15 of the board's intent to sell or dispose of such property shall be  
16 published at least two times in the official county newspaper. Such  
17 notice shall include the time, place and conditions of such sale or  
18 disposition.

(c) If the value of the property does not exceed \$1,000, such notice by publication shall not be required prior to the sale or disposition of such property. When property of the county having a value of not more than \$1,000 is sold or disposed of, the board of county commissioners shall cause to be published as a part of the statement required by K.S.A. 19-227, and amendments thereto, a detailed account of such sale or disposition which shall list such property, the person who acquired the property and the purchase price.

(Wells, Lowther and Lawrence)

(e)

19 (e) (d) The board, by unanimous vote, may dispose of any real  
20 property interest belonging to the county, including any interest  
21 derived through dedication, plat, condemnation, reversion, abandon-  
22 ment, reservation or tax foreclosure, which the board determines,  
23 after notice and public hearing, to be surplus property not required  
24 for public use, and to be unmarketable property. Such property  
25 interest may be disposed of by the county by the adoption of a  
26 resolution providing that the interest of the county shall be vacated  
27 and transferring by quitclaim, without benefit of warranties of title,  
28 whatever right, title or interest the county has or may have in the  
29 property. The resolution shall provide for the reservation to the  
30 county and the owners of any lesser property rights for public util-  
31 ities, the rights-of-way and easements for public service facilities  
32 which are in existence and in use across the property. Upon adoption  
33 of the resolution, the property interests vacated and conveyed shall  
34 revert to and vest in the owners of the real estate immediately  
35 abutting thereon, in proportion to the frontage of such land, except  
36 in cases where such land may have been acquired for public use in  
37 a different proportion, in which event it shall revert and vest in the  
38 owner of the adjoining real estate in the same proportion that it was  
39 acquired.

sell or

sold or

40 Following the adoption of the resolution, the county clerk shall  
41 record the conveyance upon the transfer records of the county and  
42 shall cause a notice of the transfer to be published at least two times  
43 in the official county newspaper and to be sent by certified mail to

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1 each owner of the adjoining real estate to whom the property is  
 2 being transferred, at the address where the owner's tax statement  
 3 is sent. A copy of the transfer and the notice shall be recorded with  
 4 the register of deeds of the county, and no fee shall be charged by  
 5 the county clerk or the register of deeds recording the transfer.

(f) 6 ~~(d)~~ In the event of any sale or disposition of real property  
 7 pursuant to the authority under this section, the board, in its dis-  
 8 cretion, may enter into and execute contracts for sale or lease-pur-  
 9 chase agreements for a term of not more than five years.

(g) 10 ~~(e)~~ The provisions of this section shall not apply to or restrict  
 11 the conveyance of real property by any county to the state of Kansas,  
 12 the title to which was previously conveyed to such county by the  
 13 state of Kansas.

(h) 14 ~~(f)~~ The provisions of this section shall not apply to or restrict  
 15 the conveyance of real property by any county to a nonprofit cor-  
 16 poration organized under the laws of Kansas if such real property  
 17 is acquired and conveyed by the county for the purpose of devel-  
 18 opment of an industrial or business park on such real property com-  
 19 prised of businesses engaged in: (1) Manufacturing articles of  
 20 commerce; (2) conducting research and development; or (3) storing  
 21 or processing goods or commodities. If the real property is to be  
 22 conveyed for an amount which is less than the amount the county  
 23 paid to acquire such property, the board of county commissioners  
 24 shall publish a notice of its intent to convey such property. The  
 25 notice shall include a description of the property, the cost of ac-  
 26 quiring the property and the amount for which such property is to  
 27 be conveyed. Such notice shall be published once each week for  
 28 three consecutive weeks in the official county newspaper. If, within  
 29 45 days after the first publication of such notice a petition signed  
 30 by not less than 2% of the qualified electors of the county is filed  
 31 with the county election officer, such property shall not be conveyed  
 32 unless the proposition of sale or disposal of such property is sub-  
 33 mitted to and approved by a majority of the qualified voters of the  
 34 county at an election called therefor. The election shall be called,  
 35 noticed and held in the manner provided by K.S.A. 10-120, and  
 36 amendments thereto, or at a general election.

(i) 37 ~~(g)~~ The provisions of this section shall not apply to or restrict  
 38 the conveyance of real property by any county to a port authority  
 39 if such real property is acquired and conveyed by the county for  
 40 the purpose of development of an industrial, commercial or business  
 41 park on such real property. The board of county commissioners shall  
 42 publish a notice of its intent to convey such property. The notice  
 43 shall include a description of the property, the cost of acquiring the

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1 property and the amount for which the property is to be conveyed.  
2 Such notice also shall include the time and date of the public hearing  
3 at which the board proposes to consider the conveyance of such  
4 property. Such notice shall be published at least once in the official  
5 county newspaper. Following the public hearing, the board of county  
6 commissioners may convey such property.

(j) 7 ~~(h)~~ Whenever it is required by this section that the board of  
8 county commissioners approve a sale *or disposition* of property by  
9 unanimous vote and a county has a five-member board, such board  
10 may approve a sale of property by a 4/5 majority. or disposition  
11 Sec. 2. K.S.A. 1992 Supp. 19-211 is hereby repealed.  
12 Sec. 3. This act shall take effect and be in force from and after  
13 its publication in the Kansas register.

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