

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Nancy Brown at 1:30 p.m. on March 23, 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: No conferees.

Others attending: See Guest List, Attachment 1.

The Chairman opened the meeting for subcommittee reports. The subcommittee member assignments are found on Attachment 2.

Representative Hayzlett presented the subcommittee report on **SB 130**, which authorizes municipalities to participate in the state's debt setoff program. The subcommittee recommended that the bill be amended as set out on Attachment 3. Representative Hayzlett stated the amendments (1) narrow the definition of "debt" to not include special assessments, except when a property owner petitions for the improvement; (2) not include fines or penalties assessed by a municipal court, except for traffic infractions and offenses; (3) added a requirement that municipalities must certify three attempts to collect a debt has been made before submission to setoff; and (4) assesses the state's collection fee at a rate agreed to by the parties to the agreement.

Representative Wempe stated he opposes the bill because the state setoff program currently serves some 160 state agencies; and if this bill is enacted, some additional 4,000 local units of government could be served by this bill, thus overburdening the state setoff program, and the state would be generally accepting the judgment and ability to collect debts of those local units of government.

On motion of Representative Grant, seconded by Representative Pettey, the subcommittee's recommendation to adopt the amendments was passed. Representative Wempe voted "No." Then, on motion of Representative Hayzlett, seconded by Representative Wootton, the committee passed **SB 130**, as amended. Motion carried. Representatives Wempe and Mollenkamp voted "No."

Representative Macy presented the subcommittee report on **SB 153**, relating to cities special assessments for costs of improvements, stating it is the subcommittee's recommendation that the bill be amended, as requested by the city of Overland Park, to (1) change the time limit when a property owner in an improvement district can challenge creation of the improvement district, need for and nature and extent of the improvements, methods of financing, including apportionment of costs and methods of levying assessments; (2) the challenge must be done within 30 days after publication of the resolution; (3) a certified letter must be sent to property owners; and (4) prohibits litigation of above issues after assessments are fixed. The amendment also allows the governing body to exclude property from the improvement district if any tax, excise fee, charge, or dedicated land or easement were found by the governing body to represent a portion of the property's contribution to the cost of improvement, or may allow credit against the special assessment.

Representative Macy reported that Overland Park also requested an amendment to add a section which would change the way trafficways (main thoroughfares) are financed. Current law states the city at large should pay. Overland Park wants the ability to have adjoining landowners or developers to pay for all or part of the improvements. The subcommittee does not recommend this further amendment as it has concerns that in rapidly growing areas some property owners might be assessed large amounts for road improvements on main traffic streets (such as Nall and Mission in Overland Park) that benefit the entire city, not just the property owners.

Chairman Brown noted the written testimony of Timothy Mulcahy of J. C. Nichols Company, Kansas City, Missouri, on **SB 153** (see Attachment 4) and the discussion draft, entitled "Cities and Municipalities Assessment Law Summary," (Attachment 5).

After discussion, on motion of Representative Macy, seconded by Representative Pettey, the Committee

adopted the subcommittee's recommended amendments as set forth in Attachment 6. Representative Tomlinson voted "No."

On motion of Representative Macy, seconded by Representative Ballard, the committee passed **SB 153**, as amended. Representatives Brown and Tomlinson voted "No."

Representative Tomlinson then presented the subcommittee report on **SB 182**, relating to the apportionment of retailers' sales tax, and its recommendation to amend the bill to broaden the definition of "total tangible property tax levies" as described in Attachment 7 and the subcommittee's statement relating to the possible effect on tax policy. On motion of Representative Tomlinson, seconded by Representative Packer, the committee adopted the amendment to Section 1(c) as shown on Attachment 7 to these minutes. Motion carried.

Then, Representative Tomlinson moved, and Representative Packer seconded, that **SB 182** be passed, as amended. The committee discussed the effects of this bill and there was apprehension expressed that the bill is setting a tax policy precedent. The committee then voted on the motion, and **SB 182** was passed, as amended. Representatives Brown and Macy voted "No."

Representative Alldritt presented the subcommittee report on **SB 273**, concerning the publication of county expenditures. On motion of Representative Alldritt, seconded by Representative Mollenkamp, the committee adopted the subcommittee's report (see Attachment 8-1).

Then, Representative Alldritt stated that the subcommittee recommended that **SB 273** be amended as shown on Attachment 8-2. Representative Holmes questioned the subcommittee's recommendation that "copies of such statement shall be available upon request at no cost to the person requesting the statement." Representative Holmes moved that be changed to permit counties to choose whether or not to charge for copies. Representative Toplikar seconded the motion. Several committee members voiced opposition to the amendment. A vote on the motion was taken, and the motion failed. After further discussion, the committee adopted an amendment to the proposed amendment of subsection (b) by requiring "An itemized statement of expenditures is available for review in the Clerk's office." Chairman Brown reminded the members of the editorial comment of Jim Hitch, of theThe Ottawa Herald, on **SB 273** (see Attachment 9).

Representative Addritt moved, and Representative Macy seconded, that **SB 273** be passed, as amended. Motion carried.

Representative Ballard then presented the subcommittee report on **SCR 1613**, which approves the creation of the City of Coffeyville - City of Chanute, Kansas, Joint Port Authority as required by K.S.A. 12-3402 (see Attachment 10). Representative Holmes moved, and Representative Ballard seconded, that the subcommittee report be adopted and that **SCR 1613** be approved. The committee then discussed the port authority statutes. Chairman Brown stated she will oppose the enactment of the resolution, not the goals of Coffeyville and Chanute, but to the creation of another quasi-municipality with significant taxing authority and powers of eminent domain. Theresa Kiernan reminded the members that port authorities are subject to the tort statutes. A vote on the motion was taken, and the motion carried.

On motion of Representative Hayzlett, seconded by Representative Mays, the minutes of the meetings held on March 17 and 18, 1993, were approved.

The meeting was adjourned at 3:00 p.m. The next meeting will be on call of the Chair.

## GUEST LIST

**COMMITTEE:** House Local Government

DATE March 23, 1993

[illegible]

HOUSE OF REPRESENTATIVES  
COMMITTEE ON LOCAL GOVERNMENT  
SUBCOMMITTEE ASSIGNMENTS  
Regular Session of 1993

SB 130 - Debt Setoff

Meets in Room 521-S,  
1:30 P.M., Monday, March 22

Chair - Rep. Hayzlett

Members -

Rep. Ballard

Rep. Grant

Rep. Pettey

Rep. Wootton

SB 153 - Assessment

Meets in Room 527-S,  
1:30 P.M., Monday, March 22

Chair - Rep. Macy

Members -

Rep. Donovan

Rep. Novak

Rep. Toplikar

SB 273 - Publication

Meets in 5th Floor West Lounge,  
1:30 P.M., Monday, March 22

Chair - Rep. Alldritt

Members -

Rep. Bryant

Rep. Mays

Rep. Mollenkamp

Rep. Welshimer

SB 182 - Sales Tax Distribution

Meets in Room 522-S,  
1:30 P.M., Monday, March 22

Chair - Rep. Tomlinson

Members -

Rep. Holmes

Rep. Packer

Rep. Powers

Rep. Wempe

SCR 1613 - Coffeyville-Chanute Port Authority

Meets in Room 522-S, at approximately 2:30 p.m. after  
adjournment of Subcommittee Meeting on HB 182 (shown above)

Chair - Rep. Holmes

Members -

Rep. Ballard

Rep. Donovan

Rep. Wempe

ATTACHMENT 2

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SENATE BILL No. 130

By Committee on Local Government

1-29

AN ACT concerning setoff against debtors of the state and municipalities therein; authorizing reciprocal agreements with other states to allow the setoff of tax liabilities of other states; amending K.S.A. 75-6201, 75-6202, 75-6203, 75-6204, 75-6205, 75-6206, 75-6207, 75-6210, 75-6211, 75-6212 and 75-6214 and repealing the existing sections.

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

New Section 1. The secretary of revenue and the director of accounts and reports are hereby authorized to enter into reciprocal agreements with other states to allow the setoff of ~~delinquent taxes~~ *debts* owed to such other states pursuant to K.S.A. 75-6201 *et seq.*, and amendments thereto.

Sec. 2. K.S.A. 75-6201 is hereby amended to read as follows: 75-6201. The purpose of this act is to establish as policy that state agencies shall cooperate in identifying debtors who owe money to the state, *a foreign state agency and any municipality* and that procedures be established for setting off against debtors the sum of any debt owed to the state, *a foreign state agency or any municipality*.

Sec. 3. K.S.A. 75-6202 is hereby amended to read as follows: 75-6202. As used in this act:

(a) "Debtor" means any person who:

(1) Owes a debt to the state of Kansas or any state agency *or any municipality; or*

(2) owes support to an individual, or an agency of another state, who is receiving assistance in collecting that support under K.S.A. 39-756 and amendments thereto or under part D of title IV of the federal social security act (42 U.S.C. § 651 *et seq.*), as amended; *or*

(3) *owes unpaid taxes to any state which has entered into a reciprocal agreement pursuant to section 1-*

(3) *owes a debt to a foreign state agency.*

(b) "Debt" means:

(1) Any liquidated sum due and owing to the state of Kansas,

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1 *any judicial district of this state or the clerk thereof*, or any  
 2 state agency, municipality or foreign state agency which has accrued  
 3 through contract, subrogation, tort, operation of law, or any other  
 4 legal theory regardless of whether there is an outstanding judgment  
 5 for that sum; ~~or or~~

6 (2) any amount of support due and owing an individual, or an  
 7 agency of another state, who is receiving assistance in collecting that  
 8 support under K.S.A. 39-756 and amendments thereto or under part  
 9 D of title IV of the federal social security act (42 U.S.C. § 651 *et*  
 10 *seq.*), as amended, which amount shall be considered a debt due  
 11 and owing the department of social and rehabilitation services for  
 12 the purposes of this act;

13 (3) *in the case of a municipality, a liquidated sum due and*  
 14 *owing to the municipality; or*

15 (4) *any amount of unpaid taxes owed to any state which*  
 16 *has entered into a reciprocal agreement pursuant to section*  
 17 *I.*

18 (c) "Refund" means any amount of Kansas income tax refund due  
 19 to any person as a result of an overpayment of tax, and for this  
 20 purpose, a refund due to a husband and wife resulting from a joint  
 21 return shall be considered to be separately owned by each individual  
 22 in the proportion of each such spouse's contribution to income, as  
 23 the term "contribution to income" is defined by rules and regulations  
 24 of the secretary of revenue.

25 (d) "Net proceeds collected" means gross proceeds collected  
 26 through final setoff against a debtor's earnings, refund or other pay-  
 27 ment due from the state or any state agency minus any collection  
 28 assistance fee charged by the director of accounts and reports of the  
 29 department of administration.

30 (e) "State agency" means any state office, officer, department,  
 31 board, commission, institution, bureau, agency or authority or any  
 32 division or unit thereof *and any judicial district of this state or the*  
 33 *clerk or clerks thereof.*

34 (f) "Person" means an individual, proprietorship, partnership,  
 35 limited partnership, association, trust, estate, business trust, cor-  
 36 poration, other entity or a governmental agency, unit or subdivision.

37 (g) "Director" means the director of accounts and reports of the  
 38 department of administration.

39 (h) "Municipality" means any municipality as defined by K.S.A.  
 40 75-1117, and amendments thereto.

41 (i) "Payor agency" means any state agency which holds money  
 42 for, or owes money to, a debtor.

43 (j) "Foreign state agency" means any state or agency of a state

. A debt shall not include: (A) Special assessments except when the owner of the property assessed petitioned for the improvement and any successor in interest of such owner of property; or (B) fines or penalties assessed by a municipal court, except for traffic infractions and offenses

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1 *which has entered into a reciprocal agreement pursuant to section*  
 2 *1.*

3 Sec. 4. K.S.A. 75-6203 is hereby amended to read as follows:  
 4 75-6203. (a) The collection remedy under this act is in addition to  
 5 and not in substitution for any other remedy available by law.

6 (b) Each state agency ~~shall~~, *foreign state agency and munici-*  
 7 *palilty*, whenever possible, *shall* obtain the full name, social security  
 8 number, address and any other information required by the director  
 9 of accounts and reports from any person for whom the state agency,  
 10 *foreign state agency or municipality* provides any service or with  
 11 whom the state agency, *foreign state agency or municipality* transacts  
 12 any business and who may become a debtor under this act.

13 (c) Except for debts for which a voluntary agreement for payment  
 14 has been entered into and is being complied with or debts for which  
 15 garnishment or other judicial proceedings are pending and except  
 16 as otherwise directed by the secretary of administration, the director  
 17 may require any state agency to certify all debts owed to the state  
 18 agency or to certify all such debts in specified categories of debts,  
 19 for setoff under K.S.A. 75-6204, *and amendments thereto*. Any state  
 20 agency required to certify debts under this subsection shall give the  
 21 director all information relating to such debts as may be requested  
 22 by the director.

23 (d) The secretary of administration as provided in K.S.A. 75-3706  
 24 and amendments thereto may adopt rules and regulations necessary  
 25 to carry out the provisions of this act.

26 (e) The secretary of revenue may adopt rules and regulations  
 27 defining the term "contribution of income" for the purposes of this  
 28 act.

29 Sec. 5. K.S.A. 75-6204 is hereby amended to read as follows:  
 30 75-6204. (a) Subject to the limitations provided in this act, if a debtor  
 31 fails to pay to the state of Kansas or any state agency, *foreign state*  
 32 *agency or a municipality* an amount owed, the director may setoff  
 33 such amount against any money held for, or any money owed to,  
 34 such debtor by the state or any state agency.

35 (b) *The director may enter into an agreement with a municipality,*  
 36 *judicial district of this state or the clerk thereof for participation*  
 37 *in the setoff program for the purpose of assisting in the collection*  
 38 *of a debt as defined by paragraph (3) of subsection (b) of K.S.A.*  
 39 *75-6202, and amendments thereto.*

40 Sec. 6. K.S.A. 75-6205 is hereby amended to read as follows:  
 41 75-6205. (a) The director shall not effect final setoff and collect debts  
 42 through use of the remedy established under this act unless the  
 43 debt is equal to or greater than \$25.

The director shall include in any such agreement a provision requiring the municipality to certify that the municipality had made at least three attempts to collect a debt prior to submitting such debt to set-off pursuant to this act.

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(b) The use of setoff against earnings of a debtor shall be subject to the same dollar limitations and dollar restrictions as are provided by law for wage garnishment. The maximum amount of the disposable earnings of an individual which will be subject to setoff to enforce any order for the support of any person shall not exceed 50% of the debtor's disposable earnings unless the state agency *or municipality* submits satisfactory information to the director indicating that a greater percentage is applicable and authorized by law.

Sec. 7. K.S.A. 75-6206 is hereby amended to read as follows: 75-6206. (a) A state agency, *foreign state agency or municipality* which requests the director to assist in the collection of a debt due to the state agency, *foreign state agency or municipality* by the utilization of setoff procedures under this act or which is required to certify debts under K.S.A. 75-6203 and amendments thereto, shall certify to the director in writing the identity of the debtor, the amount of the debt subject to setoff and other information as the director may require. The director shall cause such data to be matched to payroll, refund and other pending payment files to identify those instances where setoff procedures may be implemented. The director shall then make the following notification to the debtor in writing, either by personal delivery to the debtor or by mail. Such notification shall include:

(1) A demand for payment of the debt and a brief explanation of the legal basis of the debt;

(2) a statement of the ~~state agency's~~ *director's* intention to setoff the debt due against the debtor's earnings, refund or other payment due to the debtor from the state of Kansas or any state agency;

(3) the right of the debtor to request in writing a hearing to contest the validity of the claim, if such request is made: (A) Within 15 days of the mailing of the notice, or (B) in cases where notice was not given by mail, within 15 days of personal delivery to the debtor;

(4) a statement that a hearing may be requested by making a written request therefor to the director of accounts and reports and the address of the director; and

(5) the fact that failure to request a hearing within the fifteen-day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.

(b) A copy of the notice required by subsection (a) to be sent to the debtor shall be sent to each state agency ~~involved~~, *foreign state agency or municipality seeking collection through setoff from the debtor*. Subject to the provisions of K.S.A. 75-6205, ~~upon receipt of the copy of such notice the state and amendments thereto and~~

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1 upon request of the director, the payor agency shall withhold from  
2 the named debtor an amount equal to that claimed as the debt owed;  
3 and. The state agency, foreign state agency or municipality shall  
4 notify immediately the director of accounts and reports of any pay-  
5 ments thereafter received from the named debtor or of any arrange-  
6 ments thereafter made for payment of the debt. Until the director  
7 of accounts and reports gives notice to a state the payor agency as  
8 to the final determination to proceed or not proceed with the col-  
9 lection of a debt by setoff, the state payor agency shall continue to  
10 hold payments subject to setoff.

11 Sec. 8. K.S.A. 75-6207 is hereby amended to read as follows:  
12 75-6207. (a) If the director receives a timely written request for a  
13 hearing under K.S.A. 75-6206 and amendments thereto, the director  
14 shall request the secretary of administration to appoint a presiding  
15 officer who shall hold a hearing in accordance with the provisions  
16 of the Kansas administrative procedure act to determine whether  
17 the debt claim is valid. Subject to the provisions of subsection (b),  
18 the presiding officer shall determine whether the claimed sum as-  
19 serted as due and owing is correct, and if not, shall order an ad-  
20 justment to the debt claim which shall be forwarded to the director  
21 and to the agency state agency, foreign state agency or municipality  
22 to which the debt is owed. No issue may be considered at the hearing  
23 which has been previously litigated and no collateral attack on any  
24 judgment shall be permitted at the hearing. The order of the pre-  
25 siding officer shall inform the debtor of the amount determined as  
26 due, if any, and that setoff procedures have been ordered to proceed  
27 in accordance with this act. If the setoff is to be made against earnings  
28 of the debtor, the order shall include a statement that the setoff  
29 may be postponed in accordance with K.S.A. 75-6208 and amend-  
30 ments thereto. Orders under this section shall not be subject to  
31 administrative review.

32 (b) In cases where there is only one known present or future  
33 payment due from the state to the alleged debtor, the presiding  
34 officer may limit the hearing issue to a determination of whether  
35 the debt owed the state agency, foreign state agency or municipality  
36 is at least equal to the amount of the payment owed to the debtor  
37 by the state.

38 (c) Pending final determination in the order of the presiding  
39 officer of the validity of the debt asserted by the state agency, foreign  
40 state agency or municipality, no action shall be taken in furtherance  
41 of collection through the setoff procedure allowed under this act.

42 (d) Judicial review of an order under this section shall be in  
43 accordance with the provisions of the act for judicial review and civil

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1 enforcement of agency actions. In any such review, except as pro-  
 2 vided in subsection (e), the department of administration and the  
 3 secretary of administration shall not be named parties to the  
 4 proceedings.

5 (e) Parties to an action for review of an order under this section  
 6 shall be: (1) The debtor; (2) the state agency, *foreign state agency*  
 7 *or municipality* which requested assistance in collecting the debt or  
 8 which certified the debt; and (3) any party the district court permits  
 9 to intervene in the action. Applications for a stay or other temporary  
 10 remedies shall be to the state agency described in subsection  
 11 ~~(e)(2)~~ *district court*.

12 Sec. 9. K.S.A. 75-6210 is hereby amended to read as follows:  
 13 75-6210. (a) Upon completion of a setoff transaction, the director  
 14 shall transfer the net proceeds collected to the account or fund of  
 15 the officer or agency *state agency, foreign state agency or munic-*  
 16 *ipality* to which the debt was owed.

17 (b) From the gross proceeds collected by the director through  
 18 setoff, the director shall retain a reasonable collection assistance fee  
 19 of not to exceed 15% *for a state agency*, except that in the case of  
 20 transactions for collection of debts arising from the employment se-  
 21 curity law such fee shall not exceed \$300 for any transaction. *The*  
 22 *director shall retain a reasonable collection assistance fee from the*  
 23 *gross proceeds of collections through setoff on behalf of a munici-*  
 24 *pality in such amount as the municipality and the director shall*  
 25 *agree. The director shall retain a reasonable collection assis-*  
 26 *tance fee from the gross proceeds of collections through setoff*  
 27 *on behalf of a* ~~for~~ *foreign state agency in such amount as specified*  
 28 *in the reciprocal agreement entered into pursuant to section 1. The*  
 29 *director may credit a portion of the collection assistance fee to the*  
 30 *appropriate account or fund of any other state agency that has in-*  
 31 *curring expenses in assisting in the collection of the debt. The amount*  
 32 *of the collection assistance fee retained by the director shall be*  
 33 *deposited in the state treasury and credited to the accounting services*  
 34 *recovery fund.*

35 (c) Upon receipt by the *agency state agency, foreign state agency*  
 36 *or municipality* of the net proceeds collected, the *agency state*  
 37 *agency, foreign state agency or municipality* shall credit the debtor's  
 38 obligation in the amount of the gross proceeds collected.

39 (d) Except as otherwise prescribed by the director or the sec-  
 40 retary of administration, any state agency, *foreign state agency or*  
 41 *municipality* which receives any payment from a debtor after noti-  
 42 fication to the debtor under K.S.A. 75-6206 and amendments thereto,  
 43 other than payments collected pursuant to K.S.A. 44-718 and amend-

as specified in an agreement entered into  
 pursuant to K.S.A. 75-6204, and amendments  
 thereto,

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ments thereto or collected through the federal government or judicial process, shall remit the collection assistance fee imposed under subsection (b) to the director which shall be credited to the accounting services recovery fund. If a state agency fails to remit the collection assistance fee as required by this subsection, the director may transfer an amount equal to such collection assistance fee from the appropriate account or fund of the state agency to the accounting services recovery fund. *If a foreign state agency or municipality fails to remit the collection assistance fee as required by this subsection, the director may seek collection of such fee in such manner as may be allowed by law.*

(e) In cases involving the collection of debts arising from the employment security law, the entire amount collected shall be credited to the employment security fund and the collection assistance fee shall be transferred from the special employment security fund to the accounting services recovery fund.

Sec. 10. K.S.A. 75-6211 is hereby amended to read as follows: 75-6211. The priority in multiple claims by state agencies, *foreign state agencies and municipalities* for setoff under the provisions of this act shall be according to the time of filing with the director under K.S.A. 75-6208. ~~Notwithstanding the priority established in this section, collection of taxes shall have priority over other claims for collection by the setoff procedure. following priority of claims:~~

(a) Collection of taxes owed to agencies of the state of Kansas;

(b) claims for collection of intrastate and interstate child support debts;

(c) claims for collection of debts which have been written off by assignment to the director;

~~(d) claims for collection of debts owed municipalities;~~

~~(e)~~ (d) other claims according to the time of filing with the director under K.S.A. 75-6208 and amendments thereto; and

~~(f)~~ (e) notwithstanding subsection ~~(e)~~ (d), claims for collection of tax liabilities of other states shall have last priority according to the time of filing with the director under K.S.A. 75-6208, and amendments thereto.

Sec. 11. K.S.A. 75-6212 is hereby amended to read as follows: 75-6212. (a) Notwithstanding any provision of law prohibiting disclosure by the department of revenue of the contents of taxpayer records or information and notwithstanding any confidentiality statute of any state agency, *foreign state agency or municipality*, all information exchanged among the department of revenue, any other state agency, *foreign state agency or municipality* and the debtor necessary

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1 to accomplish and effectuate the intent of this act is lawful.

2 (b) The information obtained by any other state agency, *foreign*  
3 *state agency or municipality* from the department of revenue in  
4 accordance with the exemption authorized by subsection (a) shall  
5 only be used by such other state agency, *foreign state agency or*  
6 *municipality* in the pursuit of its debt collection duties and practices.  
7 Any person employed by, or formerly employed by, a state agency  
8 other than the department of revenue, *who is employed, or formerly*  
9 *employed by a foreign state agency or municipality, and* who receives  
10 information subject to the provisions of K.S.A. 79-3234 and amend-  
11 ments thereto, or other information designated by law as confidential,  
12 shall be subject to the same duty of confidentiality with respect to  
13 such confidential information imposed by law on officers and em-  
14 ployees of the state agency, *foreign state agency or municipality*  
15 from which such information was obtained and shall be subject to  
16 any civil or criminal penalties imposed by law for violations of such  
17 duty of confidentiality.

18 Sec. 12. K.S.A. 75-6214 is hereby amended to read as follows:  
19 75-6214. (a) Upon written request to the director, any debtor against  
20 whom setoff has been effected may have a hearing thereon if:

21 (1) The debtor alleges that either such debtor did not receive  
22 actual notice of the right to request a hearing thereon or that the  
23 debtor did not use the opportunity for a hearing;

24 (2) less than two years have elapsed since the setoff was effected;  
25 and

26 (3) the debtor alleges that the setoff was improper.

27 (b) Hearings under this section shall be conducted in accordance  
28 with the provisions of the Kansas administrative procedure act. Or-  
29 ders resulting from hearings under this section shall not be subject  
30 to administrative review. If it is determined that the setoff was  
31 improper, the debtor shall be entitled to a refund of the sum im-  
32 properly setoff. The director of accounts and reports shall cause such  
33 refund to be paid from the fund or funds of *any state agency* to  
34 which the amounts which were setoff were credited. *In the case of*  
35 *a foreign state agency or municipality, the director shall direct a*  
36 *refund of the amount improperly setoff.* The amount of any such  
37 refund shall be in addition to and shall not be included in computing  
38 expenditures credited against any expenditure limitation imposed on  
39 any such fund.

40 Sec. 13. K.S.A. 75-6201, 75-6202, 75-6203, 75-6204, 75-6205, 75-  
41 6206, 75-6207, 75-6210, 75-6211, 75-6212 and 75-6214 are hereby  
42 repealed.  
43

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## J. C. NICHOLS COMPANY

310 WARD PARKWAY  
ON THE COUNTRY CLUB PLAZA  
KANSAS CITY, MISSOURI 64112  
816/561-3456

TIMOTHY T. MULCAHY  
LEGAL COUNSEL

March 22, 1993

Representative Nancy Brown  
27th District  
State Capitol  
Topeka, Kansas 66612

Re: Senate Bill 153

Post-It™ brand fax transmittal memo 7671

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|                                  |                      |
|----------------------------------|----------------------|
| To REPRESENTATIVE<br>NANCY BROWN | From TIM MULCAHY     |
| Co. STATE CAPITOL                | Co. J.C. NICHOLS CO. |
| Phone 816-561-3456               | Phone 816-561-3456   |
| Fax #                            | Fax #                |

Dear Representative Brown:

Sandy Spalitto and I have been reviewing **Senate Bill 153** and have some concerns with some of the proposed language.

Initially, the Bill expands existing state statute to increase the power of local municipalities to the potential detriment, we believe, of the property owner. Existing statutory and case law has clearly defined the proper procedures and we believe this Bill to be unnecessary.

The proposed Bill would allow only 30 days to challenge the proposed resolution. Although we would not favor a lengthy period of time to challenge the resolution, 30 days may not be enough time for a property owner to respond.

We are also concerned about a provision which redefines what a main trafficway could mean. The proposed definition is unclear, but it could result in adjacent property owners being assessed for the entire cost of an arterial.

Another provision of concern proposes that land be excluded from the calculation of a proposed benefit district. If land is excluded from the assessment calculation, other property owners could be assessed more than their fair share to pay for public improvements.

Finally, we are concerned about the potential for property owners to be over-assessed for public improvements or be inflicted with a wider variety of impact fees and excise taxes. We find the proposed Bill to be vague on procedures to rectify potential over-assessment. We are also concerned that municipalities may use this proposed Bill to become even more creative in extracting additional fees and taxes from property owners. We believe this proposed Bill at least needs to be further clarified so that all parties will understand the potential impact.

ATTACHMENT 4-1

3-23-93

Page 2

March 22, 1993

Representative Nancy Brown

Thank you for giving us the opportunity to examine this Bill. We very much appreciate the work you have done and your willingness to work with us. As always, if we can be of assistance to you, please let us know. Should you have any questions or comments concerning our letter please call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Timothy T. Mulcahy", with a long, sweeping flourish extending to the right.

Timothy T. Mulcahy

TTM:bz

cc - Representative Judith Macy - 43rd District  
Ms. Sandy Spalitto

ATTACHMENT 4-2  
3-23-93



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

LOCAL GOVERNMENT  
RANKING REPUBLICAN  
GOVERNMENTAL ORGANIZATION  
ECONOMIC DEVELOPMENT  
STATE EMERGENCY RESPONSE COMMISSION  
CHAIRMAN  
COMMUNITY DEVELOPMENT BLOCK GRANT  
ADVISORY BOARD, CHAIRMAN  
EMERGENCY MEDICAL SERVICES BOARD  
NCSL STATE-LOCAL RELATIONS COMMITTEE  
AND THE WOMEN'S NETWORK BOARD  
FEDERAL EMERGENCY MANAGEMENT AGENCY  
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**DISCUSSION DRAFT**

**CITIES AND MUNICIPALITIES ASSESSMENT LAW SUMMARY  
K.S.A. 12-6a-01  
SB 153**

- 12-6a-02 Governing body authority to confer benefit district.
- 12-6a-04 Governing body passes resolution and orders public hearing on advisability of improvement (may proceed without hearings to make findings as to advisability).

Notice - 2 publications in newspaper.

(If petition made by landowners, hearing may not be necessary.)

- 12-6a-05 Governing body may secure feasibility report before adoption of resolution ordering hearing on advisability of improvement.
- 12-6a-06 Governing body may, anytime within 6 months after hearing is adjourned on advisability of improvements, adopt a resolution authorizing improvement.

Effective upon publication once 20 day protest period (by 51% of property owners) after publication of resolution ordering the improvement.

**NEW  
LANGUAGE  
OVERLAND  
PARK**

*Resolution ordering improvement shall be mailed to property owners' last known post office address.*

*Action may be brought by any property owner not later than 30 days from publication of resolution to challenge:*

- *Creation of improvement district or the boundaries*
- *Need for and nature and extent of improvement*
- *Method of financing improvement, including apportionment of costs between city and improvement district and method of levying assement*

- 12-6a-07 City may pay portion of cost (not more than 95%)

ATTACHMENT 5-1  
3-23-93

Cities and Municipalities Assessment Law Summary

KSA 12-61-01 et seq.

Page 2

NEW  
LANGUAGE  
OVERLAND  
PARK

*Governing body may exclude property from improvement district if any tax, excise fee, charge, or dedicated land or easement were found by governing body to represent portion of the property's contribution to cost of improvement, or may credit against special assessment*

12-6a-08 Improvement costs apportioned against property

12-6a-09 After total improvement costs determined, the governing body causes assessment to be determined.

Assessment filed with Clerk and open for public inspection.

Clerk publishes notice of meeting of governing body to meet to consider assessments.

Notice published once ten days prior to meeting.

Notice mailed to property owners at last known address.

NEW  
LANGUAGE  
ORIGINAL  
BILL

*As an alternative to the above, the governing body, prior to construction, may determine maximum amount of assessments against each property. The governing body may proceed (as described above) with preparing assessment rate, filing with city clerk, and calling hearing.*

12-6a-10 At meeting, governing body shall hear objections and may amend assessment.

Pass ordinances and levy assessments payable in not more than 20 equal annual installments.

12-6a-11 No suit can be brought after 30 days from publication of ordinance fixing assessments.

NEW  
LANGUAGE  
OVERLAND  
PARK

*No such suit shall litigate a claim which could have been litigated in accordance with 12-6a-06.*

12-6a-12 Upon notice and hearing, as provided in original assessment, supplemental assessments may be made under certain circumstances.

ATTACHMENT 5-2  
3-23-93



Cities and Municipalities Assessment Law Summary  
KSA 12-6a-01 et seq.  
Page 3

12-6a-19 When property owner, not in original water or sewer benefit district requests to be served, a benefit fee may be required (not to exceed amount of assessment, including principal and interest, which would have been levied had it been included in original district, reduced in proportion to time passed from the date of assessment levied to date served (pro-rata reduction).

12-690 This section deals with designation of traffic ways.

Act is supplemental to all other acts relating to improvement of streets.

NEW  
LANGUAGE  
OVERLAND  
PARK

*Adds language, boulevards, avenues and designation of street, boulevard or avenue as a main trafficway or main trafficway connection. Allows home rule for financing.*

Peanut: Changes the statute from stating main trafficways shall be paid by city at large to alternate financial means...property owner, developer...

## SENATE BILL No. 153

By Committee on Local Government

2-2

8 AN ACT concerning cities; relating to special assessments to pay the  
9 costs of improvements authorized thereby; amending K.S.A. 12-  
10 6a09 and repealing the existing section.

11

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

13 Section 1. K.S.A. 12-6a09 is hereby amended to read as follows:  
14 12-6a09. (a) As soon as the total cost of any improvement is deter-  
15 mined, *or the governing body has approved an estimate of the total*  
16 *cost of the improvement in the case of assessments to be levied*  
17 *pursuant to subsection (c),* the governing body shall cause the as-  
18 sessments against each lot, piece or parcel of land deemed to be  
19 benefited, to be determined in the manner set forth in the resolution  
20 as to advisability of the improvement provided for in K.S.A. 12-  
21 6a04, *and amendments thereto,* and an assessment roll shall be  
22 prepared.

23 (b) The proposed assessment roll shall be filed with the city clerk  
24 and be open for public inspection. The city clerk shall thereupon,  
25 at the direction of the governing body, *shall* publish notice that the  
26 governing body will meet to consider the proposed assessments. Such  
27 notice shall be published in a newspaper at least once not less than  
28 ~~ten (10)~~ 10 days prior to such meeting of the governing body and  
29 shall state the date, time and place of such meeting, and the general  
30 nature of the improvement, and its cost, the extent of the improve-  
31 ment district proposed to be assessed, and that written or oral ob-  
32 jections will be considered at such a hearing. At the same time, the  
33 clerk shall mail to the owners of the property made liable to pay  
34 the assessment, at their last known post-office address, a notice of  
35 the hearing and a statement of the cost proposed to be assessed;  
36 against the land so owned and assessed; ~~but~~. The failure of any  
37 owner to receive such notice shall not invalidate the proceedings.

38 (c) *As an alternative to the procedure required by this section,*  
39 *the governing body, prior to commencement of construction of the*  
40 *improvement, may determine the maximum amount of the assess-*  
41 *ments against each lot, piece or parcel of land deemed to benefitted*  
42 *by the improvement. Such determination shall be made in the manner*  
43 *provided in the resolution adopted pursuant to K.S.A. 12-6a04, and*

ATTACHMENT 6-1  
3-23-93

1 amendments thereto. Following such determination, an assessment  
2 roll shall be prepared and filed with the city clerk and a hearing  
3 shall be called and held to consider the proposed assessments as  
4 provided by subsection (b).

6

5 Sec. ~~2~~ K.S.A. 12-6a09 is hereby repealed.

See attachment

6

6 Sec. ~~3~~ This act shall take effect and be in force from and after

7

7 its publication in the statute book.

ATTACHMENT 6-2  
3-23-93

Sec. 2. K.S.A. 12-6a06 is hereby amended to read as follows:

12-6a06. (a) The governing body ~~may~~, by a majority vote of the entire members-elect thereof, at any time within six ~~(6)~~ months after the final adjournment of the hearing on the advisability of making the improvements, may adopt a resolution ~~authorizing ordering~~ the improvement in accordance with the finding of the governing body upon the advisability of the improvement, as provided in K.S.A. 12-6a04, and amendments thereto which shall be effective upon publication once in the newspaper:--~~Provided~~7. The improvement shall not be commenced if, within ~~twenty-(20)~~ 20 days after publication of the resolution ordering the improvement, written protests signed by both ~~fifty-one-percent-(51%)~~ 51% or more of the resident owners of record of property within the improvement district and the owners of record of more than half of the total area of such district are filed with the city clerk:--~~Provided~~7-however7. Whenever adjoining parallel streets have been improved, and the proceedings are to improve the intervening connecting street to the same extent as the streets to be connected, or when two portions of any street have been improved and an intervening portion not exceeding two blocks has not been improved, and the proceedings are to improve such intervening portion to the same extent as the improved portions, or when the proceedings are to improve sanitary and storm water sewers, no protest shall be accepted by the city clerk and such improvements may be made regardless of protests. The genuineness of the signature and addresses of all signers of each protest shall be verified by some signer of such protest. The governing body shall be judge of the sufficiency of any protest and its decision shall be final and conclusive:--~~Provided~~7. Names may be withdrawn from any protests by the signers thereof at any time before the governing body ~~shall--convene~~ convenes its meeting to determine the sufficiency thereof.

(b) A copy of such resolution ordering the improvement shall be mailed, by certified mail, by the city clerk to the owners of the property included in the improvement district at their last know post-office address. A statement giving notice to the owners of property included in the improvement district that the

owners may bring an action pursuant to subsection (c) of K.S.A. 12-6a06, and amendments thereto, shall accompany the copy of the resolution. The statement shall notify such owners of the thirty-day time period in which such action may be filed and shall list the matters which may be challenged pursuant to subsection (c) of K.S.A. 12-6a06, and amendments thereto. The failure of any owner to receive the resolution and the notice required by this subsection shall not invalidate the proceedings.

(c) Any owner of property in the improvement district described in the resolution ordering the improvements to be made may bring an action not later than 30 days from the publication of the resolution for the purpose of challenging the creation of the improvement district or its boundaries, the need for and the nature and extent of the improvements to be made, the method of financing the improvements, including the apportionment of costs between the city and the improvement district and the method for levying assessments against the property in the improvement district or any other matter expressly provided for in the resolution.

Sec. 3. K.S.A. 12-6a07 is hereby amended to read as follows: 12-6a07. (a) The city may pay such portion of the cost of the improvement as the governing body may determine, but not more than ~~ninety-five-percent-(95%)~~ 95% of the total cost thereof. The share of the cost to be paid by the city at large shall be paid in the manner provided by K.S.A. 12-6a14, and amendments thereto.

(b) If any property deemed benefited shall ~~by reason of any provision of law~~ be exempt from payment of special assessments ~~therefor~~ by reason of any provision of law, such assessment ~~shall~~, nevertheless, shall be computed and shall be paid by the city at large.

(c) If any property which would otherwise be deemed benefited by an improvement has made payment of any tax, excise, fee or charge, or has dedicated land or easements, which payment or dedication has been expressly found by the governing body to represent all or a portion of the property's contribution to the cost of such improvement, the governing body either may (1) exclude the property from any improvement district created to

construct and finance the same improvement and not levy any special assessment against the property for payment of the improvement, or (2) include the property in an improvement district created to construct and finance the same improvement, but provide a credit for the payment of any such tax, excise, fee, charge or dedication against the amount of any special assessment to be levied against the property for payment of the improvement.

Sec. 4. K.S.A. 12-6a11 is hereby amended to read as follows:  
12-6a11. No suit to set aside the ~~said~~ assessments or otherwise question the validity of the proceedings shall be brought after the expiration of ~~thirty-(30)~~ 30 days from the publication of the ordinance fixing ~~said~~ the assessments. No such suit shall litigate a claim or issue which was or could have been litigated in an action brought in accordance with subsection (c) of K.S.A. 12-6a06, and amendments thereto.

Sec. 5. K.S.A. 12-690, 12-6a06, 12-6a07, 12-6a09 and 12-6a11 are hereby repealed.

STATE OF KANSAS

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TOPEKA

HOUSE OF  
REPRESENTATIVES

March 23, 1993

COMMITTEE ASSIGNMENTS

MEMBER: EDUCATION  
LOCAL GOVERNMENT  
JOINT COMMITTEE ON PLANNING EDUCATION

Report of House Local Government Subcommittee #4  
Concerning SB 182

The Subcommittee recommends that the House Local Government Committee recommend SB 182 favorable for passage with the attached amendment.

Further, the Subcommittee recommends the following language be inserted into the Local Government Committee minutes:

"(TAX POLICY): There has been some concern voiced as to the precedent established by this bill for tax policy in this state. The danger of this legislation is that it may encourage other municipalities to seek to adjust county tax distribution formulas to their advantage. It is felt that this situation is unique enough and the result equitable enough as to not run a significant risk of disrupting the tax structure of this state".

The Subcommittee recommends this language to identify its concern for the seriousness of this bill and its implications to the state as a whole.

Bob Tomlinson  
Subcommittee Chairman

ATTACHMENT 7-1  
3-23-93

Proposed Amendment  
to Senate Bill No. 182

On page 2, in line 37, following the stricken period, by inserting "The ad valorem property tax levy of any county or city district entity or subdivision shall be included within this term if the levy of any such district entity or subdivision is applicable to all tangible property located within each such city or county.";

ATTACHMENT 7-2  
3-23-93



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TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: AGRICULTURE  
ENERGY & NATURAL RESOURCES  
LOCAL GOVERNMENT

LOCAL GOVERNMENT SUBCOMMITTEE 3  
S.B. 273

SB 273 allows counties to publish, either monthly or quarterly, a summary of all county expenditures and the summary must include the statement: "An itemized statement of expenditures is available for review in the clerks office."

The subcommittee reviewed and discussed the publishing requirements of cities, townships, and water districts and is aware that these entities are not held to a uniform statute. School districts are not required by statute to publish expenditures. There are inequities.

Currently there are lawsuits pending or filed against some counties who have summarized and SB 273 will address that issue.

The counties will be required to publish no more than cities and the subcommittee does not believe the passage of this bill will diminish the publics' right to know.

By unanimous consent the subcommittee adopts SB 273 and recommends this bill favorably for passage to the Committee on Local Government.

Richard Alldritt, Chairman  
Bill Bryant  
Doug Mays  
Gayle Mollenkamp  
Gwen Welshimer

ATTACHMENT 8-1  
3-23-93

**19-228.** Statement of expenditures; publication. [The board of county commissioners shall cause to be published at the end of each calendar quarter or, if the county commissioners so provide, at the end of each month, a statement of all sums of money allowed in excess of fifty dollars, and for what purpose during the preceding quarter or month. Whenever salary and wages of employees or amounts paid to vendors or other items of expense are required to be published, the amount published shall reflect the total amount paid to such employee or vendor or the total amount of such expense during the period covered by the publication. Such statement shall be published once in a newspaper having the qualifications required by K.S.A. 64-101.

History: G.S. 1868, ch. 25, § 35; R.S. 1923, 19-228; L. 1973, ch. 103, § 1; L. 1974, ch. 111, § 1; L. 1980, ch. 118, § 1; July 1.

(a) Except as provided by subsection (b),

an itemized

(b) In lieu of publishing an itemized statement of expenditures as required by subsection (a), the board of county commissioners may publish a summary of expenditures from each fund and the cash balance of each fund at the beginning and close of the quarter or month. If a summary of expenditures is published as authorized by this subsection, a notice also shall be included that a detailed statement of expenditures is available for public inspection at the county clerk's office. Copies of such statement shall be available upon request. *AT NO REQUEST COST TO THE PERSON*

*REQUESTING THE STATEMENT.*

ATTACHMENT 8-2  
3-23-93

# Opinion

## Editorials

### Be accountable

**Y**ou can kiss your right to public information goodbye if rural interests in the Kansas Legislature get their way, and it looks as though they will.

Rep. Nancy Brown, Stanley Republican who is chairman of the House Local Government Committee, says rural county commissioners are pulling out all the stops to get their rural legislators to push for passage of Senate Bill 273.

What this bill does, in general, is change a section of the law that deals with how county commissioners report to the public on what they spend.

Instead of requiring commissioners to publish an accounting of their expenditures, by item, it would allow commissioners simply to publish a summary of how much they spend, without the mention of specific items.

Of course, an accounting of the specific expenditures would be on file at the county clerk's office, but that fact is merely a bold-faced hypocrisy, a slap in the face of every taxpayer.

How many taxpayers will trek to the county clerk's office to pore over the county's bookkeeping? Very few.

Senate Bill 273 is government at its very worst. If the Legislature is interested in doing anything about this aspect of government it ought to be toward the end of making government more accountable, not less.

Why is the legal publication of government expenditures a vital public service? Because the average citizen cannot read a government budget and understand what it means. At the very least, taxpayers are entitled to know, specifically, what their money was spent on after the fact. And the information should be easily available to them.

Senate Bill 273 is government secrecy in action. Legal publications cost taxpayers money. That is a fact. But what is more costly, paying to get this information, or never getting it at all?

Local governments have found many ways around the law already, placing legal publications with the least circulation, for example.

Those governments have, in effect, used legal publications as a form of economic development for small newspapers.

If advertising rates are too high, let the Kansas Legislature change them. Any newspaper that depends on legal advertising for its existence has a problem anyhow.

The aim of legal publications should be to get the information to the most people possible. In some cases that could be done through free distribution "shopper" publications. That isn't legal now, but maybe the legislature ought to consider it.

The only thing the legislature ought to be considering in this area is how to make government at all levels more accountable.

—Jim Hitch

9  
ATTACHMENT  
3-23-93

TO: Rep. Nancy  
BROWN

FROM: Jim Hitch

3/18/93

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TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: LABOR & INDUSTRY  
ECONOMIC DEVELOPMENT  
LOCAL GOVERNMENT

March 23, 1993

We the SCR 1613 subcommittee fully support the creation of a new joint Port Authority by the cities of Coffeyville, and Chanute.

While choosing not to amend SCR 1613, we strongly recommend the inclusion of as many communities as possible to make the Port Authority viable.

Representatives: Les Donovan  
Barbara Ballard  
Carl Holmes  
Jack Wempe

ATTACHMENT 10  
3-23-93