

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:00 a.m. on March 15, 1993 in Room 531-N of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Jim Kaup, Gilmore & Bell  
Chris McKenzie, League of Kansas Municipalities  
Dr. Ramon Powers, Kansas State Historical Society  
Robert L. Beardsley, Wichita Metropolitan Area Planning Dept.  
Ronald Schneider, Kansas Preservation Alliance

Others attending: See attached list

HB 2506 -- Concerning municipalities; relating to the issuance of bonds.

Jim Kaup, Gilmore & Bell, testified in support of the bill. He called the committee's attention to copies of a letter with a balloon of the bill attached from Joe L. Norton of Gilmore & Bell which explains the bill's intent. (See Attachment 1). Mr. Kaup said the bottom line of the bill is to increase the marketability of municipal bonds as there are underwriters who will not buy bonds without a discount. Cities would not be required to do this by the bill, but it makes the option available to cities. The important changes are located on page 1, lines 21 and 24, and on page 2, line 2. Mr. Kaup concluded by explaining the other changes located on page 2, line 5, and on page 3, lines 9 and 10.

Chris McKenzie, League of Kansas Municipalities, testified in support of the bill. (See Attachment 2).

Written testimony in support of the bill by Rebecca E. Floyd, Office of the Attorney General, was submitted. (See Attachment 3)

Sen. Tillotson made a motion to report HB 2506 favorable for passage, Sen. Gooch seconded, and the motion carried with Sen. Ranson passing.

Continued hearing on HB 2419 -- Relating to the annexation of fire districts.

Chris McKenzie, League of Kansas Municipalities, testified in opposition to the bill and distributed copies of a balloon of the bill with suggested amendments and a brief explanation of the amendments. (See Attachments 4 and 5).

The Chairman asked Mr. McKenzie if he would accept leaving in the language on page 6 of the bill if the amendment were left in on page 8 to take care of the standing issue. Mr. McKenzie answered that he would accept this with reservations because it is not yet clear what the full impact would be.

Sen. Langworthy asked Mr. McKenzie if had offered the same amendments in the House. Mr. McKenzie said those offered today are additional amendments, not the ones offered in the House.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT, Room 531-N Statehouse, at 9:00 a.m. on March 15, 1993.

The Chairman distributed copies of proposed amendments which staff had prepared for him. (See Attachment 6). He noted that the bill can be passes as is, it can be rejected, or a middle ground can be reached with the clarifying amendment on page 8 and keeping the remainder of the bill intact.

Sen. Ranson asked if the bill is mandating anything other than the board of county commissioners consider the impact of annexation. The Chairman confirmed her statement reiterating that no action by the board would be required, just that consideration be given.

Sen. Feleciano stated that he feels the amendment would preclude the constitutional right of citizens to sue.

Sen. Tillotson asked if the amendment would nullify the intent of the bill. The Chairman responded that it would take the "teeth" out of the bill.

Sen. Reynolds questioned as to if the bill could be changed so that people on adjacent land could join in a suit with landowners of the district.

Mr. Heim explained that there is no constitutional right to sue with regard to annexation, therefore, whatever the legislature gives is what there is in terms of rights. As to Sen. Reynolds thoughts, he could not be certain how that would work.

Sen. Langworthy asked the Chairman if the sponsor of the bill would be satisfied with the amendments. The Chairman said, yes, with the amendment on page 8 and those offered by the League of Municipalities.

The Chairman asked the committee if it wished to act on the bill.

Sen. Lanworthy made a motion to adopt the amendments on page 8 prepared by staff and as proposed by the League of Municipalities except on page 6, Sen. Reynolds seconded the motion, and the motion carried.

Sen. Tillotson made a motion to report HB 2419 unfavorable for passage, Sen. Gooch seconded.

Sen. Langworthy made a substitute motion to report HB 2419 favorable for passage.

A question arose as to if a substitute motion can be made for an opposite vote. Sen. Langworthy withdrew her substitute motion.

A short discussion followed as to the results of reporting a bill adversely. It was determined that if it is reported adversely, it can be reconsidered.

The Chairman clarified that bill by explaining that, currently, the county commissioners do not have to consider landowners adjacent to annexed fire districts, but with this bill, it must consider them.

Sen. Langworthy felt that reporting the bill unfavorably is harsh treatment. Other possibilities were discussed.

Sen. Tillotson withdrew her original motion and made a motion to table HB 2419, Sen. Langworthy seconded, and the motion failed.

Sen. Downey made a motion to report HB 2419 favorable for passage, Sen. Langworthy seconded. The vote was unclear and a show of hands was requested. The motion failed.

HB 2470 -- Concerning historic preservation.

Dr. Ramon Powers, Kansas State Historical Society, testified in support of the bill. (See Attachment 7).

The Chairman asked Dr. Powers to briefly explain why the request is being made to change the requirement from 500 feet to 200 feet. Dr. Powers answered that it would reduce the number of projects that communities must send to the state historic preservation officer.

There being only ten minutes of committee time remaining, the Chairman called on out-of-town conferees. Robert Beardsley, Wichita Metropolitan Area Planning Department, testified in support of the bill. (See Attachment 8).

Ron Schneider, Kansas Preservation Alliance of Wichita, testified in opposition to HB 2470. (See Attachment 9). Mr. Schneider had attached proposed amendments to his testimony which would give the State Historical Society final authority. Dr. Powers stated he found the amendments acceptable.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT, Room 531-N Statehouse, at 9:00 a.m. on March 15, 1993.

There being no further time, the hearing on HB 2470 was continued until tomorrow, March 16. The Chairman asked Dr. Powers to testify further at that time and that Mr. Schneider work with Dr. Powers on amendments. Remaining conferees will testify at tomorrow's meeting also.

The minutes of March 11 were approved.

The meeting was adjourned at 10:00 a.m.

The next meeting is scheduled for March 16, 1993.

Date: March 15, 1993

## GUEST REGISTER

SENATE

## LOCAL GOVERNMENT

[illegible]

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OF COUNSEL  
RICHARD E. PETRIE

March 11, 1993

Senator Mark Parkinson  
Chairman  
Senate Committee on  
Local Government  
State Capitol, Room 128-S  
Topeka, KS 66612

VIA FEDERAL EXPRESS

Re: House Bill No. 2506

Dear Sen. Parkinson:

Thank you for the opportunity to submit information concerning House Bill No. 2506, a bill that proposes to amend two sections of the Kansas statutes that relate to the issuance of municipal bonds. This bill passed the House by a vote of 124 to 0. It is my understanding that you have scheduled a hearing for Monday, March 15, 1993 at 9:00 a.m. Due to prior commitments, I will be unable to attend the hearing. However, Mr. James M. Kaup of our firm will be present and available to answer any technical questions from the Committee. It is also my understanding that Ms. Rebecca E. Floyd of the Attorney General's office will be available for the same purpose.

Section 1 of House Bill No. 2506 proposes to amend K.S.A. 10-106 relating to the public sale of municipal bonds. Such statute requires a public sale, at sealed bid, for most issuances of general obligation bonds by Kansas municipalities. The proposed amendments do not modify or provide any additional exemptions to the public sale requirements. Under the existing statute, bonds sold at public sale are required to be sold at not less than par and accrued interest. The proposed amendment (page 2, lines 1 and 2) will allow the municipalities to establish the purchase price for bonds sold at public sale. The proposed amendment would not require municipalities to sell bonds at discount but would allow municipalities the flexibility to structure the bond sales in such manner if it is in the municipality's best interest. The proposed changes would allow municipalities to

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Attachment 1

Senator Mark Parkinson  
March 11, 1993  
Page Two

accept a "discount bid", a bid of less than the par value of the bonds. Under existing law, in almost all public sales, the bidders bid interest rates which are higher than current market conditions so that the purchaser may resell the bonds to individual customers at market prices, thus establishing a "premium" to be derived for that company's or institution's compensation for resale of the bonds. This artificially inflates the rates that municipalities must pay on bond issues. By allowing a discount bid, a municipality may receive current market interest rates on the bonds. The difference between par and the price actually bid by the purchaser, i.e. the discount, serves as compensation to the purchaser. If this Bill passes, although municipalities will receive lower interest rates for bonds, they will also receive an amount less than par, thus requiring planning in establishing the par amount of the bonds so that the net amount received by the municipality will equal costs to be paid for projects financed by the bonds. Bid documents on bonds that are currently allowed to be sold at discount (revenue bonds or refunding bonds) usually establish the maximum discount which is acceptable by the municipality.

Attached hereto is the cover page of the Official Statement for the City of Manhattan, Kansas, relating to two series of bonds that were sold during the summer of 1992. The Series 189 Bonds financed various capital improvements and were sold at par plus accrued interest. The Series 190 Bonds, being refunding bonds, were allowed to be sold at a discount. A comparison of the two issues indicates that interest rates, as well as yield, were higher on the Series 189 Bonds than the Series 190 Bonds. This example illustrates one instance where a municipality could save in interest costs by selling bonds at discount.

The additional proposed modification contained in House Bill No. 2506 (page 2, line 5) conforms to the requirements of a certified or "cashier's" check to language contained in the existing statute (page 1, line 30).

Section 2 of House Bill No. 2506 proposes to amend K.S.A. 10-1009 relating to maximum interest rates that may be placed on municipal bonds. The current statute references treasury bonds published in the weekly "MuniWeek". "MuniWeek" has ceased publication and has been replaced by "The Bond Buyer". Accordingly, proposed changes are contained on page 3, lines 10 and 18 of the Bill. In addition, for clarification purposes, lines 9 and 17 of the Bill indicate a "thirty-year" reference to treasury bonds to establish the index.

Senator Mark Parkinson  
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Should you have questions concerning this correspondence or if I can be of additional service to you or the Committee, please feel free to contact the undersigned.

Very truly yours,



Joe L. Norton

JLN:jlw

Enclosure

cc Rebecca E. Floyd, Attorney General's Office  
Theresa Kiernan, Revisor of Statutes Office  
Mike Heim, Legislative Research  
Curt Wood, City of Manhattan  
James M. Kaup, Gilmore & Bell, P.C.

# HOUSE BILL No. 2506

By Committee on Appropriations

2-19

AN ACT concerning municipalities; relating to the issuance of bonds; amending K.S.A. 10-106 and 10-1009 and repealing the existing sections.

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

Section 1. K.S.A. 10-106 is hereby amended to read as follows: 10-106. (a) Municipal bonds shall be sold at public sale as follows: The officers having charge of the sale of the bonds shall publish a notice of the sale one time in a newspaper having general circulation in the county where the bonds are issued and in the Kansas register. Such notices shall be published not less than six days nor more than 30 days before the sale and shall contain the following information: (1) Except as provided by subsection (b), the date, time and place at which a public auction will be held or at which written sealed bids will be received and considered for the sale of the bonds for cash at ~~not less than par and accrued interest at such price as the municipality may accept~~; (2) the date of issue, total par value and denomination of the bonds being sold; (3) the dates and amounts of maturities of the bond issues; (4) the dates on which interest on the bonds shall become due and payable; (5) the place or places where and the approximate date on which the bonds being sold will be delivered to the purchaser; (6) a statement that a good faith deposit in the form of a certified or cashier's check in the amount of 2% of the total par value of the bonds being sold shall accompany each bid or in the case of public sale at auction the same shall be furnished by each bidder; (7) a statement disclosing whether or not the purchaser of the bonds will be required to pay for the printing thereof and whether or not and to what extent the purchaser of the bonds will be required to pay the expense of legal services rendered to the municipality in connection with the issuance of the bonds including the fees of recognized bond counsel for an opinion as to legality of issuance; (8) the assessed valuation of the municipality; and (9) the total bonded indebtedness of the municipality as of the date on which the bonds being sold are dated including the bonds submitted for bid. The rate of interest may be omitted in advertising and the bidders requested to specify the lowest interest rate or rates

HB 2506

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on the bonds at which they will pay not less than par and accrued interest the purchase price.

If sold at public sale with sealed bids, purchasers shall submit their bids in writing, sealed, for all or any part of the bonds, and each bid shall be accompanied by a certified or cashier's check for 2% of the total amount of the bid. In case any purchaser, whose bid is accepted, fails to carry out the contract, the deposit shall be forfeited to the municipality issuing the bonds. Sealed bids shall be opened publicly and only at the time and place specified in the notice. At the time and place specified, the bonds shall be sold to the highest and best bidder or bidders, and the bonds may be allotted among the bidders, however, any or all bids may be rejected. No contract for the sale of the bonds shall be made except on bids submitted as provided in this section. No bonds shall be delivered to any purchaser until the amount of the bid is placed in the hands of the officer in charge of the sale. The provisions of this section relating to the public sale of bonds shall not apply to bonds secured solely and only by revenues, bonds sold, pursuant to written agreement, to the government of the United States of America or any bureau, department, instrumentality or agency thereof, bonds issued pursuant to K.S.A. 10-427 et seq., and amendments thereto, and all bonds of the same series or which are issued simultaneously with such bonds and bond sales where the total amount of the issue does not exceed \$100,000. In such cases, the bonds may be sold at public or private sale as the officers having charge of the sale of such bonds determine. The practice of providing more than one issue within a twelve-month period for any one project is prohibited unless the project engineer or architect certifies that it is necessary to do so for the orderly construction progress of the project.

(b) As an alternative to providing notice of the date, time and place of public auction or receipt of bids provided by subsection (a)(1), the officers having charge of a bond sale may establish a time period of not less than seven nor more than 30 days during which such bonds would be sold. Notice of such sale period shall be published one time in a newspaper having general circulation in the county where the bonds are issued and in the Kansas register and shall be published not less than six days nor more than 30 days before the beginning date of the sale period. The notice shall contain the information specified in subsection (a) except that in place of the time and date of sale, the notice shall specify the time period during which the bonds would be sold and the manner in which persons interested in submitting a bid may register for notice of the bond sale. At least three business days prior to the time and date



1 of the bond sale, the officers having charge of the sale shall give  
2 notice to all persons having registered for notice of the bond sale,  
3 and bids shall be submitted and received and the sale made in the  
4 manner provided in subsection (a).

5 Sec. 2. K.S.A. 10-1009 is hereby amended to read as follows:

6 10-1009. (a) The maximum stated rate of interest which may be fixed  
7 on fixed-rate bonds issued by a municipality or taxing subdivision of  
8 the state of Kansas shall be determined on the day the bonds are  
9 sold and shall not exceed the index of *thirty-year* treasury bonds  
10 published by ~~the weekly MuniWeek~~ *The Bond Buyer*, in New  
11 York, New York, on the Monday next preceding the day on which  
12 the bonds are sold, plus 2%.

13 (b) The maximum stated rate of interest which may be fixed on  
14 variable-rate bonds issued by a municipality or taxing subdivision of  
15 the state of Kansas shall be determined on the date on which the  
16 rate is determined in accordance with the resolution or ordinance  
17 of the issuer and shall not exceed the index of *thirty-year* treasury  
18 bonds published by ~~the weekly MuniWeek~~ *The Bond Buyer*, in  
19 New York, New York, on the Monday next preceding such date,  
20 plus 2%.

21 (c) The maximum rate of interest specified in this section shall  
22 be applicable to bonds issued after the effective date of this act  
23 pursuant to proceedings initiated either before or after the effective  
24 date of this act.

25 Sec. 3. K.S.A. 10-106 and 10-1009 are hereby repealed.

26 Sec. 4. This act shall take effect and be in force from and after  
27 its publication in the Kansas register.

# OFFICIAL STATEMENT

Rating: Moody's - Aa

## NEW ISSUE

In the opinion of Gilmore & Bell, Wichita, Kansas, Wichita, Kansas, Bond Counsel, under existing law and assuming continued compliance with certain requirements of Internal Revenue Code of 1986, as amended (the "Code"), the interest on the Bonds (including any original issue discount properly allocable to an owner thereof) is not deductible from gross income for federal income tax purposes, is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, and is excluded from computation of Kansas adjusted gross income, and is exempt from the tax imposed by Kansas counties, cities or townships upon the gross earnings derived from money, notes and other evidence of debt. The Bonds have not been designated as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code. See "LEGAL MATTERS - Opinion of Bond Counsel" herein.

## CITY OF MANHATTAN, KANSAS

\$2,943,000

### GENERAL OBLIGATION BONDS SERIES 189

\$6,765,000

### GENERAL OBLIGATION REFUNDING BONDS SERIES 190

Dated: June 1, 1992

Due: November 1, as shown below

The Series 189 Bonds and the Series 190 Bonds (jointly the "Bonds") will be issued as fully registered bonds without coupons in the denomination of \$5,000 or any integral multiple thereof. Principal on the Series 189 Bonds will be payable annually on November 1, beginning on November 1, 1993. Principal on the Series 190 Bonds will be payable annually on November 1, beginning on November 1, 1992. Semiannual interest on the Bonds will be payable on May 1 and November 1, beginning on November 1, 1992. Principal will be payable upon presentation and surrender of the Bonds by the registered owners thereof at the office of the Treasurer of the State of Kansas, Topeka, Kansas, as bond registrar and paying agent (the "Paying Agent" and "Bond Registrar"). Interest will be payable by check or draft of the Paying Agent mailed to the persons who are the registered owners of the Bonds as of the close of business on the fifteenth day (whether or not a business day) of the calendar month preceding each interest payment date.

Bonds maturing November 1, 1992 to November 1, 2001, inclusive, shall become due without option of prior payment. The Bonds maturing on November 1, 2002, and thereafter will be subject to redemption prior to maturity at the option of the City on November 1, 2001, or on any interest payment date thereafter as described herein. See "THE BONDS - Redemption Provisions" herein.

The Bonds constitute general obligations of the City and are payable in part from special assessments levied upon the property benefitted by the construction of said improvements and, if not so paid, from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City, with the balance payable from ad valorem taxes which may be levied without limitation as to rate or amount upon all the taxable tangible property, real and personal, within the territorial limits of the City.

### MATURITY SCHEDULE

Series 189 Bonds				Series 190 Bonds			
Maturity Date	Principal Amount	Interest Rate	Yield	Maturity Date	Principal Amount*	Interest Rate	Yield
1993	\$158,000	8.00%	3.50%	1992	\$ 50,000	3.00%	PAR
1994	165,000	8.00%	4.25%	1993	45,000	3.50%	PAR
1995	175,000	5.875%	4.75%	1994	50,000	4.00%	PAR
1996	190,000	4.90%	PAR	1995	50,000	4.50%	PAR
1997	210,000	5.00%	PAR	1996	55,000	4.75%	PAR
1998	220,000	5.20%	PAR	1997	55,000	4.90%	PAR
1999	235,000	5.40%	PAR	1998	90,000	5.00%	PAR
2000	250,000	5.55%	PAR	1999	395,000	5.15%	PAR
2001	260,000	5.70%	PAR	2000	485,000	5.30%	PAR
2002	275,000	5.85%	PAR	2001	575,000	5.45%	PAR
2003	60,000	6.00%	PAR	2002	610,000	5.60%	PAR
2004	65,000	6.10%	PAR	2003	635,000	5.75%	PAR
2005	70,000	6.125%	PAR	2004	685,000	5.90%	PAR
2006	75,000	6.10%	6.15%	2005	720,000	6.00%	PAR
2007	75,000	6.20%	PAR	2006	765,000	6.00%	PAR
2008	80,000	6.25%	PAR	2007	655,000	6.05%	PAR
2009	85,000	6.30%	PAR	2008	565,000	6.10%	PAR
2010	90,000	6.30%	PAR	2009	170,000	6.15%	PAR
2011	100,000	6.30%	6.35%	2010	110,000	6.20%	PAR
2012	105,000	6.30%	6.35%				

(All plus accrued interest, if any)

The Bonds are offered for delivery when, as, and if issued subject to the approval of legality by Gilmore & Bell, Wichita, Kansas, Bond Counsel. It is expected that the Bonds will be available for delivery on or before June 17, 1992.

OFFICIAL STATEMENT DATED MAY 11, 1992



**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: Senate Local Government Committee  
FROM: Chris McKenzie, Executive Director  
DATE: March 15, 1993  
RE: HB 2506

I appreciate the opportunity to appear today in support of HB 2506. This legislation would help improve the marketability and lower the cost of issuing municipal bonds by allowing the sale of such bonds at discount. Current law limits municipalities from selling municipal bonds at less than par (the face value of the bond) and accrued interest. By allowing municipalities to sell bonds at discount as well, HB 2506 will open up another avenue for lowering the cost of municipal bond issues.

For the Committee's information, I have been advised by Mr. William Caton, President of the Kansas Development Finance Authority, that the Authority also has found it necessary in recent months to structure bond issues to allow for the sale of bonds to finance state agency projects at a discount rather than at face value. In such situations what is most critical is the net interest cost of the issue over its life. If selling bonds at a discount will save taxpayers funds, it would appear to be a desirable alternative to give municipalities.

RECOMMENDATION: The League urges the Committee to approve HB 2506.

*Senate Local Gov't  
3-15-93  
Attachment 2*



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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ROBERT T. STEPHAN  
ATTORNEY GENERAL

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Testimony of Rebecca E. Floyd  
Assistant Attorney General  
Before the Senate Committee on Local Government  
Re: House Bill No. 2506  
March 15, 1993

Mr. Chairman, Members of the Committee:

Thank you for providing me with the opportunity to comment on House Bill No. 2506 which proposes to amend K.S.A. 10-106 relating to the public sale of municipal bonds and K.S.A. 10-1009 relating to the maximum interest rates municipal bonds may carry.

The proposed amendment to K.S.A. 10-106 which requires public sale for most general obligation bond issues does not change or affect the public sale requirements. The amendment proposes only to change the requirement that such bonds be sold at not less than par (the stated amount of the bond) plus accrued interest. The amendment proposed, while not requiring municipalities to sell their bonds at a discount, would, when Kansas municipalities deemed such an action appropriate and in the best public interest, allow them to sell the bonds at discount for less than par and accrued interest costs.

Senate Local Gov't  
3-15-93  
Attachment 3

In our opinion this amendment if passed would afford Kansas municipalities greater flexibility and control over their financial programs. The amendment would allow municipalities a chance to receive more favorable market rates on bonds, which when sold at par, generally carry higher rates in order that the original purchasers may realize some profit when they are resold to customers at market rates.

The amendment would provide Kansas municipalities with a useful tool in structuring their financial programs and assist them in offering competitive securities to the market.

Section 2 of House Bill No. 2506 proposes to amend K.S.A. 10-1009 relating to the maximum interest rates Kansas bonds may carry. This amendment would merely change the reference to the treasury bond index formerly published in Muniweek to The Bond Buyer. Muniweek ceased publication last year. The Bond Buyer carries the Treasury Bond Index and the 30 Year Bond Index is the specific index utilized. We favor this amendment as well.

Please feel free to contact me should you have any questions regarding this matter.



**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: Senate Committee on Local Government  
FROM: Chris McKenzie, Executive Director  
DATE: March 15, 1993  
RE: House Bill No. 2419

Thank you for the opportunity to offer the views of the league of Kansas Municipalities concerning HB 2419. By action of the League's Legislative Policy Committee I appear today in opposition to HB 2419. While I have worked with the bill's sponsor to make improvements to this measure and we appreciate her cooperation, the League is still opposed to HB 2419 for the following reasons:

1. **It is Inadvisable to Make Changes to the Annexation Laws Without Further Study.** The Legislature made major changes to the annexation laws in 1987 after at least two years of study. The cities and counties of the state are just beginning to fully understand those changes. In fact, the Kansas Supreme Court only recently issued its first opinion on the bilateral statutory procedure, K.S.A. 12-521. In that opinion involving the City of Topeka and the Sherwood Improvement District, the Court concluded it was appropriate for the county commission to look at the impact of the annexation on the balance of the property in a political subdivisions that would be affected by the annexation. In other words, the special provisions of HB 2419 providing for the consideration of such factors for fire districts are unnecessary. Fire districts already are mentioned in K.S.A. 12-521 (see line 21, page 7 of HB 2419), and this measure appears to give fire districts special status which other subdivisions are not afforded.
2. **HB 2419 Appears to Give Standing to Sue to Residents of Areas That Are Not Annexed.** Although it does not appear to be the sponsor's intention, lines 27 - 28 on page 6 appear to give standing to sue to the owners of land in areas that are not going to be annexed if they are "near or adjacent to the land proposed to be annexed". The League strongly opposes granting standing to such parties. The bilateral procedure already grants standing to the primary parties involved--the city, the owners of the property to be annexed, and the county. The current statutory scheme already directs the county commission to consider "the effect of the proposed annexation on the city and other adjacent areas, including, but not limited to, other cities, fire, sewer and water districts, improvement districts, townships or industrial districts..." (see lines 20 - 23 on page 7). It is the job of the county commission to balance the interests of all of the parties **and** to represent the interests of those parties who are indirectly affected, such as the owners of property near the area to be annexed.
3. **Certain Terms Are Very Ambiguous.** Lines 27 and 28 of page 6 of the bill would require the county commission to make specific written findings of fact and conclusions determining whether the annexation would cause manifest injury to the owners of any land proposed to be annexed "or to the owners of land in areas **near or adjacent to** the land to be annexed..." Quite frankly, we are not sure what the term "near or adjacent to" means in this context. It is quite possible, for example, for a person to conclude that this includes property outside the jurisdiction of an affected political subdivision which is "near or adjacent to" the land to be annexed.

RECOMMENDATION: We respectfully recommend that the Committee study this measure very carefully before considering it for action. We urge the Committee to not report HB 2419 favorably for passage unless it is amended as shown in the attached balloon version of the bill. If it pleases the Committee, I would be happy to explain these amendments to the Committee.

*Senate Local Gov't  
3-15-93 Attachment 2*



HOUSE BILL No. 2419

By Committee on Local Government

2-10

Amendments Proposed By  
League of Kansas Municipalities  
March 15, 1993

Senate Local Gov't  
3-15-93  
Attachment 5

9 AN ACT concerning cities; relating to annexation; amending K.S.A.  
10 12-520, 12-520a and 12-521 and repealing the existing sections.  
11

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

13 Section 1. K.S.A. 12-520 is hereby amended to read as follows:  
14 12-520. (a) Except as hereinafter provided, the governing body of  
15 any city, by ordinance, may annex land to such city if any one or  
16 more of the following conditions exist:

17 (1) The land is platted, and some part of the land adjoins the  
18 city.

19 (2) The land is owned by or held in trust for the city or any  
20 agency thereof.

21 (3) The land adjoins the city and is owned by or held in trust  
22 for any governmental unit other than another city, except that no  
23 city may annex land owned by a county which has primary use as  
24 a county-owned and operated airport, or other aviation related ac-  
25 tivity or which has primary use as a county owned and operated  
26 zoological facility, recreation park or exhibition and sports facility  
27 without the express permission of the board of county commissioners  
28 of the county.

29 (4) The land lies within or mainly within the city and has a  
30 common perimeter with the city boundary line of more than 50%.

31 (5) The land if annexed will make the city boundary line straight  
32 or harmonious and some part thereof adjoins the city, except no  
33 land in excess of 21 acres shall be annexed for this purpose.

34 (6) The tract is so situated that  $\frac{2}{3}$  of any boundary line adjoins  
35 the city, except no tract in excess of 21 acres shall be annexed under  
36 this condition.

37 (7) The land adjoins the city and a written petition for or consent  
38 to annexation is filed with the city by the owner.

39 (b) No portion of any unplatted tract of land devoted to agri-  
40 cultural use of 21 acres or more shall be annexed by any city under  
41 the authority of this section without the written consent of the owner  
42 thereof.

43 (c) No city may annex, pursuant to this section, any improvement

1 district incorporated and organized pursuant to K.S.A 19-2753 *et*  
2 *seq.*, and amendments thereto, or any land within such improvement  
3 district. The provisions of this subsection shall apply to such im-  
4 provement districts for which the petition for incorporation and or-  
5 ganization was presented on or before January 1, 1987.

6 ~~(d)~~ *Subject to the provisions of this section and subsection (f)*  
7 *(e) of K.S.A. 12-520a, and amendments thereto, a city may annex,*  
8 *pursuant to this section, any fire district organized under the*  
9 *provisions of K.S.A. 19-3613 et seq., and amendments thereto,*  
10 *or any land within such fire district.*

11 ~~(d)~~ *(e)* Whenever any city annexes any land under the authority  
12 of paragraph 2 of subsection (a) which does not adjoin the city, tracts  
13 of land adjoining the land so annexed shall not be deemed to be  
14 adjoining the city for the purpose of annexation under the authority  
15 of this section until the adjoining land or the land so annexed adjoins  
16 the remainder of the city by reason of the annexation of the inter-  
17 vening territory.

18 ~~(e)~~ *(f)* No city ~~shall be authorized to~~ *may* annex the right-of-  
19 way of any highway under the authority of this section unless at the  
20 time of the annexation the abutting property upon one or both sides  
21 thereof is already within the city or is annexed to the city in the  
22 same proceeding.

23 ~~(f)~~ *(g)* The governing body of any city by one ordinance may  
24 annex one or more separate tracts or lands each of which conforms  
25 to any one or more of the foregoing conditions. The invalidity of  
26 the annexation of any tract or land in one ordinance shall not affect  
27 the validity of the remaining tracts or lands which are annexed by  
28 the ordinance and which conform to any one or more of the foregoing  
29 conditions.

30 ~~(g)~~ *(h)* Any owner of land annexed by a city under the authority  
31 of this section, within 30 days next following the publication of the  
32 ordinance annexing the land, may maintain an action in the district  
33 court of the county in which the land is located challenging the  
34 authority of the city to annex the land and the regularity of the  
35 proceedings had in connection therewith.

36 Sec. 2. K.S.A. 12-520a is hereby amended to read as follows:  
37 12-520a. (a) The governing body of any city desiring to annex land  
38 under the authority of K.S.A. 12-520, and amendments thereto, ~~first~~  
39 shall adopt a resolution stating that the city is considering the an-  
40 nexation of the land. The resolution shall:

41 (1) Give notice that a public hearing will be held to consider the  
42 annexation of the land and fix the date, hour and place of the public  
43 hearing. Unless the governing body of the city determines adequate

5-2



1 facilities are not available, the public hearing shall be held at a site  
2 located in or as near as possible to the area proposed to be annexed.  
3 The hearing shall be held at the time determined by the governing  
4 body to be the most convenient for the greatest number of interested  
5 persons;

6 (2) describe the boundaries of the land proposed to be annexed;  
7 and

8 (3) state that the plan of the city for the extension of services to  
9 the area proposed to be annexed, which is required under the pro-  
10 visions of K.S.A. 12-520b, and amendments thereto, is available for  
11 inspection during regular office hours in the office of the city clerk.

12 (b) The date fixed for the public hearing shall be not less than  
13 60 nor more than 70 days following the date of the adoption of the  
14 resolution fixing the date of the hearing.

15 (c) A copy of the resolution providing for the public hearing shall  
16 be mailed by certified mail to each owner of land proposed to be  
17 annexed not more than 10 days following the date of the adoption  
18 of the resolution. The resolution shall be published in the official  
19 newspaper of the city not less than one week and not more than  
20 two weeks preceding the date fixed for the public hearing. A sketch  
21 clearly delineating the area in such detail as may be necessary to  
22 advise the reader of the ~~resolution to determine the~~ particular land ~~and~~ <sup>Delete -- confusing</sup>  
23 proposed to be annexed shall be published with the resolution ~~and~~.  
24 A copy ~~thereof of the resolution~~ such sketch also shall be mailed  
25 to the owner of the property with the resolution.

26 (d) A copy of the resolution providing for the public hearing shall  
27 be sent by certified mail not more than 10 days following the date  
28 of the adoption of the resolution to:

29 (1) The board of county commissioners;

30 (2) the governing body of the township where the land to be  
31 annexed is located;

32 (3) any special assessment district or governmental unit providing  
33 municipal services to the area proposed to be annexed including,  
34 but not limited to, sewer districts, rural water districts, fire districts  
35 or improvement districts;

36 (4) any utilities having facilities within the area proposed to be  
37 annexed;

38 (5) the governing body of any school district in the area proposed  
39 to be annexed;

40 (6) any city, county, township or joint planning commission hav-  
41 ing jurisdiction over the area proposed to be annexed; and

42 (7) any other political or taxing subdivision located within the  
43 area proposed to be annexed.

5-4

(e) (1) At the public hearing, a representative of the city shall present the city's proposal for annexation, including the plan of the city for the extension of services to the area proposed to be annexed. Following the explanation, all interested persons shall be given an opportunity to be heard. The governing body may recess, for good cause shown, the hearing to a time and date certain, which shall be fixed in the presence of persons in attendance at the hearing.

(2) *At such hearing or at any continuation of such hearing, the city shall hear testimony as to determine the advisability of the annexation of land in a fire district organized pursuant to K.S.A. 19-3613 et seq., and amendments thereto. The action of the city shall be quasi-judicial in nature. The city shall make specific written findings of fact and conclusions determining whether the annexation of causes manifest injury to the fire district, or to the city if the annexation is disapproved. The findings and conclusions shall be based upon the preponderance of evidence presented to the city. In determining whether manifest injury would result from the annexation, the city's.* As a guide in determining the advisability of such annexation, the city's considerations shall include, but not be limited to, the:

(1) Response time of the city and the fire district to the area proposed to be annexed;

(2) impact on the fire district from the decrease in its tax base if the annexation is approved;

(3) impact on the city's provision of fire service if the annexation is disapproved;

(4) impact on the residents of the area if the annexation is approved; and

(5) impact on the remainder of the fire district if the annexation is approved.

(f) No resolution, notice and public hearing required under the provisions of this section shall be required as a prerequisite to the annexation of land owned by or held in trust for the city or any agency thereof or land all of the owners of which petition for or consent thereto in writing.

(g) Any resolution, adopted pursuant to this section, which includes territory subsequently incorporated pursuant to K.S.A. 15-115 et seq., and amendments thereto, shall be invalid.

Sec. 3. 12-521 is hereby amended to read as follows: 12-521.

(a) Whenever the governing body of any city deems it advisable to annex land which such city is not permitted to annex under K.S.A. 12-520, and amendments thereto, or if the governing body of any city is permitted to annex land under K.S.A. 12-520, and amend-

ments thereto, but deems it advisable not to annex thereunder, the governing body may annex such land as provided by this section. The governing body, in the name of the city, may present a petition to the board of county commissioners of the county in which the land sought to be annexed is located. The petition shall set forth a legal description of the land sought to be annexed and request a public hearing on the advisability of such annexation. The governing body of such city shall make plans for the extension of services to the tract of land proposed to be annexed and shall file a copy thereof with the board of county commissioners at the time of presentation of the petition. Such report shall include:

(1) A sketch clearly delineating the land proposed to be annexed and the area of the city adjacent thereto to show the following information:

(A) The present and proposed boundaries of the city affected by such proposed annexation;

(B) the present streets, water mains, sewers and other city utility lines, and the proposed extension thereto;

(C) the general land use pattern in the areas to be annexed.

(2) A statement setting forth a plan of sufficient detail to provide a reasonable person with a full and complete understanding of the intentions of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city and area proposed to be annexed at the time of annexation and the estimated cost of providing such services. The plan shall state the estimated cost impact of providing such services to the residents of the city and the residents of the area proposed to be annexed. The plan shall state the method by which the city plans to finance the extension of such services to such area. The plan shall include a timetable for the extension of major municipal services to the area proposed to be annexed. The plan shall state the means by which the services currently provided by a township or special district in the area to be annexed shall be maintained by the city at a level which is equal to or better than the level of services provided prior to annexation. The plan shall state those services which shall be provided immediately upon annexation and those services which may be provided upon petition of the landowners to create a benefit district.

(b) The date fixed for the public hearing shall be not less than 60 nor more than 70 days following the date of the presentation of the petition requesting such hearing. Notice of the time and place of the hearing, together with a legal description of the land sought to be annexed and the names of the owners thereof, shall be pub-

lished in a newspaper of general circulation in the city not less than one week and not more than two weeks preceding the date fixed for such hearing.

A copy of the notice providing for the public hearing shall be mailed by certified mail to each owner of the land proposed to be annexed not more than 10 days following the date of the presentation of the petition requesting such hearing.

A sketch clearly delineating the area in such detail as may be necessary to advise the reader of the particular land proposed to be annexed shall be published with such notice and a copy thereof mailed to the owner of the property with such notice.

The board for good cause shown may continue the hearing beyond the time specified in the notice without further publication.

(c) On the day set for hearing, the board of county commissioners shall hear testimony as to the advisability of such annexation, and a representative of the city shall present the city's proposal for annexation, including the plan of the city for the extension of services to the area proposed to be annexed.

The action of the board of county commissioners shall be quasi-judicial in nature. The board of county commissioners shall consider the impact of approving or disapproving the annexation on the entire community involved, including the city and the land proposed to be annexed, in order to insure the orderly growth and development of the community. The board shall make specific written findings of fact and conclusions determining whether such annexation or the annexation of a lesser amount of such area causes manifest injury to the owners of any land proposed to be annexed, ~~or to the owners of land in areas near or adjacent to the land proposed to be annexed~~ or to the city if the annexation is disapproved. The findings and conclusions shall be based upon the preponderance of evidence presented to the board. In determining whether manifest injury would result from the annexation, the board's considerations shall include, but not be limited to, the extent to which the following criteria may affect the city, the area to be annexed, the residents of the city and the area to be annexed, other governmental units providing services to the area to be annexed, the utilities providing services to the area to be annexed, and any other public or private person, firm or corporation which may be affected thereby:

(1) Extent to which any of the area is land devoted to agricultural use;

(2) area of platted land relative to unplatted land;

(3) topography, natural boundaries, storm and sanitary sewers, drainage basins, transportation links or any other physical charac-

Delete -- unclear and ambiguous what "near or adjacent" means

5-6

1 teristics which may be an indication of the existence or absence of  
2 common interest of the city and the area proposed to be annexed;

3 (4) extent and age of residential development in the area to be  
4 annexed and adjacent land within the city's boundaries;

5 (5) present population in the area to be annexed and the pro-  
6 jected population growth during the next five years in the area  
7 proposed to be annexed;

8 (6) the extent of business, commercial and industrial development  
9 in the area;

10 (7) the present cost, methods and adequacy of governmental serv-  
11 ices and regulatory controls in the area;

12 (8) the proposed cost, extent and the necessity of governmental  
13 services to be provided by the city proposing annexation and the  
14 plan and schedule to extend such services;

15 (9) tax impact upon property in the city and the area;

16 (10) extent to which the residents of the area are directly or  
17 indirectly dependent upon the city for governmental services and  
18 for social, economic, employment, cultural and recreational oppor-  
19 tunities and resources;

20 (11) effect of the proposed annexation on the city and other ad-  
21 jacent areas, including, but not limited to, other cities, ~~fire~~, sewer  
22 and water districts, improvement districts, townships or industrial  
23 districts *and, subject to the provisions of section 2, fire districts;* [ 4

24 (12) existing petitions for incorporation of the area as a new city  
25 or for the creation of a special district;

26 (13) likelihood of significant growth in the area and in adjacent  
27 areas during the next five years; and

28 (14) effect of annexation upon the utilities providing services to  
29 the area and the ability of those utilities to provide those services  
30 shown in the detailed plan.

31 (d) The board of county commissioners shall render a judgment  
32 within seven days after the hearing has been adjourned sine die. If  
33 a majority of the board of county commissioners concludes that the  
34 annexation or any part thereof should be allowed, the board shall  
35 so find and grant the annexation by order; and thereupon the city  
36 may annex the land by ordinance. Orders of the board of county  
37 commissioners denying the petition or a part thereof for annexation  
38 shall require a majority vote of the members of the board. When  
39 an order denying a petition or part thereof is issued, it shall be by  
40 resolution, which shall be sent by certified mail to the city proposing  
41 the annexation. All orders of the board of county commissioners  
42 granting or denying petitions for annexation shall be spread at length  
43 upon the journal of proceedings of the board. The failure of such

1 board to spread an order granting annexation upon the journal shall  
2 not invalidate such order.

3 (e) Any owner ~~or the city~~ aggrieved by the decision of the board [of land in the area proposed to be annexed  
4 of county commissioners may appeal the decision of the board to  
5 the district court of the same county in the manner and method set  
6 forth in K.S.A. 19-223, and amendments thereto. Any city so ap-  
7 pealing shall not be required to execute the bond prescribed therein.

8 New Sec. 4. When determining the effect of a proposed annex-  
9 ation on a fire district ~~or land therein~~, considerations by the board [Delete -- unnecessary  
10 of county commissioners shall include, but not be limited to, the:

11 (a) Response time of the city and the fire district to the area  
12 proposed to be annexed;

13 (b) impact on the fire district from the decrease in its tax base  
14 if the annexation is approved;

15 (c) impact on the city's provision of fire service if the annexation  
16 is disapproved;

17 (d) impact on the residents of the area if the annexation is ap-  
18 proved; and

19 (e) impact on the remainder of the fire district if the annexation  
20 is approved.

21 Sec. 5. K.S.A. 12-520, 12-520a and 12-521 are hereby repealed.

22 Sec. 6. This act shall take effect and be in force from and after  
23 its publication in the statute book.

Proposed Amendment to House Bill No. 2419  
(As Amended by House Committee)

On page 4, in line 1, by striking "(1)"; in line 8, by striking "(2)";

On page 8, in line 3, following "owner", by inserting "of land annexed pursuant to this section"; in line 6, following the period, by inserting "Nothing in this subsection shall be construed as granting the owner of land in areas near or adjacent to land annexed pursuant to this section the right to appeal the decision of the board of county commissioners.";

Senate Local Gov 4  
3-15-93  
Attachment 6





# KANSAS STATE HISTORICAL SOCIETY

CENTER FOR HISTORICAL RESEARCH

120 West Tenth ▪ Topeka, Kansas 66612-1291 ▪ 913/296-3251  
FAX #913/296-1005

KANSAS MUSEUM OF HISTORY

6425 South West Sixth ▪ Topeka, Kansas 66615-1099 ▪ 913/272-8681

TESTIMONY BY DR. RAMON POWERS, EXECUTIVE DIRECTOR OF THE KANSAS STATE HISTORICAL SOCIETY, TO THE SENATE LOCAL GOVERNMENT COMMITTEE ON MARCH 15, 1993, CONCERNING HOUSE BILL 2470

As the executive director of the State Historical Society, I wear many different hats. One of them is that of State Historic Preservation Officer. For purposes of carrying out a federal-state partnership program, I am the point of contact and responsibility for a variety of historic preservation-related services and activities.

When the legislature initially enacted the state's historic preservation statute in 1977, it affirmed that the historical, architectural, and archeological resources of Kansas are important assets of the state and worthy of being preserved. Historic preservation means the identification, protection, restoration of the buildings, sites, and structures significant to the history, architecture or archeology of the state, its counties and cities, and the nation.

Obviously the Historical Society is concerned with the past. Our collections are full of newspapers from the past; photographs of past events, people, and places; clothing, tools, and other items used by preceding generations. And of course we are concerned with the legacy we still have in Kansas in our built environment. That richness of historical sites and buildings helps to give us and all Kansans a sense of time and place. Historic resources provide for us a sense of identity, and knowing where we come from provides the basis for deciding where we need to go in the future.

Our concern for the Kansas past translates to a concern for the future of that past. That concern was also recognized by the legislature when it enacted a protective section to the state historic preservation law. Since 1977 that section has been modified a number of times to meet specific needs that existed. Over the past year as we have analyzed that protective section and how it was working, it has become clear to us that some changes are needed. Because the law impacts a number of communities in the state, we took counsel with the League of Kansas Municipalities as well as some individual communities to explore some possible changes. Once our discussions with the League began, things developed rapidly, and it is unfortunate that we did not bring the historic preservation community into the discussion early on.

Before reviewing the bill, let me explain the basic elements of the state historic preservation law. Any project undertaken, licensed or permitted by the state or its political subdivisions that has the potential to encroach upon, damage, or destroy historic properties or their environs must be reviewed by the state historic preservation officer. In plain English, the most common example is that any proposed project around a historic property which requires a building permit must be submitted to the state historic preservation officer for review. Several years ago, the limits for notifying the state historic preservation officer of projects were established at within 500 feet of a historic property for cities and 1,000 feet for properties in rural areas.

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3-15-93  
Attachment 7



The bill under consideration does two things. First, the distance for notice requirements to the State Historic Preservation Officer would be reduced from within 500 feet to within 200 feet of the boundaries of a listed historic property. This change will make the distance consistent with notifications for zoning changes and substantially reduce the number of projects that communities must send to the state historic preservation officer. I might add, parenthetically, that we are working on rules and regulations right now to better define the types of projects for which notice has to be given; those rules and regulations will also have the effect of reducing the number of projects that are submitted to the preservation officer.

Second, a new section, (e), would be added which would allow the state historic preservation officer to enter into agreements with certain cities and counties delegating to them the preservation officer's review responsibilities under preceding sections (a), (b), and (c). The agreements could be requested only by those cities or counties which have enacted comprehensive local historic preservation ordinances, which have local historic landmark commissions, and which are actively engaged in local historic preservation programs. The law also specifies some of the provisions that must be contained in the agreement, i.e., the specific 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 reviews, the length of time the agreement is valid, and provisions for termination of the agreement. The bill also gives the agency authority to adopt rules and regulations to implement the provisions of the bill and further states that any delegation of authority does not prevent the state historic preservation officer from investigating and providing his comments on projects within a community. We do not know how many communities might want to take advantage of that provision; there are five or six communities with local landmarks commissions which have experience in historic preservation reviews. And, this legislation may well spark interest in developing local programs in other communities.

Some of the requirements in existing legislation were considered necessary in the past because there was little protection at local levels for historic properties. But more cities have enacted and are considering local preservation ordinances, and in our thinking the decisions on projects affecting local historic resources are better made at the local level by local historic preservation commissions than by a state agency.

There is some apprehension about the first change--the reduction in the notice requirement from 500 to 200 feet--within the preservation community. While I am convinced that this is the way to go, I am willing to have this change delayed for a year while discussions continue. I believe that there is consensus on the second amendment, section (e), and would urge that we go forward with it.

In conclusion, the bill under consideration today has come to you as a joint effort of the Society and the League of Kansas Municipalities. We intend to work with the cities and the preservation community to redirect our program to provide greater support for preservation throughout the state. To facilitate the shift, new section (e) will provide an opportunity for those communities with local historic preservation programs to attain a greater level of involvement and take more responsibility for local reviews.



METROPOLITAN AREA PLANNING  
DEPARTMENT

CITY HALL — TENTH FLOOR  
455 NORTH MAIN STREET  
WICHITA, KANSAS 67202-1688  
(316) 268-4421

March 10, 1993

Senator Mark Parkinson  
Chair, Local Government Committee  
Kansas Senate  
State Capitol - Room 531 North  
Topeka KS 66612

Re: House Bill 2470 Historic  
Preservation

Ladies and Gentlemen:

Your committee will shortly consider House Bill 2470, which proposes amendments to the statutes governing review procedures for historic preservation. The City of Wichita is very interested in this legislation, and favors its passage with some reservations.

In the past, the time needed for adequate design review at the state level has caused delays locally, resulting in a poor perception of the process on the part of property owners and developers. The number of projects that require state review has risen astronomically over the past three years, which engenders further delays due to staffing limitations at both the state and local levels. This flood of project reviews, and associated delays, impedes our capacity to respond quickly to development requests, which in turn costs property owners money and discourages development. While acknowledging the need for such review, the City of Wichita strongly urges the adoption of procedures that will enable efficient and timely determinations of project impact on designated landmarks and/or their environs.

The relationship between the bill and the City's adopted position are parallel to a high degree. The Bill reduces review "environs" for landmarks that are listed on the Register of Historic Kansas Places and/or the National Register of Historic Places to 200 feet, which is in line with City policy and state law on the "affected area" for notifying nearby owners on rezoning cases. In Wichita, a 200-foot radius would include those projects in the same block-face or a facing block that are most likely to affect a registered landmark. Also, lines 27-32 (page 1) give the SHPO unlimited

*Senate Local Gov't*  
*3-15-93*  
*Attachment 8*

authority to investigate and make findings on projects beyond the radius.

The Bill provides for the delegation of the review authority of the State Historic Preservation Officer (SHPO) to local units of government "if the state historic preservation officer determines that the city or county is capable of carrying out such responsibilities." As a Certified Local Government (CLG), under the provisions of the National Historic Preservation Act of 1966, as amended, and with a highly regarded record of conscientious design review and compliance with its CLG responsibilities, Wichita would expect to be determined to be "capable," but would like to have input into the development of relevant regulations by the State Historic Preservation Office.

The Bill does not address the exemption of "minor" projects, however, which the City would like to see excluded from review altogether. As a result of discussions with SHPO staff, it is considered likely that such exemptions could be addressed within the context of regulations issued by the SHPO, which would not require legislative action. It is suggested that the wording of the Bill be examined to ensure that such regulative exemptions would be allowed; if not, then substitute wording should be considered. (It should also be noted that the specification of what would constitute a "minor" project might often best be determined on a case-by-case basis. For example, the wiring of a house that had never been wired would be much more problematic than the rewiring of a more modern structure, and would therefore logically become a "major" modification rather than a "minor" updating.)

In sum, the City of Wichita generally encourages the adoption of this bill, given the caveats just noted. The City is currently experiencing a renaissance of reinvestment in its historic buildings, and this measure could be enormously helpful in facilitating that effort.

Thank you for your time and consideration.

Most sincerely yours,



Robert L. Beardsley  
Senior Planner for  
Historic Preservation



# Kansas Preservation Alliance

1655 Fairview · Wichita KS 67203



RE: Opposition to House Bill 2470  
Amendment to the Historic  
Preservation Act

Dear Senator Parkinson:

As a Board member of the Kansas Preservation Alliance, and as an active participant in historic preservation in my community, I strongly appose the proposed amendments to the Historic Preservation Act of Kansas, K.S.A. 75-2724.

The amendments attempt to do two things: 1) Reduce the jurisdiction or area of responsibility that the State Historic Preservation Officer must review prior to the commencement of any project which affects the environs of an historic property from 500 to 200 feet, and 2) Delegate the responsibility to review and comment upon such projects from the State Historic Preservation Officer to certain local governments.

The current law has been effective and necessary to protect the historic resources of the State of Kansas. Personally, I know of numerous projects that would have otherwise destroyed or damaged historic property within the state if K.S.A. 75-2724 had been drafted pursuant to the proposed amendments. Further, as a lawyer who has participated in the major appellate decisions on this subject in the State of Kansas, it is clear that this is good law, which has been upheld by our Courts.

It appears that the State Historic Preservation Department wishes to reduce its work load in this area, and to rely upon local governments to act as the "watch-dog" of our historic resources. It is my opinion that the State of Kansas has very specific duties to preserve and protect all properties which are part of the state and national registers of historic places. This duty must remain with the State government, and should not be reduced or completely delegated away. Our law has been identified nationally as progressive and as a model for other state preservation laws on this specific issue.

*Senate Local Gov't  
3-15-93  
Attachment 9*

Senator Mark Parkinson  
p.2

Unfortunately, the House Bill was drafted and presented without the participation of the preservation community. Subsequent to its introduction, numerous meetings and discussions have taken place.

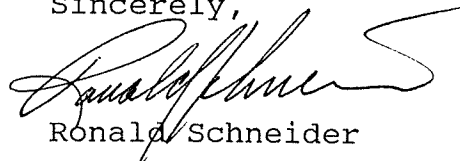
Dr. Ramon Powers of the State Historical Society has since recognized many of the issues which have been brought by citizens of the State of Kansas. It is now my understanding that Dr. Powers does not object to the 500 foot notice and jurisdiction boundary remaining, thus deleting the 200 foot change of the proposed amendment. It is also my understanding, that we can agree upon language and a mechanism which permits the State to contract with local governments to perform some of its duties under the law, subject to the final approval or recommendations of the State Historic Preservation Officer.

Dr. Powers has expressed his commitment to preservation, and the direction which he hopes to guide the Historic Preservation Department for the State of Kansas. At the present time, this solution appears acceptable to Dr. Powers, the Kansas Preservation Alliance, and myself. No doubt, future considerations will be required by all participants, and the legislature will be called upon in other sessions to consider improvements and changes to the law. I hope that all persons concerned about preservation will actively participate in that process, and that the preservation of our historic and cultural resources will be the ultimate beneficiary of our activities.

I have attached proposed text changes which are acceptable. I believe that these amendments will meet the objectives of the state, the local governments, and the interests of the Kansas Preservation Alliance.

I recommend that these changes be adopted by this committee. Thank you for the opportunity to testify on this subject, and I am happy to answer any questions.

Sincerely,



Ronald Schneider

## HOUSE BILL No. 2470

By Committee on Local Government

2-16

9 AN ACT concerning historic preservation; concerning certain gov-  
10 ernment projects; amending K.S.A. 75-2724 and repealing the  
11 existing section.

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

14 Section 1. K.S.A. 75-2724 is hereby amended to read as follows:  
15 75-2724. (a) The state or any political subdivision of the state, or  
16 any instrumentality thereof, shall not undertake any project which  
17 will encroach upon, damage or destroy any historic property included  
18 in the national register of historic places or the state register of  
19 historic places or the environs of such property until the state historic  
20 preservation officer has been given notice, as provided herein, and  
21 an opportunity to investigate and comment upon the proposed pro-  
22 ject. Notice to the state historic preservation officer shall be given  
23 by the state or any political subdivision of the state when the pro-  
24 posed project, or any portion thereof, is located within 500 ~~200~~ feet  
25 of the boundaries of a historic property located within the corporate  
26 limits of a city, or within 1,000 feet of the boundaries of a historic  
27 property located in the unincorporated portion of a county. Not-  
28 withstanding the notice herein required, nothing in this section shall  
29 be interpreted as limiting the authority of the state historic pres-  
30 ervation officer to investigate, comment and make the determinations  
31 otherwise permitted by this section regardless of the proximity of  
32 any proposed project to the boundaries of a historic property. The  
33 state historic preservation officer may solicit the advice and rec-  
34 ommendations of the historic sites board of review with respect to  
35 such project and may direct that a public hearing or hearings be  
36 held thereon. If the state historic preservation officer determines,  
37 with or without having been given notice of the proposed project,  
38 that such proposed project will encroach upon, damage or destroy  
39 any historic property included in the national register of historic  
40 places or the state register of historic places or the environs of such  
41 property, such project shall not proceed until: (a) (1) The governor  
42 in the case of a project of the state or an instrumentality thereof  
43 or the governing body of the political subdivision, in the case of :

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project of a political subdivision or an instrumentality thereof, has made a determination, based on a consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to such historic property resulting from such use and (b) (2) five days' notice of such determination has been given, by certified mail, to the state historic preservation officer.

(b) Any person aggrieved by the determination of the governor pursuant to this section may seek review of such determination in accordance with the act for judicial review and civil enforcement of agency actions. Any person aggrieved by the determination of a governing body pursuant to this section may seek review of such determination in accordance with K.S.A. 60-2101 and amendments thereto.

(c) The failure of the state historic preservation officer to initiate an investigation of any proposed project within 30 days from the date of receipt of notice thereof shall constitute such officer's approval of such project.

(d) Failure of any person or entity to apply for and obtain the proper or required building or demolition permit before undertaking a project that will encroach upon, damage or destroy any historic property included in the national register of historic places or the state register of historic places, or the environs of such property, shall be subject to a civil penalty not to exceed \$25,000 for each violation. The attorney general may seek such penalties and other relief through actions filed in district court.

~~(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 is capable of carrying out such responsibilities.~~ 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 forming certain project reviews, the length of time the agreement is to be valid and provisions for termination of the agreement. The state historic preservation officer shall adopt any rules and regulations necessary to implement the provisions of this subsection.

All agreements with a city or county

- 1 ~~A delegation of authority pursuant to this subsection shall not be~~
- 2 ~~construed as limiting the authority of the state historic preservation~~
- 3 ~~officer to investigate, comment and make determinations otherwise~~
- 4 ~~permitted by this section.~~
- 5 Sec. 2. K.S.A. 75-2724 is hereby repealed.
- 6 Sec. 3. This act shall take effect and be in force from and after
- 7 its publication in the statute book.

all agreements shall provide that the state historic preservation officer shall retain final authority to approve or object to any recommendations or decisions made by a city or county pursuant to this subsection.

authorizing a city or county to make recommendations or to perform

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