

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Nancy Brown at 1:30 p.m. on February 22, 1994, 1994 in Room 521-S of the Capitol.

All members were present except: Representative Carl Holmes (excused)
Representative Gwen Welshimer (excused)

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

Conferees appearing before the committee:

Gary Brockus, Chairman, Blue Valley Recreation Commission
Matt Grogger, President, Blue Valley Board of Education
Laura Kelly, Kansas Recreation and Park Association
Representative David Adkins
Christopher McKenzie, League of Kansas Municipalities
John C. Eisele, representing the J. C. Nichols Company
Thomas S. Busch, representing the Home Builders Association of Kansas City
Representative Jerry Henry
Gerry Ray, Intergovernmental Coordinator, Johnson County Board of Commissioners
Barry Hokanson, Director of Planning for Johnson County
Kenneth A. Keen, Director, Sedgwick County Department of Information Services
Harry Herington, Associate General Counsel, League of Kansas Municipalities
Jim Reardon, Director of Legal Services, Kansas Association of Counties
Ben Coates, Kansas Press Association
Karen France, Director of Governmental Affairs, Kansas Association of Realtors
Julie Doll, Associate Publisher of *The Olathe Daily News*

Others attending: See Attachment 1.

Chairman Brown opened the hearing on **HB 2625** (recreation commissions; Blue Valley district) and stated that a substitute bill has been drafted to address the concerns of the School Board and the Recreation Commission. On motion of Representative Macy, seconded by Representative Mays, the committee approved the introduction of **Substitute for HB 2625**, as shown on Attachment 2. The Chairman stated this is special legislation for Blue Valley and that she had met with officials of the Blue Valley Board of Education and the Blue Valley Recreation Commission, and others, and that the substitute bill is a consensus bill that changes the way the Recreation Commission operates for Blue Valley.

Gary Brockus, Chairman of the Blue Valley Recreation Commission, testified in support of the substitute bill (see Attachment 3).

Matt Grogger, President of the Blue Valley Board of Education., testified in support of the substitute bill (see Attachment 4). He stated the additional mill levy (which in Blue Valley equals about \$600,000) permitted in the bill will be used primarily for land acquisition for baseball and soccer fields. Presently the Recreation Commission budget is only certified by the Board of Education. The Recreation Commission's operating budget is \$3.1 million (\$1.5 from user fees). Mr. Grogger stated the reasons for change stems from the public's call for assurance of accountability by elected and appointed officials.

Laura Kelly, of the Kansas Recreation and Park Association, objected to the special legislation created by the substitute bill (see Attachment 5). Ms. Kelly stated that the association is not opposed to special legislation for Blue Valley but has concerns about the bill establishing a precedent that may be chosen by other recreation commissions and ultimately cause piecemeal special legislation for other areas. Representative Mays suggested that perhaps a threshold dollar level, or similar requirement, would satisfy the association's objection. Representative Brown stated that the Blue Valley Recreation Commission area is identical to the school district's area and it includes three cities and three townships, thereby making it unique.

There being no others present to testify on the bill, the hearing on **Substitute for HB 2625** was closed.

Chairman Brown opened the hearing on **HB 2807** (cities, major trafficways, financing). Representative David Adkins testified in support of the bill and stated the city of Leawood is involved in litigation that will be impacted by this proposal. He stated this merely clarifies existing law (see Attachment 6). Representative Adkins encouraged passage of the bill to allow the city greater flexibility in improving infrastructure and assessing costs to those the improvements would benefit.

Chris McKenzie, of the League of Kansas Municipalities, testified in support of the bill, stating it is fundamental that elected officials be given authority to respond to the needs of the electorate (see Attachment 7).

Mr. John Eisele, representing the J. C. Nichols Company, testified in opposition to **HB 2807** and stated that the lawsuit filed today (Homebuilders vs. Overland Park) will decide the intent of current law (see Attachment 8). Mr. Eisele recommended a study and recodification of the laws for financing roadways.

Tom Busch, representing the Homebuilders Association of Kansas City, testified in opposition to the bill (see Attachment 9). The Chairman stated that the bill will not be acted on due to the litigation and because a similar bill (**SB 777**) is being considered.

There being no others present to testify on the bill, the hearing on **HB 2807** was closed.

Chairman Brown opened the hearing on **HB 2812** (distribution of lease moneys from flood control project lands; Atchison and Doniphan counties). Representative Jerry Henry, sponsor of the bill, testified in support of the bill. Martin Asher, Secretary-Counsel of Drainage District 1545, described the district's needs to meet federal requirements and how the proposal would allow the drainage district to receive part of the federal funds allocated to the township to meet the federal directives. The funds are intended for the maintenance of roadways; but there are no roadways in this district (see Attachment 10).

There being no others present to testify on the bill, the hearing on **HB 2812** was closed.

The Chairman opened the hearing on **HB 3018** (local government computer technology and data management

act).

Gerry Ray, Intergovernmental Coordinator for the Johnson County Board of Commissioners, described the need for local units of government to assess user fees for financing equipment and personnel required to respond to requests for complete data bases or for computerized products and services (see Attachment 11).

Barry Hokanson, Director of Planning for Johnson County, described his agency's support of the bill, stating that thousands of maps, reports and other documents are prepared by his office in response to requests from private businesses and governmental agencies. He stated that costly high technical equipment and trained staff is required, and he felt that charging for such data is equitable. (See Attachment 12).

Ken Keen, Data Services Director of Sedgwick County, supported **HB 3018**, explaining that organizations outside of Kansas come to the Wichita office for complex data without charge. Kansas taxpayers provide the manpower and equipment and not having the ability to charge for data is unfair to them (see Attachment 13).

Harry Herington, Associate General Counsel of the League of Kansas Municipalities, stated the League's support of the bill (see Attachment 14).

Jim Reardon, Director of Legal Services for the Kansas Association of Counties, expressed support for the bill (see Attachment 15).

The Chairman stated she intends to have the bill "blessed" and plans for the committee to work it later.

Ben Coates, Kansas Press Association, testifying in opposition to the bill, stated the bill does not establish a schedule of fees. He stated the public should have free access to the information.

Karen France, Director of Governmental Affairs of the Kansas Association of Realtors, testified in opposition to **HB 3018**, stating it is the association's belief that the bill raises more questions than it answers, and requests the committee to adversely report it (see Attachment 16).

Julie Doll, Associate Publisher of *The Olathe Daily News*, testifying in opposition to **HB 3018**, objected that the bill would allow government to charge for such services as owners rather than custodians, and that is unfair and unwise (see Attachment 17).

There being no others present to testify on **HB 3018**, the Chairman stated that conferees will be notified of the time the bill will be worked.

Chairman Brown stated several bills remain in committee and that action is in order. The first bill for consideration was **HB 2625** (recreation commissions; Blue Valley district). Chairman Brown stated that after hearing the bill, several questions and objections were expressed, and after a meeting with officials from both the Blue Valley school district and the Recreation Commission, the consensus was to make some modifications to current law and provide a more direct relationship to elected officials for accountability purposes. A **Substitute to HB 2625** has been developed (see Attachment 2). Representative Macy moved, seconded by Representative Toplikar, that the committee approve the substitute bill. After discussion, Representative Mays offered a substitute motion to amend the substitute bill to make all recreation commissions with budgets of \$3 million or more be subject to the bill. It was noted that the Blue Valley budget of \$3.1 million budget has \$1.5 million from tax funding and the remainder from fees. There was no second to Representative Mays motion. After further discussion, the original motion of Representative Macy was considered and the committee approved **Substitute for HB 2625** and recommended its passage.

The committee then considered **HB 2807** (cities, major trafficways, financing). Representative Mays

moved, and Senator Grant seconded, that **HB 2807** be tabled. The committee approved the motion.

On motion of Representative Macy, seconded by Representative Grant, the minutes of the meetings held on February 16 and 17, 1994, were approved.

The meeting was adjourned at 3:40 p.m. The next meeting of the committee will be held on February 23, 1994, 1:30 p.m., in Room 521-S of the Capitol.

HOUSE OF REPRESENTATIVES
COMMITTEE ON LOCAL GOVERNMENT
CONFEREES AND VISITORS
FEBRUARY 22, 1994

NAME AND ADDRESS (Please print)		REPRESENTING
Bew Cortes	Topeka	KPA
Mike Slagle	Olathe	Johnson County, KS
Julie Doll	Olathe	Olathe Daily News - KPA
Paul C. Egan		
Sara Corless	Kansas City	Home Builders Assn of Greater KC
Tom Busch	Merriam	HBA of Greater KC
Michelle Clun	Merriam Topeka	attn: Jon Small

HOUSE BILL NO. _____

By

AN ACT concerning recreation commissions; relating to the powers and duties thereof; amending K.S.A. 12-1928 and K.S.A. 1993 Supp. 12-1926 and 12-1927 and repealing the existing sections.

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

Section 1. K.S.A. 1993 Supp. 12-1926 is hereby amended to read as follows: 12-1926. (a) Except as provided by ~~subsection (b)~~~~---all~~ this section, recreation commissions shall consist of five members to be appointed as follows: (1) Upon the adoption of the provisions of this act by the city or school district acting independently, the governing body of such city or school district shall appoint four persons who are residents of the taxing district to serve as members of the recreation commission, the first appointee to serve for four years, the second for three years, the third for two years, and the fourth for one year, and the fifth member who also shall serve for four years shall be appointed by the four appointee members of such commission; or (2) upon the adoption of the provisions of this act by the city and school district acting jointly, the governing bodies each shall appoint two persons who are residents of the taxing district to serve as members of the recreation commission, and the persons so selected shall select one additional person, and all of such persons shall constitute the recreation commission.

Of the members of the commission first selected by the school district, one shall serve for a term of one year, and one for a term of four years; one of those first selected by the governing body of the city shall serve for a term of two years, and one for a term of three years. The additional member shall serve for a term of four years. Thereafter, the members of the commission shall be selected in the same manner as the member such person is

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succeeding and the term of office of each shall be four years. Any member of the recreation commission may be removed from the commission, by the appointing authority, for any cause which would justify removal of an appointive officer of the city or school district. Except for members first appointed to the commission, all commissioners not filling a vacancy shall hold office for a term of four years and until their successors are appointed and qualified. Whenever a vacancy occurs in the membership of the commission, a successor shall be selected to fill such vacancy in the same manner as and for the unexpired term of the member such person is succeeding. The commission shall elect a chairperson and secretary from their membership. The commissioners are hereby empowered to administer in all respects the business and affairs of the recreation system. The treasurer of the city or school district to which is certified the budget of the recreation commission shall serve as ex officio treasurer of the recreation commission. Such treasurer shall keep an accurate record of all money and property received and disbursed and shall make a report thereof monthly to the commission, or as often as the commission requires. Members of the commission and the ex officio treasurer of the commission shall serve without compensation.

(b) Any recreation commission established pursuant to K.S.A. 12-1901 et seq., and amendments thereto, prior to the effective date of this act may continue as constituted on the effective date of this act or may, upon a majority vote of the commissioners, reorganize into a five-member commission as provided by subsection (a). If the commission continues as constituted on the effective date of this act, upon the expiration of the term of a member, a person shall be appointed to the commission in the same manner as the member such person is succeeding. The term of office shall be four years. Whenever a vacancy occurs in the membership of the commission, a successor shall be selected to fill such vacancy in the same manner as and for the unexpired term of the member such person is succeeding.

(c) From and after the effective date of this act, the Blue Valley recreation system established by the Blue Valley unified school district No. 229 shall be governed by a recreation commission consisting of seven members appointed by the board of education of such school district. The terms of office of members of the recreation commission serving prior to the effective date of this act shall expire on the effective date of this act, but such members shall continue to serve until their successors are appointed hereunder. Members of the recreation commission serving prior to the effective date of this act may be reappointed as provided by this subsection. Unless removed at an earlier time by the board of education: (1) One member shall be appointed for a term of one year; (2) two members shall be appointed for terms of two years; (3) two members shall be appointed for terms of three years; and (4) two members shall be appointed for terms of four years. Thereafter successors shall be appointed for terms of four years and until their successors are appointed and qualified, unless the board removes a member at an earlier time. Vacancies shall be filled by appointment for the unexpired term.

Sec. 2. K.S.A. 1993 Supp. 12-1927 is hereby amended to read as follows: 12-1927. (a) Except as provided by subsection (b) the recreation commission shall prepare an annual budget for the operation of the recreation system. Prior to the certification of its budget to the city or school district, the recreation commission shall meet for the purpose of answering and hearing objections of taxpayers relating to the proposed budget and for the purpose of considering amendments to such proposed budget. The recreation commission shall give at least 10 days' notice of the time and place of the meeting by publication in a weekly or daily newspaper having a general circulation in the taxing district. Such notice shall include the proposed budget and shall set out all essential items in the budget except such groupings as designated by the director of accounts and reports on a special publication form prescribed by the director of

accounts and reports and furnished with the regular budget form. The public hearing required to be held herein shall be held not less than 10 days prior to the date on which the recreation commission is required to certify its budget to the city or school district. After such hearing the budget shall be adopted or amended and adopted by the recreation commission. In order to provide funds to carry out the provisions of this act and to pay a portion of the principal and interest on bonds issued pursuant to K.S.A. 12-1774, and amendments thereto, the recreation commission shall annually, not later than August 1 of any year, certify its budget to such city or school district which shall levy a tax sufficient to raise the amount required by such budget on all the taxable tangible property within the taxing district. Each year a copy of the budget adopted by the recreation commission shall be filed with the city clerk in the case of a city-established recreation system or with the clerk of the school district in the case of a school district-established recreation system or with the clerk of the taxing district in the case of a jointly established recreation system. A copy of such budget also shall be filed with the county clerk of the county in which the recreation system is located. If the recreation system is located in more than one county, a copy of the budget shall be filed with the clerk of the county in which the greater portion of the assessed valuation of the recreation system is located. The city or school district shall not be required to levy a tax in excess of the maximum tax levy set by the city or school district by current resolution. In the case of a new recreation commission established under the provisions of this act, such levy shall not be required to exceed one mill. Whenever the recreation commission determines that the tax currently being levied for the commission, as previously established by the city or school district, is insufficient to operate the recreation system and the commission desires to increase the mill levy above the current levy, the commission shall request that the city or school district authorize an increase by adopting a resolution

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declaring it necessary to increase the annual levy. The city or school district may authorize the increase by resolution, but such increase shall not exceed one mill per year. The maximum annual mill levy for the recreation commission general fund shall not exceed a total of four mills.

(b) Prior to adopting the budget pursuant to subsection (a), the Blue Valley recreation commission appointed by the Blue Valley unified school district No. 229 shall submit its proposed budget to the board of education of such school district. The school board either shall approve, or modify and approve, the proposed budget. The recreation commission shall adopt such budget as approved, or modified and approved, by the board.

~~(b)~~ (c) Any resolution adopted under subsection (a) shall state the total amount of the tax to be levied for the recreation system and shall be published once each week for two consecutive weeks in the official newspaper of the taxing district. Whereupon, such annual levy in an amount not to exceed the amount stated in the resolution may be made for the ensuing budget year and each successive budget year unless a petition requesting an election upon the proposition to increase the tax levy in excess of the current tax levy, signed by at least 5% of the qualified voters of the taxing district, is filed with the county election officer within 30 days following the date of the last publication of the resolution. In the event a valid petition is filed, no such increased levy shall be made without such proposition having been submitted to and having been approved by a majority of the voters of the taxing district voting at an election called and held thereon. All such elections shall be called and held in the manner provided by the general bond law, and the cost of the election shall be borne by the recreation commission. Such taxes shall be levied and collected in like manner as other taxes, which levy the city or school district shall certify, on or before August 25 of each year, to the county clerk who is hereby authorized and required to place the same on the tax roll of the county to be collected by the county treasurer and paid over by

the county treasurer to the ex officio treasurer of the recreation commission.

~~(c)~~ (d) The tax levy provided in this section shall not be considered a levy of such city or school district under any of the statutes of this state, but shall be in addition to all other levies authorized by law and, with respect to any such levy made for the first time in 1989, shall not be subject to the provisions of K.S.A. 79-5021 et seq., and amendments thereto.

~~(d)~~ (e) At any time after the making of the first tax levy pursuant to this act, the amount of such tax levy may be reduced by a majority of the voters of the taxing district voting at an election called pursuant to a petition and conducted in the same manner as that prescribed by subsection ~~(b)~~ (c). The authority of any recreation commission in existence on the effective date of this act or any recreation commission established under the provisions of this act to operate and conduct its activities, other than the recreation commission appointed by the Blue Valley unified school district No. 229, may be revoked in any year following the third year of its operation by a majority of the voters of the taxing district voting at an election called pursuant to a petition and conducted in the same manner as that prescribed by subsection ~~(b)~~ (c). If the petition submitted is for the purpose of reducing the mill levy, it shall state the mill levy reduction desired. Upon revocation, all property and money belonging to the recreation commission shall become the property of the taxing authority levying the tax for the commission, and the recreation commission shall be dissolved.

~~(e)~~ (f) All financial records of the recreation commission shall be audited as provided in K.S.A. 75-1122, and amendments thereto, and a copy of such annual audit report shall be filed with the governing body of the city or school district, or both, in the case of a jointly established recreation system. A copy of such audit also shall be filed with the county clerk of the county in which the recreation system is located. If the recreation system is located in more than one county, a copy of

the budget shall be filed with the clerk of the county in which the greater portion of the assessed valuation of the recreation system is located. The cost of each audit shall be borne by the recreation commission.

Sec. 3. K.S.A. 12-1928 is hereby amended to read as follows: 12-1928. Every recreation commission appointed pursuant to this act shall have the power to:

(a) Make and adopt rules and regulations for the operation of the recreation system;

(b) conduct the activities of the recreation system on any property under its custody and management, or, with proper consent, on any other public property and upon private property with the consent of the owners;

(c) receive any gift or donation from any source;

(d) receive, accept and administer any money appropriated or granted to it by the state or federal government or any agency thereof;

(e) purchase insurance. The city or school district to which the recreation commission certifies its budget shall levy an annual tax upon all taxable tangible property within the taxing district in an amount necessary to pay for insurance purchased for those purposes authorized by K.S.A. 75-6111, and amendments thereto, and to pay a portion of the principal and interest on bonds issued pursuant to K.S.A. 12-1774, and amendments thereto, except that no levy shall be made under this subsection which, when coupled with any levy made pursuant to subsection ~~(i)~~ (j), is in excess of one mill without the approval of the city or school district. Taxes levied pursuant to this subsection shall be in addition to all other taxes authorized or limited by K.S.A. 12-1927, and amendments thereto, or any other provisions of law;

(f) sue and be sued;

(g) enter contracts;

(h) enter lease agreements for real and personal property. The term of any such lease shall not exceed 10 years. Any such lease agreement shall be subject to the approval of the city or

school district to which the recreation commission certifies its budget;

(i) employ a superintendent of recreation and any other employees which may be necessary for proper operation of the recreation system;

(j) create and establish employee benefits contribution funds for the purpose of paying the employer's share of any employee benefits, exclusive of any salaries, wages or other direct payments to such employees, as may be prescribed in the resolution creating such funds. The recreation commission may receive and place in such funds any moneys from any source whatsoever which may be lawfully utilized for the purposes stated in the resolution creating such funds, including the proceeds of tax levies authorized by law for such purposes. The city or school district to which is certified the budget of any recreation commission which has established employee benefits contribution funds pursuant to this subsection shall levy an annual tax upon all taxable tangible property within the taxing district in an amount determined by the recreation commission to be necessary for the purposes for which such funds were created and to pay a portion of the principal and interest on bonds issued pursuant to K.S.A. 12-1774, and amendments thereto, except that no levy shall be made under this subsection which, when coupled with any levy made pursuant to subsection (e), is in excess of one mill without the approval of the city or school district. Taxes levied pursuant to this subsection shall be in addition to all other taxes authorized or limited by K.S.A. 12-1927, and amendments thereto, or any other provisions of law. For the purposes of this subsection, employee benefits shall include social security as provided by subsection (c) of K.S.A. 40-2305, and amendments thereto, workers' compensation as provided by K.S.A. 44-505c, and amendments thereto, unemployment compensation as provided by K.S.A. 44-710a, and amendments thereto, health insurance and retirement benefits;

(k) acquire title to personal property by purchase, bequest,

gift or other donation and acquire title to real property by devise, gift or other donation. No real property may be purchased by the recreation commission appointed by the Blue Valley unified school district No. 229 without first obtaining the approval of the board of education of such school district. Whenever property owned by a recreation commission is sold, the proceeds shall be used for recreation purposes; and

(1) perform any other acts necessary to carry out the provisions of this act.

New Sec. 4. (a) The recreation commission appointed by the Blue Valley unified school district No. 229 may petition the board of education of such school district to adopt a resolution proposing to make an annual levy not to exceed one mill upon all taxable tangible property within the taxing district for the purpose of creating a capital improvement fund to be used for the acquisition of sites, and for the constructing, equipping, repairing, remodeling and furnishing of buildings for recreation system purposes and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the taxing district. Upon receipt of such petition, the board shall adopt a resolution imposing such levy. No levy shall be made unless the proposal to make such levy is submitted to and approved by a majority of the qualified electors of the taxing district voting at an election thereon. Such election shall be called and held in the manner provided by the general bond law.

(b) Any fund created pursuant to this section shall not be subject to the provisions of K.S.A. 79-2925 to 79-2937, inclusive, and amendments thereto. In making the budget of the recreation system, the amounts credited to, and the amount on hand in, the capital improvement fund and the amount expended therefrom shall be shown on the budget for the information of the taxpayers of the taxing district. Moneys in such fund may be invested in accordance with the provisions of K.S.A. 10-131, and amendments thereto, with interest thereon credited to such fund.

Sec. 5. K.S.A. 12-1928 and K.S.A. 1993 Supp. 12-1926 and 12-1927 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.



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**TESTIMONY PREPARED FOR THE
KANSAS HOUSE LOCAL GOVERNMENT COMMITTEE
TUESDAY, FEBRUARY 22, 1994**

RE: HB 2625

Madam Chair, Members of the Committee: My name is Gary Brockus, and I am a member of the Blue Valley Recreation Commission. I appreciate the opportunity to appear before you today to speak **in support of HB 2625**. I am not here to speak on behalf of the entire Commission; the views here expressed are my own.

Having resided for over 8 years in the Blue Valley School District, several things are very clear to me:

- As do others, the Blue Valley Community places a high priority on the availability of recreation programs and facilities - it is indeed a quality of life issue.
- The residents of our community continue to demonstrate their commitment to these activities and facilities by means of both their financial support, through taxes and user fees, and by their willingness to devote countless hours of volunteer time.
- The Blue Valley School District, though eager to work with the Recreation Commission, cannot allocate its limited, educational resources towards the acquisition, development and operation of recreation facilities.
- Keeping pace with the leisure needs of our patrons, in the context of the incredible growth we continue to experience, is a task that cannot be accomplished under the limitations imposed by current Recreation Commission statutes.

The legislation which is before you today will increase the Commission's accountability to the public, while enabling us, with approval of the voters, to provide much needed facilities and programs.

It is for these reasons that I rise in support of the provisions of this bill. Thank you for your consideration of these remarks.

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G. Matt Grogger
11926 Perry
Overland Park, KS 66213
Tel 913-897-3421

February 22, 1994

Testimony on HB2625 re: changes to structure and responsibilities of Board of Education USD 229 and the Blue Valley Recreation Commission

Madam Chairman and members of the committee:

My name is Matt Grogger and I am a resident of the Blue Valley School district. The Patrons of Blue Valley School District authorized the formation of the Blue Valley Recreation Commission by a majority vote in 1986. The growth in the population of the district has generated a rapidly growing need for recreation programs and the rapid increase in assessed valuation has also produced growing revenues for the Recreation Commission annual budgets. While the administration of the Recreation Commission business is and should continue to be the responsibility of the Commissioners, there is sentiment in the community for elected officials to exercise more oversight of the Commission budgets. In addition, there is need for increased collaboration between the BOE and the Recreation commission as both the number of school facilities used and the frequency of use by the Recreation Commission continues to grow.

The provisions of HB2625 that requires BOE approval of the Recreation Commission budgets, as well as the requirement that the Commission be increased from 5 to 7 members appointed by the BOE will assure that the necessary coordination between the BOE and the Commission occurs on an ongoing basis. This close tie between the two bodies is essential to assure that potential conflict over facility utilization is minimized.

The provision of the bill authorizing the Recreation Commission to request that one additional mill be levied exclusively for acquisition of real property, combined with the provision for carryover of unexpended funds, will enable the commission to acquire land and/or facilities needed for the growth in demand for recreation activities in the community. It is my understanding

that current statutes do not allow the school district to acquire land or facilities for exclusive use of the recreation commission to meet the rapidly growing demands for recreation facilities. Therefore school facilities which are only available to the recreation commission during times they are not being used by the school district are insufficient to meet community requested recreation needs.

The other provisions of the bill address "housekeeping" type activities, but all of them appear to provide for improved collaboration between the Recreation Commission and the Board of Education. This cooperation is essential since to two bodies have common boundaries and common constituencies.

I speak in favor of the revised House Bill 2625, and urge the legislature to incorporate these provisions in law for the benefit of all Blue Valley School District and Recreation Commission patrons. Thank You.

Kansas Recreation and Park Association



700 SW Jackson St Ste 705 • Topeka Kansas 66603-3758 • (913) 235-6533 (Phone) • (913) 235-6655 (Fax)

TESTIMONY BEFORE THE
KANSAS HOUSE OF REPRESENTATIVES
LOCAL GOVERNMENT COMMITTEE
TUESDAY, FEBRUARY 22, 1994
IN OPPOSITION OF
RE: HB 2625

Madam Chair, Members of the Committee: I am Laura Kelly, Executive Director of the Kansas Recreation and Park Association. I am here to testify in opposition to HB 2625 on behalf of the 170 recreation commissions currently operating in the State of Kansas.

Enabling legislation, passed in 1945, allowed for the creation of recreation commissions for the purpose of providing recreation programs. Between 1945 and 1987 the statutes became littered with exceptions for individual communities. In 1987, following a thorough review of the statutes and extensive input from the League of Kansas Municipalities, the Kansas Association of School Boards and the Kansas Recreation and Park Association, the law was recodified.

Since 1987, there have been several revisions to the statutes including those contained in last year's HB 2226 which further clarified the authority of recreation commissions and increased their accountability. KRPA supported those revisions because they represented good public policy and they were across the board revisions applying equally to all commissions established under the enabling legislation.

KRPA opposes HB 2625 because it is special legislation that negates the uniformity of the statutes governing recreation commissions. Passage of this legislation will inevitably lead to requests from other communities to tailor the statutes to suit their perceived needs. In the 19 communities where the commissions are city-based, not school based, home rule could be invoked, drastically changing the way those recreation commissions are operated. It won't take long before the statutes become impossible to interpret as they were prior to the 1987 recodification.

That said, the Kansas Recreation and Park Association recognizes that the Blue Valley Recreation Commission is faced with some unique issues that need resolution. What we request is that resolution be found without creating potential problems for all the other communities where the current statutes work.

I thank you for your time.

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President
Dave Graverson CLP
Topeka

President-elect
David Stevenson PhD CLP
Manhattan

Past President
Michael Meadors CLP
Johnson Co

Secretary
Jim Rice CLP
Chanute

Treasurer
Curt Loupe CLP
Topeka

Member at Large
Gary Scott CLP
Liberal

Member at Large
Bill Nicks CLP
Lenexa

Ex-officio
Theodore Ensley CLP
Secretary KDWP

Executive Director
Laura Kelly



State of Kansas
House of Representatives

State Capitol
Room 448-N
Topeka, Kansas 66612-1504
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Committee Assignments

Taxation
Judiciary

David Adkins
Representative, 28th District

TESTIMONY BEFORE HOUSE COMMITTEE ON LOCAL GOVERNMENT
TUESDAY, FEBRUARY 22, 1994
1994 H.B. 2807

Chairman Brown and Members of the Committee:

I am pleased to appear in support of House Bill 2807 which I have sponsored at the request of the City of Leawood. My representative district boundaries follow the city limits of the City of Leawood and it's my pleasure to appear on behalf of the city on this occasion.

In my opinion, House Bill 2807 represents a clarification of current law and does not expand the powers of a city beyond those it currently may exercise. The bill, if enacted, would confirm the authority of cities to utilize a number of financing options when constructing or improving main trafficways.

This flexibility allows cities to fairly assess the costs of infrastructure to those who benefit from the improvement. By contrast, developers urge an interpretation of current law which would unfairly shift the cost of street improvement onto the city's taxpayers at large without regard to the benefit received. Such an interpretation works to provide developers a significant windfall at the expense of all taxpayers. To avoid this result the law should be clarified to assure fairness and flexibility in the financing of public streets.

I care little about how a court would interpret the current law -- I am far more interested in what the appropriate public policy choice is. The language contained in H.B. 2807 clearly sets forth the authority cities need to appropriately fund growth. Leawood has utilized its financing options to assure that main trafficways are constructed with both taxpayers and developers paying their fair share. The passage of H.B. 2807 merely confirms that they may continue to do so.

I urge your favorable consideration of H.B. 2807.

David Adkins

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**League
of Kansas
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 S.W. 7TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

TO: House Committee on Local Government

FROM: Chris McKenzie, Executive Director

DATE: February 22, 1994

RE: Support for HB 2807

On behalf of the League of Kansas Municipalities and its 540 member cities, I am appearing today in support of HB 2807. While this legislation does no more than state in even clearer terms what the League and many of our member cities have long interpreted was the intent of the legislature when it enacted the main trafficway act, K.S.A. 12-685 et seq., HB 2807 provides some helpful clarification of this intent. A number of cities in Kansas and city residents will benefit from the enactment of this legislation.

RECOMMENDATION. We recommend that the Committee report HB 2807 favorably.

HOUSE LOCAL GOVERNMENT
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LAW OFFICE
JOHN C. EISELE, CHARTERED
SUITE 165
4121 WEST 83 STREET
PRAIRIE VILLAGE, KS. 66208-5303

John C. Eisele

Off. (913)642-1333
[Fax # 642-1575]

February 21, 1994

Representative Nancy Brown, Chairperson
Local Government Committee
House of Representatives
State Capitol Building
Topeka, KS 66612

Re: HOUSE BILL No. 2807

Dear Representative Brown and members of the Committee:

For the purpose of this record, I represent The J.C.Nichols Company.

WHAT IS HOUSE BILL No. 2807 ABOUT?

[It is NOT about "a simple change Leawood needs."!]

This bill would permit cities to use home rule powers to enact any unbridled scheme they can devise to fund improvements to "Main Trafficways", and to avoid all current statutory funding methods. It changes the current plans for funding the improvement of "Main Trafficways" by cities from "city-at-large" funds to a potential "crazy quilt" of different funding schemes.

Pending in the District Court of Johnson County, Kansas, is the case of Lynn McCarthy, et al., vs. the City of Leawood, et al., Case # 94-C-729. It is a case to have declared void an ordinance described as an "impact fee" ordinance. The city of Leawood continues to attempt to expand its home rule power to impose a method of exacting money from land owners to pay for or to reimburse the city of Leawood for any "city-at-large" funds used in the improvement of K-150 highway. We believe Mr. Richard Wetzler, Leawood's city attorney, is concerned there are problems in the city's defense of that action, and is trying to "try his case" in the legislature - with HOUSE BILL No. 2807.

There are at least three other communities in Johnson County which have followed the same line of thinking which led to other "impact fee" ordinances. These cities likewise want to see legislation such as HOUSE BILL No. 2807 passed. These cities know there are statutory and constitutional problems with their position, which of course they would deny. They need to create a statutory basis for what they've already done. Why else would they be here? Why else would Mr. Adkins, Mr. Wetzler's partner, ask you to consider this bill? They tried to get it done last

year in S-387, unsuccessfully! Section 3 of S-387 is identical to Section 3 of this bill.

The ramifications of passage of such a bill are awesome and frightening. And it places unlimited power in a city council, any city council, with no right of protest on the part of the landowners, as otherwise provided by statute.

The bill appears generally to be fairly harmless. However, let's look at the three sections.

In Section 1., there is change only in verbiage. There is absolutely no change in substance. A smoke screen.

In Section 2., the set up for the last section happens. Remember that funding under this particular statute does not allow even benefit district funding. Funding must be done with city-at-large funds. And in this particular sequence of statutes, we're dealing not with neighborhood streets or alleys, etc., but with main trafficways. The legislature, in its wisdom over the decades, has said that if a roadway is designated a main trafficway, then the city at large should pay for the creation or improvement of such main trafficway. That is why, in this funding statute, the word "shall" is used. Changing "shall" to "may" sets the stage for the last, but most risky and alarming sequence before you!

In Section 3. this sequence begins in line 38 with "shall not preclude the use of ... home rule authority pursuant to section 5 of Article 12 of the Kansas constitution for the making and financing of all or any part of such improvement." (Emphasis added).

This, then, allows cities to totally circumvent ALL improvement statutes. And it would allow all of the cities in the entire state of Kansas to exact impact type fees with no right of protest. The state lacks that power! Do you believe giving that power to cities is wise?

Historically, the legislature has modified and added statutes pertaining to financing of streets and thoroughfares since the late 1920's without much coordination. There are a number of them scattered in various chapters. [Parenthetically, K.S.A. 14-556, dealing with public improvements in cities of the second class, of which Leawood is one, sets out with great particularity that cities of the second class are authorized and empowered to do exactly what they are doing in this K-150 project, and precisely how the city shall pay for the process. **And it does not include benefit district financing or impact fee financing.** Only city-at-large funds on hand or issuance of general revenue bonds.] So the city went shopping for a "statute of convenience"!

But in all of the statutes, whether pertaining to state, county, or city, there are checks and balances as to the state, county and city governments in the use or abuse of power! In the impact fee type ordinance adopted by Leawood, there are none.

Funding of streets or thoroughfares by statute is basically done in one of three ways:

- 1.] by body-at-large funds [or issuance of general revenue bonds];
- 2.] by benefit district funding;
- 3.] by a combination of the first two.

With benefit districts, the statutes protect landowners by permitting protests. In the various statutes pertaining to funding highways, streets, roads, boulevards or avenues, if there is any provision for funding by benefit district, there are two conjunctive safeguards to the taxpayers.

1.] If 51%, or more, of the resident landowners of record protest the creation of a benefit district, AND

2.] if owners of record of land constituting 51% or more of the land within the proposed district protest the creation of the district, the district may not be formed, and the governing body must pay for the project with "city/county-at-large" funds.

The statutes and the case law are neither clear nor decisive as to the definition of "resident owners of record of property" - still another reason for an Interim Study Committee as later suggested herein.

That is a uniform process, historically, in this state.

For instance, the problem, as a city council "may" see it, is illustrated by the "Leawood, Kansas K-150 Corridor Impact Fee Ordinance".

1.] the city of Leawood will participate with county & state to widen 135th street from State Line, its Eastern border, to just East of Nall, its border with Overland Park, KS.

2.] the city of Leawood knows it will not be able to create a benefit district pursuant to K.S.A. 12-6a01 et seq. to fund the city's portion of cost. First, the statutes probably don't allow it. Secondly, if it is an appropriate statute, the City commenced the hearing required prior to creation of a benefit district, 7 February 1994, and has continued the hearing until the first Monday in April, apparently hoping to have statutory relief prior to that time. It was clear at the meeting that requisite owners for protest of the proposed district would protest.

3.] State & Federal funding is getting harder to come by in all areas of local government, so "city-at-large" tax dollars are likewise getting harder to spread around to all the things a city wants to do [in some instances] and must do [in other instances].

4.] the city of Leawood, and at least three others [Overland Park, Olathe, Lenexa], were advised as far back as 1988 that the impact fee ordinance would give them the power to exact funds from land owners without the "problem" of benefit district type protest from affected land owners.

5.] Leawood passed such an ordinance [1027C]. It is now the subject of the suit above mentioned.

6.] IF THE CITY CAN CONVINCE THE LEGISLATURE TO MAKE A "COUPLE OF SMALL CHANGES", the city of Leawood can perhaps resolve the lawsuit without any additional expense, or at worst it will merely reenact the impact fee ordinance, and do it all over again, but with statutory authority, and bypass the "benefit district protest" with its protest problems.

AND THAT IS WHAT HOUSE BILL No. 2807 is about!

As an example, in the entire K-150 Impact Fee Corridor, there is now only one parcel in development. It is the Lutheran Church at the corner of 135th & Chadwick. The impact fee ordinance defines "place of worship" as "quasi-public", and exempts property used for quasi-public purposes from the impact fee. But the city of Leawood, in essence said to the church, "Not all of your tract is a place of worship; if you want the zoning and building permit, you pay the impact fee - and pay for both sides of the road from K-150 to the South border of your property [they normally exact only 1/2 from a real estate developer] - and, when we widen the highway, you pay for the right turn lane for east bound traffic, and you put up a letter of credit for \$14,000.00 to guarantee us you'll have the money to pay for the turn lane." Pray tell, how does the church create so much traffic and benefits as to have the cost of the turn lane from a 4 lane highway imposed upon it?

In January 1994, the Leawood city council voted to raise this **impact fee** amounts by approximately 50%, based upon square footage of land owned in the district. And bear in mind that the council can raise it, at will, again by any amount it so desires under the guise of its impact fee ordinance. And they have determined, some how, what that square footage will be without establishing the North or South boundaries of the impact fee zone, as they have admitted in the city's answer in the lawsuit above. The North and South boundary lines, and the "reverse frontage roads" [which do not exist] shown on the map are merely artist renderings, not surveys, again as they have admitted. Attached is a reduced portion of a page out of the Master Development Plan of the city of Leawood, showing the boundaries

of the impact fee zone in question. While they fully expect to exact fees based upon square footage within the zone, the boundaries are fictional.

Nowhere in the statutes has the legislature ever given absolute and unbridled authority to cities or counties to finance the streets, roads and highways. And we believe now is not the time to start.

Since it has been decades since a comprehensive look at the financing of streets, roads and highways has been considered on a statewide codified basis, it would be our position that the matter should be referred to an Interim Study Committee to be appointed for the purpose of studying the issue of municipal financing of infrastructure needs, and especially streets and thoroughfares. One merely looks at the financing provisions in K.S.A. 12-685 et seq., K.S.A.12-6a01 et seq., K.S.A.14-556 and others, to see how the financing of streets and thoroughfares has grown like Topsy. The laws should be clear and uniform throughout the state of Kansas. It is time to codify these important areas of municipal finance.

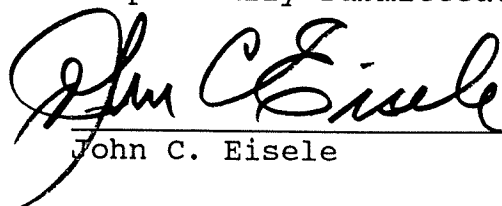
It does not go without note that the city of Overland Park has caused to be introduced Senate Bill 777. It is almost as dangerous as HOUSE BILL No. 2807. A number of developers and builders believe the city of Overland Park has wrongfully exacted in excess of \$6,500,000.00 from them and others, and litigation will soon be commenced to recover those funds. Senate Bill 777 is an obvious effort on the part of the city of Overland Park to obtain some protection and relief from its financial and legal problems that the Kansas court system probably will not deliver without statutory changes.

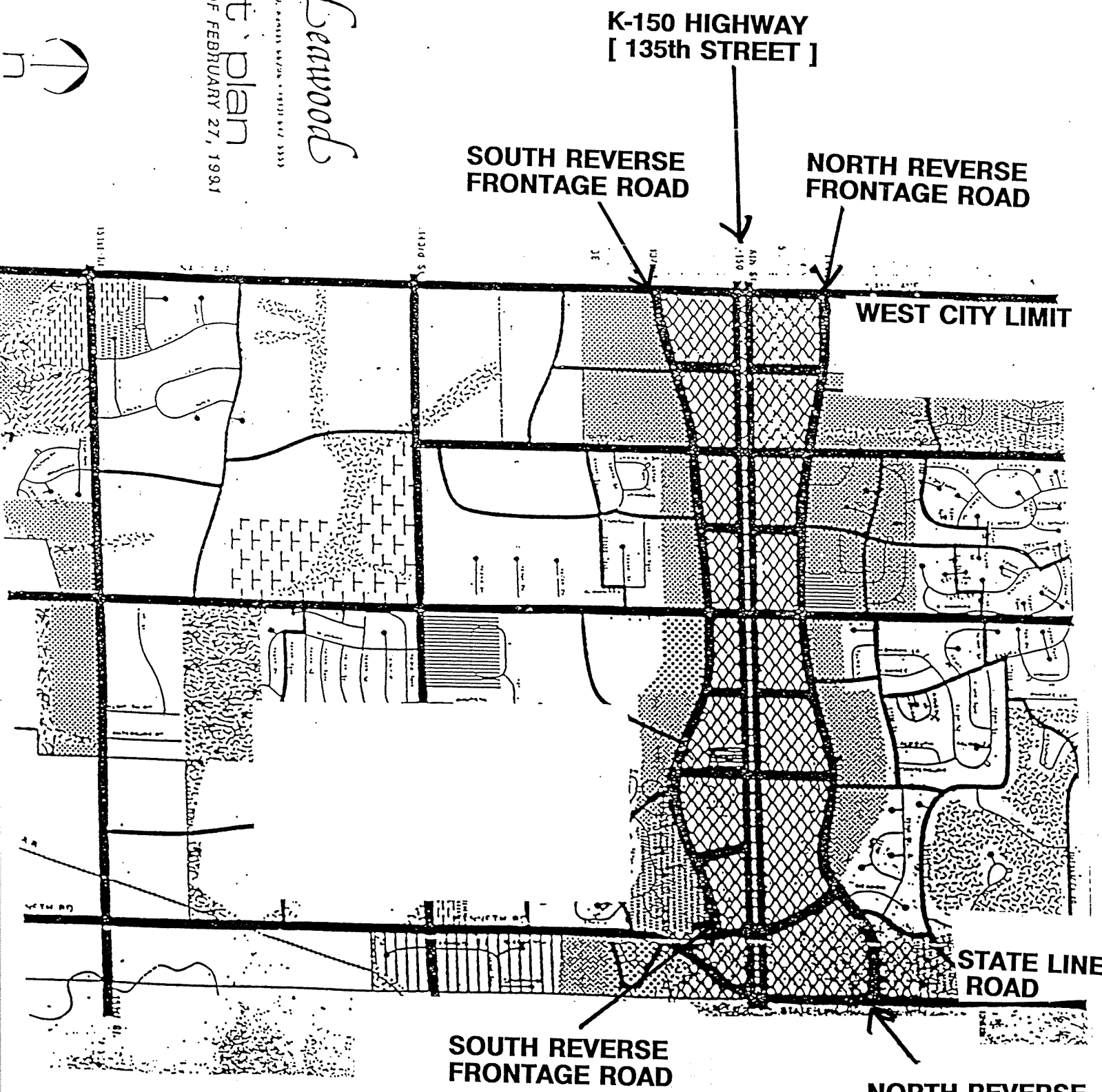
We acknowledge here today that cities and counties are in a quandary as to how to finance construction and maintenance of streets and thoroughfares. And we likewise acknowledge the need to address the problem. But we do not believe that cities should ever be given the power this bill would deliver.

We again suggest the creation of an Interim Study Committee to be appointed for the purpose of studying the issue of municipal financing of infrastructure needs.

If you have any questions regarding this matter, I will be happy to answer them.

Respectfully submitted:


John C. Eisele



FOR IMMEDIATE RELEASE
February 22, 1994

Contact: Tim Underwood,
Executive Vice President
Home Builders Association
of Greater Kansas City
(816) 942-8800

**LANDOWNERS SUE OVERLAND PARK OVER MAJOR
THOROUGHFARE FUNDING**

A group of Johnson County developers and the Home Builders Association of Greater Kansas City filed suit today in the Johnson County District Court against the City of Overland Park. The suit challenges the city's practice of forcing adjacent landowners to pay for part of the cost of improving major thoroughfares, which are also known as main trafficways. Major thoroughfares like Quivira and Antioch are constructed for the movement of traffic through the city and to locations outside the city.

The plaintiffs contend Kansas statutes (K.S.A. 12-685 et seq.) require all cities to pay for the cost of improving designated main trafficways with strictly city at-large funds. Overland Park has for many years used benefit districts and fees charged to developers for platting their land to help finance the cost of its major thoroughfares.

Continuing attempts by Overland Park to substantially raise developer fees or impose excise taxes led the HBA to question the city's system for financing major thoroughfares. Since September of last year, the HBA and individual developers have met with city officials in an attempt to find a legal and fair method for financing throughfare improvements. Negotiations broke down in the last two weeks when Overland Park submitted a bill in the Kansas

Senate that failed to address key issues that the HBA believes is necessary for an open and fair financing system.

Consequently, the HBA and the developers felt compelled to file suit and seek a judicial declaration of what is a legal and fair method for financing major thoroughfare improvements. "In recent years, the city has collected millions of dollars in developer fees contrary to state law. It is our hope that this suit will clarify the proper form of financing major thoroughfares which in turn should establish the relative obligations of the city at-large and adjacent landowners," said Brad Taylor, HBA President.

The law firm of Holbrook, Heaven & Fay, P.A. represents the landowners and the HBA in the suit. "For over thirty years, state law has required all cities to pay for improvements to their major thoroughfares with strictly at-large funds. That is only fair when these roadways serve the entire community," said Pete Heaven, one of the lawyers filing suit. "If Overland Park believes development is outpacing municipal resources, a legislative study ought to be initiated to find a solution rather than letting cities exercise unbridled discretion to secure necessary funding."

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toms\hba.doc

HOLBROOK, HEAVEN & FAY, P.A.

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* ADMITTED IN KANSAS, MISSOURI AND DISTRICT OF COLUMBIA

**ADMITTED IN KANSAS AND MISSOURI

ALL OTHERS KANSAS ONLY

February 22, 1994

Representative Nancy Brown, Chairperson
Local Government Committee
House of Representatives
State Capital Building
Topeka, KS 66612

Re: HOUSE BILL NO. 2807

Dear Representative Brown:

Thank you for allowing me to address the Committee today. For the purpose of this record, I represent the Home Builders Association of Greater Kansas City.

Today, my law firm placed on file a lawsuit against the City of Overland Park on behalf of the HBA of Greater Kansas City and nearly a dozen developers, which includes the J.C. Nichols Company. This case seeks declaratory and injunctive relief which would prohibit Overland Park from violating the main trafficway act (K.S.A. 12-685, et seq.) by financing major thoroughfare improvements with benefit district assessments and private developer fees.

My law firm also represents William R. Davis and Fern Stultz in a lawsuit filed against the City of Leawood, which involves Leawood's attempted use of a benefit district to improve State Line Road, a designated main trafficway. These two homeowners, who are respectively in their seventies and nineties, have been required to pay for the expansion of State Line Road from two lanes to five lanes simply because their properties front State Line Road. Leawood is paying nothing towards the cost of those improvements. Unlike Kansas City, Missouri, it has escaped its share of the costs by obtaining funding from Johnson County, Kansas and private landowners.

HOUSE BILL NO. 2807 is one of several bills pushed by the City of Leawood or the City of Overland Park to legitimize illegal

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Representative Nancy Brown, Chairperson
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financing tools the cities have used and abused during the last decade.

The main trafficway act (K.S.A. 12-685, et seq.) was enacted in 1959 to provide a uniform law to enable cities to use at-large funding sources to finance improvements to designated main trafficways. Before that time, cities were compelled to secure special legislation to do so in order to properly issue bonds.

The rationale behind this act was straightforward and sensible. Main trafficways benefit the city at-large and, therefore, should be paid for with at-large funds.

During the last decade, several cities in Johnson County have become creative in their financing of major thoroughfares, so that they could finance other items in their budgets. Unwilling to tax their constituents for the bells and whistles in their budgets, these cities have searched for ways to charge others to pay for their infrastructure needs.

Private developer fees and benefit district assessments have become the favorite methods for cost shifting. Legal challenges and self-doubts about these methods, however, have caused these cities to pursue alternative methods such as impact fees and excise taxes. The number and variety of these methods are dependent only upon the creativity or desperation of the cities.

At least, that would be the case if HOUSE BILL NO. 2807 were passed. It would wipe out the mandate of the main trafficway act and place in the hands of cities complete discretion as to how they would finance main trafficway improvements. And recent history has shown that these cities have abused the discretion they have already misappropriated.

Leawood has attempted to nearly double the rate of developer fees in the last month; while its base rate was already 20% higher than Overland Park's.

In the last six months, Leawood has attempted to use benefit districts to force homeowners and landowners to pay for the cost of improving K-150 Highway and State Line Road. Where, may I ask, does the special benefit accrue to these people for such massive improvements?

Representative Nancy Brown, Chairperson
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Overland Park has pursued the adoption of an excise tax ordinance that would tax the business of land development, but only south of 110th Street.

Where is the fairness in such actions? If H.B. 2807 were to pass, how can we trust these cities to act openly and fairly in their quest to finance main trafficways, when they have acted so unfairly in the past?

The state should retain oversight of the financing of main trafficways. The law needs to remain uniformly applicable to all cities. The state legislature should not give cities a blank check and the use of individual bank accounts to do so. Any modifications to the current system legally mandated should be made only after a comprehensive legislative study of the issues has been completed. The HBA of Greater Kansas City and its members stand ready to assist in such a study.

Respectfully submitted,

HOLBROOK, HEAVEN & FAY, P.A.



By: Thomas S. Busch

TSB:tc
toms\brown.hba

STATEMENT IN SUPPORT OF HOUSE BILL NO. 2812

Drainage District #15-45 was established in February, 1948 for the purpose of flood control and land management. It protects 4,081 acres of cropland in the Missouri River bottom of Atchison and Doniphan Counties. A five person board of supervisors is elected by the landowners to oversee management of the District.

The Board of Supervisors are charged with maintenance of the levees, flood gates, and drainage ditches that make up the District. A semi-annual inspection by the U.S. Corps of Engineers insures that the District is properly maintained. Funds for maintenance are raised through special assessment levied upon real estate inside the District. The budgeted expenses for 1993 was \$15,905.00.


In late 1992, the United States America through the U.S. Army Corps of Engineers purchased 980 acres within the district. This purchase was to establish a wetland area as part of the Missouri River Fish & Wildlife Mitigation Project. The federal government is legally prohibited from paying real estate taxes and so as a result the District lost \$3,362.54 in 1993 tax revenue. The Board of Supervisors has had several discussions with representatives of the Army Corps of Engineers about possible ways in which the federal goverment can assist the District to offset the lost revenue. However, the federal government has been extremely slow in their reaction and with the floods of 1993 the Corps' attention is now diverted elsewhere.

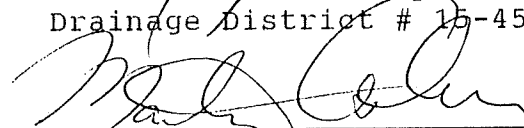
Since its wetland project is in the early stages of development, during 1993 the Corps leased many of its acres for agricultural purposes. Pursuant to K.S.A. 27-117 the State Treasurer is to pay to the County Treasurer all monies paid by the United States from the leasing of certain lands. The County Treasurer is then to divide the money received between school districts, county government and townships. In 1993 the Atchison County Treasurer received approximately \$39,000.00 resulting from the leasing of land from the United States Government.

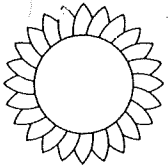
H.B. 2812 amends K.S.A. 27-117 by adding new section (1) (b). This provides that in Atchison and Doniphan Counties the drainage districts shall receive 10% of the money from federal lease payments. The new section removes the township

as a beneficiary of funds in Atchison and Doniphan Counties. This is justified since there are no township roads or benefitis within Drainage District #15-45. As the Corps develops the wetland project fewer acres will be made available for leasing for agrigultural useage and thus the amount paid to the State Treasurer will be reduced. However, the leasehold payment would help the Drainage District to offset the lost tax revenue until a different arrangement can be reached with the federal government.

Respectfully submitted,


CHAIRMAN - Board of Supervisors
Drainage District # 15-45


SECRETARY - COUNSELOR
Drainage District # 15-45



Johnson County
Kansas

HOUSE LOCAL GOVERNMENT COMMITTEE

FEBRUARY 22, 1994

HEARING ON HOUSE BILL 3018

TESTIMONY OF GERRY RAY, INTERGOVERNMENTAL COORDINATOR
JOHNSON COUNTY BOARD OF COMMISSIONERS

Madam Chair, members of the Committee, my name is Gerry Ray representing the Johnson County Board of Commissioners. Thank you for the opportunity to talk with you about House Bill 3018, a proposal that is an extremely important issue for local governments in Kansas.

The bill would allow counties and cities to impose user fees when requests are received for a complete computer data base or computerized products and services. The technical details will be explained later by the some of the other conferees that will follow.

The counties and cities first presented this proposal about eighteen months ago. There have been two interim studies and a Senate bill which was introduced in 1993 but did not get out of committee. We have worked with the special interest groups who initially opposed the idea. Concessions were made and agreement reached with the Kansas Press Association and the Information Network of Kansas.

When Johnson County began this process many of us had just read the book "Reinventing Government" and were convinced there was a new wave of thinking on how to finance certain government functions in other ways besides taxing the citizens. We believed that innovative thinking and entrepreneurial approaches were the answer for the future. What we proposed seemed to a logical method of supporting and maintaining a system capable of creating a product that was marketable. At the same time it would safeguard the rights of citizens to obtain information.

Government is told on an continuing basis that it should operate in a more businesslike manner. Any business person will verify that when the stockholders make a five million dollar investment, as did the taxpayers in Johnson County, you make every effort to insure that the investment is protected from obsolescence. We are seeking ways to impose user fees on those who request complete data bases rather than being required to charge only the cost of reproduction as we are under existing law. We believe it is not the responsibility of the taxpayers to subsidize the commercial endeavors of a small group of users. The special interest groups will argue that they have already paid for the system through their taxes. However, the vast majority of the people who paid for the system will have no need to access any of it. Why then, should they pay to enhance the profit making enterprises of a small

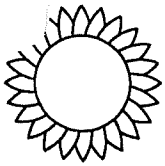
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segment of taxpayers or in many cases out of state interests that have paid nothing toward the investment? We believe they should not be expected to do so. Just because a government asset is acquired with tax dollars does not entitle a select group the right to use it for commercial purposes without assuming a larger share of the cost than is taken on by the citizenry at large.

The user fee concept has become a necessary and accepted practice in government because it is a fair and equitable method to help support such services as park programs, public health, ambulances and many others. Without user fees these services would have to be cut back or eliminated, with such fees they are enhanced to the benefit of everyone. The bottom line is , will local governments be granted the authority to seek new ways to finance their responsibilities or are they to be locked into dependency on property tax because "that's the way we've always done it"? Several years ago the Legislature made this decision for the State when they created the Information Network of Kansas. When we began this process we believed the policy decision had already been made and the precedent established by the State. What we are asking is no more threatening to the public access to information than what is already in place at the State level.

The counties and cities of Kansas sincerely hope we will be allowed to follow the State's innovative lead that will result in a new approach to information management at the local level. In order to do so need your help in getting HB 3018 passed by the Legislature.

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**Presentation To
LOCAL GOVERNMENT COMMITTEE
KANSAS STATE HOUSE
by
Barry Hokanson
Director of Planning, Johnson County, Kansas**

RE: HB 3018 (Local Government Computer Technology and Data Management Act)

Members of the Committee:

My name is Barry Hokanson, Director of Planning for Johnson County. On behalf of the Board of County Commissioners, I wish to speak in favor of HB 3018. Along with other counties in Kansas, and in conjunction with the Kansas Association of Counties (KAC), in 1992 we presented the concept of this bill to the Joint Committee on Computers and Telecommunications. In 1993 the bill was referred to the Senate Government Organization Committee. Last fall, interested groups held a series of work sessions to refine that earlier bill. It is now before you as a streamlined and improved bill, HB 3018.

Statute Needed

As local governments in Kansas increase the amount of computerized information they maintain, there is a need to refine the rules for management of such information and its access by outside users, especially in those cases where copies of whole databases may be requested. Without a modernized set of rules, counties and cities face complex and costly pressures on their resources to deal with burdensome demands at a time when there is scarce funding for normal government operations. Specifically, these counties and cities need clear state statutes on matters of privacy, cost recovery, and citizen access regarding the release and use of computerized information. HB 3018 has been written so as to maintain and enhance options for citizen access, and yet provide mechanisms for the governments to charge reasonable fees for those few users who request large volumes of information or even entire databases.

Protecting the Public's "Right to Know" and Access to Open Records for Inspection, Review and Copy

There is an important distinction between requests for public records versus requests for data products, data services, or copies of whole databases. By placing this distinction in the statutes, however, there will be no interference with the public's "right to know" or to access open record information. This bill protects public access to the workings of government, while providing reasonable management abilities for the data processing systems of counties and cities. In fact, computerized systems can make it easier for citizens to obtain information about their government and to more easily study the data used to form public policy. Our county, like many others, is already

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providing "public access" terminals in courthouse offices. In the future we hope to have the same access available in public libraries.

Mapping Systems

Johnson County and other Kansas counties have developed computerized mapping projects (called Geographic Information Systems, or GIS). These GIS programs are opening new ways to look at information. Counties and cities need ways to manage the demand for these new kinds of computerized products, with some reasonable fee structures, and to manage the release of computerized data for purposes other than viewing or inspection.

Supports Contracts for Joint Ventures

HB 3018 authorizes database partnerships among public agencies, and it encourages the formation of "public enterprise relationships" through contracts and licenses with the private sector. This concept is in keeping with new trends toward public-private joint ventures to reduce taxpayer costs, specifically to share the costs of building and maintaining complex computer databases. Current statutes governing computer data fail to grant clear authority for agencies to implement realistic fee structures when copies are requested in computerized form.

Without such authority, there is a disincentive for groups such as cities, counties, utility companies and water districts to form compacts or joint ventures. Any prospective participant is understandably reluctant to pay for development of an expensive new database if outside users may later demand, perhaps successfully, that the entire database be given to them at no charge. HB 3018 creates a mechanism to protect such partnerships while also protecting public access to public records.

Custodianship Preserved

Current statutes (KSA 45-220) designate custodian responsibilities to certain public officials, defining their obligations in managing various public records. Nothing in the proposed bill will modify or reassign such custodian duties.

New Directions

HB 3018 is patterned after model legislation adopted in other states. The bill represents modern data management policies endorsed and recommended by the National Conference of State Legislatures, the National League of Cities, the National Association of Counties, and Public Technology, Inc.

Map Examples

Attached are examples of special maps that illustrate the value of building computerized geographic databases.

Thank you for your consideration. I would be happy to respond to questions or to provide additional information as may be required.



Sample: Orthophotograph

Johnson County, Kansas
Automated Information/Mapping System

This aerial photo has been processed through a computer program to create an accurate "orthophotograph." Each part of the image on the orthophoto has been repositioned and adjusted to match measured distances on the ground. In this case the control network for the county's digital topographic maps was used to manipulate the orthophoto image. The photos are produced at a scale of 1 inch = 100 feet in the urban area and 1 inch = 200 feet in the rural area. The cost of this project was about \$500,000 in 1986. Updates will cost about \$1000 to \$4000 per square mile, depending on scale. The 1986 photo series is recorded on photo film whereas future versions may be stored as digital images on computer disk.

Date of photography: April 1986

Contractors and cost: Analytical Surveys, Inc., Surdex, Inc., Photo Service, Inc., \$500,000

Coverage: 480 square miles

HOUSE LOCAL GOVERNMENT
Attachment # 12-3
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Sample: Planimetric Map

Johnson County, Kansas

Automated Information/Mapping System

This planimetric map has been drawn from a computer database created with a "stereoplotter" machine and a set of aerial photographs. The ground contour lines are shown at 2-foot elevation intervals. Building outlines, road edges, ponds and other physical features of the landscape are "digitized" in the same process. Once the database was created, the computer program can now generate maps of various scales and sizes, and the maps can display some or all of the 58 features in the system. Maps can also be customized with color lines, color shading, and 3-D perspectives.

Date of photography: April 1986

Contractor and cost: Analytical Surveys, Inc., \$1,750,000

Coverage: 480 square miles

Size of computer file: 1,000 megabytes (1 gigabyte)

HOUSE LOCAL GOVERNMENT

Attachment # 12-4

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Table 1 **Planimetric Coverage Structure**

There are 13 coverages for each map sheet. Below is a list of the feature codes and coverages.

1 Building Coverage:

- 20 - Building
- 21 - Courtyard

2 Centerline Coverage:

- 40 - Railroad
- 41 - Road Centerline
- Railroad Name Annotation

3 Road Edge Coverage:

- 50 - Paved Road
- 51 - Gravel Road
- 52 - Trails
- 53 - Alley
- 54 - Bridge
- 55 - Driveway

4 Index Contour Coverage:

- 110 - Index Contour
- 111 - Index Depress Contour
- 112 - Dense Tree Index
- 113 - Dense Tree Index Depress
- Contour Label Annotation

5 Intermediate Contour Coverage:

- 100 - Intermediate Contour
- 101 - Intermediate Depress Contour
- 102 - Dense Tree Intermediate Contour
- 103 - Dense Tree Int. Contour Depress

6 Misc. Coverage:

- 90 - Gravel Pits
- 91 - Cemetery
- 92 - Runway
- Cemetery Annotation
- Sheet Number Annotation
- 93 - Ordnance Plant

7 Other Building Coverage:

- 30 - Parking Paved
- 31 - Gravel Parking
- 32 - Fence
- 33 - Retaining Wall

8 Spot Height Coverage:

- 120 - Spot Height
- 121 - Water Spot Height
- Spot Height Annotation
- Water Spot Height Annotation

9 Survey Control Coverage:

- 130 - Section Corner Paneled
- 131 - Section Corner From Quad
- 132 - Section Corner Paneled Offsite
- 133 - Control Horizontal
- 134 - Control Vertical
- 135 - Control Horizontal/Vertical
- Control Point Annotation

10 Utilities Coverage:

- 1 - Overhead Pipeline
- 2 - Water Tower
- 3 - Round Tank
- 4 - Utility Pole
- 5 - Traffic Signal
- 6 - Light Pole
- 7 - Transmission Tower (2Pnt)
- 8 - Transmission Tower (1Pnt)
- 9 - Radio Tower
- 10 - Fire Hydrant
- 11 - Round Manhole
- 12 - Pipeline

11 Vegetation Coverage:

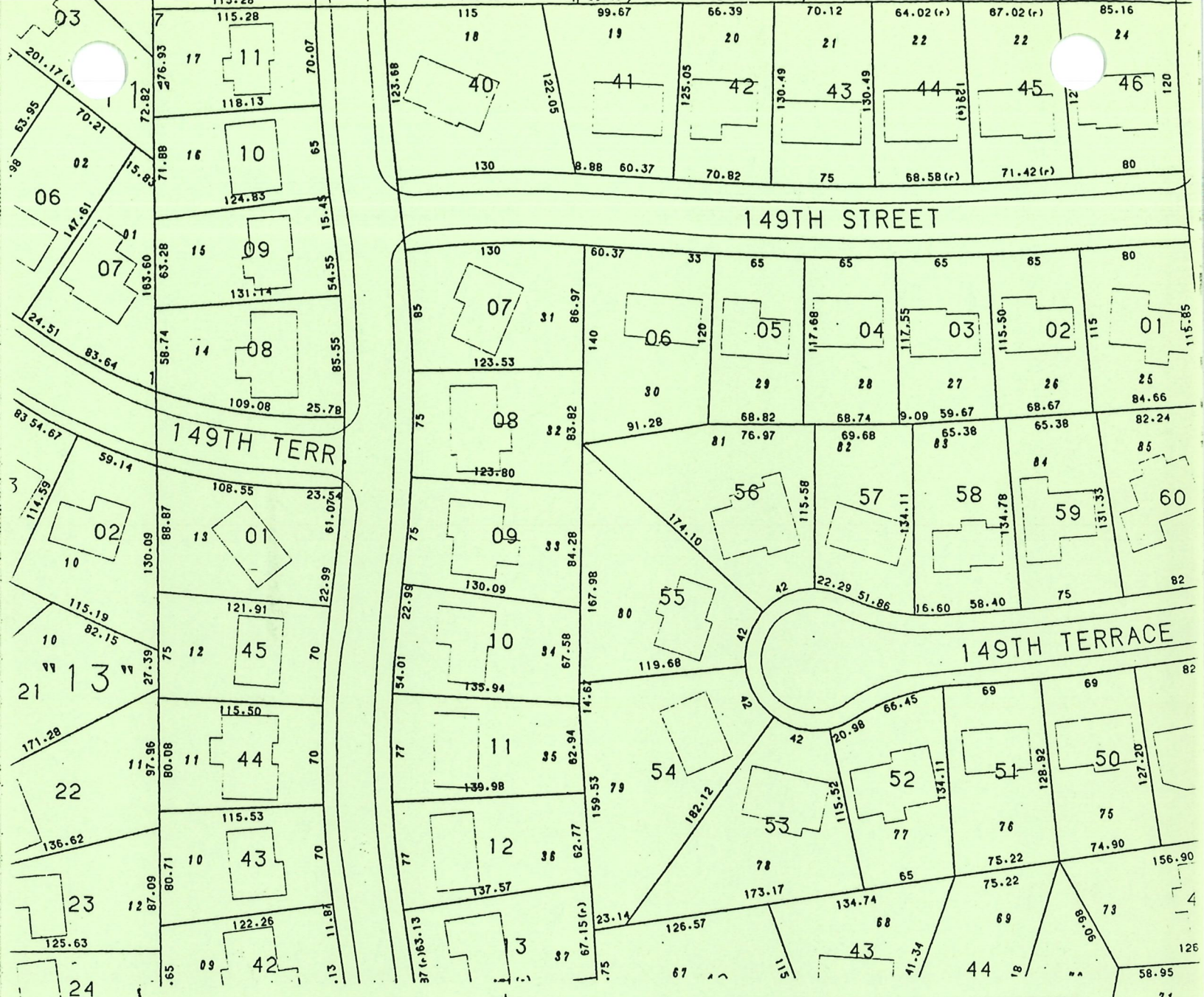
- 80 - Single Broadleaf
- 81 - Hedge
- 82 - Tree Outline

12 Water Coverage:

- 60 - River, Lake, Stream, Pond
- Water Annotation

13 Water Structure Coverage:

- 70 - Culvert
- 71 - Dam
- 72 - Earth Dam
- 73 - Catch Basin



Sample: Property Map

Johnson County, Kansas

Automated Information/Mapping System

This property map has been drawn from a computer database created with a program using coordinate geometry, based on original surveys, subdivision plats and deeds. Once the database was created, the computer program can now generate maps of various scales and sizes, and the maps can display some or all of the property features in the County's record systems. Parcel numbers and dimensions can be displayed as needed for specific projects. Maps can also be customized with color lines, color shading, and 3-D perspectives.

Date of map construction: 1987 to 1991

Contractor and cost: United Aerial Mapping, Inc., \$1,650,000

Coverage: 480 square miles (1,200 map files)

Size of computer file: 750 megabytes

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Attachment # 12-6

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POTENTIAL AIMS USERS

<u>Cities</u>	<u>School District</u>	<u>Utility Companies</u>	<u>State /Federal</u>
Bonner Springs	Blue Valley	Southwestern Bell	County Extension
Countryside	DeSoto	Kansas City Power & Light	SCS, ASCS
DeSoto	Gardner/Edgerton	KPL Gas Service	Kansas Water Resources
Edgerton	Olathe	United Telecom	Kansas Natural Resources
Fairway	Shawnee Mission	Telecable	KDHE
Gardner	Spring Hill	Jones Intercable	EPA
Lake Quivira		Pipelines	FEMA
Leawood			DOT, FAA
Lenexa			
Merriam			
Mission			
Mission Hills	<u>Service Districts</u>		
Mission Woods	Water District No. 1		
Olathe	Rural Water Districts		
Overland Park	Fire Districts		
Prairie Village			
Roeland Park			
Shawnee			
Spring Hill			
Westwood			
Westwood Hills			

Private Sector

- Technical: engineers/surveying firms
- Development: Chambers of Commerce, developers, Board of Realtors
- Commercial Users: delivery, routing, market studies

APPLICATIONS SUMMARY

Automated Information Mapping System

	SOFTWARE				CUSTOM MAPS	DESCRIPTION/STATUS
	In Use	Buying	Testing	Planning		
Appraiser	A/INF			AV	I, P	largest producer & user of AIMS maps; plans expansion with ArcView
Wastewater	A/INF				I	sewer dist. planning, sewer location maps, benefit dist. calculations
Public Works	A/INF, AC				I	enhancing data of stream networks, contracting for AutoCAD program
Public Works--Stormwater	AC				I	translated AIMS data files were provided to prime contractor & 3 subs
County Clerk				A/INF, AV	P	Unix connections require new computers
Human Services & Aging					S	monthly guide maps for volunteer drivers for Home Delivered Meals
Environmental					S	studying ArcView
Med-Act			A/INF, AV		S	testing AIMS files for street database
Emergency Management					S	siren location study now in progress
Election Commissioner					S	various maps of precincts, census data
Parks and Recreation	AC		A/CD		S	testing Arc/CAD for Mill Creek Streamway Park area
CDBG Administration					S	various maps of census data for Block Grant program
Finance				AV	S	joint project for DMAC -- maps of capital projects
Airport	AC				S	files converted to AutoCAD
CERI					S	land use maps and analysis, zip code overlay, census maps
Planning Office	A/INF, AV				I, P	zoning, land use, comprehensive plan maps
Gardner Edgerton Schools					S	district boundary maps, base maps for bus routing
Blue Valley Schools	A/INF, AV				I	sample files for testing; full AIMS license proposed
City of Overland Park	A/INF, A/CD				I	full AIMS license since June 1993; numerous applications
City of Olathe	AC, A/INF					testing on-line connection; joint city/Airport water line project
City of Lenexa	AC	A/INF, AC			S	using AIMS map of city zoning; proposes AIMS license
City of Prairie Village				AV		sample AIMS files for street reconstruction and street light projects
City of Gardner	AC					AutoCAD files for city water project
City of Leawood	AC					AutoCAD files for stormwater and street projects
Water District No. 1	A/CD		AV	A/INF	S	sample corridor maps and AutoCAD files, planning AIMS license
Rural Water District No. 6	AC					AutoCAD files (requested, in process)
South Jo. Co. Fire Dist.			AV			testing ArcView, planning AIMS license

SOFTWARE CODES:

A/INF = Arc/Info
A/CD = Arc/CAD
AC = AutoCAD
AV = ArcView

CUSTOM MAP CODES:

I = maps prepared by agency's internal staff
S = maps prepared as service by AIMS staff
P = printed map book as a joint project by Planning, Appraiser, Clerk

Geographic Information System (GIS)

started: 1985
cost: \$5 million for initial project

GIS costs:

10% hardware & software
90% database development

GIS elements:

- detailed aerial photography
- computerized contours, buildings, light poles, bridges, etc.
- property base map, surveys, plats

GIS operations in Johnson County:

- central department budget = \$575,000/year
- 13 full-time staff assigned to GIS in 3 departments
- 5 additional staff assigned part-time to GIS
- updates proposed in 1994 and 1995 (\$420,000)

Potential users:

- County government (20+ departments)
- Cities (21)
- School Districts (6)
- Water Districts (4)
- Utility Companies
 - gas, electric, phone, cable TV, pipelines, railroads
- Private sector

Data updates by:

street construction	city
school census	school
address changes	city, utility
light poles, power poles	utility
sewer lines	county
water lines	water district
fire hydrants	water district, fire district
traffic signals	city
plats, surveys	engineering consultant, city
new aerial photos	all (via contractor)
new contour maps	all (via contractor)
property ownership	county
building permits	city
business licenses	city



SEDGWICK COUNTY, KANSAS

Department of
Information Services
538 N. Main
Wichita, KS 67027-3704
Phone: 316/383-7968
FAX: 316/383-7673

Kenneth A. Keen
Director

TO: House Local Government Committee

FROM: Kenneth A. Keen, *AK* Director

DATE: February 18, 1994

RE: House Bill 3018

Chair Brown and Committee members, thank you for the opportunity to express Sedgwick County's support of House Bill 3018.

We are living in what has been called the "information age." Business management relies more heavily on information and the ability to use it than ever before. Similarly, governmental organizations have large investments in information technology and in gathering data necessary for accomplishing their missions. Private business recognizes that "information has value." It is no different for government at any level. Information gathered and processed at taxpayer expense has value, not only within government, but to the business community as well.

As public servants, we are entrusted to manage the taxpayer's resources for the benefit of the taxpayer. In most areas, the "giving away" of resources the taxpayer has paid to accumulate would be regarded as a criminal offense. Unfortunately, this is not the case in the area of information or data. Current law permits companies to make demands of government for specific data, sometimes for entire databases in formats for processing by their computers, and to make a profit without recognizing the taxpayer's equity in the data.

It is recognized that government must always be accountable to the taxpayer. Individuals must have access to their information to verify the accuracy of that information or to challenge the way government is carrying out its work. For example, individuals wishing to challenge the validity of their taxes need access to their own information and also to the records of a sample of other similarly taxed items to build a case of alleged unequal treatment. House Bill 3018 is not intended to deny an individual citizen access to data. This is a fundamental

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taxpayer/citizen right that must be maintained; government must always be accountable to its citizens.

Attached to the written testimony are two (2) examples of problems Sedgwick County has encountered trying to comply with the Open Records Act.

ISSUES AT SEDGWICK COUNTY

1. The Kansas Open Records Act requires a response within three days describing when the information will be available. It is very difficult to provide effective estimates when requests are vague: "I want all the information to which I am entitled." In addition, it is difficult to plan a response in regard to normal work that must be processed. Time schedules are sometimes regarded as too long causing the perception that the County is just stalling.
2. Requesters sometimes propose that their programmers, or contract programmers be provided to circumvent the limited resources of the County. Neither of these is acceptable to the County. While security is in place to prevent unauthorized access to programs and files, training and explanations regarding standards and methods do not relieve programming staff of an appreciable load. The County's external audit firm has issued a strongly-worded statement against the advisability of permitting non-County staff access to data files.
3. The current Kansas Open Records Act sometimes places an unusual burden on local governments using information in an electronic form. For example, K.S.A. 45-221 (d) states that "if a public record contains material which is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record which is subject to disclosure pursuant to this act." There is a direct conflict between this legal requirement, good computer system design, and the Attorney General's opinions that states "the KORA imposes no duty on a public agency to create a record to compile specific information requested by an individual" (opinion 86-43) and "... it is our opinion that a public agency is not required under the KORA to write a computer program if the information requested is available in existing records. While an individual has the right to obtain copies of public records, there is no right to obtain the records in the least expensive manner" (opinion 87-137).

In both of the examples described above, specific records were created to comply with the Open Records requests. Except for very simple requests, it is very difficult to avoid writing programs to comply with the request.

4. Once a program has been written to comply with a request, there is an issue of ownership of the new program. Does the government own it? Does the requester own it?
5. Once a new record has been created to satisfy the request, does the requester have the ability and/or the legal right to place any demands

upon the County concerning further requests for the same information by other individuals?

6. Do local governments have to respond to agencies and individuals residing outside the State of Kansas? Sedgwick County has received requests from Ohio, Missouri, Texas, and Colorado. In fact, in the first example provided above, the company involved is not owned by individuals residing within the state.
7. As computer systems evolve, is there any obligation on the local government to provide maintenance (changes) to the programs written to create records?
8. Conflicts of interest are sometimes hidden concerning the proposed legislative change. Indeed, most of those opposing the change profit, either through their business or personally, from the use of government data and have a vested interest in preventing Kansas cities and counties from recognizing an important revenue stream that the State is already using.

The proposed changes do not directly benefit any city or county employee, but provide a revenue stream that can benefit the taxpayers as a whole. The argument is sometimes made that the taxpayer has already paid for the information. That statement is incorrect: the taxpayers, as a whole, have paid for the information and are entitled to a return on their investment if any single individual or taxpayer is using the information to profit themselves or their business.

These are issues that plague those of us responding to the Kansas Open Records Act and have led to our support of the proposed legislation. If there is some way I can assist the committee or there are questions I may address, please let me know.

EXAMPLE I

The first instance involved a request for property information from the Appraiser's office. Initially, the request asked for information appearing on the tax roll. When an electronic copy of the actual tax roll was provided, the requester stated it would be too much work on their part to remove various spacing and formatting and, as a result, they wanted a copy of the files the programs used to create the tax roll. The County responded that a record complying with the request did not exist because information to which they were not entitled was present in the computer record. A lawsuit was filed. It was argued by the County that a good-faith effort had been made to comply with the request. The judge ruled against the County.

A tape was provided to the requester. Because of a mis-match in computer equipment a second run was required to write the information to a format that would permit the requester's computer to read it. Programming and reprogramming was required to respond to the request.

EXAMPLE II

The second issue involved a very large amount of data. The initial request, over three years ago, covered information the County maintains in files for the District Court, Register of Deeds, Appraiser, Clerk, and Treasurer involving 207 files and about 7.5 billion characters of information. Initial cost estimates were made that covered the costs of using County programmers and resources to provide the information in a form that the requester could define and would be easy for them to use. These estimates were declared unreasonable by the requester, and a lawsuit was filed.

Following a court appearance and some depositions, attorneys for the two parties reached a compromise concerning what information would be provided for a specific charge. Programming began and 21 tapes were delivered to the requester about two weeks later. The work actually cost over \$2,000 more than the agreed amount, which had to be absorbed by the taxpayer as part of the agreement.

Problems began to surface. Tapes for various reasons were unreadable and had to be recreated. Data were missing in the agreement and subsequent reprogramming was required to provide them. There was a programming error on the part of the County. Misunderstandings arose and the County was only partially paid the amount it billed the requester to cover cost subsequent requests. The information was sent out of state for programming work and the County was asked to provide long-distance consulting support. The County declined, but has participated in several teleconferences and has been reimbursed for those staff hours.

Two years later, requests continue to be received for consulting help concerning the data. The latest communication was November 1993, requesting program modifications. Runs continue to be requested to provide updated information at various intervals.

In support of this request, Sedgwick County programmers have supplied over four inches of written documentation, written 21 programs, and 24 "jobs" for the County's computer to process. The project has taken over 108 hours: time that otherwise would have been devoted to accomplishing useful work for the citizens of Sedgwick County.



**THE LEAGUE
OF KANSAS
MUNICIPALITIES**

**Municipal
Legislative
Testimony**

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

TO: House Local Government Committee

FROM: Harry Herington, Associate General Counsel

DATE: February 22, 1994

RE: HB 3018 - Local Government Computer Technology and Data Management Act.

I appreciate the opportunity to appear on behalf of the League of Kansas Municipalities to express our support for HB 3018, the Local Government Computer Technology and Data Management Act. It is our belief that HB 3018 is a necessary addition to the Kansas Open Records Act in order for local units of governments to develop and maintain necessary computerized information.

With the increase of personal computers in the past 10 years, local governments have been forced to dramatically change the methods they use to store, manage and retrieve public data. The type and scope of data requested of local governments have also changed dramatically. Although officials are still responding to traditional open record requests that involve the photocopying of specific public records, they are also being overwhelmed with data requests that require computerized manipulation and, in some cases, the development of specific computer programming. The more sophisticated information system that a local government acquires, the more complex data inquiries they receive. Under the current Open Records Act, local governments are restricted with the amount they may charge when responding to these requests. It is quickly becoming apparent the private business is not only profiting from the use of publicly acquired information, but they are also putting a strain on the equipment and manpower that is necessary to maintain the information. This places local officials in a no win situation. If they update their equipment, there will also be an increase in the workload of local staff due to the increase of complex data requests. Local staffs that are unable to handle the increased workloads are thus forced to work with outdated equipment and software in order avoid having access to information that would benefit both the public and private sectors.

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HB 3018 would allow local governments to charge appropriate fees necessary to help maintain and improve the required computerized technology, without adversely affecting the spirit of the Kansas Open Records Act. Private individuals would still have traditional access to public information at cost of reproduction and on-line access, through the use of public access terminals, to computerized information without charge. Local governments would be granted the authority to enter into agreements with other public and private agencies in order to share in the cost of the development of new computer and information technology. This would lessen the financial burden on local taxpayers. Thus, the situation changes from a no win situation to a win-win-win situation; with the local government, private sector and local taxpayers all benefiting.

RECOMMENDATION

The League of Kansas Municipalities would recommend that the House Local Government Committee report HB 3018 favorably.



"Service to County Government"

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Executive Director
John T. Torbert, CAE

TO: House Local Government Committee

FROM: Jim Reardon, Director of Legal Services
Paul Flowers, Director of Research
Kansas Association of Counties

RE: SB 747/HB 3018

Electronic Data Management: From Yellow Brick Road to
Superhighway.

Testimony of February 22, 1993.

KAC supports the Local Government Computer Technology and Data Management Act. During recent hearings held by the Senate Governmental Organizational Committee, Chairman Ramirez asked that representatives of local government meet with members of the private sector to seek common ground on public policy issues relating to electronic data management. As a result, the Kansas Association of Counties and the League of Kansas Municipalities participated in three such meetings held in Topeka and Wichita.

We believe that this process brought about increased awareness of the perspectives of each participant. In effect, these meetings and hearings laid the groundwork for the creation of public data management policies which truly work for the good of Kansas citizens. **SB 747/HB 3018** is the result of this process.

Several areas were identified as being particularly relevant during the meetings:

1. **The structuring of partnerships between government and private information users.** "Re-inventing government" requires looking to users of information for the purpose of finding resources for the maintenance and development of data and information systems. Currently there are no clearly defined guidelines regarding what is and what is not permissible. This is an important issue that is addressed in **SB 747/HB 3018**.

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2. **The status of manipulated records and software as public records.** There is a need for further clarification from the legislature regarding what exactly constitutes a public record when information is jointly developed. Counties are custodians of an enormous amount of personal data, that means that technology is required to keep public information public and private information private. **KAC supports the right to public access of public information. We urge extreme care in protecting private information.**
3. **The preservation of public access to public records.** Electronic information management is rapidly becoming the mode by which all levels of government are doing business. Although this trend is rapidly increasing the quantity of public records, at the same time it also introduces new problems in duplicating these records upon request, particularly when complex or very large numbers of records are involved.
4. **The cost of information technologies.** According to County News Magazine counties, last year funnelled \$23 billion into information technologies and related resources--**not including personnel costs**. Counties have invested steadily to build integrated technology systems that bring together computers, telephones, fax machines, video and audio tape, compact disks, cable, telephone wire, satellites, optical fiber transmissions lines, microwave nets, televisions, monitors, printers, etc. **Is it unreasonable to ask commercial users and co-developers to share the costs involved? KAC thinks that county governments need to anticipate the changes in the delivery of information and to manage the changes in a manner that will result in the greatest good for their respective communities.**

Early this year, President Clinton announced a new initiative, The National Information Infrastructure (NII), that proposes using technology to drive economic growth and job creation. He has invited local and state governments to develop an "Agenda for Action". The actions you as legislators take will determine how successful Kansas will be in developing our agenda for participating in this Information Infrastructure. Developing such a highway will require you to establish new standards, laws, regulations and intergovernmental relationships. **KAC urges you to provide our pioneers in these endeavors the widest latitude possible in order to develop this infrastructure.**

We urge your consideration and support for SB 747/HB 3018. We wish to thank the committee for this opportunity to discuss this vital public issue.

test\ink.tst



Executive Offices:
3644 S. W. Burlingame Road
Topeka, Kansas 66611-2098
Telephone 913/267-3610
Fax 913/267-1867

TO: HOUSE LOCAL GOVERNMENT COMMITTEE

FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: FEBRUARY 22, 1994

SUBJECT: HB 3018, PUBLIC RECORDS AND INFORMATION, LOCAL GOVERNMENT
COMPUTER TECHNOLOGY AND MANAGEMENT

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS®, I appear today to oppose HB 3018.

We oppose the bill because we believe it raises many questions which are not answered in the bill. Our first question is, if this bill is passed, do the provisions of this bill override the provisions of the Kansas Open Records Act (KORA)? If it does not, then which act takes precedence?

Since the KORA is not printed in the bill for you, I thought you might be interested in knowing what the KORA provisions are regarding these matters.

The KORA states, "It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy," at K.S.A. 45-216.

The definition of the term "public record" is found at K.S.A. 45-217 (f)(1) which states, "public record means any recorded information, regardless of form or characteristics, which is made, maintained or kept by or is in the possession of any public agency including, but not limited to, an agreement in settlement of litigation involving the Kansas public employees retirement system and the investment of moneys of the fund."

The rules for charging for inspection or copies of a public record are found at K.S.A. 45-219, (c) which states in part, "Except as provided by subsection (f) or where fees for inspection or for copies of a public record are prescribed by statute, each public agency may prescribe reasonable fees for providing access to or furnishing copies of public records, subject to the following: (1) In the case of fees for copies of records, the fees shall not exceed the actual cost of furnishing copies, including the cost of staff time required to make the information available. (2) In the case of fees for providing access to records maintained on computer facilities, the fees shall include only the cost of any computer services, including staff time required.

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Now, let us distinguish the KORA with the provisions of HB 3018. House Bill 3018 appears to be making up completely different rules for what is already defined to be a public record. With the exception of the item in (6) dealing with licensure, the "electronic products and services" defined in Section 3 clearly fall under the definition of public record which I read to you earlier. They are recorded information in the form of computerized data, which is made, maintained or kept by or is in the possession of a public agency. The bill appears to let cities and counties make up different procedures for access to these records and to set up a different fee structure than that permitted under the KORA.

As already stated above, the KORA provides that, "In the case of fees for providing access to records maintained on computer facilities, the fees shall include only the cost of any computer services, including staff time required." House Bill 3018 states in Section 5 (3) "User fees shall not exceed the actual incremental costs of providing the electronic services and products plus a reasonable portion of the capital and the costs of the information management system." This is a much broader sweep of authority being granted to cities and counties than what was ever intended under the KORA.

Keep in mind that, with the exception of the licensure authority, all of the electronic products and services described under Section 3 of this bill are being accessed now under the terms of the KORA. Many of the people in this room can give you examples of how it is being handled under the KORA. This legislation proposes dramatic changes to the charges which would be legal under KORA and goes directly in contravention to the purpose of the KORA that, "It is declared to be the public policy of the state that public records shall be open for inspection by any person unless other wise provided by this act, and this act shall be liberally construed and applied to promote such policy."

While this bill was brought to you as a better solution to the problem than what SB268 proposed, it essentially proposes the same solution only coming at it through a different door, without ever amending the KORA. We do not think this is good public policy.

This bill permits the cities and counties to charge taxpayers not just for access to public records, but also to charge taxpayers for the computer systems which they will be using. There is no indication that the "reasonable portion of the capital and operational costs of the information management system" are to be reduced by the overall benefit which a city or county enjoys by having the system in place for its own record management purposes.

What is missing from this bill is the acknowledgement that it is the duty of cities and counties to be the custodians of records for the citizens of this state. All citizens benefit by having current, accurate computerized information. All city and county citizens benefit by having efficient record keeping. Yet, under this legislation, the citizens who have the misfortune to want access to the records have to be the subsidizers for the custodial job already incumbent upon local governments. Paragraph (4) of Section 5 states that "Fee schedules may be reduced to reflect policy decisions to subsidize or partially subsidize use of and access to the particular information management system." It does not say "shall". Therefore, there is no requirement that the fee making structure reflect the city's or county's own benefit of having these systems in place. This is a very troublesome concept in light of the spirit of the KORA.

While the proponents here would argue that the KORA did not anticipate the advent of the computer boom, we would point out that it did anticipate computer access when the provision was put in the original legislation which specifically mentions that, "In the case of fees for providing access to records maintained on computer facilities, the fees shall include only the cost of any computer services, including staff time required."

Our remaining concerns center around the licensing authority which this bill proposes to provide to local units of government. While we are fully aware of the wonders of the information highway which are being promised to us, we are also concerned about what may happen to the custodial duties of public records in the name of preparation or participation in the information highway.

The bill appears to give local governments the ability to enter into exclusive licensing arrangements for the broad purpose of the ability to "use and disseminate all or part of a database for the provision of electronic products and services..." This ability was discussed many times throughout the meetings of the task force assigned to study this topic last summer. Many questions were asked, most of them were unanswered although there was general recognition that the answers to the questions probably involved amending the KORA. Yet, once again, we have no amendments to the KORA in this bill.

I draw your attention to two articles which I have attached to my testimony which point out the problems which this licensure concept pose. One of the key problems is, if local governments in fact grant licenses for the purpose of use and dissemination of public records, wouldn't they then have the power of delegating their custodial duties away, for a price. And, if this is true, who will pay the price? (Refer to articles.)

What concerns us here, is that the day will come when local governments find it more "cost effective" to contract away their custodial duties to say, a company like the Information Network of Kansas (INK), and no longer keep their own records, thus forcing the public to go to INK to get access. A company like the INK, is in business to make a profit, unlike government, which should not be in that business. Additionally, we have a concern about the ability given in Section 4 (d) to limit liability through warranty disclaimers or other appropriate contract provisions with customers." Couldn't the local governments contract away their liability for keeping inaccurate public records.

In general, we believe the proposals here concerning fee making structure and giving local government the power to enter into these exclusive agreements have severe impacts on the KORA. We ask you to consider these implications very seriously and that report the bill adversely.

Costly on-line services limit access to government data

By JUBE SHIVER JR.
Los Angeles Times

WASHINGTON — For a growing number of Americans, the vaunted information highway is already turning into a costly toll road.

The traffic in question is government data. Taxpayers pay for its collection, but private-sector middlemen have become its main purveyors through lucrative "on-line" services that can cost as much as \$300 an hour to use.

Congress, for example, has an on-line system that allows staffers to view the status and, in some cases, the full text of proposed legislation and other information. Computer users say this material could be made publicly available via computer relatively cheaply, but outsiders must pay \$1,900 a year and more to get the information from companies such as Legi-Slate Inc., an on-line service owned by

“People who criticize us for selling government information misunderstand what we are doing.”

Arnold Winkelman,
Legi-Slate on-line service

the Washington Post Co.

“People who criticize us for selling government information misunderstand what we are doing,” said Arnold Winkelman, who oversees Legi-Slate's marketing division. “What we are selling is a tool to get information in a timely and accurate fashion.”

There is little disagreement that the nation's emerging electronic information infrastruc-

ture will offer great public benefit, such as helping the government speed medical research to doctors or making the Library of Congress available to any scholar, anywhere, with a personal computer. Nor is there much quarrel with the right of information vendors to resell government information that's quickly and cheaply made available elsewhere.

The concern is that exclusive arrangements with costly private on-line services will create what Temple University's Nolan A. Bowie calls “an information underclass.” Critics also fault government agencies for charging as much as 50 times more for electronic versions of documents routinely available on paper.

“What we are building is society's nervous system for the next millennium — something that will change the way we think and affect the kind of society we want to become,” said Bowie, a communications professor.

Even a toll-free information highway is like-

ly to leave some people behind. The poorest of the poor, lacking the education, the computers and perhaps even the phone lines, are unlikely to begin scouring electronic Securities and Exchange Commission filings even if access is free.

But the high-priced system evolving now shuts out many of those otherwise equipped for the Information Age — including many libraries, where even the poorest might otherwise gain access. High-priced data could also curb research.

A Princeton University student ran into just such a roadblock in writing a senior thesis on federal banking regulations. The Federal Reserve used to give computer tapes to researchers for free. But on Feb. 1, 1991, it denied the student's request for 40 tapes, saying he could buy the tapes from the National Technical Information Service, a federal agency, for \$20,000.

HOUSE LOCAL GOVERNMENT
Attachment # 16-4
2 / 22 / 84

Business

THE KANSAS CITY STAR

SATURDAY, October 23, 1993

Data link to SEC to be free

**Science grant will
pay for two-year trial
of computer service**

From Star News Services

WASHINGTON — In a two-year trial project, the federal government will give Americans on-line computer access to corporate filings at the Securities and Exchange Commission.

Access to the filings at the SEC, which maintains one of the world's most valuable stores of information on corporate activities, is being financed by a \$660,000 National Science Foundation grant.

The computer service will be provided by New York University's Stern School of Business, a non-profit organization, and the Internet Multicasting Society. The information will be made available over Internet, the global network of computer networks.

Carl Malamud, founder of the Internet Multicasting Society, said he hoped to have the nationwide service operating by the end of the year.

Although the project is a trial, it has broad implications. It is a fast, inexpensive way to give access to public records of corporate filings. The precedent could threaten a huge industry that has grown up to sell financial records, court cases and other public documents over services such as Mosaic and Central's Nexis and DataStar.

The decision to make the Electronic Data Gathering, Analysis and Retrieval system available comes amid mounting controversy.

Groups such as the Taxpayers Assets Project, a Washington public interest group affiliated with consumer activist Ralph Nader, have criticized arrangements where the government information bankrolled by taxpayers is exclusively offered through proprietary on-line services that can cost as much as \$300 an hour to use.

HOUSE LOCAL GOVERNMENT
Attachment # 16-5

2 / 22 / 94

LEGISLATIVE HEARING -- The House Local Government Committee

Remarks delivered February 22, 1994, by Julie Doll, associate publisher of The Olathe Daily News, regarding the Local Government Computer Technology and Data Management Act.

The question the Legislature will answer when it considers House Bill 3018 is whether local government will be allowed to charge the public for access to public information?

As a member of the press and as a Kansan, I hope your answer is no.

Under current law, government officials are allowed to charge fees adequate to cover the costs of copying information requested by the public. The bill under consideration would allow government to act as the owners -- rather than as custodians -- of public information.

The bill would allow government agencies, acting as owners, to sell public information. To generate revenue, government would deny or limit access to some, while selling to others the right to access and use the information.

Such arrangements are unfair and unwise.

They are unfair because lack of financial means should not disqualify anyone from gaining access to or using public information.

As taxpayers, Kansans have paid for the equipment that has been assembled and the information that has been compiled. It is theirs. And it is unfair to make them pay for it again through user fees and licensing arrangements.

Exclusive business arrangements between government and private, for-profit companies for the dissemination of information are unwise because they hinder access to that information and because exclusive arrangements preclude others from developing better and more economical products and services.

Ensuring access to public information is one of the cheapest and most effective means of economic development. Use of data bases and other information compiled by the government should be encouraged as a way to develop new products and services and to market existing ones.

Putting aside the issue of access for commercial purposes, there remains the issue of access for the general public.

Supporters of this bill, no doubt, will point to its provisions for "public purposes" as sufficient protection of the right to access.

But rather than be reassured, the public should be alarmed by the provisions.

It should not be up to the local agency that is acting as the custodian of records to decide who gets information for free, and who must pay.

The provision calling for waivers or fee reductions for "public purposes," such as journalism or education, asks government to make judgments about the people who request information, as well as their motives for doing so. That is a mighty slippery slope to begin down.

Does the real estate developer get charged for information, while the special interest group out to stop his project wins a waiver under the heading of non-profit activities?

Does the metro newspaper get its data base free, under the guise of journalism, while the direct marketing firm forks over the dough?

Does the local public school board win a waiver under the heading of public education, while the private school pays? Or does "public education" have a much broader meaning? And if so, how broad is broad?

While the provision for waivers and fee reductions for certain users is ominous, the provision for a public terminal and free paper copies of specified information is simply inadequate.

Sophisticated uses of data bases cannot be accomplished through such means. Although the intention may be noble, providing a public computer terminal and free paper copies of information that is specified by the user is no substitute for equal access.

It is, rather, akin to allowing only those with Cadillacs and Town Cars on the Kansas Turnpike, and offering the rest of us the use of a broken-down Model T for the trip to Wichita. Telling us that we don't have to pay the toll doesn't make the journey possible.

As we all know, the electronic information field is being redefined daily with technological breakthroughs and innovations in how people can access and use information.

Kansas -- its citizens, its businesses and even its government -- will be best served if obstacles to advancement are kept to a minimum, and information can move as freely as possible to as many people as possible.

It was the Legislature's commitment to public accountability and ensuring public access that stopped a bill similar to this one last year in the Senate. I urge you to again place the public's right to public information above the plan to generate revenue for local units of government, and to reject House Bill 3018.

Thank you.