

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:00 a.m. on January 18, 1994 in Room 531-N of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Karen France, Kansas Association of Realtors  
John Torbert, Kansas Association of Counties  
Don Moler, The League of Kansas Municipalities  
Patricia Baker, Kansas Association of School Boards

Others attending: See attached list

The Chairman informed the committee that the bills scheduled for hearing today were a result of an interim study and had been tentatively approved by the interim committee.

SB 455 -- Concerning Cities and counties; relating to certain mandates imposed thereon; relating to aggregate tax levy limitations and exemptions.

SB 457 -- Concerning certain legislative bills and rules and regulations; relating to the preparation of fiscal notes and economic impact statements.

Theresa Kiernan briefly described SB 455 as exempting the cost of enforcing state and federal mandates from the tax lid.

Karen France, Kansas Association of Realtors, testified first, not in support of or opposition to SB 455, but rather to offer another solution to the problem in the form of HCR 5017 which has been introduced in the House. (See Attachment 1).

John Torbert, Kansas Association of Counties, testified in support of both SB 455 and SB 457. (See Attachment 2).

Don Moler, League of Kansas Municipalities, testified in support of SB 455 and SB 457. (See Attachment 3).

Final testimony was given by Patricia Baker, Kansas Association of School Boards, in support of SB 457. (See Attachment 4).

Sen. Ranson, who was not present during the interim study, inquired as to if the committee had considered giving local government an option to enact mandates if not funded. The Chairman answered that the committee had not. Mr. Heim added that Section 3 of SB 455 addresses this in a little different fashion in that the law is not binding if not funded.

Sen. Langworthy made a motion to report SB 455 favorable for passage, Sen. Feleciano seconded.

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT, Room 531-N, Statehouse, at 9:00 a.m. on January 18, 1994.

Sen. Reynolds began a discussion regarding changing the effective date to "upon publication in the register." The Chairman noted that this might be a problem with regard to mandate bills already passed which are effective July 1. Sen. Langworthy stated that it is her understanding that publication in the register would not be workable because local government budgets have already been set.

Upon a call for a vote on Sen. Langworthy's motion, the motion carried.

Sen. Ramirez made a motion to recommend SB 457 favorable for passage, Sen. Ranson seconded, and the motion carried.

The Chairman announced that the committee would be meeting on Tuesdays and Thursdays this session unless more meetings are needed.

The meeting was adjourned at 10:36 a.m.

The next meeting is scheduled for January 20, 1994.

Date: January 18, 1991

**GUEST REGISTER**

**SENATE  
LOCAL GOVERNMENT**

NAME

ORGANIZATION

ADDRESS

Don Moler	League of KS Municipalities	Topeka
Ginn Keci	SRS	DSOB-611N
Scott Allison	Budget	Topeka
Mary Woodland	KDDT	Topeka
John Menden	SRS	Topeka
Pat Baker	KASB	Topeka
Janet Stubbins	KBIA	Topeka
John Vanlost	KAC	Topeka
Anne Smith	Ks. Assoc. of Counties	Topeka



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

TO: SENATE LOCAL GOVERNMENT COMMITTEE

FROM: KAREN FRANCE, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: JANUARY 18, 1994

SUBJECT: SB 455, STATE AND FEDERAL MANDATES EXEMPTED FROM TAX LID

Thank you for the opportunity to testify. On behalf of the Kansas Association of REALTORS, I appear today to neither support or oppose SB 455, but to offer commentary, and hopefully food for thought.

We would like to point out that, while this may be a quick-fix solution to a problem, we propose another solution which has been introduced in the House, HCR 5017, the Government Cost Control Amendment.

The Government Cost Control Amendment would constitutionally control spending growth for state and local government. Spending growth would be limited to increases in the cost of living for the state. There are allowances for emergency situations for the state. But, outside of those emergency provisions, the only way this spending control can be exceeded is by a majority vote of the appropriate electorate.

At the same time, the state is prohibited from requiring any new or expanded activities by taxing subdivisions or from shifting the tax burden to taxing subdivisions, without full state financing. Missouri, Oklahoma and Colorado each have similar constitutional provisions.

The Kansas Association of REALTORS® feels that this Government Cost Control Amendment is an idea whose time has come. Such an amendment serves three purposes.

First, this government cost control amendment eliminates the need for tax lids. It restricts spending by local units of government without the utilization of any "loopholes" or exemptions. It is a straightforward way of limiting spending which would be in place from year to year, without having the property tax lid discussions which have become an almost annual event. Such a spending limitation for all levels of government takes away the complaint made by local governments that the legislature is advocating spending limits for local units of government without limiting state budgets.

Second, this government cost control amendment brings both fiscal responsibility and flexibility to the government budget making process. Because the growth of government

spending would be fairly predictable from year to year, governments could establish long term planning methods, within the parameters of the cost limitations.

The logical fallout of this amendment would be that local units could be given legislative authority for alternative taxes, including additional sales tax authority, earnings tax authority or income tax surcharges. They could then alter their tax mix, as long as the total amount collected did not increase above the revenue limit provided by the amendment. By the same token, the state could change the current tax mix between income tax, sales tax, property tax etc., as long as the total amount collected did not increase above the revenue limit. Meanwhile, the tax base for all units of government could expand with new development plus increases in the cost of living and any federal revenues which may be given.

Third, this Government Cost Control Amendment would answer the demand of voters that government become more efficient and responsive. Taxpayers asks why government can't be run like a business. While we know it cannot be completely run like a business, a spending limitation would force the government to live within its means.

A business cannot continually raise its prices in order to cover increased costs. The market prevents it. Thus businesses must continually look to keeping their costs in line if they are to survive in the market place. A cost control amendment would be the equivalent of the "market place" competition for government. It would put a limit on the income side of the balance sheet, thus providing the "incentive" to keep costs in line. Government would have to prioritize its services in order to deliver the best product for the best prices.

In summary we believe this amendment provides many answers to questions which plague the legislature on an annual basis. We believe such an amendment would help return confidence to government without placing unreasonable restrictions on the hands of government officials. We believe the people would strongly support such an amendment if given the chance to vote. We ask that you consider this alternative.





"Service to County Government"

215 S.E. 8th  
Topeka, Kansas 66603-3906  
(913) 233-2271  
FAX (913) 233-4830

**EXECUTIVE BOARD**

**President**

Barbara Wood  
Bourbon County Clerk  
210 S. National  
Fort Scott, KS 66701  
(316) 223-3800, ext. 54

**Vice-President**

Dudley Feuerborn  
Anderson County Commissioner  
100 E. 4th  
Garnett, KS 66032  
(913) 448-5411

**Past President**

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

Roy Patton  
Harvey County Weed Director  
P.O. Box 687  
Newton, KS 67114  
(316) 283-1890

Nancy Hempen  
Douglas County Treasurer  
110 Massachusetts  
Lawrence, KS 66044  
(913) 832-6275

**DIRECTORS**

Mary Bolton  
Rice County Commissioner  
101 W. Commercial  
Lyons, KS 67554  
(316) 257-2629

Ethel Evans  
Grant County Commissioner  
108 S. Glenn  
Ulysses, KS 67880  
(316) 356-4678

Frank Hempen  
Douglas County Director of  
Public Works  
1242 Massachusetts  
Lawrence, KS 66044  
(913) 832-5293

Mary Ann Holsapple  
Nemaha County Register of Deeds  
607 Nemaha  
Seneca, KS 66538  
(913) 336-2120

Eldon Hoyle  
Geary County Commissioner  
106 Bunker Hill Road  
Junction City, KS 66441  
(913) 762-4748

**NACo Representative**

Marjory Scheufler  
Edwards County Commissioner  
312 Massachusetts  
Kinsley, KS 67547  
(316) 995-3973

Darrell Wilson  
Saline County Sheriff  
300 W. Ash  
Salina, KS 67401  
(913) 826-6500

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

**January 18, 1994**

**Testimony**

**To: Senate Local Government Committee**

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

**Subject: Senate Bills 455 and 457 -- Mandate  
Legislative Package**

The Kansas Association of Counties is in favor of the proposed mandate legislative package.

Of the two proposals, the one that provides an additional tax lid exemption for state and federally mandated costs (SB 455) is of the most immediate importance. We simply feel that if another level of government is going to require us to do something, we should at the very least have a tax lid exemption that would allow us to fund for that expense within our budgets.

As the state and federal governments have seen increasingly tight budgets, the result has been the tendency to pass costs down to the city or county level. In just the past few years, the state has enacted a new community corrections program, passed on new requirements on juvenile detention and more recently, enacted sentencing guidelines. All of these have had cost impacts on county budgets. At the federal level, in very recent history, we have seen "motor voter", the Americans with Disabilities Act and the new Subtitle D regulations on landfills. We are not sure what impact the new national health care proposals will have on county budgets but I think there is concern that there will be the potential of increased costs. There is also national legislation that has been introduced that would require local governments to be brought under the jurisdiction of OSHA - most certainly at an increased cost. For all of these reasons, and others too numerous to mention, we feel very strongly that there should be a tax lid exemption for mandated costs. It is an issue of simple fundamental intergovernmental fairness.

*Senate Local Gov't  
1-18-94  
Attachment 2*

The other key part of this piece of legislation is that the legislature would have to make a "finding" of compelling state interest before approving a mandate. This has no real impact in the overall scheme of things other than to call your attention as legislators to the fact that a piece of legislation that you are giving strong consideration to for passage may well impose an additional cost burden on the property tax system. This "finding" should be in the very early part of the proposed bill. With mandates, awareness is half the battle. We feel this fosters that awareness.

With respect to the proposal requiring that local governments be consulted on fiscal notes (SB 457), we think this is an excellent idea. This consultation has been attempted in the past but the results have been hit and miss. We have put in place a network of county volunteers that will work directly with the state in preparing local information on fiscal notes. This information would then be generated to the state via computer linkup so that there is no time lost in the process. It is critical that all of you have good financial cost information available to you when passing laws. We think this proposal will assist the state budget director in getting this information to you directly from those that will be most impacted by it. The other part of this legislation requires state agencies to consult with us before rules or regulations are adopted that will increase our costs. We think this is a very important part of this proposal.

We think these two pieces of legislation make a good solid beginning at a statutory approach to dealing with mandates. They do however merely give us ways of dealing with these mandates in a little more orderly fashion. They treat the disease, not the source of the disease. We still think that more needs to be done. Other states have considered and passed mandate legislation and constitutional amendments that makes compliance with that mandate optional if funding is not provided for it. We do feel that the legislature should view this package as a beginning - not an end all solution.

mandts



# THE LEAGUE OF KANSAS MUNICIPALITIES

## Municipal Legislative Testimony

AN INSTRUMENTALITY OF KANSAS CITIES 112 S.W. 7TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

**TO:** Senate Local Government Committee

**FROM:** Don Moler, General Counsel

**DATE:** January 18, 1994

**SUBJECT:** SB 455, Mandates; SB 457, Economic Impact Statements

### 1. Introduction

On behalf of the 538 member cities of the League of Kansas Municipalities, I want to express our appreciation for the Committee's last hearing on the subject of unfunded state mandates and HCR 5018, the constitutional amendment proposed by the League and the Kansas Association of Counties on the same subject. We appreciated the Committee's expressions of concern and interest about what we perceive as a growing problem.

We entered the discussions with Senator Parkinson and Representative Brown knowing full well that there are some definite concerns about whether HCR 5018 may move us too far too quickly in the direction of restraining state legislative options in terms of unfunded mandates. Further, there is understandable concern about amending the state constitution without first having attempted some statutory solutions to the problem.

It is in the spirit of encouraging a better dialogue about the effects of unfunded and underfunded state mandates on cities that we appear today in support of **SB 455** and **SB 457**. We believe each of these bills helps lay a better groundwork for an improved state-local dialogue before new mandates are enacted or adopted in the form of administrative rules and regulations. Further, one of the proposals (SB 455) provides valuable fiscal flexibility to cities that are faced with an unrelenting stream of federal and state mandates but required to cut other municipal services because of a tight state property tax lid.

In the following sections I will discuss both of these bills and provide you with concrete examples of how they will improve state-local relations in the area of mandates.

### 2. Tax Lid; Special Mandate Finding (SB 455)

**(a) Section 1--Tax Lid Exemption for Mandated Costs.** Section 1 of SB 455 would add a new and much needed exemption to the aggregate property tax lid for added expenses "...which are specifically mandated or required by a state or federal law or rule and regulation. In other words, if the federal or state government, acting directly through Congress or the state legislature, or indirectly through one of their administrative agencies, requires a city to increase spending, that amount would be exempt from the property tax lid. Further, the only items this would apply to would be those for which noncompliance could trigger a civil or criminal sanction. This would not

*Senate Local Gov't  
1-18-94  
Attachment 3*



include discretionary actions by a city, including spending as a match for a state or federal grant. Only the hard core mandated spending would be exempt.

Why should the legislature exempt truly mandated spending from the tax lid? In the first place, it is the **just** thing to do. Telling municipal officials to increase spending for new mandated programs while at the same time keeping a tax lid in place means local spending priorities must suffer. This includes parks and recreation, police protection, fire protection, and every other municipal function supported by the property tax. In the second place, it will require the legislature to confront the fact that state mandates cost money. During state FY 1994 cities will realize virtually no increase in state aid as a result of last minute budget decisions by the 1993 legislature. What will cities use to fund new state mandates when state aid stays steady or declines: the property tax. Finally, exempting mandates from the tax lid will allow local elected officials to continue to determine local spending priorities for local program priorities. Some city governing bodies may still decide not to raise taxes because of growing mandates. That should be a local decision, however.

**(b) Section 2--Finding of Compelling State Interest.** One of the hardest parts of trying to raise public and legislative understanding of the growing difficulty of unfunded mandates is that most of us have never met a mandate that we did not like. In the abstract, every mandate can be justified many times over. It is only when you begin to interject the fiscal impact of a mandate proposal that a dose of pragmatic thinking begins to take over.

Section 2 of this bill would require a simple finding before a new unfunded or partially funded state mandate would be binding upon a city. That would be that the legislature finds **by law** "...that the enactment of such law and the imposition of the mandate without full state funding shall serve a compelling state interest." We respectfully suggest that it is just this type of finding that most Kansans would expect to be made before a statewide scheme of any kind is imposed on elected governing bodies at the local level. In fact, this really captures the essence of the circumstances in which most persons would say an unfunded or underfunded mandate is justifiable--when the circumstances are compelling enough to require such action. Finally, imposing such a statutory requirement would require that the legislature concentrate on both the mandate and its lack of funding before it took effect. As a result, some of the "surprise" mandates we experience from time to time can be avoided.

You may ask yourself whether this is simply window dressing or would it really serve a practical purpose. Let me give you two examples from the 1993 legislative session that have taken us by surprise since the session was over:

Example 1: In 1993 the legislature passed the Underground Utility Damage Prevention Act which requires the owners of underground facilities, including cities which own gas lines and electric lines (but not water or sewer lines) to belong to the state underground facility notification center and to mark any underground facilities which the city owns that may be covered by the act when notification from the center is received that digging will occur in the area. The annual maintenance fee is \$10 per 1,000 population, with a minimum fee of \$200. Municipalities are then charged \$.40 per incoming locate call received in excess of 100 calls per year. Emergency calls on weekend or after hours are \$2.00 each plus \$.50 for each additional attempt to notify the municipality. When this legislation passed we were comforted by the fact that water and sewer

facilities of cities were excluded. What we did not know, however, is that the electric lines owned by cities which connect traffic signals and street lines are covered. This was totally unexpected.

Example 2: In 1993 SB 423 (Chapter 291, 1993 Session Laws of Kansas) was enacted by the legislature which has been described as "clean-up" legislation for the sentencing guidelines laws. Contained in that bill is a mandate I learned about only as recently as October 3, 1993 which requires that violators of municipal ordinances which are parallel to Class A and Class B misdemeanors have to be finger printed at the time of their first appearance or before final disposition. While this may make sense for purposes of the sentencing guidelines, this is a new unfunded mandate on the approximately 340 cities which operate municipal courts in Kansas since the vast majority of them do not have fingerprinting machines. We learned recently that a typical ink fingerprinting machine costs approximately \$300--which sounds affordable. This means, however, that in order to comply with this law that over 300 such machines would have to be purchased--approximately \$90,000. In addition to the capital costs, however, you must have a trained operator, for which we haven't yet calculated the cost. When we tell these cities this good news you can imagine the reception it will get. By the way, an automated fingerprinting machine (which does not require a trained operator) costs approximately \$87,000.

Section 2 would require that the legislature make an explicit finding before mandates of this type become binding on a city or county. Given the surprise with which both of these mandates were received by us and cities across the state, a requirement for such a finding seems eminently sensible and desirable. Only when the legislature make such a finding would the "mandate" be legally binding.

Finally, we strongly support the requirement that the finding be contained in Section 1 of any bill containing such a mandate. In that manner, the legislative bodies considering the legislation would have a reasonable chance of detecting the presence of a mandate in a bill before voting on it.

### **3. Fiscal Notes; Economic Impact Statements (SB 457)**

One of the more frustrating aspects of working to address the problem of unfunded federal and state mandates is that there is so little reliable information on the local cost of mandates. Some existing state statutes require state agencies charged with the preparation of fiscal notes on proposed legislation (Division of Budget) and economic impact statements by state agencies charged with the development of proposed administrative rules and regulations (most state agencies) to look at the fiscal consequences of legislative or administrative mandates. Unfortunately, due to the press of time and lack of familiarity with local government, little meaningful information is produced through the existing process.

SB 457 would begin to address that problem in the following ways:

**(a) Section 1--Consultation With Local Government Organizations on Fiscal Notes.** Currently the Division of Budget is required by K.S.A. 75-3715a to prepare a fiscal note for "...all bills increasing or decreasing state revenues or the revenues of counties, cities and school districts, making state appropriations or increasing or decreasing existing appropriations or the fiscal liability of the state, or imposing functions or responsibilities on counties, cities and school

districts which will increase their expenditures or fiscal ability." While this provision is noble in its intentions, it is a difficult requirement with which to comply fully because neither the Budget Division nor any other state agency can prepare such fiscal notes without direct local government assistance.

The proposed amendment to this section would require the Budget Division to consult directly with the League, the Kansas Association of Counties and the Kansas Association of School Boards when preparing such fiscal notes. It then would be up to us to provide the Budget Division with information about the fiscal impact of the proposed bill. The League is presently in the process of establishing a team of municipal analysts who will assist the Budget Division with this task. While the Budget Division currently endeavors to consult with our associations on such matters, this amendment would formalize that practice. Furthermore, it will require more direct assistance by our organizations in assisting with the development of fiscal notes affecting local government coffers.

**(b) Section 2--Consultation With Local Government Organizations on Economic Impact Statements.** Current state law requires state agencies to prepare economic impact statements prior to the issuance of administrative rules and regulations. The purpose of this requirement apparently is to require more careful thought by administrative agencies prior to the issuance of rules and regulations that will have an adverse economic impact on private persons, other governmental agencies, consumers, etc. This section would require that in the preparation of such statements that state agencies consult with the League, KAC, and KASB in the same manner as would be required of the Budget Division in Section 1.

Such direct consultation should even lead to the development of improved regulations, as the League's experiences with consultation with KDHE and the Kansas State Historical Society on proposed regulations in the last year have demonstrated. The dialogue we have been able to have on both the proposed Surface Water Quality regulations and the proposed historic preservation regulations has significantly improved both sets of proposed regulations and softened their fiscal impact on cities. Direct consultation of the type proposed in Section 2 would hopefully lead to the development of a similar network of local fiscal analysts who will assist state agencies with fiscal assessments of proposed rules and regulations.

#### 4. Conclusion

At this stage of my testimony some of you may be wondering why I am supporting these two measures when the League's real agenda is to advocate passage of HCR 5018. I want to stress that passage of HCR 5018 and its submission to the voters is one of our major priorities. We are willing to work on these and other shorter range "solutions", however, because we know the problem of unfunded mandates will only really be solved by a joint effort by the legislature, Congress and local government. As the representative of your partners in the intergovernmental system, we are receptive to any sincere proposals that may begin to address the serious imbalance in our federal system of government that has been created by unfunded and underfunded mandates. We believe these proposals are the result of a good faith effort to address that problem. They are not panaceas any more than HCR 5018, but they represent a step in the direction of solving the problem.

Fort Scott City Commissioner Nancy Maze, a League Governing Body member, recently captured our position on unfunded mandates so well when she said: "You shouldn't pick the tune on the jukebox unless you've plugged it with your money." We respectfully suggest it is time for legislative action on this important subject. These bills will not stop the state from spending local tax dollars to comply with mandates, but they will make the process a bit more rigorous than it is currently.

Thank you for your consideration.



Testimony on S.B. 457  
before the  
Senate Committee on Local Government

by

Patricia E. Baker  
Associate Executive Director/General Counsel  
Kansas Association of School Boards

January 18, 1994

Mr. Chairman, Committee members, thank you for the opportunity to testify on behalf of Kansas school boards.

We appreciate the opportunities we have had to have input into decision making by the legislature and by state agencies. We would welcome additional opportunities in providing assistance.

In the past we have not believed that school boards have been "shut out" of this information exchange. We are particularly grateful to the Division of Fiscal Services and Quality Control of the State Department of Education for providing and receiving information.

Our larger concern has been and still is, the problem of mandates without funding. Our member districts hope that the passage of S.B. 457 will lead to a realization that requirements for school districts must be funded.

Thank you for your attention.

*Senate Local Gov't  
1-18-94  
Attachment 4*