

MINUTES OF THE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Roger Reitz at 9:30 a.m. on February 14, 2011, in Room 159-S of the Capitol. Senator Kelsey moved to accept the minutes of January 24, January 25, February 3, and February 7, Senator Huntington seconded the motion. The motion carried.

All members were present except:

Senator Garrett Love, excused

Senator Pete Brungardt, excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes

Jill Shelley, Kansas Legislative Research Department

Noell Memmott, Committee Assistant

Conferees appearing before the Committee:

Mr. Tom Brill, President, Tomahawk Hills Homes Association, Mission Hills, Kansas

Senator Pat Apple, Kansas, 12<sup>th</sup> District

Mr. Joseph F. Hall, Representing Sugar Lake Community

Others attending:

See attached list.

The hearing opened on **SB 101—Uniform common interest owners bill of rights act; exclusion of certain communities**. Jill Shelley, Research, reviewed the homeowner's bill from 2010. She explained **SB 101** would exclude from requirements homeowners who do not own property in common. Senator Huntington gave background on the original bill.

Mr. Tom Brill, President, Tomahawk Hills Homes Association, gave testimony in favor of **SB 101** (Attachment 1). Ms. CJ Sullivan submitted written testimony (Attachment 2) in opposition to the bill.

The hearing opened on **SB 114—Uniform common interest owners bill of rights act; changes**. Mike Heim, Revisor, explained the bill deals with notification and voting rights.

Senator Pat Apple, District 12, testified in support of **SB 114** (Attachment 3). Written testimony in favor of the bill was submitted by Mr. J. Darcy Domoney, Attorney (Attachment 4).

The hearing opened on **SB 150—Cities; incorporation; number of residents**. Mike Heim, Revisor, reviewed the bill.

Don Moler, Executive Director, League of Municipalities, gave background on the original number of people that constituted a city.

Senator Pat Apple, District 12, testified in support of **SB 150** (Attachment 5). Mr. Joseph Hall, Representing Sugar Lake Community, also testified in support of the bill (Attachemts 6).

The next meeting is scheduled for Tuesday, February 15, 2011

The meeting was adjourned at 10:25.

DATE: February 14, 2011

[illegible]

## SENATE BILL 101 TESTIMONY OF TOM BRILL

FEBRUARY 14, 2011

My name is Tom Brill and I have been President of the Tomahawk Hills Homes Association in Mission Hills, Kansas for the past 6 years and have been a Director of our group for over 9 years. Our homes association was created in June, 1935 by the J.C. Nichols Company and has operated continuously since that time. Our association has 554 members, 7 Board of Directors ; over 90 members recently attended our annual meeting in January. Our organization does not own real property, or manage any real property, such as swimming pools or club houses. Its main function is beautification projects which maintain the flowers, shrubs, trees and statuary located on several islets and at the entranceway to various blocks. Its annual budget is around \$18,000.00.

Our City has around 3,500 residents and there are two other homes associations, the Mission Hills Home Company and the Indian Hills Homes Association. Their functions are similar to ours. The Park Board of the City of Mission Hills is composed of home association members interested in gardening and works closely with our three associations to spend both City and Association monies in the best manner possible. All three associations have their budgets and expenses approved annually by members at our respective annual meetings. Individual invitations are mailed to members for this meeting, and this year we had record attendance of 250 members for our joint annual meeting. There is complete transparency and accountability. There is easy access to the officers, Board of Directors through direct contacts and a directory of members exists to facilitate contacts. Our monies are billed and collected annually by the Homes Association of Kansas City which performs this administrative task for about other 51 homes associations, which includes condominium projects. This organization

was set up by the J.C. Nichols Company and has been performing this administrative job since 1944.

We are supporting Senate Bill 101, sponsored by our Senator Terrie Huntington, to relieve our organizations of the expense imposed by provisions of 2010 HB 2472, the Uniform Common Interest Owners Bill of Rights Act. While this Act correctly protects rights of owners of real property, our three homes organizations do not own real property and our functions are completely different than your typical development or condominium homes organization.

The most troublesome provisions of the new law are the notice provisions. Our organization is obligated to notify each of our 554 members of Boards of Directors meetings which is expensive and not helpful. Our 2-3 meetings of the Board of Directors are short and concern how the monies are being spent as directed by the budget adopted at each annual meeting. Our meetings are set on an ad hoc basis so that as many Directors can attend as possible; a set schedule has never worked. In over 12 years, our members have never requested to attend a Board meeting which are held in the City Hall; and if requested, they would be welcome. We have been following the other provisions of the new law for many years. As I said, transparency and accountability have been the hallmarks of the J.C. Nichols homes associations over these many years.

The proposed Senate Bill 101 will exclude associations which do not own or manage real property. We are the simplest form of democracy at work. Our Board of Directors want less regulation and intrusion of government in our lives. We want to continue what has been successfully going on since the 1930's. Thank you for your support of Senate Bill 101. Thank you.

2

SENATE LOCAL GOVERNMENT COMMITTEE  
February 14, 2011

TESTIMONY ON SB 101  
by Cherylane (CJ) Sullivan  
10967 Westgate Rd.  
Overland Park, KS 66210

To: Members of the Senate Local Government Committee

Regarding: SB 101 that would amend the current UCIOBORA Law

I am unable to attend committee meetings in person on February 14, 2011. Please allow me to send you this written testimony regarding the above amendments. Many Kansas residents worked very hard to get the UCIOBORA Law passed last year and I fear that any amendments will discard and discount that work. This Law protects all Kansans governed by Home Owners Association Boards and allows them a voice in decisions made on their behalf. The wording of the Law was well thought out, recommended by the Kansas Judicial Council and discussed and debated in several Legislative committees in which many testimonies were heard. I urge you to not amend this Law and make it "less than" its original intention.

SB 101 Uniform common interest owners bill of rights, exclusion of certain communities:

Removing the proposed section lines 10, 11 and 12 "This act shall not apply to any common interest community which does not own any real property held in common for the benefit of such community," would jeopardize the rights of thousands of Kansans living in residential areas governed by Home Owners Associations. There are still Boards to elect, decisions to be made, votes to be taken, assessments to be charged and dues to be collected from residents of all HOAs. Eliminating this huge section of the population would take away basic rights of those in need of this Law.

Thank You.

Senate Local Government

2-14-2011

Attachment 2

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

COUNTIES  
ANDERSON, FRANKLIN,  
LINN & MIAMI

COMMITTEE ASSIGNMENTS

CHAIRMAN: UTILITIES  
VICECHAIR: ASSESSMENT AND TAXATION  
MEMBER: ETHICS AND ELECTIONS

pat.apple@patapple.org  
pat.apple@senate.ks.gov

PAT APPLE  
SENATOR, TWELFTH DISTRICT  
PO BOX 1  
LOUISBURG, KANSAS 66053  
(913) 837-5285  
Office: STATE CAPITOL BUILDING—224-E  
TOPEKA, KANSAS 66612  
(785) 296-7368  
1-800-432-3924

**Testimony in Support of  
Senate Bill 114  
February 14, 2011**

Chairman Reitz and members of the Senate Local Government Committee,

Thank you for the opportunity to testify in favor of Senate Bill 114. My senate district includes Linn County where several recreational lake developments are located. The largest, Linn Valley Lakes, brought to my attention several concerns with the Uniform Common Interest Bill of Rights that passed the legislature last session. This measure contains many good provisions that protect home owners and give direction to home owner associations across our state but has a few provisions that create undue hardships on this class of development.

First let me describe Linn Valley Lakes. Linn Valley Lakes was developed prior to county zoning regulations and contains approximately 5000 lots, a golf course, several lakes, swimming pool and club house. Less than 10% of the lots are occupied by a residence. Some lots are camping lots and some members do not own property and are members by paying annual dues. There are at least two groups that are claiming developer status and are not paying annual dues.

SB 114 deals with two issues, notification and voting rights. The changes in SB 114 for notification will greatly reduce the burden of notification of meetings for a development of this size where many members do not live at the development. Notification of a rule change by mail is very expensive when there are 5000 notices to be sent. The second issue deals with voting rights. Current law allows for non paying members to vote on the officials of the association but may be restricted from voting on matters of assessment or fees. The concern is that a non paying developer may attempt to vote for the officials.

Thank you for your consideration of this important matter.

Very truly yours,

Pat Apple  
Kansas Senate, District 12

Senate Local Government

2-14-2011

LAW OFFICES OF  
**WINKLER, DOMONEY & SCHULTZ**

131 SOUTH PEARL  
 P.O. BOX 333  
 PAOLA, KANSAS 66071-0333

913-294-2800

FAX: 913-294-2873

email: wds\_law@sbcglobal.net

WENDELL D. WINKLER (RETIRED)

J. DARCY DOMONEY

SHEILA M. SCHULTZ

JOHN L. DOMONEY

Testimony Presented To The  
 Senate Local Government Committee  
 by J. Darcy Domoney  
 February 14, 2011  
 concerning Senate Bill 114

Good morning. Thank you for the opportunity to come before the Senate Local Government Committee in support of Senate Bill 114. The language in Senate Bill 114 would make several changes to the Uniform Common Interest Owners Bill of Rights Act that became Kansas Law effective January 1, 2011. My law firm represents Linn Valley Lakes Property Owners Association, Sugar Valley Lake Homes Association and Tanglewood Lakes Owners Association. All three Associations are located in Linn County, Kansas.

Under the new law, if a member of an association is delinquent in the payment of their dues/assessments, they still have the right to vote in elections regarding the Board of Directors of the Association. A primary function of a Board of Directors of an Association is to determine how to spend the dues/assessments that it collects. To allow delinquent members to vote in Board elections is not logical. In addition, part of the leverage to encourage members to pay their dues/assessments is the right to vote in Board elections.

Under the new law, it is required that the Bylaws of the Association be amended to contain certain provisions. These required provisions already are set forth in other areas of the new law and they override any provisions that are contained in the Association documents. In most cases, it takes a vote of the Association membership to amend the Bylaws. A possible result is that the membership fails to vote to amend the Bylaws to come into compliance with the Kansas Law. The requirement to amend the Bylaws is an unnecessary provision and therefore it should be totally repealed.

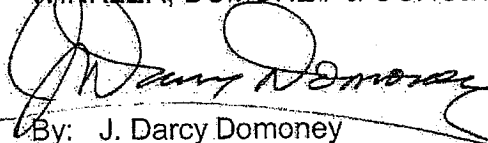
Senate Local Government

2-14-2011

Attachment 4

In certain sections of the new law, notice is required to be given to lot owners by either hand delivery, mail or email. This is cost prohibitive for my clients. For instance, Linn Valley Lakes Property Owners Association has approximately 5,000 lots and therefore potentially 5,000 members. It is impossible for Linn Valley Lakes Property Owners Association to obtain current email addresses for all lot owners and it is equally impossible to hand deliver notice to each lot owner. Therefore, under the new law, the only alternative available is the mail. The approximate cost of a mailing to each current lot owner by Linn Valley Lakes Property Owners Association is \$2,000.00. Senate Bill 114 allows for the required notices to be given by posting on the Association's website or posting on a bulletin board in the Association's office or other public locations that owners have access to at all times. This is a much more reasonable approach.

WINKLER, DOMONEY & SCHULTZ



By: J. Darcy Domoney



PAT APPLE  
SENATOR, TWELFTH DISTRICT  
PO BOX 1  
LOUISBURG, KANSAS 66053  
(913) 837-5285  
Office: STATE CAPITOL BUILDING—224-E  
TOPEKA, KANSAS 66612  
(785) 296-7368  
1-800-432-3924



TOPEKA

SENATE CHAMBER

COUNTIES  
ANDERSON, FRANKLIN,  
LINN & MIAMI

COMMITTEE ASSIGNMENTS  
CHAIRMAN: UTILITIES  
VICECHAIR: ASSESSMENT AND TAXATION  
MEMBER: ETHICS AND ELECTIONS

pat.apple@patapple.org  
pat.apple@senate.ks.gov

## Testimony in Support of Senate Bill 150 February 14, 2011

Chairman Reitz and members of the Senate Local Government Committee,

Thank you for the opportunity to testify in favor of Senate Bill 150. Senate Bill 150 deals with lowering the threshold of population where a community can seek to become a city from 300 to 250. The lake development community of Sugar Valley in Linn County would like to pursue the option to become a city. Currently their population is 267. Most grants and programs that enable communities to provide basic services are only available to cities and are not available to unincorporated communities.

Many of the homes in Sugar Valley are used as a second home and are not used as a primary residence. I believe it makes sense to lower the threshold.

The same safeguards are in place and Sugar Valley will need to work with and obtain the support of the Linn County Commission to establish a city.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Pat Apple', written over a horizontal line.

Pat Apple  
Kansas Senate, District 12

Senate Local Government

2-14-2011

Attachment 5

Testimony in Support of SB 150  
Presented to the Kansas Senate Local Government Committee  
By Joseph F. Hall & Ron Nickelson  
February 14, 2011

Thank you for the privilege of addressing you today in support of SB 150. We will try to make brevity the benchmark of our presentation.

We are representing the Sugar Lake community what is located about one and one-half miles south of Mound City, Kansas on highway 7 in Linn County.

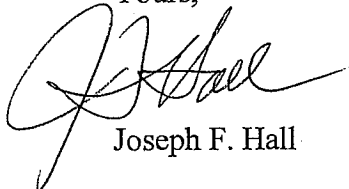
Currently the State statutes afford incorporation into a municipality to communities that have 300 residents, or 300 residential lots serviced by sewers and water. We fall short of both of these parameters, as do many lake communities in the State. It is important to know that during the months of April through October our population grows to 400-700 people as many homeowners of secondary residences come down to enjoy these months skiing, boating, playing golf, camping and other outdoor activities. This puts a strain on our ability to offer a safe complex and to provide services they need and deserve.

We would ask the Kansas Senate to amend the current law to alter the population minimum from 300 to 250. This would allow us to incorporate, with the blessing of the county, and achieve the following: water and sewage systems, storm drainage, improve roads and police presence backed by enforceable laws.

For our community to move forward it must have a foundation of established rules and an infrastructure that affords those property owners a sense of order and an environment that speaks to progress.

In closing, we humbly ask the Committee to look at the obvious reasons why this makes sense, but perhaps look deeply to see who would object and who would be harmed by such a change. Frankly I see no argument, based on the principles that govern common sense that would validate the rejection of this proposal. With the help of the great State of Kansas, we, as a community, will move forward with the adoption of this amendment.

Yours,



Joseph F. Hall



Ron Nickelson

Senate Local Government

2-14-2011

Attachment 6