

MINUTES OF THE SENATE JUDICIARY COMMITTEE

The meeting was called to order by Chairman John Vratil at 9:35 a.m. on Thursday, February 19, 2004, in Room 123-S of the Capitol.

Members were present and on time except:

Senator Barbara Allen - arrived 9:39 a.m.
Senator David Haley - arrived 9:57 a.m.
Senator Derek Schmidt - arrived 9:47 a.m.
Senator Edward Pugh - arrived 9:40 a.m.
Senator Kay O'Connor - arrived 9:53 a.m.
Senator Lana Oleen - arrived 9:42 a.m.

Committee staff present:

Mike Heim, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor Statutes
Helen Pedigo, Office of the Revisor Statutes
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Senator Greta Goodwin
Senator Robert Tyson
Larry Womacks, Cowley County landowner
Bill House, S.E. Kansas, Ark City/Cedarvale
Allie Devine, Vice President and General Counsel, Kansas Livestock Association (written)
Roger Black, Kansas Livestock Association
Terry Holdren, Kansas Farm Bureau (written)
Donna Martin, Save Our Industries & Land (SOIL), Dexter, KS (written)
Charles Benjamin, Sierra Club, Lawrence, KS
Robert Voegele, President of Cowley County Farm Bureau (written)
John Todd, John Todd & Associates, Wichita (written)
Bud & Jan Nitschke, Cowley County concerned citizens (written)
Sandy Jacquot, League of Kansas Municipalities
Bob Courtney, Regional Area Economic Partner (REAP), South Central Kansas (written)
Mike Pepoon, Sedgwick County (written)

Others attending:

See Attached List.

Chairman Vratil admonished Committee members about the problem of members arriving late to Senate Judiciary Committee meetings. Twice, during previous meetings, the Chair asked members to arrive on time. He asked the Committee Secretary to record arrival times of Committee members beginning with today's meeting, and incorporate the times into the official Committee record. He instructed Committee members who have a valid reason for being late or know in advance if they are going to be late, to contact the Committee Secretary.

Final Action on:

SB 420 – Costs of a civil action; offer of judgment

Chairman Vratil called for discussion and final action on **SB 420**. The Chairman explained the bill, and said that the legislation would amend the existing statute relating to offer of judgment. He stated that a balloon amendment was submitted. The amendment would limit the amount of reasonable attorney fees that could be recovered to the lesser of attorneys' fees incurred by the plaintiff or the defendant. The purpose of the amendment was to ensure that one party could not run up attorney fees as a bargaining lever with the other party. (Attachment 1)

Senator Umbarger made a motion to accept the balloon amendment, seconded by Senator Goodwin to amend SB 420 in accordance with the balloon amendment presented, and the motion carried.

The Chairman requested discussion on the bill. He called for a motion on the bill. Senator Goodwin

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made a motion to recommend the bill favorably as amended, seconded by Senator Pugh.

Chairman Vratil called for discussion on the motion to pass the bill out favorably as amended. Senator Allen asked if the amended bill would have any impact on the Kansas Trial Lawyers Association's (KTLA) position on the bill, as there was strong opposition expressed by KTLA during the hearing on the bill.

Senator Oleen stated that she had considerable concerns with the bill in creating a level playing field in regards to right to appeal, and would be voting "no" on the bill. The Chairman explained that **SB 420** as amended does not effect the right to appeal. Senator Oleen explained that her concern related to a plaintiff not being able to continue their appeal and juries not being told that insurance companies are part of the suit that is before them.

Senator Goodwin commented that everyone had been involved with issues within the court system where the process goes on and on at the detriment of both the plaintiff and the defendant. She looked at this bill as a way of controlling some of those costs for both parties. Senator Goodwin said that any time mediation can be utilized outside the courtroom instead of using courtroom time or judges' time, it is good for the process. Cases that drag on and on are a detriment to the legal system and comes down as to who has the most money. She stated she saw it as a way of not having all of these cases continuing on in the court system at the cost of the taxpayers.

Chairman Vratil explained that the bill was an effort to deal with the overburdened and under funded judicial system, because it will have the effect of causing cases to be settled rather than going to trial. Senator Umbarger inquired if the judge didn't have some discretion on this subject. The Chairman said that the judge had some discretion in determining reasonable attorney fees. The bill requires the judge to award reasonable attorney fees.

Senator Pugh said that he did not think **SB 420** would be passed by the Legislature or signed by the Governor, but he was going to vote to move it out of Committee. He stated that he felt the bill was not the most well-reasoned legislation; however, the Legislature needs to initiate discussion about making everybody that is a party to claims or issues that go before the courts, responsible for the outcome. The number of cases is increasing every day. He added that the Legislature should have the Judiciary exercise Rule 11 privileges more frequently.

Chairman Vratil stated that was exactly what motivated him to introduce **SB 420**, and was why he sponsored it. He agreed 100% with Senator Pugh. Chairman Vratil commented that each year the Legislature talks about the over-crowded and under funded judicial system, but nothing much is ever done about the situation.

Chairman Vratil called for a vote on the motion to recommend the **SB 420** as amended. By voice vote the Committee approved the motion, with Senator Betts requesting his "no" vote be recorded.

SB 436 – Statute of limitations on childhood sexual abuse extended to 30 years

Chairman Vratil explained the bill, and called for final action on **SB 436**. He reminded Committee members that there were no amendments offered from any of the conferees. Senator Donovan stated that he could not support the bill with the 30 year term in it.

Senator Donovan made a motion to amend **SB 436** by deleting the numeral 30 in Line 15, page 1, and inserting the numeral 5, and doing the same on Line 16. The motion was seconded by Senator Oleen.

The Chair called for discussion on the proposed amendment. Senator Donovan commented that some of the conferees referred to all the different individuals whose lives could be put on hold for 30 years, i.e. schoolteachers, counselors, Boy Scouts and Girl Scouts troop leaders. He said that it might become difficult to find people to serve in voluntary positions with this law on the books. He recalled that there was one state in the northeast part of the country that allowed for a 30 year limitation in the case of childhood sexual abuser. He explained that under current law, a person can report such a crime until the age of 18. Senator Donovan added that any time after age 18 until an individual is one hundred years

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old, the victim has a three year time period to file a suit if the person recalled an incident which happened at a younger age. He felt that five years was reasonable.

Senator Oleen commented that she had trouble accepting the proposed 30 year limitation because she questioned the ability to reconstruct the crime when one was looking at something 20 years old. She said she would have liked possibly a ten year term better, but would support five years due to the difficulty of going back 30 years and having accurate evidence.

Senator Pugh asked the Revisor if Kansas presently had a separate Statute of Limitations on sexual abuse in civil cases. The Revisor, Jill Wolters, responded that the existing law addressed by **SB 436** was the law that governed civil cases involving sexual abuse. Senator Pugh stated he was not going to vote for the change from 30 years to 5 years. He felt the law ought to remain as is.

Senator Betts stated that sexual abuse totally violates the victims and takes their personal rights and power away from them. He affirmed that he supported the increase to 30 years, and if he had to he would support 50 years as he felt very strongly it was an issue that is somewhat taken for granted when one has have not been a victim of such a crime.

Following Committee discussion, Chairman Vratil called for a vote on the motion to adopt Senator Donovan's amendment. By voice vote the amendment was adopted and the motion carried.

Senator Goodwin made a motion to pass the bill out of Committee favorably as amended; seconded by Senator Schmidt, and the motion carried. Senators Pugh and Betts requested their dissenting votes be recorded.

Senator Betts asked that his "no" vote be explained, as follows: *"I have voted against SB 436 because I believe victims of child sexual abuse should be entitled to more than five years to seek civil and/or criminal damages against the accused. The infliction of sexual abuse has been known and proven to cause mental illness and physical damage; therefore, it may take victims more than an amended five years for the victim to gather the strength and confidence to bring the accused to justice."*

SB 461 – Limitations on acquisition of land by eminent domain by a port authority and county

Chairman Vratil opened the hearing on **SB 461**, and announced that due to the large number of conferees wanting to appear before the Committee that he would divide the time remaining equally between the proponents and opponents. He instructed conferees to keep their testimony as brief as possible, and make an effort not to repeat the same points made by other conferees have made to eliminate redundancy in the testimony presented to the Committee. The Chair also announced that questions would be held until after all conferees had testified. If time allowed, there would be Committee questions following all testimony.

Senator Greta Goodwin testified as the sponsor of **SB 461**. She explained that the proposed lake project in Cowley County was a private development project, which the media accurately described as the taking of private land by eminent domain for the benefit of private developers. She stated that as a concerned citizen and landowner, she was introducing **SB 461** to clarify that neither the counties, port authorities or other quasi-public bodies may take land from private citizens through the use of eminent domain powers and use the land for recreational purposes only. Senator Goodwin said that if governmental entities use eminent domain powers to acquire land, and recreation is part of the purpose for the use of eminent domain, then the governmental body may not allow private development upon such acquired land or site for 30 years.

Senator Goodwin stated that most of the residents in Cowley County would join her in supporting a much smaller scale lake if water were truly needed for that area of the state. The residents recognize how important clean water is for the county. She said it was her hope that when this proposed bill became law, private landowners in Cowley County would be assured that their property would not be taken indiscriminately for the profit or gain by private developers. She shared that the Cowley County affected landowners first found out about the private developer's plan through local newspaper articles. One family had owned and farmed property in the area where the lake is proposed since before Kansas was a state. The outcry from Cowley County landowners was that money cannot sway them to give up their

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land and livelihood.

Senator Goodwin explained that the Wichita developer's hope was that the lake would be built and owned by a quasi-governmental organization, a port authority of sorts, made up of city and county governments in south-central Kansas. She described the developer's visionary plans to turn the area into Kansas' answer to Grand Lake, Oklahoma, with cabins, resorts and retirement homes. She added that the developer thought that the sale of building sites and perhaps drinking water for Wichita could help offset the costs of building the lake. Senator Goodwin quoted a Wichita Eagle story that described said that the proposal by the Wichita developer and a commercial real estate broker as a \$400 million lake development 50 miles southeast of Wichita near Dexter.

Senator Goodwin testified that the landowners were never given a public forum to offer their opinions, ask questions, or speak to the developers in public. She concluded by asking her colleagues in the Kansas Legislature to join her in assuring that eminent domain powers or other quasi-public body powers are used only for public purposes and not for private profit. (Attachment 2)

Senator Goodwin also furnished to the Committee copies of Ron Pray's, (owner and operator of Pray Stone Company in Winfield) written testimony. Mr. Pray described his company's use of Silverdale limestone which has been used in many notable buildings in Kansas and throughout the country. Mr. Pray stated if the lake was built, and land within three miles of the lake was appropriated by eminent domain for development of the lake, all past and present reserves of Silverdale limestone would be affected. (Attachment 3)

Senator Robert Tyson testified in support of **SB 461**, and talked about the problem of eminent domain for port authorities in a single county. He said that eminent domain is the responsibility of the Legislature, and is used by other entities only as the Legislature directs. Senator Tyson explained that the Legislature has delegated its authority so much in recent years that it has lost any oversight in the process of eminent domain. He quoted the rule often stated by Kansas courts, "The power of eminent domain can only be exercised by virtue of a legislative enactment. The right to appropriate private property to public use lies dormant in the state until legislative action is had pointing out the occasions, mode, conditions and agencies for its appropriation."

Senator Tyson offered an amendment to **SB 461** for the Committee's consideration which he believed would solve the problem with eminent domain. (Attachment 4)

Terry Holdren, Associate State Director-Kansas Farm Bureau Governmental Relations, conceded his time to the landowners from Southeast Kansas, and submitted his testimony as written in support of the proposed legislation. (Attachment 5)

Allie Devine, Vice President and General Counsel for the Kansas Livestock Association (KLA), conceded her time to the citizens of the affected area who had traveled to Topeka to testify. She asked that her testimony in support of **SB 461** be submitted as written in order to allow more time for the landowners. (Attachment 6)

Larry Womacks, Cowley County landowner, submitted his testimony as written in support of **SB 461**. (Attachment 7)

Bill House, landowner and cattleman with residences in Ark City and Cedar Vale, testified in support of the proposed legislation. Mr. House stated that he had been in the business of raising cattle continuously since 1939, and operated ranches in Chautauqua and Cowley Counties in Kansas as well as Osage County, OK. He explained that the proposed lake project would effectively destroy the Cowley County ranch which is composed of 4,500 acres, including approximately 400 acres of river bottomland. Mr. House said he understood that the proposal would include an area adjoining the lake and would probably include another 2,100 acres. He asked the Legislature to re-examine the authorization of and limit eminent domain to constitutional provisions. (Attachment 8)

Roger Black, Kansas Livestock Association (KLA), Save Our Industry and Land (SOIL), and Grouse-

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Silver Creek Watershed Board, appeared before the Committee in support of **SB 461**. He stated that the bill was about basic respect for property. He said that respect for persons and property are in separable in many ways. He said in his written testimony that it was unethical to plan a project for at least five years without input from the people most affected, and on whom the greatest costs fall. (Attachment 9)

Donna Martin, Save Our Industry and Land (SOIL) and Kansas Livestock Association (KLA), spoke in favor of **SB 461**. She told the Committee that at a public meeting on October 27, 2003, Lieutenant Governor Moore stated, "If there is no need for water, this is a dead issue." She said his statement appeared to be withdrawn on January 29, 2004, at the Lower Arkansas and Walnut Basin Advisory Committee (BAC) by one of his subordinates when he said, "Our goal is economic development through water." Ms. Martin stated that the Corps of Engineers Study indicated that area has adequate water through 2080, and that an El Dorado lake official mentioned offering to supply water for western Butler County, but Wichita officials rejected the offer. She concluded that the exploitation of eminent domain has got to end, and asked the Committee to pass **SB 461**. (Attachment 10)

Charles Benjamin, Attorney at Law, Lawrence, KS, appeared on behalf of the Kansas Chapter of the Sierra Club,. In the interest of time he submitted his testimony as written in support of **SB 461**. The bill as written would go a long way toward protecting Grouse Creek and its tributaries. (Attachment 11)

Robert Voegele, farmer from Cowley County who lives in Ark City, submitted written testimony in support of **SB 461**. (Attachment 12)

John Todd, John Todd & Associates, Wichita, submitted written testimony in favor of **SB 461** (Attachment 13)

Bud and Jan Nitschke, Cowley County concerned citizens, submitted written testimony, which included copies of speeches, letters, public forums, letters to-the-editor and editorials, in support of the proposed legislation. (Attachment 14)

Chairman Vratil called upon the opponents of **SB 461** to testify. Sandy Jacquot, General Counsel for the League of Kansas Municipalities, explained that the primary concern for the League was the language in Section 1(a) and in Section 3 that would affect all existing and future port authorities. She said if the concern needing to be addressed in this bill encompasses only one area, Sections 1 and 3 could be amended to limit the impact to port authorities created for the purpose of completing a project in Cowley County. Ms. Jacquot stated that the League generally does not support legislation targeting one specific area, the greater concern is limiting all current and future port authorities in Kansas because of one localized situation. She offered an amendment for the Committee's consideration, and added that if that issue was addressed then the League would withdraw its opposition to **SB 461**. (Attachment 15)

Bob Courtney, Regional Area Economic Partner (REAP), submitted written testimony in opposition to **SB 461**. (Attachment 16)

Michael Pepoon, Director of Government Relations for Sedgwick County, KS, submitted written testimony in opposition to **SB 461**. (Attachment 17)

Following brief Committee comments and discussion, Chairman Vratil closed the hearing on **SB 461**.

The Chairman expressed the Committee's appreciation to all the conferees for appearing before the Committee.

The meeting was adjourned at 10:30 a.m. The next scheduled meeting is February 20, 2004.