

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 11:00 a.m. on February 7, 2001, in Room 519-S of the Capitol.

All members were present except: Senator Jenkins - Excused

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Don Hayward, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Janet Stubbs, Kansas Building Industry Association
Karen France, Kansas Association of Realtors
Erik Sartorius, K.C. Regional Association of Realtors
Don Moler, League of Kansas Municipalities
Bart Budetti, Assistant City Attorney, Overland Park
Jane Neff-Brain, Assistant City Attorney, Overland Park
David Peel, Johnson County Planning Department
Mike Taylor, City of Wichita
Tim Howison, Re/Max Realtors, Salina
Stan Byquist, Salina developer
Robert Taggert, Topeka real estate appraiser
Lonie Addis, Kansas County Commissioners Association

Others attending: See attached list.

The minutes of the February 5, 2001, meeting were approved.

SB 91—Enacting the city and county development activity excise tax act.

Janet Stubbs, Kansas Building Industry Association, testified in support of **SB 91**. (Attachment 1) Before beginning her testimony, she distributed copies of written testimony in support of **SB 91** submitted by Representative Doug Patterson, who was unable to attend the meeting, (Attachment 2) and Tim Underwood, Executive Vice President of the Home Builders Association of Greater Kansas City (Attachment 3). Ms. Stubbs went on to say that **SB 91** was introduced in response to the implementation of an excise tax in the City of Derby, which the voters recently repealed by a vote of 58 percent to 42 percent. She emphasized that **SB 91** is not an attempt to prohibit implementation of an excise tax by local units of government or to repeal those currently in effect, but rather, it is intended to establish guidelines which government must follow to enact a fair and equitable excise tax on one segment of the business community thereby increasing the cost of housing and making it less affordable. She noted that the process is complex and should be calculated individually per city due to varying policies from city to city.

Ms. Stubbs followed with an explanation of the guidelines and requirements which **SB 91** is intended to establish. She expressed support of home rule and the making of informed, responsible decisions by local units of government. She agreed that, if a city conducts a fair and accurate study which proves that new development is not shown to pay its way under the proposed method of calculation, an impact fee should be charged by the local unit of government. She emphasized that her association does not want the city at large to bear the burden of the new development, but at the same time, it does not believe it is fair for new development to be required to fund the city's general revenue fund.

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Ms. Stubbs contended that new construction and new development more than pays its way in a city. She noted that in the Derby case, a study done by the City Manager showed that new residential development alone generated approximately five and one-half times more revenue to the city than the cost to provide needed services. In conclusion, she listed arguments by opponents to the bill and responded to each. She urged the Committee to pass the bill in the interest of eliminating the opportunity for local units of government to “tax without representation.”

Karen France, Kansas Association of Realtors (KAR), testified in support of **SB 91**. She noted that the bill addresses accountability and rule making in the excise tax process. She stated that the 2001 KAR Legislative Policy states, “Impact and excise fees should not hamper or deter development in Kansas communities, and governments should limit use of fees to the provision of public capital improvements necessitated by new development, not to correct existing deficiencies. Furthermore, the imposition of any fees should be accompanied by an ordinance defining the level of service to be provided in exchange for such fees.” Ms. France pointed out that both the Kansas Court of Appeals and the Kansas Supreme Court recognize that the Legislature has the ability to place limitations on home rule authority. She called attention to an article titled “Comprehensive Infrastructure Financing Strategies” which appeared in the *Kansas Government Journal* in May of 1998, noting that the authors discuss the distinctions between an impact fee and an excise tax. In conclusion, she said, “We think it is reasonable to have rules for cities and counties to play by when utilizing an excise tax.” ([Attachment 4](#))

Erik Sartorius, Kansas City Regional Association of Realtors, testified in support of **SB 91**. He maintained that current governance of excise taxes is lacking because municipalities and counties are not required to conduct the same analysis when levying an excise tax as they are when imposing an impact fee, and funds from excise taxes can be placed in the general fund of the city or county but are not spent specifically to benefit the people on whom the tax was levied. He believes that the bill offers common sense rules for the imposition of an excise tax, including a comparison of the benefits and costs of current residents and the benefits and costs in new growth areas. He reasoned, without a guarantee that a new area will receive the benefits of the excise tax levied against it, new housing will be less affordable. ([Attachment 5](#))

Don Moler, League of Kansas Municipalities, testified in strong opposition to **SB 91** on the ground that it will adversely impact constitutional home rule. He commented that, on its face, **SB 91** appears to grant cities the ability to levy an excise tax; however, nothing could be further from the truth as it restricts the ability of cities to operate in this area. In addition, he said the bill is unnecessary because cities currently have the ability to impose an excise tax on real estate developments in Kansas. In his opinion, the underlying motive for the bill is to make it virtually impossible for cities to levy excise taxes, in the nature of impact fees, on developers in the state. ([Attachment 6](#)) With regard to the situation in Derby previously discussed, Mr. Moler pointed out that public’s vote to remove the excise tax proves that the system currently in place works. In addition, he pointed out that cities which levy an excise tax use it to improve such things as arterial streets and services necessitated by the fact that many new homes are being built in the area. Mr. Moler also distributed copies of written testimony in opposition to **SB 91** submitted by Randy Allen, Kansas Association of Counties. ([Attachment 7](#))

Bart Budetti, Assistant City Attorney for the City of Overland Park, followed with further testimony in opposition to **SB 91**. The written testimony he submitted is also signed by Jane Neff-Brain, also an Assistant City Attorney for the City of Overland Park. Mr. Budetti noted that the testimony includes comments from testimony presented last year in opposition to a similar bill and that a copy of the study by Dr. Mark Dotzour addressing the ongoing debate about the necessity of imposing impact fees in local communities was also attached to the testimony. He called attention to the conclusion section of Dr. Dotzour’s study in which he admits that, in the five subdivisions studied, one did represent a net cost to the city because the city did not require the developer to pay for the costs of widening the arterial street that supports that subdivision. In this regard, Mr. Budetti explained that, in the City of Overland Park, the excise tax has been committed to the improvement of the arterial streets that service the various subdivisions. He went on to say that one of his key points of opposition to the bill is the question of home rule. He observed that there is a principal involved in terms of letting local governments deal with an issue first. He contended that, unless there is a demonstrated record of abuse or irresponsible activity by local governments, the Legislature should not exercise its power to limit home rule. ([Attachment 8](#))

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Jane Neff-Brain, Assistant City Attorney for the City of Overland Park, followed with further testimony in opposition to **SB 91**. In regard to the proponents' contention that low and moderate income individuals are forced to live on the fringe of the city because the excise tax makes it too costly to own a home in the city, she informed the Committee that in the heart of Overland Park includes lower and moderate income housing, and she believes those individuals would much prefer an excise tax, where at least part of the thoroughfares that are being constructed for new development are paid for by the new development, rather than being paid for from the city general revenues. She distributed a handout regarding the specific formula used to calculate the excise tax rate, which is based upon a cost per square foot of development. Also included in the handout was a chart regarding the cost to construct several thoroughfares in Overland Park. She noted that statistics show that the development communities pay a small percentage of the overall cost of thoroughfares in the city. Her hand out also included a comparison of several cities in Johnson County with regard to the overall and total fees that would be paid based on a \$175,000 for single-family residential development. She pointed out that Leawood has an impact fee, and its overall charges are greater than Overland Park, based on an 18 cent excise tax. (Attachment 9)

David Peel, Johnson County Planning Office, testified in opposition to **SB 91**. He stated that the bill purports to be a city and county development activity excise tax act; however it reads like an impact fee act, not like an excise tax act. He said impact fees and excise taxes involve very different procedures and should not be interchanged. He explained that the purpose of an impact fee is to regulate, whereas the purpose of an excise tax is to raise revenue. He believes the bill would establish extensive and complicated requirements to adopt and administer an excise tax, and the cost, along with the fear of litigation, could cause many communities not to use excise taxes or impact fees. As a result, roads and other need infrastructure may not be built. (Attachment 10)

Mike Taylor, representing the City of Wichita, gave final testimony in opposition to **SB 91**. At the outset, he noted that Wichita does not use the development activity excise taxes addressed in the bill, but instead uses special assessment taxes to help developers make the construction of new subdivisions more affordable. He explained that his opposition is related to a concern relating to Wichita's one-time water treatment plant equity fee which is charged to any new home or business hooking up to the City of Wichita water system for the first time. The city attorneys feel that the broad language in the bill could have an unintended consequence of effecting the water system plant equity fees; therefore, he suggested that the bill be amended. In addition, he said that he opposes the bill because it is clearly another attempt to restrict the decisions made by locally elected officials. (Attachment 11) With this, the hearing on **SB 91** was closed.

Written testimony in opposition to **SB 91** submitted by Tom Kaleko, Assistant City Administrator for the City of Lenexa, had been distributed to committee members. (Attachment 12)

SB 92–Property taxation; determination of fair market value.

In the interest of saving time, Janet Stubbs, Kansas Building Industry Association, asked that the Committee to review her written testimony in support of **SB 92**, which was requested due to a problem Saline County brought to the attention of Rep. Carol Beggs and the Association last spring. Her testimony indicates that the appraiser for Saline County was adding the debt of the special assessments on each lot to the sale price of each lot to arrive at a "fair market value" determination for purposes of taxation. Although the Board of Tax Appeals (BOTA) was not persuaded by the county's argument that the fair market value includes the special assessments, efforts to get a directive from the Property Valuation Division establishing the BOTA opinion as the correct method of appraisal of single vacant lots not used in agriculture has not been successful, and the Saline County appraiser advises he will continue to value property in the same manner until he receives a higher court's opinion to the contrary or until legislative action is taken. (Attachment 13) In further support of the bill, Ms. Stubbs distributed copies of a legal opinion by Timothy P. O'Sullivan with the firm of Husch & Eppenburger, LLC, which was prepared in connection with a similar bill, **HB 2064**. The analysis indicates the proposed amendment to the statute would clarify the statute, and it would lead to better uniformity in appraisals of real property throughout the state. (Attachment 14)

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Karen France, Kansas Association of Realtors, testified in support of **SB 92** because it will protect taxpayers from having to expend time and money to take their appeals to BOTA again and again to dispute the way that a county appraiser values improved vacant lots. Further, the bill would make it clear, once and for all, that unpaid special assessments should not be included in the market value of a vacant lot. She pointed out that the bill codifies the correct methodology for valuing a particular kind of property, not a particular value arrived at by BOTA. (Attachment 15) At the conclusion of her testimony, Ms. France introduced Stan Byquist, a Salina developer, and Tim Howison, a Salina realtor, who support **SB 92**.

Mr. Howison explained that he has been a developer for approximately fourteen years and a real estate broker with RE/Max for approximately twenty-three years. He said he owns a substantial development in Salina, and the lots are currently sold in the \$10,000 to \$14,000 range. As special assessments continue to go up, the price for the lots are reduced just to get them marketed. For example, seven years ago, the special assessments were in the vicinity of \$5,800 to \$6,200 in a development in Salina. Today, the special assessment is \$15,900. In his opinion, adding the value of the special assessments over and beyond the sale price of the lots constitutes double taxation, and it is crimping the real estate market substantially. He noted that the City of Salina owns the improvements, yet the developer is liable for payment. In his opinion, it is not fair to tax the developers for improvements which are not yet paid for.

Mr. Byquist said he has been in the real estate developer for approximately three years. He said the lots in his subdivision are selling in the neighborhood of \$12,000 to \$13,000. The total cost of the lot to the purchaser, including the specials, is approximately \$24,000 to \$25,000. He feels that the cost of the specials is enough of a burden on purchasers, and specials, which are considered as a debt and not a credit, should not be included in calculating the valuation for taxation purposes.

For the Committee's information, a Topeka real estate appraiser, Robert Taggart, explained the procedure used in the valuation of residential building sites in subdivisions. He said that appraisals are made in conformance to the uniform standards of professional appraisal practice and K.S.A. 79-501 and 503(a). Basically, the value of a residential site is determined by the sales comparison approach, which is the adjustment of known sales of similar sites in the subject subdivision adjusted to the subject property. In the appraiser's opinion, the market sets the site value. If a building site in a subdivision has no special assessments and sells for \$35,000, and a site in a similar subdivision with special assessments sells for \$25,000, those sales set a basis of valuing the sites in those subdivisions. If there are sufficient number of sites that would warrant a discounted cash flow, an appraiser would evidence that in the appraisal. The sale price of sites, plus special assessments, will generally exceed the market value of sites with all the improvements in and paid. Appraisers consider the actual sale price of the sites to be the market value.

Lonie Addis, Labette County Commissioners Association, testified in opposition to **SB 92**. He contended that, if passed, the bill would create inequities in the Computer Assisted Mass Appraisal System (CAMAS) and would curtail a county appraiser's performance in creating fair market values for Kansas property. Commissioner Addis contended that special assessments have value and must be construed as an improvement in determining value. He believes that legislating the removal of special assessments would place restrictions on appraisers which will hinder them from accomplishing the measure of fairness expected. He urged the Committee not to remove a tool appraisers use to make values equal. (Attachment 16)

Rod Broberg, Kansas Association of Counties, was scheduled to testify in opposition to **SB 92**. When he was called upon, he declined, stating that he preferred to testify at a later date when the Committee has more time to discuss the bill with him. Senator Corbin agreed to reschedule his testimony.

Don Moler, League of Kansas Municipalities, testified in opposition to **SB 92**. He believes that the bill could have a very large and unintended impact on property taxes. He said passage of the bill would result in a shift of property tax load from new homes in new subdivisions, which are subject to special assessments for a period of years, onto older properties on which there are no existing special assessments. In his opinion, the bill involves an inherent fairness issue which cannot be ignored. (Attachment 17)

With this, the hearing on **SB 92** was continued to February 19, 2001, and the meeting was adjourned at 12:05 p.m.

The next meeting is scheduled for February 8, 2001.