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February 15, 2007

Chairman and Members of
the Senate Commerce Committee
State Senate
Topeka, KS 66612

Re: Senate Bill No. 316

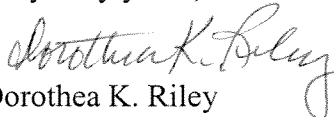
Ladies and Gentlemen:

As bond counsel to the cities of Lenexa and Wichita, we are recommending, on their behalf, an amendment to K.S.A. 12-1770a referenced in Senate Bill No. 316 to permit the use of tax increment revenue to pay the cost of multilevel parking facilities that are owned by, or leased to, developers (A copy of the proposed statutory change is attached). Current law *permits* the use of tax increment revenue to pay the cost of surface parking facilities owned by or leased to developers, *but restricts* the ability of cities to use tax increment financing for multilevel parking facilities unless the facilities are owned by the municipality.

These cities, along with others in Kansas, are encouraging developers to limit urban sprawl and provide concentrated centers for development to conserve resources and land and create neighborhoods of business and residential development. Large surface parking lots are inconsistent with this approach. The proposed amendment to the current tax increment statutes would provide cities with a better tool to encourage this type of development for the benefit of conservation of land as well as the promotion of economic development.

If we may be of any assistance to the committee on this matter, please let me know.

Very truly yours,


Dorothea K. Riley

Attachment

AN ACT concerning economic development, relating to tax increment financing; multilevel parking structures, amending K.S.A. 12-1770a and repealing the existing section.

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

Section 1. K.S.A. 2006 Supp. 12-1770a is hereby amended to read as follows: 12-1770a.

As used in this act, and amendments thereto, the following words and phrases shall have the following meanings unless a different meaning clearly appears from the content:

(a) “Auto race track facility” means: (1) An auto race track facility and facilities directly related and necessary to the operation of an auto race track facility, including, but not limited to, grandstands, suites and viewing areas, concessions, souvenir facilities, catering facilities, visitor and retail centers, signage and temporary hospitality facilities, but excluding (2) hotels, motels, restaurants and retail facilities, not directly related to or necessary to the operation of such facility.

(b) “Base year assessed valuation” means the assessed valuation of all real property within the boundaries of a redevelopment district on the date the redevelopment district was established.

(c) “Blighted area” means an area which:

(1) Because of the presence of a majority of the following factors, substantially impairs or arrests the development and growth of the municipality or constitutes an economic or social liability or is a menace to the public health, safety, morals or welfare in its present condition and use:

(A) A substantial number of deteriorated or deteriorating structures;

(B) predominance of defective or inadequate street layout;

- (C) unsanitary or unsafe conditions;
 - (D) deterioration of site improvements;
 - (E) tax or special assessment delinquency exceeding the fair market value of the real property;
 - (F) defective or unusual conditions of title including but not limited to cloudy or defective titles, multiple or unknown ownership interests to the property;
 - (G) improper subdivision or obsolete platting or land uses;
 - (H) the existence of conditions which endanger life or property by fire or other causes; or
 - (I) conditions which create economic obsolescence; or
 - (2) has been identified by any state or federal environmental agency as being environmentally contaminated to an extent that requires a remedial investigation; feasibility study and remediation or other similar state or federal action; or
 - (3) a majority of the property is a 100-year floodplain area; or
 - (4) previously was found by resolution of the governing body to be a slum or a blighted area under K.S.A. 17-4742 *et seq.*, and amendments thereto.
- (d) “Conservation area” means any improved area comprising 15% or less of the land area within the corporate limits of a city in which 50% or more of the structures in the area have

an age of 35 years or more, which area is not yet blighted, but may become a blighted area due to the existence of a combination of two or more of the following factors:

- (1) Dilapidation, obsolescence or deterioration of the structures;
- (2) illegal use of individual structures;
- (3) the presence of structures below minimum code standards;
- (4) building abandonment;
- (5) excessive vacancies;
- (6) overcrowding of structures and community facilities; or
- (7) inadequate utilities and infrastructure.

(e) “De minimus” means an amount less than 15% of the land area within a redevelopment district.

(f) “Developer” means any person, firm, corporation, partnership or limited liability company, other than a city and other than an agency, political subdivision or instrumentality of the state or a county when relating to a bioscience development district.

(g) “Eligible area” means a blighted area, conservation area, enterprise zone, historic theater, major tourism area or a major commercial entertainment and tourism area or bioscience development area as determined by the secretary.

(h) “Enterprise zone” means an area within a city that was designated as an enterprise zone prior to July 1, 1992, pursuant to K.S.A. 12-17,107 through 12-17,113, and amendments

thereto, prior to its repeal and the conservation, development or redevelopment of the area is necessary to promote the general and economic welfare of such city.

(i) “Environmental increment” means the increment determined pursuant to subsection (b) of K.S.A. 12-1771a, and amendments thereto.

(j) “Environmentally contaminated area” means an area of land having contaminated groundwater or soil which is deemed environmentally contaminated by the department of health and environment or the United States environmental protection agency.

(k)(1) “Feasibility study” means:

(A) A study which shows whether a redevelopment project’s, special bond project’s or bioscience development project’s benefits and tax increment revenue and other available revenues under subsection (a)(l) of K.S.A. 12-1774, and amendments thereto, are expected to exceed or be sufficient to pay for the redevelopment, special bond or bioscience development project costs; and

(B) the effect, if any, the redevelopment project costs, special bond project or bioscience development project will have on any outstanding special obligation bonds payable from the revenues described in subsections(a)(l)(D) and (a)(l)(G) of K.S.A. 12-1774, and amendments thereto.

(2) For a redevelopment project, special bond project or bioscience project financed by bonds payable from revenues described in subsections (a)(l)(D) and (a)(l)(G) of K.S.A. 12-1774, and amendments thereto, the feasibility study must also include:

(A) A description of any project submitted under K.S.A. 12-1771d, and amendments thereto, to satisfy the requirements of paragraph (i) of this section;

(B) a statement of how the jobs and taxes obtained from the project will contribute significantly to the economic development of the state and region;

(C) a statement concerning whether a portion of the local sales and use taxes are pledged to other uses and are unavailable as revenue for the redevelopment project. If a portion of local sales and use taxes is so committed, the applicant shall describe the following:

(i) The percentage of sales and use taxes collected that are so committed; and

(ii) the date or dates on which the local sales and use taxes pledged to other uses can be pledged for repayment of special obligation bonds;

(D) an anticipated principal and interest payment schedule on the bonds; and

(E) following approval of the redevelopment plan, the feasibility study will be supplemented to include a copy of the minutes of the governing body meeting or meetings of any city whose bonding authority will be utilized in the project, evidencing that a redevelopment plan has been created, discussed, and adopted by the city in a regularly scheduled open public meeting.

(3) For a proposed major commercial entertainment and tourism area, the feasibility study must also include:

(A) Visitation expectations;

(B) economic impact;

- (C) the unique quality of the project;
- (D) the ability of the project to gain sufficient market share to:
 - (i) Remain profitable past the term of repayment; and
 - (ii) maintain status as a significant factor for travel decisions;
- (E) integration and collaboration with other resources or businesses;
- (F) the quality of service and experience provided, as measured against national consumer standards for the specific target market;
- (G) project accountability, measured according to best industry practices; and
- (H) the expected return on state and local investment that the project is anticipated to produce.

(4) The failure to include all information enumerated in this subsection in the feasibility study for a redevelopment, special bond or bioscience project shall not affect the validity of bonds issued pursuant to this act.

(l) “Historic theater” means a building constructed prior to 1940 which was constructed for the purpose of staging entertainment, including motion pictures, vaudeville shows or operas, that is operated by a nonprofit corporation and is designated by the state historic preservation officer as eligible to be on the Kansas register of historic places or is a member of the Kansas historic theatre association.

(m) “Historic theater sales tax increment” means the amount of state and local sales tax revenue imposed pursuant to K.S.A. 12-187 *et seq.*, 79-3601 *et seq.* and 79-3701 *et seq.*, and amendments thereto, collected from taxpayers doing business within the historic theater that is in excess of the amount of such taxes collected prior to the designation of the building as a historic theater for purposes of this act.

(n) “Major tourism area” means an area for which the secretary has made a finding the capital improvements costing not less than \$100,000,000 will be built in the state to construct an auto race track facility.

(o) “Real property taxes” means all taxes levied on an ad valorem basis upon land and improvements thereon, except that when relating to a bioscience development district, as defined in this section, “real property taxes” does not include property taxes levied for schools, pursuant to K.S.A. 72-6431, and amendments thereto.

(p) “Redevelopment project area” means an area designated by a city within a redevelopment district.

(q) “Redevelopment project costs” means those costs necessary to implement a redevelopment project plan or a bioscience development project plan, including costs incurred for:

(1) Acquisition of property within the redevelopment project area;

(2) payment of relocation assistance pursuant to a relocation assistance plan as provided in K.S.A. 12-1777, and amendments thereto;

- (3) site preparation including utility relocations;
- (4) sanitary and storm sewers and lift stations;
- (5) drainage conduits, channels, levees and river walk canal facilities;
- (6) street grading, paving, graveling, macadamizing, curbing, guttering and surfacing;
- (7) street light fixtures, connection and facilities;
- (8) underground gas, water, heating and electrical services and connections located within the public right-of-way;
- (9) sidewalks and pedestrian underpasses or overpasses;
- (10) drives and driveway approaches located within the public right-of-way;
- (11) water mains and extensions;
- (12) plazas and arcades;
- (13) parking facilities, *including multilevel parking structure*;
- (14) landscaping and plantings, fountains, shelters, benches, sculptures, lighting, decorations and similar amenities; and
- (15) related expenses to redevelop and finance the redevelopment project, except that for a redevelopment project financed with special obligation bonds payable from the revenues described in subsections (a)(1)(D) and (a)(1)(G) of K.S.A. 12-1774, and amendments thereto, such expenses shall require prior approval by the secretary of commerce.

Redevelopment project costs shall not include costs incurred in connection with the construction of buildings or other structures to be owned by or leased to a developer, however, the “redevelopment project costs” shall include costs incurred in connection with the construction of buildings or other structures to be owned or leased to a developer which includes an auto race track facility *or a multilevel parking structure*. In addition, for a redevelopment project financed with special obligation bonds payable from the revenues described in subsections (a)(1)(D) and (a)(1)(G) of K.S.A. 12-1774, and amendments thereto, redevelopment project costs shall not include:

(1) Fees and commissions paid to real estate agents, financial advisors or any other consultants who represent the businesses considering locating in a redevelopment district;

(2) salaries for local government employees;

(3) moving expenses for employees of the businesses locating within the redevelopment district;

(4) property taxes for businesses that locate in the redevelopment district;

(5) lobbying costs; and

(6) a bond origination fee charged by the city pursuant to K.S.A. 12-1742, and amendments thereto.

(r) “Redevelopment district” means the specific area declared to be an eligible area in which the city may develop one or more redevelopment projects.

(s) “Redevelopment district plan” or “district plan” means the preliminary plan that identifies all of the proposed redevelopment project areas and identifies in a general manner all of the buildings, facilities and improvements in each that are proposed to be constructed or improved in each redevelopment project area.

(t) “Redevelopment project” means the approved project to implement a project plan for the development of the established redevelopment district.

(u) “Redevelopment project plan” means the plan adopted by a municipality for the development of a redevelopment project or projects which conforms with K.S.A. 12-1772, and amendments thereto, in a redevelopment district.

(v) “Secretary” means the secretary of commerce.

(w) “Substantial change” means, as applicable, a change wherein the proposed plan or plans differ substantially from the intended purpose for which the district plan or project plan was approved.

(x) “Tax increment” means that amount of real property taxes collected from real property located within the redevelopment district that is in excess of the amount of real property taxes which is collected from the base year assessed valuation.

(y) “Taxing subdivision” means the county, city, unified school district and any other taxing subdivision levying real property taxes, the territory or jurisdiction of which includes any currently existing or subsequently created redevelopment district including a bioscience development district.

(z) “Special bond project” means a redevelopment project with:

(1) At least a \$50,000,000 capital investment and \$50,000,000 in projected gross annual sales revenues; or

(2) for areas outside of metropolitan statistical areas, as defined by the federal office of management and budget, the secretary finds:

(A) The project meets the requirements of subsection (g); and

(B) would be of regional or statewide importance. A “special bond project” shall not include a project for a gambling casino.

(aa) “Marketing study” means a study conducted to examine the impact of the redevelopment project or special bond project upon similar businesses in the projected market area.

(bb) “Projected market area” means any area within the state in which the redevelopment project or special bond project is projected to have a substantial fiscal or market impact upon businesses in such area.

(cc) “River walk canal facilities” means a canal and related water features located adjacent to a river which flows through a major commercial entertainment and tourism area and facilities related or contiguous thereto, including, but not limited to pedestrian walkways and promenades, landscaping and parking facilities.

(dd) “Commence work” means the manifest commencement of actual operations on the development site, such as, erecting a building, excavating the ground to lay a foundation or a

basement or work of like description which a person with reasonable diligence can see and recognize as being done with the intention and purpose to continue work until the project is completed.

(ee) “Major commercial entertainment and tourism area” may include, but not be limited to, a major multi-sport athletic complex.

(ff) “Major multi-sport athletic complex” means an athletic complex that is utilized for the training of athletes, the practice of athletic teams, the playing of athletic games or the hosting of events. Such project may include playing fields, parking lots and other developments.

(gg) “Bioscience” means the use of compositions, methods and organisms in cellular and molecular research, development and manufacturing processes for such diverse areas as pharmaceuticals, medical therapeutics, medical diagnostics, medical devices, medical instruments, biochemistry, microbiology, veterinary medicine, plant biology, agriculture, industrial environmental and homeland security applications of bioscience and future developments in the biosciences. Bioscience includes biotechnology and life sciences.

(hh) “Bioscience development area” means an area that:

(1) Is or shall be owned, operated, or leased by, or otherwise under the control of the Kansas bioscience authority;

(2) is or shall be used and maintained by a bioscience company; or

(3) includes a bioscience facility.

(ii) “Bioscience development district” means the specific area, created under K.S.A. 12-1771, and amendments thereto, where one or more bioscience development projects may be undertaken.

(jj) “Bioscience development project” means an approved project to implement a project plan in a bioscience development district.

(kk) “Bioscience development project plan” means the plan adopted by the authority for a bioscience development project pursuant to K.S.A. 12-1772, and amendments thereto, in a bioscience development district.

(ll) “Bioscience facility” means real property and all improvements thereof used to conduct bioscience research, including, without limitation, laboratory space, incubator space, office space and any and all facilities directly related and necessary to the operation of a bioscience facility.

(mm) “Bioscience project area” means an area designated by the authority within a bioscience development district.

(nn) “Biotechnology” means those fields focusing on technological developments in such area as molecular biology, genetic engineering, genomics, proteomics, physiomics, nanotechnology, biodefense, biocomputing, bioinformatics and future developments associated with biotechnology.

(oo) “Board” means the board of directorsthe Kansas bioscience authority.

(pp) “Life sciences” means the areas of medical sciences, pharmaceutical sciences, biological sciences, zoology, botany, horticulture, ecology, toxicology, organic chemistry, physical chemistry, physiology and any future advances associated with life sciences.

(qq) “Revenue increase” means that amount real property taxes collected from real property located within the bioscience development district that is in excess of the amount of real property taxes which is collected from the base year assessed valuation.

(rr) “Taxpayer” means a person, corporation, limited liability company, corporation, partnership, registered limited liability partnership, foundation, association, nonprofit entity, sole proprietorship, business trust, group or other entity that is subject to the Kansas income tax act, K.S.A. 79-3201 *et seq.*, and amendments thereto.

(ss) “Floodplain increment” means the increment determined pursuant to subsection (b) of K.S.A. 2006 Supp. 12-1771e, and amendments thereto.

(tt) “100-year floodplain area” means an area of land existing in a 100-year floodplain as determined by either an engineering study of a Kansas certified engineer or by the United States federal emergency management agency.

(uu) “Major motorsports complex” means a complex in Shawnee county that is utilized for the hosting of competitions involving motor vehicles, including, but not limited to, automobiles, motorcycles or other self-propelled vehicles other than a motorized bicycle or motorized wheelchair. Such project may include racetracks, all facilities directly related and necessary to the operation of a motorsports complex, including, but not limited to, parking lots, grandstands, suites and viewing areas, concessions, souvenir facilities, catering facilities, visitor

and retail centers, signage and temporary hospitality facilities, but excluding hotels, motels, restaurants and retail facilities not directly related to or necessary to the operation of such facility.

Section 2. K.S.A. 12-1770a as amended by section 3 of Chapter 192 of the 2006 Session Laws of Kansas is hereby repealed.

Section 3. This act shall take effect and be in force from and after its publication in the statute book.