Approved: March 23, 2010
Date

MINUTES OF THE SENATE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Roger Reitz at 9:30 a.m. on March 9, 2010, in Room 144-S of the Capitol.

All members were present.

Committee staff present:
Mike Heim, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Reed Holwegner, Kansas Legislative Research Department
Noell Memmott, Committee Assistant

Conferees appearing before the Committee:
Dale Goter, City of Wichita
Ashley Jones-Wisner, LISC, Greater Kansas City
Donald E. Smith, Community Housing of Wyandotte County, Inc.
Shara Gonzales, New Beginnings, Inc.
Luke Bell, Kansas Association of Realtors
Mike Taylor, Unified Government Public Relations
Norman C. Pishny,

Others attending:
See attached list.

The hearing opened on **SB 561 - Cities; rehabilitation of abandoned houses; nonprofit corporations**. Dale Goter, Government Relations Manager, City of Wichita, spoke in favor of the bill (Attachment 1). He and the following proponents noted the goal of the bill was to maintain protection for individual property rights while assisting neighborhoods to attain higher standards of property maintenance: Ashley Jones-Wisner, LISC, Greater Kansas City (Attachment 2); Donald E. Smith, Community Housing of Wyandotte County, Inc. (Attachment 3); Shara Gonzales, New Beginnings, Inc.(Attachment 4); Luke Bell, Kansas Association of Realtors (Attachment 5); and Mike Taylor, Unified Government Public Relations (Attachment 6).

Written testimony in favor of **SB 561** was submitted by the following: Rebecca Buford, Tenants to Homeowners, Inc./The Lawrence Community Housing Trust (Attachment 7); Ed Linnebur, Downtown Shareholders, Kansas City, Kansas (Attachment 8); Martha Neu Smith, Kansas Manufactured Housing Association (Attachment 9); Chris Wilson, Kansas Building Industry Association, Inc.(Attachment 10); and Phil Perry, Senior Vice President, Governmental Affairs, Home Builders Association of Greater Kansas City (Attachment 11).

Mike Petersen made the suggestion to add counties to the bill. The hearing was closed.

The discussion continued on **HB 2472 - Kansas uniform common interest owners bill of rights act**. Senator Huntington reviewed the bill (Attachment 12). The bill has been revised and new amendments clarify the bill. Senator Huntington moved to pass **HB 2472** out of committee. Senator Kultala seconded the motion. A discussion of the bill followed. Senator Wagle continued to voice her concern on how this bill will affect those Home Owners Associations that function correctly. Randy Hearrell, Judicial Council, stated he had compiled a check list to review existing bylaws to the new laws. Mike Heim, Revisor, said the bill will provide structure to Home Owners Associations. The motion passed.

March 9

The hearing opened on **HB 2029 - Annexation procedures; de-annexation, board of county commissioners duties, election required, when.** Norman C. Pishny testified in favor of the bill (Attachment 13).

The hearing on **HB 2029** will continue.

The next meeting is scheduled for March 15, 2010.

The meeting was adjourned at 10:30

LOCAL GOVERNMENT
GUEST LIST

DATE: March 9, 2010

NAME	REPRESENTING
Randy Hearrell	Judicial Council
Debbie Lee	
Tom Kim	
Brad Harrelson	KFB
Jim Parker	2 H.O. assns.
Mike Rudinger	Self
Henry Streeter	Self.
Rob Johnson	Federal Consultant
ERIK SARTORIUS	City of Overland Park
Rob Hutchison	Self
Norman Bishop	Self & friends
Travis Love	Lottie, Govt Relations
Don Moler	LKM
Brad Sweet	No Annexation Coalition
Whitney Jamar	City of Topeka

TESTIMONY

CITY OF WICHITA

Dale Goter
Government Relations Manager

City of Wichita
455 N Main, Wichita, KS. 67202
Wichita Phone: 316.268.4351
dgoter@wichita.gov

Kansas Senate Committee on Local Government

Testimony in support of SB561

Chairman Reitz and members of the Senate Local Government Committee. Thank you for this opportunity to register the support of the City of Wichita for SB561.

Blighted properties are one of the most challenging problems facing Kansas towns and cities. Over the past several years, the City of Wichita has pursued a variety of strategies and tactics to address this problem. We have worked with non-profit housing groups, along with Sedgwick County government, to find innovative approaches.

Three years ago, the City of Wichita was successful in gaining legislative passage of a bill allowing foreclosure of blighted abandoned property in one year instead of the standard three-year wait. SB561 extends that principle, reducing the waiting period to 90 days.

It is our belief that prompt intervention will prevent the deterioration of the blighted abandoned property to the point that it no longer is a candidate for rehabilitation and a return to the property tax base.

Unfortunately, despite our best efforts, we are continually frustrated by restrictions in current law. SB561 represents a new approach that has the potential to improve our blighted neighborhoods.

Our goal is to provide the maximum protection for individual property rights, while assisting neighborhoods to attain higher standards of property maintenance that enhance the quality of life for all residents.

Blighted properties cast a depressing shadow over an entire neighborhood. It is our hope that SB561, if enacted into law, will provide another valuable tool to fight this chronic problem.

We urge the committee to favorably report SB561 for passage.

Senate Local Government
3-9-2016

Attachment 1-1

LISC
Greater Kansas City
Helping neighbors build communities

March 9, 2010

Ashley Jones-Wisner
Local Initiatives Support Corporation
913-375-7264
www.lisc.org/KansasCity

RE: Senate Bill 561

Chairman Reitz and members of the Senate Local Government Committee,

I want to thank you for the opportunity to present written testimony. My name is Ashley Jones-Wisner and I am Director of State Policy at Greater Kansas City LISC. Greater Kansas City LISC is a program area of the Local Initiatives Support Corporation, the nation's largest community development organization, dedicated to revitalizing urban core and rural neighborhoods. Currently, Greater Kansas City LISC's signature program, NeighborhoodsNOW, serves three Kansas City, Kansas Neighborhoods: Douglass-Sumner, Downtown KCK and
St. Peter/Waterway.

Greater Kansas City LISC started the Kansas Housing Policy Network about three years ago. Although it began with only a hand-full of individuals from across the state, it has grown to include over 400 members interested in the creation of community development tools. The Kansas Housing Policy Network includes representations from the Homebuilders, Realtors, Homeless Providers and Advocates, Community Development Corporations, and many other interested entities.

One of the greatest challenges we face as we work with residents to revitalize their neighborhoods is the number of vacant, abandoned or dilapidated houses in the community. No matter how much funding we put into these neighborhoods, individuals are less likely to move into neighborhoods if they have to live next to one of these poorly kept structures. Property values in the neighborhoods also suffer, which affects both existing and potential residents.

In almost all cases, community development corporations are the developers of last resort. Most of the areas serviced by nonprofits have had severe disinvestment over a prolonged period of time. Working in such disinvestment is hard, time-intensive work. Tools, such as this bill provides by making two simple changes, will allow the work we do in these neighborhoods to both move at a pace that will allow our programmatic and monetary resources to be used efficiently and effectively.

We encourage you to support SB 561, as it will help us create decent, safe and affordable housing in Kansas communities.

Community Housing
OF WYANDOTTE COUNTY, INC.

Community Housing of Wyandotte County, Inc.
2 South 14th Street
Kansas City, Kansas 66102
913.342.7580

SB 561
March 4, 2009
Donald E. Smith
Community Housing of Wyandotte County, Inc.
2 South 14th Street
Kansas City, Kansas 66102
913.342.7580
www.chwconline.com

Chairman Reitz and members of the Senate Local Government Committee,

I want to thank you for the opportunity to present testimony today regarding SB 561. My name is Donny Smith and I am the Executive Director of Community Housing of Wyandotte County (C.H.W.C.), a not-for-profit, community development organization, dedicated to revitalizing the downtown neighborhoods of Kansas City, Kansas through housing redevelopment and overall quality of life initiatives.

C.H.W.C. was founded in 2002 as the result of a merger between Catholic Housing of Wyandotte County, founded in 1998 and Neighborhood Housing Services of Kansas City, KS, founded in 1981. C.H.W.C. is a chartered member of NeighborWorks America, a nationally recognized network of over 200 community development corporations nationwide. We are also partners with Greater Kansas City LISC, which is a member of Local Initiatives Support Corporation, who provides funding and technical assistance in our redevelopment efforts.

C.H.W.C. has built over 100 new single-family homes and renovated nearly 60 existing homes in the downtown neighborhoods of Kansas City, Kansas. Our new homes have been built on long-forgotten, vacant and overgrown lots that were eyesores to the neighborhood residents and places in which criminals and vagrants found attractive to use for illegal purposes. The vacant homes we have renovated have typically been slated for demolition or previously uninhabited for quite some time, prior to C.H.W.C.'s efforts to renovate them. Many of these homes were once grand historic structures in the early 20th Century and we were fortunate to be able to save them.

One of the greatest challenges we face as we work with residents to revitalize their neighborhoods is the number of vacant, abandoned or dilapidated houses in the community. The current tools we have at our disposal to remove blighted properties from our neighborhoods is minimal. Many times these homes could be saved, but because our organization cannot get easy access to the property to conduct the proper structural inspections it is difficult for us to go through the process of getting court-ordered approval to access the property and easier to allow the blighted property to be demolished and redeveloped at a later date.

The simple changes proposed in this bill are certainly steps in the right direction to help my organization continue to improve our neighborhoods by clearing blight, building new homes, and renovating existing properties.

We encourage you to support SB 561, as it will help us create decent, safe and affordable housing in Kansas communities.

NeighborWorks®
CHARTERED MEMBER

Senate Local Government
3-9-2010

Attachment 3-1

New Beginnings Inc.

P.O. Box 2504 Hutchinson, KS 67504-2504
Phone 620.966.0274 Fax 620.966.0280

SB 561
March 9, 2010
Shara Gonzales
New Beginnings, Inc.
620.966.0274
www.newbeginnings-inc.org

Chairman and Members of the Local Government Committee,

I want to thank you for the opportunity to present testimony this morning. My name is Shara Gonzales and I am the Executive Director for New Beginnings, Inc. New Beginnings is a twenty year old housing organization in Hutchinson, Kansas. We primarily serve Reno County. As of January, we have helped over 7,000 households regain or stabilize their housing situation. 70% of who we serve is families with children.

New Beginnings began as a provider of emergency services and shelter for people who had lost their homes. We soon realized that homelessness was primarily a housing issue and began to develop comprehensive solutions to people being re-housed and the prevention of homelessness in the first place. Over the last 15 years we have created methods to temporarily house people while increasing their income capacity to afford market rate housing; a comprehensive, coordinated process for bringing all of a community's resources and services to bear on a situation so as to stabilize the household from future loss of housing, and built affordable housing to prevent home loss.

New Beginnings became a Community Housing Development Organization (CHDO) six years ago. To date we have built 97 units of affordable housing that we own and manage. Most of this development was new housing. We currently are rehabilitating a five story building that will provide another 29 units of affordable housing. New Beginnings utilizes Low Income Housing Tax Credits (LIHTC), CHDO set aside funds (HOME) and private financing to create these rental units.

Hutchinson's Housing Needs Assessment in 2000 indicated that Hutchinson needed to build 100 units of affordable housing over a ten year period to meet the need in our community. One of our biggest challenges has been to acquire enough properties in a timely manner to meet this goal. The core area of our city needs to be re-developed and this bill will allow us and others in our community to acquire property in a manner that will greatly speed the process of this re-development. It will allow us to combine our traditional resources for development with those stimulus monies that have recently been made available to our community to make a significant impact on our housing needs.

Re-development of our core will provide housing for the companies who are locating in Hutchinson currently and for future economic development. We encourage you to support SB 561 and provide one more resource in an ongoing challenge to create affordable, decent housing for all Kansans.

Thank you.

KANSAS Association of REALTORS®

Luke Bell
Vice President of Governmental Affairs
3644 SW Burlingame Rd.
Topeka, KS 66611
785-267-3610 Ext. 2133 (Office)
785-633-6649 (Cell)
Email: lbell@kansasrealtor.com

To: Senate Local Government Committee

Date: March 9, 2010

Subject: **SB 561** -- Making Various Changes to the Kansas Abandoned Housing Act Correcting to Help Cities Redevelop Abandoned Housing and Revitalize Neighborhoods

Chairman Reitz and members of the Senate Local Government Committee, thank you for the opportunity to testify on behalf of the Kansas Association of REALTORS® in support of **SB 561**. Through the comments expressed herein, it is our hope to provide additional legal and public policy context to the discussion on this issue.

KAR has faithfully represented the interests of the nearly 9,000 real estate professionals and over 700,000 homeowners in Kansas for the last 90 years. In conjunction with other organizations involved in the housing industry, the association seeks to increase housing opportunities in this state by increasing the availability of affordable and adequate housing for Kansas families.

SB 561 would make various changes to the Kansas Abandoned Housing Act to make it easier for cities and non-profit housing organizations to redevelop abandoned housing in this state. In order to accomplish this objective, **SB 561** would make the following changes to the act:

(1) amend the definition of "abandoned property" in **K.S.A. 12-1750(c)** to reduce the required vacancy period on residential real property from 180 to 90 days; and
(2) reduce the occupancy requirement in **K.S.A. 12-1756g** for individuals who have purchased rehabilitated property from three years to one year.

In general, **SB 561** contains several incremental and reasonable modifications to the current language in the Kansas Abandoned Housing Act governing the redevelopment of abandoned housing. If enacted, the provisions of **SB 561** will help cities and non-profit housing organizations redevelop and revitalize residential properties that have been abandoned by their previous owners.

By improving and streamlining the process for redeveloping abandoned housing, **SB 561** will help cities revitalize neighborhoods that are plagued by a large number of abandoned homes. This will help create increased economic prosperity, a higher quality of life and increased affordable housing opportunities for Kansas families.

For all the foregoing reasons, we would urge the Senate Local Government Committee to strongly support the provisions of **SB 561**. Once again, thank you for the opportunity to provide comments on **SB 561** and I would be happy to respond to any of your individual questions at the appropriate time.

Senate Local Government
3-9-2010

Attachment 5-1

Testimony

Unified Government Public Relations
701 N. 7th Street, Room 620
Kansas City, Kansas 66101

Mike Taylor, Public Relations Director
913.573.5565 mtaylor@wycokck.org

SB 561
Rehabilitation of Abandoned Houses

Delivered March 9, 2010
Senate Local Government Committee

The Unified Government supports Senate Bill 561 as a reasonable, moderate approach for dealing with the problem of abandoned housing. Allowing local governments to partner with and empower qualified organizations to fix-up neglected properties is a positive step toward dealing with blight and its damaging impact on neighborhoods.

SB 561 makes minor changes to existing law by shortening the time frame under which abandoned, nuisance housing can be addressed.

The longer a residential structure sits abandoned, the more detrimental it is to the neighborhood and structure itself. The following are issues that compound as abandoned conditions are existent over time:

- Structure becomes a haven for illegal activity.
- Structure subject to continued vandalism and scrapping efforts.
- After long periods of time and abuses demolition becomes the only feasible option.
- Many abandoned properties are subject to arson and fires.
- Property continues to deteriorate and have an impact on the appearance of the neighborhood.
- Property decreases market value of other properties in the surrounding area.

The quicker an abandoned property can get into the hands of responsible parties, the greater the chance a successful rehabilitation can be accomplished. SB 561 offers the opportunity to minimize the negative effects rundown, neglected properties have on a neighborhood.

Tenants to Homeowners, Inc.

SB 561
March 3, 2010
Rebecca Buford
Tenants to Homeowners, Inc./ The Lawrence Community Housing Trust
785.760.2058
www.tenants-to-homeowners.org

Madame Chair and Members of the Local Government Committee,

I want to thank you for the opportunity to present testimony this afternoon. My name is Rebecca Buford and I am the Executive Director of Tenants to Homeowners, Inc., a not-for-profit housing developer in Lawrence, Kansas. We are focused on creating permanently affordable housing through construction and rehabilitation projects and stabilizing neighborhoods through our Housing Trust Program. This program allows working class families to own their own homes through partnerships with the city and local lenders and support from federal housing funds, local foundations, and community contributions.

TTH has worked in Lawrence for 17 years and has put 278 families in their first homes with the city's earlier HOOT Program. Since 2005, TTH has added 40 permanently affordable houses to its Housing Trust Program and stewards these homes in perpetuity. TTH has developed 42 new construction projects and has completed 20 rehabilitation projects in the target neighborhoods of Lawrence. Not only do these projects provide local jobs, they also stabilize traditionally affordable neighborhoods suffering from gentrification and/or blight. Most significantly, the community subsidy used for these projects is locked into these homes through a resale formula price that ensures that while first time buyers will make a fair return on their investment the homes will remain affordable in the community for generations to come. We are the first Community Housing Trust in the state of Kansas and we are proud to say that we are creatively addressing affordable housing in one of the most unaffordable markets in Kansas. We currently have 8 units in development and several units being rehabilitated. Given the lack of vacant land in Lawrence, we are turning more and more towards rehabilitation projects to infuse the opportunity of owner-occupied affordable housing among our diverse neighborhoods.

One of the challenges we face in Lawrence as we try to develop ownership housing in rental areas where there is little space to expand is the high cost to obtain properties that are candidates for rehabilitation. It is hard for us to see the number of poorly maintained houses with absentee landlords that allow these properties to deteriorate among our target neighborhoods. These owners have no consideration of what they are doing to their community and the effect that these unmaintained properties have on neighborhoods. No matter how much funding we put into these neighborhoods with new infill construction, people are less likely to want to live next to one of these poorly kept structures. Tools, such as this bill provides, that allow for quicker not-for-profit investment in abandoned or neglected houses, help us greatly in our efforts to stabilize neighborhoods and use public funding efficiently.

We encourage you to support SB 561, as it will help us create decent, safe and affordable housing in Lawrence and across the state of Kansas.

DOWNTOWN SHAREHOLDERS

SB 561
March 4, 2010

Chairman Reitz and members of the Senate Local Government Commitee,

I want to thank you for the opportunity to present testimony, with regard to SB 561. My name is Ed Linnebur and I am Director of Downtown Shareholders. Downtown Shareholders is a membership organization that is dedicated to revitalizing Kansas City, Kansas and surrounding neighborhoods.

Downtown Shareholders partnered with Local Initiative Support Corporation (LISC) over the last four years with their Neighborhoods Now program, and support their efforts to enhance the tools available to revitalize our downtown housing. Currently, Greater Kansas City LISC's signature program, Neighborhoods NOW, serves three Kansas City, Kansas Neighborhoods: Douglas Sumner, Downtown KCK and St. Peters, Waterway.

Several years ago, I worked for a Community Development Corporation in Missouri whose focus was working in a blighted community and working to improve the physical conditions of the neighborhood and to increase homeownership in this neighborhood. One tool we used was the Abandon Housing Act, this allowed us to pursue the homes that were left vacant and for all intensive purposes we had no owner to talk with or negotiate with to purchase or have repair the home. This tool allowed us to begin a formal search for who legally owned this property and to seek them out, to have these homes abated. For the most part the legal owners were family members that had no idea that they owned a portion of this home, due to no will or were stuck in probate. We were able to work with the families and help them get ownership of the home, or transfer ownership through a quit claim process. But that was unusual, normally there were no surviving members of the family and we would have to publish for 120 days, have a hearing with the judge to discuss this property and what our intent was to improve the property and we had to show that we had the means to complete this work. We would have to show our prior work and our current financial report for the judge to render us the right to improve the property. Once we started this process the costs would be tracked, if an owner were found during our rehab, the owner could reimburse our costs and then take ownership. If however, we finished the rehab and abated the code violations we would then have a second hearing to obtain the deed of the home, free an clear of any legal liens on the property. This would allow us to market the home and sell the home and return this home to a functioning asset in the neighborhood.

One of the greatest challenges we face as we work with residents to revitalize their neighborhoods is the number of vacant, abandoned or dilapidated houses in the community. No matter how much funding we put into these neighborhoods, individuals are less likely to move into neighborhoods if they have to live next to one of these poorly kept structures. Property values in these neighborhoods also suffer, which affects both existing and potential residents.

In almost all cases, community development corporations are the developers of last resort. Most of the areas serviced by nonprofits have had severe disinvestment over a prolonged period of time. Working in such disinvestment is hard, time-intensive work. Tools, such as this bill provides by making a simple change, will allow the work we do in these neighborhoods to both move at a pace that will allow our programmatic and monetary resources to be used efficiently and effectively.

We encourage you to support SB 561, as it will help us create decent, safe and affordable housing in Kansas communities.

Thank you,

Ed Linnebur
913-371-0705

726 Armstrong Ave, Ste 201 Kansas City KS 66101 913/371-0705

Senate Local Government
3-9-2010
Attachment 8-1

KANSAS MANUFACTURED HOUSING ASSOCIATION

3521 SW 5th St.
Topeka, KS 66606
785-357-5256
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kmha1@sbcglobal.net

TO: Senator Roger Reitz, Chairman
And Members of the
Senate Local Government Committee

FROM: Martha Neu Smith
Executive Director

DATE: March 9, 2010

RE: SB 561 – Cities Relating to Rehabilitation of Abandoned Houses

Chairman Reitz and members of the Committee, my name is Martha Neu Smith and I am the Executive Director for Kansas Manufactured Housing Association (KMHA) and I appreciate the opportunity to provide written comments in support of SB 561 – Cities Relating to Rehabilitation of Abandoned Houses.

KMHA is a statewide trade association, which represents all facets of the manufactured and modular housing industry including manufacturers, retail centers, community owners and operators, finance and insurance companies, service and supplier companies and transport companies. KMHA members provide some of the most affordable unsubsidized housing being built today.

KMHA supports the changes being proposed in SB 561, which will make it easier for cities and non-profit housing groups to redevelop abandoned homes. SB 561 proposes changing the definition of abandoned property by reducing the vacancy time from 180 days to 90 days and by changing the occupancy requirement for families that purchase the redeveloped property from three years to one year. KMHA feels these changes will help residential neighborhoods that are currently struggling with the negative impacts of having abandoned properties in their midst by providing them a more efficient process in addressing those situations.

KMHA would respectfully ask that the Senate Local Government Committee support SB 561 – Cities Relating to Rehabilitation of Abandoned Houses.

Thank you for the opportunity to comment.

Senate Local Government
3-9-2010

Attachment 9-1

KBIA
KANSAS BUILDING INDUSTRY ASSOCIATION, INC.

STATEMENT OF KANSAS BUILDING INDUSTRY ASSOCIATION

TO THE SENATE LOCAL GOVERNMENT COMMITTEE

SENATOR ROGER REITZ, CHAIR

REGARDING S.B. 561

MARCH 9, 2010

Mr. Chairman and Members of the Committee, I am Chris Wilson, Executive Director, of Kansas Building Industry Association (KBIA). KBIA is the trade and professional association of the residential construction industry in Kansas, with approximately 2300 member companies at large and in local home builders associations.

KBIA supports S.B. 561. The purpose of this bill is to facilitate the rehabilitation of abandoned housing. There are only two changes in the statute in this bill. In the definition of abandoned property, the time which the property must be unoccupied prior to being considered abandoned is shortened from 180 tosh 90 days. The property must also be one for which taxes are delinquent for the preceding two years. The bill would also shorten the time for which a person who purchases a rehabilitated house must occupy it from three years to one year.

We think the bill strikes a good balance between the purpose of facilitating rehabilitation of abandoned housing and the protection of the rights of the property owners. The bill also provides for an extension of an additional 90 days for a property owner to be allowed to bring the property into compliance with fire, housing and building codes.

Homebuilders want abandoned property in urban areas to be rehabilitated, because it is very much needed in communities with this type of housing. Abandoned housing promotes the decline of the community and increases criminal activity in the area and is a threat to the safety of residents in the community. Builders who build and renovate affordable housing in these areas want to see this property rehabilitated as quickly as possible while still protecting the property rights of those who own abandoned property.

We ask that the Committee report S.B. 561 favorable for passage and thank you for your consideration.

HOME BUILDERS ASSOCIATION
OF GREATER KANSAS CITY

Affiliated NAHB

600 EAST 103RD STREET • KANSAS CITY, MISSOURI 64131-4300 • (816) 942-8800 • FAX (816) 942-8367 • www.kchba.org

Written Testimony on SB 561
Senate Committee on Local Government
Phil Perry, Senior VP Governmental Affairs
March 9, 2009

Chairman Reitz and members of the committee, thank you for this opportunity to provide written testimony today concerning SB 561, amendments concerning the rehabilitation of abandoned houses. The Home Builders Association of Greater Kansas City urges your support for this important piece of legislation as we all work to revitalize our communities.

Our organization has worked for years to help local Community Development Corporations (CDC's) in their efforts to work in these neighborhoods that have either been ignored or abandoned. As we struggle to make affordable housing options available to all, this tool will help these CDC's move at a pace that is more efficient and effective. The changes in this bill will help address the problems in these neighborhoods - the large number of vacant, abandoned, or dilapidated housing. These structures provide a barrier to attracting new families and individuals to these communities.

Members of our organization have seen the importance of working in these neighborhoods through the work of the Housing Choices Coalition, Argentine Neighborhood Development, Community Housing Wyandotte County, City Vision, and other CDC's located in the metro KC area. Additionally, some of our members formed a CDC, the Builders Development Corporation, in 2005 as a way to address these problems. The changes that are contained in this bill will help all of these organizations as we work towards solutions to the existing problems in these neighborhoods.

Thank you for you time and we urge your support for SB 561.

Senate Local Government
3-9-2010
Attachment 11-1

As Amended by House Committee

Session of 2010

HOUSE BILL No. 2472

By Committee on Local Government

1-19

AN ACT enacting the Kansas uniform common interest owners bill of rights act; amending K.S.A. 58-3119 and 58-3120 and repealing the existing sections; also repealing K.S.A. 2009 Supp. 58-3830.

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

New Section 1. (a) Sections 1 through 23, and amendments thereto, shall be known as the Kansas uniform common interest owners bill of rights act.

(b) The legislature finds as a matter of public policy:

(1) That a significant and increasing number of Kansans live in common interest communities;

(2) that effective operation of these common interest communities is in the interest of their owners, residents, and the state; and

(3) that the adoption of uniform rules to govern the rights and duties of unit owners, associations, and developers will help to ensure that common interest communities operate effectively and fairly.

(c) The public purposes of this act are to establish uniform rules of law to clarify the rights and duties of unit owners and associations in all forms of common interest communities, to provide for the effective operation of common interest communities in the interest of their owners and their residents and to address current and potential areas of conflict and tension between unit owners and associations, boards and managers in a comprehensive and balanced manner.

New Sec. 2. As used in this act:

(a) "Assessment" means the sum attributable to each unit and due to the association pursuant to the budget adopted under section 19, and amendments thereto.

(b) "Association" means the unit owners association.

(c) "Board of directors" means the body, regardless of name, designated in the declaration or bylaws which has power to act on behalf of the association.

(d) "Bylaws" means the instruments, however denominated, that contain the procedures for conduct of the affairs of the association, regardless of the form in which the association is organized, including any

Proposed Amendments

Prepared by: Mike Heim
Revisor of Statutes
Office
March 9, 2010

z24

Senate Local Government
3-9-2010

Attachment 12-1

amendments to the instruments.

(e) "Common interest community" means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes, insurance premiums, maintenance, or improvement of, or services or other expenses related to, common elements, other units, or other real estate described in that declaration. The term does not include an arrangement described in section 7, and amendments thereto. For purposes of this paragraph, ownership of a unit does not include holding a leasehold interest.

(f) "Declarant" means a person or group of persons acting in concert that:

(1) As part of a common promotional plan, offers to dispose of the interest of the person or group of persons in a unit not previously disposed of; or

(2) reserves or succeeds to any declarant right.

(g) "Declaration" means the instrument, however denominated, that creates a common interest community, including any amendments to that instrument.

(h) "Limited common element" means a portion of the common elements allocated for the exclusive use of one or more but fewer than all of the units.

(i) "Person" means an individual, corporation, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity. In the case of a land trust, the term means the settlor of the trust rather than the trust or the trustee.

(j) "Record", used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(k) "Residential purposes" means use for dwelling or recreational purposes, or both.

(l) "Rule" means a policy, guideline, restriction, procedure, or regulation of an association, however denominated, which is not set forth in the declaration or bylaws and which governs the conduct of persons or the use or appearance of property.

(m) "Unit" means a physical portion of the common interest community designated for separate ownership or occupancy.

(n) "Unit owner" means a person that owns a unit.

New Sec. 3. Except as expressly provided in this act, the provisions of this act shall be mandatory and apply notwithstanding contrary provisions in the declaration or bylaws of a common interest community and shall not be varied or waived by agreement.

(e) "Common elements" means those portions of the property not owned individually by unit owners, but in which an indivisible interest is held by all unit owners, generally including the grounds, parking areas and recreational facilities.

And by relettering the remaining subsections accordingly

New Sec. 4. Every contract or duty governed by this act imposes an obligation of good faith in its performance or enforcement.

New Sec. 5. This act, and amendments thereto, apply to all common interest communities that contain 12 or more units that may be used for residential purposes and are created within this state after the effective date of this act.

New Sec. 6. (a) This act, and amendments thereto, apply to all common interest communities that contain 12 or more units that may be used for residential purposes created in this state before the effective date of this act; but this act, and amendments thereto, do not apply with respect to actions or decisions of an association or its board of directors concerning events and circumstances occurring before the effective date of this act.

(b) This act, and amendments thereto, do not invalidate existing provisions of the declaration, bylaws, plats or plans of those common interest communities; provided, however, the provisions of the declaration or bylaws of a common interest community that are contrary to the mandatory provisions of this act, and amendments thereto, may not be enforced with respect to events and circumstances occurring after the effective date of the act.

(c) The declaration, bylaws, plats or plans of any common interest community created before the effective date of this act may be amended to achieve any result permitted by this act, regardless of what applicable law provided before the effective date of this act.

New Sec. 7. (a) An arrangement between the associations for two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement or declarations does not create a separate common interest community.

(b) An arrangement between an association and the owner of real estate that is not part of a common interest community to share the costs of real estate taxes, insurance premiums, services, maintenance or improvements of real estate, or other activities specified in their arrangement does not create a separate common interest community. However, assessments against the units in the common interest community required by the arrangement must be included in the periodic budget for the common interest community, and the arrangement must be disclosed in all public offering statements and resale certificates required by this act.

(c) A covenant that requires the owners of separately owned parcels of real estate to share costs or other obligations associated with a party wall, driveway, well, or other similar use does not create a common interest community unless the owners otherwise agree.

New Sec. 8. (a) The association shall:

(1) Adopt and may amend bylaws and may adopt and amend rules;

(2) adopt and may amend budgets;

(3) have the power to require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to commencement of a judicial proceeding;

(4) promptly provide notice to the unit owners of any legal proceedings in which the association is a party other than proceedings involving enforcement of rules, or to recover unpaid assessments or other sums due the association;

, covenants or declarations of restrictions,

(5) establish a reasonable method for unit owners to communicate among themselves and with the board of directors concerning the association;

(6) have the power to suspend any right or privilege of a unit owner that fails to pay an assessment, but may not:

(A) Deny a unit owner or other occupant access to the owner's unit;

(B) suspend a unit owner's right to vote; or

except on issues involving assessments and fees

(C) withhold services provided to a unit or a unit owner by the association if the effect of withholding the service would be to endanger the health, safety, or property of any person; and

(7) have all other powers that may be exercised in this state by organizations of the same type as the association.

(b) The board of directors may determine whether to take enforcement action by exercising the association's power to impose sanctions or commencing an action for a violation of the declaration, bylaws, and rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. The board of directors does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

(1) The association's legal position does not justify taking any or further enforcement action;

(2) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;

(3) although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or

(4) it is not in the association's best interests to pursue an enforcement action.

(c) The board of directors' decision under subsection (b) not to pursue enforcement under one set of circumstances does not prevent the board of directors from taking enforcement action under another set of circumstances, but the board of directors may not be arbitrary or capricious in taking enforcement action.

~~(d) Unless expressly prohibited by the declaration, an association shall have the power to borrow money and assign its right to future income, including the right to receive assessments, as provided in this subsection. At least 14 days prior to entering into any loan agreement on behalf of the association, the board of directors shall disclose to all unit holders the amount and terms of the loan and the estimated effect of such loan on any common expense assessment. Unit owners shall then have a reasonable opportunity to submit comments to the board of directors with respect to such loan.~~

~~If the board of directors proposes to enter into a loan agreement on behalf of the association and to assign the right to future income as security for such loan pursuant to this section, unit owners of units to which at least a majority of the votes in an association are allocated, or any larger percentage or fraction stated in the declaration, must vote in favor of or agree to such assignment.~~

New Sec. 9. (a) In the performance of their duties, officers and members of the board of directors appointed by the declarant ~~shall exercise the degree of care and loyalty to the association required of a trustee. Officers~~ and officers and members of the board of directors not appointed by the declarant shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized, and are subject to the conflict of interest rules governing directors and officers, under existing law. The standards of care and loyalty described in this section apply regardless of the form in which the association is organized.

(b) An association shall have a board of directors created in accordance with its declaration or bylaws. Except as otherwise provided in the declaration, the bylaws, subsection (c), or other provisions of this act, the board of directors acts on behalf of the association.

(c) The board of directors may not:

(1) Amend the declaration except as provided by law other than this act;

(2) amend the bylaws;

(3) terminate the common interest community;

(4) elect members of the board of directors, but may fill vacancies in its membership for the unexpired portion of any term or, if earlier, until the next regularly scheduled election of board of directors' members; or

(5) determine the qualifications, powers, duties, or terms of office of board of directors' members.

New Sec. 10. ~~(a)~~ (a) The declarations shall establish when the period of declarant control is terminated.

The bylaws of the association must:

(1) Provide the number of members of the board of directors and the titles of the officers of the association;

(2) provide for election by the board of directors or, if the declaration

(b)

requires, by the unit owners, of a president, treasurer, secretary, and any other officers of the association the bylaws specify;

(3) specify the qualifications, powers and duties, terms of office, and manner of electing and removing board of directors' members and officers and filling vacancies;

(4) specify the powers the board of directors or officers may delegate to other persons or to a managing agent;

(5) specify the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(6) specify a method for the unit owners to amend the bylaws;

(7) contain any provision necessary to satisfy requirements in this act or the declaration concerning meetings, voting, quorums, and other activities of the association; and

(8) provide for any matter required by law of this state other than this act to appear in the bylaws of organizations of the same type as the association.

~~(b)~~ (c) Subject to the declaration and this act, the bylaws may provide for any other necessary or appropriate matters, including, but not limited to, an election oversight committee and other matters that could be adopted as rules.

New Sec. 11. (a) An association shall hold a meeting of unit owners annually at a time, date, and place stated in or fixed in accordance with the bylaws.

(b) An association shall hold a special meeting of unit owners to address any matter affecting the common interest community or the association if its president, a majority of the board of directors or unit owners having at least ~~25%~~ **10%**, or any lower percentage specified in the bylaws, of the votes in the association request that the secretary call the meeting. If the association does not notify unit owners of a special meeting within 30 days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of the meeting. Only matters described in the meeting notice required by subsection (c) may be considered at a special meeting.

(c) An association shall notify unit owners of the time, date, and place of each annual and special unit owners meeting not less than 10 days or more than 60 days before the meeting date. Notice may be by any method reasonably calculated to provide notice to the person. The notice for any meeting must state the time, date, and place of the meeting and the items on the agenda, including:

(1) A statement of the general nature of any proposed amendment to the declaration or bylaws;

(2) any budget proposals or changes; and

(3) any proposal to remove an officer or member of the board of directors.

(d) The minimum time to give notice required by subsection (c) may be reduced or waived for a meeting called to deal with an emergency.

(e) Unit owners must be given a reasonable opportunity at any meeting to comment regarding any matter affecting the common interest community or the association.

(f) The declaration or bylaws may allow for meetings of unit owners to be conducted by telephonic, video, or other conferencing process, if the alternative process is consistent with subsection (g) of section 12, and amendments thereto.

New Sec. 12. (a) Meetings of the board of directors and committees of the association authorized to act for the association must be open to the unit owners except during executive sessions. The board of directors and those committees may hold an executive session only during a regular or special meeting of the board or a committee. No final vote or action may be taken during an executive session. An executive session may be held only to:

(1) consult with the association's attorney concerning legal matters;

(2) discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;

(3) discuss labor or personnel matters;

(4) discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or

(5) prevent public knowledge of the matter to be discussed if the board of directors or committee determines that public knowledge would violate the privacy of any person.

(b) For purposes of this section, a gathering of board of directors at which the board members do not conduct association business is not a meeting of the board of directors. The board of directors and its members may not use incidental or social gatherings of board members or any other method to evade the open meeting requirements of this section.

(c) ~~During~~ the period of declarant control, the board of directors shall meet at least ~~four~~ times a year. At least one of those meetings must be held at the common interest community or at a place convenient to the community. After termination of the period of declarant control, the board of directors shall meet at least once a year~~. All board of director's~~ meetings must be at the common interest community or at a place convenient to the community unless the unit owners amend the bylaws to vary the location of those meetings.

(d) At each board of director's meeting, the board shall provide a reasonable opportunity for unit owners to comment regarding any matter affecting the common interest community and the association.

Except as provided in subsection (i), during

two

and such

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(e) Unless the meeting is included in a schedule given to the unit owners or the meeting is called to deal with an emergency, the secretary or other officer specified in the bylaws shall give notice of each board of directors meeting to each board member and to the unit owners. The notice must state the time, date, place, and agenda of the meeting and, except as provided in subsection (c) of sections 11 and 19, and amendments thereto, be given at least five days prior to the meeting date.

(f) If any materials are distributed to the board of directors before the meeting, the board at the same time shall make copies of those materials reasonably available to unit owners, except that the board need not make available copies of unapproved minutes or materials that are to be considered in executive session.

(g) Unless the declaration or bylaws otherwise provide, the board of directors may meet by telephonic, video, or other conferencing process if:

(1) The meeting notice states the conferencing process to be used and provides information explaining how unit owners may participate in the conference directly or by meeting at a central location or conference connection; and

(2) the process provides all unit owners the opportunity to hear or perceive the discussion and to comment as provided in subsection (d).

(h) After termination of any period when the declarant controls the association, unit owners may amend the bylaws to vary the procedures for meetings described in subsection (g).

(i) During the period of declarant control, instead of meeting, the board of directors may act by unanimous consent as documented in a record authenticated by all its members. The secretary promptly shall give notice to all unit owners of any action taken by unanimous consent. After termination of the period of declarant control, the board of directors may act by unanimous consent only to undertake ministerial actions or to implement actions previously taken at a meeting of the board.

(j) Even if an action by the board of directors is not in compliance with this section, it is valid unless set aside by a court. A challenge to the validity of an action of the board of directors for failure to comply with this section may not be brought more than 60 days after the minutes of the board of directors of the meeting at which the action was taken are approved or the record of that action is distributed to unit owners, whichever is later.

New Sec. 13. (a) Unless the bylaws otherwise provide, a quorum is present throughout any meeting of the unit owners if persons entitled to cast 20% of the votes in the association:

(1) Are present in person or by proxy at the beginning of the meeting;

(2) have cast absentee ballots solicited in accordance with the asso-

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ciation's procedures which have been delivered to the secretary in a timely manner; or

(3) are present by any combination of paragraphs (1) and (2).

(b) Unless the bylaws specify a larger number, a quorum of the board of directors is present for purposes of determining the validity of any action taken at a meeting of the board of directors only if individuals entitled to cast a majority of the votes on that board are present at the time a vote regarding that action is taken. If a quorum is present when a vote is taken, the affirmative vote of a majority of the board members present is the act of the board of directors unless a greater vote is required by the declaration or bylaws.

(c) Except as otherwise provided in the bylaws, meetings of the association must be conducted in accordance with the most recent edition of *Roberts' Rules of Order Newly Revised.*

New Sec. 14. (a) Unless prohibited or limited by the declaration or bylaws, unit owners may vote at a meeting in person, by absentee ballot pursuant to subsection (b)(4), by a proxy pursuant to subsection (c), or, when a vote is conducted without a meeting, by electronic or paper ballot pursuant to subsection (d).

by secret ballot,

(b) Unless contrary provisions of the declaration or bylaws so provide, at a meeting of unit owners the following requirements apply:

(1) Unit owners who are present in person may vote by voice vote, show of hands, standing, or any other method for determining the votes of unit owners, as designated by the person presiding at the meeting.

(2) If only one of several owners of a unit is present, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the owners casts the votes allocated to the unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(3) Unless a greater number or fraction of the votes in the association is required by this act or the declaration, a majority of the votes cast determines the outcome of any action of the association.

(4) Subject to subsection (a), a unit owner may vote by absentee ballot without being present at the meeting. The association promptly shall deliver an absentee ballot to an owner that requests it if the request is made at least three days before the scheduled meeting. Votes cast by absentee ballot must be included in the tally of a vote taken at that meeting.

(5) When a unit owner votes by absentee ballot, the association must be able to verify that the ballot is cast by the unit owner having the right to do so.

(c) Except as otherwise provided in the declaration or bylaws, the following requirements apply with respect to proxy voting:

(1) Votes allocated to a unit may be cast pursuant to a directed or undirected proxy duly executed by a unit owner.

(2) If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy.

(3) A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the association.

(4) A proxy is void if it is not dated or purports to be revocable without notice.

(5) A proxy is valid only for the meeting at which it is cast and any recessed session of that meeting, other than a member of the board of directors.

(6) A person may not cast undirected proxies representing more than 15% of the votes in the association.

(d) Unless prohibited or limited by the declaration or bylaws, an association may conduct a vote without a meeting. If a vote without a meeting is permitted and used, the following requirements apply:

(1) The association shall notify the unit owners that the vote will be taken by ballot.

(2) The association shall deliver a paper or electronic ballot to every unit owner entitled to vote on the matter.

(3) The ballot must set forth each proposed action and provide an opportunity to vote for or against the action.

(4) When the association delivers the ballots, it shall also:

(A) Indicate the number of responses needed to meet the quorum requirements;

(B) state the percent of votes necessary to approve each matter other than election of directors;

(C) specify the time and date by which a ballot must be delivered to the association to be counted, which time and date may not be fewer than three days after the date the association delivers the ballot; and

(D) describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

(5) Except as otherwise provided in the declaration or bylaws, a ballot is not revoked after delivery to the association by death or disability or attempted revocation by the person that cast that vote.

(6) Approval by ballot pursuant to this subsection is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

(e) If the declaration requires that votes on specified matters affect-

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ing the common interest community be cast by lessees rather than unit owners of leased units:

(1) This section applies to lessees as if they were unit owners;

(2) unit owners that have leased their units to other persons may not cast votes on those specified matters; and

(3) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners.

(f) Unit owners must also be given notice of all meetings at which lessees are entitled to vote.

(g) Votes allocated to a unit owned by the association must be cast in any vote of the unit owners in the same proportion as the votes cast on the matter by unit owners other than the association.

New Sec. 15. (a) The association, or its agents, must retain the following for five years unless otherwise provided:

(1) Detailed records of receipts and expenditures affecting the operation and administration of the association and other appropriate accounting records;

(2) minutes of all meetings of its unit owners and board of directors other than executive sessions, a record of all actions taken by the unit owners or board of directors without a meeting, and a record of all actions taken by a committee in place of the board of directors on behalf of the association;

(3) the names of unit owners in a form that permits preparation of a list of the names of all unit owners and the addresses at which the association communicates with them, in alphabetical order showing the number of votes each owner is entitled to cast;

(4) its original or restated organizational documents, if required by law other than this act, bylaws and all amendments to them, and all rules currently in effect;

(5) all financial statements and tax returns of the association for the past three years;

(6) a list of the names and addresses of its current board of directors' members and officers;

(7) its most recent annual report, if any, delivered to the secretary of state;

(8) financial and other records sufficiently detailed to enable the association to comply with other requirements of law;

(9) copies of current contracts to which it is a party;

(10) records of board of directors or committee actions to approve or deny any requests for design or architectural approval from unit owners; and

(11) ballots, proxies, and other records related to voting by unit owners for one year after the election, action, or vote to which they relate.

(b) Subject to subsections (c) through (g), all records retained by an association must be available for examination and copying by a unit owner or the owner's authorized agent:

(1) During reasonable business hours or at a mutually convenient time and location; and

(2) upon 10 days' written notice reasonably identifying the specific records of the association requested.

(c) Records retained by an association may be withheld from inspection and copying to the extent that they concern:

(1) Personnel, salary, and medical records relating to specific individuals;

(2) contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated;

(3) existing or potential litigation or mediation, arbitration, or administrative proceedings;

(4) existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or rules;

(5) communications with the association's attorney which are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;

(6) information the disclosure of which would violate law other than this act;

(7) records of an executive session of the board of directors; or

(8) individual unit files other than those of the requesting owner.

(d) An association may charge a reasonable fee for providing copies of any records under this section and for supervising the unit owner's inspection.

(e) A right to copy records under this section includes the right to receive copies by photocopying or other means, including copies through an electronic transmission if available upon request by the unit owner. Copied records may be used for any reasonable purposes other than for commercial purposes.

(f) An association is not obligated to compile or synthesize information.

New Sec. 16. (a) Before adopting, amending, or repealing any rule, the board of directors shall give all unit owners notice of:

(1) Its intention to adopt, amend, or repeal a rule and provide the text of the rule or the proposed change; and

(2) a date on which the board of directors will act on the proposed rule or amendment after considering comments from unit owners.

(b) Following adoption, amendment, or repeal of a rule, the association shall notify the unit owners of its action and provide a copy of any

new or revised rule.

(c) An association may adopt rules to establish and enforce construction and design criteria and aesthetic standards if the declaration so provides. If the declaration so provides, the association shall adopt procedures for enforcement of those standards and for approval of construction applications, including a reasonable time within which the association must act after an application is submitted and the consequences of its failure to act.

(d) A rule regulating display of the flag of the United States must be consistent with federal law. In addition, the association may not prohibit display on a unit or on a limited common element adjoining a unit of the flag of this state, or signs regarding candidates for public or association office or ballot questions. The association may adopt rules governing the time, place, size, number, and manner of those displays that are not inconsistent with K.S.A. 58-3820, and amendments thereto.

(e) Unit owners may peacefully assemble on the common elements to consider matters related to the common interest community, but the association may adopt rules governing the time, place, and manner of those assemblies.

(f) Association rules that affect the use of or behavior in units that may be used for residential purposes, shall be adopted only to:

(1) Implement a provision of the declaration; or

(2) regulate any behavior in or occupancy of a unit which violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners.

(g) An association's internal business operating procedures need not be adopted as rules.

(h) Every rule must be reasonable.

New Sec. 17. (a) An association shall deliver any notice required to be given by the association under this act to any mailing or electronic mail address a unit owner designates. Otherwise, the association may deliver notices by:

(1) Hand delivery to each unit owner;

(2) hand delivery, United States mail postage paid, or commercially reasonable delivery service to the mailing address of each unit;

(3) electronic means, if the unit owner has given the association an electronic address; or

(4) any other method reasonably calculated to provide notice to the unit owner.

(b) The ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

New Sec. 18. (a) Unit owners present in person, by proxy, or by absentee ballot at any meeting of the unit owners at which a quorum is

present, may remove any member of the board of directors and any officer elected by the unit owners, with or without cause, if the number of votes cast in favor of removal exceeds the number of votes cast in opposition to removal, but:

(1) A member appointed by the declarant may not be removed by a unit owner vote during the period of declarant control;

(2) if a member may be elected or appointed pursuant to the declaration by persons other than the declarant or the unit owners, that member may be removed only by the person that elected or appointed that member; and

(3) the unit owners may not consider whether to remove a member of the board of directors or an officer elected by the unit owners at a meeting of the unit owners unless that subject was listed in the notice of the meeting.

(b) At any meeting at which a vote to remove a member of the board of directors or an officer is to be taken, the member or officer being considered for removal must have a reasonable opportunity to speak before the vote.

New Sec. 19. (a) The board of directors shall propose and adopt a budget for the common interest community at least annually. Notice of any meeting at which a budget will be considered must be given to unit owners at least 10 days prior to the meeting date and, in accordance with subsection (g) of section 12, and amendments thereto, a copy of the proposal must be made available to any unit owner who requests it. At any meeting at which a budget or budget amendment is considered, in accordance with subsection (d) of section 12, and amendments thereto, unit owners must be given a reasonable opportunity to comment on the proposal prior to the board taking action.

(b) The board of directors, at any time, may propose a special assessment. Except as otherwise provided in subsection (c), notice and consideration of any proposed special assessment shall follow the procedures set out in subsection (a).

(c) If the board of directors determines by a ⅔ vote of the membership of the board that a special assessment is necessary to respond to an emergency:

(1) The special assessment shall become effective immediately in accordance with the terms of the vote;

(2) notice of the emergency assessment must be provided promptly to all unit owners; and

(3) the board of directors may spend the funds paid on account of the emergency assessment only for the purposes described in the vote.

New Sec. 20. (a) A declarant, association, unit owner, or any other person subject to this act may bring an action to enforce a right granted

or obligation imposed by this act, the declaration, or the bylaws. The court may award reasonable attorney's fees and costs.

~~(b) Parties to a dispute arising under this act, the declaration, or the bylaws may agree to resolve the dispute by any form of binding or non-binding alternative dispute resolution, but:~~

~~(1) A declarant may agree with the association to do so only after the period of declarant control has expired; and~~

~~(2) an agreement to submit to any form of binding alternative dispute resolution must be in a record authenticated by the parties.~~

~~(c)~~ The remedies provided by this act shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed.

(b)

New Sec. 21. The principles of law and equity, including the law of corporations and any other form of organization authorized by the law of this state, the law of real estate, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this act except to the extent inconsistent with this act. If there is a conflict between this act and other law of this state, this act prevails.

~~New Sec. 22. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.~~

New Sec. 23. This act modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. section 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

And by renumbering the remaining sections accordingly

Sec. 24. K.S.A. 58-3119 is hereby amended to read as follows: 58-3119. The bylaws, *subject to the provisions of sections 1 through 23, and amendments thereto,* may provide for the following:

(a) The election ~~from among the apartment owners~~ of a board of directors, the number of persons constituting the same, and that the terms of ~~at least one-third (⅓) of~~ the directors ~~shall expire annually~~; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of directors; and whether or not the board may engage the services of a manager or managing agent.

(b) Method of calling meetings of the apartment owners; what percentage~~, if other than a majority of apartment owners,~~ shall constitute a quorum.

(c) Election of a president from among the board of directors who shall preside over the meetings of the board of directors and of the as-

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sociation of apartment owners.

(d) Election of a secretary who shall keep the minute book wherein resolutions shall be recorded.

(e) Election of a treasurer who shall keep the financial records and books of account.

(f) Maintenance, repair and replacement of the common areas and facilities and payments therefor, including the method of approving payment vouchers.

(g) Manner of collecting from the apartment owners their share of the common expenses.

(h) Designation and removal of personnel necessary for the maintenance, repair and replacement of the common areas and facilities.

(i) Method of adopting and of amending administrative rules and regulations governing the details of the operation and use of the common areas and facilities.

(j) Such restrictions on and requirements respecting the use and maintenance of the apartments and the use of the common areas and facilities, not set forth in the declaration, as are designed to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several apartment owners.

(k) The percentage of votes required to amend the bylaws.

(l) Other provisions as may be deemed necessary for the administration of the property consistent with this act.

Sec. 25. K.S.A. 58-3120 is hereby amended to read as follows: 58-3120. The manager or board of directors, as the case may be, shall keep detailed, accurate records in chronological order, of receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Such records and the vouchers authorizing the payments shall be available for examination by the apartment owners at convenient hours of week days, *pursuant to the rights and limitations of section 15, and amendments thereto.*

Sec. 26. K.S.A. 58-3119 and 58-3120 and K.S.A. 2009 Supp. 58-3830 are hereby repealed.

Sec. 27. This act shall take effect and be in force from and after January 1, 2011, and its publication in the statute book.

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Senate Committee on Local Government Affairs
RE: House Bill No. 2029

March 8, 2010
Topeka, Kansas
Testimony Presented By:
Norman C. Pishny
18750 Antioch
Bucyrus, KS 66013
913-685-8744

Background:

K.S.A. 12-520 and K.S.A 12-521 are by their very nature contrary to the premise on which our country was founded: government by the governed. The Declaration of Independence states "That to secure these rights, Governments are instituted among Men, **deriving their just powers from the consent of the governed.**"

Kansas annexation statutes subject citizens to taxation and governance by a government they did not vote for. "Imposing Taxes on us without our Consent" was one of the "repeated injuries and usurpations" justifying our war of independence against Great Britain. We don't want to go to war, but do want our constitutional right to vote.

Section 2 of the Kansas Bill of Rights states "All political power is inherent in the people, and all free governments are founded on their authority, and are instituted for their equal protection and benefit." Annexation statutes must be written from the perspective that the government serves the people, not the other way around. These statutes must be corrected now.

Let Us Vote!

Introduction:

I grew up, and still farm, in Waterville, a town of about 700 people in north central Kansas. There have been previous annexations in Waterville (e.g. Horse Trailer factory). They were called CONSENSUAL annexations, and they worked well.

Our family farm adjoins the city limits. What would happen if the City of Waterville wanted to involuntarily annex our family farm into the city and subject us to city services taxes we don't need or want? Well, we wouldn't have a vote.

How do I know? It happened to my farm in Johnson County in 2008 when Overland Park involuntarily annexed a huge portion of the rural part of the county. The BOCC approved a partial annexation of over 8 sq. miles even though 24% of Overland Park was still unplatted. This is a larger land mass than the vast majority of existing Kansas towns and cities. According to www.maps-n-stats.com Hays is 7.5 sq. miles, Garden City is 8.5 sq miles, and Emporia is 9.9 sq. miles. They utilized K.S.A. 12-521 which allows them to get around the restrictions in 12-520 and still do involuntary annexations without landowner approval, or even a vote. And there is nothing in Kansas law to present their continuing takeover of Johnson County, Miami County, or more.

If landowners want to fight a BOCC approved annexation, they must file a lawsuit in District Court. This is an expensive and time consuming process, further frustrated by the fact that their own tax dollars would be spent by the City and County to fight the lawsuit; but it is the only recourse the current law provides.

Let Us Vote!

At Issue:

As Kansans, we get to vote on sewers, swimming pools, and a variety of other issues that affect us and our homes. Yet none of us can vote if we live outside city boundaries and a city wants to take over our land a[illegible] boundary to increase their tax base.

Senate Local Government
3-9-2010
Attachment 13-1

Kansas is one of only a handful of states left in the entire nation where citizens do not have the right to vote on an involuntary takeover by a municipality.

Right now the BOCC has the final vote on K.S.A. 12-521 annexations, but according to Kansas annexation statues, this governing body serves as the judge in the quasi-judicial process. That leaves citizens with no representative in the process. The BOCC members are not allowed to talk to us. Judges don't represent anyone; they make a ruling based on information provided. The city may have seemingly limitless taxpayer funds to obtain legal expertise to represent them, but there is no one who represents the citizens impacted by the city takeover. In fact, when ruling on the Overland Park petition, **Johnson County Commissioner Wood said, "It does strike me that there's a lack of certain fairness that those who are going to be most affected do not have a vote under our representative form of government."**

Flaws with current annexation statutes:

- K.S.A. 12-531:
  - Requires a 5-year review of the annexation to see if service commitments were met, but there is no accountability.
    - Johnson County has never held a mandated 5-year review on any of their many involuntary annexations according to Johnson County Chief Counsel Steve Jarrett.
    - Cities and counties should not be able to pick and choose which laws to obey, but there are no repercussions if they don't follow this statute.
    - Waiting 5 years to determine if annexation promises have been met is far too late.
- K.S.A 12-521:
  - What happens if there is a tie? A "majority vote" of the BOCC is required to approve an annexation and a "majority vote" is required to deny the annexation, but the statute never addresses what would happen in a tie.
  - Commissioners are to determine manifest injury; however, there is no clear definition or standard for the term. What's more, the **burden of proof is on the landowner to prove injury**, not the city that filed the petition.
    - Since the City is the petitioner in the process, they should have to prove that without the annexation, the city would suffer manifest injury, yet the way K.S.A. 12-521 is set up, it requires citizens, the defendants in this quasi-judicial process, to prove that the annexation would cause manifest injury to them.
    - BOCC Chairman Annabeth Surbaugh, when ruling in favor of annexation, said, "We probably have not solved everything for every one of you whose lifestyle will change because of this." How is this not proof of manifest injury?
    - The Statute is unclear if manifest injury applies to any one citizen or if it must be to all landowners.
  - The BOCC serves as judge in the quasi-judicial process, but they are a legislative body without judicial expertise.
    - BOCC Chairman Annabeth Surbaugh said, "I think the problem is that this system of quasi-judicial ends up making everyone hacked off at us." Three additional commissioners of the 6 stated on the record that the quasi-judicial process caused them problems.
    - There is no body that represents the landowners in the quasi-judicial process. Normally, the County would represent them, but since the County is the judge, the citizens have no representation.
  - Citizens are up against seemingly limitless city (taxpayer) funds if they oppose the annexation.
    - Prior to the February 2008 ruling, Overland Park had already paid outside legal consultants nearly $400,000 of taxpayer dollars for their work on the annexation. That is in addition to the city's in-house legal staff of 6 attorneys. City staff spent taxpayer dollars to generate more than 90,000 pages of documents for the unpopular annexation. The County spent large amounts of tax dollars reviewing and processing more than 3,100 pages of documents on record.
    - Not only is the burden of appeal on the citizens; now, our own tax dollars are being spent by city and League of Municipality lobbyists to keep voter rights from being part of annexation statutes.
    - If the citizens win an appeal, they are not compensated for their time and dollars spent to fight the illegal government takeover.
  - The law needs to be clear that a ruling of the court would bind both the city and county.
    - Overland Park's position is that nothing in state annexation statutes compels them to follow the District Court ruling. In the city's response to our motion for a stay, when addressing the possibility that we would win our appeal, Overland Park states "If the City did not withdraw from exercising jurisdiction over the Annexed Area after the issuance of such a ruling, the District Attorney or Attorney General could then bring an action in *quo warranto* to compel such ouster."
  - This is a statewide issue, not just a one town or one county issue. the current law results in pitting cities against cities (e.g. Franklin vs. Arma), cities vs. counties (e.g. Sedgwick County vs. Haysville), and cities vs. individual

landowners.

- K.S.A. 15-223:
  - If an unincorporated area wants to incorporate into a city, it requires a unanimous approval from county commissioners vs. the simple majority approval required for a city to annex an unincorporated area. Recently, residents filed a petition to incorporate the City of Stilwell and a majority of the BOCC approved the incorporation petition (4 – 3). However, since the statute requires unanimous approval, it did not pass.
  - Even Overland Park advocate and *Sun* editor Steve Rose stated in an editorial regarding incorporations on June 18, 2008 "That – the unanimous vote requirement – is not fair."

Constitutional Violations:

- Neither K.S.A. 12-520 or K.S.A. 12-521 provide for a vote of the people on what they want done with their homes and land. **This is tantamount to taxation without representation.**
  - In Johnson County, our coalition sent a postcard survey to all of the homes OP sent its annexation petition to (540 houses in 15 sq. miles). The results were overwhelming: 88% of the residents returned their cards and 99% of those (471 of 477) were opposed to the Overland Park annexation proposal; but under current law, this clear message from residents doesn't matter. Kansans can be hit with huge additional and higher taxes (property, franchise, special use & permit, etc.) from a government which they had no vote.
- The Kansas Constitution (Homestead Act) guarantees that "160 acres of farming land, or... one acre within the limits of an incorporated town or city, occupied as a residence by the family of the owner" is exempt from forced sale under any process of law. Kansas Constitution, Article 15, § 9. K.S.A. 60-2301 also protects our homestead rights. Further statutes also recognize the sanctity of the homestead. For example, the homestead may be set aside by the children of the deceased person under our probate code. K.S.A. 59-2235. The surviving spouse is also "entitled to the homestead" under our probate code. K.S.A. 59-6a215. Homestead rights are enshrined in our state constitution, but when annexed into an incorporated town, liability protection is immediately reduced from 160 acres to 1 acre without any vote by those who are affected.

Let Us Vote?

Economic Development:

Let's address the basic argument continually cited over the past several years by those who oppose changing current Kansas annexation statutes – economic development.

In opposition to a House annexation bill in 2009, the League of Municipality stated "This would result in lack of physical growth by cities, the inability to accommodate economic growth, and the inability for a city's tax base to grow." This is inaccurate on many fronts:

- Spring Hill is one of fastest growing city in the state, yet only utilizes consensual annexations.
- Landlocked cities like Leawood, Fairway, Mission Hills, and Prairie Village certainly have not died. Expansion is not the solution to poor city management. A *KC Star* article on 1/30/2010 stated Leawood made *Business Week's* "America's fastest growing cities" list for 2010 (only city in KS). "The list wasn't totally based on population growth; it also included how well average household income was holding up or had even gone up during the recent recession."
- Expansion of a city is not required for economic growth. Economic growth is dictated by a free market and hard work. It is not dictated by city boundaries.
- If a city has a shrinking tax base, they need to address that issue without a bailout from county taxpayers. Adding additional strip malls will not solve the issue of dying commercial and residential areas within the city. An increased tax base may help a poorly run city in the short term, but it does not contribute to economic development at a state level.
- If the argument is that uncontrolled city expansion is required for economic development, then Kansas and North Carolina should have the best economic growth in the nation since both states allow uncontrolled city expansion. Do they? In addition, we've seen no proof that the 45 states who give citizens a vote on their lifestyle and future have suffered the losses of numerous cities as a result.
- Is agriculture not a part of the state economy? It is eliminated when city expansions take over the farms and ranches in favor of strip malls which are to replace the already dead current strip malls. Urban ordinances to not allow farming and ranching within their boundaries even if they aren't paved over.
- In 2002, Overland Park had a large involuntary annexation. How did the Kansas state economy improve after the land grab? In 2008, JO County BOCC approved an Overland Park approximately 8 sq. mile takeover. This is larger

than the vast majority of cities in Kansas. Where's the data showing how much the Kansas economy improved after this massive land grab?

- If a city (as in JO County) does not provide water, electricity, gas, or sewers and has no better road maintenance, police protection or fire service, how does changing a city boundary line magically spur economic development?
- It is true that annexations create jobs in Kansas: taxpayer paid government jobs. When cities expand their staff to take over new services, there is never a corresponding staff reduction in the county (at least in JO County).
- But, even if all the myths regarding economic development were somehow true, **how would that trump individual Kansans' constitutional right to vote and not have taxation without representation**?

Let Us Vote?

There are Better Ways:

We certainly are not anti-city or anti-development, but we should have a vote in the process. Some items to consider when looking at correcting the existing Kansas annexation statutes:

- Kansas is one of only a handful of states that do not let its residents vote on annexations. We can look at other states and learn from them. Our neighbors in Missouri allow the affected citizens to vote as well as the citizens in the city requesting the takeover.
- None of the enhancements to K.S.A. 12-521 recommended by the HB 2029 keep a city from doing consensual or unilateral annexations under K.S.A. 12-520. K.S.A. 12-521 could be eliminated entirely.
- In a special committee addressing Condemnation of Water Rights and annexations on Nov. 19, 2008, the City of Olathe stated "The City maintains its belief that rural and/or agricultural areas should remain in the unincorporated areas of Johnson County and that only as these areas urbanize, should they become part of the city."
- Incorporation should be just as viable as annexation. Is there ever unanimous approval on any subject?
- All the burdens and expenses should not be on the citizens.
- Cities and counties should be held responsible for not adhering to state statutes.
- **Kansas constitutional rights must be upheld!**

Conclusion:

The courts have ruled that the purpose of the annexation statutes is to protect the rights of landowners. *Leawood*, 245 Kan. at 283, Syl. ¶2, 777 P.2d at 831 (1989). This is simply not what happens today.

When talking to individuals throughout the state regarding involuntary annexation attempts, citizens are unaware that Kansas law does not give them the right to vote and are appalled and outraged that a city has the power to take over control of land and people without their approval or choice.

Some cities feel they must be able to take land without having the consent of landowners for city growth and taxes. We could argue about economic development and the type of development needed for our future. We could argue about urban vs. rural environments and disparate needs. We could argue about numerous ordinances and the impact they have on people's livelihoods. We could argue that a city knows better than a landowner when and how to develop their land.

Yet, how can ANYONE argue that the people should not have a right to VOTE on their own future.

Vote to APPROVE HB 2029 and Give US Our Right to VOTE.