

Kansas Department of Commerce
Secretary Antonio Soave – Neutral testimony regarding HB 2738

Prepared for the House Committee on Taxation
Room 512-N, The Statehouse
March 23, 2016

Dear Members of the House Committee on Taxation:

I regret that I cannot join you today for this important hearing on HB 2738 which would enact reforms to STAR Bonds. I applaud Committee Members for their diligent work on this important issue.

STAR Bonds are an important economic development tool for our state, our counties and our cities. However, the time has come to reform and refine STAR Bonds to maximize their effectiveness and ensure taxpayer accountability.

I have developed Ten Points for STAR Bond Reform that may serve as a guide to enact reform legislation. These Ten Points are included in my testimony and I look forward to working with Members of the Committee on Taxation to enact important STAR Bond Reform legislation.

Sincerely,



Antonio J. Soave
Secretary of Commerce

Memorandum

From: Secretary Antonio J. Soave

Re: Ten Points for STAR Bond Reform Legislation

March 11, 2016

1. Internal due diligence required within the Department of Commerce: An internal due diligence process and generation of pro formas is required so that the Department of Commerce can assess the actual viability of a project.
2. Independent feasibility study to be commissioned directly by the Department of Commerce: Feasibility studies should be commissioned by the Department rather than the developer. In return, Commerce should be able to recover one percent (1%) to two percent (2%) of project costs to be transferred into EDIF. This process provides a two-fold advantage of controlling the Department's cost and time and guaranteeing that feasibility numbers are accurate and trustworthy.
3. Capping of soft costs: Soft costs should be capped at no more than three percent (3%). These include all engineering, design, legal, consulting, and accounting costs.
4. Requirement of RFP for construction and sealed bid: The construction phase should have an RFP process to eliminate self-dealing and reduce costs.
5. Requirement of private sector to place a percentage into escrow prior to the deal: In order to meet the requirement of private sector funding being at least 51 percent of a project's costs, developers must be able to prove that will leverage actual assets and money to fund the project. A portion of these funds should be placed into an escrow account prior to the deal moving forward. A small percentage of this portion should be forfeited if the developer does not meet his requirements.
6. Retention of carried equity interest by the State so that State has guarantees: Additional fees can be recovered by the state retaining proportional ownership of land and buildings and by the state getting a percentage of gross receipts until the bonds have been repaid. This is to reflect the fact that the state is paying for a substantial portion of a project's costs and should have its interests protected until such time as it has recouped its investment. Once the State has recovered all of its money, then the developer may have a right of first refusal to purchase the State's interest at a strike price or fair market value, whichever is greater at the time of exercising the option.
7. Requirement of timelines and milestones: A clause should be adopted that requires that a project starts within a reasonable timeframe or expires. Likewise, projects should have to be completed within a reasonable timeframe or revert to the state. The State should require a series of timelines and milestones for the developers.
8. Additional requirement of escrow pertaining to the project itself: The state should have the ability to require that the developers put a portion of the bonds into escrow until successful completion of a project, with a penalty imposed upon those developers who do not meet their obligations.
9. Expansion of STAR bonds into blighted and urban areas: The threshold for projects in rural and distressed urban areas should be lowered. Smaller projects in these areas can have an impact just as great as larger projects in other areas, and the state would benefit from the flexibility to use STAR Bonds in these areas.
10. No monetary overlays or borrowing from another district: The State can adopt the position that there will be no monetary "overlying" and/or borrowing from another STAR Bond district.