

HOUSE BILL No. 2388

By Representative Garner

2-7

AN ACT concerning certain sewer districts; relating to the formation thereof; amending K.S.A. 2000 Supp. 19-101a and repealing the existing section.

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

New Section 1. (a) When used in this section, "county" means Montgomery county.

(b) Whenever a petition signed by the owners of at least 51% of the land in a sewer district requesting a board of directors be elected to govern such sewer district, the board of county commissioners shall call and hold a meeting to conduct such election as provided by this section. Notice of such hearing and election shall be published in a newspaper of general circulation in the county at least 10 days prior to the date of the hearing and election. At the time and place set out in the notice of hearing, the owners of land within any such district shall select from their number a board of directors. The number of members on the board, not to exceed nine, shall be determined by majority vote of those owners of land present.

(c) Within seven days after the election of the board, proposed bylaws shall be submitted for adoption at a meeting of owners of land located within the district, notice of which shall be given to each such landowner as provided in subsection (a). Those owners of land located within the district present at such special meeting may adopt and amend any of such proposed bylaws and may propose and adopt additional or other bylaws. Such bylaws may be amended at any annual or special meeting of the owners of land within the district.

(d) The board of directors shall be the governing body of the district and shall meet at least monthly and at such other times as may be determined by the board or upon the call of the chairperson or any two members of the board. Vacancies on the board shall be filled for the unexpired term, and until such appointee's successor is elected and has qualified, by appointment by the remaining members of the board. The board shall adopt such rules and regulations in conformity with the provisions of section 2, and amendments thereto, and the bylaws of the district as are deemed necessary for the conduct of the business of the district.

1 New Sec. 2. The board of directors of a sewer district elected pur-
2 suant to section 1, and amendments thereto, shall have the power to:

3 (a) Create, construct, reconstruct, extend, enlarge, operate and main-
4 tain a sewer system in the sewer district;

5 (b) sue and be sued;

6 (c) enter contracts;

7 (d) join sewer districts;

8 (e) acquire any real or personal property necessary to provide an ad-
9 equate sewage system;

10 (f) improve sewers and appurtenances thereof, through, under or
11 along any street, public highway, alley or park and across any land within
12 the county and to a connection with any creek, ravine, river or any other
13 place within 10 miles of the district;

14 (g) construct, extend, enlarge, improve, operate and maintain sewage
15 disposal plants at any point along or near the line of the sewer;

16 (h) acquire, by contract or purchase, rights-of-way or any other in-
17 terests in sewers, sewage plants or other means of disposal of sanitary
18 sewage, either within or outside the state, in the manner and on the terms
19 the governing body deems advisable;

20 (i) issue permits to any individual or corporation to build any sewers
21 in any lateral or joint sewer district under plans and specifications and
22 under terms approved by the governing body and under its inspection.
23 The cost of the construction shall be borne entirely by the person or
24 corporation contracting for the improvements; and governing the oper-
25 ation and transaction of business of sewer districts;

26 (j) create lateral sewer districts and assess the cost thereof against the
27 owner of the property benefited or against the maintenance budget of
28 the main sewer district;

29 (k) dissolve any lateral sewer district in the main sewer district. The
30 property located within the lateral district may be included in one or more
31 other lateral sewer districts;

32 (l) create an area-wide sewage disposal district, for the elimination or
33 prevention of pollution of the waters of the state in any drainage area, to
34 be served by a single sewage system;

35 (m) (1) adopt any rule, regulation, standard, limitation or require-
36 ment which is necessary to provide for the efficient and economical op-
37 eration of the sewer system. Except as otherwise provided by this section,
38 the violation of any rule, regulation, standard, limitation or requirement
39 shall be punishable by a penalty not to exceed \$500. The governing body
40 shall have the authority to maintain special proceedings or civil actions in
41 any court of competent jurisdiction for the purpose of enforcing or pre-
42 venting the violation thereof and to abate nuisances maintained in viola-
43 tion thereof;

1 (2) if any industrial user neglects, fails or refuses to comply with any
2 rule, regulation, standard, limitation or requirement adopted pursuant to
3 this section, in addition to any other remedy provided by statute or com-
4 mon law, the governing body is hereby authorized after notice and op-
5 portunity for a hearing, to refuse the discharge of wastewater from the
6 premises of the industrial user and to take any action necessary to prevent
7 violating discharges by the industrial user from the sewage system until
8 the time the violations cease and are corrected. The governing body may
9 condition the use of the sewage system upon the terms that are deter-
10 mined to ensure that successive violations do not occur. The governing
11 body is hereby authorized, after notice and an opportunity for hearing,
12 to assess a penalty against the industrial user in an amount not to exceed
13 \$500 for the first violation and in an amount not to exceed \$5,000 for the
14 second violation and in an amount not to exceed \$10,000 for the third
15 and each successive violation. For the purposes of this subsection, each
16 day of violation after notice and a reasonable time to cease or correct the
17 violation shall be considered a separate and successive violation;

18 (3) if the governing body determines any violation by an industrial
19 user of any rule, regulation, standard, limitation or requirement poses a
20 threat or danger to the public health, safety or welfare or to the proper
21 operation of the sewage system, the governing body is hereby authorized
22 to take immediate and effective emergency action to issue or obtain any
23 preliminary injunctive relief, without notice or hearing, to prevent the
24 discharge of the wastewater creating the threat or danger;

25 (4) if the governing body finds any violation by an industrial user of
26 any rule, regulation, standard, limitation or requirement, after notice and
27 opportunity for hearing, to be intentional, willful, and knowingly in vio-
28 lation or with reckless disregard thereof, the governing body is hereby
29 authorized to refuse any future discharge of wastewater from the violating
30 industrial user and to prevent violating discharges by the industrial user
31 into the sewage system of the sewer district. The governing body is hereby
32 authorized to assess a civil penalty upon the violating industrial user in
33 an amount not to exceed \$10,000;

34 (5) if the governing body finds any violation by an industrial user of
35 any rule, regulation, standard, limitation or requirement, after notice and
36 opportunity for hearing, to have directly caused or contributed to any
37 actual detriment to the public health, safety or welfare or to have directly
38 caused or contributed to any damage to the sewage system or treatment
39 process and that the industrial user knew or should have known that its
40 violation could cause those effects, the governing body is hereby author-
41 ized to assess against the industrial user a civil penalty in an amount not
42 to exceed \$10,000 or to collect from the industrial user the actual damages
43 caused by the violation, whichever is greater;

1 (6) whenever the governing body takes any action to prevent violating
2 discharges into the sewage system of the sewer district, the governing
3 body is hereby authorized to assess against the violator all costs of such
4 action;

5 (7) all penalties, damages and costs assessed or awarded pursuant to
6 the authority of this subsection shall be a lien upon the property of the
7 violator from the date assessed or awarded until the date fully paid. All
8 proceeds received or collected from fines, penalties, damages or costs
9 shall be used by the governing body first to defray the costs of adminis-
10 tering any rule, regulation, standard, limitation or requirement adopted
11 pursuant to this section and then to defray the costs of any repairs, re-
12 placements, maintenance or reconstruction necessitated by violations
13 thereof, and then to defray the general operation and maintenance costs
14 of the sewer district;

15 (n) take any action necessary to prevent, control, reduce and elimi-
16 nate water pollution in order to comply with the clean water act, 33 U.S.C.
17 1251 *et seq.*, and amendments thereto; and

18 (o) take any action consistent with the provisions of this act for the
19 safe, proper and economical operation of any sewer district.

20 New Sec. 3. (a) The board of county commissioners of Montgomery
21 county shall create a sewer district whenever a petition requesting the
22 creation of a sewer district signed by the owners of at least 51% of the
23 acreage of the land in the proposed district is presented to the board.
24 The petition shall state:

- 25 (1) The boundaries of the improvement district;
- 26 (2) the nature of the improvement;
- 27 (3) the estimated cost of the improvement;
- 28 (4) the proposed method of assessment; and
- 29 (5) whether the district shall be governed by the board of county
30 commissioners or a board of directors elected pursuant to section 1, and
31 amendments thereto.

32 The petition also shall state that all costs and expenses of the work,
33 including preliminary planning, engineering, legal and other preliminary
34 work of skilled persons shall be assessed against the property of persons
35 signing such petition. Any person signing the petition who desires to with-
36 draw such person's name may do so by giving written notice to the county
37 clerk on or before the date of the hearing on the petition. The petition
38 shall be null and void after a period of two years from the date of the
39 first signature on the petition.

40 (b) If a petition filed pursuant to this section requests that the sewer
41 district be governed by a board of directors, the board of county com-
42 missioners shall call and hold a meeting to conduct the election of a board
43 of directors in the manner provided by section 1, and amendments

1 thereto.

2 (c) If a petition filed pursuant to this section requests that the sewer
3 district be governed by the board of county commissioners. The board
4 shall have the same powers and duties prescribed by K.S.A. 19-27a01 *et*
5 *seq.*, and amendments thereto.

6 New Sec. 4. Nothing in this act shall be construed as precluding the
7 formation of sewer districts in Montgomery county in the manner pro-
8 vided by K.S.A. 19-27a01 *et seq.*, and amendments thereto.

9 Sec. 5. K.S.A. 2000 Supp. 19-101a is hereby amended to read as
10 follows: 19-101a. (a) The board of county commissioners may transact all
11 county business and perform all powers of local legislation and adminis-
12 tration it deems appropriate, subject only to the following limitations,
13 restrictions or prohibitions:

14 (1) Counties shall be subject to all acts of the legislature which apply
15 uniformly to all counties.

16 (2) Counties may not consolidate or alter county boundaries.

17 (3) Counties may not affect the courts located therein.

18 (4) Counties shall be subject to acts of the legislature prescribing
19 limits of indebtedness.

20 (5) In the exercise of powers of local legislation and administration
21 authorized under provisions of this section, the home rule power con-
22 ferred on cities to determine their local affairs and government shall not
23 be superseded or impaired without the consent of the governing body of
24 each city within a county which may be affected.

25 (6) Counties may not legislate on social welfare administered under
26 state law enacted pursuant to or in conformity with public law No. 271—
27 74th congress, or amendments thereof.

28 (7) Counties shall be subject to all acts of the legislature concerning
29 elections, election commissioners and officers and their duties as such
30 officers and the election of county officers.

31 (8) Counties shall be subject to the limitations and prohibitions im-
32 posed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto,
33 prescribing limitations upon the levy of retailers' sales taxes by counties.

34 (9) Counties may not exempt from or effect changes in statutes made
35 nonuniform in application solely by reason of authorizing exceptions for
36 counties having adopted a charter for county government.

37 (10) No county may levy ad valorem taxes under the authority of this
38 section upon real property located within any redevelopment area estab-
39 lished under the authority of K.S.A. 12-1772, and amendments thereto,
40 unless the resolution authorizing the same specifically authorized a por-
41 tion of the proceeds of such levy to be used to pay the principal of and
42 interest upon bonds issued by a city under the authority of K.S.A. 12-
43 1774, and amendments thereto.

1 (11) Counties shall have no power under this section to exempt from
2 any statute authorizing or requiring the levy of taxes and providing sub-
3 stitute and additional provisions on the same subject, unless the resolution
4 authorizing the same specifically provides for a portion of the proceeds
5 of such levy to be used to pay a portion of the principal and interest on
6 bonds issued by cities under the authority of K.S.A. 12-1774, and amend-
7 ments thereto.

8 (12) Counties may not exempt from or effect changes in the provi-
9 sions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

10 (13) Except as otherwise specifically authorized by K.S.A. 12-1,101
11 through 12-1,109, and amendments thereto, counties may not levy and
12 collect taxes on incomes from whatever source derived.

13 (14) Counties may not exempt from or effect changes in K.S.A. 19-
14 430, and amendments thereto.

15 (15) Counties may not exempt from or effect changes in K.S.A. 19-
16 302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

17 (16) (A) Counties may not exempt from or effect changes in K.S.A.
18 13-13a26, and amendments thereto.

19 (B) This provision shall expire on June 30, 2003.

20 (17) (A) Counties may not exempt from or effect changes in 2000
21 *Supp.* K.S.A. 71-301a, and amendments thereto.

22 (B) This provision shall expire on June 30, 2003.

23 (18) Counties may not exempt from or effect changes in K.S.A. 19-
24 15,139, 19-15,140 and 19-15,141, and amendments thereto.

25 (19) Counties may not exempt from or effect changes in the provi-
26 sions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-
27 1226, and amendments thereto, or the provisions of K.S.A. 2000 *Supp.*
28 12-1260 through 12-1270 and 12-1276, and amendments thereto.

29 (20) Counties may not exempt from or effect changes in the provi-
30 sions of K.S.A. 19-211, and amendments thereto.

31 (21) Counties may not exempt from or effect changes in the provi-
32 sions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

33 (22) Counties may not regulate the production or drilling of any oil
34 or gas well in any manner which would result in the duplication of reg-
35 ulation by the state corporation commission and the Kansas department
36 of health and environment pursuant to chapter 55 and chapter 65 of the
37 Kansas Statutes Annotated and any rules and regulations adopted pur-
38 suant thereto. Counties may not require any license or permit for the
39 drilling or production of oil and gas wells. Counties may not impose any
40 fee or charge for the drilling or production of any oil or gas well.

41 (23) Counties may not exempt from or effect changes in K.S.A. 79-
42 41a04, and amendments thereto.

43 (24) Counties may not exempt from or effect changes in K.S.A. 79-

1 1611, and amendments thereto.

2 (25) Counties may not exempt from or effect changes in K.S.A. 79-
3 1494, and amendments thereto.

4 (26) Counties may not exempt from or effect changes in subsection
5 (b) of K.S.A. 19-202, and amendments thereto.

6 (27) Counties may not exempt from or effect changes in subsection
7 (b) of K.S.A. 19-204, and amendments thereto.

8 (28) Counties may not levy or impose an excise, severance or any
9 other tax in the nature of an excise tax upon the physical severance and
10 production of any mineral or other material from the earth or water.

11 (29) Counties may not exempt from or effect changes in K.S.A. 79-
12 2017 or 79-2101, and amendments thereto.

13 (30) Counties may not exempt from or effect changes in K.S.A. 2-
14 3302, 2-3305, 2-3307, 17-5904, 17-5908, 47-1219 or 65-171d or K.S.A.
15 2000 Supp. 2-3318, 17-5909 or 65-1,178 through 65-1,199, and amend-
16 ments thereto.

17 (31) Counties may not exempt from or effect changes in K.S.A. 2000
18 Supp. 80-121, and amendments thereto.

19 (32) *Counties may not exempt from or effect changes in sections 1*
20 *through 4, and amendments thereto.*

21 (b) Counties shall apply the powers of local legislation granted in
22 subsection (a) by resolution of the board of county commissioners. If no
23 statutory authority exists for such local legislation other than that set forth
24 in subsection (a) and the local legislation proposed under the authority
25 of such subsection is not contrary to any act of the legislature, such local
26 legislation shall become effective upon passage of a resolution of the
27 board and publication in the official county newspaper. If the legislation
28 proposed by the board under authority of subsection (a) is contrary to an
29 act of the legislature which is applicable to the particular county but not
30 uniformly applicable to all counties, such legislation shall become effec-
31 tive by passage of a charter resolution in the manner provided in K.S.A.
32 19-101b, and amendments thereto.

33 (c) Any resolution adopted by a county which conflicts with the re-
34 strictions in subsection (a) is null and void.

35 Sec. 6. K.S.A. 2000 Supp. 19-101a is hereby repealed.

36 Sec. 7. This act shall take effect and be in force from and after its
37 publication in the statute book.

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