

SENATE BILL No. 261

By Committee on Utilities

2-7

AN ACT concerning cities; limiting certain franchise fees; amending K.S.A. 12-2001 and repealing the existing section.

WHEREAS, The price paid for natural gas by the citizens of the state of Kansas has substantially and dramatically increased; and

WHEREAS, The increasing price for natural gas has forced many Kansas citizens, especially those on a fixed income who are least able to pay, to make a choice between paying their gas bill or paying for other necessities of life; and

WHEREAS, As a result, cities will experience an unforeseen windfall from the collection of franchise fees; and

WHEREAS, To help reduce the burden of the Kansas citizens from such franchise fee windfall and to provide one small measure of relief

from the high cost of natural gas: Now, therefore, *Be it enacted by the Legislature of the State of Kansas:*

Section 1. K.S.A. 12-2001 is hereby amended to read as follows: 12-2001. (a) The governing body of any city may permit any person, firm or corporation to:

(1) Manufacture, sell and furnish artificial or natural gas light and heat; electric light, water, power or heat; or steam heat to the inhabitants;

(2) build street railways, to be operated over and along or under the streets and public grounds of such city;

(3) construct and operate telegraph and telephone lines;

(4) lay pipes, conduits, cables and all appliances necessary for the construction, operation of gas and electric-light or steam-heat plants;

(5) lay pipes, conduits, cables and all appliances necessary for the construction and operation of electric railways or bus companies;

(6) lay pipes for the operation of a water plant for the distribution or furnishing of water over, under and along the streets and alleys of such city; or

(7) use the streets in the carrying on of any business which is not prohibited by law.

(b) If the governing body of a city permits any activity specified in subsection (a), the granting of permission to engage in the activity shall

1 be subject to the following:

2 (1) All contracts granting or giving any such original franchise, right
3 or privilege, or extending or renewing or amending any existing grant,
4 right, privilege or franchise, to engage in such an activity shall be made
5 by ordinance, and not otherwise.

6 (2) No contract, grant, right, privilege or franchise to engage in such
7 an activity, now existing or hereafter granted, shall be extended for any
8 longer period of time than 20 years from the date of such grant or
9 extension.

10 (3) No person, firm or corporation shall be granted any exclusive
11 franchise, right or privilege whatever.

12 (4) The governing body of any city, at all times during the existence
13 of any contract, grant, privilege or franchise to engage in such an activity,
14 shall have the right by ordinance to fix a reasonable schedule of maximum
15 rates to be charged such city and the inhabitants thereof for gas, light and
16 heat, electric light, power or heat, steam heat or water; the rates of fare
17 on any street railway or bus company; the rates of any telephone company;
18 or the rates charged any such city, or the inhabitants thereof, by any
19 person, firm or corporation operating under any other franchise under
20 this act. The governing body at no time shall fix a rate which prohibits
21 such person, firm or corporation from earning a reasonable rate upon the
22 fair value of the property used and useful in such public service. In fixing
23 and establishing such fair value, the value of such franchise, contract and
24 privilege given and granted by the city to such person, firm or corporation
25 shall not be taken into consideration in ascertaining the reasonableness
26 of the rates to be charged to the inhabitants of such city.

27 (5) No such grant, right, privilege or franchise shall be made to any
28 person, firm, corporation or association unless it provides for adequate
29 compensation or consideration therefor to be paid to such city, and re-
30 gardless of whether or not other or additional compensation is provided
31 for such grantee shall pay annually such fixed charge as may be prescribed
32 in the franchise ordinance. Such fixed charge may consist of a percentage
33 of the gross receipts derived from the service permitted by the grant,
34 right, privilege or franchise from consumers or recipients of such service
35 located within the corporate boundaries of such city, and, in case of public
36 utilities or common carriers situated and operated wholly or principally
37 within such city, or principally operated for the benefit of such city or its
38 people, from consumers or recipients located in territory immediately
39 adjoining such city and not within the boundaries of any other incorpo-
40 rated city; and in such case such city shall make and report to the gov-
41 erning body all such gross receipts once each month, or at such other
42 intervals as stipulated in the franchise ordinance and pay into the treasury
43 the amount due such city at the time the report is made. The governing

1 body shall also have access to and the right to examine, at all reasonable
2 times, all books, receipts, files, records and documents of any such grantee
3 necessary to verify the correctness of such statement and to correct the
4 same, if found to be erroneous. If such statement of gross receipts is
5 incorrect, then such payment shall be made upon such corrected
6 statement.

7 On and after the effective date of the act, any provision for compen-
8 sation or consideration, included in a franchise granted pursuant to this
9 section which is established on the basis of compensation or consideration
10 paid by the utility under another franchise, is hereby declared to be con-
11 trary to the public policy of this state and shall be void and unenforceable.
12 Any such provision, included in a franchise granted pursuant to this sec-
13 tion and in force on the effective date of this act which requires payments
14 to the city by a utility to increase by virtue of the compensation or con-
15 sideration required to be paid under a franchise granted by another city
16 to the utility's predecessor in interest, is hereby declared to be contrary
17 to the public policy of this state and shall be void and unenforceable.

18 (6) No such right, privilege or franchise shall be granted until the
19 ordinance granting the same has been read in full at three regular meet-
20 ings of the governing body. Immediately after the final passage, the or-
21 dinance shall be published in the official city paper once a week for two
22 consecutive weeks. Such ordinance shall not take effect and be in force
23 until after the expiration of 60 days from the date of its final passage. If,
24 pending the passage of any such ordinance or during the time between
25 its final passage and the expiration of 60 days before such ordinance takes
26 effect, 20% of the qualified voters of such city voting for mayor, or in case
27 no mayor is elected then the commissioner or council member receiving
28 the highest number of votes, at the last preceding city election present a
29 petition to the governing body asking that the franchise ordinance be
30 submitted for adoption to popular vote, the mayor of the city shall issue
31 a proclamation calling a special election for that purpose. The procla-
32 mation calling such special election shall specifically state that such elec-
33 tion is called for the adoption of the ordinance granting such franchise,
34 and the ordinance shall be set out in full in the proclamation. The pro-
35 clamation shall be published once each week for two consecutive weeks
36 in the official city newspaper, and the last publication shall not be less
37 than 30 days before the day upon which the special election is held. If,
38 at the special election, the majority of votes cast shall be for the ordinance
39 and the making of the grant, the ordinance shall thereupon become ef-
40 fective. If a majority of the votes cast at the special election are against
41 the ordinance and the making of the grant, the ordinance shall not confer
42 any rights, powers or privileges of any kind whatsoever upon the appli-
43 cants therefor and shall be void.

1 All expense of publishing any ordinance adopted pursuant to this sec-
2 tion shall be paid by the proposed grantee. If a sufficient petition is filed
3 and an election is called for the adoption of any such ordinance, the
4 applicants for the grant, right, privilege or franchise, upon receipt by the
5 applicants of written notice that such petition has been filed and found
6 sufficient and stating the amount necessary for the purpose, shall im-
7 mediately deposit with the city treasurer in cash an amount sufficient to
8 cover the entire expense of such election. The mayor shall not issue a
9 proclamation calling such election until such money is deposited with the
10 treasurer. Upon such failure to so deposit such money the ordinance shall
11 be void.

12 (7) All contracts, grants, rights, privileges or franchises for the use of
13 the streets and alleys of such city, not herein mentioned, shall be governed
14 by all the provisions of this act, and all amendments, extensions or en-
15 largements of any contract, right, privilege or franchise previously granted
16 to any person, firm or corporation for the use of the streets and alleys of
17 such city shall be subject to all the conditions provided for in this act for
18 the making of original grants and franchises. The provisions of this section
19 shall not apply to railway companies for the purpose of reaching and
20 affording railway connections and switch privileges to the owners or users
21 of any industrial plants, or for the purpose of reaching and affording
22 railway connections and switch privileges to any agency or institution of
23 the state of Kansas.

24 (c) *For the period beginning January 1, 2001, through December 31,*
25 *2002, the franchise fees or charges authorized by paragraph (5) of sub-*
26 *section (b), for the privilege of selling or furnishing natural gas, shall not*
27 *exceed in any one month 110% of the total amount collected for the same*
28 *month during the previous calendar year.*

29 Sec. 2. K.S.A. 12-2001 is hereby repealed.

30 Sec. 3. This act shall take effect and be in force from and after its
31 publication in the Kansas register.

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