

Approved Ivan Sand  
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by REPRESENTATIVE IVAN SAND at  
Chairperson

1:30 ~~XXX~~ a.m./p.m. on MARCH 13, 1984 in room 521-S of the Capitol.

All members were present except: All Present.

Committee staff present: Mike Heim, Legislative Research Department  
Theresa Kiernan, Revisor of Statutes Office  
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

- Ms. Gerry Ray, Administrative Assistant, Johnson County Board of County Commissioners, SB 565; SB 566; SB 607
- Senator August Bogina, co-sponsor of SB 565
- Mr. Chris McKenzie, Attorney, League of Kansas Municipalities, SB 607
- Mr. Ed Johnson, City Attorney, Topeka, SB 607
- Mr. Scott Lambers, representing City of Overland Park, SB 607
- Ms. Janet Stubbs, Homebuilders Assn. of Kansas, SB 607

Chairman, Ivan Sand, called for hearings on the following Senate Bills:

SB 565, concerning improvement districts in the unincorporated areas of a county; relating to the powers thereof; - By Sen. Allen, et al

Mike Heim, Staff, gave a brief overview of the bill. (See Attachment I -- Supplemental Note on SB 565.)

Ms. Gerry Ray, representing the Board of Commissioners, Johnson County, Kansas, testified in support of SB 565, which gives authority to form improvement districts in unincorporated areas for the purpose of providing emergency warning sirens. (See Attachment II.)

When questioned, Ray stated that the original language did not specifically refer to "safety" but instead "health;" that the sirens cover 3½ sq. mi.; that the cost for initial installation will be \$9,000; and that the maintenance will be approximately \$6 per month, plus mileage and electricity with an estimated maximum cost of \$20 per month.

Representative Sand asked co-sponsor of the bill, Senator August Bogina, if HB 2773 had been considered in connection with SB 565 and if the two bills could be combined to accomplish the same thing. Bogina stated that this had not been considered as the two bills were prepared at different times; that HB 2773 will be heard Wednesday, March 14, by the Senate Local Government Committee.

Mike Heim, Staff, pointed out that the Revisor will eventually coordinate the sections in question. Heim confirmed that this legislation would have a statewide application.

Ms. Ray noted that the bill is "permissive."

The hearing on SB 565 was closed.

SB 566, concerning certain fees charged by the county clerk; -By Sen. Bogina

Mike Heim gave a brief overview of SB 566. (See Attachment III -- Supplemental Note on SB 566.)

Ms. Gerry Ray, representing the Board of Commissioners, Johnson County, Kansas, testified in support of SB 566. (See Attachment IV.)

The inclusion of the cost of staff time in the new language was questioned.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT,  
room 521-S, Statehouse, at 1:30 ~~xxx~~ a.m./p.m. on MARCH 13, 1984

It was pointed out that this is part of the open records law.

Ms. Ray pointed out that this bill deals only with county clerks.

The hearing on SB 566 was closed.

SB 607, concerning special assessments; relating to certain actions challenging the validity thereof. - By Committee on Local Government

Mike Heim, Staff, gave a brief overview of the bill. (See Attachment V -- Supplemental Note on SB 607.)

Mr. Chris McKenzie, Attorney, League of Kansas Municipalities, testified in support of SB 607. (See Attachment VI.)

McKenzie stated that the bill had been introduced by the Senate Local Government Committee at the request of the Kansas League; that cities have authority to levy special assessments; that there are very specific rules in the statutes; that the law requires that special hearings be held and notices given; that landowners have 30 days to file a lawsuit if they wish to challenge a special assessment; that the Kansas Supreme Court said if a suit is filed under federal law, there will be two years, not 30 days, to file; that SB 607 says for federal civil rights lawsuits, there will be 90 days allowed for filing.

When questioned, McKenzie verified that if a lawsuit were filed under state law, there would be a 30-day statute of limitation; that under the federal civil rights law, it would be 90 days.

McKenzie noted that he has Briefs regarding this and related legislation which he will be glad to share with Committee members.

Mr. Ed Johnson, Topeka City Attorney, appeared and stated that the City of Topeka supports the position of the League in connection with SB 607.

Mr. Scott Lambers, representing the City of Overland Park, stated that the City of Overland Park supports the position of the League in connection with SB 607.

Ms. Janet Stubbs, representing Homebuilders Association of Kansas, stated that her association supports the provisions of SB 607.

Ms. Gerry Ray, representing the Johnson County Board of County Commissioners, stated that they strongly support SB 607.

The hearing on SB 607 was closed.

The minutes of the meetings of February 28, 1984, and February 29, 1984, were approved as presented.

The minutes of the meeting of March 1, 1984, were corrected on Page 3 of 4 in connection with HB 2588, final paragraph, to read "'Representative Dorothy Flottman" instead of "Representative Elizabeth Baker" made a substitute motion that HB 2588 be tabled.' The March 1, 1984, minutes were then accepted as corrected.

Meeting adjourned.



SESSION OF 1984

SUPPLEMENTAL NOTE ON SENATE BILL NO. 565

As Recommended by Senate Committee on  
Local Government

Brief of Bill\*

S.B. 565 amends the improvement district law to give these districts the power to purchase or acquire outdoor emergency warning sirens.

Background

The bill was supported by the Johnson County Commission as a means of providing warning sirens in unincorporated areas of their county.

\* Bill briefs are prepared by the Legislative Research Department and do not express legislative intent.

JOHNSON COUNTY KANSAS

*Office of the Board of County Commissioners*

JOHNSON COUNTY COURTHOUSE  
OLATHE, KANSAS 66061  
782-5000

TESTIMONY OF GERRY RAY

HOUSE LOCAL GOVERNMENT COMMITTEE

SENATE BILL NO. 565

MARCH 13, 1984

Senate Bill No. 565 is in response to a request from the Johnson County Commissioners. The bill gives the authority to form improvement districts in unincorporated areas for the purpose of providing emergency warning sirens.

In Johnson County, there have been numerous requests for warning sirens from citizens who are willing to assume the expense of the purchase, installation and maintenance. However, the statutes do not presently provide a method to form an improvement district for this purpose. The commissioners do not feel it is equitable to purchase the sirens from the county general budget, because cities have already purchased their own and should not be required to participate in the expense for the unincorporated area. By using the improvement district method, rather than the township general fund purchase, the county can apply for matching funds through the Federal Emergency Management Agency thus saving 50% of the total cost.

Johnson County asks your support of this bill in order to allow needed protection, particularly in the rural subdivisions, in the most equitable manner.

ATTACHMENT II

SESSION OF 1984

SUPPLEMENTAL NOTE ON SENATE BILL NO. 566

As Recommended by Senate Committee on  
Local Government

Brief of Bill\*

S.B. 566 amends a statute setting fees for services performed by county clerks. The bill sets out in column fashion certain fees already authorized.

Additionally, the bill provides that fees for recording reports or other papers or making copies of reports or records where the fee is not otherwise set by law shall not exceed the actual cost of furnishing copies including the cost of staff time. Under current law, the charge for these items is set at 20 cents per page.

Background

A representative of the Johnson County Commission spoke in favor of the bill and noted this would make this statute conform to provisions in the Kansas Open Records Act enacted in 1983.

\* Bill briefs are prepared by the Legislative Research Department and do not express legislative intent.

JOHNSON COUNTY KANSAS

*Office of the Board of County Commissioners*

JOHNSON COUNTY COURTHOUSE  
OLATHE, KANSAS 66061  
782-5000

TESTIMONY OF GERRY RAY

HOUSE LOCAL GOVERNMENT COMMITTEE

SENATE BILL NO. 566

MARCH 13, 1984

Chapter 171 of the 1983 Session Laws requires, with some exceptions, that all public records to made accessible for the purpose of public disclosure. Section 5(c)(1) permits the charging of fees for copies of records; limiting the fees of the actual cost of furnishing copies, including the cost of staff time to make the information available. K.S.A. 28-103 provides for fees to be charged by county clerks limiting the fee for copies to 20 cents per folio.

Our Legal Department recognized the apparent conflict in these two statutes and suggested legislation that will allow the fee for copies to be set at the actual cost including staff time. The Johnson County Commissioners ask support of Senate Bill No. 566 in order to make K.S.A. 28-103 conform to provisions in the Kansas Open Records Act of 1983.

ATTACHMENT IV

SESSION OF 1984

SUPPLEMENTAL NOTE ON SENATE BILL NO. 607

As Amended by Senate Committee on Local Government

Brief of Bill\*

S.B. 607 establishes a 90-day state statute of limitations for federal civil rights lawsuits in state or federal court which challenge the validity of special assessments levied by local units of government.

The Senate Committee amendment was technical.

Background

The bill was requested by the League of Kansas Municipalities. The bill is in response to the recent Kansas Supreme Court case of Dutoit v. Board of Johnson County Commissioners, 233 Kan. 995, (1983). The Court in this case held the 30-day statute of limitations contained in a sewer district law (K.S.A. 19-2705) did not apply in a federal civil rights action brought under 42 U.S.C. §1983 challenging the imposition of special assessments as a taking of property without just compensation. Section 1983 of the federal code does not contain a statute of limitations so federal and state courts have traditionally borrowed state statutes of limitations covering causes of action most similar to the facts stated in the §1983 action. The Kansas court determined that the two-year statute of limitations provided in K.S.A. 60-513(a) applied.

The League fears that a two-year statute of limitations will delay public improvement projects financed by special assessments and result in substantially higher costs.

\* Bill briefs are prepared by the Legislative Research Department and do not express legislative intent.





# League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: House Local Government Committee  
FROM: League of Kansas Municipalities  
DATE: March 13, 1984  
SUBJECT: SB 607: Special Statute of Limitations for Federal Civil Rights Actions  
Challenging Special Assessments

A recent decision by the Kansas Supreme Court could dramatically increase the cost of public improvements financed through the issuance of general obligation bonds that are retired with special assessments. In Dutoit v. Board of County Commissioners of Johnson County, 233 Kan. 995 (1983), the Court refused to apply the 30-day statute of limitations contained in K.S.A. 19-2705 to a legal challenge of special assessments brought by landowners in a county sewer district. The Court instead applied a catch-all two (2) year limitation period in K.S.A. 60-513(a). The landowners' claim in Dutoit was made under a section of the federal civil rights act of 1871 found at 42 U.S.C. § 1983. Section 1983 provides a statutory basis for bringing lawsuits against state and local governments for violations of rights secured by the U.S. Constitution and federal statutes. The Dutoit court rejected the 30-day limitation period because it "is not sufficiently generous to preserve the remedial spirit of 42 U.S.C. § 1983." It made this decision notwithstanding decades of case law indicating that actions challenging special assessments brought under state law are designed to protect the same federal rights as actions brought under § 1983. A little additional background may be helpful.

Since § 1983 of the federal civil rights act does not contain a statute of limitations, federal and state courts have traditionally "borrowed" state statutes of limitations to determine the timeliness of federal civil rights claims. This "borrowing" of state law is also required by another section of the federal civil rights act, 42 U.S.C. § 1983, which directs courts to rely on "the common law, as modified and changed by the constitution and statutes of the state. . .so far as the same is not inconsistent with the Constitution and laws of the United States."

In deciding which state statute of limitations to apply to a federal claim under § 1983, the U.S. Supreme Court has instructed the lower courts to apply the limitation period for the analogous state cause of action. In Kansas, suits brought to set aside special assessments are most often brought under K.S.A. 60-907(a) which authorizes suits to enjoin the illegal levy and collection of any tax, charge or assessment. The statutes of limitations applied to such actions are contained in the various special assessment statutes (e.g., K.S.A. 12-6a11) and usually consist of a thirty-day period measured from the date on which the ordinance fixing the assessments was published.

In refusing to "borrow" the applicable 30-day statute of limitations in the Dutoit case, the Kansas Supreme Court has opened the door for lawsuits to be brought under § 1983 up to two years after a public improvement is approved by a local governing body. Not only will this result in additional legal expense for local governments, but it will increase the bond-

related expenses of such projects. As the League pointed out to the Court in its amicus curiae brief in the Dutoit case, the financing of such projects during the two years may have to be accomplished with temporary notes, thereby delaying the arrangement of permanent debt financing and raising the overall cost of the project. In the Dutoit case, the county pointed out it was paying over \$1,000 in temporary note interest charges each day due to its inability to issue general obligation bonds. In still other cases, a lawsuit filed after the bonds are issued but before the expiration of the two year period may require refinancing of the project due to changes in the assessment procedures and increased costs.

The League requests your support of SB 607 which contains a specific statute of limitations of 90 days for § 1983 actions challenging the validity of special assessments levied under state law. Such a limitation period would clearly be more generous than the 30-day period contained in most special assessment statutes. In addition, it would have the advantage of providing a clear and recent expression of state legislative intent in subsection (a) that § 1983 challenges to special assessments be brought and resolved in a timely manner in order to avoid delay and increasing public expense for public improvements. It is clear from the 1975 case of Johnson v. Railway Express Agency, Inc., 421 U.S. 454, that the U.S. Supreme Court will uphold the borrowing of state statutes of limitations enacted specifically for federal civil rights actions.

It is important to note that a statute of limitations in a special assessment procedure operates differently than other statutes of limitations because the landowners have received notice of the proposed assessments and have usually participated throughout the procedure. In the case of special assessments levied under K.S.A. 12-6a01 et seq., landowners receive initial notice of the estimated cost of the improvement, the proposed method of assessment, and the proposed apportionment of cost between landowners in the district and the city-at-large at the time the governing body initiates the improvement by resolution or in the landowners' petition. If the improvement is initiated by governing body resolution, two published notices and a public hearing are necessary before the improvement can be commenced. Such a resolution is then subject to a protest petition. Finally, after the total cost of the improvement is known (which is usually after it is completed), the city is required to hold a second hearing after giving both a published notice and personal notice which states the specific costs to be assessed against the property owners. Since this entire process can take many months, even years, the affected landowners have a far longer period of time in which to decide to challenge any improvements and assessments than simply the statute of limitations period.

One final note. The Governing Body of the League is so firmly convinced that the Court's decision in Dutoit is contrary to the public interest, that it authorized the preparation and filing of a brief amicus curiae in a § 1983 statute of limitations case presently before the U.S. Supreme Court. That case, Burnett v. Grattan, is scheduled for oral argument in the near future.

A list of the statutes of limitations that currently exist in state special assessment statutes is attached.

Statutes of Limitations in  
Public Improvement/Special Assessment Statutes

<u>Statute</u>	<u>Purpose</u>	<u>Limitation Period</u>
12-601 et seq.	Street paving	12-608 -- " <u>thirty days</u> from the publication of the ordinance fixing said assessments."
12-617 et seq.	Sewerage and drainage in cities under 80,000	12-618 -- " <u>thirty days</u> from the time when the amount due on each lot or piece of ground liable for such assessments is ascertained."
12-635 et seq.	Flood control	12-645 -- refers to procedure in 12-643 which requires (1) an appeal bond to be filed with the city clerk within <u>ten days</u> after city governing body's decision, and (2) filing of transcript of public hearing with district court clerk by city clerk within <u>twenty days</u> after bond filed.
12-665 et seq.	Cleaning and oiling streets	No limitation period.
12-6,102 et seq.	Joint city-county storm water drainage districts	Refers to 12-6a01 et seq. (See below)
12-6a01 et seq.	General improvement and assessment law	12-6a11 -- " <u>thirty (30) days</u> from the publication of the ordinance fixing said assessments."  12-6a17 (referring to service assessments) -- " <u>thirty (30) days</u> from the publication of the ordinance fixing said assessments."
12-1801 et seq.	Sidewalks	12-1810 -- " <u>within thirty days</u> after the publication of the assessment ordinance."
12-2301 et seq.	Culverts	12-2303 -- " <u>within thirty days</u> from the publication of the assessment ordinance."

CITIES OF THE FIRST CLASS

13-905 et seq.	Public improvements	13-906 "after the expiration of <u>thirty days</u> from the time the amount due on each lot or piece of ground liable for such assessment is ascertained."
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13-1008d	Sidewalks	13-1008h -- refers to procedures in 12-1811 and 12-1812. 12-1810 provides "within thirty days after publication of the assessment ordinance."
13-1013 et seq.	Sewerage and drainage systems	No limitation period.
13-1029 et seq.	Sewers; pumping stations	No limitation period.
13-1038 et seq.	Street improvements	Not specific, but probably borrowed from 12-608 or 12-6a11, i.e., <u>thirty days</u> .
13-1042	Reimprovement of streets	Not specific, but probably borrowed from 12-608 or 12-6a11, i.e., <u>thirty days</u> .
13-10,107	Sewers	No limitation period.
13-1324	Parkway, boulevard or street improvements	13-1333 -- "after the expiration of <u>thirty days</u> from the time of the levy of such tax or assessment." When assessments levied before completion and acceptance of any improvement, thirty days measured from date improvement completed and accepted.
13-1374 et seq.	Parking lots --Establishment of parking district  --Special assessments for parking improvements  --Special assessments for land acquisition and improvement  --Additional parking facilities	13-1376 -- "within <u>thirty days</u> from and after the date of the filing of such petition with the city clerk."  13-1378 -- "after <u>thirty days</u> from the awarding of a contract for such improvements and until the expiration of said thirty days the contractor shall not commence work under his or her contract."  13-1379 -- "unless the same be instituted and summons served <u>within 30 days</u> from and after the date of the publications (sic) of the ordinance levying such assessment.  -- "unless the proceedings are instituted and sommons served within 30 days from and after the date of the publication of the resolution authorizing the improvement."
13-2501 et seq.	Sidewalks, sodding, sidewalks space, change of grade	13-2533 -- "after the expiration of <u>thirty days</u> from the time of the levy of such tax or assessment." Thirty days not to commence until improvement completed and accepted.

CITIES OF THE SECOND CLASS

14-531 et seq.	Street lighting	14-536 -- "after the expiration of <u>thirty days</u> from the time the amount due on such lot or piece of ground liable for such assessment is ascertained."
14-701a et seq.	Water course improvements (See 12-694)	14-701b -- "after the expiration of <u>thirty days</u> from the publication of the ordinance fixing such assessments."  14-701i -- "after the expiration of <u>thirty days</u> from the time the amount due on such lots, pieces and parcels of land for special assessments is ascertained."
14-705 et seq.	Water mains outside city	No limitation period.

COUNTIES

19-5753 et seq.	Improvement Districts	19-2709 -- "after the expiration of thirty (30) days from the time the board of directors shall make its decision so confirming the report of the assessors.
19-27a01 et seq.	Sewers	19-27a07 -- "later than 30 days from the passage of the proposed assessment resolution."