

Approved March 31, 1987  
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Senator Don Montgomery at  
Chairperson

9:13 a.m./p. on March 26, 1987 in room 531-N of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Arden Ensley, Emalene Correll and Lila McClaflin

Conferees appearing before the committee:

Willie Martin, Intergovernmental Coordinator, Sedgwick County  
Representative Jo Ann Pottorff, 83rd District, Wichita  
Representative Bill Roy, 53rd District, Topeka  
George McCullough, Topeka Airport Authority, Topeka  
Elsbeth Schafer, Assistant City Attorney, Topeka  
Dave Gingerich, Van Doren Hazard Stallings  
Wayland J. Anderson, Assistant Chief Engineer, Division of  
Water Resources, Kansas State Board of Agriculture  
Austin Nothern, Chairman, Downtown Topeka Business Improvement  
District Planning Committee  
Kevin R. Davis, Attorney, The League of Kansas Municipalities  
Representative Marvin Smith, 50th District, Topeka  
Damon Slyter, Chairman, Shawnee County 4-H Livestock Sale  
John Reilly, President, Shawnee County 4-H Fair Board  
Winnie Kingman, County Commissioner of Shawnee County  
Representative Ginger Barr, 51st District, Auburn  
Velma Paris, County Commissioner of Shawnee County  
Jean Schulte, Shawnee County Financial Administrator

The hearings were opened by the Chairman. Willie Martin was introduced to testify in support of H.B. 2227 - concerning counties; relating to the procedure for adopting charter resolutions.

Ms. Martin stated to require a unanimous vote of 5 member commissions can be an impediment to effective and efficient local government. H.B. 2227 would require a 2/3 vote the same as required by the governing body of a city. (ATTACHMENT I)

This bill was sponsored by the Sedgwick County delegation and Representative Jo Ann Pottorff was present in support of the bill.

H.B. 2116 - concerning airport authorities; relating to the powers and duties. The bill was introduced by the Shawnee County delegation at the request of the Metropolitan Topeka Airport Authority.

Representative Bill Roy testified that the bill is needed to clarify the powers of the airport authority in regard to selling water and sewage services to customers. He introduced George McCullough a member of the MTAA.

Mr. McCullough stated the bill would authorize the MTAA to set up a water resale system to its renters and tenants at Forbes industrial park. It would help pay off a 2.5 million dollar new water distribution system and insure a reliable water supply at Forbes industrial park.

H.B. 2115 - authorizing the Secretary of State to grant an easement to the City of Topeka, along the Kansas River for the diversion of water.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON COMMITTEE,  
room 531-n, Statehouse, at 9:13 a.m./p.m. on March 26, 1987

Representative Roy stated the Shawnee County delegation at the request of the City of Topeka had requested this bill. The city wants to build a weir to divert water to its water system intake in times of low water flow.

Elsbeth Schafer representing the City of Topeka stated it was necessary to acquire permits from the Division of Water Resources and from the Corps of Engineers to build the weir, but they need the easement and this must be authorized by the Legislature before the Secretary of State can grant it. (ATTACHMENT II)

She responded to questions on how the weir would be built and if it would be diverting water from the cities down stream.

Dave Gingerich, Van Doren Hazard Stallings, answered questions concerning the project and how it would be constructed.

Wayland J. Anderson stated the Division of Water Resources support H.B. 2115. They believe the bill is necessary in order for the City of Topeka to acquire a necessary easement so that they can contrast the proposed weir across the Kansas River. (ATTACHMENT III)

H.B. 2357 - concerning cities; relating to business improvement districts.

Representative Roy testified in support of the bill. The bill was sponsored by him and Representative Acheson and was requested by the Downtown Topeka Business Improvement District. (ATTACHMENT IV)

Austin Northern testified in support of H.B. 2357. He stated the bill would prevent businesses in the district from disbanding prior to its members paying their annual assessments. ATTACHMENT V )

Mr. Northern responded to questions concerning how the improvement district would operate and who would be members of it.

Kevin R. Davis presented testimony supporting H.B. 2357. He stated the bill would allow for responsible planning and budgeting for service delivery, as well as for a fiscally responsible means to dissolve an improvement district. (ATTACHMENT VI )

H.B. 2360 - providing for the establishment of a Shawnee County Fair Association; providing for election of a board of directors and executive board; authorizing a county tax levy to fund the operations of the fair association.

Representative Marvin Smith reviewed the 4-H Fair's history in Shawnee County. He stated the elected board the bill would create would help ensure the future of the 4-H Fair. (ATTACHMENT VII )

Damon Slyter urged the Committee to pass the bill. He stated many counties already have these fair associations. (ATTACHMENT VIII)

John Reilly stated the Shawnee County 4-H Fair Board had reviewed the proposed legislation and unanimously approved of it, it was also approved of by the County Extension Council. (ATTACHMENT IX)

Jean Schulte said the County Commissioners generally liked the bill but wanted section 5, the provision for recommending a mill levy removed. He felt these changes were necessary as it is the Board's responsibility to determine the amount and sufficiency of surety bonds. (ATTACHMENT X ) He responded to questions.

Winnie Kingman stated the County Commissioners in Shawnee County have always taken care of the 4-H Fair and the tax provision

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT,  
room 531-N, Statehouse, at 9:13 a.m./~~p.m.~~ on March 26, 1987

was not necessary. She supported Mr. Schulte's recommendation that section 5 be deleted.

Representative Barr stated she supported the bill. The present Board of County Commissioners are very supportive of the 4-H but future Boards might not be. She opposed striking section 5 of the bill.

Velma Paris favored keeping the tax provision in the bill.

Representative Smith stated he did not want the taxing provision amended out of the bill.

Beverly Bradley presented written testimony on H.B. 2394. The Association of Counties supports the part of the bill that would change the date for the submission of the budget to August 1. They would recommend amending KSA 2-610 to provide for the approval of the extension budget by a majority of the county governing board.  
(ATTACHMENT XI )

The meeting adjourned at 10:00 a.m., next meeting will be March 27, 1987.

  
Chairman, Senator Don Montgomery

Date: March 26, 1987

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
Y.M. Anderson	BUDGET DIV	TOPEKA
Dave Gingerich	Van Doren, Hazard, Stallings	Topoka
Beth Schuyler	Asst' City Attorney	Topoka
Edie Smith	Director of Public Works	Topoka
Kevin Davis	Lessee of Ks Municip.	"
Marvin E. Smith	Rep. 50th Dist	Topoka
Becky Stahl	4-H	Topoka
Alan Stahl	4-H	Topoka
Norman C. Stahl	4-H	4735 NE Liggett TOPEKA KS 66617
Jo Reilly	4-H	2247 S.W. Hodges
John Reilly	4-H	2247 S.W. Hodges
Damon Steyer	4-H	6346 SW 61 <sup>ST</sup>
Eldon L. Clawson	Extension Service - 4-H.	1740 Western Topoka
Phil Sell	Shawnee County Extension Service	1740 Western Topoka 66604
Danton Rice	Secretary of State	TOPEKA
Nancy Hjertland	4-H	2036 S.W. 66604 Topoka
Delma Paris	Sh. Co. Comm.	Courthouse, Topoka
J. W. Schutte	Shawnee County	Topoka
Austin Nothern	Downtown Topoka Business Improvement District	Topoka, KS
Rep Bill Ruff	House of Reps	Topoka
Harold Grain	Intergovt. Council	Topoka
Carl E. Pritchett	Topoka - airport auth	Topoka
Dr. Dick Davis	Sh. Co. H-H Fairboard	Topoka





SEDGWICK COUNTY, KANSAS

INTERGOVERNMENTAL COORDINATOR

WILLIE MARTIN

COUNTY COURTHOUSE • SUITE 315 • WICHITA, KANSAS 67203-3759 • TELEPHONE (316) 268-7552

March 26, 1987

TO: SENATE LOCAL GOVERNMENT COMMITTEE

REF: HOUSE BILL 2227  
County Adoption of Charter Resolutions

FROM: Willie Martin, Intergovernmental Coordinator  
Sedgwick County

Mr. Chairman and Members of the Committee:

I am Willie Martin representing the Sedgwick County Board of Commissioners. I appreciate this opportunity to testify in support of House Bill 2227.

K.S.A. 19-101B. Section (b) requires the unanimous vote of all county commissioners to pass a charter resolution, unless the board determines prior to passage that the issue will be submitted to a referendum. Prior to 1978 when Coffey county approved a referendum for a five member county commission, all boards of county commissioners consisted of three members. To require a unanimous vote of five member commissions can be an impediment to effective and efficient local government.

The Constitution of the State of Kansas in Article 12, Chp. 5, Section (c)(2) requires a two-thirds vote of the governing body of a city to pass a charter ordinance. To also require a two-thirds vote of county commissions, with five or more members, for passage of a charter resolution would provide the ability to accomplish county goals and still provide the safe guard of requiring a vote of four out of five to pass a Charter Resolution.

I respectfully request that you recommend House Bill 2227 favorably.

(ATTACHMENT I) LOCAL GO 3/26/87





# CITY OF TOPEKA

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City Attorney  
215 E. 7th Street Room 358  
Topeka, Kansas 66603  
Phone 913-295-3883

March 25, 1987

Members of the Senate Local Government Committee:

The City of Topeka is undertaking construction of a "low water weir" on the Kansas River. The City has acquired all necessary permits from the Division of Water Resources and from the Corps of Engineers. However, the construction of the weir constitutes an encroachment on the Kansas River which requires an easement. K.S.A. 75-2131 authorizes a state agency of board to grant easements to municipalities, provided the agency has custody and control of the real property. In this instance, no one agency or board has custody and control of the Kansas River. Therefore, the easement must be granted by the legislature. Precedence for granting an easement is found in K.S.A. 82a-212, K.S.A. 82a-213 and K.S.A. 82a-214.

I would ask this Committee to favorably report House Bill 2115.

Respectfully submitted,

Elsbeth D. Schafer  
Assistant City Attorney

EDS/kld

(ATTACHMENT II) LOCAL GO 3/26/87

TESTIMONY BY WAYLAND J. ANDERSON  
ASSISTANT CHIEF ENGINEER  
DIVISION OF WATER RESOURCES  
KANSAS STATE BOARD OF AGRICULTURE  
TO  
SENATE COMMITTEE ON LOCAL GOVERNMENT  
HOUSE BILL NO. 2115  
March 26, 1987

Thank you, Chairman Montgomery and Members of the Committee, for this opportunity to appear. In accordance with the provisions of K.S.A. 82a-301 et seq. relating to the placing of obstructions in streams, the City of Topeka has recently applied for a permit to construct a weir across the Kansas River. In accordance with this application, a permit was issued and plans approved by the Chief Engineer, Division of Water Resources, for the construction of the weir, but the approval specifically provided that the permit did not constitute an easement to construct the weir on State owned property.

Under Kansas State Law, the State of Kansas is the owner of the bed and banks of any navigable river within the State of Kansas up to the ordinary high water mark. The Kansas River is a navigable river under State Law. The City of Topeka would like to construct this weir on the bed and banks of the Kansas River which are owned by the State of Kansas.

The City of Topeka has consulted with Mr. John Campbell, of the Attorney General's Office, and the Division of Water Resources concerning House Bill 2115. The Division of Water Resources feels that this Bill is necessary in order for the City of Topeka to acquire a necessary easement in order to construct the proposed weir across the Kansas River bed. The Division of Water Resources supports passage of House Bill 2115.

Thank you for this opportunity to appear and I would be happy to answer any questions you might have.



STATE OF KANSAS



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER ELECTIONS  
FEDERAL AND STATE AFFAIRS  
JUDICIARY

WILLIAM R. ROY, JR.  
REPRESENTATIVE, FIFTY-THIRD DISTRICT  
STATE CAPITOL  
TOPEKA, KANSAS 66612

TESTIMONY BEFORE SENATE LOCAL GOVERNMENT COMMITTEE

House Bill 2357, March 26, 1987

Members of the Committee, I appear today in support of House Bill 2357. It is a bill sponsored by Representative Acheson and me at the request of the Downtown Topeka Business District.

Under current law, a business district can be created and incur obligations. However, at any time following its creation a petition in opposition to the continuation of the district may be filed, and upon a vote of members of the district, the district immediately is dissolved. This creates a problem insofar as the district may incur obligations, but not remain intact to fulfill those obligations.

This bill creates a degree of permanency in the formation of a district. It allows the district to be dissolved, but only within the first forty-five days. If not dissolved, the district is effective through the end of the calendar year. The district must then be renewed annually thereafter.

I urge your favorable consideration of House Bill 2357.

(ATTACHMENT IV) LOCAL GO 3/26/87

# Establishing a Business Improvement District

*EDITOR'S NOTE. This report was the basis of remarks by E.A. Mosher, Executive Director of the League of Kansas Municipalities, to the Kansas Main Street Conference held on October 22, 1986. Business improvement districts now exist in only a few Kansas cities, including Manhattan (2), Hutchinson, Salina, Lawrence (in process) and Emporia (1987). However, it is under serious consideration in other cities, including Topeka, in part because of a resurgence of interest in the revitalization of downtown areas in Kansas. The report by Mosher, who was active in the preparation and lobbying for the League-sponsored bill which created the business improvement district law, primarily deals with the concepts and purposes of the law. While the procedure for creating and operating a district is briefly discussed, reference should be made to the enabling statute.*

The business improvement district act, K.S.A. 12-1781 *et seq.*, as enacted by the 1981 legislature, authorizes any Kansas city to establish a business improvement district (BID). The primary purpose of the act is to provide a method of financing "additional and extended services to businesses" within the district. It was intended to be supplemental to other private business actions, individually and collectively through non-profit groups like a chamber or a downtown development group. And it was intended to be supplemental to other public (city) actions to support and service business areas.

The legislative intent that a BID be a joint public-private initiative is assured by the legal requirements that (1) a planning committee be appointed to initiate the district; (2) an advisory board representative of businesses within the district be appointed, charged with the development of an annual program of services and a recommended

budget; and (3) a mandate that the district be discontinued upon the filing of a petition in opposition signed by not less than a majority of the businesses within the district.

## "Services," Not "Capital Improvements"

It is important to note that the word "improvement" is used in the act in the sense of "improving" and not in the sense of making capital or physical improvements. The term "services" is repeated frequently throughout the act, with never a reference to the making of a capital improvement which might require multi-year or debt financing. The intent of the drafters of the bill, and the obvious legislative intent of the act, is that a BID is a mechanism to provide services. Other means exist by which capital improvements can be financed in business areas, including the levying of special assessments. The BID act was designed to be supplemental and consistent with other Kansas statutes and city powers. In my judgment, we ought not to try to make it something else.

## Additional Services

It is also important to understand that a basic thrust of the act is to provide a method by which special or "additional and extended" services may be provided to a defined area, at the expense of businesses within the district instead of the city at large. As an example, additional police services may be provided within and at the expense of businesses in the district, over and above the normal level of police protection provided throughout the city. The act should not be used to shift the general, citywide expense of common and traditional services from the city at large to the district.

## On Businesses, Not Property

Another important concept of the law is that the annual service fees are on the "businesses," and not on property (K.S.A. 12-1791). The ownership of the property is irrelevant. Even city- or church-owned property that might otherwise be tax-exempt is considered a "business" unless the property is "used exclusively" for an exempt purpose. Because of this, proposals that service fees be collected through the property tax system are inconsistent with the intent of the act.

## Types of Services

K.S.A. 12-1784 specifies the kinds of services that may be provided within an improvement district. It is very broad, and refers to "such services as will restore or promote the economic vitality of the district and the general welfare of the city." While there is a specification of some services, these are simply illustrative. Further, subsection (f) of K.S.A. 12-1784 concludes that the district may provide "any other services which the city is authorized to perform and which the city does not also perform to the same extent on a citywide basis."

To supplement this broad discretion, the act does specify some *examples* of services, as follows:

(a) Beautification, such as by landscaping and plantings, fountains, shelters, benches, sculptures, signs, lighting, decorations and similar amenities, "including the maintenance thereof."

(b) Special or additional public services, such as sanitation, security of persons and property, and the maintenance of public facilities, including sidewalks and other public areas.

(c) Financial support of public transportation services and vehicle parking facilities open to the public, including the operation and maintenance of parking facilities.

(d) Development of plans for the general architectural design of the district and plans for future development.

(e) Development and support of community events and activities.

(f) Any other services.

## Public Funds

While the act encourages the formation and operation of business improvement districts as a joint private-public venture, a BID is, in fact, a *governmental operation*. The service fees are public funds, and are subject to the same kinds of procedural and legal restraints as apply to the use of other public moneys, such as property taxes. The expenditure of service fees, apply to within the required separate fund required by K.S.A. 12-1792, is subject to the same cash basis, budget and "public purpose" requirements as are any other public funds. As a result, it is the elected governing body of the city that must make all the final deci-

sions, not the advisory board and not those who pay the bill.

Even at the recommendation of the advisory board, and with a unanimous vote of the governing body, a city may not use public funds for nongovernmental purposes. A city may not "give away" public funds, no matter how laudible the purpose. Public money must be used for a public, governmental purpose, and for a purpose within the jurisdiction of the controlling agency. Contracts are permitted; a city with a BID could contract with a non-profit or even a for-profit agency to provide specified services. But it may not make "grants" or "gifts" except pursuant to an agreement that a public service will be provided.

### Annual Service Fees

Under K.S.A. 12-1791, broad authority is given to the city governing body to determine the annual business improvement service fees applicable to businesses within the district. The act permits the governing body to provide for a "reasonable classification" of businesses, and provides that the annual fees may be based on a variety of factors, such as physical space, front footage or number of employees.

The assessed valuation of property for tax purposes is not included as one of the listed statutory factors. In itself, this omission does not appear to exclude its use, since "such other factors or combination thereof as shall be deemed reasonable," may be used. However, business service fees based substantially on assessed valuation appear vulnerable to legal challenge. There is a standard procedure for levying *ad valorem* property taxes in Kansas. Further, by definition, property taxes are based on "value," not "benefits" — the concept of BID financing.

### The "Utility" Concept — Coordination

In municipal parlance, a BID is essentially a "utility." The service fees go into a special fund, and the moneys may be used only for services for the district. However, it is not an exclusive means to provide public services to the district — a fact clearly indicated by the statutory purpose of a BID: to provide "additional or extended" services. The BID, and its service role, should be integrated and coordinated with the total city "system." In my own judgment, attempts to make it a "captive" of the businesses involved, operating independently of the city, will not serve the best interests of the business involved.

### Collecting the Fees

Unpaid annual BID service fees do not become a lien against the benefitted property as do delinquent taxes, or sewerage service charges. There is no means to turn off service as can be done for delinquent

water bills. There is no license to a business which can be denied on failure to pay the bill. How do you collect from the recalcitrant business owner?

The answer, I think, is a combination of persuasion and force — persuasion by the city and by those businesses that do pay, and force through civil remedies available for the collection of debt owed the city. The city may haul the delinquent business into municipal court — the fees are levied by ordinance and ordinance violations are subject to prosecution. Indeed, there appears to be nothing to prohibit the fee-levying ordinance from providing a penalty for failure to pay.

In addition, a civil action could be brought in district court for the unpaid "debt," or in the small claims court if the amount does not exceed the \$1,000 limit upon small claims actions. The collection experience of at least one Kansas city indicates that reliance on public spirited "voluntary contributions" does not work well, and unenforced collections only breeds further delinquencies. If a city doesn't want to force collections, it probably shouldn't try the BID approach.

### Procedure

The procedure for establishing a business improvement district is set forth in the state law. In brief, it involves the following steps: (1) The mayor appoints a district planning committee. (2) The planning committee studies and develops preliminary plans for the establishment and operation of the district, and submits its report and recommendations to the city governing body. (3) The governing body initiates the formation of the district by the adoption of a resolution of intent, which describes the boundaries, presents a general description of the services to be provided and the estimated annual costs during the next three years, proposes a method of financing, and schedules a public hearing following published and mailed notices. (4) Following the public hearing, the governing body may create the district by passing an ordinance which describes the boundaries, summarizes the service and financing methods and provides for the appointment of a district advisory board. (5) The district advisory board, representative of businesses within the district, annually submits to the governing body a program of recommended services and an annual budget. (6) The services to be provided and the supporting fees are handled through the annual city budget, in the same manner as are other city programs and expenditures. The same procedure is required for each BID that is formed.

Unlike some other district formation procedures, such as the establishment of special assessment benefit districts for certain capital improvements, there is no statutory procedure for a legally-binding protest peti-

tion to be submitted at or before the public hearing. However, there is a "stop procedure." Under K.S.A. 12-1789, the owners of businesses within the district may file a petition in opposition to the continuation of the BID. Upon a finding that a majority of the district's businesses have signed the petition, the governing body is required to void the district, repeal the ordinance and refund any unused moneys on a pro rata basis. This potential for "mid-stream" discontinuation, while perhaps assuring responsiveness to the district businesses, presents some potential problems. It is inconsistent with the three-year planning requirement of other sections of the act, and it could even stop a current year budgeted service program. Further, it could nullify annual phase-in programs such as beautification improvements scheduled over a three-year period, with one-third of the cost financed each year from current revenues.

This discontinuation procedure was one of the "prices" paid to secure legislative approval of the original bill. Amendments to the act relating to the voidance of the district by remonstrance petition appears appropriate. For example, a requirement that the petition must be filed by not later than July 1, in order to abolish the district at the end of the current calendar budget year, would seem reasonable.

### Conclusion

At the present time, only a few Kansas cities have business improvement districts, despite its availability. Why aren't there more?

The answers are several, and probably include (1) we don't need it, (2) we don't care, (3) we (businesses) can't afford it, and (4) the procedure is too complicated. The first three reactions are clearly local decisions and heavily influenced by local leadership, both public and private. The fourth response — it's too complicated — is of questionable validity. The decision may be difficult and time consuming — defining the district, determining the services and scheduling the fees — especially given the nature of people who tend to operate businesses, often fiercely independent and occasionally suspicious of others. ("I sweep my sidewalks; why should I pay for Sam's sweeping?") The process of building consensus can take a lot of time. But the procedure — the legal procedure itself — is not complicated. For businesses and cities who do care, particularly about their downtown areas, a BID ought to be considered.

Finally, it should be noted that a BID does not have to be a "big deal" — covering a large area, with substantial services, and fees. One or more small districts, with only a limited program, are possible, and this could lead to larger districts with expanded programs as experience, and success, may justify.

BUSINESS IMPROVEMENT DISTRICT  
LEVY AND COLLECTION SCHEDULE

JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC JAN  
| | | | | 15 | | 25 | | 10 | | 31 | |

-----  
Any Fees Levied in the  
preceeding year are  
collected. District  
program carried out.  
Funds expended.  
>----->

Advisory Board Report  
is prepared. Program,  
budget, recommended  
fees. Report due no  
later than May 15.  
(K.S.A. 12-1790)  
>----->

Ordinance levying  
fees adopted.  
(K.S.A. 12-1791)  
Expenditures for  
District included  
in City Budget  
certified to the  
County no later  
than August 25.  
>----->

45 day petition period  
begins with adoption of  
ordinance levying fees.  
The 45 day petition period  
would expire no later  
than October 10.  
(Proposed amendment to  
K.S.A. 12-1789)  
>----->

If a valid petition  
were received, an  
ordinance would be  
adopted which would  
disorganize the  
District as of the  
end of the calendar  
year.  
>----->

(or)

Fees would be  
collected for  
next year.  
>----->

A VI

TO: Members of Senate Local Government Committee

RE: House Bill 2357 Regarding Business Improvement Districts

FROM: Austin Nothern, Chairman, Downtown Topeka Business  
Improvement District Planning Committee

DATE: March 26, 1987

Dear Committee Members:

In December, 1986 the Topeka City Council established by ordinance a business improvement district for the downtown Topeka area. This was the result of some ten months of study and work by our Committee and the City Council and Mayor. After working with the statute and actually going through the process of establishing a district, our Committee felt that there should be several changes made to this statute to make the BID concept more practical and useable.

House Bill 2357 would amend the statute to provide that a protest petition to dissolve a business improvement district must be filed within the 45-day period following creation of the district, or within 45 days after the adoption of the ordinance each year which establishes the budget for the following year.

The statute as it currently stands permits a city to create a business improvement district, and annually thereafter to establish its budget and assessment for the following year. However, the BID can be disorganized and dissolved at any time, even in mid-year, by a protest petition signed by over fifty percent of the businesses within the district. This particular feature makes budgeting and planning uncertain and difficult for even one year at a time since there is no way to know when the district might be dissolved.

The services which a business improvement district might wish to provide, such as litter control and cleanup, flowers, landscaping improvements or other beautification, or promotional programs require a period of time to be meaningful or successful. They will generally necessitate the hiring of some personnel or making contractual arrangements with independent contractors to provide these services. There is a difficulty in hiring people or contracting for services if the district can be almost immediately dissolved at any time and the budgeted funds for that year must be returned.

Our Committee felt that while the businesses within a district ought to have the opportunity to dissolve by protest, that opportunity ought to be exercised within a specific period of time following adoption of the ordinance which sets the levy, and if it was not so exercised, then the district should be permitted to operate under its budget for the next calendar year. This would permit operation and planning for one year at a time while still preserving a reasonable right to dissolve.

(ATTCHMENT V ) LOCAL GO 3/26/87

House Bill 2357 is designed to accomplish this singular purpose. It provides a 45-day period after initial creation of the district, or after the adoption of an ordinance establishing an annual service fee within which a protest can be filed, and the district will then be dissolved at the end of that calendar year. If such a protest petition is filed within that time period, it will in effect prohibit any levy for the ensuing year, but the district will be permitted to finish out its current calendar year. We believe that these changes will permit orderly planning while still permitting a reasonable means of terminating the district.

Austin Nothern

AN:dmt



# League of Kansas Municipalities

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

TO: Senate Committee on Local Government  
FROM: Kevin R. Davis, Attorney  
DATE: March 26, 1987  
SUBJECT: HB 2357--Business Improvement Districts

The League of Kansas Municipalities has taken a position in support of HB 2357.

We believe that this amendment will provide for the orderly dissolution of business improvement districts (BIDs). Rather than terminating the BID immediately after receipt of a qualifying petition, this new procedure allows for the completion of a logical budget and service contract period, i.e., the calendar year.

This appears to be a fair and logical treatment of businesses since they were originally involved as the district planning committee charged with the responsibility of estimating the "annual cost" of services over the next three years (K.S.A. 12-1785). K.S.A. 12-1790 further requires the business advisory board to recommend a program of services for the "calendar year." Therefore, the clear intent of the BID act is accomplished on an annual calendar year budget and presumably, the city would not create a BID without enthusiastic support of the budget by at least a majority of the businesses in the district.

We feel this amendment will provide for the most responsible planning and budgeting for service delivery, as well as for a fiscally responsible means to dissolve a BID and is clearly consistent with the intent of the original act.

(Attachment VI ) Local Go 3/26/87



# Establishing a Business Improvement District

**EDITOR'S NOTE.** *This report was the basis of remarks by E.A. Mosher, Executive Director of the League of Kansas Municipalities, to the Kansas Main Street Conference held on October 22, 1986. Business improvement districts now exist in only a few Kansas cities, including Manhattan (2), Hutchinson, Salina, Lawrence (in process) and Emporia (1987). However, it is under serious consideration in other cities, including Topeka, in part because of a resurgence of interest in the revitalization of downtown areas in Kansas. The report by Mosher, who was active in the preparation and lobbying for the League-sponsored bill which created the business improvement district law, primarily deals with the concepts and purposes of the law. While the procedure for creating and operating a district is briefly discussed, reference should be made to the enabling statute.*

The business improvement district act, K.S.A. 12-1781 *et seq.*, as enacted by the 1981 legislature, authorizes any Kansas city to establish a business improvement district (BID). The primary purpose of the act is to provide a method of financing "additional and extended services to businesses" within the district. It was intended to be supplemental to other private business actions, individually and collectively through non-profit groups like a chamber or a downtown development group. And it was intended to be supplemental to other public (city) actions to support and service business areas.

The legislative intent that a BID be a joint public-private initiative is assured by the legal requirements that (1) a planning committee be appointed to initiate the district; (2) an advisory board representative of businesses within the district be appointed, charged with the development of an annual program of services and a recommended

budget; and (3) a mandate that the district be discontinued upon the filing of a petition in opposition signed by not less than a majority of the businesses within the district.

## "Services," Not "Capital Improvements"

It is important to note that the word "improvement" is used in the act in the sense of "improving" and not in the sense of making capital or physical improvements. The term "services" is repeated frequently throughout the act, with never a reference to the making of a capital improvement which might require multi-year or debt financing. The intent of the drafters of the bill, and the obvious legislative intent of the act, is that a BID is a mechanism to provide *services*. Other means exist by which capital improvements can be financed in business areas, including the levying of special assessments. The BID act was designed to be supplemental and consistent with other Kansas statutes and city powers. In my judgment, we ought not to try to make it something else.

## Additional Services

It is also important to understand that a basic thrust of the act is to provide a method by which special or "additional and extended" services may be provided to a defined area, at the expense of businesses within the district instead of the city at large. As an example, additional police services may be provided within and at the expense of businesses in the district, over and above the normal level of police protection provided throughout the city. The act should not be used to shift the general, citywide expense of common and traditional services from the city at large to the district.

## On Businesses, Not Property

Another important concept of the law is that the annual service fees are on the "businesses," and not on property (K.S.A. 12-1791). The ownership of the property is irrelevant. Even city- or church-owned property that might otherwise be tax-exempt is considered a "business" unless the property is "used exclusively" for an exempt purpose. Because of this, proposals that service fees be collected through the property tax system are inconsistent with the intent of the act.

## Types of Services

K.S.A. 12-1784 specifies the kinds of services that may be provided within an improvement district. It is very broad, and refers to "such services as will restore or promote the economic vitality of the district and the general welfare of the city." While there is a specification of some services, these are simply illustrative. Further, subsection (f) of K.S.A. 12-1784 concludes that the district may provide "any other services which the city is authorized to perform and which the city does not also perform to the same extent on a citywide basis."

To supplement this broad discretion, the act does specify some *examples* of services, as follows:

(a) Beautification, such as by landscaping and plantings, fountains, shelters, benches, sculptures, signs, lighting, decorations and similar amenities, "including the maintenance thereof."

(b) Special or additional public services, such as sanitation, security of persons and property, and the maintenance of public facilities, including sidewalks and other public areas.

(c) Financial support of public transportation services and vehicle parking facilities open to the public, including the operation and maintenance of parking facilities.

(d) Development of plans for the general architectural design of the district and plans for future development.

(e) Development and support of community events and activities.

(f) Any other services.

## Public Funds

While the act encourages the formation and operation of business improvement districts as a joint private-public venture, a BID is, in fact, a *governmental operation*. The service fees are public funds, and are subject to the same kinds of procedural and legal restraints as apply to the use of other public moneys, such as property taxes. The expenditure of service fees, apply to within the required separate fund required by K.S.A. 12-1792, is subject to the same cash basis, budget and "public purpose" requirements as are any other public funds. As a result, it is the elected governing body of the city that must make all the final deci-

sions, not the advisory board and not those who pay the bill.

Even at the recommendation of the advisory board, and with a unanimous vote of the governing body, a city may not use public funds for nongovernmental purposes. A city may not "give away" public funds, no matter how laudible the purpose. Public money must be used for a public, governmental purpose, and for a purpose within the jurisdiction of the controlling agency. Contracts are permitted; a city with a BID could contract with a non-profit or even a for-profit agency to provide specified services. But it may not make "grants" or "gifts" except pursuant to an agreement that a public service will be provided.

### Annual Service Fees

Under K.S.A. 12-1791, broad authority is given to the city governing body to determine the annual business improvement service fees applicable to businesses within the district. The act permits the governing body to provide for a "reasonable classification" of businesses, and provides that the annual fees may be based on a variety of factors, such as physical space, front footage or number of employees.

The assessed valuation of property for tax purposes is not included as one of the listed statutory factors. In itself, this omission does not appear to exclude its use, since "such other factors or combination thereof as shall be deemed reasonable," may be used. However, business service fees based substantially on assessed valuation appear vulnerable to legal challenge. There is a standard procedure for levying *ad valorem* property taxes in Kansas. Further, by definition, property taxes are based on "value," not "benefits" — the concept of BID financing.

### The "Utility" Concept — Coordination

In municipal parlance, a BID is essentially a "utility." The service fees go into a special fund, and the moneys may be used only for services for the district. However, it is not an exclusive means to provide public services to the district — a fact clearly indicated by the statutory purpose of a BID: to provide "additional or extended" services. The BID, and its service role, should be integrated and coordinated with the total city "system." In my own judgment, attempts to make it a "captive" of the businesses involved, operating independently of the city, will not serve the best interests of the business involved.

### Collecting the Fees

Unpaid annual BID service fees do not become a lien against the benefitted property as do delinquent taxes, or sewerage service charges. There is no means to turn off service as can be done for delinquent

water bills. There is no license to do business which can be denied on failure to pay the bill. How do you collect from the recalcitrant business owner?

The answer, I think, is a combination of persuasion and force — persuasion by the city and by those businesses that do pay, and force through civil remedies available for the collection of debt owed the city. The city may haul the delinquent business into municipal court — the fees are levied by ordinance and ordinance violations are subject to prosecution. Indeed, there appears to be nothing to prohibit the fee-levying ordinance from providing a penalty for failure to pay.

In addition, a civil action could be brought in district court for the unpaid "debt," or in the small claims court if the amount does not exceed the \$1,000 limit upon small claims actions. The collection experience of at least one Kansas city indicates that reliance on public spirited "voluntary contributions" does not work well, and unenforced collections only breeds further delinquencies. If a city doesn't want to force collections, it probably shouldn't try the BID approach.

### Procedure

The procedure for establishing a business improvement district is set forth in the state law. In brief, it involves the following steps: (1) The mayor appoints a district planning committee. (2) The planning committee studies and develops preliminary plans for the establishment and operation of the district, and submits its report and recommendations to the city governing body. (3) The governing body initiates the formation of the district by the adoption of a resolution of intent, which describes the boundaries, presents a general description of the services to be provided and the estimated annual costs during the next three years, proposes a method of financing, and schedules a public hearing following published and mailed notices. (4) Following the public hearing, the governing body may create the district by passing an ordinance which describes the boundaries, summarizes the service and financing methods and provides for the appointment of a district advisory board. (5) The district advisory board, representative of businesses within the district, annually submits to the governing body a program of recommended services and an annual budget. (6) The services to be provided and the supporting fees are handled through the annual city budget, in the same manner as are other city programs and expenditures. The same procedure is required for each BID that is formed.

Unlike some other district formation procedures, such as the establishment of special assessment benefit districts for certain capital improvements, there is no statutory procedure for a legally-binding protest peti-

tion to be submitted at or before the public hearing. However, there is a "stop procedure." Under K.S.A. 12-1789, the owners of businesses within the district may file a petition in opposition to the *continuation* of the BID. Upon a finding that a majority of the districts' businesses have signed the petition, the governing body is required to void the district, repeal the ordinance and refund any unused moneys on a pro rata basis. This potential for "mid-stream" discontinuation, while perhaps assuring responsiveness to the district businesses, presents some potential problems. It is inconsistent with the three-year planning requirement of other sections of the act, and it could even stop a current year budgeted service program. Further, it could nullify annual phase-in programs, such as beautification improvements scheduled over a three-year period, with one-third of the cost financed each year from current revenues.

This discontinuation procedure was one of the "prices" paid to secure legislative approval of the original bill. Amendments to the act relating to the voidance of the district by remonstrance petition appears appropriate. For example, a requirement that the petition must be filed by not later than July 1, in order to abolish the district at the end of the current, calendar budget year, would seem reasonable.

### Conclusion

At the present time, only a few Kansas cities have business improvement districts, despite its availability. Why aren't there more?

The answers are several, and probably include (1) we don't need it, (2) we don't care, (3) we (businesses) can't afford it, and (4) the procedure is too complicated. The first three reactions are clearly local decisions and heavily influenced by local leadership, both public and private. The fourth response — it's too complicated — is of questionable validity. The decision may be difficult and time consuming — defining the district, determining the services and scheduling the fees — especially given the nature of people who tend to operate businesses, often fiercely independent and occasionally suspicious of others. ("I sweep my sidewalks; why should I pay for Sam's sweeping?") The process of building consensus can take a lot of time. But the procedure — the legal procedure itself — is not complicated. For businesses and cities who do care, particularly about their downtown areas, a BID ought to be considered.

Finally, it should be noted that a BID does not have to be a "big deal" — covering a large area, with substantial services, and fees. One or more small districts, with only a limited program, are possible, and this could lead to larger districts with expanded programs as experience, and success, may justify.

MARVIN E. SMITH  
REPRESENTATIVE, FIFTIETH DISTRICT  
SHAWNEE AND JACKSON COUNTIES  
123 N.E. 82ND STREET  
TOPEKA, KANSAS 66617-2209



TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
MEMBER: EDUCATION  
TAXATION  
TRANSPORTATION

MARCH 26, 1987

HB 2360  
SENATE LOCAL GOVERNMENT

MR. CHAIRMAN AND MEMBERS OF COMMITTEE:

SOME 4-H CLUB LEADERS AND MEMBERS OF SHAWNEE COUNTY 4-H FAIR CONTACTED SOME MEMBERS OF THE SHAWNEE COUNTY LEGISLATIVE DELEGATION CONCERNING INTRODUCING PROPOSED LEGISLATION FOR PROVIDING MORE STRUCTURE FOR A SHAWNEE COUNTY FAIR BOARD.

SOME RECENT EVENTS THE PAST FEW YEARS, HAVE CAUSED REASON FOR CONCERN.

THE 4-H FAIR BOARD A FEW YEARS AGO PAID THE SUNFLOWER EXPO \$200.00 PER YEAR ANNUAL RENT FOR USING THE FACILITIES FOR APPROXIMATELY A WEEK TO CONDUCT THE FAIR. LAST YEAR THE RENT TO KANSAS EXPO WAS INCREASED TO \$15,000.00 AND THIS YEAR THE RENT PAYMENT IS TO BE \$17,710 FOR THE FAIR.

IT APPEARS SHAWNEE COUNTY NEEDS AN ELECTED FAIR BOARD OF AND BY QUALIFIED ELECTORS TO ADMINISTER THE FAIR.

WE WOULD APPRECIATE YOUR FAVORABLE CONSIDERATION.

(ATTACHMENT VII ) LOCAL GO 3/26/87

March 26, 1987

HB 2360  
Senate Local Government Committee

Mr. Chairman and Members of the Committee:

I am Damon Slyter, Chairman of Shawnee County 4-H Livestock Sale. I would like to present a brief history and overview of fairs in Topeka.

The Kansas Free Fair was the first which I recall attending as a teenager about forty years ago. It was a big event which involved surrounding counties in northeast, north central and east central Kansas. Its name was changed to the Sunflower Expo in the 1970's. Many surrounding county fair blue ribbon winners could show at the Fair/Expo. In addition the Shawnee County 4-H Fair was separated from the Kansas Free Fair with no formal structured organization. It has continued as an annual event about the first week of August.

We believe that with the discontinuance of the regional fair/expo about 4-5 years ago, we need to have a recognized county fair association. Presently in Kansas 79 county fairs are registered with Kansas State Board of Agriculture and 117 fairs are listed with the Kansas Fair Association.

We believe that HB 2360 is an act that will provide the structure needed that so many of you already have in your respective counties. We urge your vote for this bill.

I will be followed by the Chairman of the Shawnee County 4-H Fair.

(ATTACHMENT XIII) LOCAL GO 3/26/87

ALX

March 26, 1987

HB 2360  
Senate Local Government Committee

Mr. Chairman and Members of the Committee:

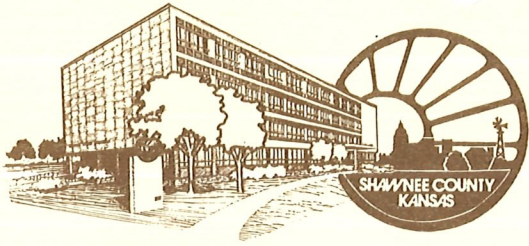
I am John Reilly, President of the Shawnee County 4-H Fair Board.

The County 4-H Fair Board needs more structure and to be recognized as an organization by the State Board of Agriculture. After consulting with the counsels for the Shawnee County Commission and the State Board of Agriculture and members of Shawnee County Legislative Delegation, we have formulated this piece of legislation that would give us this recognition and better structure. The legislation has been reviewed and unanimously approved by the County Extension Council and the County 4-H Fair Board. It is the feeling that this will give us a broader base to offer Shawnee County groups an opportunity to participate. We think that this structure and recognition is 30 years overdue.

I would appreciate your favorable consideration.

(ATTACHMENT IX) LOCAL GO 3/26/87

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Shawnee County  
**Audit — Finance Office**

**J. H. SCHULTE, CPA**  
Financial Administrator  
Suite 201 Courthouse  
Topeka, Kansas 66603-3963  
295-4305

March 26, 1987

Dear Chairman Montgomery and  
Members of the Senate Local Government Committee:

I am J. H. Schulte, CPA, Shawnee County Financial Administrator.

I am here today to discuss the language of House Bill No. 2360 as it relates to present county policy.

In 1983 the County passed a Charter Resolution exempting itself from the General Fund Levy limitations (K.S.A. 79-1946) and the Aggregate Tax Levy Limitations (K.S.A. 79-5001 et. seq.). This change was made to allow better accounting control and flexibility by using a minimum number of funds. To illustrate: the 1986 tax levy was for four tax funds--General, Road and Bridge, Bond and Interest, and Special Liability; the 1984 tax levy consisted of twenty tax levies.

We are now accommodating all the requirements of the various "special" funds such as Mental Health, Ambulance, Agricultural Extension, Noxious Weeds, etc. by budgeting an appropriation for these agencies as a line item in the General Fund.

When the newly-created Shawnee County Fair Association certifies their budget to the county, the board of county commissioners may choose to make an appropriation. It should be pointed out that by budgeting an appropriation from the General Fund, the guidelines of Section 5 relating to making a resolution, publication and election requirements, tax lid exemption, and tax rate limitation will not apply.

Since this is a Shawnee County Bill, I recommend that Section 5 be deleted. This would limit this Bill to recognizing the Shawnee County Fair Association and not conflict with present budget-making procedures.

Also in Section 2, line 0098, strike the words county clerk and county clerk's. The line should read ". . . Board of County Commissioners, and upon the Board's approval endorsed on. . . ". This change is necessary as in Shawnee County it is the Board's responsibility to determine the amount and sufficiency of surety bonds.

(ATTACHMENT X ) LOCAL GO 3/26/87

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# Kansas Association of Counties

*Serving Kansas Counties*

212 S.W. Seventh Street, Topeka, Kansas 66603      Phone (913) 233-2271

March 25, 1987

To:      Senator Don Montgomery, Chairman  
         Members of the Senate Local Government Committee

From:    Bev Bradley, Legislative Coordinator  
         Kansas Association of Counties

Re:      HB-2394

Thank you Mr. Chairman and members of the committee, for the opportunity to submit testimony on HB-2394. The Kansas Association of Counties supports part of the bill in that the date for the submission of the budget is in line with that of other county budgets.

Our legislative policy statement adopted in November addresses extension in 2 ways. We appreciate the phrase "on or before August 1" in this bill as the date for extension budget approval. This was of major concern to counties and we will appreciate your favorable consideration.

Some boards of commissioners will be disappointed, however, that the voting procedure remains the same in HB-2394 as it is currently which does not require a majority vote of the county commission to have the budget approved. The Kansas Association of Counties would recommend amending K.S.A. 2-610 to provide for the approval of the extension budget by a majority of the county governing board.

Thank you for your interest.

ATTACHMENT XI ) LOCAL GO 3/26/87