1/2/24

Approved March 1, 1988
Date

MINUTES OF THE Senate COMMITTEE ON Local Government.

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

9:09 a.m./pXX on February 24, 1988 in room 531-N of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Theresa Kiernan and Lila McClaflin

Conferees appearing before the committee:
Representative Harold Guldner
Pete McGill, Kansas Legislative Policy Group
Tom Bell, Kansas Hospital Association
David Bayouth, Sedgwick County, Wichita
Dean Otterson, Businessman
Barney Kreitzer, Businessman, Wichita, KS.
Ernie Mosher, Kansas League of Municipalities
Senator James Francisco

The hearing on H.B. 2180 was opened. H.B. 2180 concerns the issuance of no-fund warrents for certain hospitals. It was sponsored by Representative Guldner, and was introduced during the 1987 session. The Chairman called on Representative Guldner to brief the committee on the bill.

Representative Guldner stated some counties in his district have requested the bill. It would authorize counties to issue no-fund warrents to cover shortfalls in the operation and maintenance budgets, for county hospitals. Current law authorizes no-fund warrants for district hospitals.

Pete McGill, Kansas Legislative Policy Group, presented written testimony in support of the bill. They believe it will provide more flexibility to local officials (Attachment I).

Tom Bell, Kansas Hospital Association, supported the bill. He stated it provides for consistency between county and district hospital laws, and it gives counties another tool to use (Attachment II).

Senator Ehrlich moved to report H.B. 2180 as amended favorably. Senator Langworthy seconded the motion. The motion carried.

S.B. 641 - concerning municipalities; relating to the privatization of public services and facilities.

The Chairman opened the hearings on S.B. 641. He called attention to the written testimony submitted by the Kansas Department of Health and Environment, their testimony supports S.B. 641, they did recommend an amendment, by adding a section to address facilities which are operated under contract by private entities (Attachment III).

David Bayouth, County Commissioner, Sedgwick County, supported the bill, he stated it would give counties some alternatives for financing county projects. In response to a question, he stated, he was representing himself.

Dean Otterson spoke in support of the bill. He is from Minnesota and they have privatization laws there, he believes it would help local units of government with their plans for financing. He got involved because of a project he was unvolved in in Sedgwick County.

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 Senate COMMITTEE ON Local Government,

room 531-N, Statehouse, at 9:09 a.m./p.m. on February 24, 1988.

The Vice-Chairperson assumed the chair in the absence of the Chairman.

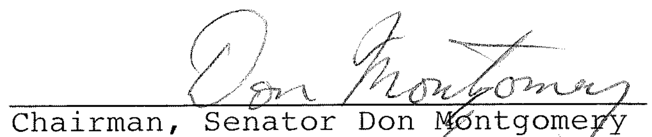
She called on Barney Kreitzer from Wichita, Kansas. Mr. Kreitzer stated he is an investment banker in Wichita. He believes this legislation would be a method for financing some projectd that they are furnishing financing for, he urged support for the bill.

Ernie Mosher, Kansas League of Municipalities, stated the league does not have a stand on the proposal; they do agree with the concept of the bill. The bill as drafted would require considerable "work" as it would affected some 15-20 different statutes. He thought some sections as it is written now would be unconstitutional. He hope to get some signals from the committee as to their intentions. (Attachment IV)

Senator Francisco supported the bill. He stated the NCSL has a thirty minute film on privatization, he would be glad to show it to the committee.
The privatization law is nothing new, legislatures accross the nation are getting into this. The idea is a new idea to us, but it is an idea we need to study, it has a lot of merit.

Senator Daniels moved to adopt the minutes of February 18, 1988. Senator Ehrlich seconded the motion. The motion carried.

The Vice-Chairperson announced action would be taken on S.B. 558, at the next meeting, on February 25, 1988. The meeting adjourned at 9:53 a.m.



Chairman, Senator Don Montgomery

Date: February 24, 1988

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
[illegible]	KG&E	Topeka
Bernie Norwood	none	Lawrence, Ks
Bev Bradley	KS Assoc of Counties	Topeka
B A Krentzer	United Sec Dn	Wichita
Dean S. Ollerson	Miller and Schroeder	Minnesota
Dave Bayouth	Sedg. C	525 W. Wichita
Alan E. Sims	Overland Park	City of Overland Park
Tom Bell	Ks. Hosp. Assn.	Topeka
Terry Stevens	City of Topeka	Topeka
Karl Mueldener	Hlth & Env.	Topeka
Alan Steppat	Pete McGill & Assoc.	Topeka
Pete McGill	KLPG	Topeka

Kansas Legislative Policy Group
301 Capitol Tower, 400 West Eighth, Topeka, Kansas 66603, 913-233-2227
TIMOTHY N. HAGEMANN, Executive Director

February 24, 1988

TESTIMONY
to
SENATE LOCAL GOVERNMENT COMMITTEE
HB 2180

Mr. Chairman and members of the Committee, I am Pete McGill of Pete McGill and Associates. We represent the Kansas Legislative Policy Group which is an organization of county commissioners from rural areas of the State. We appear today in support of House Bill 2180, as amended by the House.

As you are probably aware, the issuance of no-fund warrants by local officials because of insufficient revenues is governed by K.S.A. 79-2938. That statute requires application to the State Board of Tax Appeals for approval and prescribes requirements that must be accommodated as well as tests that must be met before the Board's approval may be granted.

Furthermore, the Board must conduct a public hearing and publish notices at least ten days prior to the hearing. In summary, the process is somewhat cumbersome and time consuming. An exception to the general procedure is found in K.S.A. 80-2519. That statute grants authority to

district hospital boards to issue no-fund warrants without receiving Board of Tax Appeals approval.

As you know too well, revenue estimating is not a precise science. Attached to this statement is a copy of testimony provided the House Committee by Hamilton County Commissioner Bill Wood. Commissioner Wood documented the revenue sources which financed the Hamilton County Hospital during 1986. You will note that property taxes funded only 20 percent of that hospital's operations. The other sources, particularly Medicare reimbursements, are somewhat unpredictable.

Normally, when public officials recognize that revenues are falling short of expectations it becomes necessary to curtail expenditures regardless of authorized spending. In the case of county hospitals, however, we are dealing with the provision of important public health services and response to accidental injuries. County Commissioners would prefer to deal with such budget crises in a more acceptable manner, that is, the expeditious issuance of no-fund warrants. Thus, our reason for requesting enactment of HB 2180.

At our request the House Committee adopted one amendment to HB 2180. In its original form, it required that "Warrants issued under this section shall be issued, registered, redeemed and shall bear interest in the manner

and be in the form prescribed by K.S.A. 79-2940, and amendments thereto" (lines 27-30). K.S.A. 79-2940 requires that such warrants shall bear the notation "issued pursuant to authority granted by order No. _______, dated _______ of the state board of tax appeals."

Obviously, if HB 2180 were law, there would be no order by the Board of Tax Appeals. Therefore it would be impossible to comply with the prescribed form. For this reason, we requested that the words "and be in the form" be deleted from line 29.

In conclusion, we believe that HB 2180 will provide more flexibility to local officials who are elected by the people in their communities to handle their affairs in a responsible manner. We respectfully request that you recommend HB 2180 for passage, as amended.

Thank you for your time and consideration.

Mr. Chairman and members of the Committee, I am Bill Wood, Chairman of the Board of Hamilton County Commissioners. I appear today in support of House Bill 2180.

I would like to emphasize that there is good precedence for the passage of this measure in that the language is identical to that of KSA 80-2519 which gives District Hospital Boards the authority to issue no-fund warrants. We feel County Commissioners need the same authority.

Budgeting for a hospital is different and more difficult than most other County functions because the majority of revenue is derived from variable sources. For calendar year 1986 Hamilton County Hospital had revenues from the acute care side of $1,008,000. This income was received from the following sources:

1. 35% Commercial Insurance
2. 20% County Mill levy
3. 10% Welfare and Private Pay
4. 35% Medicare

All of these sources except County Mill levy will fluctuate as a result of patient load. In addition the last category, Medicare, has fluctuated greatly in the past few years due to changes in Medicare regulations. The most severe change was the implementation of the Diagnostic Related Group (DRG) method of reimbursement to hospitals. Under this plan each particular type of illness receives a set reimbursement regardless of length of stay in the hospital.

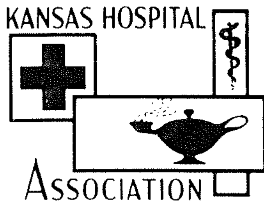
This reduction in reimbursement caused Hamilton County Hospital to experience a revenue shortage in 1985. No fund warrants were obtained pursuant to KSA 79-2938. However, the amount received, due to the limitation to 25% of the amount that could have been levied, was still not sufficient. Fortunately we then had Revenue Sharing funds to fall back on. This is not the case today.

We feel that government officials at all levels try to provide good service and still keep taxes as low as possible. It is easier to keep mill levies lower, if you know you have a safety valve such as House Bill 2180 provides, should revenues be over estimated.

Western Kansas citizens have shown a desire for good health care in spite of the increased costs as evidenced by the large margin that increased levy limits have been passed. However, if this attitude should change, the people still have the final say through the 5% protest clause included in the bill.

In conclusion I feel that House Bill 2180 will give County Commissioners an added tool to more efficiently operate their Hospitals.

Thank you for your time and consideration.



Donald A. Wilson
President

February 24, 1988

I. KHA supports HB 2180.

II. There are approximately 50 county hospitals in Kansas. These hospitals generally range in size from 25-50 beds. Because of various factors, many of these hospitals are presently experiencing financial difficulties.

III. HB 2180 gives counties another tool to use in attempting to cope with the problems of the local hospital. The bill does not give counties unlimited authority in this area, but does set up procedures for protest petitions to be filed in case there is opposition to the issuance of the no-fund warrants.

IV. HB 2180 provides for consistency between county and district hospital laws. KSA 80-2519 already allows hospital districts to issue no-fund warrants. HB 2180 would give the same authority to counties that operate hospitals.

(ATTachment II) Local Go 2/24/88

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STATE OF KANSAS

DEPARTMENT OF HEALTH AND ENVIRONMENT
Forbes Field
Topeka, Kansas 66620-0001
Phone (913) 296-1500

Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*
Gary K. Hulett, Ph.D., *Under Secretary*

Written Testimony Presented to

Senate Local Government Committee

by

The Kansas Department of Health and Environment

Senate Bill 641

Mr. Chairman and members of the Committee:

Senate Bill 641 will have little impact on Kansas Department of Health and Environment programs. Publicly and privately owned and operated water supply systems, water pollution control facilities, and solid waste disposal facilities already exist in the State of Kansas. Statutory and regulatory programs to control these facilities apply equally to these facilities whether privately or publicly owned or operated.

We recommend amendment of Senate Bill 641, however, by adding a section to address facilities which are operated under contract by private entities and which remain under complete or partial ownership of the municipality. This new section should require the service contract between the private entity and municipality to clearly specify which party to the contract is responsible for obtaining and complying with necessary environmental permits.

The Committee should also be aware municipalities cannot transfer title of water pollution control facilities built with federal construction grant funds, to a private entity without repayment of the grant to the federal government. Private operation of those facilities is acceptable, however.

Mr. Chairman and Committee Members, we support Senate Bill 641 with the requested amendment.

(Attachment III) Local GO 2/24/88

February 24, 1988

A III

MEMORANDUM

RE: SB 641--Privatization of Public Facilities
FROM: E.A. Mosher, Executive Director, League of Kansas Municipalities
DATE: February 24, 1988

PRELIMINARY DRAFT

SB 641 requires considerable "work" as to its drafting. For example, the provisions of lines 36:37, providing that the act "shall take precedence over any other law to the contrary," may be an unconstitutional amendment by implication. It includes some definitions of terms which are not found, at least by me, within the body of the act. The term "ordinance" is used throughout the bill, although only cities enact ordinances. The attempt, in Section 15, to treat property taxes as special assessments is inconsistent with other Kansas laws. These are a few examples of the many editorial and drafting changes necessary to make SB 641 workable.

The following attempts to identify the principal, substantive provisions of SB 641. Each of these substantive provisions are followed by a comment as to existing, similar powers of municipalities, primarily in application to cities. The bill line number on which the substantive provision begins is cited for each provision.

Line 126, Section 3. Authorizes municipalities to contract for services with a private vendor. Comment: Generally, municipalities now have authority to contract for the performance or securing of public services, subject to the inherent limitations as to who may exercise certain governmental powers.

Line 131. Authorizes municipalties to enter into a service contract for not more than 30 years. Comment: Generally, the cash basis and budget law limits municipal financial commitments (contracts) to one year, although there are some statutory exceptions. Cities may be able to enter into such long-term contracts if authorized by a constitutional home rule ordinance.

Line 145. Under the contract, the municipality may either (a) pledge its full faith and credit or (b) oblige a specific source of payment. Comment: Typically, municipal service contracts are "full faith and credit." The inherent power to contract probably includes the ability to restrict the source of payment, assuming both parties agree to this limitation.

Line 156, Section 5. The contract may authorize the vendor to construct the facilities without compliance with any competitive bidding requirements, under certain stated conditions. Comments: Some municipalities are now required to let at least certain construction contracts by competitive bids. To the extent the contract buys a service, the public bidding requirements of a municipality for construction work may not extend to the private contracts let by the vendor.

Line 176. The service contract may be entered into by negotiations with a single vendor or by competitive negotiations with more than one vendor. Comment: As noted above, statutory competitive bidding requirements for contracts usually relate to construction, not services.

Line 181. To raise funds to pay the contractor for the service, the municipality is authorized to (1) levy property taxes, (2) impose rates and charges, (3) levy special assessments, and (4) exercise other revenue-producing authority. But under this subsection, this authority may be exercised only to the same extent as if the facility was owned and operated by the municipality. Comment: With the latter restraint, in lines 188:191, this subsection would not appear to grant any substantial new authority to the municipality. For example, the municipality could not levy property taxes to purchase services from the vendor unless it could levy taxes to directly provide the same services.

Line 192. This subsection empowers a municipality to levy rates and charges to pay the contractor for the contracted services. Comment: This power is in addition to the more restrictive powers in subsection (1), beginning on line 184. Cities probably have such powers.

Line 205. Rates and charges not paid by the person or property billed become, effectively, a lien against the benefitting property. Comment: As a general rule, under present law, fees and charges against property are property tax liens, while other charges and fees are not.

Line 253, Section 7. As part of the service contract, the municipality may sell or lease its existing related facilities, including land and equipment, to the private contractor. This apparently means, for example, that the city might sell or lease its present sewerage treatment plant to a private vendor, under an agreement whereby the vendor would construct a new, remodeled or expanded treatment plant. Comment: Such action may now be legally possible, with proof of the public purpose.

Line 259, Section 8. Relates to title of the facility under contract, permitting a type of lease-purchase. Comment: Probably specifies an essential provision of a service contract.

Line 266, Section 9. Permits a municipality to acquire an interest in the facility. Comment: Probably a new type of municipal power.

Line 270, Section 10. Authorizes a municipality to acquire an interest in the private vendor, as a joint venture. Comment: There is no known, comparable, existing statutory authority.

Line 276, Section 11. Authorizes a municipality to issue bonds to cover some or all of the cost of a facility, to be owned by the private vendor, if bonds may now be issued for such purposes. The bonds would be limited to revenue bonds, similar to industrial revenue bonds. Comment: Generally, cities may issue revenue bonds for public, revenue-producing enterprises, as well as industrial revenue bonds. This would be a substantial grant of new authority for municipalities other than cities. An amendment to the industrial revenue bond law would probably be required.

Line 288, Section 12. The private vendor would be granted the exclusive right to provide the service, to the same extent as if it were owned and operated by the municipality. Comment: Essential provisions for certain services.

Line 297, Section 13. Authorizes the municipality to exercise eminent domain to acquire property for (a) itself, or (b) the private vendor.

Comment: Generally, cities have such power, for public purposes. This section probably needs more work in application to municipal acquisition of property for the use or ownership of the vendor.

Line 312, Section 15. Property taxes levied for payment of the service fee shall be treated as special assessments. Comment: Intent unknown. Probably cannot be done, at least with such a short provision.

Line 316, Section 16. Apparently provides that if property taxes are levied to pay the service fee, a property tax exemption is obtainable for the vendor-owned facilities used to perform the service. Comment: This section probably needs revision. Generally, facilities must be owned and used for public purposes as a condition for exemption.