

Approved January 26, 1989  
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Sen. Don Montgomery at  
Chairperson

9:00 a.m./~~3:30~~ on January 25, 1989 in room 531-N of the Capitol.

All members were present except:

Committee staff present:

Theresa Kiernan, Revisor of Statutes  
Mike Heim, Legislative Research  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Susan Seltsam, Treasurer's Office  
Steve Lackey, Director, Dept. of Public Works for the City of Wichita  
Bev Bradley, Kansas Association of Counties  
Dave Bayouth, a commissioner from Sedgwick County  
Ernie Mosher, League of Kansas Municipalities  
Ro- Smith, Wichita Independent Business Association  
land

The Chairman began the meeting by recognizing Susan Seltsam of the Treasurer's Office who had a request for the introduction of a bill which would technically amend the general bond law. (See Attachment I). She explained that the bill would change the 30 day provision to 60 days to help bond owners.

Sen. Daniels made a motion that the bill be introduced and referred back to committee, Sen. Langworthy seconded, and the motion carried.

Attention was turned to SB 14 relating to the privatization of certain capital intensive public services. The Chairman reminded the committee of an interim committee report which had been previously distributed to each member and noted that proponents would be heard at this meeting.

Steve Lackey, Director of the Department of Public Works for the City of Wichita, testified first. (See Attachment II). The Chairman commented that the bill is limited to solid waste only, and Mr. Lackey had included water and sewer in his testimony. Mr. Lackey said it was his understanding that there would be an amendment for inclusion of water and sewer.

Bev Bradley, Kansas Association of Counties, followed. (See Attachment III.) The Chairman asked her if she would have a problem with the bill if it were expanded to include water and sewer. She said she would have no problem with this and had addressed only solid waste in her testimony because that is all the bill addresses.

Dave Bayouth, a county commissioner from Sedgwick County, gave further testimony in support of the bill. He would like the bill to be amended to include water and sewage and questioned as to if the bill would include hazardous waste. The Chairman said, in his opinion, the bill would not cover hazardous waste.

Next to testify was Ernie Mosher, League of Kansas Municipalities. (See Attachment IV.) Sen. Ehrlich asked Mr. Mosher if he would be opposed to the street and fleet maintenance amendments offered by Wichita, and Mr. Mosher said he would have no opposition to this. With regard to Section 1 (a) of the bill, the Chairman asked if Mr. Mosher feels it is sufficient in trying to limit services or is a specific amount needed. Mr. Mosher said he feels it was important to make it clear that the procedure is to require more than a one year contract. Sen. Steiniger noted that Kansas' cash basis law is one of the major reasons Kansas has a higher credit rating, and this bill is opening up the Kansas cash basis law.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT,  
room 531-N, Statehouse, at 9:00 a.m./~~XXXX~~p.m. on January 25, 1989.

Sen. Gaines questioned why the service agreement with private contractors is set at 30 years in the bill when it could be set at 20 years as in franchise agreements. Mr. Mosher said he would have no problem with using 20 years in water, sewer or solid waste areas, but there would be some exceptions in energy. Staff noted that there is a 30 year provision in Chapter 65 already. Sen. Gaines then expressed his feeling that New Section 9 dealing with tax exemption for property used for the performance of a public service should be removed. Mr. Mosher said he feels it needs to be worked on in relation to equipment.

Final testimony was given by Roland Smith, Wichita Independent Business Association. (See Attachment V). Mr. Smith also stated that he would support the suggested amendments.

The minutes of January 18 were approved.

The meeting was adjourned.

Date: January 25

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
Rev Bradley	KS Assoc of Counties	Topeka
Dennis Murphy	Ks Dept Health & Env	Topeka
William T. Hart	Ks Bd. of Agric.	Topeka
Susan Siltson	Ks Treasury	✓
JOE MORWELL	STATE TREASURER	✓
STEVE LACKEY	CITY OF WICHITA	WICHITA
Catherine Holdeman	City of Wichita	Wichita
Dennis Stokkoy	CITY OF KCK	KCK
Dave Boyatz	Seeds, Co.	545 N. Miami <sup>Wichita</sup>
Jim Kaup	League of Municipalities	Topeka
Harold Gibbs	Senate Intern	Wichita
JA Idd	KS77A	Wichita
Jerry Marfath	KSC77	Topeka
Edward Amundson	WIBA	Wichita
Glan Steppat	KLPG	Topeka
AND GRANT	KCC	TOPEKA
KEVIN ROBERTSON	Ks Consulting Engis	Topeka

\_\_\_\_\_ BILL NO. \_\_\_\_\_

By

AN ACT concerning the general bond law; requiring notice prior to call of bonds by municipality; amending K.S.A. 1988 Supp. 10-129 and repealing the existing section.

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

Section 1. K.S.A. 1988 Supp. 10-129 is hereby amended to read as follows: 10-129. (a) Whenever any municipality orders the call of any bonds issued by such municipality prior to the date of the maturity of such bonds, it shall be the duty of the clerk or secretary of such municipality to notify:

(1) The state treasurer and paying agent of such call by mailing to the state treasurer and paying agent, by certified mail, at least 30 days prior to the date fixed for the call of such bonds, if such date is prior to September 1, 1989, or at least 60 days prior to the date fixed for the call of such bonds if such date is on or after September 1, 1989, a copy of the order, resolution or ordinance calling such bonds; and

(2) cause the paying agent to notify each presenter of interest coupons or owner of registered bonds that a call has been made as follows:

(A) if the bonds are bearer bonds, each person who last received an interest payment on any such bonds prior to the date fixed for notification of the call of such bonds if the address of such person is known, by mailing to such person, at the last known address thereof, a copy of the order, resolution or ordinance calling such bonds; or

(B) if the bonds are registered, each registered owner of such bonds, or the duly authorized agent thereof, by mailing to such person or authorized agent, at the last known address of such owner or agent, a copy of the order, resolution or ordinance

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Senate Local Gov.  
Attachment I

calling such bonds.

(b) Costs associated with the foregoing provisions shall be paid by the municipality ordering the call of such bonds.

Sec. 2. K.S.A. 1988 Supp. 10-129 is hereby repealed.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

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Senate L 16  
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# WICHITA

January 25, 1989

DEPARTMENT OF  
PUBLIC WORKS  
OFFICE OF THE DIRECTOR  
CITY HALL — EIGHTH FLOOR  
455 NORTH MAIN STREET  
WICHITA, KANSAS 67202

Senate Local Government Committee  
Don Montgomery, Chairman  
State Capitol Building  
Topeka, Kansas 66612

RE: Senate Bill No. 14: Privatization

Ladies and Gentlemen:

Driven by reduced revenue sharing of state and federal agencies and pressure from citizens to curtail tax increases, local governments have been prompted to find innovative ways of continuing service delivery to citizens at lower costs. While no single approach has solved the financial dilemmas encountered, privatization has become a common effort of many jurisdictions aimed at this goal.

The City of Wichita became actively involved in privatization in 1979 when provisions for solid waste removal were discontinued. The City totally "shed" this activity and it is now provided by private companies. Other privatization efforts include numerous consulting activities, cafeteria concessions, landfill operations, custodial (limited), design engineering, and some mass transit services. There are many other services provided through private contractors which could be, or at one time were, delivered by public employees.

Proposed Senate Bill No. 14 would affect local privatization efforts in a positive sense, in that it would allow multiyear contracting for solid waste, water, and sewer activities. At present, the cash basis law limits contracting to one year, thus discouraging private providers from attempting to participate in the provision of capital intensive services. Multiyear contracts should allow greater privatization and more competition to provide the service. The City of Wichita supports such enabling legislation.

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Senate Local Gov.  
Attachment II

The City of Wichita formed a task force in 1988 which is reviewing the concept of privatization. (The Chairman, Bill Watson, spoke to the interim committee last August, expressing the above sentiments.) They will make recommendations on how the City can better organize their privatization efforts which should result in cost savings to taxpayers. Their goal is not to determine which services should be privatized; rather, they will suggest ways in which the City might take a more aggressive stance in consistently reviewing the alternative service delivery options available and, acting upon the same, where appropriate.

The City of Wichita would like to add to the scope of the bill by asking that fleet maintenance and street maintenance be added as an amendment. Currently, due to the magnitude of capital investment and the prospective workload, the City of Wichita could have additional flexibility in managing their assets by allowing multiple year contracts. With the current arrangement, the companies are not given sufficient guarantees with respect to future commitments, thus reducing the economic advantages for privatization.

Thank you for your consideration.

Very truly yours,



Steve Lackey, P.E., Director  
Department of Public Works

SL:sb  
Attachment

1-25-89  
Senate 2/4

SENATE BILL No. 14

By Special Committee on Local Government

Re Proposal No. 34

12-21

18 AN ACT concerning municipalities; relating to the privatization of  
19 certain capital intensive public services; amending K.S.A. 10-1116  
20 and repealing the existing section.

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

22 New Section 1. As used in this act:

23 (a) "Capital intensive public service" means a public service  
24 which requires the investment of capital by a private contractor in  
25 physical facilities which would be amortized over a period exceeding  
26 one year;

27 (b) "public service" means the collection, transportation, proc-  
28 essing, recycling or disposal of solid wastes;

29 (c) "municipality" means any city or county or two or more cities  
30 or counties acting jointly;

31 (d) "private contractor" means one or more persons who are not  
32 a municipality;

33 (e) "service agreement" means any contract between a munici-  
34 pality and a private contractor under which the private contractor  
35 agrees to furnish to the municipality or to any other user a capital  
36 intensive public service and the municipality agrees to pay or cause  
37 to be paid to the private contractor a service fee for such service  
38 setting forth the terms and conditions thereof;

39 (f) "service fee" means the payment the municipality is required  
40 under the service agreement to make, or cause to be made, to the  
41 private contractor, including payments made by third parties to the  
42 private contractor for products or services and credited against pay-  
43 ments the municipality otherwise would have to make or cause to

{street maintenance; fleet maintenance;

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1-25-89  
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"Service to County Government"

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**Executive Director**  
John T. Torbert

January 25, 1989

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

From: Bev Bradley, Legislative Coordinator  
Kansas Association of Counties

Re: SB 14 - Governmental service privatization bill

"The Kansas Association of Counties supports comprehensive legislation to allow contracting with the private sector for services for solid waste management." This statement is part of our legislative policy adopted in November for 1989.

We understand there are provisions in current statutes which allow for municipalities to enter into contracts with private entities in a number of areas. Counties are currently using privatization in several areas of government where county officials feel it is an effective tool to provide public services in an efficient manner and the statutes allow its use.

Our particular concern for SB-14 is to insure that counties may continue to join in groups to provide for solid waste management as is currently provided in KSA 65-3410 and to enter into long term contracts with adequate funding available. Each county is required to have a solid waste management plan. The plan may include a governmental cooperative arrangement to join with other entities to provide waste management services and to be able to contract with a private enterprise for such services if a finding is made that the public service agreement is in the public interest and would provide the service in an efficient and effective manner.

We believe SB-14 meets these criteria plus many additional ones. We support SB-14

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Senate L/G  
Attachment III



**League  
of Kansas  
Municipalities**

**Municipal  
Legislative  
Testimony**

*An Instrumentality of its Member Kansas Cities. 112 West Seventh Street, Topeka, Kansas 66603 Area 913-354-9565*

TO: Senate Committee on Local Government  
 FROM: E.A. Mosher, Executive Director  
 RE: SB 14--Privatization of Municipal Services and Improvements  
 DATE: January 25, 1989

The League supports SB 14, with certain amendments later noted. The League staff was involved in drafting the bill during the interim legislative study of this matter. Our convention-adopted policy statement provides: "We generally support legislation to facilitate the limited privatization of facilities and services for use by the public, including the authority to enter into multi-year contracts."

Following is a brief summary of the major provisions of SB 14: (1) Authorizes cities and counties, or two or more municipalities acting jointly, to enter to multi-year agreements with a private contractor for the provision of a capital intensive public service, now limited in the bill to solid waste services; (2) Establishes a procedure for a municipality to enter into such contracts, following a published request for proposals, with a requirement that a municipality may not enter into a contract except after a public hearing, following notice. (3) Requires a feasibility analysis which includes a comparative analysis of the cost of providing the service directly or by a private contractor, and requires a finding by the governing body that the proposed agreement "is in the public interest and would provide the public service in an efficient and effective manner". (4) Authorizes the municipality to provide for payment of service fee to the private contractor, and to raise revenue for this purpose "subject to the same conditions and limitations" as if the facility was owned and operated by the municipality. (5) Prohibits the issuance of bonds for land or facilities to be "sold or given to the private contractor", or the acquisition of land by eminent domain for sale or gift to the private contractor. (6) Contains, in Section 9, provisions as to the property tax status of property owned by the private contractor but used exclusively for the performance of a public service. (7) Provides, in Section 12, an amendment to the cash basis law to specifically recognize multi-year service agreements.

The most substantive provision of the bill is found in Section 3, which authorizes agreements for a term of not to exceed 30 years. Absence such a provision, there is really little new authority in the bill, in our judgment. The bulk of the bill, in effect, relates to procedures and restrictions on the implementation of this basic power.

Cities and counties now have statutory or home rule power to enter into annual contracts with private contractors for services, equipment and the use of a capital facility. However, it is difficult to enter into cost effective contracts when a substantial private capital investment is necessary by the contractor to provide the service. Some private contractors will take risks, under a good faith assumption that the contract will be renewed annually for a term long enough to amortize their capital costs. But there is reason to believe that this may be an expensive way to conduct the public business--a contractor who does not "load" the annual contract price with the "cost" of the risk that it may be for only one year, is pretty naive.

There is, in Kansas, a considerable amount of "privatization" now under way. In most instances, however, these are more service oriented than improvement oriented. There are

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Attachment IV

*President: Douglas S. Wright, Mayor, Topeka \* Vice President: Irene B. French, Mayor, Merriam \* Past President: Carl Dean Holmes, Mayor, Plains  
 \* Directors: Margo Boulanger, Mayor, Sedan \* Nancy R. Denning, Commissioner, Manhattan \* Ed Eilert, Mayor, Overland Park \* Greg Ferris, Councilmember, Wichita \* Frances J. Garcia, Commissioner, Hutchinson \* William J. Goering, City Clerk/Administrator, McPherson \* Jesse Jackson, Commissioner, Chanute \* Richard U. Nienstedt, City Manager, Concordia \* David E. Retter, City Attorney, Concordia \* Judy M. Sargent, City Manager, Russell \* Joseph E. Steineger, Mayor, Kansas City \* Bonnie Talley, Commissioner, Garden City \* Executive Director: E.A. Mosher*

few known examples of private contracts as to a capital intensive public service which did not include some kind of government involvement in the financing of the capital costs.

A good deal of literature has been published on "privatization" in recent years. In my judgement, some of it is "hype", and there are also examples of things working the other way --such as cities taking over cable television service where companies are charging unrealistic rates. But whether it is "hype" or not, we think local units should have a realistic option to contract for the performance of services on a multi-year basis, when this is found to be in the public interest. And to be realistic, multi-year contracts are necessary.

It is foreseeable, in the future, that private contracts might be especially advantageous when two or more local units in close proximity are concerned about securing the same service. For example, a group of counties might want to enter into an agreement with a single contractor to meet the sophisticated and expensive methods required for the disposal of solid waste which appears to be facing us in the future.

Privatization may be particularly applicable in the future to those public services that are technology-oriented and/or highly regulated. Many municipalities may not be able to afford to hire and retain the personnel needed for such operations, while a private contractor might be able to service a number of municipalities. Further, privatization may prove advisable for those public activities where private business methods is important to the operation, such as the marketing of recycled materials from a waste disposal facility.

We interpret the basic thrust of SB 14 as opening up a realistic option in Kansas, for the future, for the securing of local government services through the use of private contractors. The League does not propose that bill be made a wide-open authorization for any and all public service. However, we do propose that the function of water and sanitary sewerage, both capital intensive services, be included within the bill. This could be done by amending subsection (1) (b), beginning on line 27, as follows:

(b) "public service" means (1) the collection, transportation, processing, recycling or disposal of solid wastes; (2) collection, treatment or disposal of sanitary sewage or wastewater; or (3) the acquisition, treatment or distribution of water;

In addition, we think there are some problems in Section 7, page 4, and suggest the following amendment:

The service agreement may contain provisions under which title to any land, equipment or facilities in the name of the private contractor shall vest in or revert to the municipality, ~~including provisions where~~ if the private contractor defaults under any specified provisions in the service agreement.

In conclusion, the League supports the enactment of SB 14, with the amendments we have proposed.

1-25-89  
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2-IV



**WICHITA INDEPENDENT BUSINESS ASSOCIATION**

Riverview Plaza • Bldg. 200 • Suite 5 • 2604 W. 9th St. at McLean Blvd. • Wichita, Kansas 67203  
(316) 943-2565

January 25, 1989

STATEMENT TO: Senate Committee on Local Government  
FROM: Roland Smith, Executive Director  
Wichita Independent Business Association  
SUBJECT: Senate Bill 14 on Privatization

Mr. Chairman and members of the Committee. I am Roland Smith, Executive Director of the Wichita Independent Business Association. WIBA is an association of over 1400 locally-owned businesses in the Wichita trade area.

WIBA is a firm believer that there are areas in government that can feasibly be privatized and especially when the contract is not limited to one year, therefore, we support SB-14.

1-25-89  
Senate L/G  
Attachment V