

Approved January 31, 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. ~~XXXX~~ on January 26, 1989 in room 531-N of the Capitol.

All members were present except:

Sen. Gaines - Excused

Committee staff present:

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

Conferees appearing before the committee: None

The meeting began with the continued hearing on SB 14. Mike Heim went through the interim committee report on privatization for the committee's information. (See Attachment I). He also had a hand out which explains how a survey on privatization was conducted. (See Attachment II).

The Chairman stated that he has not heard from anyone in opposition to the bill. He asked staff if there is statutory authority to cover street sweeping. Staff answered that there are a number of local units of government doing this although it is not in the statutes. The Chairman had further questions as to what authority school districts operate under for building buildings on purchase agreements. Staff responded that it is in the provisions for school districts to have authority to lease buildings for ten years, but it is not certain that authority is there to purchase buildings. The Chairman then asked under what statutory law lease-purchase agreements for schools fall. Staff was uncertain but will get a copy of a lease-purchase agreement to see how it is handled.

Sen. Ehrlich asked why SB 14 is needed since this is already being done now. Staff answered that SB 14 is a broader bill with clear statutory authority for long-term contracts in this area. Sen. Petty asked if the bill would cover cancellation of a contract if a problem situation should develop with the contractor. Staff noted that this is addressed in New Section 7 of the bill.

At this time, the Vice-Chairman recessed the committee for a short time due to the fact that several senators left for page pictures. When the meeting resumed, the Chairman began a discussion of the amendments offered by the League of Kansas Municipalities. He also expressed his concern with regard to Section 1 (a) as to what "Capital intensive public service" refers. He wondered if this would include street sweepers. Sen. Steineger felt that street sweepers would be included.

The Chairman noted that the bill is allowing capital to be provided to build a facility that cannot be removed like a sweeper could. It gives someone the authority to exceed the cash basis law. Sen. Ehrlich felt that it might be possible to do it under home rule. Sen. Steineger said this could not be done because Kansas has a cash basis law. He added that there are a number of exceptions to the cash basis law, and this bill would be another exception. Sen. Daniels asked what effect the bill would have on Kansas' good bond rating. Sen. Steineger said there would be a minus effect. This bill would be minor, but a continuing trend of exceptions to the cash basis law would affect Kansas' rating because the general bond law and cash basis law have been the reason Kansas has been given a good rating. He added that the bill is creating future debt for 30 years which is negative for bond ratings. Requiring massive financing is a new trend, and there are certain risks involved, such as a pollution problem developing, and there is no guarantee that private business will be able to operate after a few years if the EPA shuts them down.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT,  
room 531-N, Statehouse, at 9:00 a.m. ~~9:00~~ on January 26, 1989.

The chairman called for action on the amendments offered by the League of Municipalities. Sen. Ehrlich made a motion to amend SB 14 in Section 7, page 4 by adding ", equipment or facilities" after "land", deleting "including provisions where", and adding "if" before "the private contractor", Sen. Langworthy seconded, and the motion carried.

Sen. Ehrlich made a motion to amend SB 14 as suggested by the City of Wichita by adding fleet maintenance and street maintenance to New Section I (b), Sen. Allen seconded.

Sen. Petty had a question about opening it to fleet maintenance as to how restrictive it will be in terms of controls; does it open it up to abuse by private contractors. Sen. Steineger commented that this really smashes the cash basis law because it allows entering into long-term contracts for service.

Sen. Frahm asked why the interim committee dealt with only solid waste. The Chairman explained the reason was that solid waste needs immediate attention, and many cities could not pass bonds to do this even though it is mandated.

On a call for a vote on the motion to amend by Sen. Ehrlich, the motion failed. Sen. Allen called for a division. There were two voting "yes", Sen. Allen being one, and six voting "no".

The minutes of January 25 were approved with the exception that the name of the conferee for the Wichita Independent Business Association be corrected from "Ron" to "Roland".

The meeting was adjourned.



SB14

DRAFT  
November 22, 1988

**COMMITTEE REPORT**

To: Legislative Coordinating Council  
FROM: Special Committee on Local Government  
RE: PROPOSAL NO. 34 -- PRIVATIZATION\*

Proposal No. 34 called for a review of the need for the enactment of a comprehensive law to permit local units of government to contract with private business for the provision of public facilities and services.

The interim study was prompted by the introduction of 1988 S.B. 641 and the public hearing on that bill held in the Senate Local Government Committee during the past legislative session. The bill died in Committee, but the Committee agreed to recommend the privatization issue for an interim study.

**Provisions of S.B. 641**

S.B. 641 applied to any municipality defined to include any political or taxing subdivision of the state. It would have permitted any local unit of government to contract with a private vendor for the provision of any capital intensive public service. The latter term was defined to include the "prevention, control and abatement of water pollution through waste treatment facilities, provision of potable water, solid and hazardous waste

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\* \_\_\_ B. \_\_\_ accompanies this report.

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Attachment I

disposal, storage and removal, and any other capital intensive public service . . . ."

The bill permitted long-term contracts for not more than 30 years, the levy of property taxes, special assessments, imposition of service fees, the issuance of bonds, and the exercise of the right of eminent domain to acquire property.

**Kansas Laws Permitting Cities and Counties  
to Contract with Private Entities**

A number of laws currently permit cities, counties, and other local units of government to enter into contracts with private entities for provision of public services or facilities. The following are some examples of laws that authorize some or all cities and counties or related governmental entities to contract with private entities for various purposes. These include: airport purposes (K.S.A. 3-166 and 3-306); child care services (K.S.A. 12-4807); delinquent personal property tax collections (K.S.A. 79-2018); electricity generation or power purchases (K.S.A. 10-1202, 12-895, 13-1259); emergency medical services (K.S.A. 65-6116); fire protection (K.S.A. 13-796); hospital facilities (K.S.A. 14-679, 14-687, 19-4611); housing and urban renewal (K.S.A. 17-2345 and 17-4748); interlocal cooperation agreements for any public purpose (K.S.A. 12-2904); mental health and mental retardation (K.S.A. 19-4001 and 65-211); museums (K.S.A. 19-2668); reappraisal services (K.S.A. 79-1478); resource recovery facilities, refuse (K.S.A. 12-2114 and K.S.A. 65-3418, 65-3421); sewer facilities, treatment, and water pollution (K.S.A.

12-3104); and water supply, waterworks management (K.S.A. 12-2702, 13-2402, 19-3531, 19-3548).

Several of these laws specifically authorize long-term contracts. For example, K.S.A. 12-2114 authorizes a contract with a private entity for refuse collection and disposal for not to exceed 20 years. Street lights contracts may run for not to exceed ten years under K.S.A. 14-534. Public wholesale water supply contracts may run 40 years under K.S.A. 19-3548. Resource recovery contracts may run for not to exceed 30 years under K.S.A. 65-3421.

#### **Cash Basis Law**

A major limitation for cities and counties, which both enjoy home rule powers in entering into contracts with private entities for the provision of public services and facilities is the cash basis law. The law requires local subdivisions to operate on a planned "cash basis," or, as it is known in municipal accounting terminology, a "modified pay-as-you-go plan." The net effect of this law is to prohibit any municipality, defined to mean a county, township, city, municipal university, school district, community junior college, drainage district, and other similar political or taxing subdivision, from spending money or creating an indebtedness in excess of the money it actually has on hand in its treasury.

The law contains several exceptions to the strict cash basis requirement. These include: cancellable purchase orders for school

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supplies and equipment, school buses, books purchased in conjunction with textbook rental programs, and data processing equipment (K.S.A. 10-1113); payments which have been authorized by a vote of the electors, bonds or no-fund warrants, municipal airport revolving funds, special recreation facilities reserve funds, enterprise funds, intragovernmental service funds, and teacher contracts (see K.S.A. 10-1116); extraordinary emergencies involving municipal utilities (K.S.A. 10-1116a); and for electric interconnection or transmission facilities or services, a lease agreement with or without an option to buy, or an installment-purchase agreement if any of these latter agreements state that the municipality is obligated to pay only for the current budget year (K.S.A. 10-1116b).

The various laws which authorize long-term contracts are considered exceptions to the cash basis law as well. Further, a long-term contract which contains a clause that the agreement is subject to annual appropriation would not violate the cash basis law.

#### **Privatization Trends**

The term privatization has become a buzz word in government management and delivery of public services in the past few years. Debate over privatization is taking place at all levels of government, in the private sector, and academic community. There are indications that privatizing public services will continue to be a major concern to state policymakers. The concept of privatization is not new, however. Governments have long relied on the private sector for some in-house

as well as public services. Viewed historically, most services provided by government today were once provided by private firms. What is new is that the level of interactions between the public and private sectors has been elevated recently and that governments have considered, or are considering, greater use of the private sector for more effective and efficient administration.

Local governments have used private enterprises extensively and the list of local services that have been privatized is long. These services include solid waste collection, street cleaning and repair, fire protection, water supply, wastewater treatment, fleet management, park maintenance, hospital and ambulance services, traffic signal maintenance, and custodial and security services. According to a 1987 survey conducted by Touche Ross, nearly 80 percent of the local governments responding to the survey used or were planning to use privatization. The survey showed that greater demand for services, citizen resistance to tax increases, and elimination of the federal revenue sharing program were three major factors that contributed to recent privatization of municipal services.

The federal government, through the use of OMB Circular A-76, "Performance of Commercial Activities," has also used private firms for various programs considered to be commercial activities. A-76 was conceived during the 1950s as a management policy of the federal government to rely on private firms for goods and services instead of competing with the private sector. During the Reagan Administration, A-76 received more attention to ensure that some of the commercial activities performed by federal workers could be privatized. Major

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projects undertaken during the Reagan Administration include the works of the Task Force on the Private Sector Initiatives in 1981, the President's Private Sector Survey on Cost Control (Grace Commission) in 1984, and the President's Commission on Privatization in 1987. Candidates for privatization include: government assets, loans, insurance, transportation, natural resources, public safety and welfare programs, and other commercial activities ranging from data processing to geological survey and industrial shops. Under an Executive Order issued in November, 1987, all federal agencies were required by April, 1988 to identify commercial activities they were performing for possible further privatization.

Forms of privatization include:

1. Contracting. The governmental entity enters into agreements with private firms (for profit or nonprofit) to provide goods or services.
2. Vouchers. This form of privatization allows the public to purchase services from private firms available in the open market. Like contracting, government pays for the service. Vouchers are used for social services and educational programs in several states.
3. Grants and Subsidies. The state or local government makes monetary contributions to help private organizations provide a service.

4. Franchise. This form gives monopoly privileges to a private firm to provide a service in a given geographical area. Franchises have been used in operating concession services in parks, such as food services, stores, rentals of sporting equipment, and recreational facilities, in addition to the traditional public utility franchising.
5. Asset Sale. The state or local unit sells, or "cashes out," its assets to private firms or individuals to shift government functions to the private sector.
6. Deregulation. The state removes its regulations from the service previously monopolized by government in favor of private provision of the service, e.g., motor carrier deregulation.
7. Volunteerism. States and local units use volunteers to provide public services.
8. Private Donation. The state or local unit may rely on the private sector for assistance in providing public services. Private firms may loan personnel, facilities, or equipment to state or local agencies.
9. Public-Private Partnership. States and local units conduct projects, ranging from social services to

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economic development, in cooperation with representatives from private firms, relying on private resources instead of spending tax monies.

10. Service Shedding. The state or local unit may drastically reduce the level of a service or stops providing a service so the private sector can assume the function.

See "Privatization and Contracting For State Services: A Guide," Innovations, Council of State Governments, 1988, from which the above discussion was condensed and for more information on this topic.

#### **Testimony of Conferees**

The Committee heard testimony from representatives of the State Department of Education, the Department of Corrections, the Board of Agriculture, the University of Kansas, the cities of Lawrence and Hutchinson, the League of Kansas Municipalities, the Kansas Advocacy and Protective Services, and Kansas Legal Services. In addition, a Wichita attorney, a Sedgwick County Commissioner, a Wichita securities broker, a Minnesota securities broker and public official, and the chairman of the Wichita Privatization Task Force appeared.

The representatives of the state university and state departments described various privatization activities they have been involved with.

*School contracts*

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The representative from the State Department of Education noted his agency leases copy machines, and contracts for curriculum needs studies, for inservice and special education services, computer services, auditing, legal and financial services, and insurance advice.

The Department of Corrections discussed privatization contracts for medical services, dental services, educational services, and community residential centers. The representative of the State Department of Agriculture described privatization of weights and measures device verification and other testing programs. A University of Kansas representative described a former contract for custodial services at the University of Kansas Medical Center.

The representatives of the Kansas Advocacy and Protective Services and Kansas Legal Services described the types of services they provide by contract for the states and local units of government.

The representatives of Lawrence and Hutchinson described various privatization activities, including street sweeping, snow removal, animal shelter, manpower clerical help, concessions operations, landfill services, street repair, water meter maintenance, drug treatment, public housing, and a variety of other services and activities.

The representatives of the cities and the League of Kansas Municipalities supported the granting of broad legislative authority for cities to engage in various types of privatization activities, including the authority to enter into long-term contracts. They noted most of the provisions of the proposed privatization legislation could now be

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accomplished, but that there was merit in codifying this authority in one bill.

The representatives of the Wichita securities firm and the Minnesota securities firm, and the Sedgwick County Commissioner presented the Committee with a redraft of S.B. 641, designed to meet some of the technical deficiencies of the bill which were pointed out during the 1988 Legislative Session.

The Chairman of the Wichita Task Force on Privatization described the activities of this city-appointed group.

#### **Committee Conclusions and Recommendations**

The Committee believes that privatization of public services and facilities can be an effective tool for local governments to use in accomplishing their purpose of providing needed public services and facilities in the most efficient and cost-effective manner. The Committee is mindful of the various laws that now authorize contracts with private entities to perform numerous public services. The Committee also wishes to note that a number of privatization activities currently are being pursued at the local and at the state level. Further, the Committee is cognizant of the fact that only one local government official appeared at the public hearing to describe a specific problem that he thought required a privatization solution which could not be accomplished under existing law.

For these reasons, the Committee is recommending a privatization bill limited to the one area of solid waste collection, transportation, processing, recycling, and disposal. The Committee believes limited legislation specifically granting an exception to the cash basis law to permit contracts with private entities for not to exceed 30 years is a logical first step toward the possible granting of broader legislative authority at a later date.

The major provisions of \_\_\_ B. \_\_\_ are as follows. Any municipality defined to include any city or county may contract with a private entity to furnish the collection, transportation, processing, recycling, or disposal of solid wastes for a period of not to exceed 30 years. The municipality may obligate itself to pay a service fee, pledge its full faith and credit, or obligate a specific source of revenue for payment of the service fee.

Procedures required include published notice of a request for proposals, a public hearing, and the preparation of a feasibility analysis by the municipality. The municipality must make a finding the public service agreement is in the public interest and would provide the service in an efficient and effective manner.

All real and personal property used exclusively for the performance of the public service shall be exempt from property taxes. Cooperative efforts with other municipalities are specifically authorized.

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Respectfully submitted,

\_\_\_\_\_, 1988

Rep. Ivan Sand, Vice-  
Chairman  
Rep. Connie Ames Kennard  
Rep. Elizabeth Baker  
Rep. Nancy Brown  
Rep. Denise Everhart  
Rep. Elaine Hassler  
Rep. Mary Jane Johnson  
Rep. Robert D. Miller  
Rep. Alfred Ramirez  
Rep. Debara K. Schauf  
Rep. John Sutter

Sen. Don Montgomery, Chairman  
Special Committee on Local  
Government

Sen. Eugene Anderson  
Sen. Norma Daniels  
Sen. Audrey Langworthy  
Sen. Jack Steineger  
Sen. Ben Vidricksen

# Privatization in America

 Touche Ross

An Opinion Survey of City and  
County Governments on Their Use  
of Privatization and Their  
Infrastructure Needs



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**T**his report is the third in a series of Touche Ross research monographs dealing with infrastructure and privatization. The previously published reports are *The Infrastructure Crisis* and *Financing Infrastructure in America*. For copies of these reports or other information, please call your local Touche Ross office or Irwin T. David, National Director of Public-Sector Services, 202 955-4258.

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# Introduction

**C**itizens are demanding more services, but resisting higher taxes. The federal government mandates clean-water standards and other programs for which local governments must pay, but cuts off revenue sharing. Local governments' resources are stretched thin.

To ease this tension, local governments are turning to alternative methods to deliver public services. Privatization, which in various ways engages the private sector to provide services or facilities that are usually regarded as public-sector responsibilities, is one of those alternatives. Yet little is known about how widely privatization is being used, what for, or how successfully. This report, based on a survey sponsored by Touche Ross, the International City Management Association, and the Privatization Council, begins to answer these questions.

Data for the report were gathered by means of a survey conducted in July 1987. Questionnaires were sent to the city manager or county executive of every U.S. city with a population of more than 5,000 and every U.S. county with a population of more than 25,000. Nineteen percent of them completed and returned the questionnaires.

The questionnaire asked officials for their opinions about privatization, how they have used it or plan to use it, and what its results have been. It also sought information on local infrastructure to update a survey conducted in 1985 by Touche Ross and *City & State* magazine. The results of that survey were published in a report entitled *Financing Infrastructure in America*.

Privatization falls largely into three categories:

- Contracting services out. The government contracts with a private-sector organization (or another government) to provide a specific service, such as street sweeping or garbage collection, instead of doing the work itself.
- Construction or acquisition and operation of facilities. A private-sector organization builds or acquires a facility, such as a sewage-treatment plant, and then owns and operates the facility for the government.
- Sale of assets. The government sells assets, such as loan portfolios, parking garages, or hospitals, to the private sector. The buyer may either liquidate the asset or operate it under the buyer's own auspices.

This report concerns local governments' use of all three categories of privatization.

Many respondents not only answered the questions in the questionnaire but offered thoughtful comments. Unfortunately, we can only summarize these comments here. Some respondents expressed the view that privatization is not a panacea, but a technique to be used when appropriate. Regarding it as one of several ways to provide the services their citizens want and need, they examine it carefully alongside other methods, service by service. Indeed, some reported privatizing services or facilities that were not mentioned in the questionnaire.

Other respondents, maintaining that government can provide services just as effectively as the private sector can, questioned whether the supposed advantages of privatization are real, and saw potential disadvantages instead. On the whole, however, the comments reflected an open-minded attitude on the part of the respondents.

The comments also emphasized a point that the tabulated survey results can only suggest: the urgent need to educate citizens and policymakers on alternative methods to provide services to citizens.

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## Highlights

- Nearly 80 percent of the survey respondents believe that privatization will represent a primary tool to provide local government services and facilities in the next decade. About the same number have used privatization before or plan to use it in the future. Of these, nearly all have contracted services out, or plan to; nearly 40 percent have privatized facilities, or plan to; and almost one-quarter have sold assets to the private sector, or plan to. About 35 percent have used or will use more than one form of privatization.
- Cost savings are the main reason for privatizing services or facilities, but not the only reason. Many governments privatize services because they do not have the staff or facilities to provide the needed services, and find privatization a more effective way of doing so than to hire staff or acquire facilities. Similar reasons are also frequently given for privatizing facilities.
- Most governments say they achieved the objectives they had in privatization. For those that wanted to cut costs, the savings have been substantial. Forty percent of the governments that contracted services out for this reason saved at least 20 percent, and 10 percent saved 40 percent or more. Of those that privatized facilities for this reason, 45 percent saved at least 20 percent in capital costs, and 24 percent saved 40 percent or more.
- Survey respondents currently contract out an estimated total of more than \$1 billion worth of services a year, and plan to privatize close to \$3 billion worth of facilities over the next two years. As these figures do not include the value of services or facilities privatized by nonresponding cities and counties, let alone states, authorities, enterprises, agencies, schools, colleges, universities, or federal agencies, it can readily be appreciated that the total value of all public services and facilities privatized in the United States must be enormous.
- Privatization presents a significant opportunity for private-sector organizations to serve local governments. However, most governments want providers with experience.
- The major impediments to privatization plans are a concern about loss of control, a belief that cost savings will not materialize, and union or employee resistance.
- Local infrastructure still needs much expansion and repair. Over half of the respondents plan to spend at least twice as much on their infrastructure in the next five years as they spent in the last five years; and over 27 percent will spend at least three times as much. Methods of financing infrastructure expansion and repair will change: leasing, tax-increment financing, user fees, special-benefit assessments, and local tax increases will become more important than they were before.
- The survey results suggest an urgent need for more communication and education. Taxpayers do not understand the costs of infrastructure expansion and repair. Many governments perceive little interest in the private sector to provide public services or facilities. Many respondents are also unfamiliar with privatization techniques and benefits.