

Approved March 28, 1991
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by REPRESENTATIVE M. J. JOHNSON at
Chairperson

1:30 ~~XX~~/p.m. on MARCH 26, 1991 in room 521-S of the Capitol.

All members were present except:
Representative Judith Macy

Committee staff present:
Mike Heim, Legislative Research Dept.
Theresa Kiernan, Revisor of Statutes
Connie Smith, Committee Secretary

Conferees appearing before the committee:

Ernie Mosher, League of Kansas Municipalities
Bev Bradley, Deputy Director, Kansas Association of Counties
Gary Hanson, counsel for Kansas Rural Water Association

Chairman opened a hearing on SB 25.

SB 25 - City and county home rule revenue authority; user fees and service charges. Re Proposal No. 24.

Chairman Johnson stated this was an interim study Re Proposal No. 24.

Chairman introduced Ernie Mosher, League of Kansas Municipalities, who testified as a proponent and offered suggested amendments. (Attachment 1) Mr. Mosher responded to questions from committee.

Bev Bradley, Kansas Association of Counties, was next to testify in support of SB 25. (Attachment 2) No questions from committee.

There were no opponents to SB 25.

Janet Stubbs, Home Builders Association of Kansas, stated she was sorry she wasn't on the agenda but she wasn't aware of Mr. Mosher's prepared amendment and would like the opportunity to prepare perhaps written testimony after reviewing his written comments. Chairman stated this would be acceptable.

Sara Corless, Home Builders Association of Greater Kansas, would like the opportunity to do the same as Ms. Stubbs.

Chairman closed the hearing on SB 25.

Chairman opened a hearing on SB 295.

SB 295 - Lease of space by county commissioners.

Chairman opened a hearing on SB 295.

Staff gave a briefing on SB 295 stating it permits counties to enter into long-term leases with a host county public building commission for space for detention of eligible juvenile offenders. Staff answered questions from committee.

There were no proponents or opponents to SB 295.

Chairman closed the hearing on SB 295.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

room 521-S, Statehouse, at 1:30 ~~am~~/p.m. on MARCH 26, 1991

SB 318 - Rural districts; attachment by land in fringe area of a city.

Chairman Johnson recognized Gary Hanson, counsel for Kansas Rural Water Association, testified in support of SB 318. (Attachment 3) Mr. Hanson responded to questions from committee.

Mr. Hanson distributed a letter from Dennis F. Schwartz, KRWA President, in support of SB 318. (Attachment 4)

There were no opponents to SB 318 and the Chairman closed the hearing on SB 318.

Meeting adjourned at 2:20 p.m.



**League
of Kansas
Municipalities**

**MUNICIPAL
LEGISLATIVE
TESTIMONY**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186

TO: House Committee on Local Government
FROM: E.A. Mosher, Executive Director, League of Kansas Municipalities
RE: SB 25--City and County Home Rule Fees and Charges
DATE: March 26, 1991

The League supports passage of SB 25. Most of the arguments for its passage are set forth in the report of the interim study of the Special Committee on Local Government. For your convenience, the Committee's conclusions are set forth below:

"The Committee encourages local governments to expand the use of service charges and user fees at the local level as one means of relieving pressure on ad valorem property taxes. The Committee likewise recommends that cities and counties review existing service charges and user fees to determine if the fees are set at an adequate level to reimburse the costs of the program or service."

"The Committee recommends that both K.S.A. 12-137 and K.S.A. 19-117 be amended to clarify that protest petition and election procedures do not apply when cities and counties establish or raise service fees or user charges. The recommendation is included in S.B. 25. The Committee believes that to make all user charge or service fee decisions of a local governing body subject to a protest and election procedure would be disruptive to the operation of their governments. The Committee simply believes local governing bodies should be able to set local swimming pool admission charges, softball participation fees, meeting hall rentals, and other similar matters without subjecting these everyday decisions to the protest petition and election procedures."

Background

Some confusion now exists as to the procedural requirements for the exercise of home rule powers by cities and counties when levying service fees and charges. Part of this confusion is whether a user fee or service charge, not specifically authorized by statute, is levied under home rule powers (and thus subject to K.S.A. 12-137 and 19-117) or under inherent, governmental "police" or "implied" powers. SB 25 would clarify the matter by simply removing normal user fees and service charges from the special procedures of K.S.A. 12-137 and 19-117, in the same manner that permit or license fees for regulatory purposes are now specifically excluded. This special procedure requires a two-thirds vote of the governing body, two newspaper publications, and makes the ordinance or resolution subject to a petition for

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Attach. 1*

a referendum. Under SB 25, only an ordinary home rule ordinance or county resolution would be required for such non-tax fees and charges when levied by a governing body.

It should be noted that the present law does not apply to those fees and charges specifically authorized by statute, which include such major local revenue producers as sewerage service charges and refuse collection fees, nor does it apply to other fees and charges not levied under home rule. Some examples of user fees and service charges which may be affected by this bill include swimming pool admission fees, golf course green fees, auditorium rentals, and fees for using city parking lots. Attached is a list of various fees and service charges used by cities.

Subsection 1 (b) beginning on page 1, and subsection 2 (e) on page 3, were added to the bill by the Senate Local Government Committee in an effort to make certain that mandated payments required of a land developer, commonly called "impact fees", could only be enacted in the same manner that a home rule tax is levied. **However, we think further changes are needed--see attached amendment.**

The provisions of subsection 1 (c) on page 2, and subsection 2 (f) on page 3, were added to specify that the amount of a service charge or user fee levied under home rule may not exceed the cost of providing the service, facility or improvement. **However, we think further changes are also needed to these actions. See attached amendment.**

Explanation of Amendments--See Attached

The intent of SB 25 is to clarify the procedural requirements. If passed, there would be three types of home rule-based revenue measures: (1) Service fees and user charges which do not exceed the costs, which would require an ordinary ordinance or county resolution; (2) Permit or license fees for regulatory purposes, which would require an ordinary ordinance or county resolution; and (3) Taxes, excises and other exactions, including development impact charges, which would require a special ordinance or resolution, passed by a two-thirds vote of the governing body, with two publications and subject to a petition for a referendum. **Further**, any home-rule based revenue measure that may be called a user fee or service charge, but exceeds the cost, must be levied as if it were a tax.

In conclusion, we suggest your position on SB 25 depends heavily on (1) whether you think user fees and service charges should be used more, as an alternative to increased property taxes, and (2) whether you think locally elected governing bodies can be trusted to make these decisions, without the need for a two-thirds vote, two publications, and the possibility of a petition for a referendum.

The League suggests that the existing procedural requirements tend to discourage the use of service charges or revising existing amounts to cover costs, and that local governments can be trusted to make appropriate local decisions. It seems to us that the procedure for levying a service charge should not be more difficult than the levying of a property tax--which does not even require an ordinance or resolution. Thus, we support passage of SB 25.

Amendment to SB 25, As Amended by Senate Committee
Proposed by League of Kansas Municipalities

A. Amend subsection 1(b) and 1(c), beginning on page 1, as follows.

(b) Any financial payment required of an owner or developer of land for the cost of public facilities or improvements under the authority of section 5 of article 12 of the constitution of Kansas, and any service charge or user fee levied under such authority which exceeds the cost of providing such service, facility or improvement, shall be levied in the same procedure required for the levying of a tax, excise or other exaction under subsection (a).

~~(e) — Nothing in this section shall be construed to authorize the imposition of a service charge or user fee which exceeds the cost of providing such service, facility or improvement.~~

B. Amend subsection (2)(e) and (f), on page 3, as follows:

(b) Any financial payment required of an owner or developer of land for the cost of public facilities or improvements under the authority of K.S.A. 19-101a as amended, and any service charge or user fee levied under such authority which exceeds the cost of providing such service, facility or improvement, shall be levied in the same procedure required for the levying of a tax, excise or other exaction under subsection (a).

~~(e) — Nothing in this section shall be construed to authorize the imposition of a service charge or user fee which exceeds the cost of providing such service, facility or improvement.~~

Explanation.

The absence of a reference to the home rule authority of cities and counties in the proposed new subsections amended above could lead to some future confusion and misinterpretation of the intent. For example, it could be interpreted to mean that a payment required of a land owner as a special assessment for a public improvement must be levied in the same manner as a home rule-based tax, even though the special assessment is levied in accordance with an existing statute.

The basic purpose of K.S.A. 12-137 and 19-117 is to establish a procedure for enacting home-rule based ordinances and resolutions for revenue purposes, "a procedure for which is not otherwise prescribed by enactment of the legislature."

The changes proposed above should make it clear that:

- (a) if there is a statute on the matter, you follow that statute; and
- (b) if there is no statute, then you follow the procedure specified in SB 25.

Further the amendments above makes it clear that a home-rule based "impact fee", and a home-rule based service charge or user fee that makes money (i.e. exceeds costs), must be levied as if it were a tax, even though it is not locally referred to as a tax.

Examples of Fees and Service Charges Levied by Kansas Cities

Note: Some of those are covered by a statute or are levied for regulatory purposes, and thus exempt from the procedures of K.S.A. 12-137.

Airport. Lease payments by operator or for hangers, restaurant concessions, space rental, land rental for crops, sale of fuel, etc.

Ambulance Service. Charges, based on cost for service.

Animal Impounding. Most cities which provide for the impounding of animals running-at-large in violation of an ordinance make various impounding charges against the person who redeems the animal.

Auditorium. Cities with auditoriums usually have a schedule of charges for the use of facilities.

Bicycle Licenses. A number of cities require the payment of a small annual fee by the owners of bicycles. A license tag is usually furnished.

Boxing and Wrestling. Gross receipts fees for professional matches. See K.S.A. 12-5102.

Building Demolition and Removal Fee. Used mostly by larger cities.

Building Inspection Fees. For services.

Building Rental. Sometimes there are city owned buildings or space to rent.

Cat Licenses. Used by a few cities.

Cemetery. Sale of grave spaces or lots and charges for digging graves.

Dog License Fees. For regulatory purposes.

Eating Establishments. License fees are common if there is a regulatory ordinance.

Electrical Inspection Fees. For services.

Electrician Examination Fees. Many cities license electricians.

Fire Inspection Fees. Not common.

Fire Fighting Service Outside City. Several statutes provide for contracts by individuals, corporations and fire districts and a city.

Gas Inspection Fees. For services.

Golf Course Fees. For services.

Hospital. City-owned hospitals make charges for services provided.

Lakes. Cities which have lakes for parks or reservoirs often make charges for fishing, hunting, boating, shelter house rental, camping, etc.

Library. Rental of books and other library material, charges for overdue books and nonresident user fees.

License Fees. These are related to regulations pertaining to certain businesses and occupations such as pool halls, video games, bowling alleys, circuses, etc. The fee must bear some relationship to the cost of regulations.

Machinery and Equipment. Rental of.

Maps. Some cities sell maps of the city.

Mobile Home. Fees for mobile home park permits.

Motor Vehicle Accident Reports. Copying charges.

New Goods, Public Auction. License fee of \$25 a day. See K.S.A. 58-1020.

Nuisance Abatement. The cost may be assessed against the property.

Ordinances. Cities which have adopted codes of ordinances usually charge for a copy. Charges for copies of individual ordinances are often made.

Parking Charges--Off-Street. For services.

Parking Meter Charge. For regulatory purposes.

Parks. The income from a city park depends upon the chargeable facilities. Concessionaires usually must pay the city for the privilege. Fees are often charged for using the swimming

pool, golf course, cabin site rentals, hunting and fishing permits on city property, zoo admission, tennis courts, etc. Additional fees are sometimes imposed for nonresidents.

Pawnbrokers. License fee under K.S.A. 16-707.

Personal Property, Unclaimed, Lost or Stolen. Periodic sales.

Plans for Public Works. Usually a prospective bidder on a public works project is required to pay a stated charge for a copy of the plans and specifications or to make a deposit which is forfeited in case the plans and specifications are not returned.

Plumbers Fees. Some cities charge for examinations given to plumbers and for license fees.

Plumbing Inspection Fees. For services.

Police. Charges for funeral and money escorts and other special services.

Precious Metal Dealers. License fee under K.S.A. 16-707.

Recreation. Fees for services, use of facilities.

Refuse Collection Charges. For services.

Refuse Disposal Charges. For services.

Rentals. Auditoriums, real estate, etc.

Royalties. Oil, gas and other minerals.

Scales. Fees for use of public scales.

Sewage. Sale of sewage and sludge for fertilizer, irrigation.

Sewerage Service Charges. Commonly used.

Sewer, Connection Charge. Often substantial.

Signs On Buildings. Permit fee.

Street Privileges. Permit fees, either as a single charge or annually, and other charges, are made by some cities for special street privileges such as: overhanging signs, areas under sidewalks, scales or truck docks and loading platforms, crossings over streets, tanks under streets, etc.

Street Charges. Permit fees or charges for cutting pavement, replacing trenches, cutting curb, marking driveways, etc.

Subdivision Plans. Charge for processing and reviewing.

Swimming Pool Admissions. For services.

Taxis. Annual license fee.

Trees. Charges for removal from right-of-way.

Transient Merchants and Peddlers. License regulatory fee.

Water, Connection Charge. Both initial hook-up and reconnections.

Weeds. Assessment for destruction, mowing.

Weights and Measures Inspections. For services.

Zoning Fees. Charge, based upon costs for publications and processing.

Zoo Admissions. For services.



"Service to County Government"

212 S.W. 7th Street
Topeka, Kansas 66603
(913) 233-2271
FAX (913) 233-4830

March 26, 1991

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To: Representative Mary Jane Johnson, Chairperson
Members of House Local Government Committee

From: Bev Bradley, Deputy Director
Kansas Association of Counties

Re: SB 25 Cities and Counties Home Rule Fees and
Charges

The Kansas Association of Counties is in support of SB 25. The association agrees with the conclusion reached by the interim study committee which stated, "The committee encourages local governments to expand the use of service charges and user fees at the local level as one means of relieving pressure on ad valorem property taxes. The committee likewise recommends that cities and counties review existing service charges and user fees to determine if the fees are set at an adequate level to reimburse the costs of the program or service."

Our Kansas Association of Counties platform position on this matter is very simple and states that KAC would support efforts to reduce the reliance on property tax. We believe this is a beginning or first step in that user fees could be used in many instances to provide maintenance money for certain community supported services instead of general fund revenue which comes from ad valorem taxes.

We are cognizant of the amendments recommended by the Kansas League of Municipalities and are in support of them. KAC supports SB 25 as a reasonable means of making user fees and service charges available to help counties maintain functions that might not otherwise be possible, without the use of property taxes.

Thank you for the opportunity to testify.

TSBSB25

Bev
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Attach. 2

LAW OFFICES

STUMBO, HANSON & HENDRICKS

2887 S.W. MacVICAR AVENUE

TOPEKA, KANSAS 66611

TELEPHONE (913) 267-3410

FAX (913) 267-9516

GARY H. HANSON
LARRY D. HENDRICKS
TOM R. BARNES II

OF COUNSEL:
WALTER G. STUMBO
JOHN E. STUMBO

March 26, 1991

TO: HOUSE LOCAL GOVERNMENT COMMITTEE
RE: STATEMENT OF SUPPORT FOR SB No. 318

TESTIMONY OF GARY H. HANSON TO
HOUSE COMMITTEE ON LOCAL GOVERNMENT

Rural water districts are authorized by K.S.A. 82a-612 et seq. Generally, rural water districts are created by the county commissioners upon petition by the owners of land within the proposed district.

Following creation, adjoining land can later be attached to the water district under the procedures outlined in K.S.A. 82a-623. In general, this involves owners of land in the area to be attached filing a petition addressed to the county commissioners. Then, following notice and a hearing as prescribed by K.S.A. 82a-623, and upon finding that the lands are without an adequate supply of water, the county commission enters an order attaching the lands to the rural water district and thereby redefining the boundaries of the district.

Attachments of lands to rural water districts should be encouraged. Unnecessary restrictions to complicate the process should be avoided. We believe current procedures for attaching lands to rural water districts are unduly complicated and tend to discourage proper attachments of lands. Senate Bill 318 significantly reduces these complications and, therefore, we support its enactment.

Specifically, SB 318 simplifies the attachment process in the following respects:

- a) it eliminates the requirement for publication of the notice (except where required by K.S.A. 19-270);
- b) it eliminates the reference back to 82a-615 for the procedure on hearing the attachment petition (82a-615 concerns hearings on creation of a rural water district, and is confusing in the context of attachment of lands to an existing water district);

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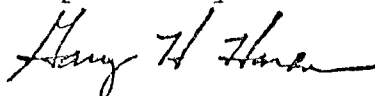
STUMBO, HANSON & HENDRICKS

- c) mailing of all notices of hearing may be made by regular mail. It is unclear in existing 82a-623, and many county clerks have concluded that, out of caution, notices should be by certified mail;
- d) it provides for written notice to be sent to the water district office, not to the homes of each director of the district.

SB 318 further addresses problems in the attachment process by amending K.S.A. 19-270. This section deals with the creation or expansion of special benefit districts (defined to include rural water districts) within three miles of any city. Currently, that statute can be interpreted to mean that whenever lands are to be attached to a rural water district that has any part of its territory within the three mile fringe area of a city, the procedures of 19-270 must be followed. Arguably, this is true whether or not any part of the lands sought to be attached are within that three mile fringe area. We do not believe this was the legislatures intent with K.S.A. 19-270, nor do we believe that such interpretation is good public policy. SB 318 makes clear that K.S.A. 19-270 must be complied with only if some part of the territory to be attached is located within the fringe area.

For the reasons above, we request the committee's favorable consideration of Senate Bill No. 318.

Respectfully submitted,



GARY H. HANSON



KANSAS
RURAL
WATER
association

Quality water, quality life

P.O. Box 226 • Seneca, KS 66538 • 913/336-3760 • FAX 913/336-2751

March 26, 1991

TO: SENATE LOCAL GOVERNMENT COMMITTEE
RE: Statement of Support for Senate Bill No. 318

In my absence, please accept this written testimony on SB 318. I am unable to present it in person today since Kansas Rural Water Association's annual conference is being held in Salina this week.

The Kansas Rural Water Association works continuously to promote high quality service to the residents of rural Kansas. We also encourage our members to expand their systems as required in order to provide their vital services to those outside their existing boundaries when it is feasible. Rural water districts generally try to be responsive to the needs of their neighbors.

The Kansas Water Office and Kansas Rural Water Association are currently involved in a project to map all rural water districts in Kansas. Since this was last done in 1974, there not only have been many new districts formed but there have also been many changes in the service territory of the then existing districts. Many of these changes have been made subject to KSA 82a-623. Some were not. Some were made in order to respond to emergency conditions; and due to the rather cumbersome nature of the existing attachment provisions, these attachments simply never became legitimate.

Senate Bill No. 318 would clarify the intent of KSA 19-270 and simplify the requirement for attachment pursuant to KSA 82a-623.

The Kansas Rural Water Association encourages your favorable consideration of Senate Bill No. 318.

Respectfully submitted,

Dennis F. Schwartz
KRWA President

LF
3-26-91
Attach. 4