

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:00 a.m. on March 16, 1995 in Room 531-N of the Capitol.

All members were present except:

Committee staff present: Mike Heim, Legislative Research Department  
Theresa Kiernan, Revisor of Statutes  
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Cynthia Harmison, Deputy City Attorney, Lenexa  
Lisa Wetzler, Assistant County Counselor, Johnson Co.  
Don Moler, League of Kansas Municipalities  
Tom Schaefer, City of Lenexa  
Jim Hunsucker, Johnson County Wastewater

Others attending: See attached list

The minutes of March 16, were approved.

**HB 2189--Concerning the Kansas Tort Claims Act; relating to exceptions thereunder.**

Ms. Kiernan explained that the bill amends the Kansas Tort Claims Act by adding an exemption from liability the distribution or sale of information from Geographic Information Systems (GIS).

Cynthia Harmison, Deputy City Attorney for the City of Lenexa, testified in support of the bill. (Attachment 1) The Chairman asked Ms. Harmison if there have been any law suits in this regard. Ms. Harmison answered there have been none in the State of Kansas. The Chairman asked what the compelling public policy is. Ms. Harmison said it would be because they will be required to maintain the information by law and the public will have access to it. Her office has no objection to the sharing of the information but wants to be protected in case of human error. Short committee discussion followed regarding the applications of the bill.

Lisa Wetzler, Assistant County Counselor for Johnson County, testified in support of the bill. (Attachment 2) Ms. Wetzler clarified a committee question as to the use of "pattern" in the bill, explaining that it regards planning and zoning concerning geographical information about the land itself, not including such information regarding such statistics as crime patterns within a city. She added that the concept is very exciting because a large amount of information is available for the public 24 hours a day, and the system has a potential for a great partnership for sharing information in the community.

Don Moler, League of Kansas Municipalities, followed with further testimony in support. (Attachment 3)

Tom Schaefer, representing the City of Lenexa, briefly testified in support of **HB 2189**. He stated GIS is a very powerful tool, and they are just now realizing how the information can be shared; but without the protection offered in this bill, the city will not be able to share the power and benefit of this tool. With this, the hearing on **HB 2198** was concluded.

**HB 2192--Concerning special benefit districts; relating to the creation or enlargement thereof.**

Ms. Kiernan explained that the bill amends the statute that concerns the creation and enlargement of special benefit districts. The bill provides that the Board of County Commissioners take into consideration testimony at a public hearing concerning six specific subjects listed in current law regarding the willingness of the city to annex the territory.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT, Room 531-N Statehouse, at 9:00 a.m. on March 16, 1995.

Jim Hunsucker, Engineering Specialist with Johnson County Wastewater testified in support of **HB 2192** on behalf of John Metzler who was unable to attend the meeting. (Attachment 4)

Senator Ranson felt, since the bill is effective statewide, testimony from the county association would be appropriate. Mr. Hunsucker informed the committee that his office had worked closely with the Kansas Association of Counties in preparing the bill. Anne Spiess, Kansas Association of Counties, stood to inform the committee that the association does support the bill.

Senator Feleciano made a motion to report **HB 2192** favorable for passage, Senator Ranson seconded, and the motion carried.

On a call for a vote on **HB 2189**, Senator Ranson made a motion to report it favorable for passage, Senator Feleciano seconded, and the motion carried.

The Chairman announced that action on the several repealer bills previously heard would take place on Tuesday, March 21.

The meeting was adjourned at 9:47 a.m.

The next meeting is scheduled for March 17, 1995.



**TESTIMONY TO SENATE  
LOCAL GOVERNMENT COMMITTEE**

**RE: HB 2189**  
(K.S.A. 75-6104 Immunity Provision)

**CYNTHIA L. HARMISON, DEPUTY CITY ATTORNEY  
LENEXA, KANSAS**

**March 16, 1995**

Chairman Parkinson and Members of the Committee:

The City of Lenexa, Kansas appears here today as a proponent of HB 2189 and we strongly urge this Committee's support of House Bill 2189. First, I think a little background would be helpful on what is a geographic information system, also referred to as GIS which is the subject matter of this proposed Bill. GIS is a tool whereby interactive graphics and plotting capabilities are used to generate and maintain map sets. It is primarily a spatial database that is developed using many different information sources such as plat maps; engineering maps; roadway maps; parcel ownership information, etc. GIS databases will permit governmental entities to do such things as identify and display all roads of a specified age and size; or identify the location of all manholes or streetlights in the City. It will permit cities to develop their own fluid zoning map. It will permit displays and tabular summaries of such things as all building permits in the City and their location on a map and the location and frequencies of crimes committed in a City. There is no end to the kinds of information that may be developed and accessed through GIS, it is only limited by the databases upon which it is developed.

GIS is a very new concept. It has been used quite extensively in Great Britain, however, it is just emerging in the United States. I recently attended a two day conference in Tempe, Arizona, on Law and Information

Policy for Spatial Databases put on by the ASU College of Law's Center for the Study of Law, Science and Technology and the National Center for Geographic Information and Analysis. A main focus of this conference was the access rights of citizens to publicly held information and the potential liability to both governmental units and the private sector in connection with the use, sharing, and distribution of GIS data and analysis results. Unfortunately, no clear legal answer exists for these issues.

The greater the sharing of information, the more valuable the GIS database becomes. Thus, information is tapped from many sources in developing a database. It is very difficult to completely verify the accuracy of all the information maintained in a database. The database will generally contain disclaimer provisions advising the user of the need to independently verify the information, however, we all know that there will be situations where people will take the short cut and rely on the information accessed through the government rather than spend any additional time and money in verifying the information through such means as independent surveys or title searches. Moreover, in this litigious society, persons will make claims for alleged damages they incurred as a result of relying upon the information.

From a legal perspective, disclaimers will probably only be a valid defense if the allegation brought against the governmental entity is a breach of contract claim. For other types of negligence or "tort" claims, the disclaimer will probably not apply. Thus, the City is requesting that an additional paragraph be added to the tort claims immunity provision which would clarify the government's immunity for providing, selling or otherwise distributing information generated from GIS.

The City is certainly not encouraging the adoption of HB 2189 in order to be sloppy in its development of its GIS database. In fact, quite the contrary - - the more accurate a database is, the more benefit that can be derived from it. However, errors can and will occur when the information is

being inputted into the computer. In addition, the City cannot take responsibility for the veracity of the information it receives from other sources such as in Lenexa's case, Johnson County, which will be a main source of our information. The City firmly believes that the language proposed in HB 2189 is the best way to handle the use of GIS in Kansas. The language will promote the widespread sharing of information and encourage access to government information without the chilling effect that potential lawsuits will have on database development and data sharing.



## Legal Department

---

March 16, 1995

LOCAL GOVERNMENT COMMITTEE

HEARING ON HOUSE BILL 2189

COMMENTS OF LISA R. WETZLER  
ASSISTANT COUNTY COUNSELOR, JOHNSON COUNTY

Mister Chairman, members of the Committee, my name is Lisa Wetzler and I am an assistant county counselor for Johnson County. I submit the following comments on behalf of Johnson County in support of HB 2189 seeking an amendment to the Kansas Tort Claims Act.

HB 2189 would add provision (u) to the Tort Claims Act and provide governments protection in lawsuits involving their geographical information systems. As governments face great use of their electronic information, protection from damage claims becomes increasingly important. More and more demands are placed on government systems by members of the public and the need for certain protection in the form of a tort claim defense is now more urgent than ever.

As government is expected to supply data and information in geographical electronic form, the proposed amendment is the sole source of protection a government would have in the face of lawsuits and large damage awards. In order to encourage and permit governments to share the tremendous wealth of information now accumulated within their geographical information systems, Johnson County urges this Committee to support the legislation protecting governments in their activities involving electronic information.

*Senate Local Gov 4  
3-16-95  
Attachment 2*



**League  
of Kansas  
Municipalities**

LEGAL DEPARTMENT · 112 S.W. 7TH TOPEKA, KS 66603 · TELEPHONE (913) 354-9565 · FAX (913) 354-4186

**LEGISLATIVE TESTIMONY**

**TO:** Senate Local Government Committee

**FROM:** Don Moler, General Counsel

**RE:** Support for HB 2189

**DATE:** March 16, 1995

The League supports HB 2189 which provides a specific exception from liability pursuant to the Kansas Tort Claims Act under K.S.A. Supp. 75-6104 for providing, distributing, or selling information derived from geographic information systems of the city. We believe this is a helpful enumeration of a newly developing technology and needs to have its own place in the exemption section of the Kansas Tort Claims Act. It is arguable that this exemption is already found in the discretionary function found in subsection (e) of the current law, but we believe that a further definition of this specific function, which has come about as a result of the computer age, perhaps needs to be placed into statute in an effort to specifically exempt governmental entities from liability should a problem occur with the information provided.

We respectfully request that the Committee favorably report HB 2189.

*Senate Local Govt  
3-16-95  
Attachment 3*



OUTLINE OF TESTIMONY BEFORE  
SENATE LOCAL GOVERNMENT COMMITTEE  
IN SUPPORT OF HOUSE BILL NO. 2192

*Jim Hunsucker*

Presented by ~~John Metzler~~, Chief Engineer  
Johnson County Unified Wastewater Districts  
March 16, 1995

- A. K.S.A. 19-270 stipulates certain requirements for creation of benefit districts in unincorporated areas within three miles of city boundaries.
- B. Three proposed changes to K.S.A. 19-270 and why they are needed:
  - 1. Current statute makes county consideration of six factors relating to development in the benefit district mandatory. It is proposed that the burden of providing this information fall on cities.
    - a. Some factors, such as annexation plans, can only be provided by the affected city
    - b. Some cities have refused to provide information on some or all of the factors
    - c. The absence of this information creates doubt on the district creation.
  - 2. Current statute requires district creation within seven days of public hearing. It is proposed this time frame be set at 30 days.
    - a. State law on county sewer districts (K.S.A. 19-27a01 et. seq.) allows 365 days
    - b. Charter Resolution 29-92 on Johnson County sewer districts allows 120 days
    - c. 30 days would permit Board of County Commissioners a more reasonable time frame and would be consistent with intent of K.S.A. 19-270.
  - 3. Current statute refers to K.S.A. 12-705, which has been superseded by K.S.A. 12-749. It is proposed that this reference be updated.

ksm:7395P053

*Senate Local Gov 4  
3-16-95  
Attachment 4*

TESTIMONY BEFORE  
SENATE LOCAL GOVERNMENT COMMITTEE  
IN SUPPORT OF HOUSE BILL 2192

March 16, 1995

I am John Metzler, Chief Engineer for the Johnson County Unified Wastewater Districts. This is a position I have held since 1983. We are the largest provider of sewer services in Johnson County, serving approximately 275,000 people.

I have provided you with both an outline and the full text of my testimony. We support House Bill 2192, which makes three changes to K.S.A. 19-270. This statute stipulates certain requirements for the creation of sewer and other types of benefit districts in unincorporated areas within three miles of a city boundary. I will describe each proposed change and why we support these changes below.

1. The current statute can be interpreted to require that the Board of County Commissioners consider six factors relating to development in the benefit district before they can approve the benefit district. Several of these factors, such as the city's annexation plans and the impact of the benefit district on the community, can only be provided by the affected city. It has been our experience in attempting to comply with this statute that beyond giving their consent for creation of a benefit district within their boundaries, most cities have no interest in providing this information. When this occurs, the Board cannot consider all six factors and the district creation is brought into question. The proposed revision states that the Board of County Commissioners shall consider any testimony offered concerning these factors, but that the burden of providing this information falls on the affected cities, not on the Board of County Commissioners.
2. K.S.A. 19-270 provides only a seven day time frame from the public hearing to consideration of district creation. This is a very short time frame. In fact, the state law relating to county sewer districts, K.S.A. 19-27a01 et. seq., allows a full year for board consideration between the public hearing and district creation. Charter Resolution No. 29-92, amending these provisions in state law for Johnson County sewer districts, calls for 120 days. To fulfill the intent of K.S.A. 19-270 and allow the Board of County Commissioners more time to consider all of the testimony and concerns raised at the public hearing, we have recommended a 30 day period.
3. K.S.A. 19-270 currently makes reference to K.S.A. 12-705, which was repealed in 1992 and superseded by K.S.A. 12-749. The reference has now been updated to reflect the revised statute number.

Thank you for this opportunity to provide testimony in support of House Bill No. 2192. I will be happy to answer any questions.

ksm:7395P051