

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE.

The meeting was called to order by Chairperson Gary K. Hayzlett at 1:30 p.m. on February 20, 1997 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department
Julian Efird, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Jackie Buchanan, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

HB 2223 - Cities; street improvements, costs

The Chair opened **HB 2223** for discussion and final action. The Chair advised that he and Chris McKenzie, League of Kansas Municipalities, met and discussed the bill. Chair Hayzlett proposed a compromise starting with line 25, "pay 75% of the cost of the proposed improvements and the property owner shall pay 25%. If a majority of the property owners protest, then said assessments shall return to 95% city; 5% property owner. Governing body must notify property owners by certified mail of the proposed project including a copy of this statute. Property owners must protest with certified letter within 30 days of notice".

Chair called on Chris McKenzie, League of Kansas Municipalities, to present his proposal. It was his understanding that the two main problems of the present statute is lack of notice and hearing by city governing body at the outset of initiating improvements and lack of opportunity for landowners to petition to stop the improvements, or achieve a fairer cost-sharing agreement. He proposed two amendments. One is to amend KSA 12-6104 to delete language which removes duty of city governing body to publish a notice and conduct a hearing on the advisability of the improvements. The second to amend KSA 12-6a06 to allow the owners of properties benefitted by a proposed improvement to street segments as laid out in the bill to file a petition, signed by 100% of the owners of 100% of the land area to veto the proposed improvement. His proposal would not change the present statute of the city not paying more than 95%. (Attachment 1)

Chair advised he feels that the present statute has been abused and that what is considered by the League of Municipalities as a very small project is a big project for a few people in small cities.

Chris McKenzie advised the present statute is used more by medium-sized cities, 10,000 population or more, than the small cities.

Representative Pauls made a motion to amend the bill to include the proposed amendment of the League of Municipalities, and amend KSA 12-6a04 that strikes the language of adjoining parallel streets in order that property owners would receive public notice, seconded by Representative Humerickhouse. Motion carried.

Representative Humerickhouse made a motion to amend the percentages of the balloon proposed by the League of Municipalities, 12-6a06, to 75% of the resident owners of record of such property and the owners of record of 75% of the total area of such property are filed with the city clerk, seconded by Representative Ray, motion carried.

Representative McClure made a motion to change the number of days be changed from 20 to 30 after publication in reference to the project, seconded by Representative Schwartz, motion carried.

Representative Howell made a motion that notification to property owners up-front before the project is started be by certified mail, seconded by Representative Shore, motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE TRANSPORTATION COMMITTEE, Room 526 -S Statehouse, at 1:30 p.m. on February 20, 1997.

Representative Pauls made a motion to pass **HB 2223** favorably as amended, seconded by Representative Dillon, and motion carried.

Chair announced there would be no meeting as was scheduled on Friday, February 21, 1997.

Meeting was adjourned at 2:30.

**Explanation of League Amendments to HB 2223
Drafted By League of Kansas Municipalities¹**

Problems Identified:

- Lack of notice and hearing by city governing body at the outset of initiating improvements to street segments described in bill.
- Lack of opportunity for landowners to petition to stop the improvements or achieve more "equitable" cost-sharing agreement.

Proposed Approach

- ✓ Amend K.S.A. 12-6104 to delete language which removes duty by city governing body to publish a notice and conduct a hearing on the advisability of the improvements.
Impact: similar notice and hearing requirements as for all other city-initiated projects.
- ✓ Amend K.S.A. 12-6a06 to allow the owners of properties benefitted by a proposed improvement to street segments as laid out in the bill to file a petition, signed by 100% of the owners of 100% of the land area, to veto the proposed improvement.
Impact: a unified group of owners could block a proposed improvement project, forcing the city to finance it 100% at large or negotiate a different cost-sharing arrangement with the property owners.

*House Transportation
Attachment 1
2-20-97*

¹ These amendments have not yet been endorsed by the League, but they are viewed by staff as much more workable than any amendments to K.S.A. 12-6a07, as proposed in HB 2223.

12-6a04. Initiation of improvement; notice and hearing, when; resolution determining advisability of. (1) Before any contract is let or any work is ordered or authorized for an improvement, the governing body shall by resolution direct and order a public hearing on the advisability of the improvement. Notice of the hearing shall be given by not less than two (2) publications in a newspaper. The two publications shall be a week apart and at least three (3) days shall elapse between the last publication and the hearing. Notice shall be given as to:

(a) Time and place of hearing;
(b) general nature of the proposed improvements;
(c) the estimated or probable cost;
(d) extent of the proposed improvement district to be assessed;
(e) the proposed method of assessment; and
(f) proposed apportionment of cost (if any) between the improvement district and the city at large. The hearing may be adjourned from time to time and until the governing body shall have made findings by resolution as to the advisability of the improvement, the nature of the improvement, the estimated cost, the boundaries of the improvement district, the method of assessment and the apportionment of cost (if any) between the district and the city at large, all as finally determined by the governing body: *Provided*, The area of the improvement district to be assessed may be less than, but shall not exceed, the area proposed to be assessed as stated in the notice of hearing without giving notice and holding a new hearing on the improvement: *Provided further*, That the governing body may proceed without such notice and hearing, to make findings by resolution as to the advisability of improvements as provided in this section whenever ~~adjoining parallel streets have been improved, and the proceedings are to improve the intervening connecting street to the same extent as the streets to be connected, or when two portions of any street have been improved and an intervening portion not exceeding two (2) blocks has not been improved, and the proceedings are to improve such intervening portion to the same extent as the improved portions, or when the proceedings are to improve sanitary and storm water sewers.~~

(2) Petitions for any improvement authorized to be made under the provisions of this act which set forth:

- (a) The general nature of the proposed improvement;
- (b) the estimated or probable cost;
- (c) the extent of the proposed improvement district to be assessed;
- (d) the proposed method of assessment;
- (e) the proposed apportionment of cost, if any, between the improvement district and the city at large; and
- (f) a request that such improvement be made without notice and hearing as required in subsection (1) of this section, may be filed with the city clerk. Names may not be withdrawn from the petitions by the signers thereof after the governing body commences consideration of the petitions or later than seven (7) days after such filing, whichever occurs first: *Provided, however*, That the petitions shall contain a notice that the names of the signers may not be withdrawn after such a period of time. Such petitions may be found sufficient if signed by either (i) a majority of the resident owners of record of property liable for assessment under the proposal, or (ii) the resident owners of record of more than one-half of the area liable for assessment under the proposal, or (iii) the owners of record (whether resident or not) of more than one-half of the area liable to be assessed under the proposal.

Upon filing of such petitions, the governing body may make findings by resolution as to the advisability of the improvement, the nature of the improvement, the estimated cost, the boundaries of the improvement district, the method of assessment and apportionment of cost, if any, between the improvement district and the city at large, all as determined by the governing body. Thereupon the governing body may proceed without notice and hearing to order the improvement as provided in K.S.A. 12-6a06, except that no protest shall be received as provided in said section: *Provided*, The area of the improvement district finally determined by the governing body to be assessed may not exceed the district proposed in the petition unless notice is given and a hearing held as provided in subsection (1) of this section, in which instance the proceedings shall be subject to protest as in other cases.

History: L. 1957, ch. 99, § 4; L. 1959, ch. 72, § 2; L. 1967, ch. 86, § 1; July 1.

Research and Practice Aids:

Municipal Corporations — 294(1).
C.J.S. Municipal Corporations § 1094.

12-6a06. Same; action by governing body; protests. The governing body may, by a majority vote of the entire members-elect thereof, at any time within six (6) months after the final adjournment of the hearing on the advisability of making the improvements, adopt a resolution authorizing the improvement in accordance with the finding of the governing body upon the advisability of the improvement, as provided in K.S.A. 12-6a04, which shall be effective upon publication once in the newspaper: *Provided*, The improvement shall not be commenced if, within twenty (20) days after publication of the resolution ordering the improvement, written protests signed by both fifty-one percent (51%) or more of the resident owners of record of property within the improvement district and the owners of record of more than half of the total area of such district are filed with the city clerk: *Provided, however*, Whenever adjoining parallel streets have been improved, and the proceedings are to improve the intervening connecting street to the same extent as the streets to be connected, or when two portions of any street have been improved and an intervening portion not exceeding two blocks has not been improved, and the proceedings are to improve such intervening portion to the same extent as the improved portions, ~~or~~ when the proceedings are to improve sanitary and storm water sewers, no protest shall be accepted by the city clerk and such improvements may be made regardless of protests. The genuineness of the signature and addresses of all signers of each protest shall be verified by some signer of such protest. The governing body shall be judge of the sufficiency of any protest and its decision shall be final and conclusive: *Provided*, Names may be withdrawn from any protests by the signers thereof at any time before the governing body shall convene its meeting to determine the sufficiency thereof.

History: L. 1957, ch. 99, § 6; June 29.

Law Review and Bar Journal References:

Court interpretation discussed, J. Richard Foth, 14 K.L.R. 329, 333 (1965).

the improvement shall not be commenced if, within twenty (20) days after publication of the resolution ordering the improvement, written protests are signed by both one hundred percent (100%) of the resident owners of record of such property and the owners of record of one hundred percent (100%) of the total area of such property are filed with the city clerk; *Provided further*,