

## MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Chairperson Carlos Mayans at 3:30 p.m. on March 18, 1999 in Room 521-S of the State Capitol.

All members were present except: Rep. Cindy Hermes - excused  
Rep. Peggy Palmer - excused  
Rep. John Toplikar - excused

Committee staff present: Michael Heim, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Theresa Kiernan, Office of the Revisor of Statutes  
Lois Hedrick, Committee Secretary

Conferees appearing before the committee: None

Others attending: None

Chairman Mayans stated the purpose of the meeting was to give further consideration to **HB 2505** (Sewer districts; governing body). He directed attention to a draft of a substitute bill (Attachment 1) which was developed in response to concerns on **HB 2505** expressed at the committee's meeting on March 9.

Theresa Kiernan explained the differences between the original bill and the substitute bill, stating that Representative Garner (who had appeared before the committee on the bill) had assisted in drafting the substitute bill. Differences included:

- Section 1 localizes the bill to only Montgomery County.
- Section 2 specifies powers of the board of directors of a district formed under the bill and deletes the board's ability to tax if it is not governed by the board of county commissioners.
- Section 2(m) relates to industrial users by establishing penalties for users who do not comply with district requirements.
- New Section 3 requires the board of county commissioners to create a district if a proper petition is presented. All costs of creating the new district are assessed against the property of persons who sign the petition. The section also delineates the contents of the petition.
- Section 4 clarifies that, in Montgomery County, a separate board of directors from the board of county commissioners may be formed. It also prohibits the county commissioner's from optioning out of this requirement.
- Section 4(30) is a technical amendment to resolve conflicts in the statute resulting from 1998 legislation on hog farming.

Ms. Kiernan indicated that Rep. Garner stated he would contact Pat McGuire (who also testified at the March 8 meeting) to gain reaction to the substitute bill. Neither has responded to her. She also noted that subsection (5) of New Section 3(a) should be deleted in its entirety and subsection (6) renumbered. Committee members also suggested that in New Section 3, where "county" is used, it means Montgomery County.

Representative Welshimer moved that the draft of **Substitute for HB 2505** be amended by deleting subsection (5) of New Section 3(a) in its entirety; renumbering subsection (6) to (5); and wherever "county" is used it is meant to be "Montgomery county" and the Substitute Bill be passed. Representative Shriver seconded the motion. The motion carried. Representative Jim Garner will carry the bill on the floor of the House.

Chairman Mayans indicated that future meetings are on call of the Chairman.

The meeting was adjourned at 4:30 p.m.

## Proposed Substitute for HOUSE BILL NO. \_\_\_\_\_

By Committee on Federal and State Affairs

AN ACT concerning sewer districts; relating to the governing body thereof and the powers and duties thereof; amending K.S.A. 1998 Supp. 19-101a and repealing the existing section; also repealing K.S.A. 1998 Supp. 19-101i.

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

New Section 1. (a) The provisions of this section shall apply to Montgomery county.

(b) Whenever a petition signed by the owners of at least 51% of the land in a sewer district requesting a board of directors be elected to govern such sewer district, the board of county commissioners shall call and hold a meeting to conduct such election as provided by this section. Notice of such hearing and election shall be published in a newspaper of general circulation in the county at least 10 days prior to the date of the hearing and election. At the time and place set out in the notice of hearing, the owners of land within any such district shall select from their number a board of directors. The number of members on the board, not to exceed nine, shall be determined by majority vote of those owners of land present.

(c) Within seven days after the election of the board, proposed bylaws shall be submitted for adoption at a meeting of owners of land located within the district, notice of which shall be given to each such landowner as provided in subsection (a). Those owners of land located within the district present at such special meeting may adopt and amend any of such proposed bylaws and may propose and adopt additional or other bylaws. Such bylaws may be amended at any annual or special meeting of the owners of land within the district.

(d) The board of directors shall be the governing body of the district and shall meet at least monthly and at such other times as may be determined by the board or upon call by the chairperson or any two members of the board. Vacancies on the board shall be filled for the unexpired term, and until such appointee's successor is elected and has qualified, by appointment by the remaining members of the board. The board

shall adopt such rules and regulations in conformity with the provisions of section 2, and amendments thereto, and the bylaws of the district as are deemed necessary for the conduct of the business of the district.

New Sec. 2. The board of directors of a sewer district elected pursuant to section 1, and amendments thereto, shall have the power to:

- (a) Create, construct, reconstruct, extend, enlarge, operate and maintain a sewer system in the sewer district;
- (b) sue and be sued;
- (c) enter contracts;
- (d) join sewer districts;
- (e) acquire any real or personal property necessary to provide an adequate sewage system;
- (f) improve sewers and appurtenances thereof, through, under or along any street, public highway, alley or park and across any land within the county and to a connection with any creek, ravine, river or any other place within 10 miles of the district;
- (g) construct, extend, enlarge, improve, operate and maintain sewage disposal plants at any point along or near the line of the sewer;
- (h) acquire, by contract or purchase, rights-of-way or any other interests in sewers, sewage plants or other means of disposal of sanitary sewage, either within or outside the state, in the manner and on the terms the governing body deems advisable;
- (i) issue permits to any individual or corporation to build any sewers in any lateral or joint sewer district under plans and specifications and under terms approved by the governing body and under its inspection. The cost of the construction shall be borne entirely by the person or corporation contracting for the improvements; and governing the operation and transaction of business of sewer districts;
- (j) create lateral sewer districts and assess the cost thereof against the owner of the property benefited or against

the maintenance budget of the main sewer district;

(k) dissolve any lateral sewer district in the main sewer district. The property located within the lateral district may be included in one or more other lateral sewer districts;

(l) create an area-wide sewage disposal district, for the elimination or prevention of pollution of the waters of the state in any drainage area, to be served by a single sewage system;

(m) (1) adopt any rule, regulation, standard, limitation or requirement which is necessary to provide for the efficient and economical operation of the sewer system. Except as otherwise provided by this section, the violation of any rule, regulation, standard, limitation or requirement shall be punishable by a penalty not to exceed \$500. The governing body shall have the authority to maintain special proceedings or civil actions in any court of competent jurisdiction for the purpose of enforcing or preventing the violation thereof and to abate nuisances maintained in violation thereof;

(2) if any industrial user neglects, fails or refuses to comply with any rule, regulation, standard, limitation or requirement adopted pursuant to this section, in addition to any other remedy provided by statute or common law, the governing body is hereby authorized after notice and opportunity for a hearing, to refuse the discharge of wastewater from the premises of the industrial user and to take any action necessary to prevent violating discharges by the industrial user from the sewage system until the time the violations cease and are corrected. The governing body may condition the use of the sewage system upon the terms that are determined to ensure that successive violations do not occur. The governing body is hereby authorized, after notice and an opportunity for hearing, to assess a penalty against the industrial user in an amount not to exceed \$500 for the first violation and in an amount not to exceed \$5,000 for the second violation and in an amount not to exceed \$10,000 for the third and each successive violation. For the purposes of this subsection, each day of violation after

notice and a reasonable time to cease or correct the violation shall be considered a separate and successive violation;

(3) if the governing body determines any violation by an industrial user of any rule, regulation, standard, limitation or requirement poses a threat or danger to the public health, safety or welfare or to the proper operation of the sewage system, the governing body is hereby authorized to take immediate and effective emergency action to issue or obtain any preliminary injunctive relief, without notice or hearing, to prevent the discharge of the wastewater creating the threat or danger;

(4) if the governing body finds any violation by an industrial user of any rule, regulation, standard, limitation or requirement, after notice and opportunity for hearing, to be intentional, willful, and knowingly in violation or with reckless disregard thereof, the governing body is hereby authorized to refuse any future discharge of wastewater from the violating industrial user and to prevent violating discharges by the industrial user into the sewage system of the sewer district. The governing body is hereby authorized to assess a civil penalty upon the violating industrial user in an amount not to exceed \$10,000;

(5) if the governing body finds any violation by an industrial user of any rule, regulation, standard, limitation or requirement, after notice and opportunity for hearing, to have directly caused or contributed to any actual detriment to the public health, safety or welfare or to have directly caused or contributed to any damage to the sewage system or treatment process and that the industrial user knew or should have known that its violation could cause those effects, the governing body is hereby authorized to assess against the industrial user a civil penalty in an amount not to exceed \$10,000 or to collect from the industrial user the actual damages caused by the violation, whichever is greater;

(6) whenever the governing body takes any action to prevent violating discharges into the sewage system of the sewer



district, the governing body is hereby authorized to assess against the violator all costs of such action;

(7) all penalties, damages and costs assessed or awarded pursuant to the authority of this subsection shall be a lien upon the property of the violator from the date assessed or awarded until the date fully paid. All proceeds received or collected from fines, penalties, damages or costs shall be used by the governing body first to defray the costs of administering any rule, regulation, standard, limitation or requirement adopted pursuant to this section and then to defray the costs of any repairs, replacements, maintenance or reconstruction necessitated by violations thereof, and then to defray the general operation and maintenance costs of the sewer district;

(n) take any action necessary to prevent, control, reduce and eliminate water pollution in order to comply with the clean water act, 33 U.S.C. 1251 et seq., and amendments thereto; and

(o) take any action consistent with the provisions of this act for the safe, proper and economical operation of any sewer district.

New Sec. 3. (a) Subject to the provisions of K.S.A. 19-270, and amendments thereto, the board of county commissioners of Montgomery county shall create a sewer district whenever a petition requesting the creation of a sewer district signed by the owners of at least 51% of the acreage of the land in the proposed district is presented to the board. The petition shall state:

- (1) The boundaries of the improvement district;
- (2) the nature of the improvement;
- (3) the estimated cost of the improvement;
- (4) the proposed method of assessment;
- (5) the proposed apportionment of cost, if any, between the district and any other sewer district operated and maintained by the governing body; and

(6) whether the district shall be governed by the board of county commissioners or a board of directors elected pursuant to

section 1, and amendments thereto.

The petition also shall state that all costs and expenses of the work, including preliminary planning, engineering, legal and other preliminary work of skilled persons shall be assessed against the property of persons signing such petition. Any person signing the petition who desires to withdraw such person's name may do so by giving written notice to the county clerk on or before the date of the hearing on the petition. The petition shall be null and void after a period of two years from the date of the first signature on the petition.

(b) If a petition filed pursuant to this section requests that the sewer district be governed by a board of directors, the board of county commissioners shall call and hold a meeting to conduct the election of a board of directors in the manner provided by section 1, and amendments thereto.

(c) If a petition filed pursuant to this section requests that the sewer district be governed by the board of county commissioners. The board shall have the same powers and duties prescribed by K.S.A. 19-27a01 et seq., and amendments thereto.

Sec. 4. K.S.A. 1998 Supp. 19-101a is hereby amended to read as follows: 19-101a. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

(1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not consolidate or alter county boundaries.

(3) Counties may not affect the courts located therein.

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a

county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271--74th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(12) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 to 19-4625, inclusive, and amendments thereto.



(13) Except as otherwise specifically authorized by K.S.A. 12-1,101 to 12-1,109, inclusive, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.

(14) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto. Any charter resolution adopted by a county prior to July 1, 1983, exempting from or effecting changes in K.S.A. 19-430, and amendments thereto, is null and void.

(15) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

(16) Counties may not exempt from or effect changes in K.S.A. 13-13a26, and amendments thereto. Any charter resolution adopted by a county, prior to the effective date of this act, exempting from or effecting changes in K.S.A. 13-13a26, and amendments thereto, is null and void.

(17) Counties may not exempt from or effect changes in K.S.A. 71-301, and amendments thereto. Any charter resolution adopted by a county, prior to the effective date of this act, exempting from or effecting changes in K.S.A. 71-301, and amendments thereto, is null and void.

(18) Counties may not exempt from or effect changes in K.S.A. 19-15,139, 19-15,140 and 19-15,141, and amendments thereto. Any charter resolution adopted by a county prior to the effective date of this act, exempting from or effecting changes in such sections is null and void.

(19) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provisions of K.S.A. 1998 Supp. 12-1260 to 12-1270, inclusive, and amendments thereto, and 12-1276, and amendments thereto.

(20) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-211, and amendments thereto.

(21) Counties may not exempt from or effect changes in the

provisions of K.S.A. 19-4001 to 19-4015, inclusive, and amendments thereto.

(22) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.

(23) Counties may not exempt from or effect changes in K.S.A. 79-41a04, and amendments thereto.

(24) Counties may not exempt from or effect changes in K.S.A. 79-1611, and amendments thereto.

(25) Counties may not exempt from or effect changes in K.S.A. 79-1494, and amendments thereto.

(26) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-202, and amendments thereto.

(27) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-204, and amendments thereto.

(28) Counties may not levy or impose an excise, severance or any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water. Any resolution adopted by any county prior to the effective date of this act imposing or levying any such tax is null and void.

(29) Counties may not exempt from or effect changes in K.S.A. 79-2017 or 79-2101, and amendments thereto. Any charter resolution adopted prior to the effective date of this act, which affected the provisions of K.S.A. 79-2017 or 79-2101, and amendments thereto, is hereby declared to be null and void.

(30) Counties may not exempt from or effect changes in K.S.A. 2-3302, 2-3305, 2-3307, 17-5904, 17-5908, 47-1219 or 65-171d or K.S.A. 1998 Supp. 2-3318, 17-5909 or 65-1,178 through

65-1,199, and amendments thereto.

(31) Counties may not exempt from or effect changes in sections 1, 2 and 3, and amendments thereto.

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

Sec. 5. K.S.A. 1998 Supp. 19-101a and 19-101i are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.