

Approved: 3-11-99
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairman Senator Janice Hardenburger at 1:30 p.m. on March 3, 1999, in Room 529-S of the Capitol.

All members were present:

Committee staff present: Dennis Hodgins, Legislative Research Department
Mike Heim, Legislative Research Department
Ken Wilke, Revisor of Statutes
Graceanna Wood, Committee Secretary

Conferees appearing before the committee: Tom Schaefer, Asst. City Administrator, Lenexa
Dorothea Riley, Bond Counsel to Lenexa
Ronald Norris, Director of Public Works, Lenexa
Larry Kleeman, Asst. Gen. Counsel, League of Kansas
Municipalities
Donald Seifert, Management Services Director, Olathe
Jim Kaup, Lobbyist, City of Topeka

Others attending: See attached list

Chairman Hardenburger asked for approval of the minutes of January 25, February 15, 16, 17, 18, 22, 23, and 24.

Senator Huelskamp moved that the minutes be approved as written, seconded by Senator Becker. Motion carried.

Chairman Hardenburger opened hearing on **HB 2073 concerning cities and counties; relating to storm drainage improvement.**

Tom Schaefer, Assistant City Administrator for the City of Lenexa gave testimony supporting **HB 2073**, advising the Committee that if this bill passed, this would grant cities and counties the authority to issue general obligation bonds to finance large storm water drainage improvement projects in those cities, between cities and between cities and adjacent counties. (Attachment #1)

Dorothea Riley, Bond Counsel for the City of Lenexa, informed the Committee that the bill would repeal and replace K.S.A. 23-631-r and 13-631s, which were originally enacted in 1911 and were last amended in 1975. The existing legislation provides for any city's governing body to construct storm sewers or drains by ordinance at the point at which the storm sewer or drain will commence and the point of outlet for the storm sewer or drain. This bill would add channels and retention basins to the types of storm drainage improvements that may be constructed and financed by cities which provides a more comprehensive approach to storm water management. (Attachment #2)

Ron Norris, Director of Public Works for the City of Lenexa gave testimony in support of **HB 2073**, informing the Committee about the need for cities and counties being able to fund, and hence bond, storm water facilities outside their immediate jurisdictional boundaries. (Attachment #3)

Senator Steineger asked about the bonding, as to how it would be handled--would a taxing district be set up inside that watershed, or be all taxable property in every city effected.

Dorothea Riley informed the Committee that if a city wanted to do a project, the city would either issue its own obligation bond to finance the construction of the project, or it may incorporate with the county or city and each jurisdiction would have to have their own funding for their share of the project. It would be general obligation bonds of the whole county. There are also statutes that permit counties or cities to create a district to assess the property they think is going to be benefitted.

CONTINUATION SHEET

Legislative staff informed the Committee that current law permits watershed districts to be created within the county, and there are laws which permit drainage districts to be created. Drainage districts and watershed districts have very similar power and they can be multi-county. This bill provides more authority than what now exists.

Jim Kaup, Lobbyist on behalf of the City of Topeka presented testimony in support of **HB 2073**, which would enable cities to use statutes to undertake construction of storm water channels and retention basins as well as drainage ditches. (Attachment #4)

Larry Kleeman, Assistant General Counsel for the League of Kansas Municipalities gave testimony on behalf of the League's 527 member cities to offer their support of **HB 2073**. He said that storm water management is not solely a city problem—nor is it solely a county problem, and the bill clarifies the authority of cities to fully protect their citizens from storm water hazards. (Attachment #5)

Donald Seifert, Management Services Director for the City of Olathe presented testimony in favor of **HB 2073**, which would help clarify and expand one of the financing tools available for local governments to better manage storm water. (Attachment #6)

Chairman Hardenburger closed hearing on **HB 2073**.

Senator Becker moved that this bill be passed out favorably, seconded by Senator Gooch. Motion carried.

Meeting was adjourned at 2:10 p.m.



TO: Senate Elections and Local Government Committee
FROM: Tom Schaefer, Assistant City Administrator -/K
DATE: March 3, 1999
SUBJ: Support for HB 2073

Good afternoon Madame Chairman and members of the Committee.

My name is Tom Schaefer and I am the Assistant City Administrator in Lenexa. Thank you for this opportunity to speak to you today IN SUPPORT OF House Bill 2073. This bill, if passed, would grant cities and counties the authority to issue general obligation bonds to finance large storm water drainage improvement projects in those cities, between cities and between cities and adjacent counties.

I am here today along with Ms. Dotty Riley, our bond attorney with the firm of Logan, Riley, Carson and Kaup and Mr. Ron Norris, Public Works Director for the city of Lenexa. I will make a few brief introductory remarks and then would like you to hear from Ms. Riley and Mr. Norris concerning the legal, financial and engineering implications of this bill for local governments in Kansas.

As you may know Lenexa is a suburban city in Johnson County with a population of about 38,000 people. Lenexa is a rapidly growing community. Last year we experienced a boom in building construction in both the residential and commercial sectors. In fact, our 1998 building permit valuation totals hit an all time record of nearly \$150 million. This record growth is being fueled by a strong regional and state economy that is creating demand for new housing and commercial buildings. While this growth is a very positive factor in increasing the tax base of the city it does not come without some new challenges.

One of the most significant of these challenges for the city is maintaining an effective system to manage the increased storm water run-off from newly developed areas. Like many cities all over Kansas, Lenexa has areas within the city that are prone to flooding during storms involving heavy rainfall. For the last several years Lenexa has been working diligently through participation in the Johnson County Storm Water Management Advisory Council (SMAC) grant program to address these issues. While this is an effective program to address drainage problems at the neighborhood level, this program is not currently set up to address broader stormwater issues such as retention basins for large drainage areas. To undertake a project of this type will involve a great deal more planning and considerably more cost. The ability to bond finance such a project will make actual construction more feasible.

As Lenexa plans for more intense development in the western portion of our city we will be taking a much more comprehensive approach to storm water management to guide the systematic development of storm water structures and facilities. This legislation is needed to provide an important tool for local governments to use in developing a more regional approach to storm water management. In the end we will be better able to serve our citizens through this regional approach because as Mr. Norris will explain further in a few minutes, storm water run-off has little respect for the boundary lines on a map that separate jurisdictions.

Thank you for your kind attention. We will be happy to try to answer questions after Ms. Riley and Mr. Norris give their testimony.

LOGAN RILEY
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March 3, 1999

Honorable Chairperson and Members
of the Senate Committee on
Elections and Local Government
State House
300 West 10th Avenue
Topeka, Kansas 66612-1504

Re: House Bill No. 2073

Ladies and Gentlemen:

As bond counsel to the city of Lenexa, Kansas, we strongly support the passage of House Bill No. 2073. House Bill No. 2073 repeals and replaces K.S.A. 12-631r and 12-631s which were originally enacted in 1911 and were last amended in 1975. The existing legislation provides for the governing body of any city to construct storm sewers or drains for the purpose of carrying storm water from streets, avenues and alleys of such city after the city designates by ordinance the point at which the storm sewer or drain will commence and the point of outlet for the storm sewer or drain. The existing legislation also permits cities to issue general obligation bonds to pay the cost of the construction of such storm sewers or drains. In simpler terms, K.S.A. 12-631r and 12-631s essentially provides authorization for cities to construct and finance "drainage ditches" next to roads within the city to control storm drainage.

In working with the city of Lenexa and numerous other cities and counties in Kansas, we understand that modern storm drainage management necessitates more than the construction of drainage ditches. Approaches to contemporary storm drainage management include the construction of channels that divert runoff in a controlled fashion away from roads, infrastructure and other property and the construction of retention basins to safely accumulate storm water runoff. House Bill No. 2073 adds channels and retention basins to the types of storm drainage improvements that may be constructed and financed by cities which, we believe, provides a more comprehensive approach to storm water management.

House Bill No. 2037 also permits cities to determine the necessity of storm drainage improvements based on the need for improvements to manage storm drainage areas rather than just managing storm water runoff from roads. This change from the existing legislation is intended to address the need for cities and counties to provide adequate storm water management for entire drainage areas, not just from roadways. Because damaging storm water runoff does not stop at a city's boundaries, House Bill No. 2037 further

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Attachment: # 2-1

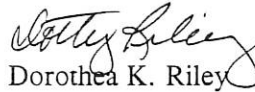
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permits cities to construct the storm water management improvements in an area within three miles outside the corporate limits of a city if the board of county commissioners of the affected county approves the construction by adopting a resolution. In our opinion, this Bill recognizes the regional nature of storm water problems and updates the existing legislation by providing cities and counties with contemporary storm drainage management tools.

If we may be of any assistance to the Committee on this matter, please let me know.

Very truly yours,



Dorothea K. Riley

DKR:mkr

Thank you for the opportunity to appear before you today. My name is Ronald Norris. I am the Director of Public Works for the City of Lenexa. By way of introduction, I am a professional engineer, with a degree in Civil Engineering and a Masters degree in Public Administration. Prior to coming to this job, I was Director of Design and Construction for the state of Missouri, and am past National President of the American Public Works Association.

Today I want to speak to you about the need for cities and counties to be able to fund, and hence bond, stormwater facilities outside their immediate jurisdictional boundaries. In order to address this, I want to first speak briefly about the nature of stormwater issues. I then want to focus on the changing nature of stormwater regulation and solutions, and the opportunities these approaches afford. Finally, I want to explore an example of why a multi-jurisdictional approach in today's regulatory and public environment is desirable.

Stormwater, by its very nature does not lend itself to solutions that are based on section lines, property lines, or jurisdictional boundaries. The only "law" storm water knows is that of gravity. The only boundary it respects is that of the watershed. The watershed derives its geographical boundaries from the topography and because most jurisdictional boundaries are derived from section lines, roadways, or other man-made lines, stormwater is almost always a multi-jurisdictional problem. Most stormwater solutions, however are single jurisdiction issues. Shawnee tries to address its problems, Olathe and Overland Park work on their issues individually, and Lenexa attacks its own problems. When the problems being addressed are small, isolated "parcel level" concerns, or even involves a few parcels; this approach may work on a limited scale for those specific parcels. It does little, however, to address the system wide issues of increased run-off due to development, environmental degradation or the enhancement of water quality.

Parcel level solutions are those solutions directed at localized, limited problems. Typical parcel level solutions include paving a channel in order to reduce flooding, stabilizing a channel with riprap or concrete in order to prevent localized erosion, or constructing small individual retention basins to prevent increased runoff rates from an individual property. Until recently in Kansas, as in most of the United States, parcel level solutions were, with few exceptions, the norm.

New regulations are in place and, for many cities, even newer regulations are on the way. Presently the Corps of Engineers requires jurisdictions to obtain a "404" permit to construct stormwater improvements on most channels. These permits focus solutions toward environmentally friendly approaches and away from the traditional paved channel, paved slope approach. They tend toward natural, "bio-engineered" solutions which respect the environment and also have as goals the preservation or enhancement of water quality.

Within the next two or three years many cities in Kansas will fall under the new National Pollutant Discharge Elimination System (NPDES) Phase II requirements. Under these requirements, all cities in metropolitan areas of more than 50,000 and most cities of 10,000 or more in non-metro areas will fall under this program. They will be required to

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address minimum measures in at least six specified areas. My purpose today is not to take an in-depth look at the pending NPDES Phase II regulations, but to point out these regulations, together with those already in place, will result in jurisdictions needing to move from parcel level problem solving to system level solutions.

Such an approach is a significant departure from the parcel level thinking of the past. It will involve water shed planning and land use controls, establishing regulations governing set-backs from streams, erosion control on construction projects, environmentally sensitive solutions for streamway erosion control, regional detention basins as opposed to individual retention on each property, the preservation and establishment of wet lands, and numerous other strategies. These solutions will not be effective in meeting stormwater goals nor in complying with regulations if they are not implemented in a coordinated, watershed basis, across jurisdictional boundaries. In our immediate area, most public works officials have recognized the need for such an approach and are beginning the process of establishing those mechanisms that will serve us across our respective boundaries.

A system approach will afford a wide range of benefits beyond the immediate goals of stormwater management. Wider streamway setbacks enhance the opportunity for trails and openspace. Regional stormwater detention basins gives rise to amenities such as increased park area, lakes and recreation. The emphasis on nature and natural solutions will serve to enhance the quality of life in cities and suburban areas while at the same time meeting increasingly stringent stormwater regulations.

The key to all of this is to approach the problem not from a perspective of artificial jurisdictional boundaries, but on a systemic, watershed basis. With a system approach, many of the solutions will of necessity involve more than one jurisdiction. For example, in western Lenexa, one of our major watersheds is Cedar Creek. Water from Lenexa flows into Cedar Creek. Cedar Creek flows through portions of DeSoto and into the unincorporated portions of Johnson County. There are few opportunities within Lenexa to create effective detention facilities. I believe the same is true for DeSoto. A major detention facility in the unincorporated area would make more sense and be much more effective than multiple small facilities in the cities. However, the County would not likely want to construct such a facility to serve needs arising from Lenexa or DeSoto. It would therefore make much more sense for the cities to jointly construct a facility outside their boundaries, in the County.

Such a solution would be possible through an interlocal agreement. Under present law, however it could not be debt financed. Such a large undertaking would likely need debt financing. The legislation you are presently considering will allow our city and others the opportunity to do debt financing for such facilities if and when the need should arise. I urge your favorable consideration of this legislation.



CITY OF TOPEKA

Chief Administrative Officer
215 S.E. 7th Street Room 355
Topeka, Kansas 66603-3914
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LEGISLATIVE TESTIMONY – HOUSE BILL 2073

TO: Senator Hardenburger and Members of the Senate Elections and Local Government Committee
FROM: Jim Kaup, on behalf of the City of Topeka
RE: **HB 2073; Stormwater Drainage Improvement Authority for Cities**
DATE: March 3, 1999

I am pleased to present this testimony on behalf of the City of Topeka in support of HB 2073, as amended by the House.

The City agrees with the position of the City of Lenexa that changes are needed to the current limitations in K.S.A. 12-631r and 12-631s as to both (1) the types of stormwater improvements that may be undertaken and (2) the means of financing those improvements.

The flow of stormwater does not honor the narrow parameters of the current law. Contemporary techniques for managing stormwater, likewise, cannot be fully realized due to the wording of those statutes.

The proposed amendments would enable cities to use these statutes to undertake construction of stormwater channels and retention basins as well as drainage ditches.

Perhaps most important, HB 2073 would amend these statutes to enable cities to use them as legal authority for the management of stormwater on a “drainage area” basis. This will allow a city to make stormwater management improvements outside its corporate limits, on the condition that such is agreeable to the board of county commissioners.

The City respectfully requests this Committee’s favorable consideration of HB 2073, as amended, and looks forward to the opportunity to better protect lives and property by adding this new legal authority to the City’s public improvements toolchest.

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LEAGUE OF KANSAS MUNICIPALITIES

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Legislative Testimony

To: Senate Elections & Local Government Committee
From: Larry Kleeman, Assistant General Counsel
Date: March 3, 1999
Re: League Support of HB 2073

Thank you for allowing me to appear on behalf of the League's 527 member cities to offer their support of HB 2073.

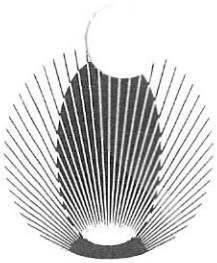
One of the most important prerogatives of a city is to provide for the welfare and safety of their citizens, and for the most part they have the ability to do that. However, today's hearing highlights one of a few situations where a city's power to act within its own boundaries is not enough to fully protect its citizens. As we've seen several times this past year, the threat posed by rising floods and uncontrolled storm waters can cause great harm to a community – resulting in damage to property, physical injuries, and even loss of life. Rushing waters can begin in unincorporated areas outside of a city and build to a crescendo with devastating affects upon city residents and their property. Unfortunately, rushing waters don't pay heed to a city's boundary line. Cities must be able to protect against this hazard not only within their borders but also without.

Storm water management beyond a city's borders is necessary to ensure the safety of its citizens. The only impediment is that cities cannot act outside their jurisdiction without state authorization. HB 2073 would change that and grant cities the power to fully protect its citizens. Under this bill, cities would be authorized to act outside their boundaries for purposes of constructing storm drainage improvements.

HB 2073 recognizes that storm water management is not solely a city problem – nor is it solely a county problem. Cities and counties should be able to work together to solve storm drainage problems, and this bill makes it clear that they have this authority. This bill also acknowledges that storm water management involves much more than building a drain into a street side curb. Modern management techniques also have goals of protecting homes, businesses, school grounds, and parks – not just streets and alleys. Construction of retention basins and channels are also an essential part of a storm water management system. The means available to cities to accomplish these tasks should not be limited in any way.

This bill clarifies the authority of cities to fully protect their citizens from storm water hazards, and the League urges favorable passage of HB 2073.

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City of Olathe

MEMORANDUM

TO: Members of the Senate Elections and Local Government Committee
FROM: Donald R. Seifert, Management Services Director *MRS*
SUBJECT: **HB 2073** - City and County Storm Water Drainage Improvements
DATE: March 3, 1999

On behalf of the city of Olathe, thank you for the opportunity to appear today in support of **HB 2073**. The management of storm water is an important, yet generally unseen local government function. As we all know from recent events last October, storm water management can also be a life and death matter. The city of Olathe believes this bill will help clarify and expand one of the financing tools available for local governments to better manage storm water.

The city of Olathe is fortunate in that geographically it is located at the top of several drainage basins. Olathe's storm water generally finds its way to the Kansas and Blue Rivers by way of our neighboring cities of Lenexa and Overland Park. In 1991, the city created a storm water utility that raises approximately \$1 million annually to cash fund storm water improvement projects within our city. However, some projects are too large to be totally cash funded, and storm water does not respect city boundaries. The city supports this bill because it clarifies bond issuance requirements, broadens the scope of improvements eligible for bond financing, and allows improvements to be extended outside the city limits. The city also supports the House committee amendment that authorizes adjacent cities to jointly undertake storm water improvement projects.

Thank you again for the opportunity to support this bill.

rc

Senate Elections & Local Government

Attachment: # 6-1

Date: 3-3-99