

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 p.m. on March 23, 2004 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Martha Dorsey, Legislative Research Department
Mike Heim Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Maureen Stinson, Committee Secretary

Conferees appearing before the committee:

Blaise Plummer, City of Emporia
Melinda Walker, City of Wichita

Others attending:

See Attached List.

The Chairman opened the hearing on:

SB 523 **taxing subdivisions, budgets; amendments of**

Written testimony in support of the bill was submitted by Sen. Barnett, Kansas Senate (Attachment 1). He explained that during the development of the 2004 budget for the City of Emporia, a mistake occurred in Lyon County that has most probably occurred throughout the state at various times. He said an error was made in calculation of the assessed valuation of taxing subdivisions in Lyon County and that subsequently, the budget that had been adopted in 2003 required revision. Senator Barnett said the bill would provide a procedure for amendment for amendment or revision of the budget prior to November 1 in any year that such an error occurs. He said that current law addresses amendments to the budget during the year in which the budget is in effect.

Blaise Plummer, City of Emporia, testified in support of the bill (Attachment 2). He said the adoption of this amendment by the Legislature will provide specific authority for cities to take action to correct their budgets due to clerical errors in the assessed valuation figures.

There were no opponents to the bill.

The Chairman closed the hearing on: **SB 523**

SB 523 **taxing subdivisions, budgets; amendments of**

Rep. Campbell made a motion for the favorable passage of SB 523 and asked that it be placed on the Consent Calendar. Rep. Reitz seconded the motion. The motion carried.

The Chairman opened the hearing on:

SB 408 **public works bonds**

Melinda Walker, City of Wichita, testified in support of the bill (Attachment 3). She said the bill would increase the minimum for requiring a bond to bid on construction, repair, and renovation of public buildings from \$40,000 to \$100,000. She explained that the benefit to the small and disadvantaged businesses and community at large in having the ability to waive the bond requirement for contracts less than \$100,000 far outweighs the risk that liens will be filed.

CONTINUATION SHEET

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE at 3:30 p.m. on March 23, 2004 in Room 519-S of the Capitol.

There were no opponents to the bill.

SB 408 **public works bonds**

Rep. Yonally made a motion for the favorable passage of SB 408. Rep. Storm seconded the motion. The motion carried.

SB 523 **taxing subdivisions, budgets; amendments of**

Rep. Campbell restated his earlier motion concerning SB 523, with the Consent of the Committee, to exclude the phrase "and asked that it be placed on the Consent Calendar." Rep. Reitz seconded the motion. The motion carried.

Minutes

Rep. Campbell made a motion to approve the minutes of the February 10, 2004, February 12, 2004, March 9, 2004, and March 18, 2004 meetings. Rep. Siegfried seconded the motion. The motion carried.

Interim Study Request

Copies of a draft letter to the Legislative Coordinating Council on behalf of the Committee were distributed to the members for their review (Attachment 4). The letter requests an in-depth study on the topic of city annexation laws during the 2004 Interim.

Copies of a draft letter to the Legislative Coordinating Council on behalf of the Committee were distributed to the members for their review (Attachment 5). The letter requests an in-depth study on the topic of eminent domain and its use by governmental entities for purposes of economic development during the 2004 Interim.

With the Committee's encouragement, the letters requesting interim study on the two topics, annexation and eminent domain, will be sent.

Adjournment

The meeting was adjourned at 4:00 p.m.

There are no further meetings scheduled for the 2004 Session.

JIM BARNETT
SENATOR, 17TH DISTRICT
CHASE, COFFEY, GEARY, GREENWOOD
LYON, MARION, MORRIS, OSAGE, AND
WABAUNSEE COUNTIES



TOPEKA

SENATE CHAMBER

Testimony

Senate Bill 523

COMMITTEE ASSIGNMENTS
CHAIR: HEALTH INSURANCE ISSUES
WORKING GROUP
VICE CHAIR: PUBLIC HEALTH AND WELFARE
VICE CHAIR: FINANCIAL INSTITUTIONS AND
INSURANCE
MEMBER: FEDERAL AND STATE AFFAIRS
HEALTH CARE STABILIZATION
FUND OVERSIGHT

Chairman Vickrey and other distinguished members of the House Local Government Committee, thank you for the opportunity to speak in support of SB 523.

During the development of the 2004 budget for the City of Emporia, a mistake occurred in Lyon county that has most probably occurred throughout the state at various times. An error was made in calculation of the assessed valuation of taxing subdivisions in Lyon county. Subsequently, the budget that had been adopted in 2003 required revision.

SB 523 would provide a procedure for amendment or revision of the budget prior to November 1 in any year that such an error occurs. Current law addresses amendments to the budget during the year in which the budget is in effect.

This legislation would allow all cities across the state to correct errors in valuation in a timely fashion.

I request your favorable consideration of SB 523.

Signed:

Senator Jim Barnett

JAB/gkp

House Local Government
Date: 03-23-04
Attachment # 1



**KANSAS HOUSE LOCAL GOVERNMENT COMMITTEE
WRITTEN TESTIMONY IN SUPPORT OF
SENATE BILL NO. 523
MARCH 23, 2004**

Thank you for the opportunity to appear before you in support of Senate Bill 523 pertaining to the preparation of municipal budgets. The preparation and adoption of the annual city budget is critical, particularly as revenue streams have been in decline the past two years. The budget is the principal policy tool of the governing body to implement its priorities for the upcoming year. The governing body establishes the level of services and programs needed by the community against the tax burden required to finance such services.

Kansas statutes establish fixed dates for the preparation, notice and public hearing, adoption and certification of city budgets and the property tax levies needed to support the adopted budget. Budget preparation begins in the summer. A typical timeline for adopting a city budget is the following:

- | | |
|------------|--|
| June 15 | County appraiser certified to the county clerk the appraisal rolls. K.S.A. 79-1466 |
| July 1 | County clerk notifies city of assessed valuation of all properties for the next year's budget. K.S.A. 79-5a27. Municipal budget preparation is underway. |
| August 1 | Last day for cities to meet and prepare the budget for the next year. K.S.A. 79-2727 |
| August 5 | Last day for publishing notice of budget hearing. K.S.A. 79-2929 |
| August 15 | Last day for public hearing on city budget. K.S.A. 79-2933. |
| August 25 | This is the last day for cities to file tax levy and the adopted budget with the county clerk. K.S.A. 79-1801. |
| October 31 | Last day for county clerk to correct clerical errors in assessment for current year. K.S.A. 79-1701. |

The county clerk completes the tax roll and delivers the roll to the county treasurer on November 1. The county treasurer then publishes notice of the tax levy on each \$1,000 of assessed valuation.

As described in the attached news accounts, it is possible that between the adoption of the city budget on or before August 25, and the last day for the county clerk to correct errors, the assessed valuation for the county can change. The change can be due to discovery of real property which should have been included in the valuation, or discovery of property which is exempt and shouldn't have been included in the valuation. When such mistakes occur, the city adopted budget no longer reflects the mill levy adopted by the city. In the case of the City of Emporia last summer, the correction downwards of assessed valuation in the county would have resulted in a 1.89 mill increase in order to fund the adopted city budget. The budget officially adopted by the city called for a 2.77 mill levy increase to fund the city budget. If the city did nothing to amend its budget after the error occurred, the actual mill levy increase would have risen to 4.665. This result was not acceptable to the City Commission which acted to adjust the city budget downwards in order to maintain the mill levy increase at the level previously voted on by the Commission.

K.S.A. 79-2929a only provides for amending an adopted budget in the current budget year. There is no specific authority for cities to amend an adopted budget prior to the budget going into effect on January 1. The proposed amendment to K.S.A. 79-2929a provides in subparagraph (b) that when an error in the calculation of the assessed valuation occurs, the governing body can amend its budget prior to November 1. If the amendment is solely to accommodate the correction in the calculation of assessed valuation, then there is no requirement for public notice and public hearing to accomplish the amendment.

The adoption of this amendment by the legislature will provide specific authority for cities to take action to correct their budgets due to clerical errors in the assessed valuation figures.

Sincerely,



Blaise Plummer
City Attorney

Tax error hits city

Emporia must revise already passed budget

By KIM HOLCOMB
holcomb@emporiagazette.com

When property tax valuation goes down, taxes go up and vice versa, to keep taxing districts' budgets funded at a fairly even level. But because of a mistake by the county clerk in June, the city of Emporia set its 2004 budget too high.

In June, the county made its valuation

estimate based on the county appraiser's certifications. Lyon County Clerk Karen Hartenbower said she uses those certifications to make an estimate and sends notices out to the taxing districts — the city, school district and a long list of county entities.

This year, however, she never sent one to the city, which set its budget on a higher valuation that did not include one of two large tax exemptions for Tyson Fresh Meats, formerly IBP.



Hartenbower



Commons

"The city is very upset, and it's my fault. I'm in error," Hartenbower said. "In June, the appraiser's office sent letters to the school district and the county. I am supposed to give the best estimate I have (of valuations).

... The city would not have set as high a budget if they knew what the valuation was."

A \$15 million Tyson exemption for per-

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ERROR

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sonal property, equipment, and a \$6 million Tyson exemption for real estate, were in process. But the \$6 million was not included in Hartenbower's estimate, nor were some smaller exemptions, a difference of more than \$6.5 million.

"The number we're being given today," Commons said, "should have been given to us in July. ... We

had assumed those exemptions had been taken off. ... Karen made the comment (Wednesday) that it would mean about \$1 million for the city. Really it's much more severe — \$134.7 million is what we had in assessed valuation and it's \$128.2 million now."

Hartenbower met with Commons on Thursday to discuss the problem, and gave the city until the end of the month to revise its budget. That could mean any number of things for the city.

"Karen said she could allow the

governing body to make an adjustment," he said. "... It's something where we'll have to see how far we have to go with it. Things could be cut out of the budget. If we did nothing, the mill levy would increase slightly less than 2 mills."

One part of the budget process Commons said he does not like is having to create a budget in June and July.

"Some things pop up that you can't anticipate," he said.

Hartenbower said she wanted to work with the city.

EMPORIA CITY COMMISSION

CITY BUDGET BECOMES EVEN MURKIER

By SCOTT ROCHAT
rochat@emporiagazette.com

City commissioners knew Wednesday they needed to fix the 2004 budget to account for a \$6.5 million valuation error by the county clerk's office. But the question arose: Can they?

County Clerk Karen Hartenbower told the city last week that the city had until the end of October to bring its budget in line with the new valuation figures. But City Manager Steve Commons and City Attorney Blaise Plummer said it might not be possible to change the budget until it's too late.

"There's no procedure to amend a budget you've just adopted," Plummer said. "We're in a vacuum as far as process."

The problem, Plummer said, is that the city can only amend a budget for the current budget year. But this budget doesn't go into effect until January 2004. By then, November property taxes have already been levied.

Commons said the city was asking for a state attorney general's opinion on the matter. Until that came, he said, any early measures the city might take could have the whole budget declared illegal.

"We're here as a result of a mistake that was made last summer," Commons told

the commissioners. "I don't want to put you in the position of compounding that mistake."

If no changes can be made, the mill levy will automatically rise to cover the gap. That means 1.891 mills over and above what the city approved in November, or 4.665 mills above what was paid for 2003.

In real dollars and without including changes in a home's value, that means the owner of a \$75,000 home would pay \$371.41, a \$40.24 increase from this year.

If changes are allowed, however, it

Please see Budget, Page <#>

BUDGET

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calls the whole budget calendar into question. Because the budget is presently reviewed in July and approved in August, the figures are based on projections made 18 months in advance. But if those figures can be changed in October, why does there need to be an Au-

gust deadline?

"This may open up new opportunities for us," Commons said.

Negotiations with SBC may relieve some of the financial pressure. The phone company pays the city 12 cents a phone line, under an agreement that dates back to 1963. But other utilities, such as cable or gas, pay a percentage of their gross receipts, usually around 3 percent.

The phone agreement is up for renewal this year. If SBC's rate were

set to a similar 3 percent, Commons said, and other phone companies followed suit, the result would be an increase in phone franchise revenues for the city, jumping from \$20,000 a year to about \$100,000 a year.

Testimony from:
Melinda Walker
City of Wichita

March 23, 2004

Chairperson
House Local Government Committee
State Capitol, Topeka

Dear Chairperson:

I am here today to speak in support of Senate Bill 408.

Senate Bill 408 amends K.S.A. 60-1111 by providing an increase in the required public works bond be furnished by any contractor from \$40,000 to \$100,000 who enters into a contract with the city to do work for a cost in excess of \$100,000. It is important to note that Senate Bill 408 does not require such a waiver but merely permits a municipality to decide to waive this bonding requirement for public works contracts under \$100,000. This amendment has a housekeeping update on language that any liens which have been filed prior to the filing of such bond shall be discharged.

The public works bond, itself, is an exception to the mechanic lien concept. Ordinarily, property upon which work is done or upon which improvements are made utilizing supplies and materials purchased from others is subject to such a lien to the extent that the owner or the owner's contractor fails to pay for such work, supplies or materials. The legislature has determined that public property should not be subject to such a lien. However, in order to provide some alternative protection to those who provide labor, supplies or materials to improve public property, the legislature, in K.S.A. 60-1111, has required that the contractor post a bond guaranteeing payment for such labor, supplies or materials when the public works improvement contract will cost more than \$40,000 recommend change to \$100,000.

In recent years the City of Wichita has identified this required bond as a significant impediment to the ability of small and disadvantaged businesses to compete for the City's public works contracts. Several such business owners have recounted their willingness to bid for such work and their frustration in finding that they could not qualify for bonding by the existing insurance and surety companies that write such bonds. Many times their complaint is that they are not able to compete for contracting work in the private sector because selection is often based on past relationships and less on a strict bid process. While the City offers the opportunity to bid and compete on a much more level playing field, the public works bond requirement of K.S.A. 60-1111, more often

House Local Government
Date: 03-23-04
Attachment # 3

than not, prevents the small business or newly formed small and disadvantaged business from having the opportunity to bid.

The Kansas Minority Business Development Council, an independent organization affiliated with the Wichita Chamber of Commerce, has identified bonding requirements as one of the most significant factors preventing small and disadvantaged businesses from participating fully in the City of Wichita's bid process.

The Wichita City Council has approved the expansion of the SBA Micro Loan Program for Wichita small businesses using local tax funds to increase available loan funds by \$500,000.

The issue of qualifying for bonding is somewhat of a Catch-22 for small and disadvantaged businesses. Most bonding companies evaluate a contractor's "bondability" using traditional indicators such as the record of past work, audited financial statements and financial references. A new, small and disadvantaged business, even those which are adequately capitalized and competently staffed, do not have access to the type of work in the private sector which would give them a "track record" sufficient for a bonding company to consider them a good risk. Public sector work, which is awarded competitively on the basis of the low bid, is often the only opportunity that such a business has to prove itself and to establish the work record it needs to compete across the board. When the inability to obtain a public works bond prevents the business from tapping that opportunity, it is, in the opinion of the governing body of the City of Wichita, time to take a look at the interests that such a bond is designed to protect and to weigh them against the burdens on small and disadvantaged businesses that it represents.

The City of Wichita has done this balancing of competing interests and it believes that if it has the choice of waiving the public works bond on contracts under \$100,000 it can still provide adequate protection against liens being filed against City property while encouraging participation by small and disadvantaged business in the City's public works bid process. Other cities may not agree or may not have the same concerns that Wichita does and, as a consequence, may never take advantage of the option afforded by Senate Bill 408.

The City of Wichita is committed to eliminating barriers to full and fair participation by small and disadvantaged business in the awarding of City contracts. The City of Wichita Council, and the small/disadvantaged business community all agree that the public works bond requirements of K.S.A. 60-1111 is such a barrier. The City Council believes that it can administer its bidding contracting and procuring process without requiring a public works bond under the required \$100,000 for public works contract and still adequately protect City owned property from the risk of being liened because a contractor has not paid its bills. Consequently, the benefit to the small and disadvantaged business and

the community at large in having the ability to waive this bond requirement for contracts under \$100,000 far outweighs the risk that liens will be filed and the City will have to "pay twice" for public improvements.

March 9, 2004

Representative Doug Mays, Speaker
Chairman, Legislative Coordinating Council
380-W, Statehouse
Topeka, KS 66612

Dear Representative Mays:

On behalf of the House Local Government Committee, I am requesting an in-depth study be conducted of city annexation laws during the 2004 interim.

There appears to be considerable interest in this topic among members of the Kansas House and our local government committee. A thorough study of city annexation laws and practices has not been conducted by an interim committee topic since 1986.

The following are some of the areas that should be explored:

- The need for cities to have unilateral annexation powers.
- The need for residents in an area proposed to be annexed to have more of a voice in the unilateral annexation process.
- The efficacy of the annexation procedure before the board of county commissioners and its frequency of use.
- The feasibility of local boundary commissions to decide annexation issues.
- A review of city plans for extension of services to newly annexed areas and their effectiveness.

Thank you for your consideration of this request.

Sincerely,

Representative Jene Vickrey, Chair
House Local Government Committee

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House Local Government
Date: 3-23-04
Attachment # 4

March 23, 2004

Speaker Doug Mays
Chairman
Legislative Coordinating Council
Statehouse, 380-W
BUILDING MAIL

Dear Speaker Mays:

On behalf of the House Local Government Committee, I am requesting a 2004 interim study on the topic of eminent domain and its use by governmental entities for purposes of economic development.

The study should review the types of local government entities that may exercise the powers of eminent domain for economic development projects, how this power has been used, around the state, and the need for restrictions, if any, on this power.

The study should ^{also} review what the courts have determined is a proper public purpose for the exercise of the powers of eminent domain and determine if the legislature should place limits on the public purpose doctrine.

Thank you for your consideration of this matter.

Sincerely,

Vickrey
Representative Jene ~~Vickery~~, Chair
House Local Government Committee