

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on February 21, 2006 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department  
Bruce Kinzie, Revisor of Statutes' Office  
Diana Lee, Revisor of Statutes' Office  
Ann McMorris, Committee Secretary

Conferees appearing before the committee: Rep. C. Frank Miller  
Rhonda Franks, Scranton - property owner  
Ken Daniel, Kansas Small Business owner  
Ed Jakinski, Associate Landlords of Kansas  
Kimberly Winn, League of Kansas Municipalities

Others in attendance: See attached list

Chair opened the hearing on

**H.B. 2592 - Liens for utility services provided by municipally owned or operated utility**

Proponents:

Rep. C. Frank Miller testified the amendments added to this bill by the House Committee will more clearly define the uniform conditions set forth in **H.B. 2592**. He also requested a technical amendment to more clearly define uniform conditions. Bruce Kinzie is to explain the amendment. (Attachment 1)

Rhonda Franks, Scranton is a property owner who urges passage of **HB 2592** in order to make uniform the laws passed and to stop cities from unfairly placing the financial burden on property owners to pay a tenant's or any previous customer's unpaid utility bill. (Attachment 2)

Kenneth Daniel, small business owner, urged passage of **HB 2592** to help small business owners continue providing homes for a large part of the population. (Attachment 3)

Ed Jakinski, Associate Landlords of Kansas, noted that many times the municipality does not know the owner of the property when a tenant applies for service. He urged passage of **HB 2592**.

Opponents:

Kimberly Winn, League of Kansas Municipalities, opposed **HB 2592** because the bill would uniformly prohibit the collection of fees due and owing to the city from landlords. This would have a negative impact on all cities that operate water, sewer, solid waste, electric, or natural gas services. (Attachment 4)

Much discussion and questions on deposits, how they are computed, length of time deposits are held, and how cities collect unpaid fees from the tenants.

Chair closed the hearing on **HB 2592**.

Rep. Miller called on Revisor Bruce Kinzie to explain an amendment he proposed to clarify **HB 2592**. Bruce provided a balloon showing the changes proposed by Rep. Miller and explained the deletion of certain statutes. (Attachment 5)

Chairman Emler asked Ms. Winn to provide the summary of the Supreme Court cases she had cited.

No further action taken on **HB 2592**.

CONTINUATION SHEET

MINUTES OF THE Senate Utilities Committee at 9:30 A.M. on February 21, 2006 in Room 526-S of the Capitol.

Approval of Minutes

Moved by Senator Apple, seconded by Senator Pyle, approve the minutes of the meeting of the Senate Utilities Committee held on February 20, 2006. Motion carried.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 5



Tuesday February 21, 2006

Honorable Senator Jay Emler Chairman  
Members of the Senate Utilities Committee  
Testimony presented by Representative Frank Miller.

It is my pleasure to once again come before this committee in support of HB 2592, which passed out of the House, February 14, 2006 by a vote of 114 yeas to 8 nays.

Mr. Chairman, last year I presented HB2279, which was a bill that was almost a twin of this year's version. However, the bill that I presented last year was supposed to have been uniform statewide, but somehow turned out not to be uniform. For this reason, this year I had the revisors redraft this bill from last year and had it made uniform statewide.

The injustice this bill corrects was made known to me last year by one of my constituents who is the owner of several rental houses. Since that time, I have had many other rental property owners tell me that the municipality has placed a tax lien on their rental property because a tenant moved out without paying all of his or her bills.

The bill, HB2279, that was passed last year by both the House and the Senate, and was signed into law by the governor, allows local governmental entities providing utility services to place a lien on a property owner's property tax roll for any unpaid bills, which were contracted with the property owner, for water, sewer, and trash charges. The law also allowed these services to be discontinued until the unpaid amount had been paid. However, the bill did not allow the local governmental entity to place a lien on the owner's rental property if the service was contracted with the tenant.

A brief summary of what HB2592 does is as follows:

1. The new bill requires the law to be applied uniformly statewide; which means no municipality or county can opt-out under Home Rule.
2. It does not allow a lien to be attached to a rental property owner's property tax roll for any unpaid tenant charges if the utility service provider contracted with the tenant.
3. The municipal utility service provider cannot refuse to contract with the tenant unless the tenant has outstanding unpaid utility bills.
4. It defines "utilities services" to include; water, sewer, trash, gas, and electricity.

The bill was amended twice by the House Utilities committee:

1. It provided that the utility provider may require a deposit to be paid by a tenant, but such deposit shall not exceed the amount of an average expected month's bill for use of the utility's service.
2. Amended so that the bill does not include any rural water district organized pursuant to K.S.A. 82a-612 et seq., and amendments thereto.

Other persons will testify today and emphasize the magnitude of this injustice. It is important that rental property owners be protected from irresponsible tenant's unpaid

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bills. It may be convenient for the utility provider to charge an unpaid bill to the rental property owner, or add the amount to the owner's tax roll, or pass it on to next renter, but it is most certainly not FAIR!

These rental property owners provide a service to communities in general by taking the responsibility of maintaining many of the older homes in our neighborhoods. This upkeep adds to the esthetic appearance of our communities, which in turn helps maintain or even increase the appraised values of all property. Thus, municipalities and counties benefit by enjoying a stable or increasing revenue base.

More importantly, these rental properties are much needed by low income families and young people not yet able to financially become homeowners. This includes, in many cases, our children or grandchildren.

Mr. Chairman I respectfully request that the Senate Utilities committee amend this bill to correct an oversight by the revisor. The technical amendment will more clearly define the uniform conditions set forth in HB2592. Revisor Bruce Kinzie is present and will present and explain the amendment for consideration by the committee.

I urge the committee to support HB 2592 as amended.

Thank you, Mr. Chairman, and I stand for questions.

Testimony submitted by  
Representative Frank Miller

February 21, 2006

Rhonda Franks  
717 E 5<sup>th</sup> St  
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(785) 633 4961

To: The Honorable Senator Jay Emler, chairman, and all members of the Senate Utilities Committee.

Mr. Chairman I support HB 2592 because it will make uniform the laws passed the last two sessions and will stop cities from unfairly placing the financial burden on property owners to pay a tenant's or any previous customer's unpaid utility bill.

With the passage of this bill, cities will no longer be able to "home rule" out of state law as many cities currently do. For the last two years I watched the Scranton City Officials "home rule" out of state law and pass ordinances which allow them to bypass the state law which state lawmakers intended to be uniform. When Scranton attempted to "home rule" out of state law regarding this issue, citizens circulated a successful petition and defeated the charter ordinance at the polls. Yet, even though the citizens spoke loud and clear with their votes at the polls, the City of Scranton passed ordinances the following year which places as much financial burden possible on the landlord or the next property owner, rather than the person who created the debt. They additionally passed ordinances which discriminate against tenants by requiring unreasonably high deposits from a tenant, but not from a home owner.

Scranton **refuses** to provide utility services at a residence until the next customer, whether it is the landlord or a new property owner, pays the previous customer's unpaid debt. This policy not only places the financial responsibility on the **wrong** person, it also **enables** someone to fail to pay their bill. Once some (not all) individuals realize that their landlord or the person they are selling their property to will be required to pay their final bill, they aren't going to pay their final bill. **Make the person who created the debt accountable. Stop enabling them to skip out. Pursue them.** Cities need to aggressively pursue collection against the person that created the debt, instead of forcing a third party who did not contract for the service to pay the debt. No other business is allowed to do this. If a customer at a gas pump drives off without paying for the gas, the gas station does not require the next customer to pay the "drive off" customer's debt before being allowed to purchase gas himself.

Without the passage of this bill, if cities are allowed to continue to force landlords to pay someone else's debt, landlords will be forced to raise rents or defer maintenance on properties. This will result in sub-standard properties which would ultimately decrease the tax base.

Myself and others in the City of Scranton have been forced on numerous occasions to pay the debt of a former city customer. As landlords, we have had to pay previous

tenant's outstanding utility bills. When purchasing new properties, we have been forced to pay the **previous property owner's** outstanding utility debt. I was even forced to pay for a **former property owners' bounced check** when I purchased a new property. In all of these situations the city did not pursue collection action against the person who created the debt—they just passed it to the landlord or the new property owner. The city also failed to pursue prosecution of the person who wrote the bad check.

In one case, when I protested paying one of these, I was told by the city council that if I failed to pay the former **home owner's** outstanding utility bill, the city would shut utilities off to my personal home, my restaurant, my husband's commercial shop and every rental that we owned. They knew my pockets weren't deep enough to fight this and I had no choice but to pay the bill. This is all a form of extortion.

I keep hearing from city officials that these unpaid bills will bankrupt them. I surveyed about 10 cities, including Scranton, to try to get statistics from them. Osage City was the only city that provided information, they stated it is NOT a problem; they loose less than 1% of their annual budget due to uncollectible accounts. All other cities told me they did not have that information available. If it is not available, how can they determine it will bankrupt them?

I had to pay nearly \$900.00 last year to the City of Scranton for debt that was not mine. This was over 2.5% of my annual budget. This was money that I could have used to improve and maintain my properties which increases the value of my properties and ultimately increases the cities tax revenues. This same \$900.00 was less than 1/10 of one percent of the city's annual budget.

Please make this bill law. Passage of this bill will not only prevent cities from unfairly burdening one class of business owner with someone else's debt; but also prevent cities from discriminating against tenants.

ADVOCATES FOR KANSAS SMALL BUSINESS

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## Testimony to the Senate Utilities Committee

by Kenneth Daniel

February 27, 2006

Mr. Chairman and Members of the Committee:

My name is Ken Daniel, and I am a small business owner and volunteer advocate for small business. I publish KsSmallBiz.com, a small business newsletter, and serve as C.E.O. of Midway Wholesale, a Topeka specialty building material distributor in Topeka and six other Kansas cities.

I wish to speak in favor of House Bill 2592.

Several times this year, I've heard lobbyists and officials of cities and counties testify that they are only looking out for the little guy. That is exactly what I heard when testimony was taken on this bill in the House.

I am here today as a person who is genuinely looking out for the little guy. The median small business owner and the median wage-and-hour person in this country make almost exactly the same, around \$33,000 per year. In other words, half of all small business owners, about 12 million of them, make less than \$33,000 per year.

A huge group of those are people that have a rent house or two to pick up extra income beyond their regular jobs. They endure huge credit risks, both personally and from deadbeat tenants.

No matter how much lipstick you put on the pig, publicly-owned utilities are businesses. They are businesses that invested nothing and pay no taxes. Their employees are supported with rich pensions and health benefits that people who make less than \$33,000 per year cannot afford.

Now those government-owned businesses are asking for you to relieve them of the "burden" of doing their job, shifting that burden of red tape work and credit losses onto the little guy.

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Attachment 3-1



My business sells about \$45 million per year, and our bad debts run about one-half of one percent. The late fees we charge pay back part of this. There is absolutely no reason these utilities cannot manage this on their own.

There is nothing magical about this, but it takes work. We have to check credit up front, monitor things, and work to collect when people get behind.

The cities and counties don't want to do this work, so their solution is to dump it on the little guy.

It is not fair to punish people who are providing homes for a huge part of our population just because these government-run businesses don't want to do the work that all of the rest of us have to.

I encourage the committee to act favorably on House Bill 2592.



League of Kansas Municipalities

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To: Senate Utilities Committee  
From: Kimberly Winn, Director of Policy Development & Communications  
Date: February 20, 2006  
Re: Opposition to HB 2592

Thank you for the opportunity to appear before you today on behalf of the 576 member cities of the League of Kansas Municipalities (LKM). LKM and our member cities stand in opposition to HB 2592. Because HB 2592 would uniformly prohibit the collection of fees due and owing to the city from landlords, HB 2592 would have a negative impact on all cities that operate water, sewer, solid waste, electric, or natural gas services.

Across the country it is not unusual for cities to have local ordinances requiring landlords to pay utility bills in the event that a tenant does not pay and we support a city's ability to use this collection method for the following reasons:

- **Equity.** The real crux of this issue is equity. If cities are unable to collect delinquent utility bills from landlords who have rented to tenants who refuse to pay their bills, then the remaining citizens of the city will bear the cost in higher utility rates. Citizens of the community who pay their bills in a timely fashion should not be penalized for those tenants who refuse to pay their bills. The landlords, who own the property, and are using the property as a money-making enterprise should be obligated to make sure that the city services which are delivered to that property are ultimately paid for.
- **Landlords Have Alternatives.** Allowing a tenant to individually contract for his or her own utility service is really up to the landlords. Many landlords simply include water and sewer service as part of their rent charges, thereby avoiding the situation where a tenant "skips out" on the payment of those charges.
- **Home Rule.** We believe that such decisions are best left to locally elected officials and their citizenry.

The lien which is provided for in statute and in most city ordinances is the mechanism by which cities and their citizens can be assured that each property pays its fair share for the use of city services. HB 2592 would amount to a subsidy of landlords by property owners who pay their bills appropriately. For these reasons, we respectfully request that you do not report HB 2592 favorably for passage. Thank you for the opportunity to share our concerns on this issue. I would be happy to stand for questions at the appropriate time.

Session of 2005

**HOUSE BILL No. 2592**

By Representatives F. Miller, Golco, Grange, Huy, Klegerl, Knox,  
McCreary, Judy Morrison, Oharah, Peck and Pilcher-Cook

1-11

11 AN ACT concerning municipalities: relating to utilities services; also re-  
12 pealing K.S.A. 2005 Supp. 12-631k, 12-631z, ~~12-1, 12-6, 12-12,~~  
13 ~~§60,~~ 14-569 and 19-2765b.

amending K.S.A. 12-856 and K.S.A. 2005 Supp. 12-860 and  
repealing the existing sections;

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. (a) Except as provided in subsection (b), if any person,  
17 firm, corporation, organization, political or taxing subdivision of the state  
18 or other entity other than the state of Kansas and the federal government  
19 residing, occupying, using or operating on property to which is provided  
20 utility services by a utility owned or operated by a municipality, neglects,  
21 fails or refuses to pay the fees or charges for such service, the unpaid fees  
22 or charges shall constitute a lien upon the property to which such utility  
23 service is provided. The amount of the unpaid fees or charges shall be  
24 certified by the governing body of the municipality to the county clerk of  
25 the county in which such property is located, to be placed on the tax roll  
26 for collection, subject to the same penalties and collected in the same  
27 manner as other taxes are collected by law. The governing body may  
28 refuse the delivery of such utility service as otherwise permitted by law  
29 until such time as such charges are fully paid.

30 (b) A lien shall not attach to property for unpaid utility fees or  
31 charges, when the utility service has been contracted for by a tenant and  
32 not by the landlord or owner of the property to which such service is  
33 provided.

34 (c) Except as provided by this subsection, no municipality which pro-  
35 vides utility services shall refuse to contract with a tenant for provision of  
36 such services to property occupied by such tenant. A municipality shall  
37 not be required to contract with any person if such person has outstanding  
38 or unpaid charges for utility services provided by such municipality.

39 (d) A utility owned or operated by a municipality may require  
40 a deposit to be paid by a customer, but such deposit shall not ex-  
41 ceed the amount of an average expected month's bill for use of the  
42 utility's service.

43 ~~(e)~~ (e) When used in this section:

5-2

1 (1) "Municipality" means any city, county, township, water district,  
2 improvement district or other political or taxing subdivision of the state  
3 or any agency or instrumentality of a municipality which provides utility  
4 services **but does not include any rural water district organized pur-**  
5 **suant to K.S.A. 82a-612 et seq., and amendments thereto.**

6 (2) "Utility services" means refuse, trash, garbage or other solid waste  
7 collection and disposal, sewer, water, gas and electric power services.

8 ~~Sec. 2. K.S.A. 2005 Supp. 12-631k, 12-631z, ~~12-1,124~~ 12-6, 12-4, 12-~~  
9 ~~860, 14-569 and 19-2765h are hereby repealed.~~

10 Sec. 3. This act shall take effect and be in force from and after its  
11 publication in the statute book.

By inserting Sec. 2. K.S.A. 12-856 and Sec. 3. K.S.A.  
2005 Supp. 12-860 (see attachment)

And by renumbering the remaining sections accordingly

K.S.A. 12-856 and

Sec. 2. K.S.A. 12-856 is hereby amended to read as follows:  
12-856. For the purpose of this act the following words and phrases shall have the meanings ascribed to them in this section:

(a) "City" shall mean any city ~~having a population of less than eighty thousand (80,000)~~ in this state.

(b) "Waterworks system" shall mean a waterworks system owned and operated by a city.

(c) "Sewage disposal system" shall mean the sanitary and storm sewers, pumping stations, sewage treatment plants, outfall sewers and any and all appurtenances necessary in the operation of the same owned and operated by a city.

(d) "Water and sewage system" shall mean a combination of a waterworks system and sewage disposal system.

Sec. 3. K.S.A. 2005 Supp. 12-860 is hereby amended to read as follows: 12-860. ~~(a)~~ The governing body of the city shall establish rates and charges for water and for the use of the sewage disposal system. The amount of such rates and charges shall be reasonable and sufficient to pay the cost of operation, repairs, maintenance, extension and enlargement of the water and sewage system and improvements thereof and new construction and the payment of any bonds and the interest thereon as may be issued for such water and sewage system. No revenue shall be used for the payment of bonds payable primarily by assessments against property in sewer districts. Such revenue may be used to pay revenue bonds or general obligation bonds payable by the city at

large issued either for the waterworks system or sewage disposal system before the systems were combined or for the water and sewage system after they have been combined. The city is authorized to discontinue water service for any failure to pay the rates or charges fixed for either water service or the use of the sewage disposal system or both when due,--and,--except--as provided--in--subsection--(b),--if--there--is--sewage--disposal--system use--without--water--service--the--charge--may--be--certified--as--a--lien against--the--property--served--and--assessed--as--a--tax--by--the--county clerk--or--county--assessor.

(b)--The--lien--established--by--subsection--(a)--shall--not--apply whenever--the--water--service--or--the--use--of--the--sewage--disposal system--has--been--contracted--for--by--a--tenant--and--not--by--the landlord--or--the--owner--of--the--property--affected.