

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Vice Chairman Mitch Holmes at 3:30 p.m. on March 11, 2010, in Room 144-S of the Capitol.

All members were present except:

Representative Sharon Schwartz, Excused
Representative Mario Goico, Excused
Representative Michael Peterson, Absent
Representative Mike Slattery, Excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Kristen Kellems, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Carol Bertram, Committee Assistant

Conferees appearing before the Committee:

Representative Lance Kinzer, 14th District
Sandy Jacquot, General Counsel, League of Kansas Municipalities
Marvin Nisly, Nisly Brothers, Inc.
Larry W. Smith, President, L. & K. Services, Inc.
Gary Black, District Manager, Waste Management, Wichita

Others attending:

See attached list

Vice Chairman Holmes opened the hearing on **HB 2675 - City annexation; fire district territory; double taxation; refund of taxes.**

Representative Lance Kinzer, 14th District, appeared before the Committee as a proponent to **HB 2675 (Attachment #1)**. He said this bill addresses an issue of simple fairness. It provides a property tax refund to a landowner for any year that the property remained in a fire district after the property had been annexed by a city that provides fire service.

Representative Kinzer went on to refer to the written-only testimony of Arlyn Briggs (**Attachment #2**) who supports **HB 2675**. Mr. Briggs states the gist of the problem is when two entities tax residents for the same service and only one entity provides the service. To avoid this problem, Mr. Briggs encourages the Committee to pass **HB 2675**. Questions and answers followed.

Sandy Jacquot, Director of Law/General Counsel, appeared before the Committee in opposition to **HB 2675 (Attachment #3)**. She stated that the League of Kansas Municipalities believes this is a situation that will differ from location to location and simply having one mandated solution does not really address the issue. Therefore, the League encourages this Committee to let the solution be worked out at the local level and to not limit the ability of cities and their citizens to do so. She stated the real issue may be how to compel detachment. Questions and answers followed.

Vice Chairman Holmes closed the hearing on **HB 2675**.

Vice Chairman Holmes opened the hearing on **HB 2701**.

Mike Heim, Office of the Revisor of Statutes, explained **HB 2701**, stating this bill creates the Organized Solid Waste Collection Service Act which would determine how municipalities could establish solid waste collection services. Also, municipalities would be required to pay the fair market value of any private solid waste collection services displaced by the municipalities or cities establishing their own services. Questions and answers followed.

CONTINUATION SHEET

Minutes of the House Local Government Committee at 3:30 p.m. on March 11, 2010, in Room 144-S of the Capitol.

J. Marvin Nisley, President of Nisly Brothers, Inc., appeared before the Committee as a proponent for **HB 2701** (Attachment #4). He urged the Committee to pass this bill as it helps municipalities think carefully about the perceived advantages and disadvantages of organized solid waste collection and how such a change affects all involved parties. He said the process in the bill allows affected parties to plan for changes. Questions and answers followed.

Larry W. Smith, President, L. & K. Services, Inc., appeared before the Committee as a proponent for **HB 2701** (Attachment #5). He presented testimony giving the expenditures individual haulers experience in their business: the cost of the equipment, the hiring of additional employees, the costs of using landfills, the price of fuel, and additional costs for miscellaneous expenditures. Questions and answers followed.

Gary Black, District Manager for Waste Management for the City of Wichita, appeared as a proponent for **HB 2701** (Attachment #6). He stated this bill sets up a process that requires public input and input from waste hauling businesses that are affected by a city's decision to franchise, and that this process would allow waste hauling businesses to operate in a free and open market. Questions and answers followed.

David Lies, Lies Trucking Service in Wichita, appeared before the Committee as a proponent for **HB 2701**. There was no written testimony provided; he indicated he would submit written testimony at a later date. He requested protection from cities putting waste collection companies out of business.

Sandy Jacquot, Director of Law/General Counsel, League of Kansas Municipalities, presented testimony in opposition to **HB 2701** (Attachment #7). She stated that the most onerous provision in the bill is to require cities to use eminent domain proceedings and pay the solid waste companies that are displaced by implementing an organized solid waste collection service, the fair market value of the business taken. Because of the enormous cost, this would end municipalities' ability to regulate solid waste collection services for the benefit of the public health, safety and welfare of their citizens. Questions and answers followed.

Vice Chairman Holmes recognized Marvin Nisley who addressed the issue of franchising. He informed the Committee of how franchising fees are used in the city of Hutchinson as a tool for fairness.

Vice Chairman Holmes referred the Committee to three written-only testimonies which were in opposition to **HB 2701** and had been distributed earlier from (1) Kathleen B. Sexton, City Manager, City of Derby (Attachment #8); (2) Dale Goter, Government Relations Manager, City of Wichita (Attachment #9); and (3) Melissa A. Wangemann, Kansas Association of Counties (Attachment #10).

There being no one else to testify Vice Chairman Holmes closed the hearing on **HB 2701**.

The next meeting of the House Local Government Committee is scheduled for March 16, 2010.

The meeting was adjourned at 4:40 p.m.

S.S.

Representative Mitch Holmes, Vice Chairman

HOUSE LOCAL GOVERNMENT COMMITTEE

DATE: March 11, 2010

NAME	REPRESENTING
Sandy Jungst	LKM
Travis Lowe	Little Co. Relations
ERIK SARTORIUS	CITY of Overland Park
Melissa Wangemann	KAC
Diane Minear	Sec. of State
Mindi Kohak	Secretary of State
David Lies	Travis Lies Trash Service LLC
MARVIN NISLY	NISLY BROTHERS
LARRY SMITH	L & K services INC
GARY BLACK	Waste Management, of Kansas, INC.
STEVE KEARNEY	WASTE MANAGEMENT
JOHN C. ROTTERBERG	Dottembaugh and
Doug Mays	Clack
Bill Bider	KDHE
Lance Kinzer	State Rep.

Please use black ink

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

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OLATHE, KS 66062
(913) 782-5885

STATE CAPITOL, ROOM 121-W
(785) 296-7692
lance.kinzer@house.ks.gov



TOPEKA

LANCE KINZER
REPRESENTATIVE, 14TH DISTRICT

COMMITTEE ASSIGNMENTS
CHAIRMAN: JUDICIARY
MEMBER: CORRECTIONS AND
JUVENILE JUSTICE

TESTIMONY REGARDING HB 2675

HB 2675 addresses an issue of simple fairness. Paying for core services like fire protection is something that few people begrudge. Paying for it twice is a different matter, especially when one of the entities to whom it is paid no longer provides the service. Mr. Briggs will describe the specific situation faced by some of my constituents in Olathe and may have some ideas about how to improve HB 2675. For me the core issue is that when annexation occurs a delay in detaching the area annexed from the fire district by which it was previously served should not result in double taxation. In Olathe, Johnson County RFD #3 refused to agree to attach residents who had been annexed into the City of Olathe for a number of years. This was simply not fair to residents in the annexed area. HB 2675 proposes to provide a remedy for anyone who finds themselves in a similar circumstance.

Local Government
Date: 3-11-10
Attachment # 1

March 11, 2010

Chairperson Schwartz and fellow committee members:

Thank you for allowing me to submit my testimony via Mr. Kinzer today as I realize that is normally not allowed. I am on my way back to Kansas City from Spokane, Washington. I missed my flight at 6:15 AM by ten minutes after traveling ninety miles southwest of Spokane.

The entire issue of detachment took on significance to me in 1999 when the city of Olathe approached residents of an area known as the Woodland corridor area. This area was approximately ten square miles in area.

In the initial phase the city sent out a questionnaire to determine if residents wanted to be annexed by the city of Olathe. City council members held several meetings along with the city manager to determine the interest level by the residents of the area. I recall attending one meeting where I specifically asked what benefit the residents would receive if we agreed to annexation. We were assured our police and fire protection would improve significantly if we were annexed into the city.

I found this difficult to understand since the rural fire district already had in place a first responder agreement with the city for fire protection. I also questioned two council members about how many people had to agree to the annexation. One indicated that was not known at that point and the questionnaire was to just gauge what level of interest might be present. It was stated we might have to face a sewer and road benefit district in the future if we chose not to agree to annexation and the city had to force annexation to occur. If we agreed to be annexed, we would not have to pay for the benefit district by ourselves, but rather the city would share the expense with a larger number of residents. I also asked what percentage of residents would be required before the annexation would be forced on the others in area. The reply indicated it was just a preliminary questionnaire to gain insight in the interest level.

Before long it became apparent the interest by the city was more than just stated but rather one to actually annex the area in any way possible. Answers from the city or elected officials were difficult to get, especially truthful answers. Many felt we were being blackmailed by the looming possibility of a benefit district for roads and especially sewers as our large-lot development had septic tanks already installed and working properly.

The city did indeed take voluntary annexation with the taxes reflecting that in the 2000 tax bills. I chose not to annex but rather to wait and see what would happen as a result of not annexing. As a result of not annexing, I saved the entire first year of city taxes and the approximately \$196.00 which would have been due for both city and RFD #3 by choosing not to annex. I have attached a spreadsheet that shows the amount of overage charged by the city. After much debate with the city, they agreed with us and detached

Local Government

Date: 3-11-10

Attachment # 2

us but not before the county commission allowed a bond issue to be passed in which we could not get out of until 2014.

The gist of the problem is when two entities tax residents for the same service and only one entity provides the service. That is what happens many times. It was not like Olathe has done it once and repented...rather they did it again after detaching us from Rural Fire District No. 3. To them it is free money and will not be challenged in court some day.

\
When I attended a county commission meeting, one commissioner suggested I seek relief from the statue legislature due to the inequity of the situation. I felt then as I do now, those individuals responsible for their mistakes and inaction to correct the problem.

I would ask the members of this committee to pass House Bill 2675 and consider putting some teeth into the proposed bill. I would like to see a penalty of 50% per year to help prevent cities from just collecting the money and not returning it in a timely manner if the detachment spans a tax year. An even better way to solve the problem would be not to allow annexation to occur until the detachment process was in order and ready to be completed as part of the annexation.

As the bill currently reads there is no incentive for the city or county commissioners to act in a timely manner. The entire process of annexation is a mess precipitated by the kluge of state laws currently in place. I would suggest the Johnson County commission chairperson would have testified today as to that had it not been for fear of a lawsuit by cities within Johnson County.

It is time for our elected officials to step up to the plate and put justice ahead of political and personal gain. Is it any wonder why tea party activities are gaining in popularity and size with each passing day?

I would encourage all members of this committee to put aside partisanship and think about how they would feel if they paid taxes to two entities for the same service and then to make it even worse to pay for a bond that residents should never have been part of and can not get out of for another four years.

I thank you for your consideration of house bill 2675 and look forward to answering any questions you might have. I have included my email and cell phone if you would like to contact me.

Again I thank you for allowing me to submit my testimony via email at so late a date.

Sincerely,

Arlyn Briggs
Email: arlynbriggs@yahoo.com
Cell: (620) 363-0041

Year	Property Valuation	Olathe Mill Rate	Olathe N/F Mill Rate	Olathe Difference	RF 3 Mill Rate	Net Mill Overage	Olathe Tax Amt	Olathe N/F Tax Amt	RF 3 Tax Amt	Net Tax Overage
2000	37,444	24.630	24.630	0.000	5.141	5.141	\$922.25	922.25	192.50	192.50 * See Note 1
2001	42,562	24.699	23.048	1.651	5.234	3.583	\$1,051.24	980.97	222.77	152.50
2002	43,344	24.763	23.113	1.650	5.647	3.997	\$1,073.33	1,001.81	244.76	173.25
2003	43,344	24.849	23.163	1.686	6.459	4.773	\$1,077.06	1,003.98	279.96	206.88
2004	44,517	24.932	23.206	1.726	8.953	7.227	\$1,109.90	1,033.06	398.56	321.72
2005	44,517	24.923	23.241	1.682	8.399	6.717	\$1,109.50	1,034.62	373.90	299.02
2006	44,908	24.843			1.039	1.039	\$1,115.65		46.66	46.66 * See Note 2
2007	45,771	25.030			0.925	0.925	\$1,145.65		42.34	42.34
2008	47,052	24.908			0.943	0.943	\$1,171.97		44.37	44.37
2009	45,081	24.837			0.902	0.902	\$1,119.68		40.66	40.66
TOTAL							\$10,896.21	5,976.68	1,886.48	1,345.87

Note 1: I did not pay this amount as I was not annexed at this time. Just for illustration purposes.

Note 2: Olathe fully detached the fire district and the only thing to pay was the bond issue which continues until 2014.



TO: House Local Government Committee
FROM: Sandy Jacquot, Director of Law/ General Counsel
DATE: March 11, 2010
RE: Opposition to HB 2675

Thank you for allowing the League of Kansas Municipalities to testify in opposition to HB 2675. This bill would require a rebate of ad valorem property taxes for citizens who are annexed into the city, but still remain a part of a fire district. The rebate would come from whichever entity is not providing the fire service, presumably to avoid double taxation. This bill is totally unworkable and a bureaucratic nightmare to administer.

First, most fire district and city fire departments are volunteer, so the tax levy for fire service in those communities is typically minimal and most do not have even have a separate levy for fire service. In those circumstances, it would be virtually impossible to determine how much to rebate to the citizen. There are multiple choices here that make legislation unnecessary. There is a detachment process, by which the annexed area may be detached from the fire district. Depending on the type of fire district and the city, some of the detachment processes are initiated by petition, giving citizens the ability to bring the issue to the forefront. In addition, some cities have addressed the issue by agreement, so that citizens are not disadvantaged.

LKM believes this is a situation that will differ from location to location and simply having one mandated solution does not really address the issue. Therefore, we encourage this committee to let the solution be worked out at the local level and to not limit the ability of cities and their citizens to do so. We urge this committee to not report HB 2675 favorably for passage.

Local Government

Date: 3-11-10

Attachment # 3

NISLY BROTHERS, INC.

(620) 662-6561

Toll Free (866) 662-6561



Fax (620) 662-6833

info@nislybrothers.com

5212 SOUTH HERREN ROAD www.nislybrothers.com HUTCHINSON, KS 67501

We Keep You Looking Good!

My name is Marvin Nisly from rural Hutchinson. Our company, Nisly Brothers, Inc. is a private, family owned and operated corporation based in rural Hutchinson. We provide waste and recycling services in Reno County, the western edge of Sedgwick and Summner, Kingman, Pratt, Barber, Kiowa and Stafford counties.

Over 50 years ago my father began a small trash hauling company in Hutchinson that he named Nisly Brothers Trash Service. In the following years the company has been continuously family owned and operated. My father has now retired and currently the company is owned by my two brothers, Harold and Arnold, and me.

I encourage you to support HB 2701, it provides a procedure for municipalities to deliberate carefully about the perceived advantages and disadvantages of organized solid waste collection and how it affects all involved parties.

Free enterprise takes little government intervention and I admit I am generally for smaller government.

Competition typically causes firms to develop new products, services and technologies, that give consumers greater selection and better products and lower prices for the products and services, compared to what the price would be if there was little or no competition. Competition generally gives the customer the best value.

If one of our employees would do something to make a customer angry, the offended customer has only to pick up the phone and choose another provider. Consequently, we take very good care of our customers.

Our customers are our most valuable resource. Without customers, we just have a bunch of employees and surplus equipment with little value and no revenue.

The issue of organized collection is very real to me.

For a number of years before 2007 our company had been providing trash service in the City of Cheney in western Sedgwick County. We bought a license to haul trash in the city, and spent advertising money to attract and retain customers in Cheney.



We recycle

Local Government

Date: 3-11-10

Attachment # 4

In October of 2007, I received a letter from the City of Cheney. At that point they had just approved forming a solid waste utility. By December 31, 2007, less than 90 days from the first notification, the City forced us to get out and every one of our residential trash carts had been removed from the city. The city made it very clear that they were not required to compensate displaced haulers in any way, nor did they have any intentions to do so.

We base our budgets and projections on existing conditions. If a competitor offers better value for products or services, the customer can choose to switch to another company because of the value he perceives. Companies develop strategies to increase the value of the product or service to not only regain lost customers and prevent additional customers from leaving, but to attract new customers.

However, there is no way to plan for potential losses due to being forced out of a municipality. Having reasonable prices, quality equipment and complying with required licenses does not protect against this form of lost revenue. We cannot buy insurance for or predict this type of loss.

When a municipality decides to organize, they frequently have taken little time to look at all the consequences their actions. Providing the best value does not guarantee not being forced out. Also, companies have little or no time to adjust.

Trash hauling companies provide a very necessary service, and have built value by the customers they serve. Probably few municipalities realize how organized collection may affect private businesses that have previously provided this service. When a municipality forces private business out of their jurisdiction it can feel like a slap across the face.

HB 2701 helps municipalities think carefully about the perceived advantages and disadvantages of organized solid waste collection and how it affects all involved parties and allows affected parties to plan for changes. HB 2701 deserves your support.

Thank you,

J Marvin Nisly
President



We recycle

AREAS FOR CONSIDERATION CONCERNING
THE IMPACT OF FRANCHISING
FOR
L. & K. SERVICES, INC.

COST OF THE EQUIPMENT TO INVEST IN A COMMUNITY

- Cost of trucks - \$150,000 to \$200,000
- Cost of karts or toters - \$50 per unit
- In areas that have recycling, the cost of a 2nd truck and recycling bins - \$7 to \$12 per bin
- In areas where commercial service is provided, the cost of containers, starting at \$400 and up

ADDITIONAL EMPLOYEES REQUIRED

- The hiring of additional employees - minimum of 2. If recycling is available, possibly 3 -4.
- If the accounts are taken away, the necessity to terminate these employees and the cost of their unemployment

LANDFILL PRICING

- The majority of our landfill pricing is based on volume. When accounts are taken away and the volume of trash drops, we loose the better rate at the landfill
- Smaller haulers are the reason some of the area transfer stations are able to operate. If we loose business, so do they. At some point, we stand to loose some of our options for transfer stations.

FUEL PRICING

- Fuel pricing is much like that of landfills. At this time, we contract our fuel. The amount that we contract is based on the number of routes and trucks that we operate. If routes are lost, then we have probably over-contracted our fuel for the year. If we have contracted it, we pay for it...whether we use it or not.

Local Government

Date: 3-11-10

Attachment # 5

MISCELLANEOUS COSTS

- Advertising and support given to a community
- Time involved in opening accounts, setting up the routes and the cost of a variety of communication with these customers: ie: letters, phone calls, etc. If those accounts are lost, then the additional costs of closing accounts and notifying those customers.
- For those customers using our totes, karts, recycling bins or commercial containers, the cost to coordinate and bring all of those types of containers in

ONE ADDITIONAL COMMENT...If a municipality expands or incorporates and that area is being serviced by rural water, do they receive just compensation when those customers are taken away?

On behalf of our employees, managers and owners, I thank you for your time and consideration.

Larry W. Smith, President
L. & K. Services, Inc.

Madame Chair, members of the Committee:

My name is Gary Black, I work for Waste Management and I am the District Manager for the City of Wichita.

I am here today, testifying in support of House Bill 2701, which ensures that all affected parties have the opportunity to voice their opinion about local government decisions regarding waste hauling.

This bill sets up a process that requires public input and input from businesses like Waste Management, that are affected by a city's decision to franchise. Cities must declare their interest in franchising through action at the City Council or other local government body. They must seek public input into the process and develop a plan with goals for what they are trying to accomplish through franchising. Prior to voting on whether to proceed with franchising, the city must provide the solid waste plan, identify how franchising will help achieve the goals in the plan, and most importantly, show how franchising will minimize the impact on our waste hauling businesses.

Finally, a second action by the local government must be taken 30 days after the plan is publicly noticed, giving all parties time to review and provide input on whether franchising is the best decision.

This process provides protection for waste hauling businesses that are operating in a free market. Generally, the waste hauling business prefers a free and open market system where all hauling businesses are required to compete at a very high level---this results in better service and better rates—all benefiting the customer. Our businesses grow gradually, by adding one account after another, and for those of us that are competitive---we can gradually make investments in more and better equipment. This is the foundation of the open market system that has allowed businesses in America to thrive.

When a city moves from an open system to a government managed, franchise system, the impact of this type of change can be tremendous---whether you are a large company or small, the change is not gradual, but rather abrupt. An account is not simply an account--each account is different. Cities who promise to give each hauler their same market share, same number of accounts, but not the same accounts do not understand our business. Each of us have fought to get each and every account and there are those accounts and areas of the city that are preferred and there are those that are not preferred. Someone---one of us---one of our companies-- will not be treated fairly in the franchising process. And, what seems like a minor difference, a minor change by the city, can often result in a competitive edge for one or two companies in the market.

In some cases, the change can be so significant that it narrows the market, effectively putting some haulers out of business. Other times, only a few survive, reducing the competition in the market, which can affect the service level.

Local Government

Date: 3-11-10

Attachment # 6

Lastly, cities usually promise that rates will be kept low; however, the city is taking on the administration of this new government managed system. With these new city services, funding will be required to carry out these added responsibilities. So, the question then becomes, where does the money come from? In increased rates for trash collection or in some hidden tax? More importantly, with a guaranteed market share, what incentive do the remaining haulers in the market have to compete, provide a high level of service if there is nothing to compete for?

We support the current open market system for waste hauling; however, we realize that some cities may have an interest in franchising. We support HB 2701 as legislation that would at least provide the opportunity for public input and discussion on an issue that is surprisingly important to people: Choice. Residents want to choose their hauler. Let residents voice their opinion in the process by passing HB 2701.

Thank you for the opportunity to testify.



TO: House Local Government Committee
 FROM: Sandy Jacquot, Director of Law/ General Counsel
 DATE: March 11, 2010
 RE: Opposition to HB 2701

On behalf of the League of Kansas Municipalities, I want to thank the Committee for allowing us to testify in opposition to HB 2701. This bill proposes to establish the organized solid waste collection service act, but really is meant to prohibit cities and counties from franchising solid waste collection services. The bill first contains a cumbersome and time consuming process of almost three years for the city or county to jump through all of the procedural hoops necessary to get to the point of time during which it may implement a solid waste collection service, whether by defined geographic service areas or a restricted number of solid waste collectors.

The bill further restricts the use of the franchise fees to be collected to the "expense of administering the proposed collection program," although one of the biggest impacts is the degradation of city streets as the result of the large heavy trash trucks driving on city streets. It further does not allow the money to be deposited in the general fund of the city, but rather carried over from year to year in a special fund. The franchise statutes, K.S.A. 12-2001 *et seq.*, specifically give cities the authority to grant franchise agreements and provide that no privilege to use the public rights of way shall be granted without the municipality being paid "adequate compensation or consideration." Cities may permit any entity to "use the streets in the carrying on of any business which is not prohibited by law," thus contemplating the franchising of businesses such as solid waste companies. To restrict the use of the franchise fee is contrary to the intent of the franchise laws which have been in place for up to 70 years.

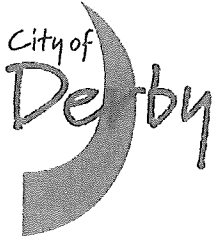
The most onerous provision in the bill is to require cities to use eminent domain proceedings and pay the solid waste companies that are displaced by implementing an organized solid waste collection service, the fair market value of the business taken. Because of the enormous cost, this would end municipalities' ability to regulate solid waste collection services for the benefit of the public health, safety and welfare of its citizens. This authority has been recognized as a lawful exercise of municipal authority, both across the country and in Kansas. The ability to franchise and regulate solid waste collection and disposal is largely limited by constitutional considerations. If a local government is able to craft regulations that meet the dormant Commerce Clause requirements under the United States Constitution, the authority to regulate should not be made virtually impossible by the State of Kansas. This would be economic protectionist legislation at its worst.

For all of the above-stated reasons, LKM urges this committee to not report HB 2701 favorably for passage.

Local Government

Date: 3-11-10

Attachment # 7



March 10, 2010

Representative Sharon Schwartz, Chair
House Committee on Local Government
State Capitol 149-S
Topeka KS 66612

Re: HB 2701 concerning solid waste collection

Dear Chairman Schwartz and Committee Members:

Thank you for this opportunity to address the committee in opposition to HB 2701. This bill overrides existing statutes regarding trash collection authority for local governments. It adds several lengthy time requirements that would be burdensome and add bureaucracy to a process that generally works well now.

This bill creates a new property right and requires cities and counties to compensate solid waste collectors for being "displaced," which not only is an unfunded mandate but also is an attempt to preserve the *status quo* way of providing trash collection. This bill is not good for residents of Kansas. It benefits only some companies in the trash business at the expense of residents.


Trash collection is handled differently in various cities. In some, residents pay more than they should have to because the city hasn't set up an efficient collection system. Generally, trash collection costs less if one truck picks up trash at every house on the block. If several companies in town each have several customers on each block, collection costs more to provide, and the cost of wear and tear on streets is higher than if just one truck served each street.

Recently, the City of Derby set up an efficient system, reducing truck traffic on residential streets from an average of 4 per week to 1.5 per week (weekly trash and biweekly recycling). The result was reduced trash bills for 95% of Derby residents (some bills were cut in half) and enhanced service (curbside recycling) for the majority of residents. **Better service at less cost** could not have been achieved without the involvement of the City and if HB 2701 had been Kansas law.

HB 2701 creates unnatural restraints with the "takings" provision and compromises every city's ability to provide the highest quality services at the lowest cost to taxpayers. Current case law shows that because solid waste collection has a significant impact on public health and welfare if not properly managed, no collector has a protected property right or reasonable expectation of continued operation.

There is no need for the state to get involved in this matter at the level proposed in this bill. Please reject this bad piece of legislation.

Highest regards,


Kathleen B. Sexton
City Manager

611 N. Mulberry, Derby KS 67037. 781-333-3111
Homepage: www.derbyweb.com E-mail: CityManager@derbyks.org

Local Government

Date: 3-11-10

Attachment # 8



Dale Goter
Government Relations Manager

TESTIMONY

City of Wichita
455 N Main, Wichita, KS. 67202
Wichita Phone: 316.268.4351
dgoter@wichita.gov

Kansas House Committee on Local Government

Opposition testimony on HB2701

3:30 p.m., Thursday, March 11, 2010, Room 144S

Chairman Swartz and members of the House Local Government Committee. Thank you for this opportunity to register the opposition of the City of Wichita to HB2701.

Our primary objection to HB2701 is that it is an inappropriate preemption of local authority. Decisions dealing with local services such as solid waste collection are best left to the locally-elected officials. Attempts to usurp the Home Rule authority of local governments should be made with great discretion on the part of state legislatures.

The City of Wichita also has other concerns with the legislation, including its requirement of a complex and lengthy process for handling solid waste collection.

Additionally:

- City of Wichita is supportive of the legislation's intent to encourage industry input into creation of a franchise agreement. The development of a franchise agreement should include an aggressive strategy for public involvement, including consumers, vendors and government interests. However, that process is best determined by the local entities, and should not be prescribed by state legislation.
- The requirement for a condemnation process to address displaced haulers would create an unfair burden on taxpayers and consumers.

Local Government
Date: 3-11-10
Attachment: 9



KANSAS
ASSOCIATION OF
COUNTIES

TESTIMONY TO THE HOUSE LOCAL GOVERNMENT COMMITTEE
ON HB 2701
MARCH 11, 2010

Chairman Schwartz and Members of the Committee:

I appreciate the opportunity to submit written testimony in opposition to HB 2701.

HB 2701 creates an extraordinary system of protections for solid waste service providers at the expense of local control of municipalities. The bill creates a detailed process for municipalities to establish solid waste collection services, a process not needed in state law.

The hoops created by the state in this bill include:

- Requiring a 180-day announcement of the governing body's intent to take up discussion on this issue.
- Requiring a 60-day public comment period, and two public hearings.
- Requiring a 90-day waiting period after adoption of the resolution during which the municipality must develop a plan.
- Requiring all licensees and those who operate solid waste collection services to participate in the planning meetings.
- Requiring the municipality to provide 30-days notice to all persons who operate a solid waste collection service.
- Detailing the specific requirements the municipality must include in its plan.
- Requiring the municipality to include a five-year budget.
- Requiring a waiting period of two years before implementation of the service.

Most importantly, the bill requires a municipality to institute condemnation proceedings against any person displaced from operating a solid waste collection service. Counties would be required to pay fair market value to these displaced persons.

Solid waste collection is considered a police power that can be exercised by cities under constitutional home rule and by counties under statutory home rule. Case law holds that solid waste collection is a municipal function as it has significant impact on public health and welfare. I would note from *Hybud Equipment Corporation v. City of Akron, Ohio*, "Control of local sanitation, including garbage collection and disposal, like fire and police protection, is a traditional, paradigmatic example of the exercise of municipal police powers reserved to state and local governments under the Tenth Amendment." 654 F. 2d 1187 at 1192 (1981).

Cases show that collectors do not have a protected property right or reasonable expectation in continued operation. There have been several cases where a local government has replaced a private collection entity and the Courts have found the collector is not entitled to compensation for lost business.

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Local Government

Date: 3-11-10

Attachment # 10


The purpose of this bill appears to be discontinuing municipal solid waste collection services in favor of private services. Where will this legislation lead – if a city or county creates a municipal golf course that competes with a private club, should the local government compensate the club? If a city or county creates a swimming pool, should it compensate others entities that build pools? If municipalities can provide these services to the public at a cheaper rate than the private sector, isn't that what the public would prefer?

I would note that counties hear a lot about how we should consolidate and downsize local government. However, this bill makes it virtually impossible for a county to enter into an interlocal agreement with another county or city for solid waste collection services. The purpose of this bill is to minimize displacement of solid waste collectors, and their interests cannot be protected while allowing cities and counties to consolidate operations.

Lastly, I would point out that there are several statutes relating to solid waste collection already, and HB 2701 does not repeal these provisions. Thus, this bill creates several conflicts with current law.

I appreciate the committee's consideration of HB 2701 and ask that you not pass the bill.

Respectfully Submitted,



Melissa A. Wangemann