

Approved: February 15, 2010

Date

MINUTES OF THE SENATE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Roger Reitz at 9:30 a.m. on February 8, 2010, in Room 144-S of the Capitol. Senator Huntington moved to approve the minutes of February 1st and 2nd. The motion was seconded by Senator Marshall.

All members were present except:

Senator Oletha-Faust Goudeau- excused

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Reed Holwegner, Kansas Legislative Research Department
Noell Memmott, Committee Assistant

Conferees appearing before the Committee:

Whitney Damron, On behalf of the City of Topeka
Nathan Eberline, League of Municipalities

Others attending:

See attached list.

The hearing continued on **SB 465 - Cities; nuisance abatement notice**. Mike Heim, revisor, reviewed the bill.

Whitney Damron, On behalf of the City of Topeka, submitted alternate changes in the proposed legislation (Attachment 1). The issue of changing receipt return requested to first class mail was discussed. He answered questions and gave the cost saving breakdown. The questions centered on knowing if the notice was received and the issue of vehicles.

Nathan Eberline, League of Municipalities, spoke in favor of **SB465 (Attachment 2)**.

The discussion will continue February 9th.

The hearing opened on **SB 463 - Counties; bonded debt limit; Norton County**. Senator Ostmeyer explained the bill and how it would benefit Norton County.

There was no discussion.

Senator Ostmeyer moved that the bill pass out of committee. Senator Kultala seconded the motion. The motion carried.

The next meeting is scheduled for February 9th, 2010.

The meeting was adjourned at 10:00 a.m.

LOCAL GOVERNMENT GUEST LIST

DATE: February 8, 2010

NAME	REPRESENTING
Nathan Eberline	LKM
Ron Heine	KRHA
Whitney Jansen	City of Jasper
ERIK SARTORIUS	City of Overland Park



MEMORANDUM

TO: The Honorable Roger Reitz, Chairman
And Members of the Senate Committee on Local Government

FROM: Whitney Damron
On behalf of the City of Topeka

RE: SB 465 - An Act concerning cities; relating to certain nuisance
abatement procedures.

DATE: February 8, 2010

Good morning Chairman Reitz and Members of the Committee.

During hearings on SB 465 held on February 2, several concerns were raised by members of the Committee in regard to changes proposed to certain nuisance statutes requested by the City of Topeka. Since the hearing was held, we have done additional research on mailing and notice options that might be available for cities that would provide greater opportunity for mail verification, but be lower in cost than a certified letter with a return service requested.

Several members of the committee suggested a deletion of the "return receipt requested" requirement made sense, which would then make it discretionary. A return receipt requested service costs \$2.30 by mail; \$1.10 electronically.

Concerns were also raised that a city should be able to prove notice was actually mailed. Under current USPS offerings, a certificate of mailing can be obtained for a cost of \$1.15, vs. \$2.80 for certified mail service.

Before outlining our suggested changes to SB 465, we want to be sure the Committee understands that in our testimony, we indicated we have a compliance rate of between 78-88 percent for the past two years for picking up or ultimately receiving a certified letter. That does not mean we have a compliance rate of that number for addressing the issues outlined in the certified letter, merely that they indeed did receive notice.

It has been suggested there is nothing to stop a city from sending out a first class letter as its first notice. That is true, and while it might lead to some mitigation by the offending party, the City will still have to send a certified letter, return receipt requested at a later date in order to meet the requirements of the statute. Furthermore, isn't it logical to assume that the more difficult property owners cities deal with on a daily basis will soon learn that a first class notice has no force of law whatsoever and that nothing really has to be done until a certified letter arrives?

In the meantime, the phone calls and letters from neighbors regarding these properties made to elected officials continue, property values decline, crime increases and related problems persist.

That said, we are cognizant of the concerns raised and would offer several alternative proposals that we believe would improve the current situation, while at the same time protect notice requirements of concern as expressed during the hearing.

Specifically:

Option I.

1. Delete the requirement for "return receipt requested" in all instances.
2. Delete the "certified mail service" requirement and replace it with a "certificate of mailing requirement."
3. Extend the timeframe for payment for remediation by a city from 30 days to 37 days following date of mailing.

Option II.

1. Incorporate the changes proposed in Option I., but retain the requirement of certified mail service, return receipt requested before removal of a motor vehicle from private property.

Issue of Automobiles.

Current law requires notice by certified mail and other procedures to protect the property owner in instances of impoundment, notice and public auction of a motor vehicle determined to be a nuisance. We are suggesting no changes to that statute (K.S.A. 8-1102).

On behalf of the City of Topeka, we appreciate your consideration of these suggested changes and appreciate the opportunity to work with the Committee on language agreeable to all parties.

WBD

Attachments

- USPS Extra Services Prices
- Balloon Amendments



Extra Services Prices

Find the price of the extra service you need with these quick summaries, organized by domestic services, recipient services, financial services, and international services.

Domestic Prices

Service	Description	Price
<u>Certificate of Mailing</u>	A receipt that shows evidence of mailing and can be purchased only at the time of mailing.	\$1.15 for individual articles.
<u>Certified Mail™ Service</u>	Provides a mailing receipt and delivery information.	\$2.80
<u>Collect on Delivery (COD)</u>	Customers pay for merchandise and postage at the time of delivery.	Ranges from \$5.50 to \$18.50. <u>Get details</u>
<u>Delivery Confirmation™</u>	Provides the date, ZIP Code™ and time your article was delivered.	\$0.70-0.80 Retail, \$0.19 Electronic
<u>Insurance</u>	Provides indemnity coverage (up to \$5,000) for lost or damaged items.	Starts at \$1.75. <u>Get details</u>
<u>Express Mail® Insurance</u>	Indemnity coverage of \$100 automatically included. Coverage up to \$5,000 available.	Starts at \$0.75. <u>Get details</u>
<u>Registered Mail™</u>	Our most secure service, it provides the maximum security (indemnity coverage up to \$25,000).	Starts at \$10.60. <u>Get details</u>
<u>Restricted Delivery</u>	Delivery to individuals you specify are authorized to receive and sign for the item.	\$4.50
<u>Return Receipt</u>	Provides recipient's signature and date/time of delivery.	\$1.10 Electronic, \$2.30 Mail
<u>Return Receipt for Merchandise</u>	Provides a mailing receipt and a return receipt.	\$3.80
<u>Signature Confirmation™</u>	Provides delivery information and signature electronically.	\$2.35 Retail, \$1.95 Electronic
<u>Special Handling</u>	For sending items that need to be handled specially through the mail like live poultry and bees.	10 lbs. and under \$7.40, over 10 lbs \$10.40

SENATE BILL No. 465

By Committee on Local Government

1-26

9 AN ACT concerning cities; relating to certain nuisance abatement pro-
10 cedures; amending K.S.A. 12-1617f and K.S.A. 2009 Supp. 12-1617e
11 and repealing the existing sections.

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

13 Section 1. K.S.A. 2009 Supp. 12-1617e is hereby amended to read
14 as follows: 12-1617e. (a) The governing body of any city may have re-
15 moved or abated from any lot or parcel of ground within the city any and
16 all nuisances, including rank grass, weeds or other vegetation. The gov-
17 erning body may have drained any pond or ponds of water, at the cost
18 and expense of the owner of the property on which the nuisance is lo-
19 cated, whenever the city, county or joint board of health or other agency
20 as may be designated by the governing body of the city files with the clerk
21 of such city its statement in writing that such nuisance, rank vegetation
22 or pond of water, describing the same and where located, is a menace
23 and dangerous to the health of the inhabitants of the city, or of any neigh-
24 borhood, family or resident of the city. The governing body of the city,
25 by resolution, also may make such determination.

26 (b) ~~Except as provided by subsection (c);~~ The governing body of the
27 city shall order the owner or agent of the owner of the property to remove
28 and abate from the property the thing or things therein described as a
29 nuisance within a time, not exceeding 10 days, to be specified in the order.
30 The governing body of the city shall grant extensions of such ten-day time
31 period if the owner or agent of the property demonstrates that due dili-
32 gence is being exercised in abating the nuisance. The order shall state
33 that before the expiration of the waiting period or any extension thereof,
34 the recipient thereof may request a hearing before the governing body
35 or its designated representative. The order shall be served on the owner
36 or agent of such property by ~~certified mail, return receipt requested, first~~
37 ~~class mail~~ or by personal service. If the property is unoccupied and the
38 owner is a nonresident, then by mailing the order by ~~certified mail, return~~
39 ~~receipt requested, first class mail~~ to the last known address of the owner.

40 (c) ~~If the owner or agent of the owner of the property has failed to~~
41 ~~accept delivery or otherwise failed to effectuate receipt of a notice sent~~
42 ~~pursuant to this section during the preceding twenty-four month period;~~
43

with a certificate of mailing

with a certificate of mailing

Whitney B. Damron, P.A.
919 SOUTH KANSAS AVENUE
TOPEKA, KANSAS 66612-1210
(785) 354-1354 • (785) 354-8092 (Fax)
E-Mail: wbdamron@aol.com

1 the governing body of a city may provide notice of the issuance of any
 2 further orders to abate or remove a nuisance from such property in the
 3 manner provided by subsection (b) or as provided in this subsection.
 4 Except as specifically provided in this subsection, the governing body may
 5 provide notice of the order by such methods including, but not limited
 6 to, door hangers, conspicuously posting notice of such order on the prop-
 7 erty, personal notification, telephone communication or first class mail.
 8 If the property is unoccupied and the owner is a nonresident, notice
 9 provided by this section shall be given by telephone communication or
 10 first class mail.

11 (d) (c) If the owner or agent fails to comply with the requirement of
 12 the order for a period longer than that named in the order, the city shall
 13 proceed to have the things described in the order removed and abated
 14 from the lot or parcel of ground. If the city abates or removes the nui-
 15 sance, the city shall give notice to the owner or agent by certified mail,
 16 return receipt requested, first class mail of the total cost of such abate-
 17 ment or removal incurred by the city. Such notice also shall state that
 18 payment of such cost is due and payable within 30 days following receipt
 19 of such notice. The city also may recover the cost of providing notice,
 20 including any postage, required by this section. If the cost of such removal
 21 or abatement and notice is not paid within the thirty-day period, the cost
 22 shall be collected in the manner provided by K.S.A. 12-1,115, and amend-
 23 ments thereto, or shall be assessed and charged against the lot or parcel
 24 of ground on which the nuisance was located. If the cost is to be assessed,
 25 the city clerk, at the time of certifying other city taxes to the county clerk,
 26 shall certify such costs, and the county clerk shall extend the same on the
 27 tax roll of the county against the lot or parcel of ground, and it shall be
 28 collected by the county treasurer and paid to the city as other city taxes
 29 are collected and paid. The city may pursue collection both by levying a
 30 special assessment and in the manner provided by K.S.A. 12-1,115, and
 31 amendments thereto, but only until the full cost and any applicable in-
 32 terest has been paid in full.

33 (e) (d) Any city may remove and abate from property other than pub-
 34 lic property or property open to use by the public a motor vehicle deter-
 35 mined to be a nuisance. Disposition of such vehicle shall be in compliance
 36 with the procedures for impoundment, notice and public auction pro-
 37 vided by paragraph (2) of subsection (a) of K.S.A. 8-1102, and amend-
 38 ments thereto. Following any sale by public auction of a vehicle deter-
 39 mined to be a nuisance, the purchaser may file proof thereof with the
 40 division of vehicles, and the division shall issue a certificate of title to the
 41 purchaser of such motor vehicle. If a public auction is conducted, but no
 42 responsible bid received, the city may file proof thereof with the division
 43 of vehicles, and the division shall issue a certificate of title of such motor

with a certificate of mailing

37

the date of mailing

1 vehicle to the city. Any person whose motor vehicle has been disposed of
 2 pursuant to this subsection shall be eligible for a refund of the tax imposed
 3 pursuant to K.S.A. 79-5101 et seq., and amendments thereto. The amount
 4 of such refund shall be determined in the manner provided by K.S.A. 79-
 5 5107, and amendments thereto.

6 Sec. 2. K.S.A. 12-1617f is hereby amended to read as follows: 12-
 7 1617f. (a) The governing body of any city is hereby authorized to provide
 8 for and require the cutting or destruction of all weeds on lots or pieces
 9 of land within the city. Except as provided by subsection (b), the city clerk
 10 shall issue a notice to the owner, occupant or agent by ~~certified mail,~~
 11 ~~return receipt requested, first class mail~~ ^{or by personal service} to cut or
 12 destroy such weeds. If the property is unoccupied and the owner is a
 13 nonresident, such notice shall be sent by ~~certified mail, return receipt~~
 14 ~~requested, first class mail~~ ^{to} the last known address of the owner. The
 15 notice shall state that before the expiration of the waiting period provided
 16 herein the recipient thereof may request a hearing before the governing
 17 body or its designated representative. If the occupant, owner or agent
 18 fails to request a hearing or refuses to cut or remove such weeds, after
 19 five days' notice by the city clerk, or in cases where the owner is unknown
 20 or is a nonresident, and there is no resident agent, 10 days after notice
 21 has been published by the city clerk in the official city paper, the city
 22 shall cut or destroy such weeds and shall keep an account of the cost of
 23 same and report to the city clerk. Except as provided by subsection (b),
 24 the city shall give notice to the owner, occupant or agent by ~~certified mail,~~
 25 ~~return receipt requested, first class mail~~ ^{of} the total cost of such cutting
 26 or removal incurred by the city. The city also may recover the cost of
 27 providing notice, including postage, required by this section. Such notice
 28 also shall state that payment of such cost is due and payable within 30
 29 days following receipt of such notice. If the cost of such removal or abate-
 30 ment is not paid within the thirty-day period, the city may levy a special
 31 assessment for such cost against the lot or piece of land in the same
 32 manner as provided in K.S.A. 12-1617e, and amendments thereto, or the
 33 city may collect the cost in the manner provided by K.S.A. 12-1,115, and
 34 amendments thereto. The city may pursue collection both by levying a
 35 special assessment and in the manner provided by K.S.A. 12-1,115, and
 36 amendments thereto, but only until the full cost and any applicable in-
 37 terest has been paid in full.

with a certificate of mailing

with a certificate of mailing

with a certificate of mailing

38 (b) In lieu of giving notice as provided by subsection (a), a city may
 39 give notice as provided by this subsection. The governing body shall adopt
 40 an ordinance which states its weed removal policy and notification pro-
 41 cedure. Such procedure shall provide for a minimum one-time yearly
 42 written notification by mail or personal service to the owner, occupant or
 43 agent. Such notice shall include the same information required by sub-

1 section (a). In addition, such notice shall include a statement that no
2 further notice shall be given prior to removal of weeds.

3 If there is a change in the record owner of title to property subsequent
4 to the giving of notice pursuant to this subsection, the city may not recover
5 any costs or levy an assessment for the costs incurred by the cutting or
6 destruction of weeds on such property unless the new record owner of
7 title to such property is provided notice as required by this section.

8 Sec. 3. K.S.A. 12-1617f and K.S.A. 2009 Supp. 12-1617e are hereby
9 repealed.

10 Sec. 4. This act shall take effect and be in force from and after its
11 publication in the statute book.

SENATE BILL No. 465

By Committee on Local Government

1-26

Option II.

9 AN ACT concerning cities; relating to certain nuisance abatement pro-
10 cedures; amending K.S.A. 12-1617f and K.S.A. 2009 Supp. 12-1617e
11 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2009 Supp. 12-1617e is hereby amended to read
15 as follows: 12-1617e. (a) The governing body of any city may have re-
16 moved or abated from any lot or parcel of ground within the city any and
17 all nuisances, including rank grass, weeds or other vegetation. The gov-
18 erning body may have drained any pond or ponds of water, at the cost
19 and expense of the owner of the property on which the nuisance is lo-
20 cated, whenever the city, county or joint board of health or other agency
21 as may be designated by the governing body of the city files with the clerk
22 of such city its statement in writing that such nuisance, rank vegetation
23 or pond of water, describing the same and where located, is a menace
24 and dangerous to the health of the inhabitants of the city, or of any neigh-
25 borhood, family or resident of the city. The governing body of the city,
26 by resolution, also may make such determination.

27 (b) ~~Except as provided by subsection (c),~~ The governing body of the
28 city shall order the owner or agent of the owner of the property to remove
29 and abate from the property the thing or things therein described as a
30 nuisance within a time, not exceeding 10 days, to be specified in the order.
31 The governing body of the city shall grant extensions of such ten-day time
32 period if the owner or agent of the property demonstrates that due dili-
33 gence is being exercised in abating the nuisance. The order shall state
34 that before the expiration of the waiting period or any extension thereof,
35 the recipient thereof may request a hearing before the governing body
36 or its designated representative. The order shall be served on the owner
37 or agent of such property by ~~certified mail, return receipt requested, first~~
38 ~~class mail~~ or by personal service. If the property is unoccupied and the
39 owner is a nonresident, then by mailing the order by ~~certified mail, return~~
40 ~~receipt requested, first class mail~~ to the last known address of the owner.

41 (c) ~~If the owner or agent of the owner of the property has failed to~~
42 ~~accept delivery or otherwise failed to effectuate receipt of a notice sent~~
43 ~~pursuant to this section during the preceding twenty-four month period;~~

with a certificate of mailing

with a certificate of mailing

(1) Before a motor vehicle is removed from private property by the governing body of the city under the provisions of this section, the order to remove and abate from the property shall be served on the owner or agent of such property by certified mail, return receipt requested. If the property is unoccupied and the owner is a nonresident, then by mailing the order by certified mail, return receipt requested to the last known address of the owner.

Whitney B. Damron, P.A.
919 SOUTH KANSAS AVENUE
TOPEKA, KANSAS 66612-1210
(785) 354-1354 • (785) 354-8092 (Fax)
E-Mail: wbdamron@aol.com



300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: Senate Local Government Committee
From: Nathan Eberline – League of Kansas Municipalities
Date: February 2, 2010
Re: Support for Senate Bill 465

Thank you for the opportunity to offer testimony regarding Senate Bill 465. The League of Kansas Municipalities strongly supports this bill. It will provide immediate savings for cities and taxpayers, while maintaining a reliable method for notice.

K.S.A. 12-1617e and K.S.A. 12-1617f currently require service by certified mail with a return receipt or by personal service. If the property is unoccupied, the city may serve notice by certified mail to the last-known address of the owner. It is the use of certified mail that often causes difficulty for cities.

First, it is an expensive venture to send certified mail with a return receipt. The following fees are required in addition to the cost of postage: \$2.80 for certified status and \$2.30 for the return receipt (<http://pe.usps.gov/text/DMM300/Notice123.htm#wp1127887>). A \$5.10 surcharge per mailing may be minimal for an individual letter, but the expense quickly accumulates over the course of a year.

Second, many cities have found that individuals with neglected property often expect certified mail to contain bad news. The property owners often choose to ignore the mail notice and refuse to accept the mail. First-class mail is known to be reliable and efficient, particularly when considering the delivery refusal of certified mail that cities often experience with neglectful property owners.

Senate Bill 465's modification to the delivery method will save taxpayers money, while ensuring that individuals receive a dependable method for service. It is with these policy considerations in mind that the League supports Senate Bill 465.

www.lkm.org

Senate Local Government

2-8-2010

Attachment

2