Approved: March 15, 1993
Date

MINUTES OF THE SENATE COMMITTEE ON LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Mark Parkinson at 9:00 a.m. on March 11, 1993 in Room 531-N of the Capitol.

All members were present except:

Committee staff present: Michael Heim, Legislative Research Department
Theresa Kiernan, Revisor of Statutes
Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Representative Nancy Brown
Jane Neff-Brain, City of Overland Park
Chris McKenzie, League of Kansas Municipalities

Others attending: See attached list

HB 2419 -- Concerning cities; relating to annexation.

The Chairman asked staff to give an explanation of the effect of the bill. Ms. Kiernan explained that the bill concerns the annexation of fire districts by cities. The new language on page four of the bill states that cities may annex fire districts if five considerations are met. Section 3 concerns bilateral annexation by cities, and lines 27 and 28 add consideration of the impact on owners near or adjacent to the land to be annexed.

Rep. Nancy Brown testified in support of the bill. She used testimony from Dick Galamba who testified before the House Local Government Committee, which she chairs. She feels his testimony contains a good basic explanation of what the bill does. (See Attachment 1).

Sen. Ramirez asked Rep. Brown if the residents of Johnson County oppose the bill. Rep. Brown could not answer but stated that she could see no reason to oppose providing additional information which is what the bill does.

Sen. Ranson inquired of staff as to the meaning of "manifest injury" as used on page two of the written testimony of Mr. Galamba. Staff answered that it is difficult to define as it is unclear. However, the bill would require it to be considered for land outside but near the area to be annexed. Current law does not. With this, the hearing on HB 2419 was continued to March 15.

SB 387 -- Concerning construction and financing of public improvements.

Staff explained that the intent of this bill is to improve the general assessment improvement law.

Jane Neff-Brain, Assistant City Attorney for the City of Overland Park, testified in support of the bill. (See Attachments 2 and 3). At the request of the Chairman, she explained the bill. As to 12-6a06, language has been added which allows a single land owner in the district to protest. The owner has 30 days to sue the city before streets are built. This is a timely manner which will save cities costs because protests would be filed before construction. For suits at the end of construction, 12-6a11 is still in place.

Sen. Feleciano felt that notification of the improvement should be by letter rather than by publication only as indicated in the bill. Ms. Neff-Brain had no objection to this. She noted that Overland Park notifies by letter at present. Sen. Feleciano also felt that 30 days notice is not sufficient time.

The Chairman recalled that another bill, SB 153, was passed which addresses this same issue and is now in

the House. Since SB 387 was referred to this committee so close to the turn over date for bills, perhaps it would be better to work with SB 153 in the House.

Ms. Neff-Brain continued with her explanation of the bill. With regard to 12-6a07, it clarifies the city's right to not place properties along the street to be repaired in the benefit district if any charges have been paid representing the property's contribution to the improvements. The city can keep these properties out or could give credit towards the assessment.

The final change occurs in 12-690 regarding main trafficway provisions for future planning purposes.

Chris McKenzie, League of Kansas Municipalities, presented a suggested amendment to SB 387. (See Attachment 4). The amendment would prevent law suits which were brought before construction from being litigated again at the completion of the construction. With this, the hearing was concluded on SB 387.

The minutes of March 10 were approved.

The meeting was adjourned at 9:55 a.m.

The next meeting is scheduled for March 15, 1993.

Date: March 11, 1992

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
Robert D. Watson	City of Overland Park	
Jane Neff-Brain	City of Overland Park	
Gerry Ray	City of Overland	Overland Park, KS
Anne Smith	Ks. Assn of Counties	Topeka
Chris McKenzie	League of Ks Munis	Topeka

Dick Galamba

I am here to testify in support of HB 2419, but first I want to set the stage for our support. This bill is not about annexation which conjures up many emotions. Let me emphasize again. . . this bill is <u>not</u> about cities and annexation as defined in current law. This bill is not changing the annexation proceedings in any way other than to provide additional information to assist in the proceedings.

What the bill is about is fire districts. . . and information which is important to be shared and considered in the annexation process.

Current law states that at the time of annexation, if the city is not permitted to annex under KSA 12-520 (which I understand has specific conditions), the governing body of a city presents a petition to the county. A hearing is then set and the city presents testimony to the county about the areas to be annexed. This information is contained in the bill on pages 6-7. We support this procedure, but this information is incomplete. It only provides the county commissioners with information about the land in the annexed area, but does not take into consideration the important information regarding the fire district as explicitly as expressed on page 8 of the bill, New Section 4.

We feel it is extremely important to also include the possiblity of manifest injury to the fire district as outlined on page 4 of the bill.

Fire districts, as you know, derive their funding from the taxpayers. . . property taxes. When a portion of the district is annexed to a city, the remaining portion of the district does not lower their obligation in capital expenditures. The fire station remains, the equipment must be maintained, and rarely does the staff size shrink, particularly in a volunteer situation like ours. So how do we continue to provide an adequate level of safety for the remaining residents? We don't. . . at least not without a tax increase and then we are limited in what we can tax. Besides, why should remaining residents who have no voice in the annexation have their taxes increased so a city can annex land?

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Another ironic consideration is when the fire station itself is annexed. Let me share an interesting situation with you. Recently a fire station was annexed in Johnson County by the city of Overland Park. Not all the residents who paid and were continuing to pay for the fire station were annexed. Yet the obligation remains with the residents who were in the district at the time it was formed. So we have a situation where residents are paying for a fire station which they must now contract with for fire service, while others utilize "their" fire station and are not paying for it.

We feel it is vital that all information be obtained and considered by those in the decision-making process. Certainly we trust that responsible elected officials will consider all the information that is presented to them. . . but the information requested in the bill is not provided to them and, even if it were, it could be disregarded. Nothing in current law states that those outside the annexed area should be considered for "manifest injury". Without the bill, it becomes the obligation of the district or the remaining residents to provide this information (awkward when some of the employees and volunteer fire fighters are employed by the annexing city) .

We respectfully request that you consider the passage of this bill in the essence of fairness. As I mentioned earlier, we are not here to support or oppose annexation. We are here to request that additional information be required to be considered by the governing bodies in their decision making deliberations. This is merely an equity issue, not an annexation issue, and we fail to understand how anyone or any city could possibly be opposed to this request for additional information prior to making a decision.

Thank you for your consideration.

The City of Overland Park KANSAS

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TESTIMONY IN SUPPORT OF SENATE BILL NO. 387

TO: The Honorable Mark V. Parkinson, Chairperson
Members of the Senate Local Government Committee

DATE: March 11, 1993

RE: Senate Bill No. 387 -- Proposed Amendments to K.S.A. 12-6a06, 12-6a07 and 12-690 pertaining to improvement district and main trafficway financing of public improvements by Kansas cities

Ladies and Gentlemen:

The City of Overland Park has prepared and is proposing the above-referenced legislation which would amend the K.S.A. 12-6a01 *et seq.* the "improvement district" statutes and the K.S.A. 12-685 *et seq.* the "main trafficway" statutes. The city presently utilizes both sets of statutes in conjunction with one another in order to construct and finance its thoroughfare system throughout the city. Senate Bill No. 387 would simply clarify the right of Overland Park to continue to do what it has been doing for the past seventeen years as regards construction of its major thoroughfares.

Although there are strong arguments that can be advanced that existing statutory law allows the city to continue its practices, we are suggesting these changes be made in light of the obscurities created by the 1990 Kansas Supreme Court case of Blevins v. Hiebert, 247 Kan. 1 (1990), and by recent litigation in which the City's methods and means of creating a roadway improvement district were challenged at the time of assessment, after completion of the improvement and while temporary note interest was mounting against the City.

SECTION 1

In Section 1 of Senate Bill No. 387 the City proposes an amendment to K.S.A. 12-6a06 concerning adoption of the resolution creating the improvement district that would require that persons with standing who wish to challenge the creation of the improvement district or its boundaries, the need for and the nature and extent of the improvements to be made, the method of financing the improvements, including the apportionment of costs between the city and the improvement district and the method for levying assessments against the property in the improvement

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district or any other matter expressly provided for in the resolution creating the district to do so within 30 days of publication of that resolution. This time limit would require a property owner in an improvement district to mount such a challenge and would allow the City to answer any such challenge prior to the city expending public funds and prior to incurring debt to construct the roadway.

Such a proposed amendment would not in any way disadvantage property owners in an improvement district. They would still have the ability to challenge the creation of the improvement district, but would have to do so in a timely manner. And K.S.A. 12-6a11 would remain to allow challenges within 30 days from the publication of the assessment ordinance to set aside the assessments for reasons other than those required to be asserted earlier.

SECTION 3

In addition, in Section 3 of Senate Bill No. 387 the City is requesting an amendment to K.S.A. 12-690, the final section of the "main trafficway" statute. There is an argument that once a city designates a road a main trafficway, it must then finance improvements to the road from city-at-large funds pursuant to K.S.A. 12-689. The effect of this argument is that a city could not use K.S.A. 12-6a to finance road improvements if it has designated the road a main trafficway. As K.S.A. 12-690 now reads, it is not clear if it can be used in combination with other statutes such as K.S.A. 12-6a or only as an alternative to those other statutes.

Cities, for purposes of long range planning, designate certain roadways as main trafficways or major thoroughfares. This action is vital in allowing present and future property owners the ability to properly plan land uses for their properties in accordance with the development of the City's future roadway system. Also, in order to utilize the main trafficway statutes to improve and finance a roadway improvement, that street must be declared a main trafficway via ordinance.

Since 1976 the City of Overland Park has required developers to share in the cost of constructing major thoroughfares that border their developments by paying for 1/2 the cost of a standard collector street. The City-at-Large then contributes the difference between the collector and major thoroughfare cost to construct the improvement. This condition is consistent with the City's requirement that developers construct all residential and collector streets that run through and serve their developments.

Developers contribute to the cost of constructing major thoroughfares in Overland Park in one of two ways. If a developer plats his/her property prior to the City's construction

of the major thoroughfare, the developer places the money necessary to cover his/her share of the cost of the improvement into an escrow account with the city. If a developer has not platted his/her property by the time the City is ready to proceed with the improvement, that property is placed into an improvement district and assessed after completion of the improvement. It is with the first option, that the proposed amendment to K.S.A. 12-690 is intended to deal.

When the City is ready to construct a major thoroughfare, it takes the monies that have been escrowed by developers in the area of the proposed improvement who have previously platted their property and utilizes the K.S.A. 12-685 et seq. "Main trafficway" statutes as authority to improve and finance that section of the roadway allocable to those developers. It then creates a K.S.A. 12-6a improvement district which includes the remainder of the properties that are to contribute to the financing of the improvement. Thus two different financing methods are utilized in conjunction with one another to equitably accomplish the desired improvement.

The proposed amendment to K.S.A. 12-690 would clarify the right of the city to continue to use other statutes, such as K.S.A. 12-6a and K.S.A. 12-749, as well as other lawful means to collect and escrow contributions from developers for the payment of a portion of the cost of the improvement, even though those escrowed funds would not be categorized as city-at-large funds.

SECTION TWO

Finally, in Section 2 of Senate Bill No. 387 the City suggests an amendment to K.S.A. 12-6a07 in order to deal with the relationship between properties that have escrowed funds and those that have not. A suggested revision to Section 2 is attached to this paper. Proposed sub-section (c)(1) would clarify the right of the city to continue to exempt property from an improvement district when the developer had previously escrowed his/her share of the cost of the improvement. That escrowed money along with additional city-at-large revenue would be the source of funding for the main trafficway portion of the project.

Proposed sub-section (c)(2) would allow a city the option of placing all properties benefitted by the improvement in the improvement district, but then would allow a credit to those properties that had escrowed all or a portion of their share of the cost of the improvement, so as not to overcharge those properties for their share of the cost of the improvement.

Although, it may be argued that the City could cease collecting escrow money and place all properties on an equal footing in an improvement district, thereby eliminating the potential problem

of unequal financial burden for similar benefit, that solution creates greater hardship. It is infinitely more desirable to collect escrow money from a single developer who can spread the cost among all future residents of the development via increased mortgage payments than to include hundreds of single family owners in an improvement district.

Likewise, it may be argued, that the City could wait for all properties along a thoroughfare to develop, thereby collecting all necessary escrow money to improve the roadway solely with those and city-at-large funds. As development along any thoroughfare comes in erratic intervals, waiting until all development is complete would leave early developers with an unimproved roadway long past the time that it can safely and efficiently handle given traffic counts.

Thus, the latitude to combine two statutory schemes or the ability to credit properties that have otherwise paid a portion of the cost of the improvement, provides the best mechanism for the City to service both adjoining property owners and the city-at-large.

Thank you for your consideration.

The City of Overland Park, Kansas

= added
~~sample~~ = deleted

PROPOSED REVISIONS TO SECTION 2
OF SENATE BILL NO. 387

(c) If any property which would otherwise be deemed benefitted by an improvement has made payment of any tax, excise, fee or charge, or has dedicated land or easements, which payment or dedication represents all or a portion of the property's contribution to the cost of such improvement, the governing body ~~shall not include the property in any improvement district created to construct and finance the same improvement and shall not levy any special assessment against the property for payment of the improvement.~~ may either (1) exclude the property from any improvement district created to construct and finance the same improvement and not levy any special assessment against the property for payment of the improvement, or (2) include the property in an improvement district created to construct and finance the same improvement, but provide a credit for the payment of any such tax, excise, fee, charge or dedication against the amount of any special assessment to be levied against the property for payment of the improvement.

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Proposed By League of Kansas Municipalities

Senate Bill 387

City of Topeka, [illegible]

12-6a11. Same; limitation on action to set aside assessments. No suit to set aside the said assessments or otherwise question the validity of the proceedings shall be brought after the expiration of thirty (30) days from the publication of the ordinance fixing said assessments. No such suit shall litigate a claim or issue which was or could have been litigated in an action brought in accordance with paragraph (6) of Section 1.

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