

TESTIMONY

SENATE ASSESSMENT AND TAXATION COMMITTEE

HB 2033

An Act concerning sales and compensating use tax; related to countywide retailers' sales tax, ballot authority, Dickinson, Finney, Jackson, Russell and Thomas counties; amending K.S.A. 2018 Supp. 12-187 and 12-189 and repealing the exiting sections.

By: Mary Carson, Triplett Woolf Garretson, LLC

On behalf of Finney County and the City of Garden City

February 20, 2019

PROPONENT

Good Morning Madam Chair Tyson and Members of the Committee. I am Mary Carson, a lawyer with the firm of Triplett Woolf Garretson, LLC and I appear today as a proponent of HB 2033 on behalf of my clients, Finney County and the City of Garden City.

You have heard from representatives of Finney County and Garden City describing why we are here today respectfully seeking this committee's support of HB 2033. The bill ratifies the results of the election held by Finney County where local voters authorized the county to levy a 0.3% retailers' sale tax to fund capital projects in the County and City. I am here to describe the similarities between the Finney County provisions of HB 2033 and legislation previously adopted by the Kansas legislature. Finney County is not alone in finding itself in need of the legislature's help with post-election ratification of a voter approved sales tax.

K.S.A. 12-187 establishes procedures for Kansas counties to obtain authority to levy local retail sales taxes, and provides that no county may levy such a tax without submitting the question to voters at an election. The general rule stated by K.S.A. 12-187 gives a county authority to submit the question of a countywide retailers' sales tax to voters, and K.S.A. 12-189 provides a countywide sales tax may be levied in quarter cent increments not exceeding 1%. Both statutes contain multiple exceptions to these general rules applicable to over one-half of Kansas counties. And K.S.A. 12-187 currently contains seven instances where exceptional authority was granted by legislative ratification of local elections, already held and where local voters approved a sales tax at a rate not yet authorized by the statutes. Finney County is not seeking unprecedented action from the legislature.

There are seven instances in the current statute where different counties received post-election ratification of a sales tax at rate outside of the 1% rule.

1. K.S.A. 12-187(b)(3) (A) ratifies the results of an election held in **Jackson** county in 1988 where local voters approved an increase of a countywide sales tax by 1% to finance Banner Creek reservoir.

2. K.S.A. 12-187 (b)(3)(B) ratifies the results of an election held in **Ottawa** county in 1994 where local voters approved an increase of a countywide sales tax by 1% to finance a law enforcement center and jail facility.

3. K.S.A. 12-187 (b)(3)(C) ratifies the results of an election held in **Sedgwick** county in 2004 where local voters approved an increase of a countywide sales tax by 1% to finance a the downtown arena and other projects related to the Kansas coliseum and city center improvements.

4. K.S.A. 12-187(b)(3)(D) ratifies the results of an election held in **Lyon** county in 2008 where local voters approved an increase of countywide sales tax by 1% to provide ad valorem tax reduction and finance capital outlay projects.

5. K.S.A. 12-187(b)(3)(E) ratifies the results of an election held in **Rawlins** county in 2008 where local voters approved an increase of countywide sale tax by .75% to finance a swimming pool.

6. K.S.A. 12-187(b)(3)(F) ratifies the results of an election held in **Chautauqua** county in 2008 where local voters approved an increase of countywide sale tax by 1% to finance a jail and law enforcement center.

7. K.S.A. 12-187(b)(3)(G) ratifies the results of an election held in **Bourbon** county in 2015 where local voters approved an increase of its sales tax by 0.4% to finance improvements and operations of a courthouse, law enforcement center or jail.

For these counties there is also a corresponding amendment to K.S.A. 12-189 authorizing levy of tax at a rate greater than the 1% stated in the general rule.

The language used in all seven prior amendments is very similar, suggesting the circumstances leading to the request for ratification were similar to Finney County. I spoke to the Lyon County counselor about the ratification amendment adopted for that county. There Lyon County commissioners called an election seeking authority to levy a 1% countywide retailers' sales tax for ad valorem tax relief and capital projects. Lyon county voters approved the levy. At the time of the election the county was levying a .50% countywide sales tax under the general rule, and the statutes did not provide an exception for the county from the total 1% rate permitted for counties. The county discovered the issue when it submitted its resolution levying the tax to the Kansas Department of Revenue. They then came to the legislature, sought and received the same remedy Finney County seeks here.

Unlike Lyon County, Finney County and KDOR did not discover its mistake until after the sales tax was levied and being collected. The problem was discovered after the 2018 legislative session, so HB 2033 is the county's first opportunity to seek ratification of its election.

If HB 2033 becomes law, Finney County will be the eighth county to receive a post-election ratification of a voter approved sales tax. This will permit the county, together with the city, to complete the projects approved by county voters. And four other counties will have exceptions from the general rules applicable to counties. Had Finney County become aware of the authority issue before holding its election, the county would have come to the legislature to seek this exceptional authority first, and joined the many other counties who have been granted such exceptional authority.* But, like seven other counties, Finney County got a bit ahead of the game. This does not change the fact that Finney County voters approved the sales tax at the rate and for the projects described in the ballot. The levy of the tax has not been challenged.

On behalf of Finney County, Garden City and the voters of the county, we respectfully ask for your favorable support of HB 2033 as presented, both to ratify the choice of Finney County voters, and to grant Dickinson, Jackson, Russell and Thomas counties the authority to proceed with sales tax elections designed to meet their locally determined needs.

I will be happy to respond to any questions.

Thank you.

Mary Carson

* By my count, if HB 2033 becomes law, K.S.A. 12-187 and 12-198 will contain 39 amendments granting exceptional sales tax authority to counties beyond the general rule stated in the early sections of each statute. These amendments (including the post-election ratification amendments) affect 70 counties in the state and one grants exceptional authority to all counties.