Approved: March 17, 2010
Date

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 9:13 a.m. on March 9, 2010, in Room 783 of the Docking State Office Building.

All members were present except:
Representative Kay Wolf- excused
Representative Marvin Kleeb-excused

Committee staff present:
Gordon Self, Office of the Revisor of Statutes
Scott Wells, Office of the Revisor of Statutes
Chris Courtwright, Kansas Legislative Research Department
Brandon Riffel, Kansas Legislative Research Department
Marla Morris, Committee Assistant

Conferees appearing before the Committee:

Others attending:
See attached list.

Discussion and Possible Action on:

HB 2630 - Requiring adjustments to property tax levies relative to revenues produced by property taxes

Staff Chris Courtright, Kansas Legislative Research Department summarized **HB 2630.** This bill deals with property tax and would require local units of governments, under certain circumstances, to adjust the mill levy rates equal to the amount of property taxes received in the previous year, with exceptions. If more dollars are requested by the local unit of government an election would be required. He explained the exemptions and exceptions as provided in **HB 2630**. He stood for questions.

3/9/10

Representative Siegfreid moved to pass out **HB 2630** favorably. The motion was seconded by Representative Peck.

Representative Peck moved a conceptual amendment to allow revenue to increase at half the rate of the Consumer Price Index-Urban (CPIU), from the previous year before an election is required. Representative Powell seconded the motion. The motion carried.

Discussion was held on the intention of Representative Peck's amendment pertaining to the repeal of K.S.A. 2009 Supp. 79-2925b in **HB 2630**. Representative Peck stated his intention was to include restoration of 79-2925b to require publications to continue as currently provided in the law. Without objection, the restoration of 79-2925b will be included in Representative Pecks conceptual amendment.

Representative Siegfreid moved to amend **HB 2630** returning the language pertaining to publications to the language in the original bill which required the results of any increase in spending or tax increase be published in a weekly or daily newspaper so public is notified as provided in current law. The motion was seconded by Representative Peck. The motion carried.

Representative King circulated a proposed balloon amendment changing the required election to a protest right, and moving the trigger from a half CPIU to a full CPIU. Petitions would require signatures of not less than five percent of the qualified electors and filed within 30 days (Attachment 1). Representative King's proposed amendment includes removal of the proposed repeal of 79-2925b in **HB 2630.** Representative King provided examples of existing protest petitions under Kansas Law (Attachment 2), and a report on Mill Levy Issues from the Special Committee on Assessment and Taxation in 2008, prepared by the Kansas Legislative Research Department (Attachment 3).

Representative King moved the balloon amendment. The motion was seconded by Representative Frownfelter.

Minutes of the House Taxation Committee at 9:13 a.m. on March 9, 2010, in Room 783 of the Docking State Office Building.

Representative Siegfreid moved a substitute motion to amend Representative King's amendment, and change the five percent of participation of the qualified electors in last election to five percent participation of the qualified electors that voted for the Secretary of State in a general election, and filed within 60 days. Representative King seconded the motion. The motion carried.

Representative Siegfreid closed and moved to pass out favorably **HB 2630** as amended. Division was requested. The motion carried. Representative Light and Representative Brown requested their vote be recorded in opposition to passage of **HB 2630** as amended.

The next meeting is scheduled for March 10, 2010.

The meeting was adjourned at 10:32 a.m.

HOUSE TAXATION COMMITTEE

DATE: March 9, 2010

NAME	REPRESENTING
Linda Fund	KACCT
Ron Seeber	KARA
Mark Tallman	KASB
Leslie Kaufman	Ks Co-op Council
Larry Berg	KACCT
Joe Montgomery	PMCA
Michelle Butler	Cap. Strategies
Kathy Olsen	Ks Bankers Assn.
Martha Neu Smith	KMHA
Mark Schreiber	Westar
Kerry Benne	Cap. Lob Grp
Ron Gaches	CBA
Natalie Bright	KSCPA
Brent Lewis	Self ~ Wichita Taxpayer

Session of 2010

HOUSE BILL No. 2630

By Representatives Brunk, Crum, DeGraaf, Hermanson, Jack, Kerschen, Kiegerl, Morrison, Patton, Peck, Powell, Rhoades, Schwartz and Siegfreid

2-3

AN ACT concerning property tax; relating to revenues produced by property tax levies; mill levy adjustments; ~~repealing K.S.A. 2009 Supp. 79-2925b~~.

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

Section 1. (a) Subject to the provisions of subsection (c), if the total taxable real property valuation in any municipality increases due to increases in the assessed valuation of existing real property, then the governing body shall lower the mill levy rate to such rate that would equal the amount of ad valorem property taxes levied in the next previous year. This subsection shall not apply to ad valorem taxes levied under K.S.A. 72-6431, 76-6b01 and 76-6b05, and amendments thereto, or any other ad valorem tax levy which was previously approved by the voters of such municipality. Property that, in the current year, is new construction, is located within added jurisdictional territory, or has changed in use shall not be considered when determining whether the total taxable real property valuation has increased from the prior year.

(b) If the total taxable real property valuation in any municipality decreases, then the governing body may increase the mill levy rate, subject to any statutory restrictions, to a rate that would equal the amount of ad valorem property taxes levied in the next previous year. A municipality which increases mill levy rates pursuant to this subsection shall not be ~~required to comply with the election requirement~~ in subsection (c).

(c) ~~Whenever the governing body of any municipality which levies or certifies a levy of ad valorem property taxes proposes the adoption of a mill levy rate which exceeds that rate allowed pursuant to subsection (a) or the rate levied in the next previous year, unless such increase is authorized under subsection (b) of this section, it must hold an election on whether the mill levy rate shall be increased. The municipality may choose to hold such election in any manner as allowed by law. If such election is held, no mill levy increase shall be allowed unless approved by a majority of the electors voting in such election. Nothing in this subsection shall prevent any municipality from holding more than one election in any year.~~

Proposed balloon amendment: HB2630

protest petition procedures

which exceeds the assessed valuation of real property in the next preceding year by more than the percentage increase in the consumer price index for all-urban consumers published by the Department of Labor

subject to the provisions

If a petition containing the signatures of not less than 5% of the qualified electors of such municipality is filed within 30 days after the date of the budget hearing required by K.S.A. 79-2933, and amendments thereto, with the appropriate county election officer, requesting an election on whether the budget shall be funded by such increased ad valorem taxes at an election called for such purpose or at the next general election. If such an election is held, no ad valorem taxes shall be levied in excess of the amount levied to fund the budget of expenditures for the next preceding year unless approved by a majority of the electors voting in such election.

House Taxation
Date: 3-9-10
Attachment: 1

(d) The provisions of subsections (a) and (c) shall not apply to or limit the levy of ad valorem taxes for the payment of principal and interest on bonds, temporary notes and no-fund warrants or judgments rendered against any such taxing subdivision.

(e) For the purposes of this section, "Municipality" means any county, township, city, municipal university, school district, community college, drainage district and any other taxing district or political subdivision which levies taxes on property.

Sec. 2. ~~K.S.A. 2009 Supp. 79-2925b is hereby repealed.~~

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

EXAMPLES OF EXISTING PROTEST PETITIONS UNDER KANSAS LAW

5% of Qualified Voters Requirement:

- K.S.A. § 19-15,109 – Acquisition of County building sites
- K.S.A. § 12-302 – Consolidation of Cities
- K.S.A. § 12-303 – Name change after consolidation of cities
- K.S.A. § 80-2554 - Hospital district in Linn and Bourbon counties; contract to borrow money
- K.S.A. § 10-1116c – County, school district or community college; Lease-purchase agreements
- K.S.A. § 12-5302 – Emergency telephone tax
- K.S.A. § 12-1680 – Issuance of bonds for computerized police and fire vehicle locating systems
- K.S.A. § 2-162 – Shawnee County tax levy for fair grounds
- K.S.A. § 19-4004 – Tax levy for mental health and retardation services
- K.S.A. § 2-131b - County fair associations; tax levy for buildings
- K.S.A. § 72-6433 – Authority to adopt local option budgets for school finance
- K.S.A. § 72-6449 – Authority to adopt cost of living weighting tax for school finance

5% of voters that voted for the Secretary of State:

- K.S.A. § 38-546 – Tax levy for maintenance of youth camp or home
- K.S.A. § 65-6113 - Establishment, operation and maintenance of emergency medical service
- K.S.A. § 68-2048a – Counties paying to construct additional intersections on Kansas Turnpike
- K.S.A. § 2-129i - Tax levies for fair associations in urban area counties

10% of qualified voters:

- K.S.A. § 19-2871a – Enlargement of Johnson County parks and recreation district

2% of voters that voted for the Secretary of State:

- K.S.A. § 12-1616c – Dams across streams and rivers

10% of voters that voted for mayor:

- K.S.A. § 14-6,10 – City issuing bonds to assist hospital trying to cover the cost of an addition

Kansas Legislature

12-1680b

Chapter 12.--CITIES AND MUNICIPALITIES
Article 16.--MISCELLANEOUS PROVISIONS

12-1680b. Same; resolution; publication; petition. No bonds shall be issued under the provisions of this act until the governing body of such city or county shall have adopted a resolution finding that the acquisition of such system is necessary. Such resolution shall describe, in general terms, equipment to be acquired and the estimated cost thereof. Such resolution shall also provide that the city or county proposes to issue general obligation bonds in an amount which shall be stated in said resolution unless, within sixty (60) days following final publication of the resolution, a petition protesting the acquisition of such system and the issuance of such bonds, signed by not less than five percent (5%) of the qualified electors of such city or county, is filed with the county election officer. Such resolution shall be published once each week for two (2) consecutive weeks in the official city or county newspaper. If no sufficient protest is filed with the prescribed time period, such city or county may acquire the equipment necessary for such system and issue and sell said general obligation bonds pursuant to the provisions of article 1 of chapter 10 of Kansas Statutes Annotated.

History: L. 1976, ch. 404, § 2; April 14.

Kansas Legislature

12-5302

Chapter 12.--CITIES AND MUNICIPALITIES
Article 53.--EMERGENCY TELEPHONE SERVICES

12-5302. Emergency telephone tax; imposition by cities or counties; amount of tax; protest petition; election, when; user billing and liability; collection. (a) In addition to other powers for the protection of the public health and welfare, a governing body may provide for the operation of an emergency telephone service and may pay for it by imposing an emergency telephone tax for such service in those portions of the governing body's jurisdiction for which emergency telephone service has been contracted. The governing body may do such other acts as are expedient for the protection and preservation of the public health and welfare and are necessary for the operation of the emergency telephone system. The governing body is hereby authorized by ordinance in the case of cities and by resolution in the case of counties to impose such tax in those portions of the governing body's jurisdiction for which emergency telephone service has been contracted. Subject to the provisions of K.S.A. 2009 Supp. 12-5338, and amendments thereto, the amount of such tax shall not exceed $.75 per month per exchange access line or its equivalent.

(b) Within 60 days of the publication of a resolution by a county adopted pursuant to subsection (a) there may be filed with the county election officer of the county a petition signed by not less than 5% of the registered voters of the county, and within 60 days of publication of an ordinance adopted pursuant to subsection (a) there may be filed with the county election officer of the county in which the city is located a petition signed by not less than 5% of the registered voters of the city, in either such case requesting that the question of the installation and operation of emergency telephone service and imposition of tax therefor be submitted to the qualified voters of the county. Upon determination of the sufficiency of such petition and certification thereof by the county election officer, the proposition shall be submitted to the qualified voters of the county or city as the case may be at the next primary or general election of county officers following by not less than 60 days the certification of such petition. If a majority of the votes cast at such election are for the installation and operation of emergency telephone service and imposition of tax therefor, or if no protest petition is filed within the time hereinbefore prescribed, the governing body may provide for the installation and operation of such service and impose such tax. If a tax is imposed on the effective date of this act or thereafter, any proposed increase in the amount of the tax shall be subject to the protest petition provided in this subsection. The proceeds of the tax shall be utilized to pay for the operation of emergency telephone service as set forth in subsection (b) of K.S.A. 12-5304, and amendments thereto, and may be imposed at any time subsequent to execution of a contract with the provider of such service at the discretion of the governing body. The collection of such tax may begin at the time determined to be necessary to generate revenue in an amount necessary to pay the nonrecurring expenses of establishing the emergency telephone

2-3

service. Any interest earned on revenue derived from such tax shall be used to pay the expenses authorized by K.S.A. 12-5304, and amendments thereto. Such tax shall not be imposed until after the expiration of the protest period or until after approved at an election if a sufficient protest petition is filed.

(c) As an alternative to the procedure provided in subsection (b), the governing body may submit, on its own initiative, the proposal to establish an emergency telephone service to the qualified voters of the city or county for approval. Any such election shall be called and held in the manner provided by the general bond law.

(d) Such tax shall be imposed only upon exchange access lines or their equivalent. No such tax shall be imposed upon more than 100 exchange access facilities or their equivalent per person per location.

(e) Every billed service user shall be liable for any tax imposed under this section until it has been paid to the service supplier. Wireless service shall be exempt from the emergency telephone tax under this section but shall be subject to the wireless enhanced 911 grant fee imposed under K.S.A. 2009 Supp. 12-5324, and amendments thereto, and the wireless enhanced 911 local fee imposed under K.S.A. 2009 Supp. 12-5330, and amendments thereto.

(f) The duty to collect any tax imposed under authority of this section from a service user shall commence at such time as specified by the governing body. Taxes imposed under authority of this section and required by it to be collected by the service supplier shall be added to and may be stated separately in the billings to the service user.

(g) The service supplier shall have no obligation to take any legal action to enforce the collection of any tax imposed under authority of this section. The service supplier shall provide annually the governing body with a list of amounts uncollected along with the names and addresses of those service users which carry a balance that can be determined by the service supplier to be nonpayment of any tax imposed under authority of this section.

(h) Any tax imposed under authority of this section shall be collected insofar as practicable at the same time as, and along with, the charges for the tariff rate in accordance with the regular billing practice of the service supplier.

History: L. 1980, ch. 179, § 2; L. 1990, ch. 78, § 1; L. 1994, ch. 248, § 32; L. 2004, ch. 72, § 19; Apr. 22.

Kansas Legislature

72-6433

Chapter 72.--SCHOOLS

Article 64.--SCHOOL DISTRICT FINANCE AND QUALITY PERFORMANCE

72-6433. Local option budget; authorization to adopt; conditions; limitations; definitions; supplemental general fund; transfers to capital improvements fund and capital outlay fund. (a) As used in this section:

(1) "State prescribed percentage" means 31% of state financial aid of the district in the current school year.

(2) "Authorized to adopt a local option budget" means that a district has adopted a resolution under this section, has published the same, and either the resolution was not protested or it was protested and an election was held by which the adoption of a local option budget was approved.

(b) In each school year, the board of any district may adopt a local option budget which does not exceed the state prescribed percentage.

(c) Subject to the limitation of subsection (b), in each school year, the board of any district may adopt, by resolution, a local option budget in an amount not to exceed:

(1) (A) The amount which the board was authorized to adopt in accordance with the provisions of this section in effect prior to its amendment by this act; plus

(B) the amount which the board was authorized to adopt pursuant to any resolution currently in effect; plus

(C) the amount which the board was authorized to adopt pursuant to K.S.A. 72-6444, and amendments thereto, if applicable to the district; or

(2) the state-wide average for the preceding school year as determined by the state board pursuant to subsection (j).

Except as provided by subsection (e), the adoption of a resolution pursuant to this subsection shall require a majority vote of the members of the board. Such resolution shall be effective upon adoption and shall require no other procedure, authorization or approval.

(d) If the board of a district desires to increase its local option budget authority above the amount authorized under subsection (c) or if the board was not authorized to adopt a local option budget in 2006-2007, the board may adopt, by resolution, such budget in an amount not to exceed the state prescribed percentage. The adoption of a resolution pursuant to this subsection shall require a majority vote of the members of the board. The resolution shall be published at least once in a newspaper having general circulation in the district. The resolution shall be published in substantial compliance with the following form:

Unified School District No.____,
_____ County, Kansas.
RESOLUTION
Be It Resolved that:

The board of education of the above-named school district shall be authorized to adopt a local option budget in each school year in an amount not to exceed ____% of the

2-5

amount of state financial aid. The local option budget authorized by this resolution may be adopted, unless a petition in opposition to the same, signed by not less than 5% of the qualified electors of the school district, is filed with the county election officer of the home county of the school district within 30 days after publication of this resolution. If a petition is filed, the county election officer shall submit the question of whether adoption of the local option budget shall be authorized to the electors of the school district at an election called for the purpose or at the next general election, as is specified by the board of education of the school district.

CERTIFICATE

This is to certify that the above resolution was duly adopted by the board of education of unified School District No._____, _____ County, Kansas, on the ____ day of _____, _____.

_____

Clerk of the board of education.

All of the blanks in the resolution shall be filled as is appropriate. If a sufficient petition is not filed, the board may adopt a local option budget. If a sufficient petition is filed, the board may notify the county election officer of the date of an election to be held to submit the question of whether adoption of a local option budget shall be authorized. Any such election shall be noticed, called and held in the manner provided by K.S.A. 10-120, and amendments thereto. If the board fails to notify the county election officer within 30 days after a sufficient petition is filed, the resolution shall be deemed abandoned and no like resolution shall be adopted by the board within the nine months following publication of the resolution.

(e) Any resolution authorizing the adoption of a local option budget in excess of 30% of the state financial aid of the district in the current school year shall not become effective unless such resolution has been submitted to and approved by a majority of the qualified electors of the school district voting at an election called and held thereon. The election shall be called and held in the manner provided by K.S.A. 10-120, and amendments thereto.

(f) Unless specifically stated otherwise in the resolution, the authority to adopt a local option budget shall be continuous and permanent. The board of any district which is authorized to adopt a local option budget may choose not to adopt such a budget or may adopt a budget in an amount less than the amount authorized. If the board of any district whose authority to adopt a local option budget is not continuous and permanent refrains from adopting a local option budget, the authority of such district to adopt a local option budget shall not be extended by such refrainment beyond the period specified in the resolution authorizing adoption of such budget.

(g) The board of any district may initiate procedures to renew or increase the authority to adopt a local option budget at any time during a school year after the tax levied pursuant to K.S.A. 72-6435, and amendments thereto, is certified to the county clerk under any existing authorization.

(h) The board of any district that is authorized to adopt a local option budget prior to the effective date of this act under a resolution which authorized the adoption of such budget in accordance with the provisions of this section in effect prior to its amendment by this act may continue to operate under such resolution for the period of time specified in the resolution or may abandon the resolution and operate under the provisions of this section as amended by this act. Any such district shall operate under the provisions of this section as amended by this act after the period of time specified in the resolution has expired.

(i) Any resolution adopted pursuant to this section may revoke or repeal any resolution previously adopted by the board. If the resolution does not revoke or repeal

2-6

previously adopted resolutions, all resolutions which are in effect shall expire on the same date. The maximum amount of the local option budget of a school district under all resolutions in effect shall not exceed the state prescribed percentage in any school year.

(j) (1) There is hereby established in every district that adopts a local option budget a fund which shall be called the supplemental general fund. The fund shall consist of all amounts deposited therein or credited thereto according to law.

(2) Subject to the limitation imposed under paragraph (3) and subsection (e) of K.S.A. 72-6434, and amendments thereto, amounts in the supplemental general fund may be expended for any purpose for which expenditures from the general fund are authorized or may be transferred to any program weighted fund or categorical fund of the district. Amounts in the supplemental general fund attributable to any percentage over 25% of state financial aid determined for the current school year may be transferred to the capital improvements fund of the district and the capital outlay fund of the district if such transfers are specified in the resolution authorizing the adoption of a local option budget in excess of 25%.

(3) Amounts in the supplemental general fund may not be expended for the purpose of making payments under any lease-purchase agreement involving the acquisition of land or buildings which is entered into pursuant to the provisions of K.S.A. 72-8225, and amendments thereto.

(4) (A) Except as provided in paragraph (B), any unexpended budget remaining in the supplemental general fund of a district at the conclusion of any school year in which a local option budget is adopted shall be maintained in such fund.

(B) If the district received supplemental general state aid in the school year, the state board shall determine the ratio of the amount of supplemental general state aid received to the amount of the local option budget of the district for the school year and multiply the total amount of the unexpended budget remaining by such ratio. An amount equal to the amount of the product shall be transferred to the general fund of the district or remitted to the state treasurer. Upon receipt of any such remittance, the state treasurer shall deposit the same in the state treasury to the credit of the state school district finance fund.

(k) Each year the state board of education shall determine the statewide average percentage of local option budgets legally adopted by school districts for the preceding school year.

(l) The provisions of this section shall be subject to the provisions of K.S.A. 2009 Supp. 72-6433d, and amendments thereto.

History: L. 1992, ch. 280, § 29; L. 1993, ch. 264, § 12; L. 1995, ch. 160, § 6; L. 1996, ch. 265, § 4; L. 1997, ch. 189, § 1; L. 2002, ch. 196, § 5; L. 2005, ch. 194, § 17; L. 2006, ch. 197, § 19; L. 2007, ch. 185, § 3; L. 2009, ch. 139, § 3; May 28.

2-7

Kansas Legislature

72-6449

Chapter 72.--SCHOOLS

Article 64.--SCHOOL DISTRICT FINANCE AND QUALITY PERFORMANCE

72-6449. Cost of living weighting. (a) As used in this section, "school district" or "district" means a school district authorized to make a levy under this section.

(b) The board of education of any district may levy a tax on the taxable tangible property within the district for the purpose of financing the costs incurred by the state that are attributable directly to assignment of the cost of living weighting to the enrollment of the district. There is hereby established in every school district a fund which shall be called the cost of living fund, which fund shall consist of all moneys deposited therein or transferred thereto in accordance with law. All moneys derived from a tax imposed pursuant to this section shall be credited to the cost of living fund. The proceeds from the tax levied by a district credited to the cost of living fund shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state school district finance fund.

(c) The state board of education shall determine whether a district may levy a tax under this section as follows:

(1) Determine the statewide average appraised value of single family residences for the calendar year preceding the current school year;

(2) multiply the amount determined under (1) by 1.25;

(3) determine the average appraised value of single family residences in each school district for the calendar year preceding the current school year; and

(4) (A) subtract the amount determined under (2) from the amount determined under (3). If the amount determined for the district under this paragraph is a positive number and the district is authorized to adopt and has adopted a local option budget in an amount equal to at least 31% of the state financial aid for the school district, the district qualifies for assignment of cost of living weighting and may levy a tax on the taxable tangible property of the district for the purpose of financing the costs that are attributable directly to assignment of the cost of living weighting to enrollment of the district; or

(B) As an alternative to the authority provided in paragraph (4)(A), if a district was authorized to make a levy pursuant to this section in school year 2006-2007, such district shall remain authorized to levy such tax at a rate necessary to generate revenue in the same amount generated in school year 2006-2007 if: (i) The amount determined under paragraph (4)(A) is a positive number; and (ii) the district continues to adopt a local option budget in an amount equal to the state prescribed percentage in effect in school year 2006 -2007.

(d) No tax may be levied under this section unless the board of education adopts a resolution authorizing such a tax levy and publishes the resolution at least once in a newspaper having general circulation in the district. Except as provided by subsection (e),

2-8

the resolution shall be published in substantial compliance with the following form:

Unified School District No. _____,
_____ County, Kansas.
RESOLUTION
Be It Resolved that:

The board of education of the above-named school district shall be authorized to levy an ad valorem tax in an amount not to exceed the amount necessary to finance the costs attributable directly to the assignment of cost of living weighting to the enrollment of the district. The ad valorem tax authorized by this resolution may be levied unless a petition in opposition to the same, signed by not less than 5% of the qualified electors of the school district, is filed with the county election officer of the home county of the school district within 30 days after the publication of this resolution. If a petition is filed, the county election officer shall submit the question of whether the levy of such a tax shall be authorized in accordance with the provisions of this resolution to the electors of the school district at the next general election of the school district, as is specified by the board of education of the school district.

CERTIFICATE

This is to certify that the above resolution was duly adopted by the board of education of Unified School District No. _____, _____ County, Kansas, on the _____ day of _____, (year)_____.

_____
Clerk of the board of education.

All of the blanks in the resolution shall be filled. If no petition as specified above is filed in accordance with the provisions of the resolution, the resolution authorizing the ad valorem tax levy shall become effective. If a petition is filed as provided in the resolution, the board may notify the county election officer to submit the question of whether such tax levy shall be authorized. If the board fails to notify the county election officer within 30 days after a petition is filed, the resolution shall be deemed abandoned and of no force and effect and no like resolution shall be adopted by the board within the nine months following publication of the resolution. If a majority of the votes cast in an election conducted pursuant to this provision are in favor of the resolution, such resolution shall be effective on the date of such election. If a majority of the votes cast are not in favor of the resolution, the resolution shall be deemed of no effect and no like resolution shall be adopted by the board within the nine months following such election.

History: L. 2005, ch. 194, § 12; L. 2007, ch. 188, § 4; July 1.

Special Committee on Assessment and Taxation

Mill Levy Issues

Conclusions and recommendations

The Committee believes that legislative intent from 1999 was clear in that various mill levy procedural requirements have been suspended since that time. The Committee further notes that Attorney General Opinions have no force and effect of law, and encourages local taxing subdivisions not to act relative to those opinions on mill levies unless directed to do so by the courts.

However, the Committee does believe that various rights which taxpayers had prior to 1999 should be restored and therefore recommends the introduction of a bill to add protest petition provisions relative to certain tax increases by all taxing units, provided the petitions require at least five percent participation in order to trigger elections.

Proposed Legislation: The Committee recommends the introduction of one bill on this topic.

Background

Late in 2007, Attorney General Opinion 2007-34, issued in response to a request from the Cowley County Counselor on behalf of a fire district, concluded that while a statute enacted in 1999 (KSA 2007 Supp 79-5040) suspended a specific five mill property tax fund levy limit for fire districts that had been established in a second statute (KSA 2007 Supp 19-3610), the 1999 suspension provision did not also negate election procedures outlined in the latter law.

Relying for precedent on a previous opinion from five years earlier (Attorney General Opinion 2002-36) that had gone largely unnoticed by taxing subdivisions and the Legislature, the 2007 opinion concluded that since there was "no statutory authority negating the election procedures ...any fire district that wants to exceed the five mill levy limit must follow the procedural steps set forth ..."

A number of legislators held discussions late in 2007 and throughout the 2008 session with staff, Department of Revenue personnel, and representatives of local units of government about the validity of these opinions and the potential implications on local taxing subdivisions.

Property Tax Lid: 1989-1999

The Legislature in 1985 enacted an aggregate property tax limitation (tax lid) that was effective beginning with tax year 1989 so as to coincide with the implementation of property tax reappraisal and classification (see KSA 79-5021 *et seq*). Because of the significant expansion in statewide assessed valuation anticipated as a result of reappraisal, the Legislature wanted a limitation on overall property taxes imposed by taxing subdivisions (many of whom otherwise could have received a windfall if mill levy rates were not rolled back). Numerous individual statutory fund levy limits, therefore, were

suspended and replaced with the aggregate tax lid mechanism (see KSA 79-5022), which was applied to total property tax dollars levied in lieu of the mill levy rates.

At the same time the individual fund levy limits were suspended (five mills for fire districts, for example). Procedural requirements that had been in place prior to 1989 relative to elections or protest petitions (mandatory election for fire districts) also were suspended and replaced with a new mechanism.

The tax lid provided generally prohibited local units from levying property taxes in greater amounts than a "base" year (choice of either 1988 or 1989), subject to a number of exemptions and exceptions relative to property taxes levied for special purposes. Property taxes levied as a result of new improvements to real estate and added personal property were exempt from the computation, as were taxes levied as a result of added territory or a service that had been transferred from another governmental unit. Other exemptions from the formula included property taxes levied for public building commissions; judgments, settlements and expenses for protection against liability; employer contributions for workers compensation, unemployment insurance, health care costs, employee benefit plans, and employee retirement and pension programs; district court operations; payment of out-district tuition to community colleges and Washburn; certain juvenile delinquency and crime prevention programs; rebates granted to property owners in conjunction with neighborhood revitalization programs; expenses necessary to interface with the state criminal justice information system; certain mental health services; and revenues to replace reductions in motor vehicle taxes.

Local units seeking to levy more in taxes beyond amounts not authorized by the aforementioned exemptions and exceptions had home-rule-like authority pursuant to KSA 79-5036 to exempt themselves from all or a portion of the remaining restrictions of the tax lid by approving charter ordinances or resolutions. Such ordinances or resolutions were then subject to various publication and protest petition requirements, under which a certain percentage of the electorate could force an election on the question of the proposed tax lid exemptions (and efforts to increase property taxes beyond a certain point).

The tax lid was extended a number of times throughout the 1990s, with the last extension coming in 1997 (see 1997 SB 7). Under that legislation, the tax lid was extended for an additional two years — until July 1, 1999 — at which time it was allowed to expire (see KSA 79-5038). Local units of government traditionally opposed reextension of the tax lid, generally arguing that local officials with authority to levy property taxes were elected just like members of the Legislature; that local units of government had a better idea of the demand for local services from the public and did not need to be micromanaged by statewide legislation; and that the tax lid appeared somewhat hypocritical in that its provisions did not apply to the state mill levies for building funds and school district general funds.

Truth in Taxation Lid: 1999-Present

Cognizant of the imminent expiration of the aggregate tax lid, the 1999 Legislature sought to replace it with a different mechanism known as "truth in taxation."

The legislation was crafted amid ongoing concerns over confusion regarding the extent to which local units may or may not have been increasing property taxes. The fact that mill levy rates in and of themselves did not necessarily represent an accurate measure for annual changes in property taxes (the other big variable being changes in assessed valuation) caused the legislation to be drafted with an emphasis on requiring local units to acknowledge to the

press and the public when taxes were being increased.

The provisions of the truth in taxation lid, enacted in SB 45, provide that taxing subdivisions (defined more narrowly than the 1989 tax lid to exclude unified school districts and community colleges) are prohibited, absent adoption of a resolution or ordinance so acknowledging, from approving appropriations or budgets funded from property tax increases, except with regard to increases attributable to new improvements to real estate; certain added personal property valuation; property located within added jurisdictional territory; property which has changed in use; and for payment of principal and interest upon bonded indebtedness, temporary notes, and no-fund warrants (see KSA 79-2925b).

The acknowledgment resolutions and ordinances are not subject to protest petition but instead represent an official record for the benefit of the press and the public of certain property tax increases approved by local governing bodies, notwithstanding what may be happening with mill levies.

The 1999 legislation also provided for a permanent sunset of the pre-1989 provisions, effectively repealing the many hundreds of different statutory fund levy limits (and, it was assumed by legislators at the time, the various "procedural" requirements in those laws referenced in both Attorney General opinions which had not been applicable since the late 1980s, at which point in time they were replaced by the home-rule powers provided in KSA 79-5036).

The truth in taxation provisions have not been modified since they were enacted in 1999.

2002–New Election Requirements Rejected

One very important example of the collective belief that there were no protest petition or mandatory election requirements applicable to local units since 1999 relative to the setting of mill levies relates to the introduction of legislation in 2002 (HB 3025) by the House Taxation Committee, at the request of a taxpayer-advocacy group, that would have reimposed many petition and election requirements for most property taxes levied in excess of 103 percent of the previous year's amount. A similar bill (HB 2869) applicable more narrowly to cities and counties also was introduced by Representative Garner. Neither bill advanced out of the House Taxation Committee, a fact that was totally overlooked just months later when the initial Attorney General's opinion was released in August. (Why would these bills have needed to be introduced in 2002 if the pre-1989 procedural requirements were still in place?)

2006 Interim Study

Because of ongoing concerns over property taxes, the LCC in 2006 received interim study requests from Rep. Wilk, Senator Allen, and Senator Brownlee to review the truth in taxation provisions and determine whether they were functioning adequately as a replacement mechanism for the old tax lid law. The LCC subsequently approved the request and charged the Special Committee to study the current 'truth in taxation' property tax law that local governments have operated under since the late 1990's. The Committee was asked further to determine if local governments are "complying with the 'truth in taxation' provisions and if the provisions should be modified; or whether portions of the previous local government property tax lid law should be revived."

The 2006 Special Committee found that "the decision made in 1999 to abolish the tax lid in favor of the truth in taxation lid represented an appropriate choice of no longer seeking to micromanage local units of government from the Statehouse." The Committee further noted that "no report surfaced of any local unit having violated the truth in taxation provisions over the

past seven years." Moreover, during the public hearing on the issue, no conferees appeared to advocate for a return of the 1989-1999 tax lid provisions, which included protest petition procedures and potential subsequent election requirements for certain property tax increases.

2008 Legislative Response to Attorney General Opinions (AGOs)

During the 2008 Session, the Senate Approved SR 1836, which directed the Secretary of Revenue to seek a declaratory judgment in court as to whether the Tax Reform and Relief Act of 1999 and KSA 79-5040 suspended certain procedural requirements relating to the property tax levy limits of local taxing subdivisions. The resolution also noted that such a determination by the court (that certain election and other requirements were suspended along with the levy limits) would reinforce legislative intent from 1999 and create "a consistent and common sense interpretation of the law." The resolution was critical of the conclusions reached in both the 2002 and 2007 Attorney General Opinions.

Secretary Wagnon was unable to obtain such a declaratory judgment, and county clerks were advised that, absent any such finding to the contrary, the Attorney General's Opinion should be interpreted as correct, and that they should not certify any fire district levies of more than five mills without voter consent.

Implications of AGOs

Data obtained from the Property Valuation Division show that in 2007, there were 100 out of 405 fire districts statewide that were levying more than five mills, presumably none of which had ever held an election. Those districts are located in 36 counties.

An analysis by the League of Municipalities also found that mandatory election requirements had been present in the pre-1989 laws relative to drainage districts (KSA 24-407) and cemetery districts (KSA 15-1015). In addition a number of protest petition requirements had been present in the pre-1989 laws relative to watershed districts (KSA 24-1219), Washburn University (KSA 13-13a18), ambulance service districts (KSA 65-6113), recreation districts (KSA 12-1927), and general improvement districts (KSA 19-2753 *et seq.*). It is likely that many of these local units are levying property taxes in excess of the pre-1989 fund levy limits without having held elections or met the publication requirements for a protest petition.

In the wake of the inability of the state to obtain a declaratory judgment and the decision of county clerks to adhere to the opinions, the LCC subsequently charged the 2008 Special Committee to study the subject matter in 2008 Senate Resolution 1836, especially relative to whether the Tax Reform and Relief Act of 1999 and KSA 79-5040 suspended certain procedural requirements relating to the property tax levy limits of local tax subdivisions. The Committee is further charged with recommending whether additional legislation is necessary to reinforce legislative intent from 1999 that certain election and other requirements were in fact suspended along with the fund levy limits.

Committee Activities

At the October meeting, staff briefed the Committee on the topic and on the implications for local units of the opinions. Secretary Wagnon outlined why she was unable to obtain a declaratory judgment. A conferee representing the League of Kansas Municipalities also spoke about the history of the tax lid and constraints on local taxing subdivisions, noting his belief that the appropriate decision was made to let all components of fund levy limits and the tax lid law expire.

Secretary Wagnon also indicated that Shawnee County had legally advised the county

clerk that fire districts could levy in excess of five mills absent an election. But Randall Allen of the Kansas Association of Counties said he thought that other clerks were wanting to err on the side of caution and, in fact, had convinced fire districts to place questions on the upcoming November 4 ballot.

At the November meeting, the Committee learned that a fire district in Rush County had in fact been asked to place a mill levy proposal on the ballot.

Conclusions and Recommendations

The Committee believes that legislative intent from 1999 was clear in that various mill levy procedural requirements have been suspended since that time. The Committee further notes that Attorney General Opinions have no force and effect of law and encourages local taxing subdivisions not to act relative to those opinions on mill levies unless and until directed to do otherwise by the courts of this state.

However, the Committee does believe that various rights which property taxpayers had prior to 1999 should be restored and therefore recommends the introduction of a bill to add protest petition provisions relative to certain proposed tax increases by all taxing units, provided the petitions require at least five percent participation in order to trigger elections.