

Approved: February 1, 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 January 26, 2010, in Room 144-S of the Capitol. Senator Reitz excused himself for page pictures and turned the meeting over to Vice Chair Senator Wagle. Senator Reitz returned after 10 minutes and resumed as Chair of the meeting.



All members were present.

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:

Larry Baer, Assistant General Counsel, League of Municipalities  
Dotty Riley, Bond Attorney for the City of Lenexa  
Doug Mays, on behalf of the City of Olathe  
Kay Pesnell, Douglas County Register of Deeds  
Richard Samaniego, representing Kansas County Treasurers

Others attending:

See attached list.

Senator Huntington proposed legislation for a "common interest" property-bill-of-rights to protect home owners associations and set model legislation.

Senator Wagle moved the legislation be introduced in committee, Senator Kultala seconded the motion. The motion carried.

Senator Ostmeyer proposed Norton County increase its bond indebtedness from 3 percent - 5 percent.

Senator Kultala moved the legislation be introduced in committee, Senator Marshall seconded the motion. The motion carried.

Larry Baer, Assistant General Counsel, League of Municipalities, addressed the Public Sale of Bonds issue that would amend current law (K.S.A. 10-106) to allow the form of "good faith deposits" that are required to accompany bids on public bond sales to include the use of cash deposited to an account designated by city ACH or wire transfer. (Attachment 1).

Dotty Riley, Bond Attorney for the City of Lenexa, addressed the Public Sale of Bonds, (Attachment 2) stating that the amendments contained in this bill would assist Lenexa and other municipalities to make their municipal bonds more marketable while still requiring a good faith deposit to secure performance of the purchase of the bonds by the selected best bidder.

Doug Mays, on behalf of the City of Lenexa, requested language change in the proposed legislation of the Public Sale of Bonds (Attachment 3).

Eric Sartorius, representing Overland Park, written testimony only (Attachment 4).

Kay Persnell, Douglas County Register of Deeds, spoke in favor of **HB 2125 - Requiring receipt for paid real estate tax before recording certain documents** (Attachment 5).

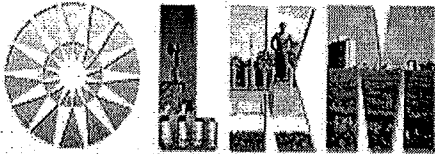
The next meeting is scheduled for February 1, 2010.

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

# LOCAL GOVERNMENT GUEST LIST

DATE: January 26, 2010

NAME	REPRESENTING
Statty Riley	Kutak Rock for Kenya
Larry R Bass	LKM
Richard Sponzo	Kenya & ASSOC.
Gay Pease	Kansas Register of Deeds
ERIK SARTORIUS	City of Overland Park
Jay Mays	Olathe



Date: January 26, 2010

To: Senate Committee on Local Government

From: Larry R. Baer  
Assistant General Counsel

Re: SB \_\_\_\_\_  
Testimony in Support

Thank you for allowing me to appear before you today and present testimony in support of SB \_\_\_\_\_ on behalf of the League of Kansas Municipalities and its member cities. This bill would amend current law (K.S.A. 10-106) to allow the form of "good faith deposits" that are required to accompany bids on public bond sales to include the use of cash deposited to an account designated by city, ACH or wire transfer.

K.S.A. 10-106, as now written, requires that a good faith deposit in the amount of two percent of the total par value of the bonds being sold be posted with the issuer by the bidder on public bond sales. The statute requires that the deposit "be in the form of a certified cashier's check or surety bond". This provision did not pose many problems until about 18 months ago when the only provider of such surety bonds suddenly stopped writing surety bonds for this purpose. In light of this, many municipalities begin accepting cash deposits for the good faith deposits. The Kansas Attorney General, who approves all new money general obligation bonds, accepted the use of cash because of the lack of a surety bond issuer. However, when the surety provider subsequently begin to issue surety bonds, the Attorney General would no longer approve the use of cash for the good faith deposit.

During the temporary allowance of cash deposits, cities found the process to work well and allowed the bond bidding process to be more accessible to bidders. This in turn resulted in more competitive bids and lower overall costs to the bond issuers.

The changes being proposed allow cities and other entities issuing bonds for public bond sale the flexibility to designate alternative methods of posting the good faith deposit. The proposed changes have in fact been used and found to be an acceptable substitute to the current statutorily required forms of deposit and, in some cases, have resulted in some saving to the bond issuers – savings to taxpayers.

For these reasons League of Kansas Municipalities supports the bill and asks for your support of this bill and requests that you pass it out favorably. Thank you.

Senate Local Government

1-26-2010

Attachment

1-1

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January 25, 2010

The Honorable Roger P. Reitz, Chairperson,  
Honorable Susan Wagle, Vice Chairperson  
and Members of the Senate Local  
Government Committee  
Statehouse, Room 144-S  
Topeka, KS 66612

Re: Senate Bill Relating to Amendments to K.S.A. 10-106

Ladies and Gentlemen:

As bond counsel to the City of Lenexa, Kansas, we are recommending, on its behalf, amendments to K.S.A. 10-106 to (1) clarify that municipalities may accept cash in the form of a wire transfer of funds through the federal reserve system as a good faith deposit for the purchase of general obligation bonds sold at public sale and (2) to permit the receipt of a good faith deposit received by wire transfer anytime prior to the time the governing body accepts the bid from a purchaser of the bonds.

***Current Law and Background.*** Under current law, K.S.A. 10-106 requires that for general obligation bonds to be sold at a competitive public sale, a municipality must receive a good faith deposit for such bonds, in the form of a certified or cashier's check or surety bond, in an amount equal to 2% of the par value of such bonds and that such good faith deposit must be furnished prior to the time of the sale. To avoid the administrative time required to obtain and deliver a cashier's or certified check and the loss of the use of the funds during the time the check is outstanding, most investment banking firms and some banks have historically utilized a surety bond service to provide a good faith deposit. An investment banking firm or bank interested in submitting a surety bond as the good faith deposit for municipal bonds could, for a small fee, arrange with Assured Guaranty Municipal Corp. (formerly, Financial Guaranty Assurance, Inc., the only company providing surety bonds for municipal bonds in Kansas and elsewhere in the United States) to qualify for a surety bond for a municipal bond issue. When the economy declined in the fall of 2008, this surety bond provider, without notice, discontinued the service, leaving both municipal bond issuers and bidders for municipal bonds without a timely, economical and efficient way to submit good faith deposits. In that cash in an issuer's bank account was a more secure manner of obtaining the good faith deposit than a check or

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Attachment

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The Honorable Roger P. Reitz, Chairperson,  
Honorable Susan Wagle, Vice Chairperson  
and Members of the Senate Local  
Government Committee

January 25, 2010

Page 2

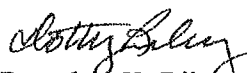
surety bond, most issuers in Kansas and elsewhere began accepting wire transfers of the good faith deposit. In 2009, the same surety bond provider resumed its surety bond service at an increased fee to bidders, and the Kansas Attorney General's office, which had approved bond transcripts in which bonds were sold with good faith deposits submitted by wire transfer during the time surety bonds were not available, indicated municipalities needed to return to utilization of the two specified forms of good faith identified in K.S.A. 10-106, *i.e.*, checks or surety bonds.

**Senate Bill.** The requested changes to K.S.A. 10-106 permit funding of the good faith deposit for municipal bonds with cash by electronic wire transfer which will give the municipality the security of cash immediately available as the good faith deposit and will provide a mechanism for bidders to submit good faith deposits that will be more efficient and cost effective for them. The bill also permits municipalities to accept the bid provided the good faith deposit is received by the bidder prior to the time the governing body accepts the bid, rather than prior to the time of the sale. This permits municipalities to determine the best bid and only require the best bidder to wire the good faith deposit, which eliminates the administrative work for the municipality of returning the good faith deposits for bidders that are not the best bid and makes the option of bidding on Kansas municipal bonds more attractive to bidders because their time and expense is reduced.

We believe the amendments contained in this bill will assist Lenexa and other municipalities to make their municipal bonds more marketable while still requiring a good faith deposit to secure performance of the purchase of the bonds by the selected best bidder.

If we may be of any assistance to the committee on this matter, please let me know.

Very truly yours,

  
Dorothea K. Riley

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January 26, 2010

The Honorable Roger Reitz, Chairperson  
Honorable Susan Wagle, Vice Chairperson  
And Members of the Senate Local Government Committee  
Statehouse, Room 144-S  
Topeka, Kansas

**Re: An Act concerning the public sale of bonds; amending K.S.A. 10-106 and repealing the existing section ("Senate Bill")**

Ladies and Gentlemen:

As bond counsel to many cities, counties and school districts in the State, we urge your prompt approval of this Senate Bill. This bill would simply allow bidders on bonds to submit their good faith deposit by electronic transfer or cash to the governmental entity or its agent.

The reasons for this change is that many bidders prefer to make their good faith deposits by electronic transfer so that if they are not the successful bidder, then their good faith deposit can be returned via electronic transfer in a timely manner.

### Current Law

Current law requires that good faith deposits be made either by a certified or cashier's check or a surety bond.

### Additional Proposed Change to K.S.A. 10-106:

In discussions with Rich Smith in the Kansas Attorney General's Office, we would like to propose to the Committee a change to K.S.A. 10-106(b). Current law provides that bond issues that do not exceed \$2,000,000 are exempt from the public sale requirement. However, its not perfectly clear that the last sentence of subsection (b) applies to clause (5) – which is the intent. The proposed change simply incorporates the last sentence of subsection (b) into clause (5) to cure the ambiguity. The proposed change to subsection (b) is attached hereto for your consideration.

Thank you for your consideration.

Sincerely,



Gary A. Anderson

Enclosure

Senate Local Government

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Attachment

3

(b) If sold at public notice sale, purchasers shall submit their bids in writing, sealed or sent by telefacsimile or other electronic transmission, as set forth in the notice of sale, for all or any part of the bonds. In case any purchaser, whose bid is accepted, fails to carry out the contract, the deposit shall be forfeited to the municipality issuing the bonds. Bids shall be disclosed publicly and tabulated or compared only at the time and place specified in the notice. At the time and place specified, the bonds shall be sold to the highest and best bidder or bidders, and the bonds may be allotted among the bidders, however, any or all bids may be rejected. No contract for the sale of the bonds shall be made except on bids submitted as provided in this section. No bonds shall be delivered to any purchaser until the amount of the bid is placed in the hands of the officer in charge of the sale. The provisions of this section relating to public notice sale of bonds shall not apply to bonds: (1) Secured solely and only by revenues, (2) bonds sold, pursuant to written agreement, to the government of the United States of America or any bureau, department, instrumentality or agency thereof, (3) bonds issued pursuant to K.S.A. 10-427 et seq., and amendments thereto, (4) all bonds of the same series or which are issued simultaneously with such bonds, and (5) bond sales where the total amount of the issue does not exceed \$2,000,000; provided, however that no more than one issue of bonds may be sold under this clause (5) for any one project in a twelve-month period unless the project engineer or architect certifies that it is necessary to do so for the orderly construction progress of the project. In such cases, the bonds may be sold at public notice or private sale as the officers having charge of the sale of such bonds determine. If bonds under clause (5) are to be sold at private sale, the officers having charge of the sale of such bonds shall publish in advance of the sale a notice of intent to seek private placement of such bonds in a newspaper having general circulation in the county where the bonds are issued and in the Kansas register. Such notice shall state the maximum aggregate principal amount of the bonds and shall indicate that the proposed sale is in all respects subject to the subsequent approval of an appropriate bond purchase agreement and an ordinance for the issuance of bonds. ~~The practice of providing more than one issue within a twelve-month period for any one project is prohibited unless the project engineer or architect certifies that it is necessary to do so for the orderly construction progress of the project.~~



ABOVE AND BEYOND. BY DESIGN.

8500 Santa Fe Drive  
Overland Park, Kansas 66212  
913-895-6000 | www.opkansas.org

Testimony Before The Senate Local Government Committee  
Regarding Municipal Bond Legislation  
Presented by Erik Sartorius  
January 26, 2010

The City of Overland Park appreciates the opportunity to share with the committee its support for this necessary change to municipal bond law brought forward by the City of Lenexa.

Until the fall of 2008, entities bidding on municipal general obligation bonds had the ability to qualify for a surety bond for the municipal bond sale. When the only company in the United States quit providing this service, municipal bond investors and municipalities themselves were left in the lurch.

In response, several municipalities began accepting the required good faith deposits via wire transfer. One the company that had previously provided surety bond services restarted its operations in 2009, the Kansas Attorney General's office indicated municipalities needed end the practice of accepting wire transfers.

The legislation sought does two things. First, it allows municipalities to once again accept good faith deposits for municipal bonds via wire transfer. This practice worked well while no surety company was available.

Second, the bill will allow municipalities to determine the best bidder for the bonds, and only require the best bidder to wire the good faith deposit. This may make Kansas municipal bond sales more attractive to bidders, as their time and expense associated with entering a bid is reduced, and will also lower administrative work and expense for municipalities.

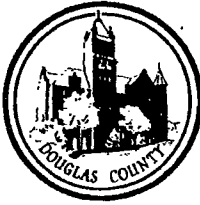
The City of Overland Park supports the goal of the proposed legislation, and asks that the committee report the bill favorably for passage.

Senate Local Government

1-26-2010

Attachment 4





**DOUGLAS COUNTY REGISTER OF DEEDS**

1100 Massachusetts Street  
P.O. Box 747  
Lawrence, KS 66044-0747  
(785) 832-5282 Fax (785) 330-2807  
www.douglas-county.com

**Kay Pesnell**  
Registrar

January 22, 2010

**Testimony in Support of HB 2125**  
**Submitted by Kay Pesnell, Douglas County Register of Deeds**  
**And August Dettbarn, Douglas County Appraisal Manager II**  
**On behalf of the Kansas Register of Deeds Association**

Chairperson Reitz and members of the Senate Committee on Local Government,

I appreciate the opportunity to address the committee on this issue. My name is Kay Pesnell, Douglas County Register of Deeds. My colleague August Dettbarn, is unable to attend due to his capacity with tax appeal hearings. I am here today in support of HB 2125, which was adopted as a legislative priority of the Kansas Register of Deeds Association. HB 2125 proposes to:

1. Revise KSA 19-1207 (Record of Plats and index; payment of fee, tax receipt required for recording) to include replats and plats of surveys for Condominiums and Townhouses.
2. The bill would provide a statutory basis for the Register of Deeds in each county to require proof (in the form of a paid tax receipt) that taxes were current before recording a plat or replat of plats of survey (for Condominiums and Townhouses).
3. The Register of Deeds Association has voted in favor of this bill.
4. This bill will enhance protection of the consumer.

We urge your support and favorable recommendation of HB 2125. I am happy to answer any questions.

Senate Local Government

1-26-2010

Attachment 5

## Examples of How the Change Protects the Public

Assume that on July 1, 2010 the owner of a twelve-unit apartment building elects to convert the building to twelve individual condominiums under the Apartment Ownership Act, K.S.A. 58-3101. The taxes for the previous year have not been paid by the due date in May. The owner records the required drawings and recitals with the register of deeds and begins to market the property to the public. Because the tax lien is for the apartment complex and not the newly created individual units, a search of the tax records for an individual condo will not discover the lien. This then puts the individual owners in jeopardy of losing the property in a tax sale since the judgement will be assessed against the legal description of the old apartment complex.

A similar problem exists with the townhouse ownership divisions in that new parcels and legal descriptions are created with each sold in a building.

On the County side even if a deed is recorded, the tax roll is not permitted to be changed and the taxes split if the taxes are not current. This creates problems for electronic billing since the lender will not have a tax account number to assign a payment to for the new individual units.