

The Kentucky League of Cities (KLC) identified a number of issues with SB 25 GA, including that fee approval relates to the revenues produced by it, not the level of the fee. [“...any special purpose governmental entity proposing the imposition of a new fee, or a fee which is expected to produce increased revenues as compared to revenues generated during the prior fiscal year...” (emphasis added).] KLC notes that the question becomes whether a fee that was previously established at a certain rate has to be reapproved if the projected revenue in the next fiscal year is more than the revenue collected in the current year. This could happen due to economic growth, population growth, increased usage, etc. This scenario is similar to the way cities calculate their property tax rates, in which cities are unable to keep the same tax rate from year to year without performing the compensating tax rate calculation. KLC adds that if the same concept applies here, then a rate approved to fund long-term debt service could be taken away at any time by the local legislation body, thereby significantly affecting the budgeting and financing authority of the SPGE.

KLC’s other major concern relates to which local governing body has the authority to approve or disapprove a proposed tax or fee for a SPGE. The bill says “...shall submit the proposed fee to the governing body of the city or county in which the largest number of citizens served by the special purpose governmental entity reside. If the special purpose governmental entity serves only the residents of a city, the notice shall be provided to the governing body of that city.” (The tax portion has a similar clause.) KLC is concerned that this could lead to confusion for the SPGEs, which would ultimately lead to costly litigation. For instance, since “incorporated population” is not distinguished in the bill, a reasonable argument could be made that a SPGE serving the entire city population and even one person outside of the city boundaries would result in the county government having veto authority over a city-created or city-related SPGE (since 100 percent of the population would be county residents, but 99 percent or so would be city residents).

KLC notes that the bill doesn’t provide a role for those establishing entities that are separate from the city or county government. Such entities could potentially have ultimate financial liability in the case of bankruptcy or court judgments against the SPGE, but the creating/appointing entity, if it is not the city or county government, would not have the authority to approve or disapprove their tax rates or fees.

KLC notes also that a question arises about who is being served. While the answer for fire districts or utility commissions may be clear, for other SPGEs, such as parks and recreation boards or museums, the question becomes more complicated.

Ultimately, KLC believes the bill as currently drafted would lead to litigation to answer these questions, which could have a moderate financial impact on the cities involved in those cases. KLC also notes that some administrative burden would be placed on city clerks and those responsible in the SPGEs to provide the rate and fee information to the governing body members of the cities. Even though a vote is not required to approve a rate or fee, the clerk would still have to process, maintain, and distribute the information to local legislative body members.

Per the Secretary of State: Additional cost to enact the above would include changes to the statewide voter registration system (VRS) to allow county clerks to code voters by taxing district. This ensures voters are provided the correct ballot. This coding will be time consuming for county clerks.

Part III: Differences to Local Government Mandate Statement from Prior Versions

The LM statement to SB 25 GA is the same as the LM statement to SB 25 as introduced. No substitutes or amendments were adopted when the bill passed the Senate.

Data Source(s): LRC Staff, Department of Local Governments, KY County Clerks Association, Secretary of State

Preparer: Wendell F. Butler **Reviewer:** KHC **Date:** 2/26/19