Water and Sewer Working Group
Summary report
March 17, 2006

Background

During the 2005 legislative session, Representatives Seifert and Olson, and Senator Wergin introduced bills modifying state law relating to the collection of unpaid municipal water and sewer bills. No legislation was enacted[1], but a provision was added to the State Government Finance Appropriations bill to establish a working group to study the issue and report back to the 2006 Legislature.[2]

The Working Group, which met twice – on January 30 and February 24, 2006, consisted of both legislators and citizens, appointed by the leadership of the House and Senate. The membership is included as Attachment A.

Working Group Discussion

Landlord perspective

• Landlords indicated they believe it is unfair for landlords to be held liable to pay for a service (water and sewer service) for which they were not the end user. . The landlords argued that because they were not the beneficiary of the municipally provided service, they should not be held liable if a tenant leaves the property and the bill is unpaid and that it should be the unsecured personal obligation of the tenant.
• Landlords argue that water and sewer charges should be treated like gas and electric service, where the provider must pursue the tenant if a bill is unpaid.
• It is unfair to require landlords to pay for these costs because they are generally not even aware of the payment status of the water account for their property. A tenant's rental deposit is generally insufficient to pay for delinquent charges.
• Landlords (and the tenants and cities representatives) agreed that the problem of unpaid water and sewer bills was generally limited to single family and manufactured homes, and was not an issue in apartment buildings.

Cities perspective

• Cities argued that state law and court cases clearly provide for the authority of municipalities to seek recovery of unpaid water and sewer bills by placing liens on the property.
• Cities contend provision of water and sewer is a service to the property, not limited to the current tenant. Unlike gas or electric utilities, the connection to water service is necessary for the property to be considered habitable under the International Property Maintenance Code so that without this connection the property cannot be rented out.
. Cities noted that tenants are very transient and often water suppliers are not advised of a changeover in tenancy until months after it occurs, leaving them with little ability to collect from the former tenant. Moreover, water suppliers are not a party to the lease agreement and cannot presume to know how that private agreement apportioned responsibility for water utilities.

• In the event there is a delinquent bill, cities need to be able to recover charges from the property owner, since, unlike electric and gas utilities; they do not have a profit margin against which they can offset these charges. Cities are also unable to track tenants to pursue an unpaid bill once they leave municipal boundaries, unlike gas and electric utilities.
• Cities argue that landlords have a variety of means to ensure payment of water and utility bills, such as receiving copies of bills as they are issued by the city, making non payment of bills a basis for eviction in the rental lease agreement, and ensuring that rental deposits are large enough to cover unpaid bills.
• Cities point out that shutting off the water supply is often not a viable option. Irate tenants threaten city workers, cutting off water makes the building uninhabitable, and in older buildings, the act of shutting off water can break pipes and plumbing fixtures.
• Unpaid water and sewer bills are a significant cost to cities: A representative of the League of Cities indicated a total of $40 million in delinquent charges were certified by 99 cities during the period 2003-2005. (This figure includes both owner occupied and rental properties.) [3]

Tenant perspective

• Tenants argued that state law and rule are inconsistent in their treatment of landlords and tenants with respect to collection of unpaid bills. Gas and electric utilities that are unable to recover unpaid charges from tenants are prohibited from collecting those charges from the landlord.
• In contrast, regulated gas and electric utilities have the ability to pursue unpaid bills from a tenant who was not a contracting party for service. Utilities can require a tenant to indicate his or her former address(es), and if there is an unpaid bill, can require the tenant to pay the bill even if the tenant's name was not the bill payer of record. Tenants argue for consistent legal treatment of landlords and tenants.
• Tenants also argue that it is unfair for tenants to be required to have the landlord as a co-applicant for water and sewer service, or for an unpaid water or sewer bill to be paid before service is provided to a rental property.
• Tenants generally support cities current practices regarding certification of unpaid utility charges; tenants pointed out that this is settled law and has been for about 100 years.

Proposals

At its second meeting, the Working Group considered three proposals by members for possible legislation:

1) Johnson proposal:
• Establishes clear process by which municipalities certify unpaid water and sewer charges to be assessed against a property, including timeframes in which landlords are notified of charges and provided with an opportunity to be heard prior to certification of the charge against the property.

2) Elwood proposal:
• Clarifies that electric and gas utilities may only hold those who contract for these services liable (they cannot hold a landlord or other tenant who was not a party to the contract liable.)

3) Kowalski proposal:
• Cities would not be permitted to pursue landlords or tenants for unpaid water and sewer charges who did not contract for the service.

• Clarify that when cities pursue payment of unpaid charges, they must interpret the statutes governing this process in their entirety.

Working group recommendation

Senator Skoglund moved that the Water and Sewer Working Group make no recommendation to change existing law to the Legislature. The motion was adopted. The Working Group adjourned and was dissolved on February 24, 2006.

Subsequent to the last meeting of the Working Group, two members submitted a minority report. That report is attached.

Attachments: Working Group members
Minority report

[1] These bills were introduced: H.F. 1367 (Olson), H.F. 2333 (Seifert), S.F. 1009 (Wergin)
[2] Minnesota Laws 2005, chapter 156, Article 2, section 49.
[3] Jeannette Behr, League of Minnesota Cities, testimony to Water and Sewer Working Group on 2/24/2006.

Water and Sewer Study Group Members

Name	Address	Appointed By
Senator Wes Skoglund	124 Capitol	President of the Senate
Senator Betsy Wergin	125 State Office Building	President of the Senate
Tom Lockhart	Golden Valley, MN	President of the Senate
Rep. Mark Olson	501 State Office Building	Speaker of the House
Rep. Bill Hilty	207 State Office Building	House Minority Leader
Pete VanVooren	Minneota, MN	Speaker of the House
Robert Hintgen	City of Richfield	House and Senate
Sandra Johnson	Bloomington City Attorney's Office	House and Senate
W. Court MacFarlane	Chaska, MN	House and Senate
Wendy Kowalski	Zimmerman, MN	House and Senate
Ron Elwood	Legal Services Advocacy Project	House and Senate

WATER AND SEWER STUDY GROUP
MINORITY REPORT

WHERE AS, An assessment, which exceeds the special benefit to the property, constitutes an unconstitutional taking without fair compensation. Buettner v. City of St. Cloud. 277 N.W. 2d 199.202 (Minn. 1979);

WHERE AS, To specially assess property, land must be shown to have been specially benefited. Tri-State Land Co. v. City of Shoreview. 290 N.W. 2d 775.777 (Minn. 1980);

WHERE AS, Minnesota Statutes Annotated, 444.075 states, "Generally a municipal sewage plant or water tower would not confer benefits, unless it can be demonstrated that a proposed plant or water tower was a local improvement, special assessments could not be imposed. *Op. Atty. Gen., 387-g-5. Aug. 16, 1963"*;

WHERE AS water bills collected as special assessments do not increase the market value and do not benefit land to be a bona fide special assessment; and

WHERE AS, the reference made to forcing a non-required contract onto a landlord when it is contrary to Minnesota Statutes 504B.215, Subdivision 2, when a landlord of a separate meter for each unit is provided is not required to contract.

THEREFORE, Charges where no demonstration that a proposed plant, water tower or facility was a local improvement, special assessments could not be imposed.

BE IT RESOLVED THAT, All sewer and water charges that are not special assessments actually financing improvements of water and sewer facilities shall be prohibited from collection as special assessments.

Members:
Wendy Kowalski
Pete VanVooren

Date: March 14, 2006