

Approved February 6, 1991  
Date

MINUTES OF THE House COMMITTEE ON Local Government

The meeting was called to order by Representative M. J. Johnson at  
Chairperson

1:30 ~~XX~~ p.m. on January 30, 1991 in room 521-S of the Capitol.

All members were present except:

Representative Gomez, excused

Committee staff present:

Mike Heim, Legislative Research Dept.  
Theresa Kiernan, Revisor of Statutes  
Connie Smith, Committee Secretary

Conferees appearing before the committee:

Representative Rick Bowden  
Representative Jeff Freeman  
Dennis F. Schwartz, President of Kansas Rural Water Association  
Gary H. Hanson, counsel for Kansas Rural Water Association

Representative Bowden appeared before the committee to request introduction of a bill concerning the authority of delaying special assessments in cities of second and third class. Representative Bowden answered questions from the committee.

Representative Thompson moved to introduce the bill request; seconded by Representative Watson. The motion carried.

Next on the agenda was a bill request from Representative Eloise Lynch, who could not be present; so Chair called on Mike Heim, staff, to explain the request. This bill request would put Saline county in a special provision which now applies to Linn, Riley and Sedgwick counties regarding law libraries and law library fees and would permit the clerk of the district court in Saline to tack on an additional fee to the dock fees for the cases that are filed in that county. That additional money would be used for the law library. No questions from committee.

A motion was made by Representative Mason to introduce the bill requested by Representative Lynch; seconded by Representative Brown. The motion carried.

Chair opened hearings on HB 2026.

HB 2026 - concerning rural water districts; relating to the dissolution thereof;

Representative Jeff Freeman, one of the six sponsors of HB 2026, testified in support of HB 2026 and stated this bill would make it clear to the IRS that Rural Water Districts aren't profit-making organizations. (Attachment 1) No questions.

Dennis Schwartz, President of Kansas Rural Water Association, appeared in support of HB 2026. (Attachment 2) Mr. Schwartz introduced Gary Hanson, counsel for Kansas Rural Water District, for a more detailed explanation of this problem.

Mr. Hanson, provided written testimony and urged that the change, contained in HB 2026, be enacted as soon as possible. (Attachment 3)

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Local Government,  
room 521-S Statehouse, at 1:30 ~~xx~~ p.m. on January 30, 1991

Chair asked staff on line 22 why the word "will" was deleted and the word "shall" inserted. Staff stated "will" and "shall" are the same and they should delete "probably" on line 22.

Mr. Hanson and Mr. Schwartz answered questions from the committee.

There were no opponents to HB 2026.

The Chair closed the hearing on HB 2026.

The Chair turned the committee's attention to discussion on HB 2015 (Township roads, maintenance agreements between township and county).

Chair stated she had asked staff to prepare an amendment which would clarify a few questions asked by committee members. Staff distributed copies of suggested amendments for discussion. (Attachment 4) Staff briefed the committee on the suggested changes to HB 2015.

Discussion followed. Chair suggested deleting the word "term" on line 21 and inserting "duration".

A motion was made by Representative Macy to amend HB 2015 by striking the word "term" on line 21, and adding "duration"; seconded by Representative Mollenkamp. The motion carried.

Representative Mollenkamp moved to pass HB 2015 favorably as amended; seconded by Representative Watson. The motion carried.

Representative Macy moved to approve the minutes of January 24, 1991; seconded by Representative Thompson. The motion carried.

Meeting adjourned at 2:08 p.m.



**Jeff Freeman**

STATE REPRESENTATIVE

P.O. Box 60

BURLINGTON, KS 66839



TOPEKA

HOUSE OF  
REPRESENTATIVES

TESTIMONY ON HB 2026

House Local Government Committee

Mary Jane Johnson, Chairman

January 30, 1991

COMMITTEE ASSIGNMENTS  
MEMBER: AGRICULTURE AND SMALL BUSINESS  
ENERGY AND NATURAL  
RESOURCES  
LEGISLATIVE, JUDICIAL AND  
CONGRESSIONAL APPORTIONMENT  
TRANSPORTATION  
COMMISSION ON WASTE REDUCTION, RECYCLING AND  
MARKET DEVELOPMENT  
AMERICAN LEGISLATIVE EXCHANGE COUNCIL  
MEMBER: TRANSPORTATION COMMITTEE

THANK YOU MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE FOR THE OPPORTUNITY TO APPEAR IN SUPPORT OF HB 2026. HB 2026 IS SPONSORED BY MYSELF AND SIX OTHER MEMBERS.

I HAVE WITH ME TODAY DENNIS SCHWARTZ, PRESIDENT OF THE KANSAS RURAL WATER ASSOCIATION AND GARY HANSON, COUNSEL FOR THE KANSAS RURAL WATER ASSOCIATION.

THE PROBLEM

RECENTLY, THE INTERNAL REVENUE SERVICE HAS RULED THAT COFFEY COUNTY RURAL WATER DISTRICT #2 AND LEAVENWORTH RURAL WATER DISTRICT #9 ARE NOT A LOCAL UNIT OF GOVERNMENT AND THEREFORE SUBJECT TO FEDERAL TAXES, PENALTIES AND FINES. IN ADDITION, COFFEY COUNTY RURAL WATER DISTRICT #3 WILL HAVE TO PAY FEDERAL UNEMPLOYMENT INSURANCE PREMIUMS FOR ITS WORKERS AND PARTICIPATE IN SOCIAL SECURITY EMPLOYEE PAYMENTS.

THE IRS HAS ALSO COMPLICATED THIS ISSUE FURTHER BY ITS RULING ON THE ISSUANCE OF TAX-EXEMPT FINANCING.

THERE ARE CURRENTLY PROPOSALS FOR CREATION OF NEW RURAL WATER DISTRICTS IN MANY COUNTIES THROUGHOUT THE STATE WHICH REMAIN ON HOLD BECAUSE OF THE IRS RULING.

*LS*  
*1-30-91*  
*Attach. 1*

HB 2026

JANUARY 30, 1991

IN SHORT, THIS ACTION BY THE IRS HAS EXTREME CONSEQUENCES FOR THE OVER 300 RURAL WATER DISTRICTS IN KANSAS.

WHY THE IRS HAS CHOSEN TO AUDIT AND HARASS THESE THREE DISTRICTS I DO NOT KNOW, BUT LET ME MAKE IT PERFECTLY CLEAR THAT THIS HAS STATE-WIDE IMPLICATIONS.

THE IRS HAS SAID THAT CHANGES THE LEGISLATURE MADE IN 1986 TO DISSOLVE A RURAL WATER DISTRICT IN RENO COUNTY BEFORE IT WAS EVER BUILT HAVE TAKEN AWAY THE GOVERNMENTAL STATUS.

THE SOLUTION

HB 2026 WOULD SIMPLY MAKE IT CLEAR TO THE IRS THAT RURAL WATER DISTRICTS AREN'T PROFIT-MAKING ORGANIZATIONS.

THE BILL WOULD RETURN TO THE ORIGINAL LANGUAGE PRIOR TO THE 1986 CHANGE.

THANK YOU AGAIN FOR THE OPPORTUNITY TO APPEAR AND I WOULD APPRECIATE YOUR FAVORABLE CONSIDERATION OF HB 2026.



KANSAS  
RURAL  
WATER  
*association*

Quality water, quality life

P.O. Box 226 • Seneca, KS 66538 • 913/336-3760 • FAX 913/336-2751

January 30, 1991

TO: HOUSE LOCAL GOVERNMENT COMMITTEE

RE: Statement of Support for House Bill No. 2026

The Kansas Rural Water Association represents nearly 300 rural water districts across the state, serving approximately 70,000 households. Rural water districts play a key role in providing safe drinking water and improving the quality of life in our rural areas.

House Bill No. 2026 repeals a provision which was added to KSA 82a-629 during the session of 1985, in an effort to allow for the dissolution of one incorporated rural water district in Reno County, which had not proven to be a feasible project. While it seemed to be appropriate at the time, the Internal Revenue Service has now used that provision to question the political sub-division status of all Kansas rural water districts. Among the more serious consequences of their interpretation is the inability for rural water districts to issue tax-free revenue bonds in order to finance system improvements and system expansions.

There are several districts currently involved in developing improvements and expansions which are being stalled due to this situation. We know that they would implore your favorable and expeditious action on this bill.

The Kansas Rural Water Association strongly supports the passage of House Bill No. 2026.

Respectfully submitted,

Dennis F. Schwartz  
KRWA President

LS  
1-30-91  
Attachment 2

LAW OFFICES

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OF COUNSEL:  
WALTER G. STUMBO  
JOHNE. STUMBO

January 30, 1991

TO: HOUSE LOCAL GOVERNMENT COMMITTEE  
RE: STATEMENT OF SUPPORT FOR HB 2026

**TESTIMONY OF GARY H. HANSON TO  
HOUSE COMMITTEE ON LOCAL GOVERNMENT**

The Legislature enacted the statutory scheme creating Kansas rural water districts in 1957. This statute is now found at K.S.A. 82a-612 et seq. A number of rural water districts have been organized since 1957, serving thousands of Kansas households, farms and businesses.

In 1985, the Legislature effected a change to K.S.A. 82a-629 concerning what would happen in the event of dissolution of a rural water district. Prior to that amendment, the statute had provided that upon dissolution, the district's property, consisting of maps, charts and records, was to be delivered to the county clerk. The 1985 amendment was apparently made in response to an isolated instance in which a rural water district was created, monies collected, and then the project found unfeasible. Amended 82a-629 provides that upon dissolution, district monies shall be apportioned among the patrons of the district, with the maps, charts and records to then be delivered to the county clerk.

In at least two separate Internal Revenue Service audits begun in 1989, the IRS focused on this amendment as the basis for assessment of the federal unemployment tax (FUTA) on the basis that rural water districts were not entitled to the exemption from payment of FUTA provided for political subdivisions of the state under IRC §3306(c)(7). Similarly, the audit held that rural water districts were not entitled to opt out of mandatory social security tax (FICA) under the exemption provided for political subdivisions of the state under IRC §3121(b)(7).

The rural water districts asked for technical advice on this issue from the Internal Revenue Service National Office. These rural water districts, Rural Water District No. 2, Coffey County, and Rural Water District No. 9, Leavenworth County, filed briefs with the IRS, as did the IRS Regional Office in Oklahoma City. I attended a meeting in Washington, D.C. on behalf of Coffey County Rural Water District No. 2 and the Kansas Rural Water Association in order to discuss this issue with the technical staff.

The National Office filed a Technical Advice Memorandum on November 8, 1990, which was later published. This advice concludes that Kansas rural water districts are not political subdivisions of the state for purposes of exemption from FICA and FUTA. The IRS noted that its rulings and federal court decisions have required that to qualify as a political

LS  
1-30-91  
Attachment 3

## STUMBO, HANSON &amp; HENDRICKS

subdivision, an entity must have more than an insubstantial amount of the three acknowledged sovereign powers of states: the power to tax, the power of eminent domain, and the police power. Of these powers, Kansas rural water districts have only the power of eminent domain. The IRS went on to state that when an entity has less than all of these powers, it will not qualify as a political subdivision if it is allowed to distribute any of its assets to private interests. Citing the provisions of K.S.A. 82a-629 as amended in 1985, the IRS concluded that Kansas rural water districts can transfer assets to private interests and accordingly, are not political subdivisions for purposes of the exemption to FUTA and FICA.

Most rural water districts were already participating in FICA. FUTA is taxed at a relatively low rate of wages paid and does not present an extreme burden on either of the districts that were the subject of this audit.

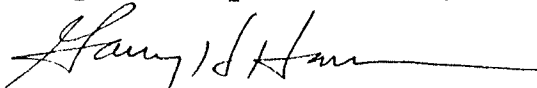
The more significant issue presented by the technical advice concerns rural water districts' ability to issue tax free debt under IRC §103. This section permits political subdivisions to issue tax free debt. The definition of political subdivisions for purposes of §103 appears to be the same as the definition used for the exemptions from FUTA and FICA.

Section 103 interest free debt financing has become an increasingly common way for rural water districts to obtain financing of projects at reasonable cost. In light of the Technical Advice Memorandum, we believe that it is not possible for Kansas rural water districts to issue tax free debt at this time.

Kansas rural water districts' status as political subdivisions of this state, and thus their ability to exempt themselves from FUTA, FICA and most importantly to issue tax free financing, turns on this seemingly innocuous provision of K.S.A. 82a-629. Although we have not done a precise calculation, we would expect that rural water district costs of operation statewide could be increased by thousands, indeed hundreds of thousands of dollars, as a result of this provision.

At the meeting with the IRS technical staff in Washington on October 31, 1990, the staff all agreed that if K.S.A. 82a-629 was changed to eliminate this possibility of assets being distributed to private interests upon dissolution, and provided instead that assets would be transferred to another political subdivision, it would be their opinion that Kansas rural water districts would once again qualify as political subdivisions of the state for purposes of the Internal Revenue Code. We urge that this change, contained in HB 2026, be enacted as soon as possible.

Respectfully submitted,



GARY H. HANSON



HOUSE BILL No. 2015

By Special Committee on Local Government

Re Proposal No. 25

12-28

AN ACT concerning counties and townships; relating to township roads; amending K.S.A. 1990 Supp. 68-560 and repealing the existing section.

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

Section 1. K.S.A. 1990 Supp. 68-560 is hereby amended to read as follows: 68-560. (a) In any county not operating under the county road unit system, any township in such county, with consent of pursuant to a written agreement with the board of county commissioners, may turn over the maintenance, repair and construction of township roads to the counties county as provided by this subsection. Any such agreement shall specifically state the term of such agreement. The question of turning over the maintenance, repair and construction of the township roads to the county shall be submitted to a vote of the qualified electors of the township at the general election whenever there shall have been submitted to the board of county commissioners at least 60 days prior to the date of such general election a petition signed by 10% of the qualified electors of such township or a resolution of the township board calling for such election.

(b) Any township which has adopted the provisions of this act may abandon the provisions of this act, and take over the maintenance, repair and construction of township roads, as provided by this subsection. The question of abandoning the adoption of the provisions of this act shall be submitted to a vote of the qualified electors of the township at any general election after the date such township has adopted the provisions of this act, whenever there shall have been submitted to the board of county commissioners at least 60 days prior to the date of any such general election, a petition signed by at least 20% of the qualified electors of such township.

Sec. 2. K.S.A. 1990 Supp. 68-560 is hereby repealed.

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

duration

which in no case shall exceed two years

Any contract entered into prior to the effective date of this act, which does not contain a provision limiting the duration thereof to two years or less shall be renegotiated to provide such limitation. Such renegotiation shall be completed on or before December 31, 1991, or such contract shall be deemed void.

LD  
1-30-91  
Attach. 4

Attach