

Approved February 27, 1991  
Date

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by REPRESENTATIVE M. J. JOHNSON at  
Chairperson

1:40 ~~a.m.~~/p.m. on FEBRUARY 26, 1991 in room 521-S of the Capitol.

All members were present ~~except~~

Committee staff present:

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

Conferees appearing before the committee:

Representative Elizabeth Baker  
Verdou Parish, Derby resident  
Bill Ham, Derby resident  
Jean Farano, Derby resident  
Karl W. Mueldener, Director, Bureau of Water, Kansas Department of  
Health and Environment  
E. A. Mosher, League of Kansas Municipalities  
Ray Trail, Assistant City Manager and Director of Finance for the city  
of Wichita  
Anne Smith, Kansas Association of Counties

Chairman opened a hearing on HB 2210.

HB 2210 - Sewer construction subject to environmental coordination act.

Representative Baker, sponsor of HB 2210, stated that HB 2210 amends the water projects environmental coordination act to include any sewer proposed to be constructed by a city after October 31, 1989. Ms. Baker provided written testimony. (Attachment 1)

Verdou Parish, Derby, testified in support on HB 2210 and directed his remarks to a specific project in Derby, the Southeast Interceptor Sewer. (Attachment 2)

Bill Ham, teacher from Derby, testified in support on HB 2210 and provided written testimony. (Attachment 3)

Jean Farano, resident of Derby, testified in support of HB 2210 and stated legislation that requires City governments to safeguard the environment would not be a burden to those cities which were committed to the careful use of Kansas' natural heritage. (Attachment 4)

Committee asked questions.

Karl W. Mueldener, Director, Bureau of Water, Kansas Dept. of Health and Environment stated that because of the expanded reviews and additional resources required for those reviews, the Department cannot support HB 2210 but they do support the concept of expanding the act to review new facilities or major modifications of existing facilities. (Attachment 5)

E. A. Mosher, League of Kansas Municipalities, appeared in opposition to HB 2210 on behalf of their member cities and provided written testimony. (Attachment 6)

Discussion followed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

room 521-S, Statehouse, at 1:40 a.m./p.m. on FEBRUARY 26, 1991

Representative Baker distributed a letter in opposition to HB 2210 from Mark A. Butterfield, Mayor of Derby. (Attachment 7)

Mike Miller, Director of Intergovernmental Relations for the city of Topeka, provided written testimony but did not testify. (Attachment 8)

Chairman closed the hearing on HB 2210.

Chairman opened a hearing on HB 2188.

HB 2188 - Pledge of sales tax revenue for payment of general obligation bonds by the city of Wichita.

Ray Trail, Assistant City Manager and Director of Finance for the city of Wichita, testified in support of HB 2188. Mr. Trail stated that except for a technical change in the structure of debt financing this proposal makes no material change in the City's liability for bonded indebtedness; but by doing so reduces the cost to the taxpayers. (Attachment 9)

E. A. Mosher, League of Kansas Municipalities, appeared in support of HB 2188 with an amendment to make it applicable to all cities. (Attachment 10)

Anne Smith, Kansas Association of Counties, appeared in support of HB 2188 with an amendment to make it applicable to all counties. (Attachment 11)

Discussion followed.

Representative Brown raised a point of why there was a difference between the protest petition of 4% in section 1 and 10% in new section 2. Mr. Trail stated it was not intended to be a difference, there might have been an error in doing a translation.

Chairman closed the hearing on HB 2188.

The meeting adjourned at 3:06 p.m.



**ELIZABETH BAKER**  
 REPRESENTATIVE, EIGHTY-SECOND DISTRICT  
 SEDGWICK COUNTY  
 601 HONEYBROOK LANE  
 DERBY, KANSAS 67037



TOPEKA  
 —  
 HOUSE OF  
 REPRESENTATIVES

CHAIR: SEDGWICK COUNTY  
 LEGISLATIVE DELEGATION  
 MEMBER: BOARD OF TRUSTEES  
 WICHITA STATE UNIVERSITY  
 REGIONAL OMBUDSMAN: KANSAS  
 COMMITTEE FOR EMPLOYEE  
 SUPPORT OF THE GUARD AND  
 RESERVE  
 COMMITTEE ASSIGNMENTS  
 RANKING MINORITY MEMBER: FEDERAL &  
 STATE AFFAIRS  
 MEMBER: ECONOMIC DEVELOPMENT  
 ELECTIONS

February 26, 1991

## To: House Committee on Local Government

Re: 2210

**HB 2210 amends the water projects environmental coordination act to include any sewer proposed to be constructed by a city after October 31, 1989. Derby has begun construction on an interceptor sewer line that is being viewed by a large portion of our community as an environmental disaster. Last Tuesday at the Derby City Council meeting the Council voted to delay the project for two weeks while alternative routes were researched.**

**Derby is a beautiful, rapidly growing community that has had excellent planning. The voters recently approved a \$20 million bond issue for a new high school and certain elementary school additions, thus insuring the potential for strong growth in the future. Sleepy Spring Creek winds through our residential area providing an idyllic setting for homes, parks and schools. Our children have grown up on its banks, and our seniors enjoy its spring flowers and its fall foliage. But everyone loves the trees and that is what this bill is all about! The people in our community want to save the trees. As you listen to my friends from Derby testify, I urge you to think of the importance of trees both aesthetically and environmentally, and specifically in urban areas.**

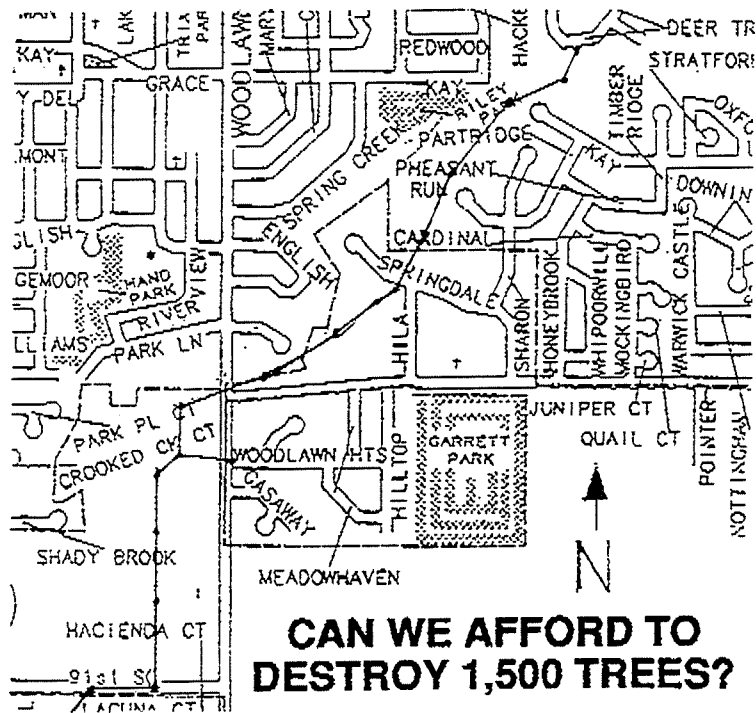
**Thank you for the opportunity to appear before you today and I urge you favorable consideration of HB 2210.**

*LY*  
*2/26/91*  
*Attach. 1*

# PRESERVE SPRING CREEK WITH AN ALTERNATE ROUTE

The City of Derby is going to build a new interceptor sewer line. This line will carry only waste water - this is not a storm sewer for flood control. The current proposed construction will:

1. Destroy more than 1,500 trees, some over 200 years old, as well as destroy creek banks and wild-life habitat.
2. The path of destruction will be at least 100 feet wide through the heart of the Spring Creek water shed.
3. Destruction of this area most likely will result in serious flooding and erosion of the land area and creek banks. Mayor Butterfield has said this is the only city council brave enough to tackle the sewer project. So let this council be brave enough to recognize that the destruction of Spring Creek could result in a legacy of serious flooding and erosion, loss of wild-life habitat, natural areas, and cause great expense.
4. The waste water sewer pipe will be buried in the creek in 5 different locations.



5. More than 3/4 of the 2 mile sewer line destruction is through private property requiring the expense of acquiring right-of-way from more than a dozen owners.
6. The new sewer can be constructed to serve the city as needed but an alternate route must be selected to preserve the natural resources and beauty so necessary to a city proud of its heritage.
7. As the city expands, it is the mayor and council's responsibility to protect and enhance the visual aesthetics so important to Derby's future. An alternate route will allow the sewer to serve the needs of the city while preserving the beauty and environment of Spring Creek.
8. If you feel the Spring Creek water way and beautiful wooded area is important to Derby, call and also write the mayor, Mark Butterfield and EACH council person. Call the City Building for council names, addresses and phone numbers.

**NEXT COUNCIL MEETING, FEB. 5, at 7:30**

**SUPPORTERS OF AN  
ALTERNATE ROUTE FOR INTERCEPTOR SEWER**

*Editorial*

# Save trees

## Spring Creek wildlife area worth more than the sewer

**T**he Derby City Council has done the right thing; it has pulled back for a couple of weeks to take a longer look at the \$2.5 million sewer project that threatens thousands of mature trees and a wide variety of wildlife.

Just days ago, the trees were facing the bulldozer. Derby, which continues to be one of the fastest growing cities in the state, is trying to build a new sewer interceptor system. But the shortest, least expensive path for the sewer is along Spring Creek, through groves of trees up to 200 years old.

The plan to build the sewer along Spring Creek has outraged scores of Derby citizens, many of them not property owners along the project's path.

This is clearly an important environmental and conservation issue. The Spring Creek basin is not only home to hundreds of the state's oldest trees, it is a wildlife

treasure, sheltering and nurturing eagles, deer, fish and countless small animals.

The Derby council is now considering an alternate sewer plan that would save most of the trees, but would cost at least \$800,000 more than the original plan.

There is another hang-up, as well. Even the new plan would destroy more than 500 mature trees on the property of Henry Phillips, who has filed an injunction to stop the project.

Now the council should worker harder to find a way to save as many of the trees and as much of the wildlife as it can. Many citizens of Derby are willing to pay more for the sewer to preserve a precious part of the area's environment. The council should take the lead in the conservation effort.

Some of the trees are older than the state of Kansas. Their value can't be measured in dollars and cents, nor can Spring Creek's wildlife.

*The Wichita Eagle, Saturday February 23, 1991*



**BOB GETZ**

## *Derby council saying, 'Down with trees!'*

**P**rogress drives a bulldozer in Derby.

Run for it. Dive for shelter.

Progress roars right along, traveling by 'dozer, and the trees come crashing down.

Progress, everyone knows, is not always nature's best buddy.

Take what's going on out here at Kansas' most rambunctious intersection, Derby.

The bulldozers of progress are here, and the squirrels, woodchucks and deer are packing their bags and leaving forwarding addresses.

The town needs a new sewer system, and two miles' worth of trees of all ages and sizes are supposed to go.

Yell 'Timber!' about 1,500 to 2,000 times and you should get the picture. And keep in mind that some of these trees were just little seedlings 200 years ago when the country itself was just a sprig.

Many of these trees will be uprooted from the back yards of some of the choicest properties along Spring Creek, also known as Dry Creek.

The city could reroute instead of uproot. But it would cost more money. Maybe \$75,000. Maybe \$2 million.

People all over town have screeched in anguish over the project. But the bulldozers and power shovels have already been rolling.

Strange the city is doing this. Is self-rape possible?

Maybe Derby's most appealing assets are its beautiful, tree-veiled creeks that wind all the way through town, weaving behind homes, under streets, through parks.

In a way, they almost turn the whole town into one big, pretty park, complete with housing, businesses — and a stoplight or five.

Sad to see Derby defaced like this, unnecessarily.

Derby might very well be Kansas' most special little town, the most esthetically promising overpopulated stoplight around, a veritable little paradise in the making.

Derby is wide, winding streets, new buildings everywhere, and beautiful homes around every corner, along every curve, over almost every hill.

The street names describe the town. Oak Meadow. Blue Spruce Road. Ash. Twisted Oak Drive. Meadowlark. Deer Trail. Dry Creek Drive.

Zounds. This isn't just a town, it's a poem. The street signs read like poetry. Sandhill, Whippoorwill, Sunny Dell, Riverview Avenue.

But getting back to the sewer.

To appreciate the magnitude of the impending tree butchery, you need to see some of the beautiful back yards whose trees are to be cleared. Verdou and Helen Parishes'. Mark and Kay Huttons'. J.D. and Fran Hoggatts'. Others.

Not just woodchucks and deer but Thoreau would've been happy living in any of those wooded but nicely landscaped back yards.

"The people along here don't just think of themselves as property owners but as guardians," Verdou Parish said. "Nobody cuts or sells firewood. We want this for our children. If this sounds philosophical and like it's meant to pull at the heart strings, it is."

A forester from K-State assessed the doomed two-mile, 100-foot-wide stretch marked with little red-orange flags, and Kay Hutton said he told her, "Turn your head. I want to cry."

Derby City Council member Susan Swaney said Monday that the engineering consultants for this project told the council last week they would conduct a two-week study of possible alternatives at no charge to the city. But the council voted nay to any delay, 5-4.

Monday, though, while I was here wandering around, the bulldozers and power shovels, poised behind the Parishes' and Hoggatts' properties, retreated, holding off.

Baffled, I hurried out to the city building.

"We're trying to make realignments," City Manager Phil Nelson said. "If there's any way to save trees, we want to do that."

Maybe there is one surefire way.

Get one of the bulldozers and go after some of the City Council members.

# Three-ring circus gives trees a break

**D**erby at dusk. Picketers, signs held high, circle in front of the beautiful new city building.

Young picketers.  
Middle-aged picketers.  
Older picketers.

Most of the dozens of picket signs are so similar and neatly printed that they look mass-produced.

"I LOVE TREES."  
"SAVE THE CREEK."  
"FIND ANOTHER WAY."

A nicer, neater, better-behaved group of protesters you've never seen.

It's Tuesday night. The weekly City Council meeting begins soon at 7:30.

Maybe 50 Derby residents have arranged their lives and leisure time to be here this cool but comfortable night.

The protesters have been at it all evening, but their performance hasn't had much of an audience. No TV cameras are around. No photographers. But the pro-

testers know the City Council members have noticed their dogged ritual.

Meeting time. Everyone marches inside. The spacious council room fills up. This is rare. Derby council meetings are usually lonely places.

How many people generally show up at the meetings?

"Oh," council member Susan Swaney says, "10 or 12."

The meeting is much livelier than the demonstration was.

The council members seem tense and grim.

But why not? They're dealing with an issue that not only won't die but gets tougher every week.

The issue is sewer lines and trees.

The issue is even more exciting than it sounds.

Some weeks ago, the city set out to install new sewer lines by ripping out more than 1,500 trees — some of them 200 years old — over a two-mile stretch 100

feet wide that follows Spring Creek through the back yards of some of the choicest properties and finest homes in Derby.

People screamed.

Tear out a couple of thousand trees to put in needed sewer lines, they said, and you virtually tear beautiful little Derby's heart out.

Much of Derby's beauty and charm, of course, centers on trees and creeks where the deer and bunny rabbits, not to mention woodchucks and young fisherpersons, often play.

After people protested, work stopped, fierce bulldozers poised just short of two of the most beautiful, wooded back yards in town.

And now the council has to decide what to do next.

Work is already under way. Big bucks are already committed.

Surprisingly, soon after the sewer item is introduced, council member Jan Dunlap,



**BOB GETZ**

after sharing the fact she's been getting anonymous phone calls in the middle of the night from people who want the trees spared, says, "I move we cancel the project."

The motion is seconded.

The crowd is startled by the suddenness of this.

"Wait a minute!" councilman James Meidinger gasps. "You just can't cancel a project like this. We just can't go on changing (our minds) for every four people."

Four members of the audience address the council.

Margo Shannon says: "It seems to me

5-1  
this council is presenting a picture of a handful of landowners against progress. That's not so."

She also says, "I don't think this council wants to be remembered for not preserving the environment."

City Manager Phil Nelson explains an alternative that would save trees. But the alternative would cost an extra \$800,000.

The meeting gets confusing. Motions are made, forgotten and have to be re-read.

Mayor Mark Butterfield says, "We are moving full-steam ahead with blinders on."

Some council members say the project needs to be studied more.

Butterfield says it's already been studied plenty.

Meidinger says, "This is a three-ring circus."

It begins to look like anything could happen. Maybe one of the council members will run outside, hop on a bulldozer and go level the trees himself. Or maybe this meeting will just never end.

Then Meidinger moves to table the issue for two weeks. The motion carries.

The audience applauds.

Derby's trees and scenery get a two-week stay of execution.

*The Wichita Eagle, Sunday, February 24, 1991*



February 26, 1991

Members of the House Local Government Committee

K. Verdou Parish  
8606 HiLa Road  
Derby, Kansas 67037

Re: Amendment to House Bill 2210

My remarks are directed to a specific project in Derby, Kansas namely the Southeast Interceptor Sewer, which is directly related to House Bill 2210.

First a brief overview of the area. I will attempt to paint a word picture of Derby's Spring Creek Greenway. Spring Creek is a year around running stream. I would estimate from a point of beginning east of Rock Road southwesternly to K-15, the greenway is over 2 miles long ranging from 30 yards to 100 yards wide. Here is 50-60 acres of nature at its finest completely surrounded by urbanization. I would dare say any species of floral or fauna common to this area can be found in this greenway. Yet on a daily basis all the elements of urbanization go on full speed ahead. Cars, people, noise, pollution, but this greenway remains in tact. Many, many times I have made comments to friends and strangers alike about the wonder of this urban greenway and its contribution to Derby.

This project is immense; the project is nearly two (2) miles in length. It calls for a 36" diameter pipe buried 30 feet underground. The minimum easement width along the route is 100 feet. Approximately 2/3's of the route is on private property in Sedgwick County, not the City of Derby, all of which NO, I repeat, NO RIGHT OF WAY OR EASEMENT EXISTED. The balance of the course is in a city public park, a city controlled flood plain and a public road. Derby's objective is to build a solely gravity flow sewer line. Obviously to achieve this concept the pipe must be placed at the lowest elevation. The lowest elevation in Derby is the Spring Creek Waterway. The line is buried in

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Attach. 2

Spring Creek at five (5) different locations. Obviously if the line to be buried is in Spring Creek Waterway the 100 foot construction easement is in the waterway as well.

Before the construction of the line begins the 100 foot easement must be cleared. All, and I mean all, vegetation and tree life is completely destroyed and removed from the site. This denuding process includes all creek bank vegetation and tree cover in the construction path. Proof of this destruction is in the city park where construction has started.

Early on in this construction process I contacted the EPA, KDH&E, the KS Dept. of Agriculture, and KS Dept. of Wildlife and Parks. Much to my surprise and disappointment I found that generally no agency had any jurisdiction over this project. Since Federal funds are not involved EPA has no jurisdiction. The KDH&E reviewed and approved the project because it meets general construction guidelines. However, because Kansas does not have strict environmental laws pertaining to our natural environment, KDH&E has no jurisdiction to address the floral and fauna destruction. The KS Dept. of AG does not have jurisdiction because the Spring Creek Watershed is less than 50 square miles. And finally, KS Dept. of Wildlife and Parks does not have any jurisdiction even though the floral and fauna will be severely damaged or destroyed.

Several landowners with property in the path of this destruction have had Dr. Wayne Gier, Professor of Forestry at Kansas State University appraise the timber within the easement right of way. He has used an appraisal formula prescribed by the National Society of Arboriculture, Council of Tree and Landscape Appraisers. Aside from his actual tree count, specimen determination, and tree sizing a couple of his comments as he worked through the forest were "Please turn your head while I cry" and "The scope of the tree and vegetation removal is so immense, the soil erosion will be immediate and it will be severe." Incidentally,

there are 29 pages of construction plans, 194 pages of specifications, of which 6 pages are devoted to re-vegetation. The 6 pages describe grass seed varieties, soil preparation, methods of seeding, sprigging, or sodding, fertilization, and mulching. Nothing is mentioned about forest restoration.

Mr. Gier identified more than 15 varieties of trees with some of the Burr Oak variety in the construction easement more than 200 years old. Those Burr Oaks are older than Derby and the State of Kansas.

We have also had Gerald Wiens, Director of the Chaplin Nature Center, tour the watershed area. Summarizing his assessment, the Spring Creek Watershed is comprised totally of a virgin, natural forest. The ground cover, shrub, understory, and tall tree growth is so varied and dense it could provide habitat for 200 of the 400 Kansas bird species. Also the habitat is varied enough it could provide cover for several animal species including some on the Kansas threatened species list. As landowners we have not attempted to identify threatened species in the area because such a study can be costly and usually takes several days to complete.

Our property is in the direct path of this sewer line. Our backyard has a wet weather draw in it. Upland water run off flows in a natural channel through our backyard when it rains. We bought the lot in 1965 and built our house in 1974.

We invited the mayor to our property in July 1990. He was there an hour. All the discussion was pleasant. We asked the mayor to consider an alternate route through our front yard. One of his final comments before leaving-- "Everybody says it is in their backyard." I will let you decide if the construction course is in our backyard.

Included in the 100 foot easement are the following:

- 1.) A permanent 40 foot easement
- 2.) A tree stand with 179 trees with 4" or greater diameter and 101 trees with a diameter less than 4 inches to be destroyed.
- 3.) A storage building with identical design and construction as our dwelling
- 4.) 30 feet of retaining wall
- 5.) 30 feet of decorative fence
- 6.) 25 feet or railroad tie stairway
- 7.) 25 feet of a stone walk (The stone is from my wife's grandparents house.)
- 8.) A water line used for plant irrigation
- 9.) A foot bridge
- 10) A small picnic table
- 11) A yard light
- 12) Four beds (approximately 30 square feet each) of ground cover
- 13) Three (3) graves which contain our childrens' pets
- 14) The temporary easement is 23 feet from our dwelling foundation.

"Everybody says it is in their backyard."

My wife and I are certain the foundation of our house is in jeopardy. The backhoe used to dig the trench weighs more than 112 tons. The shoring boxes are pulled through the trench by two (2) D8 Dozers. The weight of the equipment on site during construction is nearly 200 tons. As one council member who we invited to our property stated, 'I used to operate this type of equipment and "it will shake the hell out of the ground".'

As I previously stated there are no existing easements. However, all of this destruction can occur by eminent domain. Compensation is not a solution. This destruction will destroy our property and our way of life.

Formerly we have asked the City Council repeatedly to study alternate routes outside the Spring Creek Watershed. We are always told alternate routes

cost more and must include lift stations and we don't want lift stations.

I have formally asked the council to walk the sewer line route. Go to the city park and see the Spring Creek destruction already taking place. At one location 300 feet of pipe is buried in Spring Creek. Find out from the contractor how he will dam up or divert the creek to lay 300 feet of pipe. What happens if Derby gets a "toad strangler" rain and the creek has a retaining dam in it.

I have asked the City Council to get input from other sources such as the KS Dept. of AG, the Soil Conservation District, and the KS Dept. of Wildlife and Parks because I believe the cost of construction through the watershed is just the first payment. Future payments will include an attempt to control soil and creek bank erosion. The next future payment will be stream channelization, as an attempt to control flooding and stream bank erosion.

I believe if an effective cost study is made including after construction costs an alternate route will be less money.

And finally the real kicker---the mayor keeps telling us this project has been public knowledge since 1976. I went to the City Building and asked to see Derby's 1976 Master Plan for Wastewater. Derby has one and it includes another 1 1/2 miles of Spring Creek Waterway generally to the east and north of the present construction course. Ultimately Derby will have 3 1/2 miles of natural habitat destruction through the very heart of the Spring Creek Waterway.

In conclusion, the Spring Creek Basin is really a significant part of Derby. Not many people have ownership, but many people get enjoyment from it. They see it; they smell it; they walk and play in it; they see the wild animals and birds that find refuge in it. Kids are always coming out of the woods around our place. As an example, three (3) Sundays ago I walked up to the construction site. As I walked along the creek 2 (two) boys were fishing and it was serious fishing. Two Sundays ago I made the same walk. This time four (4) boys were on a raft.

As they tried to get on shore they tipped the raft and all four (4) went head over heels in the water. I thought, there are four kinds that are going to get serious lectures when they get home. These are examples of what Spring Creek means to Derby.

I dare say if you ask any property owner along Spring Creek he will tell you he or she is a custodian. It is his or her responsibility to preserve Spring Creek, not for himself or herself, but for the next generation.

I am asking this committee to seriously consider this amendment and not with any animosity towards Derby, Kansas. Somehow, sometime, someplace, and some way there has to be a mechanism put in place that makes a city or a county seriously consider input from various agencies that know about and care about guarding and preserving our natural environment in Kansas.

I am sure my remarks have been sketchy in some areas. If you have any questions I will attempt to answer them.

HB 2210

Committee Members:

An interceptor sewer line appears to be needed in the city of Derby. Unfortunately, the route chosen for this project is along and crossing Spring Creek.

Spring Creek is very dear to the heart of Derby and even surrounding communities. It is true that several private yards are involved in the planned destruction, but even most of the private land has been available for the public's enjoyment. Spring Creek is a wild, wooded area that meanders through the heart of Derby. It is basically its only green area of any importance. Many animals make their home there, young people from all over the city will be losing their fishing hole, their hideouts and forts, their only exposure to nature as God created it. Adults are losing a scenic walking place, and we are all losing over 2000 trees, some of which were there before our country became a nation. No park or playground could be substituted for this wilderness area.

I personally will lose no trees, but I will lose the beauty and enjoyment of this area. I am a teacher and have a modest income, but I have felt rich because of my access to this beautiful area. My boys have had the best of both worlds, living in town and yet enjoying wilderness. My ten year old and I spent New Year's Eve iceskating together in the moonlight. We feed wild turkeys and deer that come to visit us. We see owls, eagles, blue herons, mallard ducks, and muskrats. The boys and their friends spend hours each day exploring nature rather than wandering the streets or playing video games. I can't find a way to explain to them how adults can bulldoze this one last expanse of nature for a sewer that can go elsewhere.

In addition, Spring Creek floods with every substantial rain. At present it floods away from the homes, but if it is altered at all, or erosion occurs from lack of trees, I fear severe home damage will occur.

I feel that the city council not only did not study the path chosen carefully, but did not follow correct procedure. The council approved this project with little or no study of alternate routes. They approved a bid and signed a contract before they notified homeowners or purchased any right of ways. As the homeowners found out about the project by accident or by other homeowners notifying them, concern began to grow. We begged the city council to at least study alternatives and even a two week study was originally turned down by them. Some comments from the council were, "You never yell until YOUR ox is gored," and "Well, I wish you BAD luck!" When it was a 4-4 tie to take two weeks to study the project further, it automatically would have died for lack of a majority, yet the mayor voted an

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attach. 3

emphatic, unnecessary "NO!" to the study, I presume to show his defiance on the issue. All this from a council that has in its vision state. It for Derby a desire to preserve and establish green areas!

Money can not be a major issue to this council because the city of Derby voted down a bond issue to build a new city building, and yet the council went ahead and built it anyway in spite of the citizens' vote. The council was not concerned then about money. Also, we have visited with groups and citizens in many parts of the city and no one seems to mind a few extra dollars for a different route that would preserve this natural area.

Because of so many protesting, representing a cross section of our city, and even including protest letters from former citizens now living elsewhere, and because of the support of Wichita TV and newspaper media, a two week study has been temporarily agreed upon by the majority of the council. I still do not have much hope, however, as to the final vote. It seems that under this council the environment is not being protected under home rule. At the very least, the wishes of most of the citizens are being ignored. We need your help.

I have some pictures of flooding concerns and nature concerns. I think when you see them, you will realize how the destruction of this area is dangerous to flooding, and the destruction of nature is too painful to accept.

Sincerely,

Bill Ham



I am Jean Farano. I have been a Derby resident for 4 and 1/2 years. I do not live along Spring Creek. I am a former naturalist and I have a degree in Forestry from the State University of New York. The area of Spring Creek in Derby which will be destroyed by the proposed sewer interceptor route is a virgin forest, that is, never cut or plowed. It has survived for 200 years despite prairie fires, the trampling feet of buffalo, the plow, and until now, the sad effects of progress.

A lot has been said at Derby City Council meetings, in the paper and on the News about saving the trees. Spring Creek is more than trees. It is a living, working ecosystem. Two miles of the creek bed will be destroyed now, but what is not being taken into account are the problems that we are handing on to future generations.

In addition to the erosion problems caused by increased water flowing faster through Spring Creek because of the removal of the trees and their root systems, compaction {firmly packing of together} of soil by construction equipment working near the creek will cause further erosion as the water runs off the hard ground before it has a chance to soak in. The ecosystem which is Spring Creek, is part of a larger system, which is the Arkansas River.

Little by little, city by city, natural habitats in Kansas can be chewed up and spit out, by city councils who are accountable only until election day. A creek bed here, a bit of native prairie there. The natural heritage of this state should not be left up to the whim of groups of well meaning, but uninformed elected officials. It is true that we can censure them with our vote, but not until after they have destroyed our environment. You would not permit them to build a bridge of matchsticks, there are engineering guidelines and restrictions. Our environment should also be protected.

Derby needs this sewer interceptor. But at what cost? The city council seems to think that the cheapest route is the best. They are at a point now where backing down will take more nerve than most of us possess. They listened to the advice of engineers who told them, truthfully, what would cost the least amount of dollars. The engineer said in a City Council meeting, "This was the route we were given to bid on." Clearly, had environmental guidelines been in place when the plan was formed, the engineer would have taken those into account and now, saving the trees would not be an added expense.

LF  
2-26-91  
attch 4

Legislation that requires City governments to safeguard the environment would not be a burden to those cities which were committed to the careful

use of Kansas' natural heritage. Derby would not be talking about the "added expense" of saving the trees now if there had been a higher authority to which the City Council had to answer when planning their sewer route.

Until all people see the value of their environment in terms of more than dollars and cents, we need trained, aware, concerned environmental agencies on the State level to whom we can go for help when our city officials, in order to look like they are saving taxpayers dollars, destroy what they cannot hope to replace.

You might not be able to help us now, but please help other communities who find themselves where we are now. Thank you.

Testimony presented to  
House Committee on Local Government

by

The Kansas Department of Health and Environment

House Bill 2210

House Bill 2210 would broaden the Environmental Coordination Act (ECA) to require an environmental assessment by a variety of state agencies for sewer projects. This bill broadens the original intent of the ECA. The bill does not place any size or siting parameters on the sewer projects to be reviewed. The Kansas Department of Health & Environment now reviews about 400 ECA projects per year. With no limitation on the type of sewers to be included in the reviews, the number of projects would double as we issue approximately 400 sewer extension permits per year. Additional staffing would be needed in several agencies to do the reviews.

Another bill which expands the ECA has recently been, or is about to be, introduced by Representative Wisdom. This new bill significantly expands the act to allow a review of major new facilities or projects. The amendments Representative Wisdom proposes may address the needs which this bill attempts to resolve.

Because of the expanded reviews and additional resources required for those reviews, the Department cannot lend its support for the bill at this time. We do, however, support the concept of expanding the act to review new facilities or major modifications of existing facilities.

Testimony presented by: Karl W. Mueldener  
Director  
Bureau of Water  
February 26, 1991

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attach 5



**League  
of Kansas  
Municipalities**

**Municipal  
Legislative  
Testimony**

**PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186**

**TO:** House Committee on Local Government  
**FROM:** E.A. Mosher, Executive Director, League of Kansas Municipalities  
**RE:** HB 2210--Environmental Review of Sewer Projects  
**DATE:** February 26, 1991

As a result of action unanimously taken by the League's State Legislative Committee, I appear in opposition to HB 2210 on behalf of our member cities.

We interpret the bill to require any proposed sewer to be constructed by a city or county to be subject to the environmental review procedure now required of certain kinds of major water development projects. The water projects now covered by the environmental coordination act includes only floodwater levies, watershed improvements, and dams or other water obstructions.

Since the word "sewer" is not defined, we assume it applies to both sanitary sewers and storm sewers. Since the "sewer" must be "constructed by a city or county," it apparently excludes what are commonly called "house sewers", when they are not constructed by a city or county. But in any event, the number of sewer projects covered by the bill would exceed in one year the number of major water development projects covered for decades in the future. We have not seen a fiscal note, but the paperwork alone would be costly if the bill is passed.

We do not think HB 2210 is either needed or practical. If something more is involved in the bill than the protection of public health and our water resources, we suggest it be handled as a local matter locally, and not by state legislation.

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*Attach. 6*



February 22, 1991

Honorable Elizabeth Baker, Representative  
82nd District  
State Capitol-3rd Floor  
Topeka, KS 66603

Dear Elizabeth:

It is my understanding that testimony will be received on your bill entitled HB 2210. We will not be able to have any people there in person, so I hope that this letter will be read into the record on behalf of the City of Derby.

I completely understand your intent in introducing the legislation. However, I do not understand your seeming aim to stop all construction and development projects in the State. If this legislation is adopted, all sewer projects throughout the 105 counties in the state will have to come under the scrutiny of seven different state agencies. This is the equivalent to stopping development. The costs of this legislation would be astronomical in terms of construction delays, additional bureaucracies to review plans, and continued erosion of the statutorily authorized home rule doctrine granted to local governments.

The City of Derby followed all prescribed State and Federal rules and regulations concerning the construction of the Southeast Sewer Interceptor Line. While this project will temporarily disrupt the environment, it will do no additional damage to the area than would any other similar project of this nature. As with any other project, the interceptor line was reviewed and approved by the Kansas Department of Health and Environment, and city staff were told by the Chief Engineer of the Division of Water Resources that no permits were needed to construct the project since no alteration of stream channels were being considered.

In addition, residents in the Spring Creek area also contacted the State Division of Parks and Wildlife, and were told that the project would not do permanent undue damage to the existing flora and fauna in the area. You should also know that the City Council has allocated all money budgeted for the purchase of trees in the city parks to be used to purchase trees to be planted in the interceptor corridor to help mitigate the situation.

**City of Derby**

611 Mulberry • Derby, Ks 67037 • 316/788-1519 • Fax 316/788-6067

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It is true that the new trees can never replace the mature trees that will be taken by this project. However, the new trees will be species which will provide even more nutritional and shelter value to the area wildlife than are there now.

It has never been the intent of the City of Derby to cause massive harm to the environment as has been charged. I can speak with all sincerity when I state that the original alignment will be the most efficient, cost effective route, and will provide the optimum level of service to the current and future residents of the City of Derby. This is not to say that the city will not continue to investigate alternative alignments for the interceptor. In fact, staff has worked with the contractor to develop at least two alignment changes since construction has started.

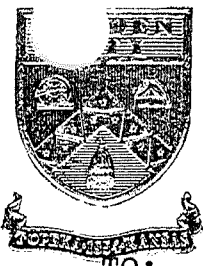
Please give serious consideration to the long-term impacts of this legislation. By the terminology of "All sewer projects", it appears that you are including extension of sanitary sewers within subdivisions, and minor repair and maintenance of sewers already in the ground. I also fail to see the benefit of including projects which have already been authorized and have been constructed, or are in the process of being constructed, especially, when the appropriate state agencies have provided review and approval.

Thank you for your consideration of this matter. However, we feel that situations such as these are better handled at the local level. If we may be of assistance to you in any way, please do not hesitate to contact either Phil Nelson, City Manager, or myself, at your convenience.

Sincerely,



Mark A. Butterfield, Mayor  
City of Derby



# CITY OF TOPEKA

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Chief Administrative Officer  
215 E. 7th Street Room 355  
Topeka, Kansas 66603  
913-295-3725

TO: House Committee on Local Government

FROM: Mike Miller, Director of Intergovernmental Relations

RE: HB 2210 - Environmental Coordination Act Review of all Sewer Projects

DATE: February 26, 1991

The city of Topeka has a number of concerns regarding HB 2210 which would require sewer projects to be reviewed under the environmental coordination act.

We are concerned about the time that would be required by state agencies to perform the environmental review. We estimate that the process would hold up projects for sixty to ninety days regardless of any real environmental impact. While we agree that protecting the environment should be a top priority, requiring all sewer projects to undergo this agency review process causes more problems than it would solve.

Of the thirty-two city sewer projects initiated since October 31, 1989, twenty-nine have been subdivision projects. An additional sixty to ninety days of administrative review and processing would in many cases impose an economic hardship on developers who are looking to build houses after completion of sewer projects.

We would suggest that not all sewer projects be required to go through the review process, rather, some criteria be development so that only certain projects that may have real need be mandated for the environmental review. We are concerned that the Division of Water Resources may not have the available staffing to process a large increase in projects, or that the other environmental review agencies have sufficient personnel to review additional projects in a timely manner.

Another concern revolves around the retro-active date of October 31, 1989 in the bill. Many projects initiated since this time have been completed and closed out. Should an environmental review find "problems", project costs may already have been assessed. Where does the money to fix or modify closed out projects come from?

The environmental coordination process is important and necessary, but not for all sewer projects. The city of Topeka recognizes that protecting the environment, wildlife and natural habitat areas are important. We ask that the impact of this proposal be studied and that some thought be given to narrowing the criteria for which sewer projects should be included in this review.

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TESTIMONY BEFORE THE HOUSE LOCAL GOVERNMENT COMMITTEE  
HOUSE BILL 2188  
February 26, 1991

Chairperson Johnson, and members of the House Local Government Committee, I am Ray Trail, Assistant City Manager and Director of Finance for the the City of Wichita. On behalf of the City, I appreciate the opportunity to appear before you today in support of House Bill 2188.

In 1985, the voters of Wichita and Sedgwick County, by referendum, approved a one cent local sales tax. The City's share of the local sales tax exceeds \$26 million annually. One-half of the proceeds of the tax is dedicated for property tax relief. The other half supports a road construction program, most particularly freeways.

The total road construction program is approximately \$390 million (1990 dollars), of which approximately \$63 million will be paid from Federal/State funds and the remaining \$327 million financed locally. Since 1987, the City has been financing freeway improvements on a pay-as-you-go cash basis.

Accumulated sales tax cash revenues are insufficient to fund the magnitude of projects the City will undertake in the next eighteen years, and it is now necessary to issue bonds. The City currently has authority to issue sales tax revenue bonds for debt financing; however, this bonding tool has requirements that do not maximize the use of public dollars:

- [1] The City must keep a ten percent reserve (i.e., for every \$1 million in bond issuance \$100,000 is set aside in a reserve account). The total amount of the reserve varies based on the bonds outstanding peaking at \$35.7 million. If not for this reserve requirement, these moneys could be applied to the actual cost of construction, and thereby reduce the City's total debt.
- [2] The City must also maintain a 100% "coverage" beyond the actual bond payment in the form of a pledge of all local sales tax revenue (including the one half which is dedicated to property tax relief). For example, if the City's bond payment is \$1 million per year including principal and interest, then annual sales tax revenues would have to be \$2 million -- the first \$1 million for the bond payment and the additional \$1 million for the 100% "coverage" over and above the debt service requirement. This has been the general consensus of the credit agencies who were consulted.

In consultation with finance specialists (Springsted, Incorporated), the City has been exploring the best possible debt financing structure. Our goal is to finance the greatest amount of roadway construction within the funds projected to be available. Based on the revenue projections and the engineering cost estimates, the City must spread the total construction program into two phases -- one phase through the year 2000 with a pause until 2007 and a second phase beginning in 2007 and through 2009.

It appears the best financing method would be to issue General Obligation (GO) bonds with a pledge of debt retirement from local sales tax revenues -- a General Obligation (GO) Sales Tax Revenue Bond. The following illustrates the

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TESTIMONY ON HOUSE BILL 2188  
 FEBRUARY 26, 1991

difference between sales tax revenue bonds and GO Sales Tax Revenue Bonds for the \$327 million (1990 dollars) in local project costs:

SALES TAX REVENUE AND GO SALES TAX REVENUE BOND COMPARISON  
 (in millions of dollars)

	<u>Sales Tax Revenue Revenue Bonds</u>	<u>GO Sales Tax Revenue Revenue Bonds</u>
1st Phase Construction	\$237	\$251
2nd Phase Construction	\$90	\$76
Total Bonds Issued	\$478	\$423
Total Debt Service Through 2012	\$567	\$514

- Notes: [1] "Total Bonds Issued" reflects a 4% inflation/growth factor from the 1990 base year estimate of \$327 million applied to the project costs and revenues for the year in which the project is completed and bonding is required.
- [2] "Total Debt Service" includes interest costs in addition to principal payment.

The GO Sales Tax Revenue Bond option provides a "double barrel" guarantee for bondholders (general obligation and sales tax revenues), and allows the City to debt finance \$14 million more in freeway construction by the Year 2000. This is because interest rates for a GO-backed Revenue Bond are moderately lower, and the City does not have the 10% reserve. The total bonds required for the program is \$55 million less for a GO Sales Tax Revenue Bond. The total debt service (through 2012) is \$53 million less. In other words, the GO support for a sales tax revenue bond allows more work to be done sooner and at less debt financing cost to the City and taxpayer.

The City is mindful of the need to maintain reserve funds to cover debt service payments in the event of fluctuations in sales tax revenues. To protect against short-term sales tax revenue shortfalls not providing sufficient revenues to meet bond payments (and impacting local property taxes), the above projection for a GO Sales Tax Revenue Bond issuance provides a \$10 million reserve fund (accumulated at the rate of \$2.5 million per year for the first four years of the program). This reserve will meet the City's need for a reasonable reserve, but is far less than the 10% required by sales tax revenue bonds.

Except for a technical change in the structure of debt financing this proposal makes no material change in the City's liability for bonded indebtedness; but by doing so reduces the cost to our taxpayers. We would appreciate your support.



**League  
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**PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 W. 7TH TOPEKA, KS 66603 (913) 354-9565 FAX (913) 354-4186**

**TO:** House Committee on Local Government  
**FROM:** E.A. Mosher, Executive Director, League of Kansas Municipalities  
**RE:** HB 2188--City Sales Tax--General Obligation Bonds  
**DATE:** February 26, 1991

The League supports the passage of HB 2188, with an amendment to make it applicable to all cities.

Under the existing sales tax bond law, cities and counties are authorized to issue revenue bonds for public improvements, with the money received from city or countywide local sales taxes pledged to pay the principal and interest on the bonds. New Section 2 would authorize the city of Wichita to issue general obligation bonds for improvements, pledging the revenue from local sales taxes, but guaranteeing the payment of principal and interest by property taxes if the projected revenue available from local sales taxes proves insufficient. In effect, these kinds of bonds would have the advantages of general obligation bonds, including a significant advantage in interest cost compared to pure sales tax bonds or pure revenue bonds.

There are several provisions of new Section 2 that deserve special note.

--Under subsection (a), beginning on line 19, page 4, a feasibility study is required, which must show that predicted future sales tax revenues from local sales taxes would be sufficient to retire the bonds.

--Under subsection (c), beginning on line 31, the bonds would be exempt from state and local taxes, except inheritance taxes, in the same manner that other local government bonds are now exempt.

--Under subsection (d), beginning on line 35, the amount of the bonds would be outside of any statutory bonded debt limit, in the same manner that sales tax bonds are exempt from debt limits. (Lines 2:4).

--Under subsection (e), beginning on line 38, the issuance of these sales tax--general obligation bonds would be subject to a petition for a referendum. A referendum would be required, at a regular or special election or mail ballot election, on petition of 10 percent of the

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number of electors who voted at the last general city election.

We are convinced that legislation like HB 2188 could result in some significant public savings, because of its reduced interest cost common to general obligation bonds. At the same time, it would permit cities to use this kind of financing when the kind of public improvement involved could be better financed by local sales taxes than by general obligation bonds, without the extra cost involved in pure sales tax bonds. We urge the Committee to report the bill favorably, with appropriate amendments to make the bill applicable to all cities. While most of the 452 Kansas cities which receive revenue from a city sales tax (124) and/or countywide sales tax (61) do not receive sufficient revenue to fund a bond issue, many of them do, and HB 2170 provides a financing option which should be made available to them.



"Service to County Government"

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**Executive Director**

John T. Torbert

March 4, 1991

To: House Local Government Committee  
Chairwoman Mary Jane Johnson

From: Anne Smith  
Director of Legislation

Re: HB 2188

The Kansas Association of Counties supports HB 2188 but would like to amend the bill to include all counties in the legislation.

The KAC hopes to be able to use sales tax as a revenue source as a guarantee for the payment of bonds. The ability to use sales tax would allow the counties an alternative to the use of property tax as a revenue source.

With the effort to restrict or reduce dependance on property tax, alternatives are needed to the existing statutes for guaranteeing general obligation bonds.

Johnson and Sedgwick counties have indicated their strong support for the amendment we are offering.

Thank you for allowing our association to testify today. We urge your favorable consideration of this legislation.

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*Attach 11*