

BIA

Approved: April 30, 2004  
Date

## MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairperson Barbara Allen at 1:30 p.m. on March 18, 2004 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Mike Heim, Legislative Research  
Martha Dorsey, Legislative Research  
Ken Wilke, Revisor of Statutes  
Nancy Kirkwood, Committee Secretary

Conferees appearing before the committee:

Others attending:

See Attached List.

### **Action on HB 2793 - Drainage districts; tax levies for general fund**

Chairperson Allen informed the committee it had copies of e-mails sent regarding the drainage districts. Those received regarding the Steineger amendment were opposing from: The Kaw Valley Drainage District, Wyandotte County (Attachment 1); Steve Dailey, general manager of the Fairfax Drainage District (Attachment 2); Robert Chaney, VP, Regulatory Affairs, Harcros Chemicals, Inc. (Attachment 3); Receiving in favor of the amendment were from : Margaret Thomas, Chair, Prairie Village Environmental Committee (Attachment 4); and Dale Crawford, Johnson County Bicycle Club, Advocacy Chair (Attachment 5).

The Chair stated it was proposed by Representative Loyd that a technical amendment be made. Line 40-41, delete the language *subject to the provision of K.S.A. 2003 Supp. 79-5040, and amendments thereto*. Senator Clark made a motion to move the amendment, seconded by Senator O'Connor. The motion carried. On HB 2793 as amended, Senator Clark move to adopt the Steineger amendment. Senator Buhler seconded the motion. The motion failed. Senator Schmidt asked for his Aye vote on the Steinger amendment be noted. HB 2793 as amended by the technical amendment, was moved to pass out favorably by Senator Clark. Senator Buhler seconded the motion and the motion carried. Senator Schmidt asked for his NO vote be recorded.

### **Action on HB 2712 - Fire district property tax levies**

Senator Jackson moved on page 2, line 26, strike the *two in front of acres and insert ten*. The motion to second was made by Senator Buhler. The motion carried. On HB 2712 as amended the motion to pass out favorably by Senator Buhler. Senator Jackson seconded the motion. The motion carried.

### **Action on HB 2605 - Topeka and Shawnee county public library; detachment of certain territory**

Ken Wilke, Revisor of Statues, handed out an amendment, technical in nature (Attachment 6). In **HB 2605** where the term *property* is used be replaced by the term *territory*. Appropriate to change all the places in the sense of land within a specified boundary. Second amendment on page 2 line 28 *board of trustees* and line 31 it is *board of directors*. The change to be made to be consistent with *board of trustees* or should be just *board*. Senator O'Connor moved to adopt the balloon, seconded by Senator Betts. The motion carried. Senator Huelskamp made a conceptual motion to make any resolution to detach territory, subject to a protest petition vote of 10% of people who voted in the last general election. K.S.A. 12-137 establishes a procedure for a city to excercise home rule power and impose a tax. Senator O'Connor seconded the motion and the motion carried. On HB 2605 as amended Senator Huelskamp moved to pass out favorably, seconded by Senator O'Connor. The motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT COMMITTEE at 1:30 p.m. on March 18, 2004 in Room 423-S of the Capitol.

**Action on HB 2641 - Drainage districts: Definition of taxpayer**

A fax from Jody Boeding, Assistant Counsel; Unified Government of Wyandotte County, Kansas City, Kansas was distributed to committee. It was follow-up to questions that arose at the committee hearing (Attachment 7).

Chairperson Allen stated that when **HB 2641** went to the House, it struck section 2 of the bill. Senator Clark moved to reinstate section 2 and pass **HB 2641** out of committee favorably as amended. Senator Buhler seconded the motion and the motion carried.

**Action on HB 2805 - Law enforcement consolidation; Lincoln and Cloud counties**

The Chair planned taking action on **HB 2805**, however learning there would be an amendment to the bill; is not ready at this time, therefore will be considered next Tuesday, March 23, 2004. Also, the Chair informed the committee it would be hearing the provisions of **HB 2654**.

The meeting adjourned at 2:15 p.m.



HB 2793

**THE KAW VALLEY DRAINAGE DISTRICT**

WYANDOTTE COUNTY, KANSAS

FLOOD CONTROL ON THE KANSAS RIVER

719 OSAGE AVENUE

KANSAS CITY, KANSAS 66105

913-342-2382

FAX 913-342-2380

**DIRECTORS**

JAMES L. JENKINS

DAVID R. MORALES

VICTOR L. HERNANDEZ

M. WARREN McCAMISH JR., ATTORNEY

LAWRENCE J. BRENNAN, ADMINISTRATOR

**FACSIMILE TRANSMITTAL COVER SHEET**

DATE: Mar. 12, 2004

FAX # 785-368-~~3658~~ 6365

TO: Chairman Allen

COMPANY \_\_\_\_\_

FROM: Kaw Valley Drainage District RE: Trails on levees

NO OF PAGES: 12 INCLUDING COVER SHEET

COMMENTS: \_\_\_\_\_

Enclosed documents are referred to in e-mail dated  
March 12.

1. Official response of Corps of Engineers to comments  
received from public concerning trails on levees- hearing held  
Aug. 20, 2003

2. Memorandum to District dated Oct. 28, 2003 giving reasons  
for denial of permission to Unified Government to place track  
on levee roads.

Larry Brennan

Several comments were received in relation to the development of recreational hike/bike trails on the existing levee system. These comments ranged from stating that the Corps should encourage or facilitate the development of a recreational hike/bike trail system on the existing levees, to the Corps should itself fund trails on the existing levee system or even require that levee districts construct or allow trails on the existing levee system. In support of trails on the existing levee system several commenters provided examples where hike/bike trails were located on Federal levees. Some commenters noted that locating hike/bike trails on the levees would emphasize Kansas City's tie with the two river systems that have played such a major role in the development of our community. They have also noted that the recreational trail system could actually increase support for, and awareness of, the benefits provided by the existing levee system. Commenters also noted the aesthetic benefits associated with the river and adjacent riparian timber. The following provides further information and clarification on how recreational hike/bike trails will be considered during this study:

1. The Corps is neither a proponent of, nor an opponent to, the incorporation of a recreational trail system into any given levee unit. In addition, the Corps has no authority to require that levee districts construct or allow recreational hike/bike trails on the existing levee system. In Kansas City District, the local sponsors own and operate the Federal levees that the Corps of Engineers constructed. The local sponsors (in some cases drainage districts, in some cases municipalities) pay for the maintenance of those systems. In other parts of the nation, this is not always the case. So, the circumstances of other Federal levee systems are not necessarily analogous to the circumstances in the Kansas City District.

2. The Corps of Engineers does not own the levee units but monitors for compliance the operation and maintenance of the levee system in cooperation with the local levee districts. This oversight is primarily to ensure that the existing levee system will perform as designed during a flood event. The Corps makes annual inspections of each levee unit and reviews plans submitted by the levee districts for work on or adjacent to the levees. The standards used as basis for this oversight and inspections are contained in the following referenced citations: TITLE 33- NAVIGATION AND NAVIGABLE WATERS, Chapter II - Corps of Engineers, Department of the Army, Part 208 - Flood Control Regulations, MAINTENANCE AND OPERATION OF FLOOD CONTROL WORKS. In summary, Part 208 emphasizes efficient operation and maintenance of levees, floodwalls, drainage structures, gates, valves, floodways, channels, pumping plants, and other flood control facilities. Failure of a levee district to maintain the levee unit in a manner consistent with the operation and maintenance manual or allow modification on or adjacent to the levee without the required engineering review and approval from the Corps could result in that levee unit not being eligible for Federal funds for repairs should it be damaged during a major flood.

3. Currently, within the Kansas City District there are recreational hike/bike trails at the Federal levee units at both Lawrence and Manhattan, Kansas. These trails provide recreational opportunities and both receive fairly high usage and are popular in their communities. However, the levee systems in the Kansas City metropolitan area are in

many cases immediately adjacent to intense industrial development, utilities, and transportation infrastructure. In view of heightened security concerns of recent times, there are industrial complexes, key utilities, and transportation lines adjacent to the levee systems that would be sensitive to increased public access. Concerns have been raised by the levee districts regarding the following: liability issues, litter/dumping, trespassing on adjacent landowners, security of businesses, damage or vandalism to levee structures, erosion of the levee embankment, sources of funding for operation and maintenance of the trail, and also conflicts between recreational users and relatively frequent operation and maintenance work on the levees. Also, there is a concern raised by the levee districts that the primary purpose (as legally authorized and established through law) of the levee system would be subordinated by adding another purpose. The Kansas City levee system provided significant protection to the economic investment in our community during the Great Flood of 1993. The Kansas City levee system has saved lives, prevented hundreds of millions of dollars in physical damages, and maintained economic and employment opportunities for a large vital portion of the metropolitan area. The levee owners and the constituents they serve remain adamant that the primary reason for the existence of this critical infrastructure must remain a central focus.

4. Funding for the development and long-term viability of a recreational hike/bike trail on a levee unit is a critical consideration. Local trail proponents may decide to fund all such costs locally. Or the possibility of Federal funding can be considered. In a study authorized under Section 216 (this study) a dollar amount up to 10% of the total project cost can be utilized for recreational development. This would include, study, design and construction costs. The costs of this recreational development are shared with the local sponsor on a 50% local and 50% Federal basis. There is currently no authority for the Corps to fund recreational trails on this levee system at 100% Federal costs.

In the current ongoing study, no specific funding for the study of recreational development was identified by the study sponsors. Thus the study budget does not address levee trail implementation directly. Furthermore, the long-term operation and maintenance cost of recreational development are fully the responsibility of the levee district (or the local sponsor for that recreational feature). It is our understanding that funding arrangements for the operation and maintenance costs associated with the implementation of a levee trail system have not been clearly identified by trail proponents in consultation with all the levee districts involved with this study. The development of a bona-fide local financing plan (addressing study, design, construction, operation and maintenance) is a necessary prerequisite for Federal involvement in any proposed trail action.

5. The first step in realistically addressing the development of a recreational hike/bike trail on a levee unit would be for the trail proponent to meet with the officials of the local levee district and discuss in some detail the operation and maintenance requirements of the levee unit. To be successful, this discussion must lead to agreement on the financial responsibility for the operation and maintenance costs associated with trail implementation. Such discussions should recognize the range and numbers of flood control facilities and access requirements for the specific levee unit.

Following the initial meetings and subsequent agreements between trail proponents and the levee districts, the individual levee districts must then formally submit to the Corps:

- A. A request for technical review of any locally-developed trail plan. The Corps technical oversight review would identify any components of the proposed plan that would not be compatible with operation or maintenance of the levee system in accordance with its primary function to provide protection during major floods, or
- B. If the trail implementation plan were to propose Corps funding or Corps involvement in the study, design, or construction of the trails, then the aforementioned local financial responsibility plan must be provided to the Corps for review. The Corps would then determine if the proposed trail implementation could be considered within the authority of the ongoing feasibility study.

6. As part of this Kansas Cities Levees Study, the Corps will consider requests from the levee districts along with any local plans, such as Metrogreen, to ensure that if practicable, any alternative selected to increase the reliability of the existing flood damage reduction system, does not preclude future development of recreation opportunities. The Corps of Engineers is supportive of beneficial and compatible recreation development in the Metropolitan area, including trail systems that interconnect the region. The Corps will continue to work with recreation interests and the levee districts to facilitate better mutual understanding and cooperation where possible.

OPTIONAL FORM 88 (7-90)

FAX TRANSMITTAL

# of pages = 3

To	<i>Lacey Brannon</i>	From	<i>David Hoover</i>
Dept./Agency	<i>KVAD</i>	Phone #	<i>816-953-3147</i>
Fax #	<i>913-345-2380</i>	Fax #	
NSN 7540-01-917-7286		5098-101 GENERAL SERVICES ADMINISTRATION	

1-4

October 28, 2003

MEMORANDUM

TO: Directors  
Kaw Valley Drainage District

FROM: Larry Brennan

SUBJECT: Inspection and Maintenance Activities of Flood Protection Facilities in Accordance With:

Title 33-NAVIGATION AND NAVIGABLE WATERS  
Chapter II, Corps of Engineers  
Department of the Army  
Part 208, Flood Control Regulations

In an earlier memorandum to you, dated April 8, 2002, the flood control features in the flood control system were listed, and inspection and maintenance activities were described.

Subsequently, the Unified Government requested a meeting to discuss the use of levee roads for hike and bike trails. The District has again denied the request. The District's position was that it would consider the use of District property for hike and bike trails, but would not permit the use of levee roads, which are the center of inspection and maintenance activities.

You requested that staff determine if there were a set of conditions which could be formulated, and incorporated into an agreement with the Unified Government, allowing the use of levee roads, without undue interference with inspection and operation activities. The answer is no.

Ernie and I have, many times since your request, discussed the relationship between District inspection and maintenance activities, and use of the levee roads for hikers and bikers. Each time the subject is examined, we are more convinced that the District's denial of the use of levee roads is correct. Because of recent findings of the 7-levees feasibility study, we are becoming convinced that any use of District property would not be prudent. These findings, while preliminary, are indicating that all levees in the District be raised approximately three feet, that walls be removed and replaced, that certain sections of earthen levees be removed and rebuilt, that more relief wells be added,



that pump stations be modified, and that additional land side berms be constructed. This construction would involve District property from one end of the system to the other. Any use of District property by others needs to be tested against the present and future District requirements for flood protection enhancements. Also, the District's riprap replacement program and its demands upon the use of property needs to be kept in mind.

## INSPECTION AND MAINTENANCE ACTIVITIES

Following is descriptive material which in large measure repeat information presented in the memorandum dated April 8, 2002, but has been updated. The following discussion in most cases tie activities with flood control features requiring maintenance.

## OUTFALL STRUCTURES @ RIVERS EDGE

There are sixty-seven outfall structures which require inspection and maintenance. River rises leave silt, sand and brush which are removed to permit free operation. Fifty-four headwalls have flap gates which require lubrication and maintenance. Inspections are made twice annually and more often if river fluctuations indicate a need. Soil deposition removal is done either by staff or a contractor. Minor deposits are removed by the staff using a truck mounted hydraulic pump to flush the material. The pump truck is supported by a second truck. When the deposit is heavy, a contractor is engaged to perform the work. A backhoe is moved to the site by truck and trailer. Access is on the levee roads.

## STORM WATER AND SEWAGE CONDUITS

In the levee system are eighty-eight conduits which carry water and sewage through and under the levees. These facilities have, in general, gate well or valve structures, which are discussed under "Valves or Sluice Gates", which follows herein. Normal inspections look for subsidence on the levees which indicates a problem exists. The conduits can be inspected either by entering the conduit, if large enough, or with television equipment. Access is on levee roads.

## VALVES AND SLUICE GATES

Conduits in the system are equipped with seventy-nine valves and/or sluice gates which are used to control flow. Twelve are maintained and operated by the Unified Government. Twice each year District valves and gates are operated from an open position, to a closed position, and then back to an open position. Inspection and lubrication are done on these occasions. This work requires a truck containing a hydraulic

wrench and mechanical wrenches and ancillary equipment. Another truck is used for support. Access is on levee roads.

#### STOP LOG AND SAND BAG GAPS

There are twelve sand bag and stop log gaps in the levee system. All but one involve a railroad crossing of the levee system. The railroad gaps are inspected. Stop log buildings are maintained, and sand bags are replaced periodically. Post hole plates are uncovered, opened, and debris removed. A truck with equipment is required. Access is on levee roads.

#### SLOPE GAGES

In the system are twelve slope gages. These require treatment to preserve the gage material. Vegetation and debris are removed from the gage. A truck with equipment is required. Access is on the levee roads.

#### LEVEE ROADS

The levee road system is 18 miles in length and are surfaced with rock aggregate. Light grading and surface restorations are performed by staff. Light work requires a blade equipped vehicle, a dump truck with aggregate, and a supporting vehicle. Major work involves a high loader, a blade, dump truck, and support vehicle. Access is on levee roads, and would be performed by an independent contractor.

#### TURF MAINTENANCE

Counting both land side and river side lengths, there exists thirty-six miles or 440 acres of levee slopes which require maintenance. Mowing is performed three times during the course of a year. Equipment required consists of three tractors and pull mowers, two of which have ganged units. The tractor, mower and required trailers are used for 800 hours a year, amounting to 15 weeks mowing time. This activity is done when slopes are suitably dry. In addition, for difficult to reach and small areas, weed eaters are used. This activity requires a support vehicle. Levee roads are used extensively during mowing for turning movements and levee crossing. Occasionally, reseeding is necessary for an area, and this is generally done by an independent contractor. Equipment required is a tiller seeder and a mulch blower, supported by a truck. Access for all equipment is on the levee roads.

## FLOOD WALLS

The levee system has 3.5 miles of floodwall. Each year a section of the floodwall is rehabilitated. This work includes removal of old joint materials, and replacement with new materials. Each year form tie holes are patched as required. This work requires a truck. Both sides of the wall require rehabilitation. Access is on levee roads.

## VEGETATION CONTROL

The vegetation control program consists of spraying dock and thistle during the spring of the year, and spraying woody plants and trees, generally in the fall.

Each spray program requires traversing the levee roads by the District and independent contractors who are invited to bid on the work. Interested parties may traverse the system several times in the bidding process to estimate the work and prepare proposals.

Spraying activity is influenced by wind and rain conditions. Spraying can not be performed on windy days or rainy days. The work is performed with trucks and personnel on the levee roads. Hoses and spray packs are used to reach vegetation on both sides of the road, extending beyond the toe of the levee. A single spraying might take several weeks, depending upon weather dictated restrictions, or the process may go more quickly. Access is on levee roads.

## SLUICE GATE AND VALVE REHABILITATION

Each year the District rehabilitates sluice gates and valves in three to five locations. Frequently the sluice gate mechanisms are replaced, or a valve replaced. This work is performed by an independent contractor. Equipment required includes a flat bed truck with hoist and a supporting truck. A single gate replacement will take several days to complete. Access is on the levee roads.

## EARTHWORK-GRADING

During the course of a year repairs due to erosion or levee vandalism requires remedial work. This work is done with a uniloader, dump truck, tractor, and supporting vehicle. Access is on levee roads.

## MOLE-WOODCHUCK CONTROL

Moles, and woodchucks require control. Trapping is done for woodchucks. When mole control is performed it is done by an independent contractor. Equipment used to

stabilize slopes are sheep foot, tractor-trailer, and supporting truck. Access is on levee roads.

## RIPRAP REPLACEMENT

Four years ago the District began an annual program of replacement of riprap on the levee slopes, and this work will continue for approximately 12 years. Equipment required includes dump trucks, high-loader, back hoes, and supporting vehicles. Because of damage by heavy equipment, levee roads need to be rehabilitated after riprap replacement. This work is performed by independent contractors, and access is on levee roads.

## SECURITY

The District engages an independent contractor to help protect the units from trespassers who damage facilities and levee slopes. Access by the contractor is on levee roads.

## PUMP STATIONS

The District has responsibility for six of the twenty-one pump stations in the levee system. The remaining fifteen stations are operated and maintained by the Unified Government, of Wyandotte County, Kansas, Kansas City in Missouri, or by private parties.

During the course of a year various inspections and maintenance tasks are performed at District pump stations. Pumps and electrical systems are tested. Pump and motors are lubricated. Water is collected in wet wells during rainfall periods so that pumps and motors can be operated for extended periods so that reliability can be tested under working conditions.

Pump stations are visited routinely once a week. Maintenance will require more frequent visits. Major maintenance is performed by an independent contractor. Access is generally on the levee roads.

## RELIEF WELLS

There are fifty relief wells in the system. Well testing and treatment are performed by an independent contractor. Ten wells are tested each year, with treatment dictated by the results of the pump tests. Well treatment includes physical and chemical removal of organic growth and mineral deposits. This activity requires a truck with hoist, trailer with motor, and a supporting truck. Piping to discharge water from the test is laid across to the river. Access is generally on the levee roads.

## MULTIPLE INSPECTION AND MAINTENANCE ACTIVITIES

Normal day-to-day inspection and maintenance activities will occur in several locations in the levee system. It is not uncommon for these activities to take place on all four units on the same day.

It is also not uncommon for the activities performed by staff, to occur at the same time independent contractors are also performing maintenance work. Independent contractors base their proposals, at the present time, knowing their work on the system can be performed when weather and their other work allow it to be done. The District, except on rare occasions, does not dictate when and in which unit work is to be done, because dictating conditions regarding time and location is not cost effective.

Other users of the levee roads include the following:

- Board of Public Utilities
- Unified Government of Wyandotte County
- Burlington, Northern, Santa Fe Railroad
- Union Pacific Railroad
- Harcross
- Kansas Gas Company
- Corps of Engineers
- Kansas Department of Transportation
- Kansas City Rowing Club
- Vegetation Control Contractors
- Well Testing Contractor
- Gate and Valve Replacement Contractors

The District has understanding with these organizations to permit access to District property to permit inspection and maintenance activities, or for security purposes. Access is on levee roads.

## SECURITY CONCERNS OF ADJACENT PROPERTY OWNER

In three of the four units are property owners who have expressed concern to us about security and activities on the levees. These property owners include chemical plants, manufacturing plants, and railroads. In some cases property owners have residual property interests riverward of the levees. These property owners should be consulted before uses of the levees are permitted for purposes other than flood protection.

## ASSESSMENT OF TAXES

Residential, commercial, industrial, and railroad interests, within the District are assessed taxes to support maintenance and operation activities by the District. Uses of District property for non-flood control purposes which would incur additional costs by the District needs to be examined carefully for legality.

Taxes are levied only on property within the District which limits were dictated by the 1903 flooded area. While the levees were constructed with Federal Funds, the local communities have not and are not paying taxes to support District activities. The District tax is a separate and distinct tax only assessed against property within the District.

## RIGHT-OF-WAY OWNERSHIP

Continuing as an unknown element in use of District property, is the District capacity to permit uses not related to flood control. In other words, in a specific location, is the District property interest on easement or fee title?

## VEHICLE USE ON LEVEE

The District has three ½ ton trucks and a dump truck. The aggregate average per year mileage over the last four years is 21,000 miles.

Making adjustments for miles driven off levees and total working days in the year, the average daily use of District vehicles on levee roads is 94 miles.

No attempt has been made to estimate the mileage by others listed in the section entitled "Multiple Inspection and Maintenance Activities".

## SAFETY OF STAFF

The District has a program to protect its employees. It includes updated equipment, outside seminars, and internal monthly safety meetings.

The introduction of hikers and bikers onto District property would present new elements which staff has not addressed. In addition to concerns about staff safety, public safety becomes a factor requiring consideration. At this point it could be said that additional staff and equipment would be required on the part of the District, if a use such as hike and bike trails were permitted.

OFFICIAL CORPS OF ENGINEER (Kansas City District) RESPONSE TO PUBLIC  
COMMENTS RECEIVED (Hearing held on August 20, 2003) CONCERNING TRAIL  
SYSTEM DEVELOPMENT ON EXISTING AND PROPOSED LEVEE SYSTEMS.

OFFICIAL CORPS OF ENGINEER (Kansas City District) RESPONSE TO PUBLIC  
COMMENTS RECEIVED (Hearing held on August 20, 2003) CONCERNING TRAIL  
SYSTEM DEVELOPMENT ON EXISTING AND PROPOSED LEVEE SYSTEMS.



HB 2093 -

**From:** Steve Dailey <spdailey@sbcglobal.net>  
**To:** <allen@senate.state.ks.us>  
**Date:** Fri, Mar 12, 2004 3:41 PM  
**Subject:** Elections & Local Government Hearing 3/11/04; HB 2793

Dear Senator Allen,

My name is Steve Dailey and I am the general manager of the Fairfax Drainage District. I was present yesterday when Senator Steinegar testified on behalf of the proposed amendment (as regards hike & bike trails on levees) to the above referenced bill. Initially, I looked for your committee secretary's e-mail address or phone number on the State's web site to request an opportunity to testify next week, but was unsuccessful. This is why I am contacting you, since you are the chair.

Quite honestly, Senator Steinegar misrepresented the Fairfax Drainage District yesterday when he stated that we support the concept of hike and bike trails on levees. Our position is quite the opposite. There are many other significant points that, in all fairness, need to be brought to the committee's attention before a final vote is taken. Please let me know (or direct me elsewhere) how I can get on the agenda for testifying as regards this bill. Thank you for your efforts!

Steve Dailey, P.E.  
Fairfax Drainage District  
913-321-2260

Senate Elec & Loc Gov  
03-18-04  
Attachment 2

**From:** Steve Dailey <spdailey@sbcglobal.net>  
**To:** <allen@senate.state.ks.us>, <betts@senate.state.ks.us>, <buhler@senate.state.ks.us>, <gilstrap@senate.state.ks.us>, <huelskamp@senate.state.ks.us>, <jackson@senate.state.ks.us>, <o'connor@senate.state.ks.us>, <schmidt@senate.state.ks.us>  
**Date:** Wed, Mar 17, 2004 4:48 PM  
**Subject:** HB 2793 Amendment Re: Hike & Bike Trails

Dear Honorable Senators,

Attached please find a one (1) page summary of Fairfax Drainage District operations and activities. This general description may be helpful to you in understanding the complexity of certain inner city drainage districts (i.e. Kaw Valley and Fairfax) and why it is critical to the primary function of these types of drainage districts to restrict hiking and biking altogether.

We recognize that certain levee systems (those in less congestive areas and with little or no structures or equipment) may be conducive to hiking and biking, but this case most certainly does not apply to the Kaw Valley or Fairfax Drainage Districts.

Thank you for taking the time to consider our position and I will be more than happy to answer any questions at tomorrow's working session when this bill is discussed.

Steve Dailey, P.E.  
Fairfax Drainage District  
913-321-2260

## Summary of Fairfax Drainage District Levee Operations & Activities:

1. The Fairfax Drainage District Protects over \$2 billion of property in the Fairfax Industrial District. The flood control facilities and equipment consist of:
  - a. 5.5 miles of earthen levee and floodwall
  - b. 12 pumping stations (41 high capacity storm water pumps) with a capacity of 1.75 billion gallons of water/day
  - c. 113 pressure relief wells
  - d. 210 sluice gates, flap gates, gate valves & check valves
  - e. 20 outfall structures
  
2. Pump Stations are operated when the Missouri river stage reaches 20.0 ft. Statistically, they are operated from early March to November. Their function is to pump groundwater (resulting from elevated river stages) and localized rainfall.
  
3. Besides Pump Station Operation, other activities of the Fairfax Drainage District include:
  - a. Noxious weed spraying of stone slope protection
  - b. Sounding, performance testing & acidization of pressure relief wells
  - c. Storm water pump testing & repair
  - d. Sluice gate maintenance and repair
  - e. Grading of gravel roads
  - f. Mowing of levee slopes and river foreshore
  - g. Lubrication/inspection and testing of pump station mechanical equipment
  - h. Inspection/maintenance high voltage electrical equipment & automatic controls
  - i. Inspection/maintenance of flood protection structures
  - j. Pump station wetwell and trash bar cleaning
  - k. Stone slope overlay
  - l. Tree and brush overgrowth removal
  - m. Header line inspection and cleaning
  - n. Outfall inspection, repairs and cleaning
  
4. Other permitted levee activities:
  - a)
    - a. Union Pacific Railroad track maintenance and train operation to GM Plant
  - b)
    - b. BPU high voltage line inspection, maintenance and repair & meter reading.
  - c)
    - c. William Pipe Line maintenance of high pressure gas line (buried at the riverward crown of the levee) and cathodic protection equipment
  - d)
    - d. KDOT/MDOT maintenance of overhead twin 7<sup>th</sup> Street Bridges

As can be seen from the above listing of flood protection facilities and the list of activities which is necessitated by pump station operation, on-going maintenance projects and contractor & utility repairs, the Fairfax levee system is not conducive to allowing the general public to enter areas in which safety to lives and property is compromised. We are certain the same can be said of the Kaw Valley Drainage District.

**From:** "Chaney, Bob" <BChaney@harcroschem.com>  
**To:** "allen@senate.state.ks.us" <allen@senate.state.ks.us>, "betts@senate.state.ks.us" <betts@senate.state.ks.us>, "buhler@senate.state.ks.us" <buhler@senate.state.ks.us>, "clark@senate.state.ks.us" <clark@senate.state.ks.us>, "gilstrap@senate.state.ks.us" <gilstrap@senate.state.ks.us>, "huelskamp@senate.state.ks.us" <huelskamp@senate.state.ks.us>, "jackson@senate.state.ks.us" <jackson@senate.state.ks.us>, "o'connor@senate.state.ks.us" <o'connor@senate.state.ks.us>, "schmidt@senate.state.ks.us" <schmidt@senate.state.ks.us>  
**Date:** Wed, Mar 17, 2004 3:42 PM  
**Subject:** Steineger amendment HB 2793

March 17, 2004

Ladies and Gentlemen:

Please do NOT adopt the Steineger amendment HB 2793.

We have just become aware of the Steineger amendment HB 2793 that would allow the public access to the levees here in Wyandotte County. My name is Robert Chaney and I work for Harcros Chemicals, Inc., which is located on Speaker Road in Kansas City, Kansas. The levee divides our property. On one side is our operational plant and on the other is woods and brush. In the past 10 years, we have had numerous incidents of people shooting weapons, drinking alcoholic beverages, littering, dumping of trash in the woods along the levee, and vandalism of our equipment.

Harcros has a rail spur that runs adjacent to the levee, where we bring in railcars of chemicals, some of them are hazardous. After the 9/11 Attack, we have taken numerous steps to increase and enhance our security here at Harcros. As a chemical company, we have been identified as a potential target for terrorists by the Department of Homeland Security. Allowing the public access to the levee behind our facility would impair our ability to restrict people from close proximity to our railcars and tanks of chemicals. This is also true for Ashland Chemicals located about one-quarter of a mile from us. The U.S. Post Office is also about one-quarter of a mile from us in the other direction. Other potential targets would be Proctor Gamble, BPU Power Station, and numerous other businesses.

In summary, the few members of the public that would safely use the levee could not justify providing those with ill intentions complete access to this area.

Please do NOT adopt the Steineger amendment HB 2793.

Respectfully submitted,

Robert Chaney  
Vice President, Regulatory Affairs

Senate Elec & Loc Gov  
03-18-04  
Attachment 3

**From:** <MGT84Roe@aol.com>  
**To:** <Allen@senate.state.ks.us>  
**Date:** Wed, Mar 17, 2004 6:46 PM  
**Subject:** Amendment to HB 2793

Dear Senator Allen:

I am writing in support of Senator Chris Steineger's Amendment to HB 2793 which would grant the right to the Kansas City, Kansas and Wyandotte County to create an easement on top of the KAW Levee System for use hiking, biking, horseback riding and walking. It is important that we complete the Wyandotte County portions of the Kansas City Riverfront Heritage Trail. I think this trail is a terrific idea.

Margaret Thomas, Chair  
Prairie Village Environmental Committee  
8401 Roe  
Prairie Village, KS 66207  
913-341-5805  
mgt84roe@aol.com

Senate Elec & Loc Gov  
03-18-04  
Attachment 4

**From:** <Dcraw7076@aol.com>  
**To:** <allen@senate.state.ks.us>  
**Date:** Wed, Mar 17, 2004 10:55 PM  
**Subject:** Sen. Subcommittee on Elections & Local Gov't.: Amendment to HB 2793

Senator Allen,

On Thursday, March 18 at 1:30 PM, your Senate Subcommittee on Elections and Local Government is scheduled to consider Sen. Chris Steiniger's amendment to HB 2793 allowing easements for public trails within the levee districts in the City of Kansas City and Wyandotte County. This section of trail is a critical component in the Greater Kansas City area MetroGreen trail system and a section of the developing Heritage Riverfront Trail linking Kansas City, KS to Kansas City, MO. As the Advocacy Chair for the Johnson County Bicycle Club (JCBC), a 300+ volunteer organization promoting recreational bicycling, I ask your support for Sen. Steiniger's amendment to HB 2793.

As you know, Kansans have very little public access along its many miles of rivers. By providing trail access within the levee district, residents of Greater Kansas City, including Johnson Countians, will be able to view, experience and enjoy our river corridors, learn about the history they have played in the development of Kansas City and gain a greater appreciation of the role, both economically and environmentally, the rivers will continue to play in Kansas City's future.

While the Kansas River is by no means a natural river today, it is still an undeveloped recreation, tourism and economic resource that has a beauty and natural character all its own and that is mostly inaccessible due to levee district refusals to work with the Mid America Regional Council or Kansas City, KS, to negotiate such access. I have enjoyed stretches of the Kansas River by boat and kayak several times from the MO side. Unfortunately, few people have this type of opportunity today. However, almost anyone would be able to walk or bicycle along the river if this amendment is approved.

As Chair of this subcommittee, JCBC thanks you for your support of recreation opportunities, tourism and a healthy lifestyle for Kansas Citians and Johnson Countians and your support of Sen. Steiniger's amendment to HB 2793.

Sincerely,  
Dale V. Crawford  
Johnson County Bicycle Club, Advocacy Chair  
512 N. Curtis  
Olathe, KS 66061  
(913)829-6588

Senate Elec & Loc Gov  
03-18-04  
Attachment 5

# HOUSE BILL No. 2605

By Representative Mays

1-28

9 AN ACT concerning libraries; relating to the Topeka and Shawnee  
10 county library district; amending K.S.A. 12-1260 and 12-1267 and re-  
11 pealing the existing sections.

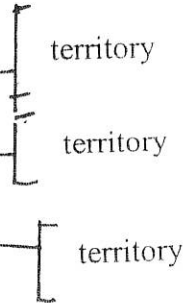
12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 12-1260 is hereby amended to read as follows: 12-  
15 1260. When used in this act and unless otherwise specifically provided  
16 therein:

- 17 (a) "County" means Shawnee county;
- 18 (b) "city" means the city of Topeka, Kansas;
- 19 (c) "library district" means all ~~territory~~ *property* located within Shaw-  
20 nee county except ~~that territory~~ (1) *property* located within Rossville  
21 township and Silver Lake township and (2) *property* detached from the  
22 district pursuant to section 3, and amendments thereto;
- 23 (d) "board" means the library board of trustees appointed pursuant  
24 to the provisions of this act;
- 25 (e) "library" means a library which serves the general public and is  
26 supported in whole or in part with tax money and shall be called the  
27 Topeka and Shawnee county public library;
- 28 (f) "governing body" means the governing body of a city or the board  
29 of county commissioners of a county; and
- 30 (g) "maintenance and support" means the general and usual cost and  
31 expense of operating a library.

32 Sec. 2. K.S.A. 12-1267 is hereby amended to read as follows: 12-  
33 1267. (a) The board shall prepare, publish and approve an annual budget  
34 for the maintenance and support of the library and may levy a tax not to  
35 exceed five mills on all taxable tangible property in the library district. At  
36 least 10 days prior to filing the adopted budget with the county clerk, the  
37 board shall submit the budget to the governing body of the city and county  
38 for review thereby.

39 (b) Whenever the board determines that the tax levy of five mills  
40 authorized by subsection (a) is insufficient to maintain and support the  
41 library, the board shall adopt a resolution declaring it necessary to in-  
42 crease the annual levy by an additional amount not to exceed 1/4 mill in  
43 any one year up to a total amount which shall not exceed an amount equal



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1 to eight mills in any year.

2 (c) Any such resolution adopted under subsection (b) shall state the  
3 total amount of the tax to be levied for library purposes and shall be  
4 published once each week for two consecutive weeks in the official county  
5 newspaper. Whereupon such annual levy in an amount not to exceed the  
6 amount stated in the resolution may be made for the ensuing budget year  
7 and each successive budget year unless a petition, signed by at least 5%  
8 of the qualified electors of the library district, requesting an election upon  
9 the proposition to increase the tax levy in excess of the current tax levy  
10 is filed with the county election officer within 60 days following the date  
11 of the last publication of the resolution. In the event a valid petition is  
12 filed, no such increased levy shall be made without such proposition hav-  
13 ing been submitted to and having been approved by a majority of the  
14 electors of the library district voting at an election called and held thereon.  
15 All such elections shall be called and held in the manner provided by the  
16 general bond law. Such taxes shall be levied and collected in like manner  
17 as other taxes, which levy the board shall certify, on or before August 25  
18 of each year, to the county clerk who is hereby authorized and required  
19 to place the same on the tax roll of the county to be collected by the  
20 county treasurer and paid over by the county treasurer to the treasurer  
21 of such board.

22 (d) The levy authorized by this section shall not be deemed a levy of  
23 the city or county, and shall be in addition to all other levies authorized  
24 or limited by law.

25 (e) Any ~~property~~ detached pursuant to section 3, and amendments  
26 thereto, shall not be liable for any levy imposed pursuant to this section  
27 after the effective date of such detachment.

territory

28 New Sec. 3. (a) Upon presentation to the board of trustees of the  
29 library district of a resolution adopted by the governing body of the city  
30 of Auburn, Kansas, requesting that all ~~property~~ located within the city of  
31 Auburn be detached from the library district, the board of directors shall  
32 adopt a resolution detaching such ~~property~~ from the library district. The  
33 detachment of such ~~property~~ shall be effective on January 1 of the suc-  
34 ceeding year. The library board shall declare the new boundaries of the  
35 library district by resolution and shall certify a copy of such resolution to  
36 the county clerk.

territory

territory

territory

37 (b) Any property annexed by the city of Auburn, Kansas, subsequent  
38 to the presentation of a resolution requesting detachment pursuant to  
39 subsection (a), may be detached from the library district in the same  
40 manner and subject to the same conditions imposed pursuant to this  
41 section.

42 (c) The ~~property~~ detached from the library district shall be liable for  
43 its proportionate share of all outstanding bonded indebtedness and any

territory

1 interest thereon of the library district on the date the resolution is passed  
2 by the library board detaching the ~~property~~ } territory  
3 Sec. 4. K.S.A. 12-1260 and 12-1267 are hereby repealed.  
4 Sec. 5. This act shall take effect and be in force from and after its  
5 publication in the statute book.



LEGAL DEPARTMENT of the UNIFIED GOVERNMENT OF  
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March 15, 2004

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The Honorable Barbara Allen  
Chairperson  
Senate Committee on Elections and Local Government  
State Capitol 120-S  
300 W. 10<sup>th</sup> Street  
Topeka, KS 66612

Re: HB 2641

Dear Senator Allen:

As a follow-up to testimony given by Wyandotte County Election Commissioner Pat Rahija to the Senate Committee on Elections and Local Government on Thursday, March 11<sup>th</sup>, I would like to offer some additional comments in response to some questions that came up during the Committee hearing.

**Why are there two different definitions of "taxpayers" in HB2641?**

The two different sections of the bill address two separate types of drainage districts and are part of two separate enactments. Section 1 of HB 2641 amends K.S.A. 24-414, while Section 2 of HB 2641 amends 24-459. K.S.A. 24-414 is part of the Drainage Act of 1905 and Amendments, and K.S.A. 24-459 is part of Acts Supplemental to Drainage Act of 1905 enacted in 1911.

The Act of 1905 deals with drainage districts in general and contains criteria for who may serve on the boards of directors and who may vote in drainage district elections. The Supplemental Act of 1911 addresses a specific type of drainage district, that is, one where the owners of 3/5 of the acreage in the district are nonresidents and there are not five resident taxpayers. The Supplemental Act contains different criteria for who may serve on the boards of directors and who may vote in the drainage district elections.

The original Act of 1905 governing drainage districts in general defines a "qualified elector" as any person 18 years of age or over who either (1) owns land within

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the district, although not a resident, or (2) owns tangible personal property within the district and is a resident. K.S.A. 24-410. For counties with a population of more than 150,000, additional criteria are added to voter eligibility: the qualified electors must be "taxpayers" and residents of the district.

Since there is no definition of "taxpayer," in either K.S.A. 24-410 or 24-414, HB 2641 proposes the following definition:

"(c) As used in this section, "taxpayer" means any person who owns any real property or tangible property within the district who pays taxes assessed on such property "

The Supplemental Act of 1911 governs districts in which owners of 3/5 of the land are nonresidents and has different criteria for voter eligibility than the 1905 Act based only on ownership of real estate, not personal property. Residency within the district is not required. Since the word "taxpayer" is used in defining a qualified voter, a definition was included in the proposed amendment to K.S.A. 24-459. The definition could not be the same as that proposed for K.S.A. 24-414 because eligible voters in those drainage districts (created by the 1905 Act) may either be real property taxpayers or personal property taxpayers, whereas in the drainage districts created by the 1911 Act voters must be only real property owners.

In summary, the term "taxpayer" is used in both statutes to describe an eligible voter, but the eligibility criteria are different for drainage districts where most taxpayers are residents and those drainage districts where most taxpayers are non-residents.

**Can the bill be changed to refer only to Wvandonotte County?**

Because the Shawnee County Election Commissioner testified in the House in favor of the amendment contained in Section 1 of HB 2641, I believe that other counties with more than 150,000 in population may also want the clarification to K.S.A. 24-414.

**Should the proposed amendments wait until the Legislature undertakes a comprehensive review of the drainage district statutes?**

The election officials who are proponents of the proposed amendments believe that such a comprehensive review would be lengthy and uncertain and that election officials will benefit from clarification to the statute at the next drainage district elections. These officials must conduct the elections, and they need statutory guidance in order to provide a consistent interpretation of the statutes governing eligibility to vote in drainage district elections.

In addition to clarifying who is a taxpayer and thus who may vote, the proposed amendment expressly provides that corporations are entitled to vote. Levees are typically built in flood plains, and the federal government flood insurance program forbids rebuilding of residences in flood plains following a flood. As a consequence flood plains are becoming increasingly industrial and less residential in character, and owners of real

*The Honorable Barbara Allen*

*March 15, 2004*

*Page 3*

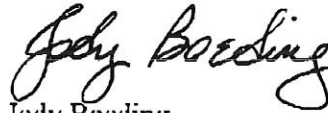
estate are often corporations rather than individuals. The corporations do pay real estate taxes and do act as responsible owners of property in the drainage district. In my opinion these corporations should be allowed to vote in drainage district elections, and I believe that was the Legislative intention. The amendment states it expressly.

Since Section 2 of the printed bill is hard to read because all the language is currently stricken, I am attaching the draft version of the proposed changes to K.S.A. 24-459 for your convenience.

On behalf of Wyandotte County Election Commissioner Pat Rahija, I am asking that Section 2 of IIB 2641, which was deleted from the bill in the House of Representatives, be reinserted into the bill.

Please feel free to contact me if you would like to discuss any further.

Sincerely,



Jody Boeding  
Assistant Counsel

Enclosure

Cc: Pat Rahija  
Wyandotte County Election Commissioner

**24-459****Chapter 24.--DRAINAGE AND LEVEES  
Article 4.--DRAINAGE DISTRICTS WITHIN COUNTIES OR CITIES****24-459. Directors; election; term; eligible voters.**

(a) The board of directors of any drainage district incorporated pursuant to K.S.A. 24-458 shall consist of three ~~persons who own land within the district but need not be residents therein~~ qualified persons as defined in subsection (e)(3).

(b) The directors for the first term after the incorporation of the drainage district shall be selected and designated in the petition for the incorporation of the district and shall be declared directors by the county commissioners to which the petition is presented.

(c) The directors shall hold office until the first Tuesday in April next after the incorporation of the district, at which time and every four years thereafter directors shall be elected and shall hold their office for the term of four years and until their successors are elected and qualified.

(d) ~~Every taxpayer~~ qualified person of the district, ~~owning real estate therein, whether a resident of the district or not,~~ shall be entitled to vote at the election or at any election which may be held in the district.

(e) The following terms shall have the following meanings.

(1) "Owner" or "person who owns land" means any person or entity who is the record owner of the fee in any real estate in the district or the fee in the surface rights of any real estate in the district, but the owners of an oil and gas lease, mineral rights or interest, easements or mortgages as such shall not be considered owners, and school districts, cemetery associations, and municipal corporations shall not be considered owners.

(2) "Taxpayer" means any owner who has paid all taxes currently due on such real estate.

(3) "Qualified person" means any taxpayer eighteen years of age or older, whether a resident of the district or not. A taxpayer who is a qualified person and who is not an individual may designate an individual to cast its vote or to serve as a director of the district.

(f) The county clerk shall determine the qualified persons entitled to vote at any election in the district. Any entity desiring to vote at an election shall register the name of its designated representative with the county election officer no later than fourteen days in advance of any such election.

**History:** L 1911, ch. 173, § 2; R S 1923, 24-459; L 1927, ch. 198, § 1; L 1983, ch. 118, § 9; July 1