

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE

The meeting was called to order by Chairman Joann Freeborn at 3:30 P.M. on February 3, 2005 in Room 231-N of the Capitol.

All members were present except:

- Representative Bill Light- excused
- Representative Tom Hawk- excused
- Representative Vaughn Flora- excused

Committee staff present:

- Raney Gilliland, Legislative Research Department
- Emalene Correll, Legislative Research Department
- Liza Montgomery, Revisor of Statutes Office
- Pam Shaffer, Committee Secretary

Conferees appearing before the committee:

- Fred Cholick, Dean of Agriculture and Director of Agricultural Experiment Station, 113 Waters Hall, Manhattan, KS 66506
- Jana Beckman, Coordinator of Kansas Center for Sustainable Agriculture and Alternative Crops (KCSAAC) 113 Waters Hall, Manhattan, KS 66506
- Steve Swaffer, Director of Natural Resources, Kansas Farm Bureau, 800 SW Jackson, Ste 1300, Topeka, KS 66612
- Wendy Harms, Associate Director of the Kansas Aggregate Producer's Association, 800 SW Jackson, Ste 1401, Topeka, KS 66612
- M S Mitchell, Legislative Chairman of the Kansas Building Industry Association (KBIA), 212 SW 8th Ave, Topeka, KS 66612
- Tracy Streeter, Director of the Kansas Water Authority (KWA), 901 Kansas Ave, Topeka, KS 66612

Others attending:

See attached list.

Chairperson Freeborn called the meeting to order.

Chairperson Freeborn asked that all guests sign log. She praised the Legislative Research Department for the Legislator Briefing Book that they have put together. She reminded all the Representatives that it is full of helpful information and that they might want to take a look at it. On Tuesday, February 8th there will be a presentation by Mary Jane Stankiewicz, Administrator of the Kansas Agricultural Remediation Board. Thursday, February 10th the Committee may work some legislation, she will let everyone know for certain next week.

Chairperson Freeborn asked if there were any bill requests.

Representative Johnson introduced a motion designating a portion of interstate highway I-70 as Twin Buttes Pass, Representative Sloan seconded the motion. Motion carried.

Chairperson Freeborn welcomed Fred Cholick, Dean of Agriculture and Director of Agricultural Experiment Station from Kansas State University to provide an overview. "An Informal Report to the Kansas Legislature January 2005" booklet was passed out to everyone attending, it can be found on the website www.oznet.ksu.edu and is not attached to these minutes. K-State Research and Extension is dedicated to a safe, sustainable, competitive food and fiber system and to strong, healthy communities, families and youth through integrated research analysis, and education. The four themes they operate under are: (1) Agriculture Industry Competitiveness (2) Natural Resources and Environmental Management (3) Food, Nutrition, Health and Safety and (4) Youth, Family, and Community Development. Mr. Cholick introduced Jana Beckman, Coordinator of Kansas Center for Sustainable Agriculture and Alternative Crops, this center was established in 2000 out of concern for farmers and ranchers in Kansas. They work with state and federal agencies, farmer organizations, farmer agencies to boost the economic profit for the producer while maintaining the environmental balance and the impact on community. Agriculture plays a very important role in society. Ms.

CONTINUATION SHEET

MINUTES OF THE House Environment Committee at 3:30 P.M. on February 3, 2005 in Room 231-N of the Capitol.

Beckman used the same booklet as Mr. Cholick.

Committee questions and discussion followed.

Chairperson Freeborn thanked Mr. Cholick and Ms. Beckman for their presentation.

Chairperson Freeborn returned to bill requests. Representative Svaty, representing Representative Flora, made a motion for the Kansas Department of Health and Environment to hire a hydrologist to evaluate landfill sites, Representative Thull seconded the motion, Motion carried.

Raney Gilliland, Legislative Research Department, gave a review of **HB 2014 - Powers of Members ex officio of the Kansas Water Authority.**

Chairperson Freeborn opened the Hearing on **HB 2014**

Steve Swaffar, Director of Natural Resources, Kansas Farm Bureau testified in support of the proposed legislation. Mr. Swaffar testified that Kansas Farm Bureau believes that the voting procedures and privileges of the ex-officio members of the Kansas Water Authority are extremely important to the success and transparency of the Kansas water planning process and the grassroots basic advisory committee structure. In actuality, the question of voting rights and the right to make and second motions for ex-officio members has been asked before. In 1981, at the request of the Chairman of the Water Authority at the time, Attorney General issued opinion 82-47 that stated "Ex-officio members of the Kansas Water Authority are precluded by KSA 1981 supp 74-2622 from voting on matters considered by the Authority..." The opinion goes on to state that ex-officio members are not specifically precluded by statute from making and seconding motions as those actions are considered "part of the deliberative process and the ensuing discussion of the motion."

Mr. Swaffar stated that from the Attorney General's opinion, ex-officio members cannot vote but have motion and seconding rights. Under this opinion, **HB 2014** need not address the issue of voting rights, However, it is our understanding that a 2004 internal policy of the Water Authority does allow ex-officio members to vote in select committees. This internal policy clearly conflicts with the Attorney General's opinion, **HB 2014**, if passed as written will clearly set boundaries for voting rights of ex-officio members, but a revision of the Water Authority's internal policy is also required to abide by the Attorney General's opinion. We encourage the committee to act favorably on **HB 2014**. He thanked the Committee for the opportunity to provide testimony. (See Attachment 1)

Wendy Harms, Associate Director of the Kansas Aggregate Producer's Association testified in support of the proposed legislation. Ms. Harms thanked the Committee for the opportunity to testify in support of **HB 2014**. Ms. Harms stated that in conducting her research in preparation for this hearing, it is obvious from the Webster's Dictionary, that the concept of an ex officio is quite broad. For example, Webster defines ex officio as "by virtue or because of an office then gives the example....the Vice President serves as ex-officio of the president of the Senate". To say the least just what does ex officio mean? What capacities can they serve? This is and can be very confusing. In order to resolve this confusion with respect to the Kansas Water Authority (KWA) and to ensure that the KWA can concentrate on its mission we support an effort to clearly define the procedures and privileges of ex officio members. To us it is apparent your predecessors meant to provide technical and advisory support to the KWA by creating ex officio members. However, in recent years the roles of ex officio members of the KWA have become unclear. **HB 2014** seeks to make this relationship clearer by defining the powers of ex officio membership. We would like to suggest you consider taking one step further by replacing the word "ex officio" with "advisory" per the attached balloon. We suggest this as we believe in reviewing the history of the KWA, that the initial reason or purpose for an ex officio member to serve on the authority was to provide other members with scientific and engineering expertise. By eliminating the work "ex officio" any doubt will be removed.

In closing, Ms. Harms encouraged the committee to act favorably and thanked the committee for the opportunity to testify. (See Attachment 2)

CONTINUATION SHEET

MINUTES OF THE House Environment Committee at 3:30 P.M. on February 3, 2005 in Room 231-N of the Capitol.

M. S. Mitchell, Legislative Chairman of the Kansas Building Association (KBIA) testified in support of the proposed legislation. Mr. Mitchell stated the KBIA supports **HB 2014** and the language contained in section 1(a) lines 29-34 on page 2 of the bill. The reason for this position is that it has been my long experience as a member of elected and appointed advisory boards that staff personnel are there to serve as a resource to provide studies and information as requested. As contained in the current law, the Legislature has provided that the ex officio members of the Water Authority are non-voting. My experience is that non-voting members don't make motions or even participate in the discussion of a motion. Mr. Mitchell encouraged the committee for favorable consideration of **HB 2014**. (See Attachment 3)

Committee questions and discussion followed Mr. Mitchell's testimony for all of the proponents who testified..

Tracy Streeter, Directory of the Kansas Water Office testified in opposition of the proposed legislation. Mr. Streeter appeared representing the position of the KWA. The KWA opposes the proposed amendments to K.S.A. 74-2622 as contained in **HB 2014** relative to the privileges of the ex officio members. The KWA is a 24 member group consisting of 13 appointed members representing various water related interests. The remaining 11 members are ex officio, non-voting members representing various state agencies/entities as designated in the statute. The primary function of the KWA is to consider and approve policy recommendations for inclusion in the Kansas Water Plan. Once approved, the KWA submits these recommendations to the Governor and Legislature for their consideration. In addition to other functions, the Authority also make recommendations on spending priorities for the State Water Plan Fund. As previously mentioned, K.S.A. 74-2622 requires ex officio members to serve in a non-voting capacity. A 1982 Attorney General's Opinion was issued which clarified the definition of non-voting membership. A Memorandum of Internal Policy (IPM-07), adopted by the KWA in January of 2004 further defines the role of ex officio members.

The Kansas Water Authority values the role of ex officio members and feels strongly that the ability of the ex officio members to make and second motions as part of the deliberation process is vital to a strong private/public partnership embodied in the Kansas water planning process. The Authority is also committed to maintaining and enhancing the public's trust in this endeavor. To that end, Steve Irsik, KWA Chairman, has agreed to revisit the Memorandum of Internal Policy (IPM-07) at the next meeting of the Authority to determine what changes, if any, need to be made to the policy to ensure consistency with the statute and interpretations made by the Attorney General. In summary, the Kansas Water Authority is opposed to the proposed changes contained in HB 2014 limiting the participation by ex officio members in the deliberations process of the Authority. Mr. Streeter thanked the Committee for the opportunity to share the position of the KWA. (See Attachment 4)

Committee questions and discussion followed Mr. Streeter's testimony.

The meeting was adjourned at 4:55. The next meeting is scheduled for February 8.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: 02/03

NAME	REPRESENTING
Fred A. Cholick	K-state
Steven Graham	K-state
Wendy M. [unclear]	KAPA
Wendy [unclear]	KAPA
Jana J. Beckman	K-State Research + Extension
Kal Eisele	Farm Bureau NER Comm.
Twilla Eisele	" "
Hugh Brownee	" " NER Comm.
Dave Brown	" " KWA KWC
Kent Astren	KFB
Karm Stuhl	KS Water Office
T.L.S. Mitchell	K.B.A.
PAT Lehman	GMD 4
Kob Menta	Hem Law Firm
Steve Swaffar	KS Farm Bureau
Bill Brady	City of Hays.
Mary Jane Starkeivicy	KFA/KARA



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Kansas Farm Bureau **POLICY STATEMENT**

House Environment Committee

Re:HB 2014 An Act Concerning the Kansas Water Authority

February 3, 2005

Submitted by:

Steve M. Swaffar

Director of Natural Resources

Chairperson Freeborn and members of the committee, thank you for this opportunity to provide testimony today in favor of House Bill 2014. Kansas Farm Bureau believes that the voting procedures and privileges of the *ex-officio* members of the Kansas Water Authority are extremely important to the success and transparency of the Kansas water planning process and the grassroots basin advisory committee structure. The advisory role these members play is a critical technical and educational function of the Kansas Water Authority. However, we believe *ex-officio* members should retain an advisory capacity status and be restricted from voting, making motions, and seconding motions in meetings of the full Kansas Water Authority.

In actuality, the question of voting rights and the right to make and second motions for *ex-officio* members has been asked before. In 1981, at the request of the Chairman of the Water Authority at the time, the Attorney General issued opinion 82-47 that stated, "Ex-officio members of the Kansas Water Authority are precluded by K.S.A. 1981 supp 74-2622 from voting on matters considered by the Authority..." The opinion goes on to state that *ex-officio* members are not specifically precluded by statute from making and seconding motions as those actions are considered "part of the deliberative process and the ensuing discussion of the motion."

Clearly from the Attorney General's opinion, *ex-officio* members cannot vote but have motion and seconding rights. Under this opinion, HB 2014 need not address the issue of voting rights. However, it is our understanding that a 2004 internal policy of the Water Authority does allow *ex-officio* members to vote in select committees. This internal policy clearly conflicts with the AG's opinion. HB 2014, if passed as written, will clearly set the boundaries for voting rights of *ex-*

House Environment Committee
February 3, 2005
Attachment 1

officio members, but a revision of the Water Authority's internal policy is also required to abide by the AG's opinion.

Annually the Kansas Water Authority makes recommendations to the Governor and Legislature about how Kansas Water Plan Fund allocations should be divided between State agencies. It is inappropriate for the individuals heading those agencies to move initiatives that potentially increase or decrease their budgets. This does not occur in the legislative budgeting process, therefore it should not be allowed in the Water Planning process. KFB believes this is the key issue for limiting the actions of *ex-officio* members. The potential conflict this presents for Kansas citizens and agency heads needs to be remedied.

We also believe it is in the best interest of the people of Kansas to limit the ability of *ex-officio* members to make and second motions in full Authority meetings. If in a full Authority meeting an *ex-officio* member makes a motion on a particular issue and, a second is provided by another *ex-officio* member, then a vote is required of the voting members of the full Authority regardless. Our concern is this type of vote could be forced without adequate discussion or study.

Eleven *ex-officio* members with motion abilities could significantly change the dynamics of the Water Authority. As members of the Governor's cabinet and civil servants, those individuals could potentially be influenced to forward a particular issue or budget item based on the interests of the Administration or agency. This may not coincide with the interests of the majority of Kansans or the recommendations forwarded by the BACs. Although we have no particular concerns with individuals currently serving on the Water Authority or actions they have taken, we do have serious concerns about motions made by past *ex-officio* Water Authority members. By restricting the motion making abilities of *ex-officio* members, and passing HB 2014, this committee and the Legislature will prevent these types of events from occurring in the future. We encourage the committee to act favorably on HB 2014.

Thank you for this opportunity to provide testimony.



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 22, 1982

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299ATTORNEY GENERAL OPINION NO. 82- 47Patrick J. Regan, Chairman
Kansas Water Authority
1400 Kansas State Bank Building
125 North Market Street
Wichita, Kansas 67202Re: State Boards, Commissions and Authorities -- Kansas
Water Office and Kansas Water Authority -- Powers of
Authority's Ex Officio Members.

Synopsis: Ex Officio members of the Kansas Water Authority are precluded by K.S.A. 1981 Supp. 74-2622 from voting on matters considered by the Authority, but such members are entitled to participate fully in that body's deliberations regarding such matters. Participation in the Authority's deliberative process includes the ability to make or second a motion, which is but a formalized expression of proposed action, and is not an integral part of the voting process whereby members of the Authority cast their votes to express approval or disapproval. Cited herein: K.S.A. 1981 Supp. 74-2622.

*

*

*

Dear Mr. Regan:

You have inquired whether a nonvoting member of the Kansas Water Authority may make or second motions for consideration at meetings of the Authority. Your question is predicated on the provisions of K.S.A. 1981 Supp. 74-2622, concerning the establishment of the Kansas Water Authority and providing in relevant part:

Patrick J. Regan
Page Two

"The state geologist, the chief engineer of the division of water resources of the state board of agriculture, the director of the division of environment of the department of health and environment, the director of the Kansas water office and the director of the agricultural experiment stations of Kansas state university of agriculture and applied sciences shall be nonvoting members of the authority ex officio." (Emphasis added.)

We recognize that the term "ex officio" may generate some confusion. However, simply stated, it means "by virtue of the office." Black's Law Dictionary 661 (Rev. 4th Ed. 1968). In this instance, then, the legislature is prescribing that by virtue of holding certain specified offices, the officers designated in the statute shall also be members of the Kansas Water Authority.

The general rule in regard to the power and authority of ex officio members of a board is that "[e]x officio members of a public body are members for all purposes." (Footnotes omitted.) 1 Am.Jur.2d Administrative Law §61. However, as evidenced by K.S.A. 1981 Supp. 74-2622, this general rule is at times subject to an express legislative direction that the powers of ex officio members be limited. In this instance, the legislature has precluded ex officio members of the Authority from voting.

While we have found no pertinent Kansas decisions addressing the scope of such a limitation, and although there is not an abundance of relevant case law from other jurisdictions, the cases we have reviewed indicate the power and authority of ex officio members of a body should be limited only by those restrictions specified in the pertinent legislation. See, generally, Louisville and Jefferson County Planning Comm. v. Ogden, 210 S.W.2d 771 (1948); Matter of Farrel v. Board of Health, 243 App. Div. 332 (N.Y. 1938). In Farrel, *supra*, the court noted that "[o]rdinarily a membership on any board or body carries with it a right to vote." Id. at 334. Furthermore, "a restriction upon such power will not be extended beyond the limitation clearly intended to be imposed by the law, rule or order creating the restraint." Id.

Accordingly, we believe that the limitation in 74-2622 on the Authority's ex officio members should not be extended beyond the clearly intended restriction of these members' voting power. Thus, for example, we believe these members are entitled to full participation in the Authority's deliberative process regarding matters under consideration by the

Patrick J. Regan
Page Three

Authority. They are entitled to partake fully in discussions, by suggesting courses of action, indicating their support of or opposition to proposed action and otherwise expressing their opinions on matters before the Authority.

However, even though the restriction on the ex officio members' powers is not to be extended beyond the statutory preclusion of their right to vote, the question arises as to whether the making or formal endorsement of a motion is an integral part of voting. Although we are unaware of any case law precisely pertinent to this issue, we note that "[a] 'motion' is usually a proposal for action by [a] deliberative assembly. Lindahl v. Independent School Dist. No. 306 of Hubbard County, 133 N.W.2d 23, 26, 270 Minn. 164." 27A Words and Phrases (1981 P.P.) 27. It is a formal proposal made to evoke action, and when acted upon it becomes the formal expression of a deliberative body's will. 27A Words and Phrases (1961) 354. It also should be recognized that in parliamentary procedure, a motion proposing action by a body is required in many instances as a condition precedent to the discussion of such proposed action by the body.

Clearly, then, a motion is but a formalized expression of proposed action; and even though a motion is a condition precedent to making a decision upon a proposal, it is not, in our judgment, an integral part of the voting process whereby members of the body cast their votes to express their approval or disapproval. Rather, we believe a motion to be as much a part of the deliberative process as is the ensuing discussion of the motion.

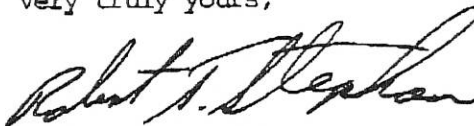
With this in mind, and in recognition of the fact that the legislature has not precluded the ex officio members of the Water Authority from participating in the Authority's deliberative process, we are unable to conclude that the legislature has intended to foreclose such members from formalizing their suggestions or proposals. In our judgment, the legislature has intended only that the Authority's ex officio members be precluded from voting.

In summary, then, it is our opinion that ex officio members of the Kansas Water Authority are precluded by K.S.A. 1981 Supp. 74-2622 from voting on matters considered by the Authority, but such members are entitled to participate fully in that body's deliberations regarding such matters. Participation in the Authority's deliberative process includes the right

Patrick J. Regan
Page Four

to make or second a motion, which is but a formalized expression of proposed action and is not an integral part of the voting process whereby members of the Authority cast their votes to express approval or disapproval.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RIS:WRA:may

KAPA

Kansas Aggregate
Producers' Association

Edward R. Moses
Managing Director

TESTIMONY

By the

Kansas Aggregate Producers' Association

Before the
House Environment Committee

Regarding HB 2014
An Act Concerning the Kansas Water Authority

February 3, 2005

Madame Chair and members of the committee my name is Wendy Harms, Associate Director of the Kansas Aggregate Producers' Association. The Kansas Aggregate Producers' Association (KAPA) is a statewide trade association, comprised of over 250 members, producing sand, gravel, crushed rock, and other various aggregate products, and one of the few industries to be represented in every county in this state.

We thank you for the opportunity to come before you today to express our support for HB 2014, regarding the voting procedures and privileges of the ex officio members of the Kansas Water Authority (KWA). In conducting my research in preparation for this hearing, it is obvious from the Webster's Dictionary, that the concept of an ex officio is quite broad. For example, Webster defines ex officio as "by virtue or because of an office then gives the example...the Vice President serves as ex officio of the president of the Senate". To say the least, just what does ex officio mean? What capacities can they serve? This is and can be very confusing.

In order to resolve this confusion with respect to the KWA and to ensure that the KWA can concentrate on its mission, we support any effort to clearly define the procedures and privileges of ex officio members. To us it is apparent your predecessors meant to provide technical and advisory support to the KWA by creating ex officio members. However, in recent years the roles of ex officio members of the KWA have become unclear. HB 2014 seeks to make this relationship clearer by defining the powers of ex officio membership. We would like to suggest you consider taking one step further by replacing the word "ex-officio" with "advisory" per the attached balloon. We suggest this as we believe in

reviewing the history of the KWA, that the initial reason or purpose for an ex officio member to serve on the authority was to provide other members with scientific and engineering expertise. By eliminating the word "ex officio" any doubt will be removed.

In closing we support HB 2014 and we thank you for the opportunity to come before you today, and I will be happy to respond to any questions at this time.

1 of a central Kansas groundwater management district shall be appointed
 2 from three nominations submitted by the presidents of the groundwater
 3 management district boards No. 2 and 5. The member who is represen-
 4 tative of industrial water users shall be appointed from three nominations
 5 submitted by the Kansas association of commerce and industry. The
 6 member who is representative of the state association of watershed dis-
 7 tricts shall be appointed from three nominations submitted by the state
 8 association of watershed districts. The member who is representative of
 9 the Kansas association of conservation districts shall be appointed from
 10 three nominations submitted by the state association of conservation dis-
 11 tricts. If the governor cannot make an appointment from the original
 12 nominations, the nominating authority shall be so advised and, within 30
 13 days thereafter, shall submit three new nominations. Members appointed
 14 by the governor shall be selected with special reference to training and
 15 experience with respect to the functions of the Kansas water authority,
 16 and no more than six of such members shall belong to the same political
 17 party; (3) one member shall be appointed by the president of the senate
 18 for a term of two years; and (4) one member shall be appointed by the
 19 speaker of the house of representatives for a term of two years. The state
 20 geologist, *the state biologist*, the chief engineer of the division of water
 21 resources of the Kansas department of agriculture, the director of the
 22 division of environment of the department of health and environment,
 23 the chairperson of the state corporation commission, the secretary of
 24 commerce, the director of the Kansas water office, the secretary of wild-
 25 life and parks, the administrative officer of the state conservation com-
 26 mission, the secretary of agriculture and the director of the agricultural
 27 experiment stations of Kansas state university of agriculture and applied
 28 science shall be nonvoting members ~~ex officio~~ of the authority. ~~Members~~
 29 ~~ex officio~~ of the authority shall act as a resource and support for other
 30 members of the authority and shall not be entitled to vote or make or
 31 second motions in any meeting of the authority. ~~Such members ex officio~~
 32 ~~shall not be entitled to vote in any meeting of a select committee or other~~
 33 ~~committee or subcommittee of the authority but may make or second~~
 34 ~~motions in such meetings.~~ The director of the Kansas water office shall
 35 serve as the secretary of the authority.

KAPA proposed amendment (2/3/05)

Insert "advisory"

36 (b) A member appointed pursuant to subsection (a)(2) shall be ap-
 37 pointed for a term expiring on January 15 of the fourth calendar year
 38 following appointment and until a successor is appointed and qualified.

39 (c) In the case of a vacancy in the appointed membership of the
 40 Kansas water authority, the vacancy shall be filled for the unexpired term
 41 by appointment in the same manner that the original appointment was
 42 made. Appointed members of the authority attending regular or special
 43 meetings thereof shall be paid compensation, subsistence allowances,

2
3



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STATEMENT OF KANSAS BUILDING INDUSTRY ASSOCIATION

TO THE HOUSE ENVIRONMENT COMMITTEE

REPRESENTATIVE JOANN FREEBORN, CHAIR

REGARDING H.B. 2014

February 3, 2005

Madam Chairman and Members of the Committee, I am M.S. Mitchell, Legislative Chairman of the Kansas Building Industry Association (KBIA). KBIA is the professional and trade association of the state's home building industry, representing over 3,000 members.

KBIA appreciates the opportunity to come before you in support of H.B. 2014 and the language contained in section 1(a) lines 29-34 on page 2 of the bill. The reason for this position is that it has been my long experience as a member of elected and appointed advisory boards that staff personnel are there to serve as a resource, to provide studies and information as requested. As contained in the current law, the Legislature has provided that the ex officio members of the Water Authority are non-voting. My experience is that non-voting members don't make motions or even participate in the discussion of a motion.

We encourage your favorable consideration of H.B. 2014.

House Environment Committee
February 3, 2005
Attachment 3



**Testimony on Kansas Water Authority
Ex-Officio Member Provisions**

**Presented to
The House Environment Committee
HB 2014**

**Tracy Streeter, Director
Kansas Water Office
February 3, 2005**

Representative Freeborn and members of the Committee, I am Tracy Streeter, Director of the Kansas Water Office. By statute, I also serve as Secretary to the Kansas Water Authority (KWA). I appear this afternoon representing the position of the KWA. The KWA opposes the proposed amendments to K.S.A. 74-2622 as contained in HB 2014 relative to the privileges of the ex-officio members.

The KWA is a 24-member group consisting of 13 appointed members representing various water related interests. The remaining 11 members are ex-officio, non-voting members representing various state agencies/entities as designated in the statute.

The primary function of the KWA is to consider and approve policy recommendations for inclusion in *the Kansas Water Plan*. Once approved, the KWA submits these recommendations to the Governor and Legislature for their consideration. In addition to other functions, the Authority also makes recommendations on spending priorities for the State Water Plan Fund.

As previously mentioned, K.S.A 74-2622 requires ex-officio members to serve in a non-voting capacity. A 1982 Attorney General's Opinion was issued which clarified the definition of non-voting membership. The synopsis of the Attorney General Opinion 1982-047 states:

Ex-Officio members of the Kansas Water Authority are precluded by K.S.A. 1981 Supp. 74-2622 from voting on matters considered by the Authority, but such members are entitled to participate fully in that body's deliberations regarding such matters. Participation in the Authority's deliberative process includes the ability to make or second a motion, which is but a formalized expression of proposed action, and is not an integral part of the voting process whereby members of the Authority cast their votes to express approval or disapproval.

A Memorandum of Internal Policy (IPM-07), adopted by the KWA in January of 2004, further defines the role of ex-officio members. The Memorandum states:

Ex-Officio members may make or second motions in both Committee of the Whole and Full Authority meetings. Ex-Officio members of the Kansas Water Authority may make and second motions as well as cast votes in select committees established by the Authority. In accordance with K.S.A. 74-2622, ex-officio members of the Kansas Water Authority may not vote on matters of Final Action before the Kansas Water Authority Committee of the Whole or the Full Authority.

The Kansas Water Authority values the role of ex-officio members and feels strongly that the ability of the ex-officio members to make and second motions as part of the deliberation process is vital to a strong private/public partnership embodied in the Kansas water planning process. The Authority is also committed to maintaining and enhancing the public's trust in this endeavor. To that end, Steve Irsik, KWA Chairman, has agreed to revisit the Memorandum of Internal Policy (IPM-07) at the next meeting of the Authority to determine what changes, if any, need to be made to the policy to ensure consistency with the statute and interpretations made by the Attorney General.

In summary, the Kansas Water Authority is opposed to the proposed changes contained in HB 2014 limiting the participation by ex-officio members in the deliberations process of the Authority. I would like to thank you, Representative Freeborn and members of the Committee for the opportunity to share the position of the Kansas Water Authority. I would be happy to stand for questions at the appropriate time.