

MINUTES OF THE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 P.M. on February 16, 2006 in Room 519-S of the Capitol.

All members were present except:

Representative Steve Huebert- excused
Representative Tom Sawyer- excused
Representative Mario Goico- excused
Representative Tom Holland- excused
Representative Melody Miller- excused
Representative Jim Yonally- excused

Committee staff present:

Mike Heim, Legislative Research Department
Martha Dorsey, Legislative Research Department
Theresa Kiernan, Revisor of Statutes Office
Maureen Stinson, Committee Secretary

Conferees appearing before the committee:

Rep. Gary Hayzlett
Tim Howison
Gary Hanson - KS Rural Water Association
Dennis Schwartz - KS Rural Water Association
Mark Crumbaker - Rural Water District #6, Johnson County

Others attending:

See attached list.

Committee Members Huebert, Sawyer, Holland, Goico, M. Miller, and Yonally were excused from the Tuesday, February 14, 2006 meeting in order that they could attend a sub-committee meeting relating to **HB 2742**.

Chairman Vickrey opened the hearing on:

HB 2720 **Planning and zoning; plat approval procedure; reasons for non-approval**

Rep. Hayzlett testified in support of the bill. He explained that the bill would amend current law regarding plat approval to require that a planning commission or joint committee on subdivision regulations provide written notification to the property owner(s) when it finds a plat does not conform to subdivision regulations.

Dave Holtwick, Home Builders Association of Greater Kansas City, submitted written testimony in support of the bill (Attachment 1).

John Smith, a certified planner and a resident of Liberal, submitted written testimony in support of the bill (Attachment 2).

Chairman Vickrey closed the hearing on **HB 2720**.

HB 2720 **Planning and zoning; plat approval procedure; reasons for non-approval**

Rep. Oharah made a motion to amend the bill to require that details of the denial or deferral be required in writing. Rep. Lane seconded the motion. Motion carried.

Rep. Oharah made a motion for the favorable passage of **HB 2720** as amended. Rep. Swenson seconded the motion. Motion carried.

CONTINUATION SHEET

MINUTES OF THE House Governmental Organization and Elections Committee at 3:30 P.M. on February 16, 2006 in Room 519-S of the Capitol.

HB 2721 **Water districts; detachment of territory**

Rep. Hayzlett testified in support of the bill.

Tim Howison, Howison Heights Water District, testified in support of the bill (Attachment 3). He emphasized that Rural Water Districts have their own administrative hearings and make their own decisions.

Gary Hanson, Kansas Rural Water Association, testified in opposition to the bill (Attachment 4). He stated that the bill would result in no liability for any "proportionate share" of outstanding indebtedness, or any other compensation, being payable to the District as a result of the detachment.

Dennis Schwartz, testified in opposition to the bill (Attachment 5). He said that allowing any one landowner to detach property without due consideration by the Board of Directors could result in a patchwork puzzle of water service boundaries.

Mark Crumbaker testified in opposition to the bill (Attachment 6). In addition to representing Consolidated Rural Water District No. 6, Johnson County, he also spoke on behalf of the following rural water districts: Rural Water District No. 7, Johnson County, Rural Water District No. 2, Miami County, Rural Water District No. 4, Douglas County, Rural Water District No. 1, Ellsworth County. He said that the unintended consequence of the proposed legislation is that rural water districts will be discouraged from undertaking the planning and capital spending required to promote economic development.

Rep. Vickrey closed the hearing on **HB 2721**.

Approval of Minutes

Rep. Lane made a motion to approve the minutes of the February 14, 2006 meeting. Rep. Beamer seconded the motion. Motion Carried.

Chairman Vickrey adjourned the meeting.

The next meeting is scheduled for Tuesday, February 21, 2006.

**House Governmental Organization and Elections
Committee**

Date 2-16-2006

Name	Representing
Mark Crumbaker	Cons. RWD 6 Johnson Co
SCOTT SCHULTZ	Rural Water District No. 4, Douglas Co.
Jerry Bennett	MI CO RWD 2
ALLAN SOETAERT	RURAL WATER DIST No 7, JOHNSON Co.
DARCEL GRIFFIN	ORTON CO. RWD #2
Gary Hanson	KRWA
Dennis Schwartz	KRWA
Don Murray	Federico Consulting
Tim Howison	Howison Hgts., W.D.
Rep. Hayzlett	LEGISLATOR
Marsha New Smith	LMHA



**HOME BUILDERS ASSOCIATION
OF GREATER KANSAS CITY**



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Testimony in Support of HB 2720

Submitted By: Dave Holtwick

On Behalf of: Home Builders Association of Greater Kansas City

House Committee on Governmental Organization and Elections
February 16, 2006

Chairman Vickrey and Committee members:

Thank you for the opportunity to submit this written testimony in support of HB 2720. An orderly, fair and well defined process for development approval is very important to our members and to the residential construction industry in the state of Kansas. My name is Dave Holtwick and I am with the Home Builders Association of Greater Kansas City where I serve as Staff Vice-President of Governmental Affairs. Our association consists of over 1,200 member companies engaged in the home building industry in the Kansas City area. I am asking you to support House Bill 2720.

Our Association supports uniform and consistent rules and regulations that affect our industry. That applies to building codes, zoning laws, development fees and taxes and we believe passage of HB 2720 will help provide details in writing related to the development approval process that might otherwise be open to interpretation and misunderstanding. Fair and consistent regulations are critical to help plan and manage your business and communications related to those regulations are critical, as well.

In addition to the changes recommended by this legislation, I would like to see an additional change made at the end of subparagraph (c) on page 2, line 9. The addition of "Such notice shall be in writing." would provide written details from the governing body for their denial or deferral of approval.

Thank you, again, for your interest and attention. Please support HB 2720.

Sincerely,

Dave Holtwick
Staff VP-Kansas Governmental Affairs

House Gov. Org. & Elections
Date: 2-16-2006
Attachment # 1

JOHN T. SMITH

Land planning, development & management # investments # real estate brokerage
 404 N Kansas # Liberal, KS 67901-3330 # vox/fax 620-624-1834 # jtsa@liberal.net

Wednesday, February 15, 2006

Rep Jene Vickrey, Chm.
 Govt. Organ. & Elections
 Capitol Office 115-S
 Topeka, KS 66612

Re: HB 2720

Dear Chm Vickrey & Committee Mbrs.

The change being considered to KSA 12-752 by the committee Thursday appears as an italicized addition in lines 38-40. That is well and good for clarification of the requirements and responsibilities before the planning commission or joint committee.

As a certified planner with 40+ years involvement in city planning, however, I can say the real problem in getting final subdivision approvals is more often with the governing bodies, not the appointed planning commission or the joint committee. The heart, judgment & real expertise in developing a subdivision is worked out during the preliminary and final platting process, done in connection with the staff & advisory commission/committee, and considers the development objectives and how to accomplish them in the context of the subdivision regulations. It goes astray when the governing body, usually uninformed regarding their appointed bodies work, brings in extraneous requirements.


Similar wording to that proposed in subparagraph (b) needs to be inserted on the second page in subparagraph (c), probably as an additional sentence at the end of that subparagraph (pg 2, line 9), maybe reading substantially as follows:

Such notice shall be in writing and shall specify in detail the reasons the deferral or refusal of plat dedications are contrary to the requirements of the subdivision regulations and of the plat approved by the planning commission or the joint committee.

The original intent of KSA 12-752 was for the subdivision plat approval work to be done by the planning commission or joint committee and the only remaining formality was for the governing body to accept the dedications, i.e. subparagraph (c), first sentence. Getting the above sentence inserted in (c) might keep the intent more clearly focused and might more directly address the governing body responsibility in this regard.

Your consideration of this matter and including the additional insertion is appreciated.

Sincerely,



John T. Smith, AICP
 Master in Urban Planning (Mich St Univ); Certified Planner (Am Inst of Certified Planners)

sec32legis hb 2720 hearing

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22721
Testimony of: Tim Howison, Howison Heights
TERRITORY OF RWD'S Water District

2-16-2006

- 1) Based on what they apply for with the counties.
 - A) Has nothing to do with what they're capable of serving!
 - B) Unlike electric companies, that have massive reserves to expand with, RWDs do not have large reserves.
- 2) Sometimes go on for years of turning down hook-ups, before they receive a threat of intervening alternatives for water
 - A) Then all of sudden they do have water, when in reality they don't.
 - B) They go to great extents to try and justify that they have water. The same process is often used in presentations to Planning Commissions, County Commissioners, and a Judges.

The 82-646a Law for RWDs

- 1) This law gives the RWDs exclusive territory to do as they wish. No one to answer to.
- 2) The RWDs have their own Administrative Hearing, where they are their own judge, jury and hangman. They make all of the decisions, regardless of the facts. If they don't want you to provide water, they simply say no. doesn't matter what their capacities are, they simply lie past it. As the law states: The burden of proof is on the petitioner. But is it really?
- 3) The facts say no. They simply rule as fits them best.
 - A) The fact that the RWD had turned people down for years has nothing to do with what is right. They simply say no.
- 4) Lack of due process in the law.

The petitioner has no chance in their administrative hearings and they know it. That's why it is set up that way.

 - 1) An appeal to the court is still set based upon proving them to be wrong. This is difficult to do when they refuse to cooperate with their data requested.
- 5) What ever happened to what was in the best interest of the public?
 - A) The best water! The best supply! Providing water to a user from a system that was not overburdened already as the RWDs system was.
- 6) RWDs and electric utilities are not on the same playing field!

This is not apples to apples!

It is a very simple fact! RWDs do not have the monetary resources to continually expand in any given situation. Some are able to get past this, and some are not.

- A) Many do not have large capacities for the expansions.
 - 1) But rather than admit this and allow someone to dare to infringe on their territory, they simply lie, and say they do not have capacity.
 - 2) If this isn't a problem, then why does the KRWA give classes on this subject by attorneys like Gary Hanson who represents the KRWA.
 - 3) Many classes are given on developers and the burden they create on RWDs. This is an ongoing issue with RWDs. Supply and demand.
- 1) In Saline County we have 11 water suppliers.
 - A) Of those, six are short of water currently and possibly more.
 - 1) There is no cooperation among those to form coalitions or networks to work together.
 - 2) Even within the last two years the Corp of Engineers held several meetings among districts and cities to hopefully do some future planning for water networks, in the Saline River Basin. So there is a shortage!

- 2) Until a network is set into motion or something along that line of thinking, water needs to be more readily provided. The current statute has been obsolete for some time because of how it is abused.
 - A) If one only knew about the amount of growth that is being held up, because of refusal of RWDs refusal to provide water (Of course when not challenged by alternative source of supply), or when fighting to supply water when they don't really have it.
- 3) There needs to be alternative to readily getting water if needed! The proposed statute provides that.



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February 16, 2006

**House Committee on Governmental
Organizations and Elections**

Re: HB 2721

Dear Mr. Chairman and Members of the Committee:

As General Counsel to the Kansas Rural Water Association, I am testifying in opposition to HB 2721. The statute that this Bill would effectively replace, KSA 82a-646, was passed by the Legislature in 1999. That statute was the result of an effort to develop a balanced approach to the release of land from rural water districts resulting in a carefully structured consideration of the interests of the respective parties to be made by the Rural Water District Board, subject to review by the District Court. This process has been used to good effect innumerable times throughout the State.

Aside from the policy considerations of eliminating the need for balancing of the respective interests as well as bypassing rural water district boards entirely in the territory release process, House Bill 2721 contains, in our view, numerous defects that could result in questionable results. Some examples are as follows:

1. The Bill requires the detachment of land from the territory of a Rural Water District if the County Clerk determines that a Petition requesting such release has been signed by the owners of 70% or more of the land proposed to be detached or by 70 % or more of the owners of record of the land proposed to be detached. This could produce some very odd results. For example,

A. See map "A", attached. For purposes of this example, a Petition describing a 100 acre tract is filed, signed by one person who owns 70 acres, but not signed by any of the 30 owners of the other 30 acres described in the Petition. According to this Bill, all 100 acres would have to be detached from the District.

B. See map "B", attached. For purposes of this example, a Petition describing a 100 acre tract is filed, signed by seven owners who combined make up the owners of 30 acres but not signed by any of the three owners who own the remaining 70

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acres described in the Petition. The entire 100 acres must be ordered detached from the District.

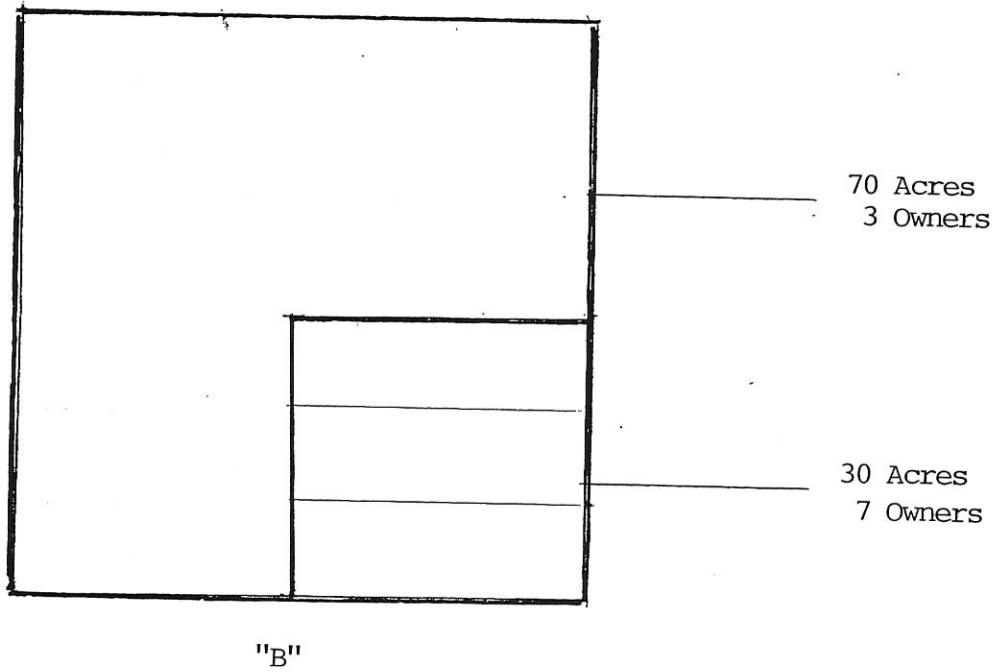
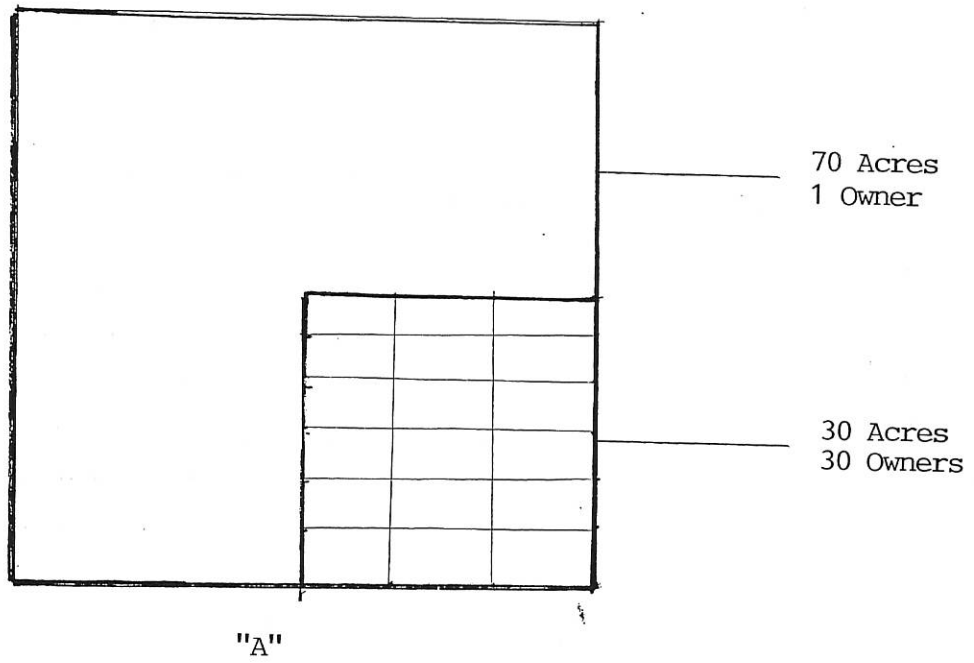
2. The Bill provides that the land detached from the District be liable for its proportionate share of outstanding indebtedness of the District as of the date of the detachment. "Land" in a Rural Water District is never liable for District indebtedness. Rural Water Districts have no authority to levy taxes (KSA 82a-615). It is not clear what Section 1(c) of the Bill is intending to accomplish, but it is our opinion that this Bill would result in no liability for any "proportionate share" of outstanding indebtedness, or any other compensation, being payable to the District as a result of the detachment.

For the reasons outlined above and those submitted by the other conferees, the Kansas Rural Water Association respectfully requests that the Committee take no action on House Bill 2721.

Respectfully Submitted,



GARY H. HANSON
General Counsel





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**Comments on HB 2721
Before the House Committee on Governmental
Organizations and Elections
February 16, 2006**

Mr. Chairman and Members of the Committee:

My name is Dennis Schwartz. I am President of the Board of Directors of the Kansas Rural Water Association. I am also Manager of Rural Water District No. 8, Shawnee County. I appreciate the opportunity to present comments on HB 2721 on behalf of the 295 rural water districts in Kansas of which 256 are active members of the Association.

The specifics of the issue aside, HB 2721 would circumvent involvement by the local rural water district board – which is the same entity that worked to create and provide water service. To allow any one landowner to detach property without due consideration by the board of directors could result in a patchwork puzzle of water service boundaries. This is contrary to the overall interests of citizens who participate in the funding of projects to ensure that citizens of the area can be provided service.

This Bill would raise significant concerns for all rural water districts in that it would completely disenfranchise not only the governing body of the district, but also the board of county commissioners. The language states that the county clerk is to determine whether the petition is sufficient, then notify the board of commissioners of such. The Bill then dictates that the board of commissioners shall enter an order approving the petition for detachment. We appreciate that there are circumstances where it is most appropriate for land to be released from one system in favor of another system. However, it is logical that there should be a thorough discussion on the merits of such an action, complete with the ability of both the board of directors of the RWD, and the board of county commissioners to exercise their discretion on the matter.

The Kansas Rural Water Association requested and in 1999 the Legislature provided a means for landowners to detach properties from rural water districts. That legislation, KSA 82a-647, involves due process and protects the interests of both the local rural water district and landowner. HB 2721 would effectively replace that statute, eliminating the opportunity for the water district's interests to be considered.

The Kansas Rural Water Association respectfully requests that no action be taken on HB 2721.



Dennis F. Schwartz
President, Kansas Rural Water Association

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February 16, 2006

**House Committee on Governmental
Organizations and Elections**

Re: HB 2721

We are representatives of a group of like-minded Kansas Rural Water Districts associated in opposition to HB 2721. Our districts are members of the Kansas Rural Water Association and the Kansas Section of the American Water Works Association.

Upon reviewing HB 2721, we have concluded this legislation would impede growth and development in those portions of Kansas served by rural water districts.

Though intended to enhance development options for certain landowners, the unintended consequence would be to increase development impediments and costs for the vast majority of landowners. Our reasons for reaching this conclusion follows:

Discourages Planning for Growth and Development by Increasing Risk

Long-term planning for future growth requires business decisions about the acquisition of water supplies and treatment, the location and construction of storage facilities, and the installation of a gridwork of transmission mains to serve those locations where growth is anticipated. All of these are expensive, take years to implement, and include inherent risk. By introducing the additional risks of uncontrollable detachment of service area and inadequate compensation for any territory detached, total business risk for planning for future growth will be increased to a level unacceptable to most districts.

Undervalues Detached Assets thereby Increasing Costs

This legislation would penalize those foresighted districts that have planned for and invested in the infrastructure required for future growth. Though this legislation proposes to compensate the district for a portion of its outstanding debt, this compensation is woefully inadequate. It fails to take into account the fact that most water utility assets are specific to a geographic area and cannot simply be moved to another location. Further, much of the cost of long-term water supply is fixed, in that it neither decreases as demand falls, nor can it be increased without significant capital investment. This penalty would result in increased costs for both current customers and future developers.

Distorts Capital Spending Priorities

This legislation would create an incentive to fund only those capital projects benefiting existing customers as opposed to those capital projects fostering future development. When new development requiring new facilities is proposed, districts factor in the potential for other nearby development when determining what portion of cost is assessed to the developer and what is paid by the district. Because of the uncertainty created by this legislation, that portion of expense allocated solely to developers will increase.

Encourages Unsound Business Practices

Because compensation for lost service area would be limited solely to a portion of outstanding debt, districts will be encouraged to finance capital projects via debt, rather than by accumulating reserves from operating profits and connection fees. As a result, capital costs will be higher for districts (and thus will be higher for the customers of rural water districts, including developers); and, undue pressure

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will be put on the limited existing sources of funding available for capital projects.

Creates Inefficient and Uneconomical Service Areas

This legislation would result in jagged boundaries, noncontiguous service areas, and islands of unserved areas within a district's boundaries. Such situations will not only be confusing to the general public but will result in increased operating and capital costs. The overlapping of the service areas of different water suppliers will result in redundant transmission mains and storage facilities, and, therefore, increased costs to the customers of both water suppliers.

Discourages Cooperation and Renders Territorial Agreements Worthless

Because of the requirements of current Kansas statutes, water suppliers routinely transfer service area from one to another to ensure that customers get the most efficient and economical water service. Increasingly, water suppliers are entering into territorial agreements with neighboring districts and cities to provide for efficient and economical growth, eliminate service redundancies, and minimize costly territorial disputes. This legislation would undermine the public benefit of these agreements and discourage such agreements in the future.

Summary

We believe it is wise and appropriate for the legislature to ensure rural water districts are held responsible for fostering economic growth, and, at the very least, not become impediments to such growth. Although it appears to us that the intent of HB 2721 is to spur rural water districts to be responsive to economic growth concerns, we firmly believe the unintended consequence of this legislation will be exactly the opposite — rural water districts will be discouraged from undertaking the planning and capital spending required to promote economic development. We urge you to NOT support this proposed legislation.

Respectfully Submitted,

Mark Crumbaker, General Manager
Consolidated RWD No. 6, Johnson Co.

Scott Schultz, District Administrator
RWD No 4, Douglas Co.

Allan Soetart, General Manager
RWD No. 7, Johnson Co.

David Bailey, General Manager
RWD No. 1, Ellsworth Co.

Jerry Bennett, General Manager
RWD No. 2, Miami Co.