

Date

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Kenny Wilk at 9:00 A.M. on February 8, 2006 in Room 519-S of the Capitol.

All members were present except:
Representative Gordon - excused

Committee staff present:
Chris Courtwright, Legislative Research Department
Gordon Self, Revisor of Statutes
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee:
Representative Jerry Henry
Representative Jene Vickrey
Secretary Wagon, Kansas Department of Revenue (DOR)
Tony Folsom, Deputy Director of Property Valuation Division, DOR
Derek Franklin, Co-Chair of the Sports Complex Committee
Ross A. VanderHamm, Paola City Manager
Mark Low, Meade County Appraiser
Judy Moler, General Counsel/Leg. Services Director, Kansas Association of Counties
Rebecca W. Crotty, Chairperson, Kansas Board of Tax Appeals (BOTA)
Trevor C. Wohlford, Executive Director/Attorney, BOTA
Linda Terrill, Attorney, Neill, Terrill & Embree
Marlee Carpenter, The Kansas Chamber of Commerce
Paul Welcome, Johnson County Appraiser, written testimony only

Others attending:
See attached list.

Representative Kirk introduced her intern, Carli Watkins, from Kansas University and Representative Treaster called attention to pages serving from Haven, Kansas.

The Chairman opened the floor for bill introductions.

Representative Huntington requested a bill introduction regarding sales tax credits for motion picture production companies. Representative Owens made a motion to introduce Representative Huntington bill request. Representative O'Malley seconded. The motion carried.

HB 2681 - Authorizing countywide retailers' sales tax for Atchison county.

Representative Jerry Henry said that the bill would allow Atchison County to impose a .25% local retailer's sales tax to finance the costs of construction and maintenance of sports and recreational facilities. The people of Atchison County would have the opportunity to vote on this issue (Attachment 1). He introduced Glenda Purkis, President of the Atchison Chamber of Commerce.

Derek Franklin said that the mission of the Sports Complex Committee is to build a multi-faceted sports facility in Atchison County. There have been public meetings and to date, a total of \$38,000 has been raised for this project. An option on a parcel of land is near finalization and both school districts in Atchison County are very supportive of this project (Attachment 2).

The Chairman closed the public hearing on **HB 2681**.

Representative Huff made a motion that the Committee move **HB 2681** out favorably and place it on the consent calendar. Representative Thull seconded the motion. The motion carried.

HB 2794 - Classification of cities for sales taxation purposes.

Representative Jene Vickrey, sponsor of the bill, spoke about the overwhelming community support of the bill. He urged the Committee to pass the amendment that would identify the City of Paola as

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on February 8, 2006 in Room 519-S of the Capitol.

a Class D City, permitting them to submit to their voters a ballot question regarding tax increases (No written testimony).

Ross A. VanderHamm, Paola City Manager, testified that Paola is experiencing unprecedented growth and with that comes the typical growing pains and exposure of deficiencies in their infrastructure, as well as their community buildings. The ability to allow taxpayers to consider an increase in their sales tax rate to assist in upgrading the vital infrastructure needs of Paola is what **HB 2794** provides, and he urged passage of the bill. Attached to his testimony were letters reflecting community support (Attachment 3).

The Chairman closed the public hearing on **HB 2794**.

Representative Huff made a motion that the Committee move **HB 2794** out favorably and place it on the consent calendar. Representative Treaster seconded the motion. The motion carried.

HB 2767 - Increasing membership of the board of tax appeals.

Chris Courtwright said that the bill would expand the membership of the State Board of Tax Appeals from three to five members. During the 2003 session the legislature decreased that number from five to three members. There would be a fiscal note commensurate with two salaries equal or level to district court judge. Mr. Self reviewed the requirements for a position on the BOTA board.

The Chairman opened the hearing on **HB 2767**.

Proponents:

Mark Low, Meade County Appraiser, testified on behalf of the Kansas County Appraisers' Association. He said that on many occasions there were only two members serving on the State Board of Tax Appeal due to lack of qualified people to serve resulting in split decisions or delays due to conflict of interests. Residential cases can take anywhere from six to eleven months for a decision, and commercial cases takes nine months or more to get a decision. With five members there would be a better chance that at least two members would be able to hear cases at any given time and should help speed up the decisions (Attachment 4).

Judy Moler, General Counsel/Legislative Services Director, Kansas Association of Counties, testified that the Association support the bill (Attachment 5).

Paul Welcome, Johnson County Appraiser, submitted testimony in support of increasing BOTA from three to five members, which would enable them to handle the backlog of cases and become current with residential cases being heard in the original tax calendar (Attachment 6).

Neutral:

Rebecca W. Crotty, Chairperson, Kansas State Board of Tax Appeals, provided input about the potential impact of the proposed bill and discussed alternative measures to improve agency operations. The fiscal impact would add at least \$260,000 for two new members, and \$50,000 in salaries and benefits for support staff plus additional dollars for moving and office space expenses.

She delineated three alternatives for improved operations: 1) Technology improvements, 2) Pre-hearing and discovery procedures and 3) One member decision-making authority. Ms. Crotty explained the current status of BOTA's docket. She explained that the process is in transition and another six months would give them the necessary time to streamline the process (Attachment 7).

Trevor Wohlford, BOTA explained the current process of BOTA and answered questions on the status of current cases. There was a request for the approximate time frame between hearing dates and decisions being made, and Mr. Wohlford agreed to provide that data.

CONTINUATION SHEET

MINUTES OF THE House Taxation Committee at 9:00 A.M. on February 8, 2006 in Room 519-S of the Capitol.

The Chairman requested that staff develop a series of four-to-five questions to ask counties to determine trend lines or areas of concern in order to ascertain how to streamline the system.

Tony Folsom briefed the Committee on the process of annual county audits. They compare properties that are sold to their appraised values and complete a sales ratio study to determine if counties are in compliance (10% high or low). If not, DOR assists the county to bring them back into compliance. Currently there are four or five counties out of compliance. In response to a request for the number of hearings and resolutions at the county level, Tony Folsom said he would gather that information.

Secretary Wagnon suggested that they be given 30 minutes to allow Pete Davis and his staff to present a briefing on the process of appraisal status in 30 minutes.

Opponents:

Linda Terrill, Neill, Terrill & Embree, said that for the first time in 25 years of practice in her field, the changes made by the Kansas Legislature, and subsequent appointments made by the Governor, have made the Kansas Board of Tax Appeals unquestionably the single most improved state tax tribunal in the United States. She said "Currently Kansas law requires 'two' BOTA members to 'act.' If they remove the requirement for two to act, then one member could hear and decide a case with a statutory right to appeal that decision to the full board. This would solve the problem and cost nothing"(Attachment 8).

Marlee Carpenter, KS Chamber of Commerce, said that the Chamber had concerns over difficulty in finding additional qualified members to serve. She requested that if Board membership is increased, qualification of membership be closely scrutinized (Attachment 9).

After discussion about the pros and cons of Linda Terrill's suggestion to change the requirement for two members to act with a statutory right to appeal that decision to the full board, the Chairman said he was inclined to introduce an amendment regarding that change. However, he said he would wait until a later date. He requested that Ms. Terrill prepare a balloon amendment that addressed her change.

The Chairman closed the hearing on **HB 2767.**

The meeting was adjourned at 10:30 A.M. The next meeting is February 9, in 313-S, which is a joint meeting of the Taxation and Utility Committees.

HOUSE TAXATION COMMITTEE GUEST LIST

DATE: 2-8-06

NAME	REPRESENTING
Gunn Burkes	DOB
J. Fred Kubik	BOTA
LINDA TERRILL	7 SELF
Lindsay Campbell	BOTA
Doug McKinney	NC Regional Planning Commission
Johanna Moller	Leadership Mitchell Co.
Bin Edert	1st National Bank
Chi Jones	City of Beloit - LMC
Carli Watters	Rep Kirk
Hanitt Lang	KAB
Judy Malin	KAC
Drew Wohlford	BOTA
Tony Folson	KDOR
Jackie Clark	Hallmark
Mark Carpenter	RS Chamber

STATE OF KANSAS

JERRY HENRY

REPRESENTATIVE, SIXTY-THIRD DISTRICT
ATCHISON AND DONIPHAN COUNTIES

3515 NEOSHO RD.
CUMMINGS, KANSAS 66016
HOME: (913) 367-2050

STATE CAPITOL—284-W
TOPEKA, KANSAS 66612-1504
(785) 296-7688

1-800-432-3924 (IN SESSION)
E-MAIL: henry@house.state.ks.us



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

MEMBER: HOUSE APPROPRIATIONS COMMITTEE
SOCIAL SERVICES BUDGET COMMITTEE
HOUSE TRANSPORTATION COMMITTEE
JOINT COMMITTEE ADMINISTRATIVE
RULES AND REGULATIONS
NCSL ASSEMBLY ON FEDERAL ISSUES—
HEALTH COMMITTEE

February 8, 2006

Chairman Wilk,
Members of the House Taxation Committee:

Thank you for the opportunity to appear before you today to ask for your favorable passage of House Bill 2681. HB 2681 would allow Atchison County to impose a .25% local retailer's sales tax to finance the costs of construction and maintenance of sports and recreational facilities.

I have had the opportunity to meet with the Atchison County Commission on this issue on several occasions and they have expressed to me their desire for this bill to be introduced.

The Atchison community has been working on this sports complex project for many years. There have been a number of public meetings concerning the need of a new sports complex for our community. It is my hope that we can pass this bill so as to allow the citizens of Atchison County the opportunity to vote on this very important issue.

Thank you for your time today, and I will be happy to stand for questions.

Jerry Henry
State Representative
63rd District

House Taxation
2-8-06
Attachment 1

**House Taxation Committee
House Bill 2681
Comments from Derek Franklin
Atchison Area Chamber of Commerce
Sports Complex Committee
9 a.m., February 8, 2006
Room 519S**

200 S. 10th / P.O. Box 126, Atchison, Kansas 66002
phone 913 367 2427 fax 913 367 2485
www.atchisonkansas.net

"It's a Great Day in Atchison"

Ladies and Gentlemen, thank you for the opportunity to speak today. My name is Derek Franklin. In addition to owning and operating the Hardware Store in Atchison, I serve as co-chairman of the Sports Complex Committee. Our mission is to build a multi-faceted sports facility in Atchison County.

This project is long over-due. For decades, our youth and adults have been challenged with outdated facilities scattered throughout the county. While this did serve the purpose of playing sports, the inconvenience and lack of modern facilities has impacted the community. Currently, there are over 2000 Atchison County youth utilizing facilities scattered throughout the county and as far away as St Joseph, Missouri.

Atchison County is ready for a sports complex. Over the past few months, we have held public meetings to determine the needs and possible funding mechanisms. We have determined that the most equitable source of financing a facility is through a one-quarter cent sales tax. We wish to raise enough money from the sales tax to build a facility and provide maintenance funds for the future. It is our plan to sunset the sales tax as soon as those goals are accomplished.

Upon the passage of House Bill # 2681, we will ask the Atchison County Commission to proceed with notice of election. Our committee has involved dozens of volunteers in this grass roots effort. To date, a total of \$38,000 has been raised for this project.

An option on a parcel of land is near finalization and hundreds of county residents have expressed their support for a new sports complex. Both school districts in Atchison County are very supportive of this project.

We ask you to help move this process along. I would entertain any questions you might have.



House Taxation
2-8-06
Attachment 2

City of Paola, Kansas

February 8th, 2006

Chairman Kenny Wilk, House of Representatives
Kansas House Committee on Taxation, Room 519-S
State Capitol
Topeka, Ks 66612

Re: House Bill 2794

Honorable Representative Wilk and Members of the House Committee on Taxation:

I appreciate the opportunity to meet with you regarding HB 2794. This amendment to K.S.A. 2005 Supplement 12-188 identifies the City of Paola as a Class D city. It would allow us to submit to our voters a ballot question increasing our retail sales tax rate for the specific purpose of funding infrastructure improvements, including perhaps a portion of the debt service for a new fire station.

Currently, the City of Paola has a 1% retail sales tax that brought in over \$1,285,000 in 2005. Half of this 1% has been dedicated (through a community supported ballot question) for the past ten years, specifically to pay the debt service for a new Aquatic Center. In November of last year, the community again strongly supported the renewal of this ½% sales tax for a new police station and the refurbishing of our Library, Community Center and City Hall.

The City of Paola is experiencing unprecedented growth, but with that comes the typical growing pains and the exposure of deficiencies in our infrastructure, as well as our community buildings. The ability to allow our taxpayers to consider an increase in their sales tax rate to assist in upgrading the vital infrastructure needs of Paola is what HB 2794 provides, and I encourage you to seriously consider approval of this bill.

Thank you for your time and deliberation.

Sincerely,



Ross A. VanderHamm
Paola City Manager



HOUSE BILL No. 2794

By Committee on Taxation

2-1

9 AN ACT concerning sales taxation; relating to city retailers' sales tax; class
10 D cities; amending K.S.A. 2005 Supp. 12-188 and repealing the exist-
11 ing section.

12

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

14 Section 1. K.S.A. 2005 Supp. 12-188 is hereby amended to read as
15 follows: 12-188. The following classes of cities are hereby established for
16 the purpose of imposing limitations and prohibitions upon the levying of
17 sales and excise taxes or taxes in the nature of an excise upon sales or
18 transfers of personal or real property or the use thereof, or the rendering
19 or furnishing of services by cities as authorized and provided by article
20 12, section 5, of the constitution of the state of Kansas:

21 Class A cities. All cities in the state of Kansas which have the authority
22 to levy and collect excise taxes or taxes in the nature of an excise upon
23 the sales or transfers of personal or real property or the use thereof, or
24 the rendering or furnishing of services by cities.

25 Class B cities. All cities in the state of Kansas which have the authority
26 to levy and collect excise taxes or taxes in the nature of an excise upon
27 the sales or transfers of personal or real property or the use thereof, or
28 the rendering or furnishing of services for the purpose of financing the
29 provision of health care services.

30 Class C cities. All cities in the state of Kansas having a population of
31 more than 290,000 located in a county having a population of more than
32 350,000 which has the authority to levy and collect excise taxes or taxes
33 in the nature of an excise upon the sales or transfers of personal or real
34 property or the use thereof, or the rendering or furnishing of services.

35 Class D cities. All cities in the state of Kansas located in Cowley, Ellis,
36 Ellsworth, Finney, Harper, Johnson, Labette, Lyon, Montgomery, Osage,
37 Reno, Woodson or Wyandotte county or in both Riley and Pottawatomie
38 counties *and the city of Paola*, all of which have the authority to levy and
39 collect excise taxes or taxes in the nature of an excise upon the sales or
40 transfers of personal or real property or the use thereof, or the rendering
41 or furnishing of services.

42 Sec. 2. K.S.A. 2005 Supp. 12-188 is hereby repealed.

43

City of Paola, Kansas

February 8th, 2006

Chairman Kenny Wilk, House of Representatives
Kansas House Committee on Taxation, Room 519-S
State Capitol
Topeka, Ks 66612

Re: House Bill 2794

Honorable Representative Wilk and Members of the House Committee on Taxation:

The Paola City Council and I wish to clearly express our support of HB 2794. As a growing, historically significant community, which celebrated it's Sesquicentennial Birthday last year, the need to continue investing in our infrastructure is essential. HB 2794 will provide an opportunity for the citizens of Paola to voice their support for it's future.

We appreciate the opportunity to have you consider this legislation, and thank you for your time and deliberation.

Sincerely,



Artie Stuteville, Mayor

Paola Council Members Jack Rowlett, LeAnne Shields, Stan Moulder, and Jim Pritchard





PAOLA
CHAMBER OF COMMERCE

3 West Wea Street
Paola, Kansas 66071

February 7, 2006

Chairman Kenny Wilk, House of Representatives
Kansas House Committee on Taxation, Room 519-S
State Capitol
Topeka, Ks 66612

Re: House Bill 2794

The Paola Chamber of Commerce took a poll of the membership regarding the House Bill 2794. The response was almost unanimous in support of the Bill.

Sincerely,
Carol Everhart
Executive Director

Paola Chamber of Commerce
3 West Wea Street, Paola, Kansas 66071
Phone: (913) 294-4335 * Fax: (913) 294-4336 * E-mail: mgr@paolachamber.org
<http://www.paolachamber.org>

"Promoting your business is our business."

**KANSAS COUNTY APPRAISERS' ASSOCIATION
P.O. BOX 988
MEADE, KANSAS 67864**

TO: House Taxation Committee

FROM: Mark Low Meade County Appraiser

RE: HB 2767

DATE: February 8, 2006

Good Morning, my name is Mark Low, Meade County Appraiser and I am here to Express the Kansas County Appraisers' Associations position on the proposed legislation.

KCAA is in favor of going to a five member board for the State Board of Tax Appeals for the following reasons.

1. Since the Board was changed to the present status of three members with specific background it seems that the Governor has had trouble finding qualified people to serve on the board. This leads to long vacancies.
2. With only two members (as has been the case for the last several months) you are continually faced with a split decision or one of the members has a conflict of interest and must recuse themselves, which will cause long delays in decisions being rendered.
3. At the County level we have seen residential cases take anywhere from 6 to 11 months for a decision, and commercial cases take 9 months or more to get a decision.
4. These long delays are causing some concern to counties, cities and school districts as to the ability to collect taxes in a timely manner and function efficiently.
5. We believe that with five members there would be a better chance that at least two members would be able to hear our cases at any given time. This should help speed up the decisions process.
6. Attached is a print out from the BOTA. It shows that for the last three years they are falling behind on Equalization and Protest hearing, which directly effect local government's ability to collect taxes.

Thank you for your time and I will take any questions.

House Taxation
2-8-06
Attachment 4

P. 02

FAX NO. 785 295 6690

FEB-06-2006 TUN 11:45 AM KS BUREAU OF TAX APPEALS

Case Type	2001 Case		2002 Case		2003 Case		2004 Case		2005 Case	
	Filings	Closed	Filings	Closed	Filings	Closed	Filings	Closed	Filings	Closed
Complaint	0	0	0	0	0	0	1	1	0	0
Department of Administration	0	0	0	0	0	0	1	1	0	0
Division of Taxation	269	77	357	111	797	206	80	1123	100	63
EDX Exemptions	64	65	64	78	54	51	61	59	60	65
Equalization	1545	1924	1245	1837	1834	1140	1477	1077	1814	1590
IRB Exemptions	62	54	55	62	54	62	42	44	50	53
Mortgage Registration Protest	94	69	105	116	153	151	68	72	60	63
No Fund Warrant	9	10	7	6	8	9	7	6	4	5
Property Valuation	12	7	11	2	13	17	21	38	76	12
Property Valuation Exemption	4	2	6	8	3	6	10	0	56	3
Protest	693	1169	345	856	299	268	371	257	671	533
Protest Justification Reject	0	3	0	3	0	0	0	0	0	14
Reappraisal (CP)	0	0	1	1	0	0	0	0	0	0
School Appeal	2	2	2	2	1	1	3	3	3	3
Tax Exemption	3572	3316	3820	4056	3212	3214	2900	3013	2680	3170
Tax Grievance	1176	1186	1104	1164	1140	1245	497	393	428	525
Tax Settlement Claim	3	4	5	6	6	6	12	11	7	7
Total	7505	7888	7127	8308	7574	6376	5551	6098	6009	6106

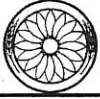


WRITTEN TESTIMONY ON HB 2767
Before the House Taxation Committee
February 8, 2006

By Judy Moler, General Counsel/Legislative Services Director

Thank you for allowing the Kansas Association of Counties to comment favorably on HB 2767. This bill would increase the Board of Tax Appeals from its current 3 member board to five. It is the opinion of the KAC that the increase of membership would allow for the hearing of tax appeals more expediently. The shift from five members down to five has allowed for a 'backlog' of cases....especially at the time when there have been only two positions filled.

The Kansas County Appraisers Association which is an Affiliate Member of the Kansas Association of Counties has provided testimony that demonstrates the problems that have been encountered with only three (sometimes two) members of the Board of Tax Appeals.



MEMORANDUM

Office of the County Appraiser Johnson County, KS

Named "Distinguished Assessment Jurisdiction" for 2000

TO: House Taxation Committee

FROM: Paul Welcome, CAE, ASA, RMA Johnson County Appraiser

RE: HB 2767

DATE: February 8, 2005

Good Morning, my name is Paul Welcome, Johnson County Appraiser and I am here to express the Johnson County Board of County Commissioner's legislative position for this proposed legislation.

Johnson County supports increasing of the State Board of Tax Appeals (BOTA) from three to five members. The residential cases that are filed exceed the number that was scheduled during 2005. In 2005, seventy five (75) cases were heard by the board. In 2003, one hundred and thirteen (113) cases were heard and for 2004 the board heard one hundred and forty four (144) cases.

For 2005, the board still had over 86 cases pending for our residential property owners. The board has set fifteen days for hearings in the first four months of 2006 and they still have over 40 cases left to be set for a hearing. This does not account for cases that may be filed from the December 2005 payment under protest.

Property owners have waited over 11 months before a board decision was rendered and the Board of County Commissioners feels that is unacceptable.

From information provided by the BOTA the board has not kept up with the filings and the cases closed. The table below shows all real property accounts and the pending cases are increasing.

	Equalization			Protest		
Year	Filings	Closed	Pending	Filings	Closed	Pending
2003	1,844	1,140		299	268	
2004	1,477	1,077		371	257	
2005	1,814	1,590		671	533	
Total	5,125	3,807	1,318	1,341	1,058	283

With this BOTA information, the filings have increased over the closed cases. This information would confirm our position that additional members are needed to handle the backlog of cases. The board feels the original size of five members would allow the board to handle the backlog of cases and become current with residential cases being heard in the original tax calendar. Our citizens deserve to have their cases heard in a timely fashion.

**PRESENTATION TO THE HOUSE COMMITTEE ON TAXATION
BY
THE KANSAS STATE BOARD OF TAX APPEALS**

**Rebecca W. Crotty, Chairperson
Trevor C. Wohlford, Executive Director/Attorney
February 8, 2006**

The Board of Tax Appeals (BOTA) is here today to take a neutral position on House Bill No. 2767. The purpose of this presentation is to provide input about the potential impact of the proposed bill and to discuss alternative measures to improve agency operations. Attached to this report is a breakdown of cases filed and cases closed in each calendar year since 2001. It should be noted that 1,259 equalization appeals were filed from Finney County in 2004 and 2005 (817 were filed in 2004 and 422 in 2005). These cases have been consolidated for hearing and decision and are therefore treated as a single case for purposes of this report.

Impact of HB 2767

House Bill No. 2767 would amend K.S.A. 2005 Supp. § 74-2433 to add two board member positions to the Board of Tax Appeals (BOTA). The bill also would require that no more than three members could be from the same political party and that one member must be appointed from each of the congressional districts of Kansas (with the remaining member appointed at large).

Fiscal Impact

House Bill 2767 would have a significant impact on BOTA's budgetary requirements. At least an additional \$260,000 would be required to fund salaries and benefits for the two new board members. It also should be noted that because board member salaries are set according to the salaries of state district court judges, any increase in salaries and benefits for district court judges would mean a concomitant increase in board member salaries. At least an additional \$50,000 in salaries and benefits would be required for staff to support the two addition members. Also, notably, the bill would result in expenses for relocation and additional rents. When the agency was reduced from five members to three members in 2003, the agency eliminated approximately 1,800 square feet of office space. That space has since been filled by the Department of Revenue, and likely would not be available should the board's membership again be increased to five. The agency therefore would be forced to move to a new location with sufficient space to accommodate additional staff. The agency would incur at least \$150,000 in moving expenses and approximately \$30,000 per year in additional rents. In sum, the immediately discernible fiscal impact of HB 2767 on BOTA would be close to \$500,000 in the first year and close to \$350,000 in each year thereafter.

Operational Impact

Before BOTA instituted new discovery and pre-hearing policies and procedures in 1998, its hearing calendar was much more busy than it is today, which necessitated a five-member board. With the new procedures in place it became apparent that a five-member board no longer was necessary to handle the agency's hearing calendar. In recognition of this reality, the Legislature reduced the board's membership to three in 2003.

Theoretically, the only area of operations in which additional board members are helpful is in the hearing process. Yet, as the agency continues to refine its pre-hearing and discovery policies and procedures, the number of BOTA hearings will steadily decline because more cases are settled or disposed of prior to hearing. There are now fewer hearings, and thus less of a need for board member coverage, than ever before. Adding two new board members would not be helpful in the decision-making process either. Under HB 2767, three board members would be required to come to agreement in all decisions, instead of the two-member majority now required. If anything, a five-member board would slow the decision-making process. The net result likely would be an overall decrease in operational efficiency.

Alternatives for Improved Operaitons

Technology Improvements. The Governor has recommended a one-time capital outlay appropriation of \$75,000 for FY 2007 so that BOTA can begin implementing new docketing technology. The docketing technology would allow a single person to docket a large portion of the agency's caseload with the use of encoded information shared between BOTA and the Department of Revenue. Currently, BOTA docket all appeals and applications by manual data entry using an outmoded case management system. In conjunction with the new docketing technology, the agency is exploring options for a new case management system. This new system will be a comprehensive calendar-based application, which will integrate docket management functions with electronic filing and document imaging, word processing and reporting technologies. The agency is in the early stages of developing this project with DISC and will be studying how best to utilize and implement updated technology.

Pre-hearing and Discovery Procedures. BOTA continues to make significant strides in its pre-hearing and discovery process. While BOTA continues to assist pro se taxpayers in all phases of the appeal and application process, the agency recently has required more formalized pre-hearing and discovery procedures for attorneys and litigants in the larger, more complex cases. In such cases, instead of supervising every phase of the discovery and pre-hearing process, as it has in the past, the agency has implemented the following procedural changes:

- When the case is docketed, the parties and attorneys of record are advised that they should begin discovery and settlement negotiations in advance of conferring with BOTA.

- After the parties and attorneys have been given ample opportunity for initial discovery and settlement discussions, the Board initiates a conference with the parties and/or attorneys of record. In the past, the Board would involve itself in all facets of the pre-hearing and discovery process, which resulted in delays and inefficient uses of administrative resources. Now, BOTA carries out a single status conference early in the proceeding, which is called a “discovery conference.” During the discovery conference, all discovery and pre-hearing deadlines are set. The attorneys are then primarily responsible for keeping the case on track and moving toward a pre-hearing conference.
- Once the case is fully prosecuted through discovery, the Board holds a pre-hearing conference. At the pre-hearing conference, the Board certifies an order that serves as a final roadmap for the hearing.

It should be noted that these new discovery and pre-hearing procedures do not apply to pro se taxpayers; it is a priority of BOTA to assist pro se taxpayers in every step of the appeal process. These new procedures apply only in the larger, more complex cases. In such cases, attorneys are expected to recognize the importance of timely, cost-effective litigation and to expedite resolution through research, articulation of claims and clarification of issues.

One Member Decision-Making Authority. Because the decision-making process appears to be the area in which delays most often occur, amending BOTA’s enabling statute to give authority to one member to decide each case would provide a significant boost to the process. Of course the parties would always have the option to appeal to a panel of all three board members if they are not satisfied with their decision. This legislative measure likely would do as much or more to move BOTA’s docket than any other measure.

Current Status of BOTA’s Docket

Since new management took over at BOTA in June 2005, the agency’s operations have improved dramatically. In the first six months of Rebecca Crotty’s tenure, the agency has seen a 60 percent increase in all cases closed, compared with closed cases in the preceding six months under the former Chairperson. Also, notably, the disposition of tax grievances and tax exemptions during Chairperson Crotty’s first six months was more than double the disposition of such cases during the preceding six months under the former Chairperson.

BOTA would welcome any further questions or comments from the committee or from the Legislature at large.

Case Type	2001 Case		2002 Case		2003 Case		2004 Case		2005 Case	
	Filings	Closed	Filings	Closed	Filings	Closed	Filings	Closed	Filings	Closed
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Division of Taxation	269	77	357	111	797	206	80	1123	100	63
EDX Exemptions	64	65	64	78	54	51	61	59	60	65
Equalization	1545	1924	1245	1837	1834	1140	1477	1077	1814	1590
IRB Exemptions	62	54	55	62	54	62	42	44	50	53
Mortgage Registration Protest	94	69	105	116	153	151	68	72	60	63
No Fund Warrant	9	10	7	6	8	9	7	6	4	5
Property Valuation	12	7	11	2	13	17	21	38	76	12
Property Valuation Exemption	4	2	6	8	3	6	10	0	56	3
Protest	693	1169	345	856	299	268	371	257	671	533
Protest Justification Reject	0	3	0	3	0	0	0	0	0	14
Reappraisal (CP)	0	0	1	1	0	0	0	0	0	0
School Appeal	2	2	2	2	1	1	3	3	3	3
Tax Exemption	3572	3316	3820	4056	3212	3214	2900	3013	2680	3170
Tax Grievance	1176	1186	1104	1164	1140	1245	497	393	428	525
Tax Settlement Claim	3	4	5	6	6	6	12	11	7	7
Total	7505	7888	7127	8308	7574	6376	5551	6098	6009	6106

74

Linda Terrill
Neill, Terrill & Embree
4707 West 135th Street, Suite #240
Leawood, Kansas 66224
Telephone: 913-814-8900
Facsimile: 913-814-8999
Lterrill@ntelaw.com

HB 2767

Thank you very much for this opportunity to speak against HB 2767.

I am a private practice attorney, practicing exclusively in the area of state & local taxation. My career began when I was appointed to serve as the General Counsel for the Kansas Board of Tax Appeals in 1984. I appear today wearing my private citizen hat.

In the year 2003, the Kansas legislature enacted legislation to increase the qualifications of BOTA members and to reduce the number of members to three. The purpose was to streamline the process and to improve the quality of decisions. Some who have spoken today argue that some cases, in their opinion, take too long to get through BOTA. However, the solution is not to revert to the old system that cried out for change a mere two years ago. The legislation that you enacted should be given a fair chance to succeed. Otherwise, these same people will be back each year asking for an increase or decrease in the membership of BOTA depending on how the docket is flowing. In my opinion, two years is not enough time to evaluate the change in the number of members.

While this bill is not a solution to the problem, there is a solution to the issue of “moving cases” and that solution is free. One BOTA member can hear a case, but Kansas law currently requires “two” BOTA members to “act”. That language has the effect of denying BOTA the ability to use the flexible provisions of the administrative procedures act found in K.S.A. 77-526. If you just remove the requirement for two to

act, then one member could hear and decide a case with a statutory right to appeal that decision to the full board.

The simple act of changing the law to allow BOTA to fully use the Kansas Administrative Procedures Act would cost nothing and solve the problem asserted here today.

Thank you, again.



Legislative Testimony

HB 2767

February 8, 2006

Testimony before the Kansas House Taxation Committee
By Marlee Carpenter, Vice President of Government Affairs

The Force for Business

835 SW Topeka Blvd.
Topeka, KS 66612-1671
785-357-6321

Fax: 785-357-4732

E-mail: info@kansaschamber.org

www.kansaschamber.org

Representative Wilk and members of the Committee;

The Kansas Chamber and its over 10,000 small, medium and large members have some reservations about HB 2767, increasing the Board of Tax Appeals membership back to five members.

Our concern is very simple. Current law establishes a Board of Tax Appeals with three members. One board seat sat vacant for many months, causing delays and problems with cases that were set to come before the Board. Our members have concerns that if finding three qualified members was so difficult, it would be next to impossible to find five qualified members.

In addition, having qualified members serve on the Board of Tax Appeals is essential. The bill calls for one lawyer and one CPA. If enacted, there could be the possibility that there be three other members of the Board without specific qualifications. If Board membership was increased back to five members we would request that qualification of membership is closely scrutinized.

The Kansas Chamber again would like to express concerns to HB 2767. We thank you for your time and I will be happy to answer any questions.

The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas

House Taxation
2-8-06
Attachment 9