

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chair Sharon Schwartz at 3:30 p.m. on February 9, 2010, in Room 144-S of the Capitol.

All members were present.

Representative Mitch Holmes, Excused
Representative Michael Peterson, Excused
Representative Mike Slattery, Absent

Committee staff present:

Mike Heim, Office of the Revisor of Statutes
Kristen Kellems, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Carol Bertram, Committee Assistant

Conferees appearing before the Committee:

Representative Larry Powell, 117th District
Representative Ann Mah, 53rd District
Rita Mohr, Director of Unclaimed Property, Treasurer's Office
David Corbin, Department of Revenue

Others attending:

See attached list

After calling the meeting to order, Chair Schwartz directed the Committee's attention to a statement which had been received from Walt Vernon, President, Quivira Falls Community Association, concerning **HB 2472**. (Attachment #1) He is opposed to the bill as it is currently written. (This bill had a hearing on January 28, 2010.)

Chair Schwartz opened the hearing on **HB 2548 - Drainage district No. 2 of Finney county; election of board members**.

She called upon Martha Dorsey, Legislative Research Department, to give the Committee an overview of **HB 2548**. She stated that **HB 2548** would change the term of office for members of the board of directors for Drainage District No. 2 of Finney County from a three-year staggered term to a four-year staggered term.

Representative Larry Powell, 117th District, appeared before the Committee as a proponent to **HB 2548**. He stated the current three-year term for the drainage district members has created the need for a special election. **HB 2548** would correct that problem (Attachment #2).

There being no one else to appear before the committee on **HB 2548**, Chair Schwartz closed the hearing on **HB 2548**.

Chair Schwartz opened the hearing on **HB 2497 - Permitting the secretary of revenue to disclose certain tax information to the state treasurer for the purpose of locating owners of unclaimed property**.

She called upon Martha Dorsey, Legislative Research Department, to give the committee an overview of **HB 2497**. She stated this bill would amend current law regarding disclosure of state income tax information and would allow the Secretary of Revenue to provide information to the State Treasurer for the purpose of locating owners of unclaimed property.

Representative Ann Mah, 53rd District, gave testimony in support of **HB 2497** (Attachment #3). She stated this bill would give the Treasurer's office another tool to use to locate people who still live in Kansas by allowing the Department of Revenue to provide information about taxpayers that might help the Treasurer's Office locate them solely for the purpose of returning their property.

CONTINUATION SHEET

Minutes of the House Local Government Committee at 3:30 p.m. on February 9, 2010, in Room 144-S of the Capitol.

Rita Mohr, Director of Unclaimed Property, Kansas State Treasurer's Office, presented testimony in support of **HB 2497** (Attachment #4). She stated this would be an effective and efficient way to do business protecting the owner's privacy by not sending information to the wrong address, reducing the cost of postage and handling of return mail, resending forms, and strengthening outreach efforts without increasing staff.

Questions and answers followed.

David Corbin, Department of Revenue, stated the Department of Revenue supports what the Treasurer's Office is trying to do. (He provided no written testimony.)

Chair Schwartz closed the hearing on **HB 2497**.

Motions:

HB 2497 - Permitting the secretary of revenue to disclose certain tax information to the state treasurer for the purpose of locating owners of unclaimed property

Representative Mah moved to change the word "individual" on page 3, line 38, to the word "persons". The motion was seconded by Representative Garcia. Motion carried. Motion by Representative Mah, seconded by Representative Seiwert to pass HB 2497 as amended favorably for passage. Motion carried.

HB 2548 - Drainage district No. 2 of Finney county; election of board members

Representative Gordon moved to give the Revisor's Office permission to make a clarifying amendment to HB 2548, seconded by Representative Mah. The motion carried. Motion by Representative Huebert seconded by Representative Gordon to pass HB 2548 as amended favorably for passage.

HB 2515 - Prohibition against a municipality requiring the installation of a multi-purpose sprinkler system in a residential structure

Representative Huebert moved that HB 2515 be amended to add manufactured housing to the definitions of residential property. The motion was seconded by Representative Gordon. The motion carried. Representative Otto moved HB 2515 be amended to apply to single family and duplex housing, seconded by Representative Mah. The motion failed. It was moved by Representative Huebert that HB 2515 and seconded by Representative Seiwert to pass HB 2515 as amended favorably for passage. The motion carried.

The next meeting is scheduled for February 11, 2010.

The meeting was adjourned at 4:17 p.m.

S. S.

Representative Sharon Schwartz, Chair

HOUSE LOCAL GOVERNMENT COMMITTEE

DATE: February 9, 2010

NAME	REPRESENTING
Rita Mohr	Treasurer's Office
Pam Stevenson	Treasurer's Office
Kevin Flory	Kansas State Firefighters Association
Marilyn Smith	KMFHA

Please use black ink

STATEMENT

To: The Kansas House and Senate
Local Government Committees

Date: February 8, 2010

From: W. N. "Walt" Vernon, President
Quivira Falls Community Association (QFCA, QF, or Association)
10990 Westgate Ave.
Overland Park, KS 66210

Subject: SB 470 and HB 247
2472,

PURPOSE: To demonstrate there is no need to enact a Kansas uniform common interest owners bill of rights, to challenge specific sections thereof, and to suggest alternatives

Attached are 1) proposals on mediation, education, and replacement of Directors, 2) comments on particular provisions and 3) background of author, history of QFCA and disclaimer

PREFACE: Testimony and letters regarding past problems at QFCA have been given to both committees. In response, the facts are that under new leadership and management, supported by a majority of the members, improvements are underway to resolve the financial and delayed maintenance problems at QF.

1. It is the members of any homes association, not the Kansas Legislature, who can take the necessary action to replace ineffective directors, officers, or managers and thereby change the direction of the association. The proposed new legislation will have no effect on this process, positive or negative, nor would it have made any difference if it had been in effect during the times of the problems and turmoil noted in the introduction.

2. No study, comprehensive or partial, has been made of the management, operation, and condition of the thousands of home associations across the state to demonstrate a need (or lack thereof) for such a complex, comprehensive, bill. Such an in-depth study would take significant time and resources requiring the involvement of experts from many fields: management, financial, construction and engineering. There is no evidence, compelling or otherwise, before the Kansas Legislature or Senate, of a need for such a bill, aside from a few horror stories.

All the satisfactorily managed Kansas homes associations should not be burdened with such an all encompassing set of complex requirements because of a few problem situations. Not every problem needs to be, should be, or even can be fixed by passing a new law.

3. The Kansas Judicial Council's Advisory Homes Association Committee effort was a fine example of legal scholarship and draftsmanship by its talented Executive Director. The principal witness/expert was an eastern law professor who spoke for a so-called uniform or model bill he helped draft. The Committee had no evidence of need before it - the proposed bill only says that because there are many such associations, new rules should be adopted.

4. Most such associations operate under Articles of Incorporation, Declaration of Covenants, By-laws and board resolutions drafted by talented, expensive lawyers of the developers when starting the project. Most are recorded and thus available to members who are charged with constructive notice thereof. New owners should (and probably do) get a copy from their realtor, title company or the seller.

Our association has some 50 pages of association responsibilities and member rights in several documents. I would be pleased to supply copies of their Tables of Contents, to show the many subjects covered or even send a full set if requested. Even a casual comparison of our documents and the model or uniform bill will show that if passed, it will not add substantially to the situations covered nor to the procedures and protections already in existence at QFCA.

Local Government

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Attachment # 1

5. Should the model or uniform bill pass, little of substance will change. Most, if not all, of Kansas Homes associations' existing rules and procedures will still apply. The same people, be they good, bad, or indifferent, will be Directors, Officers, and managers. Their members will be given the same information as before.

What will happen is that a lot of honest, sincere directors and officers, most of whom are not lawyers, contractors, financiers, or professional managers, will have to check (or pay lawyers to check) every provision of each of their governing documents, to see if they are, or are required to be, in compliance with the terms of this new bill. Going forward, every time a board considers any change or new provision, they will have to have their lawyer advise them if they can adopt it.

6. In the real world, the only solution for bad decisions, bad directors, bad officers, and bad managers is their ouster by interested, determined, and organized, members. That is what has occurred at QF. A bad problem situation such as we had will take longer to cure than a not-so-bad situation, so we are still pushing up-hill. But we are on a path to restore maintenance, finances, and property values.

I submit that the QFCA turn-around would make an excellent case study of how an association with issues and member malaise can reform itself into a model community. (As noted, we are there yet, but we are well on our way, despite the noisy efforts of a few to disparage and derail our efforts.)

That is, no situation, no matter how bad, can be resolved in Topeka. The legislature should not and can not oust a duly elected board and its manager. Unpopular directors at a few associations seems to be the impetus for this entire effort, which appears to be an attempt to achieve by laws what elections (the political process) are thought to be unable to do.

If this is the real issue, I have attached some suggestions of ways to address it without imposing a complex regulatory system on associations who do not have any serious problems.

7. The one technical or specific point I will make here is to make a case for the right of a Board of Directors to not allow a non-dues paying member to vote or even appear and speak at board meetings, (they could still make written communications.)

The national press is full of stories about condo and similar associations all over the country being in terrible financial straight, generally due to the economy and members not making dues payments. This severely pinches an association that is required to provide services such as utilities, garbage removal, snow removal, and property maintenance.

Collection of delinquent homes association dues is difficult. Bankruptcy can wipe out an obligation, first mortgages usually take preference over liens for association dues, judgments are hard to collect at best and are often impossible to, and recorded liens to be collected upon the sale of a unit may take years, even generations, to come to fruition.

Threat of a delinquent member being denied the right to vote or speak in a board meeting may not be much of an incentive to pay dues, but it is about all a frustrated, desperate board can do. Often the association has to continue to pay for services for the non-dues paying member, giving them a free ride at the expense of the other dues paying members. No one can make an argument that this is fair.

When I quizzed the eastern law school professor at an Advisory Committee meeting on his point, he admitted that he had never served on the board of an association, much less one with outstanding unpaid dues, and had no ideas on collect save to sue them.

8. As an alternative to passing no bill, so as to not waste the hours and resources expended to date on this issue and process, may I suggest that the bill be amended to either:

A. Make the bill not applicable in situations were an association has in place a rational, fairly comprehensive and substantial set of governing rules, procedures and member rights, but not require that they be identical to every one of the bill's provisions, and/or

B. Give association members the option to request the act apply by a petition signed by 20% of the members, and be voted on and approved by 2/3 of the members to be applicable to it..

Proposal on Mediation:

I suggest the Kansas version of the Uniform bill include the mediation provisions of the original HB 2253 introduced last session. This would include Sections:

1. (a) (2) "Dispute" [defined],

1. (a) (4) "Mediation" [defined],

All of Section 6 [originally was 5] with the addition to (d) of: "the District attorney, the County Attorney, the City Attorney, any Kansas Judge or any recognized Mediation service, Association, or list. [At the Judicial Council Homes Association Committee meetings, the state's AG representative stated that they lacked interest, personnel and resources to take on this duty.]

-Deletion of Section (h) because the representative of the state's AG stated they lacked interest, personnel or resources to take on this duty.

Proposal on Education

I suggest Section 7 (former 6) of 2253 be included with the observation that I would expect students at Kansas University Law School, working with a professor, or graduate students in the KU government department could draft such documents subject to final AG polishing and issuance.

Proposal on removal of Directors

I suggest that provisions generally along the lines of one of our by-laws be included in the act, as follows:

Section 4. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members in Good Standing of the Association as set forth below:

4. A. A recall election may be instituted by the receipt by the Board Secretary of a petition calling for a recall election for one or more named Directors, signed by at least one-fourth (1/4) of the Members in Good Standing, printing their name, unit, mail address, phone number, and the date of the petition, which must be less than six months old.
4. B. More than one piece of paper may be used to collect signatures so long as each identifies its purpose and the name(s) of the challenged Director(s), complies with these rules, and all signed petitions are presented to the Secretary at the same time.
4. C. The Secretary shall have five (5) business days to check the names, and if enough are valid, conduct a recall election on a regular business day within thirty (30) days of the receipt of the recall petition.
4. D. Directors whose removal is being sought will remain on the Board as Directors with full power unless, and until, the recall effort is successful and their successor(s) has/have been duly elected and attend(s) the first meeting after the election.
4. E. To remove a Director, a majority of Members in Good Standing must vote for the removal. If more than one removal is sought, each must be voted on separately.
4. F. If a Director or Directors is/are removed, an election for replacement Director(s) must be held within sixty (60) days of the recall election.

Additional Comments on specific Provisions of the proposed *Kansas uniform common interests owners bills of rights act.*

As noted above, I do not believe section 1. (a) (3) is accurate nor supported by any evidence considered by the House or Senate, and will not help to insure such associations operate effectively and fairly.

Section 2. (a) is not in touch with current terminology and should be amended by the addition of:

“and sometimes called dues, fees, or charges.”

As noted above, section 3 should be modified so that no part is mandatory if an organization has similar comprehensive rules and procedures, even if not word for word the same, unless adopted by a majority of members.

Section 5. While of no relief to QFCA, Section 5 should be changed so that it is only applicable to Organizations of 25 or more units.

Section 6 (b) should be amended to mesh with section 3.

As noted above, Section 8 (a) (6) (B) should be deleted as an aid in collecting delinquent dues,

Section 8(7) (d) lines 9 - 14 should be deleted. Members should have the opportunity to vote before common property is mortgaged, however a pledge of income does not encumber any real property and should be within the preview of the Board, if deemed in the best interest of the organization.

Add to Section 12 (d) , “Meetings shall be conducted in accordance with traditional rules of meeting procedure and order; minutes shall be taken of actions taken, attendees may be ousted for disruptive, outrageous, improper behavior and excluded for rule violation or being delinquent in payment of dues.

[The law should affirm the right of a presiding officer to maintain order, exclude rowdy individuals and members who have violated organization rules or who have not paid their dues.]

Section 14 (a) line 16, after “absentee” add “or mailed” to make it clear a mailed ballot, if allowed by the by-laws is valid. Note that mailed votes are permitted in Kansas for certain municipal elections. Same word added in Section 14 (b) (4) line 36 after “absentee”. and in (5) line 41 after “absentee” .

Further, wherever the word “proxy” appears, it is to be preceded with “mailed or” throughout the sections on voting.

Another exception to member access to records should be included as (9) for minor and subsidiary journals, lists, logs, workers notes, work files, personal correspondence, emails and computer files, repetitive requests, requests for no declared or no apparent reasons other than harassment,.

Section 17 (4) Begin with “Member Notice may be given by putting it in a news letter, posting on a notice bulletin board, leaving a notice at the residence or with someone else who is living in the residence, handing it out in a membership meeting, making it available at the office for members to come get, see or read there, or” and then continue with “any other method ...”

Section 22 should be deleted. Kansans should be free to administer and interpret this law in accordance with Kansas statutory and case law without regard to laws of other states or comments associated with the uniform act.

Background and Disclaimer

My wife and I have owned 12300 W. 107th Terrace, Overland Park, Ks in the QFCA complex since 1989, and lease it to third parties and are current on dues. We reside at 7928 Rosewood, Prairie Village, KS 913-381-4095, walt1935@sbcglobal.net. In May of 2008, I was appointed to the QFCA Board of Directors and in June of 2008 elected to the Board for a three year term in an election where I received the most votes. The next two highest vote getters joined me on the board. In July of 2008 I was elected Vice-President, and in July of 2009, elected President.

This statement does not necessarily represent the views of the owner/members of the 513 units; however, it has been endorsed in principal by its current Board of Directors.

QF consists of 513 single family homes. Approximately 75% are in attached structures, sometimes called townhouses, (2, 4, and 6-plexes) and about 100 are detached, or free standing units. Construction and sales occurred from 1972 to 1980. QFCA was formed and assumed management responsibilities as provided in its Covenants. QF is governed by a 9 person Board of Directors, 3 elected each year for over-lapping 3 year terms. The board annually elects 4 officers. QFCA's governing documents include Articles of Incorporation, Declaration of Covenants, By-Laws, as amended by member votes; and various operational rules and procedures established by resolutions of the Board. Its 2009 income, mostly from dues, was \$1,256,535. However it is owed about \$150,00 in unpaid dues.

For its first 27 years, the Board elected the same owner/member as QF President. Although employed full-time as an architect, he acted as a general manager, assisted by employees and outside contractors as needed. During his last years in office, primarily due to non-payment of dues by many members, the association was unable to meet its maintenance responsibilities and was in debt. He died in spring of 2008. A stucco residing program was began in 1990 but has slowed by lack of income.

In 2007 and 2008, interested and worried members began to meet to effect a change in leadership and direction of the Association. Although a schism developed (and continues), a significant number of members coalesced around reform candidates, and in 2008 and 2009 elections, 6 new reform directors (including myself) were elected, 3 others were appointed and new officers were elected.

Among the many changes were hiring The Tiehen Company, a professional management company to oversee day to day operations; replacing employees; a CPA firm was retained to conduct a financial review and audits; lawsuits were settled and past debts paid or repayment plans begun: service contracts were rebid at cost savings; monthly; monthly and annual financial reports are provided to the members; and revised by-laws were adopted by a majority membership vote. Also a substantial numbers of units have had exterior siding repaired under the oversight of City of Overland Park, (a process that is about 2/3 complete and is continuing) and other deferred maintenance is being addressed; an aggressive effort was instituted to collect past dues (it is having some success); and revised Covenants are in the process of being explained and voted on.

I appreciate the opportunity to submit these remarks. I would be pleased to answer any questions of Representatives, Senators or staff.

STATE OF KANSAS



TOPEKA

HOUSE OF
REPRESENTATIVES

LARRY POWELL

REPRESENTATIVE, 117TH DISTRICT
2209 GRANDVIEW EAST
GARDEN CITY, KS 67846-9668
(620) 275-6789

STATEHOUSE, 142-W
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COMMITTEE ASSIGNMENTS

CHAIRMAN: AGRICULTURE AND NATURAL
RESOURCES

VICE CHAIRMAN: AGRICULTURE AND NATURAL
RESOURCES BUDGET

MEMBER: TAXATION

February 9, 2010

Testimony in favor of **HB 2548**
Local Government Committee
Room 144-S

Chairman Schwartz and members of the Committee, thank you for hearing **HB 2548**, which essentially is a technical cleanup.

We passed a bill in the past to stagger the terms of Drainage District No. 2 in Finney County, Kansas. The purpose was to develop a continuity in the Board so that not all new members would start their positions at the same time. The action accomplished what we wanted but caused another problem - as the bill was written, it would have required a special election. This new legislation is to correct that problem.

I appreciate your consideration of this bill and will stand for questions.

Representative Larry Powell
District 117

A handwritten signature in black ink, appearing to read 'L Powell', written in a cursive style.

Local Government

Date: 2-9-10

Attachment # 2

ANN E. MAH
 REPRESENTATIVE, 53RD DISTRICT
 3351 SE MEADOWVIEW DR.
 TOPEKA, KANSAS 66605
 (785) 266-9434



EDUCATION
 HIGHER EDUCATION
 LOCAL GOVERNMENT

CAPITOL BUILDING
 TOPEKA, KANSAS 66612
 (785) 296-7668

TOPEKA

HOUSE OF
 REPRESENTATIVES

HOUSE COMMITTEE ON LOCAL GOVERNMENT
 REP. SCHWARTZ – CHAIR
 TESTIMONY HB 2497

Chairman and Committee:

Thank you for allowing me to testify today in support of HB 2497. Helping people get reconnected with their money has been a passion of mine for a few years now, since I was first given a list of the unclaimed property for people in my district. Since that time I have called people on over \$300,000 of money and other properties that the state holds. But we have over \$200 million in property that could be returned if we could just find the owners.

And that is the reason for this bill. I'm pretty good at using the resources we have to find people. I take the list of property, the voter file, 411.com, the State Treasurer's website, and I go to work. It is very frustrating to me, and I'm sure to the folks in the Treasurer's office, when we run into a dead end. HB 2497 gives the Treasurer's office another tool to use to locate people who still live in Kansas by allowing the Department of Revenue to provide information about taxpayers that might help us locate them solely for the purpose of returning their property.

I have spent hundreds of hours tracking down people. The reason we have so much money in our possession is that they are hard to find. People move. They move into nursing homes. They don't have published telephone numbers. They get married and divorced and change names. This tool will help us connect with folks who have otherwise fallen off the radar screen or can't be found, because it gives us a connection to information only the Department of Revenue has access to. This bill is a win-win for the state and for the thousands of people who will benefit from it.

I appreciate your consideration of this bill and hope you will approve it for passage to the entire House.

Local Government

Date: 2-9-10

Attachment # 3



STATE OF KANSAS
Dennis McKinney
TREASURER

900 SW JACKSON ST., STE 201
TOPEKA KS 66612-1235

PHONE: 785-296-3171
FAX: 785-296-7950

House Bill 2497
February 9, 2010
By Rita Mohr Director of Unclaimed Property
For
Kansas State Treasurer Dennis McKinney

Chairperson Schwartz and members of the committee:

House Bill 2497 would amend K.S.A. 79-3234 relating to the Tax information; preservation; limits on dissemination and use.

This proposal would allow the Treasurer's Unclaimed Property division to match reported information to our office by holders of unclaimed properties against Department of Revenue records to identify the most current mailing address for the listed property owner.

If the Treasurer's records do not contain any matching information when reported, no Department of Revenue records would be searched.

This is an effective and efficient way to do business by protecting owner's privacy by not sending information to the wrong address, reducing the cost of postage and handling of return mail, resending forms, and strengthening our outreach efforts without increasing staff.

This program can be implemented without any additional cost to either agency.

Thank you for the opportunity to appear before you today.

Local Government
Date: 2-9-10
Attachment # 4