

MINUTES OF THE HOUSE COMMITTEE ON COMMUNICATIONS, COMPUTERS AND TECHNOLOGY

The meeting was called to order by Representative Mike Meacham at
Chairperson

3:30 ~~xxx~~/p.m. on March 13, 1984 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Sherry Brown, Fiscal Staff, Research Department
Chris Stanfield, Fiscal Staff, Research Department
James A. Wilson, III - Senior Assistant Revisor
Betty Ellison, Secretary to the Committee

Conferees appearing before the committee:

Dr. Doug Hahn, Director of Environmental Resources, Sedgwick County
Mrs. Maxine Hansen, Wichita-Sedgwick County Metropolitan Planning Commission
Mr. Charles Benjamin, Harvey County Commission
Mr. Dennis Murphy, Kansas Department of Health and Environment
Mr. Warren Porter, City of Emporia
Mr. Matt Selby, Sierra Club and Kansas Natural Resources Council
Mr. Karl Gaston, South Central Kansas Economic Development District (SKEDD)
Mr. Jack Alumbaugh, Reno County, SKEDD
Mr. Charles Belt, Wichita Chamber of Commerce
Mr. Ward Clements, City of Derby
Mr. Ken Reavis, City of Haysville
Mr. Gerald Powell, City of Mulvane
Mr. M.S. Mitchell, Resource Recovery Task Force Technology Committee,
Wichita-Sedgwick County
Mr. Ralph Hunt, Association of Wichita Independent Trash Haulers
Mr. Jack Spratt, Chairman, Sedgwick County Commission

The meeting was called to order by Chairman Mike Meacham. He noted that House Bill 3095 involved resource recovery and the burning of certain kinds of waste to produce energy.

Dr. Doug Hahn, Director of Environmental Resources in Sedgwick County, gave the Committee some background information and showed a number of slides depicting waste energy facilities. He defined resource recovery as the recovery of useful materials, either in the form of recycled materials such as paper, metal, or glass, or the recovery of energy as a result of the conversion of waste material into energy forms such as steam, electricity, etc. Dr. Hahn discussed conversion of waste material into energy, rather than recycled materials. The slides showed diagrams of modular incineration or waste energy systems, and each phase of the process was described.

Dr. Hahn noted that the trash was burned at temperatures of 1,000^o to 1,800^o under starved-air conditions--thus there was not complete combustion, but rather creation of gases such as hydrogen gas, methane gas, etc. In the next phase, air was added to the gases, resulting in burning of the gases at higher temperatures, such as 2,100^o. He said that the gases are burned so cleanly that they do not require air emissions equipment on the stacks. The heat from the gases is circulated through a boiler and the water is converted to steam which can be either transferred to the market customer to be used as steam, or put through an electrical generator for electricity, or both. Dr. Hahn stated that there generally is a 95 percent reduction in volume of the trash; the weight is cut by about one-half. The ash residue resulting from the process has been found to be chemically inert by the Environmental Protection Agency and could be taken to a landfill, but in some states more productive use is made of it, such as using it for film material, road base material, etc.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMUNICATIONS, COMPUTERS AND TECHNOLOGY

room 519-S, Statehouse, at 3:30 ~~xxx~~ am/p.m. on March 13, 1984

Dr. Hahn commented that generally a small amount of supplemental energy such as natural gas or fuel oil is required to start the system burning-- then it is self-sustaining and continues to burn without more supplement. He said that air is drawn in through the doors and odors do not escape the plant, although odors are not strong in the plant. He compared the waste energy systems with sanitary landfills, commenting that the waste energy facilities looked like warehouses or storage buildings, with all hard surfaced driving areas. Some plants shown were at Little Rock, Arkansas; Batesville, Arkansas; Ames, Iowa; Grafton, Wisconsin; and Miami, Oklahoma. In summary, Dr. Hahn emphasized that resource recovery can significantly reduce volume of waste. These systems do not replace landfills but reduce reliance on landfills.

Dr. Hahn explained the feasibility study done by the Resource Recovery Task Force Committee of Wichita-Sedgwick County. Some of the components studied were:

1. Waste stream
2. Collection system
3. Market analysis
4. Public attitudes
5. Regulatory impact
6. Recycling feasibility
7. High tech waste energy systems
8. Financial analysis

Upon completion of the study, that information, along with a report of feasible options and recommendations, were presented to the Wichita Commission and Sedgwick County Commission. In July, 1983, the Board of County Commissioners in Sedgwick County and the Board of Wichita City Commissioners jointly and unanimously approved a program to install waste energy systems in Sedgwick County. Modular incineration was found to be the most cost-effective, environmentally sound, and technically sound type of resource recovery for the Wichita-Sedgwick County area. Dr. Hahn stressed that the primary purpose of the study was trash disposal--the fact that these operations produce energy is secondary, but it is important in that it provides the revenue to offset the cost and even provide a profit.

Dr. Hahn offered the following reference documents for the record. These may be found in the Legislative Research Department:

1. A copy of the Report of the Resource Recovery Task Force Committee.
2. An executive summary of the above report.
3. A detailed financial analysis of the different systems.
4. The joint resolution passed by the Board of Sedgwick County Commissioners and the Board of Wichita City Commissioners authorizing implementation of a local waste energy system.
5. A series of articles and editorials related to the activities and actions taken in support of the activity.
6. A list of members of the Research Recovery Task Force, including their occupations and employers, giving an idea of how broad the representation of the study group was.
7. A summary of the resource recovery plants in the United States today.
8. A supplement to the above summary.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMUNICATIONS, COMPUTERS AND TECHNOLOGY,

room 519-S, Statehouse, at 3:30 ~~am~~/p.m. on March 13, 1984

9. An article by David Snyder of a law firm in New York, regarding the legal history of waste and energy plants and the issue of monopoly and anti-trust.
10. A one-page summary from Waste Age Magazine, which deals with the Supreme Court decision which is the final decision relative to the flow control issue.
11. Another one-page article from Waste Age Magazine which relates to tipping fees. This article shows that fees for a landfill would be the same as those for a resource recovery plant.
12. A handout which lists the total capacity of production of the Kansas Gas and Electric Company's system, including their current plants. (Wolf Creek is added as a post operation.) This shows that the total amount of energy that could be generated from solid waste would be less than 1 percent at maximum, but actually it is much less than 1 percent.
13. A handout which shows all of the sources of energy production in the United States and which indicates that the percentage of energy produced from solid waste in 1980 was .12 percent.
14. A handout which lists all of the manufacturers of modular incinerators.

In response to questions about burning rubber tires, Dr. Hahn said that tires are very high in BTU content and produce a great deal of energy. He explained that the particulates are trapped and passed out in the ash rather than going through the upper chamber and through the stacks, so there is no noticeable odor or smoke. He said that the steel also goes into the residue. Dr. Hahn noted that the operation and maintenance cost per ton of trash processed for a 50 ton plant is roughly \$23.00; for a 100 ton plant, \$15.89 and for a 200 ton plant, \$11.83.

Mrs. Maxine Hansen, representing the Wichita-Sedgwick County Metropolitan Planning Commission, testified in support of House Bill 3095. She said that with only one landfill in northwest Wichita, there was a pressing need for more strategically located dumping sites. Mrs. Hansen noted that was the reason the Planning Commission endorsed the Resource Recovery Program as presented by the Sedgwick County Department of Environmental Resources. She said that the Planning Commission believed that House Bill 3095 clarified the authority of cities and counties to proceed with implementation and would reduce the likelihood of costly legal delays as the program moved forward.

Charles M. Benjamin, Ph.D., who is a member of the Board of Harvey County Commissioners, passed out copies of his testimony in favor of House Bill 3095. (Attachment 1) He noted several of the problems in handling solid waste which had confronted residents of Harvey County. One of his concerns was for the unknown effects of materials being buried at the landfill, noting that there had been one incident of leachate pollution of a stream near the landfill site which was used to water livestock downstream. He cited a number of materials which had been buried at the landfill and wondered how long the containers would last or if they might rupture.

Mr. Dennis Murphy represented the Kansas Department of Health and Environment in his testimony. He stated that his department had no problems with language in House Bill 3095 which clarified the existing contracting authority for cities and counties to deal with solid waste management

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMUNICATIONS, COMPUTERS AND TECHNOLOGY,

room 519-S, Statehouse, at 3:30 ~~xxx~~ p.m. on March 13, 1984

issues. However, his department recommended deletion of the term "special waste" in line 47, so as to avoid possible confusion with hazardous waste and solid waste issues. He said there currently was no provision in either the hazardous waste statutes or the solid waste statutes which defined the term "special waste." Mr. Murphy said that his department supported resource recovery as a waste management option vs. disposal via land burial or disposal via any other techniques. He said that his department endorsed the intent of the flow control provision of the bill, but would reserve comment on this provision because they had not sufficiently considered all of the potential impacts statewide of such a regulatory philosophy.

Mr. Murphy agreed with the Chairman that the staff of the Department of Health and Environment had been involved with the development of this bill and was aware of its content. In reply to a question from Representative Dean, Mr. Murphy said that this bill as drafted deals only with solid waste--it is not a hazardous waste bill. He went on to say that these types of facilities have the potential for being utilized in the management of hazardous waste. Responding to a question from Representative Friedeman, Mr. Murphy explained that his use of the term "flow" was in New Section 3 of the bill and referred to the flow of materials into the facility. He emphasized that the department was not opposed to this type of procedure.

In answer to a question of Representative Baker, Dr. Hahn said that his department had been working with the Department of Health and Environment on general study since 1980 and had been working with the staff on this particular type of legislation since October and November of 1983. He stated that Section 3 was drafted in its entirety by the KDHE staff.

Mr. Warren Porter represented the City of Emporia with his testimony. He said that the City of Emporia had recently presented a proposal to a local firm to install a modular incineration unit and was still in the process of negotiation. He stated that the City of Emporia operated both the landfill and the municipal refuse service so they basically had control of the volume, but were not opposed to other users.

Mr. Matt Selby presented copies of his testimony in favor of House Bill 3095 on behalf of the Kansas Sierra Club and the Kansas Natural Resource Council. (Attachment 2)

Mr. Karl Gaston, Vice President of the South Central Kansas Economic Development District (SKEDD) appeared at the request of Mr. Bill Hacker, President of the organization. He stated that his organization felt that House Bill 3095 had the potential to be an excellent tool for local governments, possibly working with the private sector, to handle a matter that had been a problem for many industries. Mr. Gaston noted that the SKEDD Executive Committee had approved the bill for the fourteen county members.

Mr. Jack Alumbaugh, Executive Director of the South Central Kansas Economic Development District, testified on behalf of the Reno County Commission. He stated that they had reviewed House Bill 3095 and did support it.

Mr. Charles Belt represented the Wichita Area Chamber of Commerce. He noted that members of the staff of the Wichita Chamber had been studying the problem of solid waste and hazardous waste for some time. They felt that the concepts embodied in House Bill 3095 were both a positive and a viable step toward dealing with the solid waste problem, and strongly urged the Committee's favorable consideration of the bill.

Mr. Ward Clements, City Manager of Derby, Kansas, distributed copies of his testimony in favor of House Bill 3095. (Attachment 3) He asked for the Committee's favorable report on the bill and urged its passage during this session of the legislature.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON COMMUNICATIONS, COMPUTERS AND TECHNOLOGY,

room 519-S, Statehouse, at 3:30 ~~xxx~~/p.m. on March 13, 1984

Mr. Ken Reavis, a Councilman from the City of Haysville, passed out copies of his testimony in favor of House Bill 3095. (Attachment 4) He said that he had visited the plants in both Oklahoma and Arkansas which were shown in the slides and verified that previous testimony regarding them was true--there was no stench and no filth, such as you would see in a city landfill.

Mr. Gerald Powell represented the City of Mulvane. He stated that he also was on the Sumner County Economic Advisory Board and that both bodies strongly endorsed House Bill 3095. He said that he too, had visited the plant in Miami, Oklahoma. He noted that tires were being burned the day he was there and there was no stench; also there was no emission from the stack.

Mr. M.S. Mitchell of Wichita, testified that as a member of the Task Force and the Environmental Resources Board at the time the study was made, he had been critical of the possibility of a resource recovery plant producing energy in a clean environment. Having visited the plants in North Little Rock, Arkansas; Batesville, Arkansas, the one in Wisconsin, the one in Miami, Oklahoma, and the plant at Ames, Iowa, he said he was convinced that these claims were true. He expressed his strong support for the bill and hoped it would be passed by the legislature this year.

Mr. Ralph Hunt, Jr., testified as a member of the Board of Directors of the Association of Wichita Independent Refuse Haulers. He said that the organization did support and had no objections to the incinerator and to House Bill 3095 as a whole. However, they did object in terms of the flow control portion of the bill in lines 104 to 106. His organization believes that the owner of a plant could work with the haulers, city or private, and contract with them before the plant is built, so they know they would have an adequate flow of trash coming into that plant. He said that if the price is right, the hauler will be going to the incinerator rather than to the landfill. Mr. Hunt urged that the flow control portion of the bill be deleted or at least not made mandatory by the city governments and regulated by the state that they be assigned to a certain place. He said it runs their costs up, depending on the rate paid for the time to get it dumped and the distance of the incinerator from their routes.

Mr. Jack Spratt, Chairman of the Sedgwick County Commission, read a letter from Margalee Wright, Mayor of the City of Wichita, in support of House Bill 3095. (Attachment 5) He also submitted a letter strongly supporting the bill, from Mr. Tom Scott, County Commissioner of Sedgwick County. (Attachment 6) Mr. Spratt noted that he had been working on resource recovery for some three years and he also supported the bill.

Responding to a question of Representative Ramirez, Dr. Hahn said that there were sixteen or eighteen manufacturers of modular incinerators. (These are listed in document number 14, on file with the others in the Legislative Research Department.) He said that resource recovery and waste energy tend to be generic terms and there are dramatic differences between the different kinds. Some have had problems with air pollution, costs, etc. This is why it was concluded that in the case of Wichita-Sedgwick County, modular systems were the best, and they have not had those problems. There are close to 1,000 modular systems in operation in the United States, most of them run by private industries, and those have not had problems.

Written testimony on House Bill 3095 by Barbara J. Sabol, Secretary, Kansas Department of Health and Environment, was distributed to the Committee following the meeting. (Attachment 7)

Representative Friedeman moved and Representative Green seconded that the minutes of February 9 and 14 be approved. The motion carried.

The meeting was adjourned at 5:15 p.m. The next meeting of the Committee will be held on March 14, 1984 at 3:30 p.m.

Date: March 13, 1984

GUEST REGISTER

HOUSE

COMMITTEE ON COMMUNICATION, COMPUTERS AND TECHNOLOGY

NAME	ORGANIZATION	ADDRESS
JACK Spratt	Sed County	Wichita, KS
Sam Peair	Haysville City	Haysville KS
WARD Clements	City of Derby	Derby KS
M.S. MITCHELL	RESOURCE RECOVERY TASK FORCE TECHNOLOGY COMMITTEE	WICHITA-SEDCWICK COUNTY
Ed Kopyscinski	CITY OF DERBY	DERBY, KS.
GERALD Powell	City of Mulvane	MULVANE KS.
WARREN PORTER	CITY OF EMPORIA	EMPORIA, KS
Charles Benjamin	Harvey County Commission	Newton, KS
Ralph Hunt, Jr	Ass. of Wichita Independent Truck Haulers	Wichita, KS
Terry Caskey	ass of Wichita Independent Truck	wichita, KS
Ray Caskey	" " Hauler	" "
Dennis Murphy	KDHE	Topoka
Joe Cronin	KDHE	Topoka
JACK ALUMBART	SCKRDD	WICHITA OFFICE
KARL GASTON	SCKRDD V.P.	RICE COUNTY
Bill Henry	KS Engineering Society	Topoka
W. Hester	KS Municipal	Topoka
M.E. Conley	City of Wichita	Wichita KS.
Marlene Hansen	Wichita-Sedg. city	Wichita, KS

MA PC

HOUSE BILL No. 3095

By Committee on Ways and Means

3-6

0017 AN ACT relating to solid waste; concerning resource recovery
0018 facilities; concerning resource recovery facilities provided by
0019 cities and counties; amending K.S.A. 1983 Supp. 65-3418 and
0020 65-3450 and repealing the existing sections.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 1983 Supp. 65-3418 is hereby amended to
0023 read as follows: 65-3418. (a) Title to the solid waste collected,
0024 processed or disposed of in accordance with the provisions of
0025 this act and the rules and regulations adopted thereunder shall
0026 vest in the owner of the solid waste management activity, area or
0027 facility in which the solid waste is placed. Solid waste produced
0028 from a discrete source disposed of in ways other than in accord-
0029 ance with this act shall remain the property of the generator and
0030 the generator shall be liable for removal of the waste, restoration
0031 of the area in which the waste was disposed and to provide for
0032 lawful disposal of the waste. It shall not constitute a defense to
0033 the generator that the generator acted through an independent
0034 contractor in the transportation or disposal of the solid waste.

0035 (b) *When a city or a county or combination of cities or*
0036 *counties provides for a resource recovery facility or facilities to*
0037 *recover materials or energy from solid wastes as a part of an*
0038 *approved solid waste management plan, said resource recovery*
0039 *facility or facilities shall have sole ownership, utilization and*
0040 *disbursement control of all waste collected by that facility or*
0041 *facilities or delivered to that facility or facilities and shall have*
0042 *the power to sell recovered or recycled materials or energy. Such*
0043 *provision shall be interpreted to include either active partici-*
0044 *pation and financial support of such resource recovery facility*
0045 *or facilities or oversight and regulatory control of such facility*

0046 *or facilities by the local governments. A resource recovery facil-*
0047 *ity may contract to dispose of special waste materials or prod-*
0048 *ucts as allowed by regulation according to the instructions,*
0049 *directions and conditions as set by the original owner of such*
0050 *materials delivered for disposal and resource recovery, so as to*
0051 *avoid reuse or resale of such special products or materials.*
0052 *Nothing herein shall be construed to prohibit or limit private*
0053 *waste collectors from extracting from the waste they collect,*
0054 *prior to delivery to the resource recovery facility, any materials*
0055 *that may have value to such collectors for purposes of recycling,*
0056 *reuse or resale.*

0057 Sec. 2. K.S.A. 1983 Supp. 65-3450 is hereby amended to read
0058 as follows: 65-3450. When a city or a county or combination of
0059 cities or counties provides for a facility *or facilities* to recover
0060 materials or energy as a part of an approved solid waste man-
0061 agement plan, any city, county or state agency may enter into a
0062 long-term contract to supply solid waste to the resource recovery
0063 facility; *or facilities*; to *construct, operate and maintain or con-*
0064 *struct or operate or maintain* such facilities; *;* to *contract with a*
0065 *private entity for the construction, operation and maintenance*
0066 *of such facilities*; to market materials or energy recovered from
0067 such facility *or facilities*; or to utilize such facility *or facilities* to
0068 conserve materials or energy by reducing the volume of solid
0069 waste. For the purpose of this section "long-term" shall mean a
0070 period of not less than 10 nor more than 30 years. All long-term
0071 contracts negotiated under this section shall be reviewed and
0072 approved by the attorney general before becoming effective.

0073 New Sec. 3. (a) When a city or a county or combination of
0074 cities or counties provides for a resource recovery facility or
0075 facilities to recover materials or energy from solid wastes as a
0076 part of an approved solid waste management plan, the city or
0077 county may require any person capable of being effectively
0078 served by the facility to make use of the facility or of private
0079 facilities approved by the city or county in any case where the
0080 city or county finds such use to be in the best public interest. As a
0081 part of an approved solid waste management plan, the city or
0082 county has the authority to limit the overall capacity of resource

0083 recovery systems within its jurisdiction so as not to exceed the
0084 capacity for available solid waste and to serve the best public
0085 interest.

0086 (b) "Best public interest" for the purposes of subparagraph
0087 (a) shall be inferred if:

0088 (1) Required usage will result in reusable materials being
0089 recovered rather than being disposed of;

0090 (2) required use will lessen the demand for sanitary landfill
0091 sites and capacity;

0092 (3) required use will result in a positive energy balance or
0093 will conserve natural resources; or

0094 (4) required use is necessary to achieve operational volumes
0095 necessary to make the facility financially self-supporting to the
0096 greatest extent possible; and

0097 (5) such solid wastes are produced within the corporate
0098 limits of the city or county.

0099 (c) Solid wastes produced by a person other than a municipi-
0100 pality which are privately processed and reused shall not be
0101 subject to this section.

0102 (d) The city or county shall proceed as follows when requir-
0103 ing usage of facilities approved within its jurisdiction:

0104 (1) The city or county shall notify those persons whom the
0105 city or county has determined should use facilities of the city or
0106 county or the private facilities approved by the city or county.
0107 Notification to municipalities shall be in writing. All other per-
0108 sons shall be notified by publication of a legal notice in the
0109 official county newspaper. The notification shall specify types
0110 and quantities of acceptable wastes, plans for usage of wastes,
0111 the point of delivery of wastes and the fee to be charged for such
0112 service. During the ninety-day period following the notification,
0113 the city or county shall negotiate with any or all of the persons
0114 within the areas to be served in order to develop a contractual
0115 agreement on the terms of required usage of the facility.

0116 (2) If a contract has not been made at the end of the ninety-
0117 day period, or if, in the case of a person other than a municipality,
0118 such person has not made adequate arrangements for the proc-
0119 essing for reuse of the waste generated by such person, the city

0120 or county shall hold a public hearing to take testimony for and
0121 against required usage of the facility by the person. The hearing
0122 shall be preceded by notice similar to that required under
0123 paragraph (1).

0124 (3) If a contract has not been made within 30 days after the
0125 public hearing, or if, in the case of a person other than a
0126 municipality, such person has not made adequate arrangements
0127 for the processing for reuse of the waste generated by such
0128 person, the city or county may order any person given notice of
0129 the public hearing to use the facility or the private facilities
0130 approved by the city or county, starting at a specified date which
0131 shall be at least 30 days after the order has been issued. The city
0132 or county shall not terminate, suspend or curtail other services
0133 provided to any person required to use the services and facilities
0134 under this paragraph, without the consent of such person. The
0135 city or county shall be delegated the authority by the state to
0136 institute legal action in a court of competent jurisdiction for
0137 injunctive or other relief to enforce the provisions of this act at
0138 the local level.

0139 (4) In the case of a person other than a municipality, all
0140 obligations under contract or order under this section may be
0141 terminated as to any portion of that person's solid waste by the
0142 person upon an adequate showing to the city or county that the
0143 solid waste generated by the person has value and that adequate
0144 arrangements have been made by the person to have such waste
0145 processed for reuse either by such person or any other person
0146 other than a municipality.

0147 (5) This section does not apply to persons who own or lease
0148 and occupy single-family dwellings and surrounding land and
0149 who dispose of solid waste from the premises on such surround-
0150 ing land.

0151 Subsection (d) shall be construed to delegate control of local
0152 solid waste flow by the state to cities or counties subject to the
0153 oversight of such control by the state through this act, approval of
0154 individual resource recovery facilities by the Kansas department
0155 of health and environment, and through approval of a local solid
0156 waste plan by the Kansas department of health and environment.

0157 New Sec. 4. (a) When a city or a county or a combination of
0158 cities or counties provides for a facility or facilities to recover
0159 materials or energy as a part of an approved solid waste man-
0160 agement plan, the city or county may enter into contracts with
0161 private persons for the performance of any such functions of the
0162 plan which, in the opinion of the city or county, can desirably
0163 and conveniently be carried out by a private person under
0164 contract provided any such contract shall contain such terms and
0165 conditions as will enable the city or county to retain overall
0166 supervision and control of the business, design, operating man-
0167 agement, transportation, marketing, planning and research and
0168 development functions to be carried out or to be performed by
0169 such private persons pursuant to such contract. Such contracts
0170 may be entered into either on a negotiated or an open-bid basis,
0171 and the city or county in its discretion may select the type of
0172 contract it deems most prudent to utilize considering the scope
0173 of work, the management complexities associated therewith, the
0174 extent of current and future technological development require-
0175 ments and the best interests of the state.

0176 (b) Private entities may construct, operate, maintain and own
0177 resource recovery facilities; form contracts to supply solid waste
0178 to the resource recovery facility or facilities; form contracts to
0179 market materials or energy recovered from such facility or facili-
0180 ties; or utilize such facility or facilities to conserve materials or
0181 energy by reducing the volume of solid waste under the super-
0182 vision of and with the approval of the city or county, subject to
0183 the approval of the Kansas department of health and environ-
0184 ment, and in accordance with the approved local solid waste
0185 management plan.

0186 Sec. 5. K.S.A. 1983 Supp. 65-3418 and 65-3450 are hereby
0187 repealed.

0188 Sec. 6. This act shall take effect and be in force from and
0189 after its publication in the statute book.

REPORTS OF STANDING COMMITTEES

3-15-84

MR. SPEAKER:

Your Committee on Communication, Computers and Technology

Recommends that House Bill No. 3095

"AN ACT relating to solid waste; concerning resource recovery facilities; concerning resource recovery facilities provided by cities and counties; amending K.S.A. 1983 Supp. 65-3418 and 65-3450 and repealing the existing sections."

Be amended:

On page 1, in line 35, preceding "combination" by inserting "any"; in line 36, after "counties" by inserting ", or both,"; also in line 36, after "provides" by inserting "by contract"; in line 38, by striking "said" and inserting in lieu thereof "the";

On page 2, in line 56, preceding the period by inserting the following: ", except that any materials having value as a source for energy generation may not be extracted therefrom"; in line 73, preceding "combination" by inserting "any"; in line 74, after "counties" by inserting ", or both,";

On page 3, in line 98, preceding the period by inserting the following: "or within the geographical area over which any combination of cities or counties, or both, has jurisdiction if such combination is governed by a separate legal entity"; in line 102, preceding "shall" by inserting the following: "or the separate legal entity created to govern the combination of cities or counties, or both, if such an entity exists,"; in line 104, preceding "shall" by inserting "or such separate legal entity"; in line 106, preceding the period by inserting "or such separate legal entity"; in line 113, preceding "shall" by inserting "or such separate legal entity";

On page 4, in line 120, preceding "shall" by inserting "or such separate legal entity"; in line 128, preceding "may" by inserting "or such separate legal entity"; in line 130, preceding the comma by inserting "or such separate legal entity"; in line

132, preceding "shall" by inserting "or such separate legal entity"; in line 135, preceding "shall" by inserting "or such separate legal entity"; in line 142, preceding "that" by inserting "or such separate legal entity"; in line 147, by striking "(5)" and inserting in lieu thereof "(e)"; in line 148, after "land" by inserting "which is zoned for agricultural purposes"; in line 150, preceding the period by inserting the following: "in accordance with applicable state laws and local government resolutions or ordinances"; in line 151, preceding "Subsection" by inserting "(f)"; in line 152, preceding "subject" by inserting the following: "or any combination of cities or counties, or both,"; following line 156, by inserting the following material to read as follows:

"(g) Any person aggrieved by the decision of a city or county or the separate legal entity created to govern the combination of cities or counties, or both, if such an entity exists, requiring such person to use a facility to recover materials or energy from solid wastes pursuant to subsection (a), may request the governing body of the city or county or such separate legal entity to review such decision. If requested to review such decision, the governing body shall hold a public hearing thereon. Notice of such hearing shall be published once in a newspaper of general circulation within the affected municipality at least 10 days prior to the date of the hearing. Written and oral objections to the governing body's decision shall be heard at such hearing. After the hearing, the governing body shall reconsider its original decision and if the original decision is approved by at least 2/3 vote of the members of the governing body, such decision shall stand. The governing body shall send a copy of its final decision and reasons therefor to the person who requested the review.";

On page 5, in line 157, by striking "a" where it appears for the last time and inserting in lieu thereof "any"; in line 158, preceding "provides" by inserting ", or both,"; in line 160,

preceding "may" by inserting the following: "or the separate legal entity created to govern the combination of cities or counties, or both, if such an entity exists,"; in line 162, preceding the comma, where it appears for the last time by inserting "or such separate legal entity"; in line 165, preceding "to" by inserting "or such separate legal entity"; in line 171, preceding "in" by inserting "or such separate legal entity"; in line 182, preceding the comma by inserting "or such separate legal entity";

And the bill be passed as amended.

Chairperson

SESSION OF 1984

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 3095

As Amended by House Committee on
Communications, Computers, and Technology

Brief of Bill*

H.B. 3095 empowers cities and counties to provide for resource recovery facilities and to require use of those of facilities by any person who can use them effectively. The bill vests any such facility with ownership and control of waste collected and with power to sell recovered or recycled materials or energy.

Cities and counties are required to notify all persons required to use a resource recovery facility and to negotiate contracts on the terms of the required usage. Notification to municipalities must be in writing and by publication of a legal notice for all other persons. Provision is made in the bill for public hearing and appeal by any person required to use the facility. Persons owning or leasing single-family dwellings and surrounding land which is zoned for agricultural purposes are not subject to any requirements to use a resource recovery facility.

Background

Proponents of the bill testified that resource recovery facilities offer an attractive and cost-effective alternative to sanitary land fills and are environmentally safe to operate.

* Bill briefs are prepared by the Legislative Research Department and do not express legislative intent.

TESTIMONY BY

**CHARLES M. BENJAMIN, Ph.D.
Member, Board of Harvey County Commissioners**

in support of H.B. 3095

before the Communications, Computers and Technology Committee

Kansas House of Representatives

**Tuesday, March 13, 1984
3:30 p.m.**

**State Capitol, Room 519-S
Topeka, Kansas**

INTRODUCTION

Thank you for the opportunity to testify on behalf of H.B. 3095 which would enhance the ability of cities and counties in Kansas to operate resource recovery facilities. I speak to you today as a member of the Board of Harvey County Commissioners who has to face the difficult problem of setting policies and guidelines for operating a sanitary landfill that serves all of the 30,000+ people in Harvey County. How to operate the landfill in a cost effective and yet environmentally sound and unobtrusive manner has been one of the most difficult problems that I have had to deal with since becoming a County Commissioner in 1981. I want to briefly outline what some of those problems have been in Harvey County and why I think H.B. 3095 will go a long ways toward helping us resolve those problems.

THE PROBLEMS OF SOLID WASTE MANAGEMENT IN HARVEY COUNTY, KANSAS

In 1973, the Board of County Commissioners authorized the development of a Solid Waste Management Plan for the County. The Bucher and Willis Company of Wichita, Kansas was hired as the consulting engineers for the project. The resultant plan, published in July 1973, included an analysis of basic background data, the projection of solid waste generation, a description of existing collection and disposal systems, the identification of problems within the system, recommendations for the optimum solid waste management system for the area, and estimates of operational costs. The master plan that was developed was designed to deal with the County's solid wastes to the year 1990.

In 1974, a new sanitary landfill was opened southwest of Newton on two adjacent 40 acre sites. The south 40 acre site was to be used first as Phase I

of the master plan. The life of that 40 acre site was estimated to be approximately 16 to 18 years assuming a compaction height of 18 feet. At the time of the opening of the south 40 acre site, some estimates were that the site would last as long as 25 years. Our most current estimate of the life of this site, however, is 12 to 13 years given the management and use of the site since its opening. This means that the south 40 acre site would be filled in approximately 3 years.

Because of complaints by residents of the county living near and downwind from the landfill, the Board of County Commissioners, in the summer of 1983, banned burning at the landfill. I have been aware of these complaints since I became a County Commissioner in 1981. However, due to an accidental fire last summer at the landfill which burned some 10,000 tires, the complaints became impossible to ignore. ~~However,~~ ^{As} a result of the burning ban, the south 40 acre landfill site is filling up 2 to 3 times faster than normal. This means the closing of the south 40 acre site in 1-1/2 to 2 years. We have thus far not been able to come up with an alternative burning site that would not present major problems of road access, the need for additional personnel or environmental constraints.

Turning to the north 40 acre site presents us with other problems. There is a major natural gas pipeline running diagonally across the site. Because of requirements to maintain a certain distance from the pipeline, the land available for use in the north 40 acre site is probably 25% less than the south 40 acre site. All of these factors have produced a situation in which the Board of County Commissioners will be faced with identifying and acquiring another landfill site within the next five years. While the Board of County Commissioners have made it a top priority to operate the landfill more effectively and get as much use out of it as possible, there is no question that the governing body

will be faced with major policy decisions on these matters much sooner than anticipated ten years ago.

Another area of great concern to me are the many unknown effects of the materials being buried at the landfill. We have already had one incident of leachate pollution of a stream near the landfill site which is used to water livestock downstream. In the last two years alone, permission has been granted by the Kansas Department of Health and Environment to bury 130 cubic yards of asbestos ceiling materials removed from local schools because it was deemed a health hazard; 2,000 gallons of "sludge" from the cleaning of diesel storage tanks operated by a railway company; seven 53-gallon drums of asphalt based chassis paint from a local manufacturing company; paint silts and paint dust from another local manufacturing company; "grit" from a city sewage treatment plant; and 350 cubic yard of "dried sludge and waste materials" from a local rail yard. While all of these materials must be in some kind of container and their location at the landfill site logged, there are many unanswered and perhaps unanswerable questions about the long term viability of burying these materials. How long will the containers last? What happens if the containers rupture? Will the taxpayers of the county be forced to pay the cost of unearthing and re-containing these materials at some future time?

In addition to the kinds of materials mentioned above, there are many products that contain "hazardous materials" in small quantities that come to the landfill as part of the daily municipal solid waste. While individually these products may be relatively harmless buried in a landfill, we do not know the cumulative effects of burying 125,000 cubic yards of municipal and other wastes containing these individual materials per year over the course of 25 years and beyond.

WASTE TO ENERGY - A POSSIBLE SOLUTION

I was first introduced to the concept of waste to energy systems by listening to a presentation by Dr. Doug Hahn at a South Central Kansas Economic Development meeting in Wichita in 1982. I have been enthusiastic about its potential as a solution to our solid waste problems in Harvey County ever since that time. The idea of being able to burn 90% of municipal wastes in an environmentally safe and cost effective manner is obviously attractive to local elected officials faced with the kinds of problems that I have outlined. If these systems can be used to generate steam for manufacturing or other purposes and co-generate small amounts of electricity, then so much the better.

Last Thursday a large audience at a Chamber of Commerce legislative luncheon in Hesston heard Kansas House Speaker, Mike Hayden, speak with enthusiasm about these incinerator systems and in support of H.B. 3095 which would help make it a reality for local governments in Kansas. I hope that the members of this committee and the State Legislature as a whole shares Mr. Hayden's enthusiasm. I applaud you for seriously considering this innovative piece of legislation.

Thank you for the opportunity to testify before you today.

CMB/er



SIERRA CLUB

Kansas Chapter

Testimony before

the House Ways and Means Committee

by Matt Selby

In Support of: HB 3095

March 13, 1984

HB 3095 makes a lot of sense. It is a very good bill that is beneficial in four major areas - political, economical, environmental, and social.

Politically, siting landfills is always a problem. The land used for the landfill has to come from somewhere, and the amount needed to dispose of the waste from a large municipality is tremendous. The amount of waste in the future is going to continue to increase, which will lead to an even greater demand for land disposal area. By allowing counties or municipalities to build resource recovery facilities which utilize wastes, the amount of wastes is reduced and the demand for increased landfill sites and capacity will lessen.

A resource recovery facility will benefit the county or city economically as well. Not only is a product produced which the city or county can sell, but costs for land, equipment, energy, and clean-up will be reduced.

Environmentally the effects of the bill can be very good. Waste will be reduced, land contaminated by that waste will be reduced, and some of the unpleasing odor and aesthetics that are a part of landfills will be reduced. Most importantly,

Attachment 2 3/13/84

House Communications, Computers and Technology

this bill allows society to get the most out of its resources by using the resource completely and in all of its forms.

Waste can be a resource. If wastes are reused, the demand on our finite natural resources will be reduced while reusable materials will be recovered rather than simply disposed of.

Society is benefited by reducing the need for landfills also. Land is freed for other purposes, natural resources are conserved, jobs and revenue are brought to the community through the building and operation of a resource recovery facility, and a positive way to deal with a negative aspect of society is created.

The committee should be commended for this bill as it has only advantages. The community or county that provides for a resource recovery facility will reduce waste, decrease the amount of land area needed for waste disposal, help conserve natural resources, improve the local economy through revenues from the facility's product, lower management costs, and increased jobs, and by encouraging industrial growth through the more efficient use of resource inputs and reuse of outputs.

For these reasons the Kansas Sierra Club strongly supports HB 3095. The Kansas Natural Resource Council fully endorses this testimony.

MY NAME IS WARD CLEMENTS. I AM THE CITY MANAGER OF DERBY, KANSAS. DERBY IS A CITY OF ABOUT 10,000 IN THE SOUTHEAST PORTION OF SEDGWICK COUNTY, KANSAS.

THERE HAS BEEN FOR THE PAST SEVERAL YEARS, A SMALL PRIVATE LANDFILL IN OPERATION NEAR THE SOUTH CITY LIMITS OF DERBY. THIS WAS A CONVENIENT LANDFILL FACILITY FOR THE CITIZENS OF DERBY AND MULVANE AND THE PRIVATE SOLID WASTE CARRIERS SERVING BOTH CITIES AND THE SURROUNDING AREA.

IT HAS COME TO OUR ATTENTION THAT THE STATE OFFICIALS HAVE ASKED THE OPERATORS OF THIS PRIVATE LANDFILL TO BEGIN COVERING OPERATIONS AND TO CLOSE BY JUNE 30, 1984.

THE CITY OF DERBY HAS BEEN KEPT INFORMED BY, AND HAS COOPERATED WITH, SEDGWICK COUNTY ENVIRONMENTAL RESOURCES DEPARTMENT AND THE RESOURCE RECOVERY FEASIBILITY STUDY PUBLISHED IN 1982.

WHEN THE CHAPIN LANDFILL WAS CLOSED SEDGWICK COUNTY STUDIED ADDITIONAL SITES FOR A SANITARY LANDFILL IN THE SOUTHERN PART OF THE COUNTY. IN THE CASE OF EACH SITE THE RESIDENTS HAD MANY VALID REASONS WHY A LANDFILL SHOULD NOT BE LOCATED IN THEIR AREA. THE EXISTING BROOKS LANDFILL IS LOCATED IN THE NORTHWEST QUARTER OF THE COUNTY AND IS A GREAT DISTANCE FROM THE SOUTHEAST QUARTER OF THE COUNTY. IT IS 45 MILES ROUND TRIP FROM DERBY TO BROOKS LANDFILL AND IS A LARGE FACTOR IN THE COST OF RESIDENTIAL PICKUP OF SOLID WASTE IN MOST OF SEDGWICK COUNTY. EVEN THOUGH BROOKS LANDFILL HAS BEEN EXTENDED, IT, TOO, SHALL BE FILLED IN TIME WITH THE WASTE BEING TAKEN THERE FROM THE ENTIRE COUNTY.

THE FACILITIES ADDRESSED IN HB 3095 HAVE THE CAPABILITY TO REDUCE SOLID WASTE BY UP TO 95%, AND WITH HAVING ONLY ABOUT 5% RESIDUE TO BURY, THE LANDFILLS WOULD LAST SO MUCH LONGER, AND MANY OF THE OBJECTIONABLE THINGS - LIKE THE BLOWING OF PAPERS - WOULD BE ABATED.

THE SIDE BENEFITS OF RECOVERY OF REUSABLE MATERIALS, AND THE PRODUCTION OF ENERGY, AT A TIME WHEN ENERGY COSTS APPEAR TO BE IN FOR A DRAMATIC INCREASE, MAKE THESE FACILITIES IN THE BEST PUBLIC INTEREST.

FOR THESE REASONS, WE ASK THAT YOU FAVORABLY REPORT HB 3095 AND URGE ITS PASSAGE AT THIS SESSION OF THE LEGISLATURE.

MARCH 13, 1984

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

GOOD AFTERNOON. MY NAME IS KEN REAVIS AND I AM A COUNCILMAN FROM THE CITY OF HAYSVILLE, KANSAS LOCATED IN THE METROPOLITAN AREA OF WICHITA. I AM HERE TODAY TO SPEAK IN FAVOR OF HOUSE BILL 3095.

A FEW YEARS AGO, OUR CITY PARTICIPATED IN A FIELD VISIT TO SEVERAL SOLID WASTE INCINERATION/POWER GENERATION PLANTS IN ARKANSAS AND OKLAHOMA. OUR INTEREST WAS GREAT AT THE TIME HAVING LEARNED THROUGH THE SEDGWICK COUNTY RESOURCE RECOVERY FEASIBILITY STUDY OF 1982 THAT OUR COUNTY WAS RUNNING OUT OF LAND FILL SPACE. THE PROSPECT OF ESCALATING REFUSE COLLECTION BILLS AND PILES OF TRASH LITTERING OUR CITY FOR LACK OF CONTAINMENT PAINTED A VERY DIM PICTURE INDEED.

IN OUR VISIT, WE WERE PLEASED TO NOTE THAT NOT ONLY WERE THESE TRASH INCINERATION PLANTS ENVIRONMENTALLY CLEAN, BUT IN ADDITION TO PRODUCING AN ALTERNATE REFUSE DISPOSAL SYSTEM, THEY ALSO PRODUCED ALTERNATIVE FORMS OF ENERGY. WE LEARNED THAT WHEN PLACED NEAR INDUSTRY OR POWER PLANTS, THESE WASTE INCINERATION PLANTS COULD PRODUCE ENOUGH PRESSURIZED STEAM TO MEET CERTAIN INDUSTRIAL AND POWER PLANT NEEDS AT A MUCH MORE REASONABLE RATE THAN CONVENTIONAL PRESSURIZED STEAM RATES. CONSEQUENTLY, THESE FACILITIES BECAME COST EFFICIENT NOT ONLY THROUGH THE DISPOSAL AND INCINERATION OF REFUSE, BUT THROUGH THE SALE OF ENERGY.

FOR THESE FACILITIES TO BE SUCCESSFULLY DEVELOPED IN KANSAS, THE LEGISLATURE MUST CONSIDER A BILL SUCH AS HB 3095 AS THE FIRST STEP. FROM THERE, THE PARTNERSHIP AMONG MUNICIPALITIES AND THE PRIVATE SECTOR MUST CARRY THE IDEA FROM THE DRAFT BOARD TO THE IMPLEMENTATION STAGE. IN TODAY'S LIGHT, ANY LEGISLATION THAT WILL ALLOW FOR ALTERNATIVE SOURCES OF POWER GENERATION SHOULD BE STRONGLY ENCOURAGED.

THANK YOU.

Attachment 4 3/13/84
House Communications, Computers and Technology

THE CITY OF WICHITA



OFFICE OF THE MAYOR
CITY HALL — FIRST FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202
(316) 268-4331

March 8, 1984

Representative Mike Meacham, Chairman
Committee on Communications, Computers,
and Technology
Kansas House of Representatives
Topeka, Kansas

Dear Chairman and Committee Members:

The disposal of solid waste has been a chronic and serious problem in Wichita and the surrounding area for several years. It has been exacerbated by the political difficulty associated with siting new landfills and the intuitive feeling that the burial of trash represents the loss of valuable materials as well as the potential for groundwater contamination.

The Wichita City Commission and the Sedgwick County Commission jointly sponsored a study of alternatives for the disposal of trash in the area. The major recommendation of that study was the installation of a network of modular waste-to-energy incineration facilities capable of converting area trash into energy for sale to market customers. A secondary recommendation of the study was that the facilities be privately owned and operated. The total capacity of the system recommended for Sedgwick County was a series of facilities capable of processing 900 tons of trash per day. Detailed financial analyses of individual facilities by local government staff and local financial experts indicated that a waste-to-energy program was indeed viable for the private sector.

As a result of the study and its recommendations, and after careful consideration, the City and County Commissioners jointly and unanimously endorsed implementation of a waste-to-energy program in Wichita and the remainder of Sedgwick County in July 1983. Since that time, local government staff has been working with private parties to develop proposals for specific facilities as well as developing procedures for implementation of a waste-to-energy system.

The City of Wichita supports House Bill No. 3095 related to resource recovery facilities. Specifically, enactment of this bill would provide the necessary tools for implementation of the selected waste-to-energy program for the City of Wichita and would provide a vehicle for other communities in the state to embark on similar programs. The legislation provides clear authority for a city or a county or a combination of cities or counties to provide for resource recovery facilities operated either publicly and/or privately. The bill protects

Attachment 5 3/13/84
House Communications, Computers and Technology

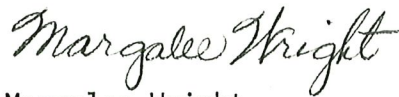
THE CITY OF WICHITA

Representative Mike Meacham
March 8, 1984
Page 2

recycling activity as had been proposed in the local solid waste study. It also provides a vehicle for standby local waste flow control, an important consideration to financial investors and operators of waste-to-energy facilities. Finally, the act clearly delegates control of local solid waste by the state to the cities or counties, subject to specific oversight by the state.

All of these issues are important to the implementation of a successful solid waste incineration program. The City of Wichita is excited about the potential that this bill offers because the legislation provides local governments the opportunity to turn a chronic problem, namely trash disposal, into a positive, constructive solution. Furthermore, a reduction in reliance on sanitary landfills for solid waste disposal reduces the potential hazard of groundwater contamination and the aesthetic problems associated with improperly operated landfills. In conclusion, the City of Wichita supports and endorses the proposed legislation regarding resource recovery.

Sincerely,



Margalee Wright
Mayor

MW:a1

TOM SCOTT . . . COUNTY COMMISSIONER, 2nd DISTRICT

525 North Main Street

Phone (316) 268-7411

Wichita, Kansas 67203



March 13, 1984

TO: Michael R. Meacham, Chairman
Committee on Communications, Computers & Technology.
Kansas House of Representatives
Topeka, Kansas

FROM: Commissioner Tom Scott, 2nd District
Sedgwick County, Kansas

Dear Representative Meacham and Committee members,

Sedgwick County, Kansas, has suffered chronic solid waste disposal problems for many many years. As a Sedgwick County Commissioner I have long supported publicly alternatives for trash disposal in the county other than land fills. In particular I have long supported the use of technologies such as waste-to-energy systems for the environmentally safe disposal of trash. Such systems also allow for the recovery of useful materials such as energy from what would otherwise be buried in the ground.

Sedgwick County staff along with a citizens task force appointed by the Sedgwick County Commission conducted a comprehensive study of solid waste disposal in Sedgwick County and concluded that waste-to-energy systems were a viable local alternative. The study further recommended that such systems be implemented privately and utilize economic incentives to make such systems work. As a result of the study and as a result of detailed financial analysis, the Board of Sedgwick County Commissioners and the Board of Wichita City Commissioners jointly and unanimously approved a local waste-to-energy program during July 1983. I, of course, supported that action.

House Bill #3095, the legislation before you, provides the tools to successfully implement waste-to-energy programs in Sedgwick County as well as other communities and counties throughout the state of Kansas. Furthermore, the bill allows local governments and the local people to choose the system which best suits them, subject to review by the Kansas Department of Health and Environment. The bill also provides sufficient waste control mechanisms to assure private financial support for trash incineration facilities.

Attachment 6 3/13/84
House Communications, Computers and Technology

Therefore, I offer my support for House Bill #3095.
The bill provides for an environmentally safe manner for trash disposal, reduces reliance on unpopular landfills and provides a positive and constructive use for waste material.

Your attention to my remarks is most appreciated.

Sincerely,



Tom Scott, Commissioner
2nd District
BOARD OF COUNTY COMMISSIONERS
Sedgwick County, Kansas

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
Testimony on H.B. 3095

by
Barbara J. Sabol, Secretary
to
Communications, Computers and Technology Committee
March 13, 1984

Background

The City of Wichita and Sedgwick County are planning for facilities to supplement their dependence on sanitary landfills as the principal method of solid waste disposal. To that end, they have endorsed a concept of a facility designed to recover energy from solid wastes.

Their analysis of the current Solid Waste Management Act, 65-3401 et seq., indicated that in their opinion the current act did not provide sufficient authority to contract for the construction and operation, or to insure that a sufficient quantity of solid wastes would be delivered to the facility to guarantee that it would operate to planned capacity. House Bill 3095 incorporates that additional contracting authority and authorizes a city or county to incorporate flow control measures if necessary to insure a supply of solid wastes for a facility.

The flow control issue provides a mechanism whereby a city or county can require the delivery of solid waste to a facility constructed primarily as a resource recovery facility. The section also provides due process protection to those persons located within that service area. Flow control is considered to be important to the economic wellbeing of resource recovery facilities. No resource recovery system will ever be built without assurance that solid wastes will be delivered to it. State of the art resource recovery facilities require some subsidy in form of tipping fees for the deposit of solid wastes into the facility and under present conditions in Kansas, may not be able to compete with landfilling. However, it can be argued that current fee schedules for sanitary landfills do not adequately provide for the potential long-term liability which is incurred when solid wastes are buried.

In recent years, local governments have come under increasing scrutiny from the courts for activities which those local governments and traditionally exercised under their police powers. Many regulatory activities now have to be analyzed in the light of potential antitrust liability. The Supreme Court ruled in 1978 that local governments can be sued for engaging in non-competitive activity unless the state has expressly allowed them to engage in such activity. Where local governments can be sued for these activities, it follows that persons contracting with local governments are also exposed.

In City of Lafayette v. Louisiana Power and Light Company, involving a challenge by a private electric utility company to the city's methods of operating a competing utility company, the Supreme Court held that the anticompetitive conduct of local governments is subject to the federal antitrust laws unless the state itself, by statute or otherwise, has directed or authorized such conduct. Then in California Retail Liquor Dealer's Association v. Midcal Aluminum, Inc., the high court held that for a private entity engaging in anticompetitive conduct pursuant to a state statutory scheme to escape antitrust liability, the conduct not only (1) must be undertaken pursuant to a "clearly articulated and affirmatively expressed state policy" to displace competition with regulation or monopoly public service, but also (2) must be "actively supervised" by the state itself. Finally, in Community Communications Company v. City of Boulder, the Supreme Court ruled that a state constitutional provision granting "home rule" status to local governments was not sufficiently express authorization to local governments to regulate franchises so as to avoid the impact of the antitrust laws.

New Section 3 is designed to provide state authorization and supervision to this particular area of local government activity. We believe that the passage of this amendment will enhance the chances of success of a resource recovery project.

The other sections of the proposal relate to expanding a city's ability to contract with others to provide for the necessary facilities. We support expansion in this area.

Environmental - Land burial of solid wastes represents a waste of valuable resources. In addition, sanitary landfills have the potential to contribute to ground and surface water contamination on a long-term basis. The department is making a continuing commitment to the substitution of resource recovery facilities for sanitary landfills. House Bill 3095, although not entirely necessary to the success of such a venture, would make a project more attractive to potential investors and cities and counties. The department supports this legislation.

Fiscal - House Bill 3095 has no fiscal impact on the department's budget.