

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Senator Merrill Werts at  
Chairperson

8:00 a.m./~~p.m.~~ on January 27, 1987 in room 123-S of the Capitol.

All members were present except:

Committee staff present:

Ramon Powers - Research  
Don Hayward - Revisor  
Nancy Jones - Secretary

Conferees appearing before the committee:

Clark Duffy, Ass't Director, Water Office  
Kerry Wedel, Water Planning, Water Office  
Russell Crites, Kansas Water Authority  
Bill Ewing, Southwestern Bell Telephone  
Richard Jones, Exec. Director, Ks. Association of Conservation Districts  
John Strickler, Kansas Forestry Extension  
Bill Hanzlick, Fish & Game Commission  
Ron Gaches, Boeing Military Airplane Co.

Motion was made by Senator Gordon, seconded by Senator Hayden, to approve minutes of the January 20 and 21, 1987 meetings. Motion carried.

SB 42 - Concerning conservation easements

SB 51 - Relating to conservation structures

Introduction to SB 42 and SB 51 was given by Russell Crites who emphasized the importance of restoring riparian areas not only for fish and wildlife but to help water quality of streams. As recreation is the number two industry in the state, the quality of riparian areas is directly related to economic growth.

Clark Duffy requested introduction of two bills by the committee. The first bill allows implementation of the monitoring data and information system, approved by the Water Authority in September 1986. The second request is for legislation necessary to implement the River Recreation subsection of the Water Plan approved during the 1986 legislative session. (Attachments A & B).

Motion was made to introduce the bills by Senator Feleciano, seconded by Senator Langworthy. Motion carried.

Kerry Wedel provided a briefing of the concepts embodied in the Riparian/Wetland subsection of the State Water Plan. Three techniques proposed to implement this subsection were highlighted with a visual presentation. (Attachment C). Benefits derived from conservation measures of riparian and wetland areas were emphasized. Passage of SB 39, 42 and 51 is recommended to attain the level of protection needed for conservation of these natural areas and continued implementation of the Water Plan.

The language of SB 42 was discussed and clarified as to intent. Mr. Wedel stated SB 39 will clarify existing statutes to allow the Chief Engineer to make appropriate consideration for stabilizing the banks and riparian vegetation during channel modification. SB 42 provides the mechanism for full implementation of riparian conservation easement agreements between the landowner and the state or others. SB 51 provides for development of local riparian/wetland programs under guidelines of the State Conservation Commission for protection of riparian and wetland areas. Discussion was held on content of the bills.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES,  
room 123-S, Statehouse, at 8:00 a.m. ~~5:00~~ on January 27, 1987.

Richard Jones gave testimony on activities in which the conservation districts are involved. (Attachment D). Emphasis was placed on the importance of riparian and wetland areas for erosion control, water quality protection and wildlife habitat. The districts give vital assistance to landowners and operation in protection of the areas as well as working closely with federal and other state agencies. Implementation of SB 42 and 51 is supported by the districts. Mr. Jones asked committee members to note an actual Soil Conservation Plan for a particular farm which was by him.

Bill Hanzlick stated SB 42 allows for rules and regulations to be developed for protection of riparian and wetland areas. Inclusion of these ecosystems in land use planning are beneficial to water quality, reservoir siltation reduction efforts and erosion control. Mr. Hanzlick stated that SB 42 will allow the Fish & Game Commission to use conservation easements for protecting riparian and wetland areas. Without easement authority, the Commission cannot totally fulfill its obligation to the State Water Plan. The same benefits apply as in SB 51. (Attachment E & F)

Discussion was held on concerns of the committee regarding easement covenants and controlled hunting.

John Strickler briefly outlined support of SB 42 and 51 as passage of the legislation will enhance and protect riparian and wetland areas. Natural woodlands in these areas will be beneficial contributors to the people of Kansas. The conservation easement agreements allow more opportunity for landowners to protect these areas. Mr. Strickler feels this legislation will place more emphasis on total conservation. (Attachment G).

Bill Ewing stated a concern of Southwestern Bill is acquisition of right of way in the future. An amendment was proposed by him which would cure his concern relating to placement of buried facilities. (Attachment H).

Ed Martinko testified to the importance of conservation easements for protection of the land and development of protective programs. Mr. Martinko strongly supports passage of the legislation. (Attachments I & J).

Ron Gaches stated that after review of SB 42, the legal staff of Boeing could not determine the limits of rights which would be created by this legislation. Examples of absurd legal situations which could arise under this bill were given. The company is not opposed to the concepts of protection of lands, but to the additional language of the bill. The bill creates authority for the state government or any governmental entity to acquire conservation easements when air space may also be protected. Growth of a municipality could be halted. Concern was also expressed about Section 4 of SB 42.

Chairman Werts asked that copies of Mr. Gaches' comments be submitted to the Committee by January 30 and Mr. Gaches agreed to do this.

Written testimony by Ron Hodges of the Kansas Chamber of Commerce was given to committee members. (Attachment K).

Meeting adjourned. The next meeting will be January 28, 1987.

# Guest List

1-27-87

Rob Hodges	Topeka	KCCI
Stephen Hunt	Topeka	KWO
John C Woodman	KC Mo	KCPK
RICHARD G JONES	SAVANA	KACD
Bill Layher	Pratt	KFCC
Bill Hanzlick	"	"
Darell Monte	Pratt	Ks. Fish. Com.
Clark Duffy	Topeka	Ks Water Office
Kenny Wedel	Tyler	" " "
Gary Flickinger	Topeka	KWO
Russell H. Burtis	Ottawa	KWA
Leland E. Relf	Topeka	DWR KSOA
RON GACHES	WICHITA	BMAK
Jerry Conrad	WICHITA	KGE
Mike Reeb	Topeka	AT+T
Rosemarie T. Storehill	Detroit, MI	AND Pipeline
Kevin Davis	Topeka	League of Ks Municip.
Robert Sukler	Partridge	KWF
Eulalia Lewis	topeka	Topeka Audubon Society
Malcolm Moore	Auburn	
Tom Stiles	Topeka	KWO
TON SCHNEIDER	TOPEKA	Ks. RURAL CENTER
Gary Reser	Topeka	Ks. Telecomm. Assn
Bill Anderson	Mission	Water Dist # of Jo Co
Ross Sublett	Mids Mo	Nature Conservancy
John Spruigon	Topeka	Budget Div
Rick Kready	"	KPL Gas Service
Malcolm Marshall	Topeka	AKA KRPC

82a-941. Same; agencies to perform research related to water resources. It is hereby declared to be a policy of the state of Kansas that all agencies of the state having responsibilities affecting the water resources of the state shall, insofar as circumstances permit, carry on basic data collection, research, and analyses concerning climate, streamflow, water quality, groundwater levels, character and geographical extent of groundwater reservoirs and their relation to both surface and underground waters, interrelation of surface and groundwaters, methods and techniques for recharging groundwater reservoirs, probable yields from surface and groundwater reservoirs, seepage and evapotranspiration losses, and such other matters that relate to the water resources of the state, and those agencies shall direct their attention to the problems of water distribution, quality, pollution, supply variability, floods, and supply in relation to demand.

History: L. 1965, ch. 558, § 15; May 12.

(a)

(b) It is hereby declared to be a policy of the State of Kansas that all agencies of the state having responsibilities affecting the water resources of the state shall develop and operate a multi-agency water resources management information system which shall encompass a data collection and quality control review, Kansas water resources database, geographic information system and a data/technical report survey.

(c) The office shall coordinate and review the activities in subsection (a) and in subsection (b) to ensure that the collection, processing and analysis of water resources data will be done in a comprehensive, efficient and timely manner. The state board of agriculture, state geological survey, Kansas department of health and environment, fish and game commission, Kansas corporation commission and all other interested state agencies shall cooperate with the office in performance of such activities.

ENERGY  
ATTACH. A  
1-27-87

Section 1. K.S.A. 74-2608 is hereby amended to read as follows: 74-2608. The Kansas water office shall:

(1) (a) Collect and compile information pertaining to climate water and soil as related to the usage of water for agricultural, industrial and municipal purposes and the availability of water supplies in the several watersheds of the state, and, in so doing, the office shall first collect and compile the information obtainable from other agencies, instrumentalities of the state, political subdivisions of the state and the federal government.

for water planning areas of the state as determined by the office.

(2) ~~Work out~~ (b) Develop a state plan of water resources management, conservation and development for water planning areas as determined by the office, and cooperate with any agency or instrumentality of the state or federal government now or hereafter engaged in the development of plans or having developed plans affecting any such area of the state.

use all relevant

(c) Develop and maintain guidelines for water conservation plans and practices. Such guidelines shall:

- (1) Not prejudicially or unreasonably affect the public interest;
- (2) be technologically and economically feasible for each water user to implement;
- (3) be designed to curtail the waste of water;
- (4) consider the use of other water if the use of freshwater is not necessary;
- (5) not require curtailment in water use which will not benefit other water users or the public interest;
- (6) not result in the unreasonable deterioration of the quality of the waters of the state;
- (7) consider the reasonable needs of the water user at the time;
- (8) not conflict with the provisions of the Kansas water appropriation act and the state water planning act;
- (9) be limited to practices of water use efficiency except for drought contingency plans for municipal users; and
- (10) take into consideration drought contingency plans for municipal and industrial users.

When developing such guidelines, the Kansas water office shall consider existing guidelines of groundwater management districts and the cost to benefit ratio effect of any plan.

(d) Coordinate basic data collection research and analyses of the water resources of the state as provided in K.S.A. 82a-941(a) and coordinate the development and operation of a water resources management information system as provided in K.S.A. 82a-941(b).

Emergency  
ATTACH B

1-27-87

# STATE WATER PLAN

● Riparian Protection

● Wetland Protection

(SB 39)

(SB 42)

(SB 51)

Submitted to the Senate Energy and Natural  
Resources Committee by the Kansas Water Office

January 27, 1987

*Energy*  
ATTACHMENT C

1-27-87

## **Definition: Riparian Area**

**An area of streamside vegetation along any perennial or intermittent stream including the streambank and adjoining floodplain which is typically distinguishable from upland areas in terms of vegetation, soils or topography.**

## **Benefits:**

**Streambank Protection**

**Erosion Control**

**Water Quality**

**Wildlife Habitat**

**Flood Protection**

**Visual Quality**

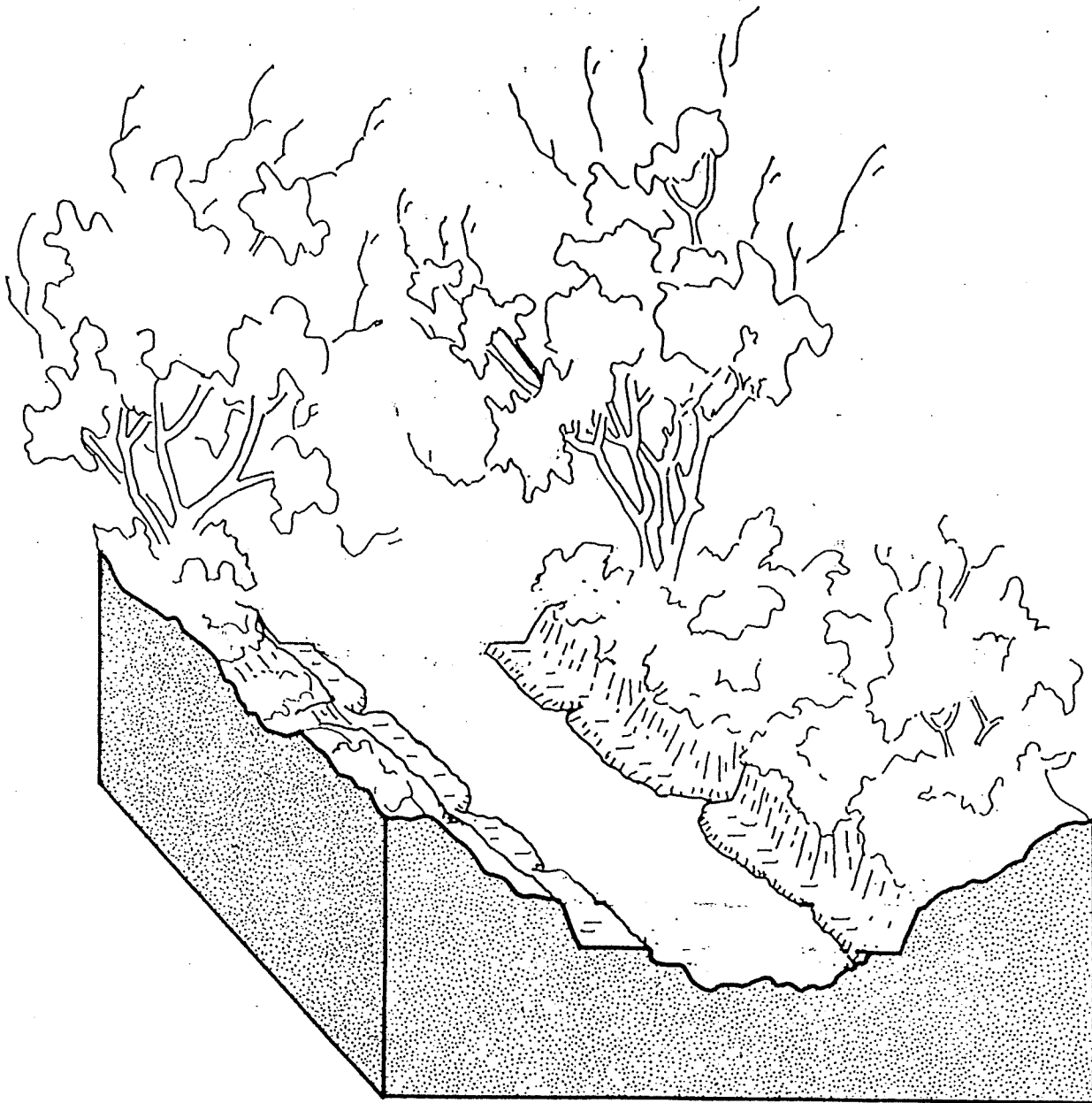
**Recreation**

# **RIPARIAN PROTECTION**

- Channel modification permits  
(SB 39)**
- Conservation District Planning  
Assistance (SB 51)**
- Conservation easements  
(SB 42)**



**Riparian Protection Sub-section**



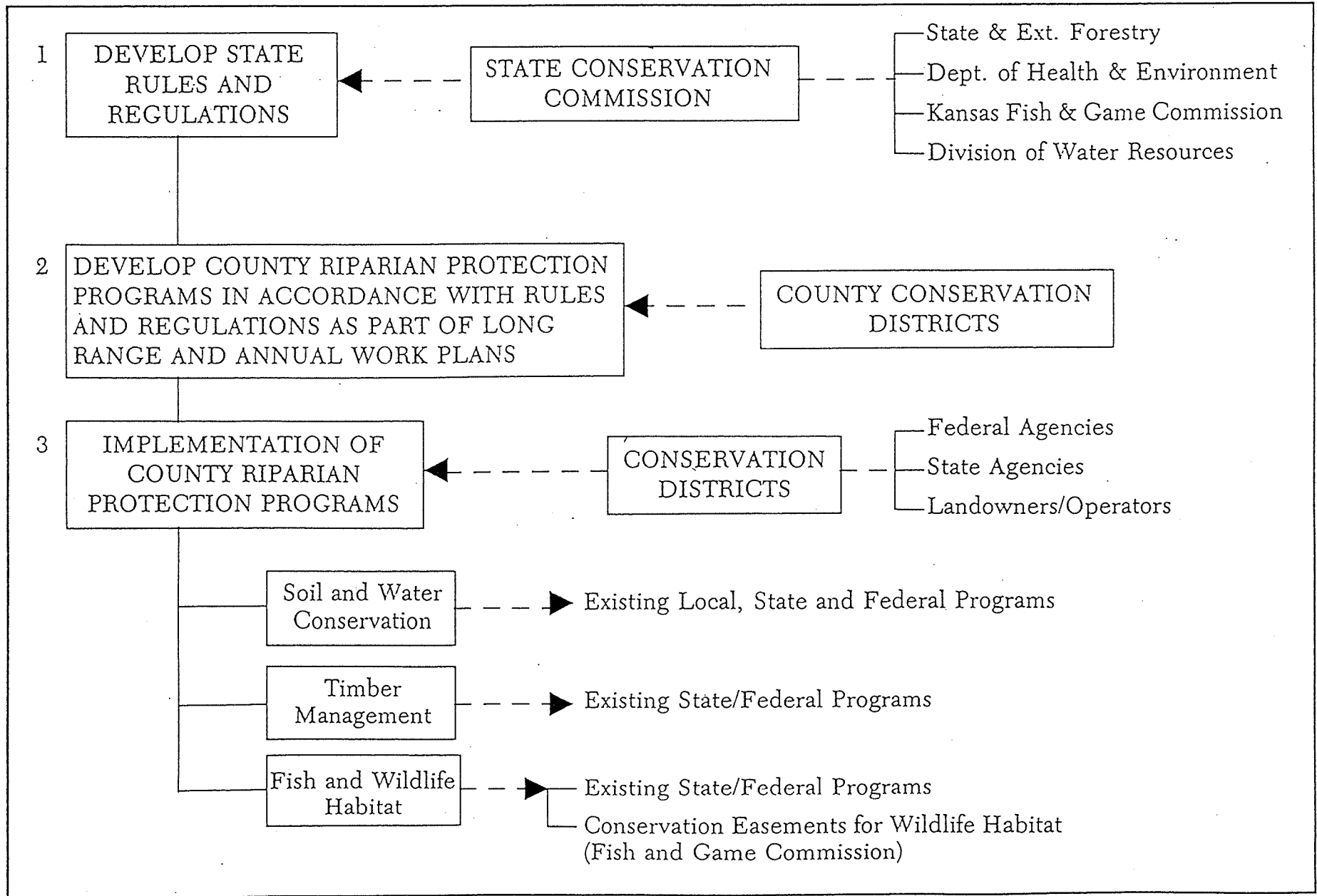
Not to scale

**channel modification regulation  
(SB 39)**

**conservation district  
assistance program  
(SB 51)**

**conservation easements  
(SB 42)**

# RIPARIAN PROTECTION PROGRAM



# **Definition: Wetland**

**Any area of predominately hydric soils where standing water or wet soil conditions exist for a significant part of the growing season of most years. When surface water is present, depth generally does not exceed six feet and vegetation is dominated by water tolerant plants (hydrophytes).**

## **Benefits:**

**Water Quality**

**Wildlife Habitat**

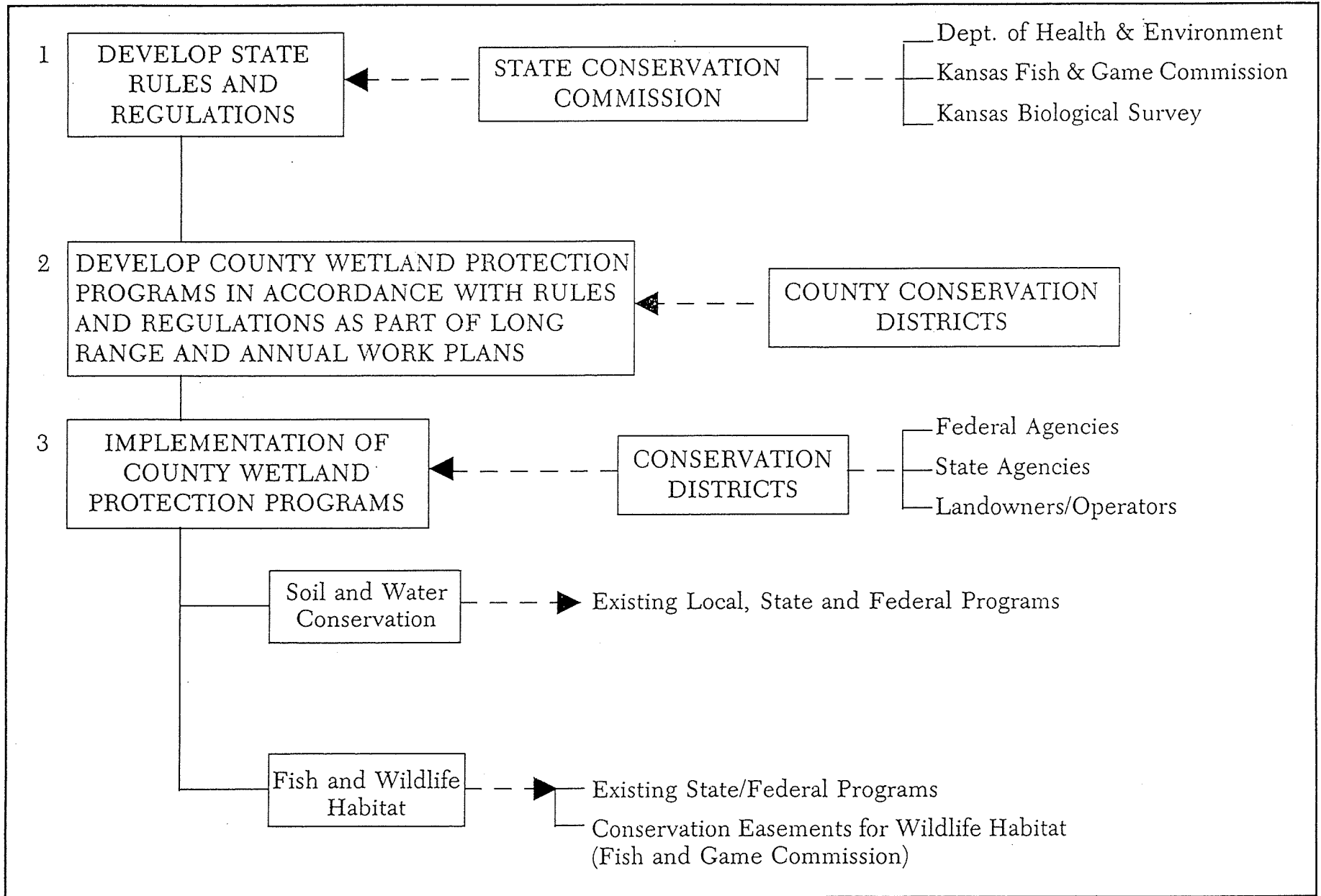
**Groundwater Recharge**

**Flood Detention**

# **WETLAND PROTECTION**

- Conservation District Planning Assistance (SB 51)**
- Conservation easements (SB 42)**

# WETLAND PROTECTION PROGRAM



# **RIPARIAN PROTECTION - WETLAND PROTECTION**

## **FACT**

- **Participation in local assistance program is voluntary**
- **Easements negotiated case-by-case on a voluntary basis**
- **Protects natural riparian and wetland areas**

SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES

January 27, 1987

Testimony on Senate Bill No. 51 - AN ACT Concerning conservation districts; relating to conservation structures; amending K.S.A. 1986 Supp. 2-1915 and repealing the existing section and Senate Bill No. 42 - AN ACT concerning conservation easements.

I am Richard Jones, Executive Director of the Kansas Association of Conservation Districts.

The Association represents the 105 county conservation districts in Kansas. Conservation districts provide assistance to landowners and operators for the protection and improvement of their soil, water, plant and animal resources. Conservation districts are governed by a 5 member board of supervisors made up of local farmers and ranchers.

The Kansas Association of Conservation Districts urges the passage of Senate Bill No. 51 and Senate Bill No. 42 for the protection of our natural riparian and wetland areas.

Both riparian and wetland areas represent an important natural resource. Natural riparian areas are important for their timber production, sediment and erosion control, water quality protection, streambank stabilization as well as for wildlife habitat. Natural wetlands are also an important resource to Kansas. Wetlands are vital to numerous wildlife species. They provide waterfowl with areas to feed, nest, breed, and over-winter. The wetland areas are also home to

*Emerges*  
ATTACH B  
1-27-87

many other species of birds and animals. Wetlands also provide for nutrient retention and sediment trapping, resulting in benefits to water quality. We need to protect these vital natural resources.

Conservation districts, working with the farmers and ranchers within their district, have been in the environmental business for years. Conservation districts provide conservation planning and application assistance to some 90,000 cooperators. They assist their cooperators with the development of conservation plans for their lands. These are complete conservation plans, developed with the individual landowners and operators and directed at protecting and improving all of their resources. Kansas conservation districts have been active in this area since the late 1930s.

Conservation districts have cooperative working agreements with the United States Department of Agriculture, Soil Conservation Service, with the Kansas Fish and Game Division, with the State and Extension Forestry Department, for technical assistance in carrying out conservation programs in their county. They may also call on many other state and federal agencies for assistance, as needed.

With the passage of Senate Bill No. 51, and with the guidelines developed by the State Conservation Commission, conservation districts are ready to develop and implement local riparian protection plans. With the passage of Senate Bill No. 42, conservation districts are ready to assist the Kansas Fish and Game Commission and the State and Extension Forestry establish county criteria for identifying crucial wildlife habitat associated with riparian and wetland areas.



KANSAS FISH AND GAME COMMISSION  
PERSPECTIVES ON STATE WATER PLAN/WETLANDS AND RIPARIAN  
PROTECTION PROGRAM ESTABLISHED BY THE STATE CONSERVATION COMMISSION  
(SB 51 and HB 2035)

Testimony presented to the  
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE  
January 27, 1987

The Kansas Fish and Game Commission endorses SB 51 and HB 2035. This bill would direct the State Conservation Commission to establish a program to protect riparian and wetland areas and such a program would be implemented by the 105 County Conservation Districts. The bill allows for rules and regulations to be developed giving guidance to the county programs.

The Kansas Fish and Game Commission will provide assistance to the Conservation Commission in the development of such a program. Sound management of our riparian and wetland areas is absolutely necessary, not just for fish and wildlife propagation, but to control flooding, aid in ground water recharge, provide streams with high quality water, and reduce siltation of our stream beds and reservoirs.

Benefits of legislation:

Inclusion of these ecosystems in land use planning insures a higher quality environment in the future, and more effectively provides for supplying water resources critical to the economy of the State. Flood control, water quality, erosion control, and reservoir siltation reduction efforts will all greatly benefit through protection of natural wetlands and riparian zones.

Agency actions for implementation:

The Kansas Fish and Game Commission has met several times with the State Conservation Commission and other affected entities to develop guidelines for wetland and riparian protection. The Kansas Fish and Game Commission has developed stream ratings which should provide assistance to counties for prioritizing efforts at protecting riparian areas.

*Energy*  
ATTACH. E  
1-27-87

Development of a voluntary conservation easement program by the Kansas Fish and Game Commission (SB 42) would provide a tool for conservation districts to utilize in providing landowner incentives for enrolling such lands in a program. The Kansas Fish and Game Commission would provide assistance to counties through its current personnel and utilize the existing Wildlife Habitat Improvement Program (WHIP) to implement and fulfill its obligation to this portion of the water plan. Existing resources would be utilized through reprioritization of efforts and no general fund monies are requested.

KANSAS FISH AND GAME COMMISSION  
PERSPECTIVES ON STATE WATER PLAN/CONSERVATION EASEMENTS (SB 42)

Testimony presented to the  
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

January 27, 1987

The Kansas Fish and Game Commission endorses Senate Bill 42. The establishment of conservation easements as a legal interest in real property in Kansas would allow the Kansas Fish and Game Commission to use conservation easements for protecting riparian and wetland areas as recommended in the riparian protection and wetland protection subsections of the State Water Plan.

Without conservation easements the Kansas Fish and Game Commission cannot fulfill its obligation to the State Water Plan. Establishment of such easements would also allow Conservation Districts to utilize the program established by the Fish and Game Commission to protect riparian areas and wetlands identified in their annual and long range work plans.

The recommendation of using conservation easements to protect wetlands and riparian areas was born out of public comment on the water plan and has received much support. Enrollment of land into such easements is strictly voluntary on the part of any landowner. Use of such easements will provide a sound method of addressing critical water supply, water quality, erosion, and fish and wildlife resource needs.

Benefits of Legislation:

The Kansas Fish and Game Commission currently has authority to accept donations of real property. However, state law currently does not recognize conservation easements. Kansas is one of only four states left in the union which do not provide such a mechanism for the protection of wildlife habitats and natural resources. State law recognizing conservation easements provides legal means\* to utilize certain federal income tax provisions, thereby providing an incentive for landowners to enroll in such an easement program.

*Energy*  
ATTACH. F  
1-27-87

Such easements would provide a tool to protect riparian and wetland habitats identified as needing protection by county conservation districts. In addition, such easements could be included in project planning to allow less costly mitigation opportunities to project sponsors.

Proposed agency action for implementation:

Enrollment of lands in conservation easements for the protection of wetland and riparian areas would be handled through existing personnel functions. Donated easements could be accepted with no additional financial requirements. Shorter term easements would not be accepted until some funding mechanism was identified in the future. Paid-for-easements do not qualify landowners for Federal income tax deductions.

\* for landowners



**Cooperative Extension Service**

Department of Forestry  
State and Extension Forestry  
2610 Claflin Road  
Manhattan, Kansas 66502  
913-532-5752

January 27, 1987

TO: Senate Committee on Energy and Natural Resources  
Merrill Werts, Chairperson

FROM: John K. Strickler, Associate State Extension Forester *John K. Strickler*

RE: Senate Bills 42 (Conservation Easements) and 51 (Riparian and Wetland Protection)

On behalf of State and Extension Forestry, I want to express our support for passage of Senate Bills 42 and 51.

The purpose of the Riparian and Wetland Protection Programs provided in SB 51 will be to promote proper management of these vital areas so that their values for water quality, soil stabilization, wildlife, timber and other multiple benefits are protected and enhanced. We believe that the strong involvement of the county conservation districts will be a very positive step in building local support for development of effective riparian and wetland protection programs. As the state forestry agency, we work closely with the conservation districts, the State Conservation Commission, the Kansas Fish and Game Commission, the Soil Conservation Service and other agencies in providing technical forestry assistance to Kansas landowners.

Many of the riparian and wetland areas that will be involved in these protection programs are in natural woodlands. Through proper management, these woodlands can make valuable contributions to water quality and quantity, while at the same time providing quality lumber, fuelwood, wildlife habitat and other multiple benefits for the people of Kansas. Our State and Extension Forestry staff will work closely with the other local, state and federal agencies in assisting landowners with this management. With education, coordination and technical assistance, Kansas landowners can voluntarily implement effective riparian and wetland protection practices.

The conservation easement capability outlined in SB 42 would provide opportunities for landowners to voluntarily dedicate riparian or wetland areas of particular worth to the purposes of protection of these values. Therefore, SB 42 complements the purposes of SB 51.

One other factor I would like to point out is that the Riparian and Wetland Programs outlined in SB 51 mesh very well with the "Sodbuster," "Swampbuster" and the Conservation Compliance provisions of the 1985 Federal Farm Bill. Passage of SB 42 and 51 would be very timely in terms of the increased emphasis on total conservation farm planning called for in this federal legislation.

JKS/plp

*see energy  
ATTACH. #  
1-27-87*

0081 easement may be prohibited or restrained by injunctive relief  
0082 granted by any court of competent jurisdiction in a proceeding  
0083 initiated by the grantor, such grantor's heirs, successors or as-  
0084 signees, or by the owner of the easement.

0085 (c) In addition to the remedy of injunctive relief, the owner of  
0086 a conservation easement shall be entitled to recover monetary  
0087 damages for injury thereto or to the interest to be protected  
0088 thereby. In assessing such damages, there may be taken into  
0089 account, in addition to the cost of restoration and other usual  
0090 rules of the law of damages, the loss of scenic, aesthetic and  
0091 environmental values.

0092 Sec. 5. Real property subject to one or more conservation  
0093 easements shall be subject to assessment and taxation or exemp-  
0094 tion therefrom in accordance with general laws applicable to the  
0095 assessment and taxation of interests in real property.

0096 Sec. 6. No interest in real property cognizable under the  
0097 statutes, common law, or custom in effect in this state prior to  
0098 July 1, 1987, nor any lease or sublease thereof at any time, nor  
0099 any transfer of a water right or any change of a point of diversion  
0100 at any time shall be impaired, invalidated or in any way ad-  
0101 versely affected by reason of any provision of this act. No provi-  
0102 sion of this act shall be construed to mean that conservation  
0103 easements were not lawful estates in land prior to July 1, 1987.

0104 ~~Sec. 7. This act shall take effect and be in force from and~~  
0105 after its publication in the statute book.

Sec. 7. Notwithstanding any other provisions hereof, utilities shall not be prevented hereunder from obtaining easements on property subject to a conservation easement for purposes of placing and maintaining underground or buried utility facilities and associated connecting boxes and similar hardware.

Sec. 8. This act shall take effect and be in force from and

# KANSAS NONGAME WILDLIFE ADVISORY COUNCIL

2291 Irving Hill Drive  
Lawrence, KS 66045  
27 January 1987


TO: Senate Committee on Energy and Natural Resources  
FROM: Kansas Nongame Wildlife Advisory Council  
RE: SB 42 - Establishment of Conservation Easements; RE Proposal No. 10  
SB 51 - State Water Plan; Conservation Structures

The Kansas Nongame Wildlife Advisory Council serves as a citizens advisory group to the Kansas Fish and Game Commission in its nongame program funded by the "Chickadee Checkoff" on the state income tax form. In October 1986 the Council voted unanimously to support the legislation necessary for implementation of the Fish, Wildlife and Recreation Section of the State Water Plan. The Council, therefore, wishes to support passage of SB 42 and SB 51.

The Council recognizes the importance of conservation easements as a means of protecting, enhancing and maintaining land, water or air spaces in addressing issues of water quantity, water quality, wildlife habitat and ecological diversity. The Council further endorses the role of the State Conservation Commission and the County Conservation Districts in developing programs for the protection of riparian and wetland areas in dealing with natural resources management issues.

It is our hope that the 1987 Kansas Legislature will approve SB 42 and SB 51 in recognition of the importance of this legislation in addressing the overall goals of the State Water Plan.

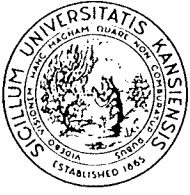
Sincerely,

  
Edward A. Martinko  
Chairman

EAM/jkm

Do something WILD!

*Gregory*  
ATTACH F1  
1-27-87



# KANSAS BIOLOGICAL SURVEY

The University of Kansas

Raymond Nichols Hall  
2291 Irving Hill Drive—Campus West  
Lawrence, Kansas 66045-2969  
(913) 864-4777

TO: Senate Committee on Energy and Natural Resources

FROM: Edward A. Martinko, State Biologist, Director  
Kansas Biological Survey *Edward A. Martinko*

SUBJECT: SB 42 - Establishment of Conservation Easements;  
Re Proposal No. 10.  
SB 51 - State Water Plan; Conservation Structures

DATE: 27 January 1987

On behalf of the Kansas Biological Survey, I would like to express our support for SB 42 and SB 51. These bills address the important issues of conservation easements and the development of programs for riparian and wetland protection in the implementation of the Fish Wildlife and Recreation Section of the State Water Plan.

As the agency responsible for studying the diversity and integrity of the plants and animals of Kansas, the Biological Survey enthusiastically endorses SB 42 and SB 51 as important steps in maintaining the environmental conditions necessary for sustaining water quality and biotic diversity in Kansas.

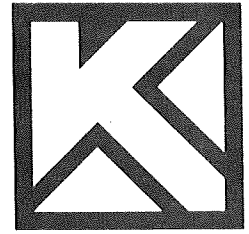
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*6/27/87*  
ATTACH J  
1-27-87



# LEGISLATIVE TESTIMONY

## Kansas Chamber of Commerce and Industry



500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the  
Kansas State Chamber  
of Commerce,  
Associated Industries  
of Kansas,  
Kansas Retail Council

SB 42

January 27, 1987

Testimony Before the  
Senate Committee on Energy and Natural Resources

by

Rob Hodges

Mr. Chairman, members of the Committee, I appreciate the opportunity to appear today to provide the Chamber's input regarding SB 42 which would permit creation of conservation easements. KCCI does not oppose the bill, but has several questions which we would like to have answered before this Committee takes action on the bill.

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The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses which includes 200 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KCCI's members having less than 25 employees, and 86% having less than 100 employees.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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*George*  
ATTACH K  
1-27-87

Section 1, paragraph (a) of the bill defines "conservation easement" and broadly outlines parameters for what such an easement could enforce. Because the terms are so broad, the Chamber has questions about the intent of the language.

In lines 23 and 25, the bill speaks to "air space." Will inclusion of air space in the bill in any way limit what another property owner may do on nearby land which is not part of the conservation easement property? In other words, if my industrial process emits an odor which is carried by the wind over property covered by the conservation easement, could the smell be interpreted to violate the "wholesome environmental quality or life-sustaining ecological diversity" of the air space? If it is the Committee's intention that such windblown smells not be a violation, then the language should be changed to make certain that this never occurs. In another case, could a farmer's burning of a field cause a violation of a conservation easement? We feel such possibilities should be specifically exempted from the bill, or at least specifically defined.

On lines 41 and 42 a conservation easement would be made perpetual unless otherwise created. The Chamber suggests that no future landowner should be bound by agreements written and agreed to in the distant past. We suggest language be substituted which would terminate a conservation easement at the time of sale of the land. Future landowners would then be free to re-create the easement if they so desired.

Section 4, paragraph (a), beginning on line 75, addresses enforcement of a conservation easement. The sentence appears to grant almost unchallengeable enforcement authority, regardless of circumstances. Referring to line 76, and assuming that all easements are created to benefit particular pieces of land, how can lack of benefit to the land not be a challenge to its enforceability? We suggest that the section needs review, and, possibly, amendment.

Lines 79 through 84 permit injunctive relief for actual or threatened injury to an easement or the interest intended for protection by an easement. What tests would be applied by a court in determining a threatened injury? How would all the interests

intended to be protected by an easement be determined? Again, the language seems to beg for litigation because of its broad potential impact. The Chamber suggests more specific language be substituted.

Lines 85 through 91 bring into the issue questions of monetary damages and serve to underscore the need for more specific language in the bill. No one should face a monetary penalty based on the broadly defined set of criteria which would be set for the courts by this bill.

Finally, Section 6, beginning on line 92, seems unclear. The first sentence appears to exempt any interest in real property which is in effect before July 1, 1987. Interest in such property established after that date would apparently not be exempt. Yet the use of the words "at any time" in lines 98 and 100 seems to create an exemption in instances of a lease or sublease established after July 1, 1987, or for transfer of a water right or change in a point of diversion at some later date. Our question deals with why leases or water right transfers which take place after July 1, 1987, should be different than any other interest in real property?

The Chamber supports the maintenance of a wholesome environmental quality in Kansas. I believe most Kansans do. But the wording of SB 42 raises questions about how the legislation would be used should it become law. We want our state to grow and prosper. If SB 42 could create a barrier to growth, this Committee, indeed the whole Legislature should deliberate at length imposing such a barrier before passing the bill.

Thank you for your time.