

Approved March 25, 1991  
Date

MINUTES OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

The meeting was called to order by Representative Diane Gjerstad at  
Chairperson

3:40 ~~a.m.~~ p.m. on Thursday, February 28, 1991 in room 423-S of the Capitol.

All members were present except:

Representative Wagnon. Excused.

Committee staff present:

Lynne Holt, Research  
Jim Wilson, Revisor  
Betty Manning, Secretary

Conferees appearing before the committee:

Mike Heim, Principal Analyst, Legislative Research  
Bob Knight, Mayor, City of Wichita  
Chris Cherches, City Manager, Wichita  
Tom Powell, Director of Law, Wichita  
Ray Trail, Director of Finance, Wichita  
Paul Stephenson, Bank IV  
Courtley Jackson, Board of Realtors  
David Traster, Department of Health and Environment  
Charles McIlwaine, Coleman Company  
Larry Sanford, Coleman Company  
David Burk, Architect, Briendenthal & Burk Architects  
Randy Summers, Kansas State Bank and Trust  
Scott McMillan, Property Banc  
Bill Bunten, First National Bank  
Randy Rathbun, Attorney  
Delbert Crowl, Delbert Crowl Co., Inc.  
Don Vaughn, Mechanical Heating and Air Conditioning

Chairperson Gjerstad called the meeting to order at 3:40 p.m.

The Chair recognized Rep. Wisdom. Rep. Wisdom made a motion to pass H.B. 2275 as amended on page 6 in line 26, by striking "and"; and after line 26, by inserting the following: "(6) the needs of the community as identified in an objective cultural needs assessment study of the metropolitan area; and"; and on line 27 by striking "(6)" and inserting in lieu thereof "(7). Rep. Brown seconded the motion. Motion carried. Rep. Brown made a motion H.B. 2275 be passed out of committee as amended. Seconded by Rep. Weimer. Motion carried.

Chairperson Gjerstad opened the hearings on H.B. 2124. Mike Heim, principal analyst with Legislative Research gave an overview of the bill which provides a financing vehicle for the cleanup of a groundwater pollution site located in the downtown Wichita area. The bill would permit the governing body of any city which has entered into contracts with the Department of Health and Environment or the United States Environmental Protection Agency to pledge tax increments receivable in future years to pay costs related to the investigation and remediation of environmentally contaminated areas. Attachment 1.

The Chair asked that all questions be held until all conferees had given their testimony.

First conferee introduced was Mayor Bob Knight, City of Wichita. Mayor Knight stated the City of Wichita was advised by the Environmental Protection Agency and the Kansas Department of Health and Environment that there was intermittent groundwater contamination

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT,  
room 423-S, Statehouse, at 3:40 ~~a.m.~~/p.m. on Thursday, February 28, 1991

four miles long and one mile wide running through the central business district of Wichita. Mayor Knight introduced Chris Cherches, City Manager, who outlined the city's plan for this cleanup operation. Tom Powell, Director of Law, City of Wichita, explained in detail the plan and the financial responsibility of the cleanup project, and the legislation the city is requesting. Attachment 2.

Paul Stephenson, Executive Vice President of Bank IV, Wichita, expressed his concern about the lending institution liability associated with superfund intervention, stating that prudent bankers are hesitant to loan in a contaminated area should they take title to property in a foreclosure situation and therefore be responsible in part for the cleanup of the contamination. Attachment 3. Courtley Jackson, President, Wichita Area Association of Realtors, who specializes as a real estate appraiser, is supportive of H.B. 2124. Due to the contamination, property owners cannot sell and owners cannot obtain any financing for expansion using their real estate as collateral. Lenders are reluctant to expose themselves to the possible remediation of the contamination if owner defaults. Mr. Jackson urged support of this bill. Attachment 4. The next conferee, David Traster, assistant secretary and general counsel for the Kansas Department of Health and Environment testified with regard to issuance of tax increment bonds. Attachment 5. Charles McIlwaine, Coleman Company, testified in support of H.B. 2124. This bill would initiate one step to implement the city's plan to this environmental contamination problem. He further stated that the federal superfund intervention would burden the city with tremendous costs in both time and money. Attachment 6. Larry Sanford, senior vice president of the Coleman Company, also spoke in support of this bill stating that if the city's plan is implemented, it will remove the cloud covering the properties in the area. David Burk, with Market Place Properties, a development company, stated his plan for a marketplace in the city has come to a virtual standstill due to a test hole completed on his property showing possible underground water contamination and thereby automatically putting his whole area in the Gilbert-Mosley site. The innovative approach the city has proposed would generate the revenues needed over the years for the cleanup project. He strongly urged support of this bill. Attachment 7.

Due to the lateness of the hour, Chairperson Gjerstad asked the remaining proponents who had come to testify to introduce themselves. They were Randy Summers, senior vice president of Kansas State Bank and Trust Company, Attachment 8, Bill Livingston, property owner in the affected area who supported the city's position, Attachment 9, Scott McMillan, commercial realtor, who had come to testify in support of the bill, Attachment 10, and William D. Bunten, president, First National Bank, Wichita, Attachment 11.

Two letters received in support of H.B. 2124 and distributed to the committee were from Representative Lahti, Attachment 12 and Bernie Koch, Wichita Area Chamber of Commerce, Attachment 13.

Chairperson Gjerstad then introduced Randy Rathbun, attorney, who stated he was not opposed to the city taking over the cleanup of this contamination. He does, however, propose a different option for financing that would not penalize the small minority of taxpayers in the affected area. He believes the only practical alternative is to make the polluters pay for the cleanup of the contamination. His main concern is with the tax increment financing and urged the committee to consider authorizing the City of Wichita to issue government obligation bonds to pay for the portion of cleanup they are deemed responsible. Attachment 14.

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Delbert Crowl, Delbert Crowl Company, Inc., said he was in complete agreement with Mr. Rathbun and was against this double taxation. He didn't cause the contamination, so why should he be responsible for the cleanup. Final opponent, Dan Vaughn, Mechanical Heating and Air Conditioning, said he had been made a prisoner of his property. He cannot sell it and cannot get money on the property from the banks. He strongly advises the issuance of government obligation bonds and urged the committee to consider this proposal.

The Chair asked for questions from the committee members.

Chairperson Gjerstad noted that since there were several questions left on this issue, coupled with the fact legislature is facing another deadline, she appointed a sub-committee to further examine the issue. The sub-committee will report back next Wednesday. Members of the sub-committee are Chairperson Gjerstad and Representatives Baker and Bishop.

Chairperson Gjerstad closed the hearings on H.B. 2124.

The meeting was adjourned at 5:15 p.m.

: Feb 28, 1991

GUEST REGISTER

HOUSE

Committee on Economic Development

<u>NAME</u>	<u>ORGANIZATION</u>	<u>ADDRESS</u>
ALAN COBB	KASB	WICHITA
Pat Casey	KDHE	Topeka
Bill Bunker	FIRST NATIONAL BANK	WICHITA, KS
BOB LIVINGSTON	COA ARCHITECTS	WICHITA
HANK BOASE	SEDGWICK COUNTY	WICHITA
Juie Hein	Topeka Hein + Ebert	
DAVID BURK	MARKETPLACE PROPOSERS	WICHITA
Randy Summers	Kansas State Bank	Wichita
BESSY GWIN	SEDO. CO. COMM.	WICHITA
JAROLD HARRISON	Sedgwick County	Wichita, KS
Mike L. Johnson	Sedgwick County	Wichita, KS.
BILL HANCOCK	" "	" "
Willie Martin	Sedgwick County	Wichita, KS.
Bud Hentzen	" "	" "
Bill Boyson	Kansas Corp. Comm	Topeka
DAVID M. TRASTER	KDHE	Topeka
Jack Shriver	KCC	Topeka,



: Feb 28, 1991

GUEST REGISTER

HOUSE

Committee on Economic Development

NAME

ORGANIZATION

ADDRESS

Larry E. Sanford The Coleman Co Inc 250 N. St Francis Wichita

Charles McIwaine " "

Courtley Jackson Wichita Area Association of Realtors 517 S. Market Wichita

Jack Brown WICHITA - SEDGWICK Co. HEALTH 1900 E. 9TH - WICHITA

Dirk LISAVER The Coleman Co. 250 N. St. Francis - Wichita

RAY TRAIL CITY OF WICHITA 455 N. MAIN Wichita

Paul D. Stephenson Bank 10 Wichita PO BOX 4 WICHITA

Chris Cherches City of Wichita 455 N. MAIN

BOB KNIGHT " "

Tom Powell " "

Jerry Connrod KGE & WAREHOUSE

Randy Robinson Wichita, KS

Donald O. Vaughn, Jr. Don Vaughn, Inc. 605 E. 1st - Wichita, KS.

Robert F Crowl Sr. Robert Crowl Co Inc 214 Commerce Wichita KS

Robert Crowl Sr. Robert Crowl Co Inc 214 Commerce Wichita

SCOTT McMILLAN PROPERTY BANC 303 S. HILLSIDE, WICHITA

Donna Rebeaux Jeff Coyer

# MEMORANDUM

## Kansas Legislative Research Department

Room 545-N -- Statehouse  
Topeka, Kansas 66612-1586  
(913) 296-3181

February 28, 1991

To: House Committee on Economic Development  
From: Mike Heim, Principal Analyst  
Re: Wichita Groundwater Contamination Cleanup: H.B. 2124  
Background and Other Options

### Background

H.B. 2124 was introduced at the request of the City of Wichita to provide a financing vehicle for the cleanup of a groundwater pollution site located in the downtown Wichita area.

### Summary of H.B. 2124

H.B. 2124 amends a provision of the tax increment financing law. The bill permits the governing body of any city, which has entered into contracts with the Kansas Department of Health and Environment (KDHE) or the United States Environmental Protection Agency (EPA), to pledge tax increments receivable in future years to pay costs related to the investigation and remediation of environmentally contaminated areas. Contract provisions dealing with the pledging of the tax increment are exempted from requirements of the cash basis and budget laws. (Note that the project will involve capital costs as well as long-term operation and maintenance costs. Any financing plan apparently would require a statutory exemption from the cash basis and budget laws to comply with consent decree requirements set by KDHE and EPA.) Projects must be completed within 20 years from the date the city enters into a consent decree with either KDHE or EPA.

### Kansas Tax Increment Financing Law Overview

The Kansas Tax Increment Financing Act appears at K.S.A. 12-1770 *et seq.* The law permits cities to use the tax increment redevelopment tool in blighted areas, central business districts, or in areas designated enterprise zones. Some of the steps in creating a redevelopment district include:

1. mailed notices to property owners and published notice and a public hearing on the issue of creating a redevelopment district;
2. the preparation of a comprehensive redevelopment plan;

Eco-Devo  
Attachment #1  
02-28-91

3. the ability of either the county or school district governing bodies to veto within 30 days of the public hearing any aspect of the plan that involves the acquisition and redevelopment of privately owned property; and
4. the ability of 3 percent of the electors to file protest petitions and thus require an election on any bond issue where the full faith and credit of the city was pledged.

The tax increment concept involves capping property values at their predevelopment amount, then levying taxes against the growth in value above this frozen amount to pay off the tax increment bonds issue to pay redevelopment costs. Taxing entities continue to receive taxes based on the capped value of property only. In Kansas only three taxing subdivisions forgo the tax on the incremental growth, *i.e.*, cities, counties, and school districts. See Attachment I for an explanation of the tax increment concept that appears in Gelfand, *State and Local Government Debt Financing*, Section 9.14.

### The Comprehensive Environmental Response Compensation and Liability Act

"Superfund" is the generic name commonly used to identify the federal Comprehensive Environmental Response Compensation and Liability Act (CERCLA) at 42 USCA § 9601 *et seq.*, as amended by the 1986 Superfund Amendments and Reauthorization Act (SARA), which governs the cleanup of hazardous waste sites in the United States. It was not the intent of Congress that only Superfund monies be used for cleanups, but rather that the maximum amount possible first be obtained from those who created or were responsible for the hazardous waste sites, and that any monies necessarily drawn from Superfund be recouped from those individuals to the greatest extent possible.

"Responsible parties" under 42 U.S. § 9607(a) subject to CERCLA liability include:

1. generators of the hazardous substance,
2. current owners and operators of the disposal site,
3. owners or operators at the time of the disposal,
4. transporters of hazardous waste, and
5. those who arranged for the disposal of the hazardous waste.

An individual who personally, or through a sole proprietorship or partnership, contributed to a Superfund site in one of the above listed capacities, can be held liable under CERCLA. The extent to which "behind the scenes" individuals and entities, such as corporate officers, directors, parent corporations, individual majority shareholders, and even successor corporations can be held liable is still evolving in the courts. Creditors and trust departments in limited circumstances also may be potentially liable under the definition of "owner or operator" under CERCLA which provides:

"Owner or operator" means . . . (ii) in the case of an onshore facility or an offshore facility, any person owning or operating such facility . . . . Such term does not include a person, who, without participating in the management of a vessel or facility, holds indicia of ownership primarily to protect his security interest in the vessel or facility." See 42 U.S.C. § 9601(20)(a).

The theory of liability under CERCLA is one of strict liability since there is no requirement that fault by a defendant be shown. Further, liability is considered joint and several, meaning that any capable party, even if more capable parties are involved, may be required to pay the entire cost of the remediation.

The only defenses to CERCLA liability are set forth in Section 42 U.S.C. 9607(b). An owner is not liable if he can show that the contamination resulted from:

1. an act of God,
2. an act of war, or
3. the release, or threatened release, was caused solely by acts or omissions of a third party and did not occur in connection with a contractual relationship with the allegedly innocent landowner (this is referred to as the innocent landowner defense).

**Kansas Department of Health and Environment  
and the Wichita Site**

KDHE has entered into a cooperative agreement with EPA under which KDHE will perform investigations of selected contaminated sites in Kansas. The investigations are conducted in accordance with the requirements of CERCLA. The purpose of the investigations is to determine if sites qualify for listing on the National Priority List (NPL), thus making them eligible for federally mandated Superfund cleanups.

As part of the agreement, KDHE conducted a preliminary assessment (PA) and scanning site investigation of the Gilbert and Mosley site located in Wichita, Kansas. A KDHE report submitted to EPA in November, 1989, recommended that a listing site investigation be conducted at the Gilbert and Mosley site to document information necessary for proposing the site for the NPL.

The Gilbert and Mosley site is approximately four miles from north to south and one to one and one-half miles from east to west in the middle of downtown Wichita. It includes all areas where volatile organic chemicals (VOCs) have been detected in the groundwater. Land use within the site is a mixture of residential, commercial, and industrial. The industrialized sections are generally limited to areas near the railroad tracks. Commercial areas within the site include the downtown business district and property along major streets.

The KDHE *Listing Site Investigation* published August, 1990, for the Gilbert and Mosley site contained the following conclusions:

1. VOC contamination at the Gilbert and Mosley site covers an extensive area, extending approximately four miles north and south, and one to one and one-half miles east and west. Levels of contamination are relatively high in local areas, and the contamination can be expected to pass under the Arkansas River to eventually threaten public water supply wells to the south.
2. The main source areas of the chlorinated hydrocarbons PCE, TCE, and DCE are near the north end of the area, with at least one of the contaminants, TCE, spreading from a source at the Coleman Company facility at 250 St. Francis. The large continuous area of general contamination indicates that the contamination has probably existed for several years, because it has traveled approximately two miles from the nearest apparent source area in some locations. Another source of PCE, TCE, and DCE contamination is located near the Western Lithograph facility at Industrial and Hydraulic.
3. The levels detected in most of the samples within the area exceed the current safe drinking water standards, and some areas have fairly high levels of contamination.
4. The groundwater in the Gilbert and Mosley site should not be used as a drinking water supply due to the levels of VOC contamination that are present. If the contaminated water were consumed over a long period of time it could present a health hazard.

All residences located within the site are provided with city water. All private and commercial wells in the area are used for lawn and garden or for industrial purposes. Several (21) Wichita public water supply wells located approximately 1.4 miles northwest of the site. These wells are used by the City of Wichita during periods of high demand, generally during the summer. Due to their location, it is highly unlikely that the wells would be affected by the contamination at this site.

The KDHE report recommended that a remedial investigation be completed at this site to further define the extent of the contamination, and outline the remedial alternatives available to clean up and prevent the migration of the contaminants. This investigation and corrective action may be completed by one of the following alternatives:

1. One or more of the potentially responsible parties (PRPs) should assume the lead to address the remediation of activities at the site in accordance with the National Contingency Plan.
2. KDHE will complete the Hazardous Ranking System (HRS) for the site. If the site ranks high enough to be considered for the NPL, the site will be recommended as a candidate site to be considered for the NPL.



## Policy Options

Options the City of Wichita has in dealing with the Gilbert and Mosley groundwater pollution site would appear to fall within one of three broad categories: (1) do nothing; (2) finance the cleanup by the city taxpayers at large; or (3) create some type of special assessment or benefit district and have those who have caused the problem or those who will benefit from its amelioration pay most or all of the costs. These options are discussed briefly below listing some of the pros and cons of each course of action or inaction and some policy questions that may be raised regarding each. A list of policy questions regarding the Wichita tax increment proposal follows.

### 1. Do Nothing

It can be argued that the City of Wichita should do nothing and let KDHE and EPA take the lead in the cleanup and let these government agencies and private parties involved sort out the cleanup and cost responsibility.

**Pros.** Since the city is not itself liable, it could avoid the problem simply by standing aside and letting the other actors involved take care of it. The city could avoid political fallout by becoming involved since any solution proposed by the city likely will not please everyone. The city would thus save numerous hours of time and expenses related thereto.

**Cons.** There may be more political problems created for the city by inaction due to the size, location, and value of the properties involved in the contamination site. Doing nothing may result in a significant devaluation of property affected, thus lowering the overall assessed valuation of the city and of other local taxing units such as the county and school district. The potential result is that revenues will be lost from property taxes. The city and other taxing units will have to suffer the loss or otherwise raise taxes. If the city does nothing the cleanup may be delayed and extended legal battles may be generated among the various parties.

**Policy Questions.** Who will be benefitted if the city does nothing? Who will be hurt? Does the city have a responsibility for the overall health and viability of the city to be an active participant or leader in this cleanup?

### 2. City At Large Pay Cleanup Costs

There are various methods that could be proposed whereby the city at large would pay for the cleanup costs. Options could include any or a combination of the following: a general tax levy against city residents, a general obligation bond issue to finance improvements needed, a surcharge on or increase in water bills, or solid waste collections fees, a sales tax increase, or some other form of general tax.

**Pros.** Any city at large payment proposal would arguably be fairly easy to understand and perhaps easy to implement. General obligation bond issues, a general tax levy, a surcharge or fee increase for water service or solid waste collection services arguable could all be accomplished by the City of Wichita under home rule power or existing statutory authority without state legislative action. A sales tax increase would require additional statutory authority.

The city could proceed quickly and get the cleanup work started. This method would not foreclose the city from negotiating for reimbursement of some or most of the cleanup costs with those parties who caused the environmental mess nor would it foreclose the filing a lawsuit against culpable parties if reimbursement negotiations failed.

**Cons.** Many city residents may object to paying for the cleanup associated with the activities of businesses whose business practices created the problem. The city governing body may object that the city would be setting a precedent for city at large payment of CERCLA. State laws may need to be enacted or amended to insure that the city can proceed on a particular at large option.

**Policy Questions.** Should city taxpayers pay the bill for environmental problems created by business and industry? Should this be considered a taxpayer responsibility to insure the continued economic viability of the community? Would this course of action encourage more environmentally careless behavior on the part of business and industry?

### 3. Special Assessment or Benefit District.

This general approach could encompass a variety of different options all involving the creation of a special benefit district of some type and requiring property owners within that district to pay all or some portion of the costs of the cleanup. Financing mechanisms could be patterned, for example, after districts created under the City General Improvement and Assessment Law (K.S.A. 12-6a01 *et seq.*); a Business Improvement District (K.S.A. 12-1781 *et seq.*); a self-supported Municipal Improvement District (K.S.A. 12-1794 *et seq.*); or a tax increment financing district (K.S.A. 12-1770 *et seq.*).

**Pros.** A benefit district approach arguably is a fair method since those who would benefit directly from the cleanup would pay most or all of the costs. Two of the options noted above provide for the appointment of an advisory board or planning committee for input from those most directly affected by the improvements.

**Cons.** The actual apportioned costs or imposition of fees among residents may result in controversy, lawsuits, and delays in the cleanup. Any of these approaches most likely would require modifications to existing state laws.

**Policy Questions.** Should innocent property owners be singled out to contribute more to the cleanup than other taxpayers at large just because they live within the special benefit district? Is there a way to cause the parties most responsible for the problem to pay most of the costs using a special benefit district vehicle? (Note that under the tax increment proposal property owners in the district will arguably be held harmless, *i.e.*, they will pay the same rate of property tax as before, will forego their right to a lower valuation of their property as a trade off for financial institutions conducting business as usual in this area and as a trade-off for the cleanup.)

## Questions Regarding the Wichita Tax Increment Proposal

The following are specific questions that may be raised about the Wichita Tax Increment Proposal.

1. Is there adequate legal authority for the county appraiser to lower property values in the cleanup site and then raise them again in light of assurances the cleanup will occur and lenders will be willing to conduct business as usual in this area?
2. What is to prevent individual property owners from challenging the county appraisers actions? Will all property owners have to agree to this?
3. What is the impact of the consent decree that Wichita and KDHE are about to consummate? Will this consent decree be legally binding on anyone other than the two parties to the agreement? What are the key terms of this consent decree?
4. Who will be the parties to the agreement involving the banks and financial institutions where they will agree to continue to loan money for property within the cleanup area?
5. What remedy would be available to individual property owners or the city if these financial institutions refuse to comply with their agreement to conduct business as usual in this area?
6. Will property owners agree to forego lawsuits under CERCLA or under other causes of action against one another? What impact would such lawsuits have on the tax increment financing method?
7. Is it Wichita's understanding that it would have to comply with all of the procedural steps in the tax increment financing law such as preparation of a plan, notice, and a public hearing?
8. Is it clear enough under the tax increment law that the county or school district could block this plan?
9. What other moneys is the city planning to use besides the tax increment proceeds?



The Public Use of Private Capital: A Discussion of Problems Related to Municipal Bond Financing, 35 Va L Rev 285, 295-96 (1949).

<sup>6</sup> See Mitchell, The Effectiveness of Debt Limits on State and Local Government Borrowing, 45 NYU Inst Fin Bull 1, 17-22, 26-27 (1967).

<sup>7</sup> See Mandelker, Netsch, & Salsich, State and Local Government in a Federal System 241 (2nd Ed 1983); Gelfand, Seeking Local Government Financial Integrity Through Debt Ceilings, Tax Limitations and Expenditure Limits: The New York City Fiscal Crisis, the Taxpayers' Revolt, and Beyond, 63 Minn L Rev 545, 560-61 (1979), and sources cited therein.

**§ 9:14. — Tax Increment Financing.**

Tax Increment Financing (TIF) is a sophisticated method of financing public improvements, usually the redevelopment of blighted urban areas.<sup>1</sup> TIF combines elements of the special district (by singling out a particular geographic area for treatment different from other areas),<sup>2</sup> special assessments (by charging property owners who benefit from a public improvement for its cost),<sup>3</sup> and revenue bonds<sup>4</sup> (by pledging the revenues produced by a public improvement to liquidate the debt incurred to finance its construction).<sup>5</sup>

Basically an inducement to private investment,<sup>6</sup> TIF freezes the amount of property taxes payable to all preexisting taxing entities at their predevelopment level. After the redevelopment, the values of the properties involved are reassessed, usually at much higher levels.<sup>7</sup> Taxes imposed on these postdevelopment property values, above the frozen level, are pledged to the governmental entity overseeing the redevelopment (a special redevelopment authority or the municipality itself). This body then uses these funds either for additional construction or service delivery improvements in the tax increment area or to retire bonds issued to finance land acquisition, construction, and other costs connected with the redevelopment.<sup>8</sup> The preexisting taxing entities continue to receive taxes, but only at the frozen predevelopment level. They also benefit indirectly from the redeveloped area, as it generates intangible benefits during the TIF period and increased taxes afterward.<sup>9</sup> Ideally, the redevelopment will produce benefits for adjoining neighborhoods as well.

The concept behind TIF emerged in the federal urban renewal programs of the 1940s, which allowed local governments to recoup their share of program costs through in-

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creased property taxes on reassessed properties within the urban renewal area. TIF, however, was only rarely used until the replacement of federal urban renewal by the Community Development Block Grant Program in 1974.<sup>10</sup> Communities were then forced to devise other financing methods for redevelopment projects. Today, more than half the states have adopted some form of TIF,<sup>11</sup> and its use is increasing dramatically.<sup>12</sup>

Authority for municipalities to use TIF generally must be granted by state legislation.<sup>13</sup> TIF schemes have been able to withstand attacks based upon the equal protection, due process, and uniformity of taxation clauses.<sup>14</sup> At least two schemes, however, have been held to violate more specific state constitutional provisions.<sup>15</sup>

TIF enabling statutes usually exempt TIF bonds from municipal debt limitations,<sup>16</sup> but at least one court has held such bonds are subject to the state's debt ceiling.<sup>17</sup> Like other exemptions from the debt limit, TIF schemes can be abused.<sup>18</sup> A more pressing concern, however, is whether a particular TIF scheme is really needed to spark private investment or is merely a windfall for developers and a loss of tax revenues for the existing taxing entities.<sup>19</sup>

<sup>1</sup> McQuillin Mun Corp § 44.20 (3rd Ed)

<sup>2</sup> See § 9:15.

<sup>3</sup> See §§ 9:11-9:12. See also § 10:19.

<sup>4</sup> See §§ 9:13, 10:17-10:18.

<sup>5</sup> Davidson, Tax Increment Financing as a Tool for Community Redevelopment, 56 U Det J Urb L 405, 413 (1979).

<sup>6</sup> 56 U Det J Urb L at 413-14.

<sup>7</sup> For TIF to be successful, the redevelopment project must be fairly large and capital intensive, in order to boost the property values and taxes to a level sufficiently high to retire the bonds. Smaller, less profitable projects are generally inappropriate. Comment, Tax Increment Financing for Development and Redevelopment, 61 Or L Rev 123, 133-34 (1982).

<sup>8</sup> Davidson, Tax Increment Financing as a Tool for Community Redevelopment, 56 U Det J Urb L 405, 411-12 (1979).

<sup>9</sup> The TIF period is usually fifteen to thirty years. See, e.g., Real Property Tax Increment Allocation Redevelopment Act, Ill Rev Stat ch 24, § 11-74.4-7 (20 years); Ohio Rev Code Ann § 725.07 (30 years); Tex Rev Civ Stat Ann art 1066e § 11(g) (20 years). But see NM Stat Ann §§ 3-46-45(5), 3-60A-21-E (5 years), 3-60A-25 (additional 5 year extension).

<sup>10</sup> Note, The Mitchell L. Rev 62 Program is discussed.

<sup>11</sup> See, e.g., A Health & Safety Tax Increment Financing Act, 74.4-1 to -11; Io §§ 125.1801-125.1806; Wash art 1066e.

<sup>12</sup> In California Tax Allocation Bonds had grown to \$1 Allocation Bonds (1983).

<sup>13</sup> McQuillin

<sup>14</sup> For an annotation, Comment, Tax Increment Financing, 61 Or L Rev 123.

<sup>15</sup> See Tucson held to violate equal protection to a vote by the Authority, 539 P2d 1000 (1975). Constitutional pledge of municipal property.

<sup>16</sup> See, e.g., Comment, Tax Increment Financing and debt ceilings.

<sup>17</sup> Richardson v. City of Tucson, 539 P2d 1000 (1975). See also Comment, Tax Increment Financing: A Matter of Opinion (1975).

<sup>18</sup> See generally

<sup>19</sup> See Davidson, Tax Increment Financing and Community Development.

See also Comment, Tax Increment Financing: A Matter of Opinion (1975).

§ 9:15. C

Perhaps the constitutionality of capital gains which has



**WICHITA DOWNTOWN GROUNDWATER CONTAMINATION AREA:**

**A PLAN FOR CLEANUP**

**AND**

**FINANCIAL RESPONSIBILITY**

**A**

**Presentation To The  
House Economic Development Committee  
In Behalf of HB 2124**

*Eco-Devo  
Attachment #2  
02-28-91*

**Appendix 1**  
**PRELIMINARY FINANCIAL OVERVIEW**  
**FOR REMEDIATION OF THE**  
**DOWNTOWN GROUNDWATER CONTAMINATION AREA**

**THE CONTAMINATION AREA**

Based on the experience in other areas placed on the "Superfund" list, property owners might be eligible for reductions of up to 40% in assessed value (e.g. 29th & Mead site). Estimates of the proportion of the assessed valuation of this area for the property taxing jurisdictions and the loss in assessed valuation to the total property tax base resulting from no remediation effort (resulting in a Superfund designation) are:

<u>Taxing Jurisdiction</u>	<u>Assessed Valuation</u>	<u>Contamination Area As a % of Valuation</u>	<u>Valuation Impact of 40% Reduction in Assessed Valuation</u>
City	\$1,452,865,067	6.6%	2.6%
Schools	1,481,409,958	6.5%	2.5%
County	1,912,254,057	5.1%	2.1%
State	1,912,254,057	5.1%	2.1%

For purposes of this preliminary financial overview, the following general estimates are used:

- [a] KDHE estimates a remediation period between 15-20 years.
- [b] Total remediation cost is estimated at \$20 million as indicated in [c] and [d].
- [c] Capital cost is estimated at \$10 million.
- [d] Total operating cost is estimated at \$10 million spread over the 20 year period (an average of \$500,000 per year in 1991 dollars).

It is stressed that these are the best estimates available and are subject to significant change from the more comprehensive evaluation which is now underway. While there may be changes in the estimated dollar cost for the remediation effort, the relative relationships will remain comparable. For immediate purposes, however, this represents a baseline from which to make decisions about the Tax Increment Financing (TIF) proposal.

The remediation effort is intended to be a joint public-private venture with property owners who are identified as major contributors to the contamination problem providing substantial "up front" funding. To illustrate how the proposed financing plan for this remediation effort would impact taxing jurisdictions, four different scenarios are presented in this analysis:

- [1] A 100% publicly-funded remediation effort (the worst case if no private contributions are received);
- [2] A 50% private cash contribution (with the public TIF providing 50%); and

- [3] A 75% private contribution (with the public TIF providing the 25% balance of the cost).
- [4] The three funding scenarios are contrasted with the potential for a decline in assessed valuation (and property tax revenues) if no remediation effort is undertaken and the area is designated as a Superfund site.

The City is anticipating contributions from responsible property owners in the range of 90-95% of the total remediation costs (although the scenarios presented here are more conservative).

SCENARIO #1 - 100% Publicly Funded Remediation (worst case)

This scenario projects no private contributions to the remediation effort. The \$10 million capital cost would be funded by 20-year bonds (level principal and interest payments at 7%) with debt service payments of \$944,000 per year. Annual operating costs are \$500,000 (1991 dollars). This makes the total annual cost estimate of \$1,444,000. This cost, if funded by a TIF, would negatively impact (annually) each taxing jurisdiction as shown below:

	<u>Tax Impact</u>	<u>Mill Levy Equivalent</u>
Schools	\$ 832,000	.56
City	323,000	.22
County	266,000	.14
State	<u>23,000</u>	<u>.01</u>
 TOTAL	 \$1,444,000	 .93

SCENARIO #2 - 50% Publicly/50% Privately Funded Remediation

This scenario projects equal sharing (50-50) of the cost of the remediation effort between the TIF district and private contributors. The \$10 million capital cost could be funded by cash private contributions (requiring no debt service payments). Annual operating costs are estimated at \$500,000 (1991 dollars) publicly funded by a TIF, and would negatively impact (annually) each property taxing jurisdiction as indicated below:

	<u>Tax Impact</u>	<u>Mill Levy Equivalent</u>
Schools	\$ 288,000	.19
City	112,000	.08
County	92,000	.05
State	<u>8,000</u>	<u>.01</u>
 TOTAL	 \$ 500,000	 .33

SCENARIO #3 - 25% Publicly/75% Privately Funded Remediation

This scenario projects the largest share (75%) of the cost of the remediation effort funded by private contributions with the remainder (25%) publicly funded. The \$10 million capital cost would be funded by cash private contributions (requiring no debt service payments). Annual operating costs of \$500,000 (1991 dollars) would be funded equally from private contributions and a publicly-funded TIF, negatively impacting (annually) each property taxing jurisdiction as follows:

	<u>Tax Impact</u>	<u>Mill Levy Equivalent</u>
Schools	\$ 144,000	.09
City	56,000	.04
County	46,000	.03
State	<u>4,000</u>	<u>.01</u>
TOTAL	\$ 250,000	.17

SCENARIO #4 - No Remediation Effort (Superfund Designation)

This scenario projects the potential impact of no local remediation effort and a resultant Superfund designation. If property values were to decline by 40% in the contamination area, a major tax loss exceeding \$5 million would shift an annual tax burden to the remaining properties in each taxing jurisdiction up to the amounts shown below:

	<u>Tax Impact</u>	<u>Mill Levy Equivalent</u>
Schools	\$2,920,000	2.0
City	1,130,000	.8
County	930,000	.5
State	<u>80,000</u>	<u>.1</u>
TOTAL	\$5,060,000	3.4

While this prospect may be the extreme, it is certain that no remediation effort could far exceed the tax impact of a TIF (wholly or partially) funded local remediation effort.

HOW THE TAX INCREMENT WOULD WORK

Traditional tax increment proposals rely on increased valuation/taxes to fund the increment used to support public improvements. In this case, the initial tax increment is actually a "decrement" in that the valuation/taxes in the contamination area would be reduced. With the cloud of the contamination problem lifted from the area and the commitment of banks to fund development, it is expected that valuation/taxes in the area will begin to increase within a short period. This

would mean that the initial loss in tax dollars to local units of government could be made up after the first few years of the remediation period.

Chart #1 shown on page 5 indicates what could happen to the current property tax base in this contamination area if no remediation effort is undertaken. Over a period of several years, the assessed valuation of the area is expected to decline (up to 40%).

Chart #2 on page 6 uses Scenario #1, 100% public financing (worst case scenario), for the contamination remediation. There would be an initial (minimal) loss of current taxes to fund the effort. The negative impact on the tax base is approximately 11% in the contamination area and less than 1% county-wide. Following the initial tax increment (decrement) for the remediation, it is expected that opportunities for development will actually increase the tax base above the current (1991) level.

### CONCLUSION

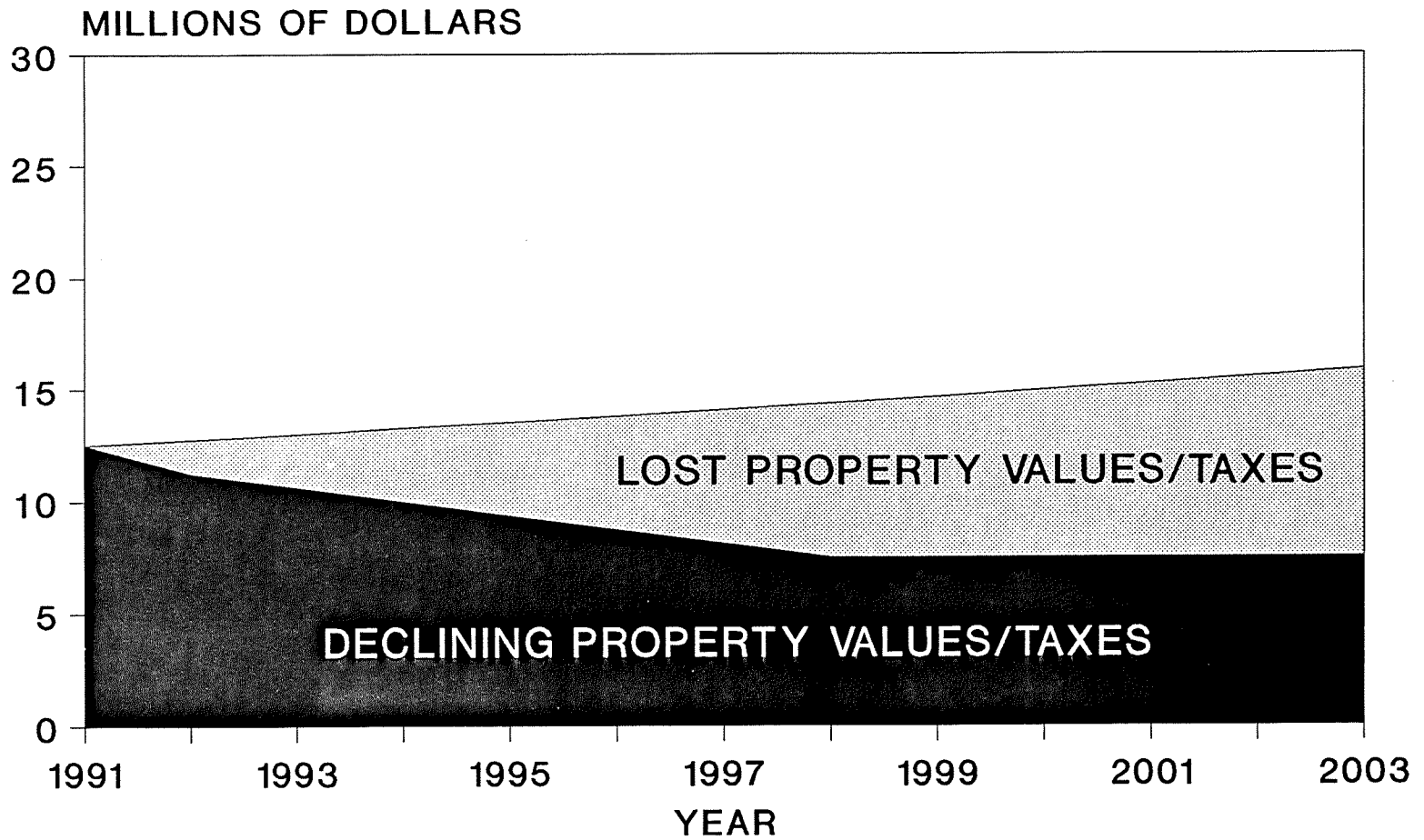
Based on the preliminary data available from the KDHE study it is apparent that the most prudent course of action is to proceed with a remediation effort of the downtown contamination area. Not only is this course of action less costly than the alternative of "doing nothing" and allowing this area to be placed on the Superfund list, the contamination problem places a cloud of uncertainty over the entire core area of the City. This jeopardizes projects like downtown redevelopment that are outside of the contamination area.

The City's legislative proposal for a special exemption from the cash basis law is crucial to successfully implementing a remediation effort. The exemption would allow the City to make a long-term commitment to fund the operating costs for the remediation effort from tax increment financing.

City of Wichita  
February 5, 1991



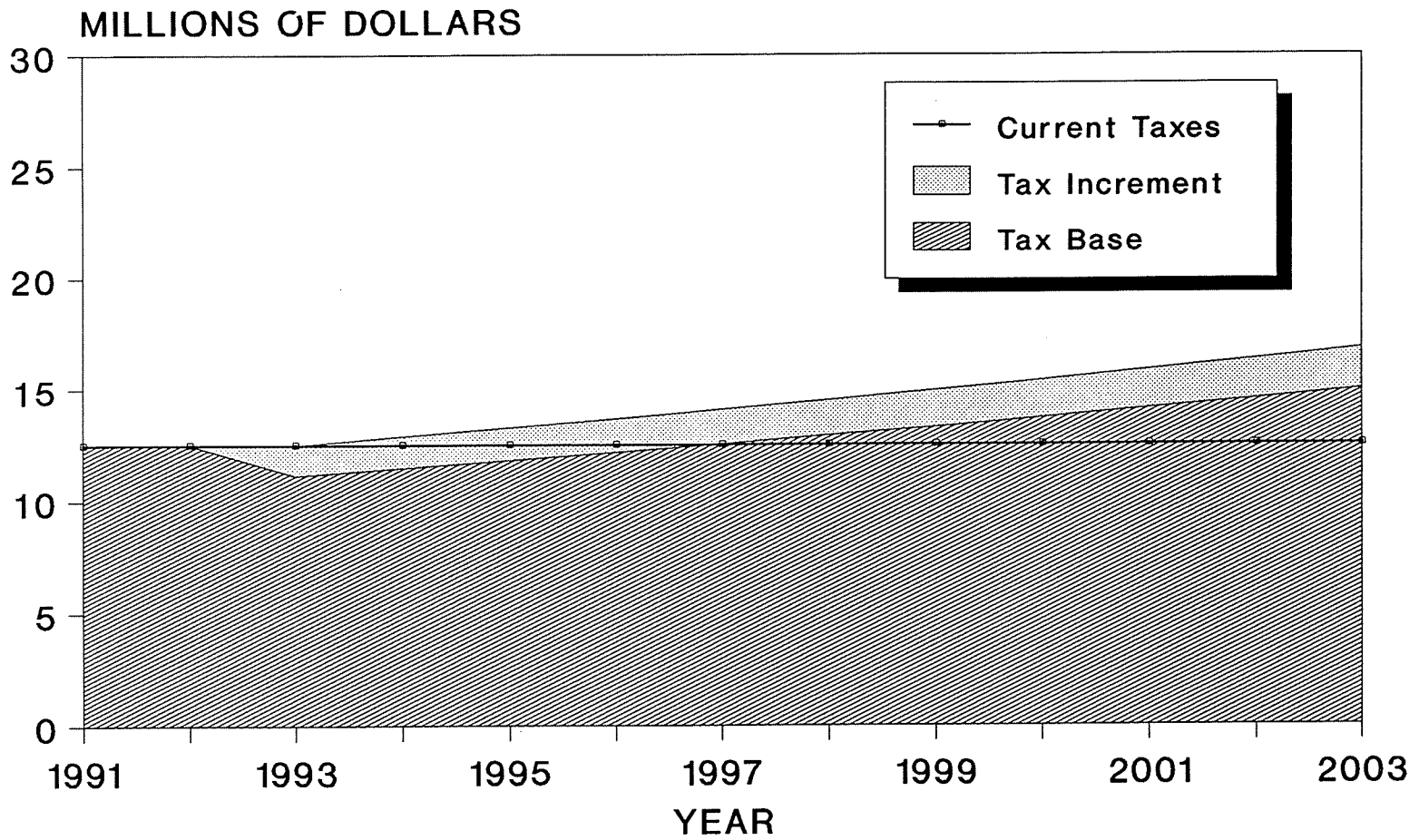
# CHART #1 GROUNDWATER CONTAMINATION AREA NO LOCAL REMEDIATION EFFORT



5

3-6

# CHART #2 GROUNDWATER CONTAMINATION AREA TAX INCREMENT-FINANCE REMEDIATION



9

6-8

**BACKGROUND  
WICHITA DOWNTOWN GROUNDWATER CONTAMINATION AREA**

In August of 1990, the City of Wichita was notified of a confirmed groundwater contamination problem. The Kansas Department of Health and Environment (KDHE) acting in consultation with the Environmental Protection Agency (EPA) reported the results of a Listing Site Investigation (LSI) indicating that Wichita has an area with intermittent groundwater contamination that is approximately four miles long and one mile wide. To further complicate the situation, this contamination travels directly through the central business district (CBD). More importantly, this downtown site (referred to as the Gilbert and Mosely Site) involves over five hundred businesses which are now classified by EPA as "Potentially Responsible Parties" (PRPs). In other words, uncertain cleanup liability rests with each of these businesses. Without local government intervention, businesses in the contaminated area face uncertain liability and declining property values. Failure to act means that a substantial portion of the City's tax-base is in jeopardy.

Wichita is currently developing a plan for remediation of the groundwater contamination problem in the central part of the City. Although the City is not required to assist in this remediation effort, other cities have experienced many years of continuous litigation between affected property owners resulting in no remediation, plummeting property values and significant cost increases.

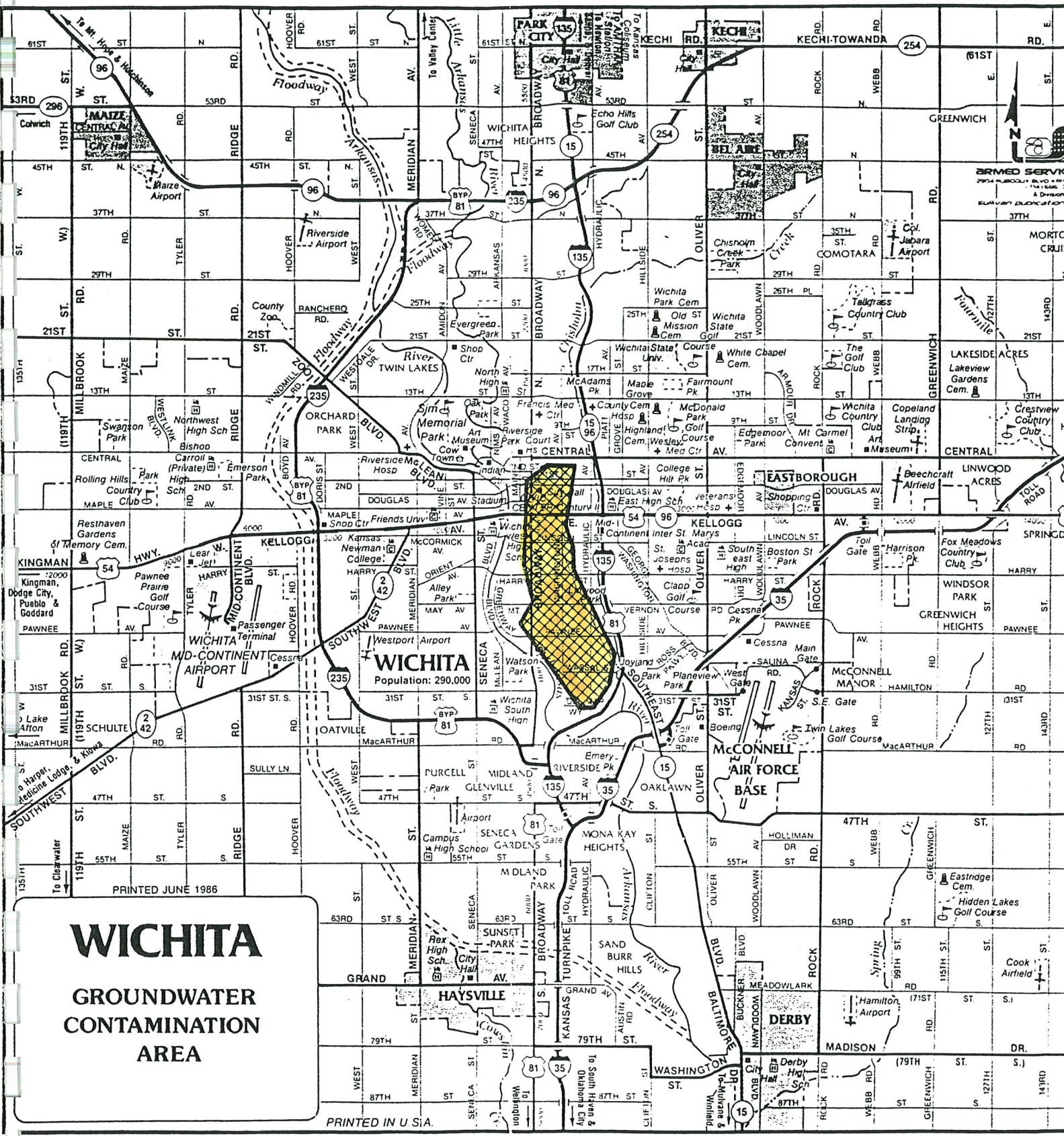
The City is proposing an innovative way of using a common financing mechanism -- the tax increment -- to finance a portion of the remediation. In conjunction with Sedgwick County, Wichita Public Schools, EPA, KDHE and local lending institutions, the property values in the area will be reduced to reflect declining property value. Simultaneously, with creation of the Tax Increment District, the County Appraiser will revalue and raise the property values in the District as if no groundwater contamination exists. Thus, property owners will be required to continue paying taxes at their pre-contamination rate, thus establishing the "increment" to retire the debt associated with the groundwater remediation. Property owners would see no change in their tax bills, yet would contribute to the remediation cost through the tax increment generated.

Timing is critical because property values are declining in light of the latest KDHE report and State Board of Tax Appeals' reduced valuation decisions. The City is presently developing a remediation plan for KDHE to prevent the contaminated area from being designated as a "Superfund" site. If the City can obtain the

necessary legislative action, the financial plan would use a combination of tax increment and contributions from the property owners responsible for the contamination to pay for the initial capital outlay (to purchase wells, etc.). The tax increment would be used primarily to pay for operation and maintenance costs of running the wells (from annual receipts from the Tax Increment Financing District (TIF)).

The KDHE's "Listing Site Investigation" report (issued in August 1990) provides preliminary information on the scope of the contamination and cost of remediation. Refining the details of the financing of this remediation effort must await further study by specialists who can pinpoint more precisely the sources of the contamination, develop a detailed remediation plan/schedule and establish a specific budget. On January 29, 1991, the City Council retained the services of a firm (Camp Dresser and McKee) to conduct the detailed study. This study is expected to take one year to complete. Approximate cost of the study will be \$1 million.





**WICHITA**  
**GROUNDWATER**  
**CONTAMINATION**  
**AREA**

PRINTED IN U.S.A.

PRINTED JUNE 1986



## EXECUTIVE SUMMARY

The contamination area is designated as the "Gilbert and Mosely Site" in the core area of the City of Wichita. The area covers approximately 8,000 parcels with an assessed value of approximately \$86 million, generating more than \$12 million of the \$203 million in local property taxes.

The City is requesting the Legislature's assistance because it appears from all options explored, this proposed plan is the most feasible and seems to be the most workable. Admittedly, to be successful it will require the support of many, including the Legislature, Sedgwick County and Wichita Public Schools and property owners in the area.

Not to take action will have a devastating impact upon the Wichita community...in terms of:

1. Individual damage to innocent property owners (many of them living on fixed incomes and have their life savings invested in such property).
2. Community damage because of the economic impact of having such a large area of the community suffer declining property values with resultant increase in the tax burden on the balance of the community.
3. Economic stagnation and curtailed economic development due to the inability of the City to revitalize its downtown area.

Because of this potential impact on the City, the City Council chose to lead. The options were: (1) to let the 500 plus owners handle the problem and end up in "Superfund;" or (2) become involved and take the leadership position...hopefully to reduce costs and solve the problem in less time and cost.

The City Council chose to lead in order to:

1. Relieve the burden on many innocent residents/property owners.
2. Reduce the stigma it gives to a community under "Superfund" designation.
3. Insure that the City's residents determine its future, not another party outside the state.
4. Prevent long term reductions in property values and loss of tax income...and forestall the long-term inability of owners to borrow or sell property.

5. Prevent encroachment of this contamination into the Derby water well field.
6. Prevent serious financial and legal liabilities that will ultimately occur.
7. And, it's the right thing for government to do.

### CITY'S PLAN

1. Create a Tax Increment Financing District - Lowering of values to reflect market value (decline in values due to contamination)...but tax at current values to establish the increment (no damage if borrowing is restored and property can be sold, purchased, improved.)
2. Enter into a Consent Decree with the Kansas Department of Health and Environment that will, essentially, relieve innocent property owners from responsibility for paying for the cleanup costs.

Will lift the "cloud" for owners of potentially having to pay the costs of cleanup...meaning property can be bought and sold again.

3. Enter into agreements with lending institutions - Provide release reflecting the City's responsibility for cleanup of the groundwater contamination. Lending institutions will be willing to provide loans and mortgages for property within the Gilbert and Mosely area.

This agreement further assures the return of property values to pre-contamination value.

4. Enter into agreements with contributors to the contamination to finance a major portion of contamination cleanup. (Estimated 90-95% cost burden for these contributors.)
5. Retain professional consultant to conduct a remediation study and assist the City in the cleanup process.
6. Hopefully, with Legislature's support and the passage of legislation, the City will be able to begin the long process of cleaning up the area and restoring confidence once again...by property owners, investors and the community.

## THE WICHITA PLAN

The City of Wichita is proposing a two-part plan for addressing groundwater contamination. Part I of the City's plan involves establishing a "Tax Increment District Zone" with boundaries that coincide with groundwater contamination. Part II of the plan includes two methods for financing groundwater cleanup: (a) Establish a Tax Increment Financing District (TIF) with boundaries to coincide with the "Tax Increment District Zone;" and, (b) Pursue damage claims against businesses for cleanup costs.

### CITY PLAN PART I - THE CREATION OF A "TAX INCREMENT DISTRICT"

Contaminated areas in Wichita are essentially "redlined" by lending institutions. Financial institutions are not willing to risk further investment in "redlined" areas without an established policy to limit their liability. Recent events, including the savings and loan industry's problems, have caused financial institutions to be extremely conservative in their lending practices. Unfortunately, bad debt exposure may be the least of the concerns of financial institutions. Liability associated with environmental cleanup can dwarf bad debt losses. Since financial institutions are perceived as having "deep pockets," they are prime targets for "Superfund" cleanup cost recovery.

Business commonly complains about too much government intervention, so why not let them fend for themselves? After all, they created the mess, let them clean it up. Easy to say; difficult to do. "Superfund" requires at least one signature on the Consent Decree indicating acceptance of responsibility for cleanup. Generally, this means that several businesses must reach some type of agreement and jointly sign the decree. Businesses guilty of contributing to contamination, but unwilling to sign the Consent Decree, can be persuaded legally by those businesses signing the Consent Decree. Unfortunately, EPA's plan, while good in concept, is problematic in application. It is extremely difficult to get numerous businesses to agree to distribution of liability. As the number of Potentially Responsible Parties (PRPs) grow, the potential for resolution of liability issues decreases.

Earlier experiences with groundwater contamination make it clear that a laissez-faire approach is inappropriate. Failure to reach agreement means that the EPA will add the Gilbert and Mosely Site to the "Superfund" list (National Priorities List) which will

substantially increase the cost of remediation. What's worse, damage to property values and associated civil law suits among businesses in the contaminated area will destroy the economic viability of the area. In this case, over five hundred businesses in and around the central business district will be negatively impacted. So, although there are risks associated with direct intervention by local government, the risks associated with inaction are much greater.

#### SIGNING ON THE DOTTED LINE

A few other pieces to the puzzle have to come together before the plan is financially viable. First, a major contributor to groundwater contamination, identified in the preliminary studies conducted by KDHE must agree to compensate the City in accordance with its contribution to contamination. This must happen if the City is to consider accepting liability for cleanup. Second, lending institutions must agree to begin prudent loaning to businesses in the area without regard for groundwater contamination if the City is to accept responsibility for cleanup. Why would lending institutions agree to these conditions? Many of the local lenders already have substantial investments in the area and, consequently, are in danger of becoming "deep pockets" to "Superfund."

A third issue associated with signing the consent decree centers on the Consent Decree itself. Clearly, EPA wants to expedite the cleanup process for a variety of reasons. They need to be able to show that they are making important progress in cleaning up the nation's groundwater before reauthorization of "Superfund" legislation in 1991. Contractual agreements with EPA are clearly designed to expedite the process. Non-compliance penalties for such things as failure to meet a specified delivery dates can be substantial. Consequently, even well-meaning PRPs incur substantial contractual risks. The City of Wichita is exercising extreme care in drafting a Consent Decree.

#### PART II OF THE PLAN - FINANCING GROUNDWATER CLEAN-UP

Distribution of the financial burden for groundwater remediation is an important policy consideration. Primarily two methods have been established for financing groundwater remediation in Wichita: Tax Increment Financing (TIF) and legal pursuit of identified polluters. The City is proposing a new and innovative approach by establishing a Tax Increment District which includes areas of suspected contamination. With support of the local

school board and county government, the property values in the area will be reduced to reflect declining property value. Simultaneously, with creation of the Tax Increment District, the County Appraiser will revalue and raise the property values in the District as if no groundwater contamination exists. Thus, property owners will be required to continue paying taxes at their pre-contamination rate, thus establishing the "increment" to retire the debt associated with groundwater remediation.

A second method of paying for cleanup includes identification and legal pursuit of businesses that are contributors to the pollution. Unfortunately, much of the contamination in the groundwater today is a function of hazardous releases in the distant past. Consequently, many of the polluters may no longer be viable businesses. In addition, many of the businesses operating in the contaminated area have a history of handling or storing hazardous materials, including Volatile Organic Chemicals (VOCs) similar to those found in the groundwater. Consequently, establishing responsibility for contamination will require detailed documentation by the environmental consultant, Camp Dresser and McKee, Inc.

In Wichita's case, one large manufacturer has accepted partial responsibility for important contamination releases and is anxious to reach an agreement with the City on appropriate compensation. Other than good citizenship, there are at least two advantages to a negotiated agreement from the perspective of a responsible party. First, if "Superfund" is implemented, responsible parties can expect dramatic increases in cleanup costs. Second, civil suits for damages due to contamination-related declines in property values can be staggering. The City's signature on the Consent Decree is expected to address the issue of damages in that property values should rebound after the cloud of environmental liability is lifted.

Since it is difficult to define the extent of the contamination prior to detailed study (RI/FS), there are risks associated with the City signing the Consent Decree. However, the risk that contamination remediation will cost more than expected or that some of the culprits will escape without paying their fair share must be balanced against tax base recovery of the property in and around the central business district. Clearly, the greater risk is damage to the tax base with resulting loss in tax revenue.

To date, municipal governments have generally not exercised their legal authority to recover damages for the release of hazardous contamination. Wichita intends to use its full legal authority under CERCLA (the Comprehensive Environmental Response, Compensation and Liability Act) to legally pursue businesses that can be identified as contributors to its groundwater contamination problems. When the City signs the Consent Decree taking responsibility for groundwater cleanup, it will not release polluters from liability.

## STATUS OF PROGRAM TO DATE

Since the initial announcement of the City's involvement, City staff has further developed the Tax Increment Financing (TIF) concept and initiated negotiations with the KDHE. Also, numerous meetings have been held with agencies and individuals throughout the City and State. We have to date:

1. Established a local Technical Committee to counsel and guide us in this endeavor.
2. Retained the services of an expert legal authority in the fields of groundwater contamination and consent decrees to assist our City Attorney's Office in developing the order that will guide the cleanup.
3. Retained the services of a professional groundwater consultant to develop the remediation plan and action required to meet all published guidelines for such a cleanup.
4. Initiated negotiations with the KDHE (and EPA) in formulating a consent decree that will do what is required but not commit the City to pay for cleanup costs with any funds other than those from tax increment financing and contributors to the contamination. (Should be ready for City Council review/action by end of the month. The consultant's detailed work plan will take one to two months to complete.)
5. Introduced legislation that will allow the City to use TIF funds for an extended period. (Legislation not yet acted upon.)
5. Now ready to prepare Tax Increment Financing District...the reason why we are here...to ask your support, including the legislation required to implement successfully the cleanup program.

**GROUNDWATER CONTAMINATION CLEANUP  
TAX INCREMENT DISTRICT**

Description - A Tax Increment Financing District (TIF) would be formed encompassing the area included in the Gilbert and Mosely contamination area.

A TIF District is primarily used as a means to pay for public projects in a specific area.

The Concept: The proposed concept would be based on contributions and/or assessments from responsible parties and increment from the TIF District/area. Increment would be established by requesting that all property values in the Gilbert and Mosley area be reduced to reflect the current market and contamination conditions. Simultaneously, with creation of the Tax Increment District, the County Appraiser will revalue and raise the property values in the District as if no groundwater contamination exists.

Because of the cost of the remediation efforts (including further studies and monitoring), upfront contributions would be expected from the designated parties. In turn, the City would be using Tax Increment Financing to assume the cost of maintaining and monitoring the system designed and constructed to remedy groundwater contamination within the Gilbert and Mosely Site.

Because of the ramifications of doing nothing and the potential impact on innocent landowners with the resultant lost value in the area, we believe this concept is the most feasible approach to address this critical problem. As the City's remediation efforts unfold, other actions may be required.

Benefits of Gilbert and Mosely TIF:

The benefits to the community are many, including:

1. It would place leadership and control of all groundwater cleanup in a single entity...the City, under the control and authority of the City Council.
2. It would allow faster implementation of necessary studies and investigations required to mediate the pollution.
3. It should reduce the number of legal actions taken against alleged contamination contributors in that property damages and values should be improved as corrective actions are taken.

4. It should reduce the overall costs of remediation, inasmuch as legal and federal intervention ("Superfund") action would not be required.
5. It should reverse declining property values in the downtown area and encourage lending institutions to reinvest. The result will be a reversal in the number of empty buildings and re-establish the tax base.
6. The cost to pay for a portion of the remediation will come from the tax increment and, therefore, cost to the individual landowners will be significantly reduced.
7. Tax Increment Financing, as it applies to groundwater contamination cleanup, in theory and result, will not increase taxes to the general taxpayer and will not place an additional tax burden on property owners in the Gilbert and Mosely area.

For further details, refer to the Preliminary Financial Overview contained in the Appendix of this report.



## LEGISLATION REQUESTED

The City is asking the 1991 Legislature to amend K.S.A. 12-1771. The amendment provides for a narrow exemption from the Cash Basis Law and the Budget Law. The City, under the proposed amendment, could pledge future tax increment funds to be used for environmental cleanups. The pledge could only be made to the Kansas Department of Health and Environment and/or to the United States Environmental Protection Agency in situations where the City is entering into a consent decree with one of these agencies.

The reason that such an amendment is needed is that the City, because of the Cash Basis and Budget Laws, cannot legally commit to pay for operation and maintenance costs for more than a one year period. It is estimated that the cleanup of the Gilbert and Mosely Site might take up to 20 years. The City, without the ability to pledge funds, has no legal ability to assure KDHE or the EPA that operation and maintenance expenses will be paid for during more than a one year period.

In addition, several of the largest banks in Wichita have agreed to sign agreements with the City that they will not withhold loans on property in the Gilbert and Mosley Site. The basis for agreeing not to withhold loans is made on the assumption that the City has a binding contractual commitment to KDHE to clean up the Gilbert and Mosley Site. If the City cannot pledge to cover operation and maintenance costs for more than one year, then no assurance can be given to the banks that the City is contractually obligated to clean up the site.

The exemption is narrow in that the funds being pledged come from tax increments that are procured from a Tax Increment District. The exemption is also limited in that the pledge can be made only to KDHE or the EPA in situations that involve cleanup of contaminated areas when a consent decree is being signed.

In summary, the amendment to K.S.A. 12-1771 is needed in order that the City can pledge and be legally responsible to pay operation and maintenance costs connected to the Gilbert and Mosley Site for a period of time that exceeds one year.

## OUTLINE

### Point No. 1:

#### **Devastating Impact If We Fail To Act Promptly**

- Individual Damage: Property Owners
- Community Damage: Increasing Tax Burden
- Economic Damage: Stagnated Development & Stalled Revitalization

Point No. 2:

**Wichita City Council Taking Lead To:**

- Relieve Burden
- Eliminate Stigma of "Superfund"
- Ensure City Controls Own Destiny
- Prevent Long Term Reduction in Property Values,  
Lost Tax Revenue
- Halt Contamination Spread
- Right Thing To Do

Point No. 3:

**The Wichita Plan**

- Create Tax Increment District
  - Coincides With Contamination Boundaries
  - Provides Method And Partially Finances Cleanup
- Finance Groundwater Cleanup
  - Create TIF District
  - Aggressively Pursue Identified Polluters
    - Force Them To Pay

Point No. 4:

**Status of Program**

- Established Technical Committee
- Retained Expert Legal Authority
  - Groundwater Contamination
  - Consent Decrees
- Hired Professional Groundwater Engineering Consultant
- Initiated Negotiations With
  - KDHE
- Introduced Proposed Legislation
- Ready To Prepare TIF District
- Need Legislation
- Allows City To Pledge To KDHE That Operation And Maintenance Expenses Can Be Paid

Point No. 5:

**Tax Increment Financing (TIF) District**

- Description and Concept
  - What Is It?
  - How Does It Work?
- Benefits for Gilbert and Mosely Site
  - Centralizes Cleanup Control In City's Hands
  - Allows Faster Remediation
  - Avoids Legal Battles
  - Cuts Cleanup Costs
  - Reverses Plunge of Property Values
  - Reduces Landowners' Costs
  - Prevents Tax Increase

Point No. 6:

**Legislation Requested**

- Amend K.S.A. 12-1771
  - Allows City To Pledge Future Tax Increment Funds
  - Pledge Can Only Be Made To:
    - KDHE
    - EPA
  - Present Limit 1 Year
    - Cleanup May Take 20 Years
  - Lending Institutions Need Assurance
    - To "Unfreeze" Property Loans
  - City Wants To Do The Right Thing

FEBRUARY 28, 1991

HOUSE BILL NO. 2124

CHAIRPERSON GJERSTAD, AND MEMBERS OF THE HOUSE ECONOMIC DEVELOPMENT COMMITTEE, I AM PAUL STEPHENSON, EXECUTIVE VICE PRESIDENT OF BANK IV WICHITA. I TOO, APPRECIATE THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY IN SUPPORT OF HB 2124.

THE PRIMARY CONCERN I WILL ADDRESS THIS AFTERNOON IS LENDING INSTITUTION LIABILITY ASSOCIATED WITH SUPERFUND INTERVENTION.

WITH THE DISCOVERY OF GROUNDWATER CONTAMINATION, AND THE POTENTIAL INTERVENTION OF THE FEDERAL GOVERNMENT THROUGH THE

*Eco-Devo  
Attachment #3  
02-28-91*



ENVIRONMENTAL PROTECTION AGENCY, PRUDENT BANKERS ARE EXTREMELY HESITANT TO LOAN IN A CONTAMINATED AREA.

SINCE THIS AREA INCLUDES OVER 500 BUSINESSES AND 7,000 PARCELS OF PROPERTY, A PORTION OF WHICH IS THE CENTRAL BUSINESS DISTRICT, THIS HAS SUBSTANTIAL RAMIFICATIONS FOR LENDING INSTITUTIONS, AS WELL AS THE ECONOMIC WELL BEING OF THE ENTIRE COMMUNITY.

ESSENTIALLY, LENDING INSTITUTIONS ARE RELUCTANT TO LOAN OR RISK FURTHER INVESTMENT IN THIS CONTAMINATED AREA UNLESS THE SITUATION CHANGES DRAMATICALLY AND BANKS CAN HAVE GREATER ASSURANCE OF AVOIDING CLEANUP COSTS IN THE

EVENT OF HAVING TO TAKE TITLE TO PROPERTY IN A FORECLOSURE SITUATION.

LET ME GIVE YOU AN EXAMPLE OF WHY THIS IS THE CASE, IF BANK IV MAKES A LOAN TO A BUSINESS IN THE CONTAMINATED AREA AND THAT BUSINESS DEFAULTS ON THAT LOAN, AND IF BANK IV TAKES POSSESSION OF THAT PROPERTY AS A RESULT OF THE DEFAULT AND THAT PROPERTY CONTAINS CONTAMINATED GROUNDWATER, BANK IV COULD THEORETICALLY BECOME THE "DEEP-POCKETS" FOR CLEANUP LIABILITY ASSOCIATED WITH THAT PROPERTY. I SAID THEORETICALLY, BUT ACTUALLY THERE ARE PLENTY OF PRECEDENTS THAT INDICATE GREAT ECONOMIC DANGER FOR LENDING INSTITUTIONS IN THIS TYPE OF SITUATION.

IN OTHER WORDS, IF SUPERFUND IS IMPLEMENTED, EPA WILL FIRST ASSIGN FINANCIAL LIABILITY TO THE RESPONSIBLE PARTIES, AND THEN LOOK FOR THOSE ASSOCIATED WITH THE PROPERTY THAT HAVE THE FINANCIAL CAPACITY TO PAY. AND, OF COURSE, LENDING INSTITUTIONS ARE FEARFUL OF BEING THE ONE ASSESSED.

IN SUMMARY, LENDING INSTITUTIONS ARE VERY CONCERNED ABOUT BAD DEBT EXPOSURE IN THE CONTAMINATED AREA, AND MORE IMPORTANTLY, THE UNDEFINED LIABILITY ASSOCIATED WITH CLEANUP. IN ESSENCE, BANKS THAT HAVE LOANS ON PROPERTY IN THE GILBERT-MOSLEY AREA HAVE AN ECONOMIC RISK THAT IN A FORECLOSURE SITUATION COULD RESULT IN A LOSS DUE TO THE ADDED POTENTIAL COSTS OF THE

GROUNDWATER CLEANUP, THAT IS MUCH GREATER THAN THE ORIGINAL LOAN ITSELF.

I AM SURE YOU ARE AWARE THAT THE COMMERCIAL REAL ESTATE MARKET IN GENERAL HAS SLOWED ACROSS THE COUNTRY. WICHITA IS NO EXCEPTION TO THAT FACT. WHAT LITTLE MARKET ACTIVITY IS OCCURRING IN THE AREA WE ARE DISCUSSING IS NEGATIVELY IMPACTED BY THE GROUNDWATER ISSUE. IT IS IMPERATIVE THAT WE DO WHAT WE CAN TO RETURN GREATER ECONOMIC VALUE TO THIS AREA. BUYERS ARE AFRAID TO INVEST IN PROPERTIES WITHOUT SOME PROTECTION AGAINST INHERITING SUBSTANTIAL ADDITIONAL COSTS THAT COULD BE ASSOCIATED WITH CLEANUP OF THE CONTAMINATION. SO, WITH LENDERS HESITANT TO LEND AND BUYERS RELUCTANT TO

INVEST, WE HAVE WITNESSED A SIGNIFICANT SLOW-DOWN IN FINANCIAL DEALINGS IN THE GILBERT-MOSLEY AREA. MEANWHILE, PROPERTY VALUES CONTINUE TO DECLINE, BUSINESSES CLOSE, AND THE TAX BASE CONTINUES TO ERODE.

HOWEVER, WITH THE CITY'S INNOVATIVE POLICY AND THEIR WILLINGNESS TO SIGN A CONSENT DECREE AGREEING TO TAKE RESPONSIBILITY FOR CLEANUP OF THE CONTAMINATION, THE LENDING INSTITUTIONS COULD ONCE AGAIN MORE CONFIDENTLY CONSIDER LENDING ON PROPERTIES LOCATED IN THIS AREA.

THE CITY AND REPRESENTATIVES OF MOST OF THE MAJOR LOCAL BANKS HAVE HELD SEVERAL MEETINGS, AND THOSE BANKS AND THE CITY HAVE REACHED A



TENTATIVE AGREEMENT WHICH SHOULD ENCOURAGE INCREASED LENDING ACTIVITY WITHIN THE AREA IF THE CITY IS ABLE TO ENTER INTO THE SETTLEMENT AGREEMENT WITH KDHE.

WITHOUT YOUR ACTION ON HB 2124, AND SUBSEQUENT ACTION BY THE CITY OF WICHITA, THE ECONOMIC VIABILITY OF AN IMPORTANT PORTION OF THE BUSINESS COMMUNITY IS IN EXTREME ECONOMIC JEOPARDY. I SEE NO OTHER VIABLE SOLUTION THAN THAT WHICH HAS BEEN PROPOSED TO YOU TODAY AND URGE YOUR FAVORABLE CONSIDERATION.

THANK YOU.

RE HB2124

House Economic Development Committee  
Diane Gjerstad, Chairperson

My name is Courtley Jackson. I am the President of the Wichita Area Association of Realtors. In addition to being a Realtor, my area of specialization is as a Real Estate Appraiser. We are supportive of the plan as proposed by the City of Wichita to solve our ground water contamination problem and urge your support of HB 2124.

I would like to share with you from our perspective the devastation we are experiencing in our real estate market due to the ground water contamination problem in Wichita. Real estate transactions have halted except for properties who have buyers with cash or sellers who can finance the sale. The result of this problem is that real estate values have declined fifty percent or more. In addition to the limited marketability of real estate in the defined area, business owners have been unable to obtain any financing for expansion of their operations or inventories using their real estate as collateral. This is because lenders are reluctant to expose themselves to the possible costs associated with remediation of the contamination if the owner defaults on the loan.

To give this committee some idea of how serious this problem is, I am aware of four buildings in the defined area where the owners have defaulted on their loans. When this occurs the lender usually begins foreclosure proceedings. However, in these four cases the two banks involved have refused to take their normal action of foreclosure. This is because of their fear of being liable for future costs associated with the cleanup of this contamination.

Property values are decreasing for both commercial and residential properties located within the Gilbert and Mosley site. This is because no financing is available and many potential buyers are afraid of their possible future liability in addition to limited future marketability of the property. An example of decreasing values is a eleven\*story office building in downtown Wichita which recently sold for \$160,000. It is not feasible at this time for an investor or business owner to consider a downtown location when other alternatives without contamination are available.

We applaud the City of Wichita, for taking a leadership role to relieve the burden on many property owners in the contaminated area. We believe that the Wichita Plan, when implemented, will reverse declining property values and encourage lenders to invest in those properties located in the contaminated area.

Without the state legislative support we are confident the EPA will add the Gilbert and Mosley site to the "Superfund" list. We don't want that to happen. Therefore, we urge your support of HB 2124.

Thank you.

*Eco-Devo  
Attachment #4*

*02-28-91*



# State of Kansas

Joan Finney, Governor

Department of Health and Environment

Office of the Secretary

Stanley C. Grant, Ph.D.,  
Acting Secretary

Landon State Office Bldg., Topeka, KS 66612-1290

(913) 296-1522  
FAX (913) 296-6231

Testimony Presented to  
House Economic Development Committee

by

The Kansas Department of Health and Environment

House Bill 2124

## Introduction

My name is David M. Traster, Assistant Secretary and General Counsel for the Kansas Department of Health and Environment. I am here this afternoon to testify on House Bill 2124 which relates to issuance of tax increment bonds.

## Bill Review

The Kansas Department of Health and Environment desires to be on record in support of the city of Wichita in its efforts to address the pollution problems at the Gilbert and Mosley site in downtown Wichita. As far as we are aware no other city in the country has taken the initiative that the city has taken to address a pollution problem of this magnitude. KDHE takes its hat off to the city of Wichita.

The problem of financing the cleanup of environmental contamination has been one fraught with problems. Federal environmental statutes have attempted to address the problem by creating strict joint and several liability for not only the actual polluter, but also for what many of us would consider to be innocent owners of property. This innocent landowner liability problem creates a tremendously depressed real estate market in those areas where environmental problems have been found. This is exactly the problem in the city of Wichita.

KDHE is constantly searching for new and innovative ways to address this problem. We see tax increment financing as one of the solutions to this growing problem because it allows a city to go forward with a solution to an environmental problem and to work out the liability issues later. This is not to say that liability cannot be decided early in the process. It just allows the process to go forward without dealing with the issue up front if that is desired.

*Eco-Devo  
Attachment #5  
02-28-91*

Charles Konigsberg, Jr., M.D., M.P.H.  
Director of Health  
(913) 296-1343

Ronald Hammerschmidt, Ph.D.,  
Acting Director of Environment  
(913) 296-1535

Lorne Phillips, Ph.D.,  
Director of Information  
Systems  
(913) 296-1415

Roger Carlson, Ph.D.,  
Director of the Kansas Health  
and Environmental Laboratory  
(913) 296-1619

In the case of Gilbert and Mosley, the city, KDHE and Coleman have decided to sit down and work out the problem together.

I want to add that while KDHE is supportive of a solution to this problem, we are not experts in the area of local government financing. There may be other methods to finance this project, and the policy decision about the best method is left to the city and the Legislature. The issuance of tax increment bonds would provide another method of funding the environmental remedial investigation and necessary corrective action by cities and local units of government at identified contamination sites.

Testimony presented by: David M. Traster  
Assistant Secretary and General Counsel  
Kansas Department of Health and  
Environment  
February 28, 1991



*The*

COLEMAN COMPANY, INC.

CHARLES B. McILWAINE  
VICE PRESIDENT  
CORPORATE COMMUNICATIONS  
316-261-3418

*General Offices*

P.O. BOX 1762  
WICHITA, KANSAS 67201  
AREA CODE 316 261-3211

February 28, 1991

**Testimony in Support of House Bill 2124 Before the House Committee on Economic Development, Rep. Diane Gjerstad, Chairperson**

Thank you for this opportunity to testify and to urge your approval of House Bill 2124, which can be extremely beneficial to both the City of Wichita and the State of Kansas. I am Charles McIlwaine, vice president of corporate communications at The Coleman Company, Inc., whose outdoor recreation products are known and used throughout the world. Our 1,300 Kansas employees received a payroll in excess of \$42 million in 1990.

The Coleman Company has gained an extraordinary heritage over more than 90 years by operating its businesses responsibly. We are proud of our record of good corporate citizenship in our community, state and nation. And we have never shied from addressing difficult situations.

Therefore, we were forthright in stepping forward to deal with groundwater contamination in downtown Wichita. Where others have hesitated, hid or run from the problem, we have committed ourselves to helping solve it effectively and fairly. Yes, we will benefit from its solution, but only in the same way others will benefit: through an expedient cleanup that can assure the value and use of property making up 20 percent of the tax base of Wichita.

Coleman wholeheartedly supports HB 2124. This prudent, carefully targeted bill is one of the required steps to implement the city's plan, which is the best answer, and the only viable answer, to this grave problem. Federal Superfund intervention would burden Wichita with tremendous cost in both time and money. But the alternative purposed by the city would enable steps to be taken immediately to encourage economic activity in downtown Wichita. Those who oppose it surely must do so either through misunderstanding, to evade responsibility or to try to profit through obstructive and incessant litigation.

Rather than years of lawsuits and stalemate, this bill will allow a solution and progress. The sooner action begins, the better for all.

HB 2124 is not part of some plan to bail out Coleman. Coleman is going forward immediately with a program, approved and supervised by KDHE, to clean up the contamination on its own property.

*Eco-Devo  
Attachment #6*

*02-28-91*

Who will pay for that cleanup? We will -- 100 percent. Will that prevent us from being held liable if it is determined we are responsible for contamination discovered off our property? No way. We are also agreeing with the city to pay for cleanup of contamination elsewhere when it is shown we are the source. We feel that is only proper and fair.

How much are we responsible for? We don't know and neither does anyone else -- yet -- but current data suggests other sources and responsible parties. We expect the RI/FS to identify more. What will the clean up cost us? That also has still not been determined. The need for answers to those and other questions are why the city has contracted for a study by a competent, unbiased consultant. That will determine the sources of contamination, who is responsible for it, how to halt it, how to treat contaminated water and soil, and the work plan to carry out those actions.

It will not only reveal where the contamination is and what must be done, but it also will show those who are responsible and should pay for it. I repeat: Coleman will clean up any contamination on its property, and it will pay for cleaning up contamination off our property that is determined under appropriate scientific evaluation to have been caused by us. We believe that is only proper. However, to be fair to all, then the others who are responsible must also come forth to do and pay their share or be required to do so. This can be accomplished under the city's plan, and HB 2124 is a crucial step to achieving this just and fair result.

When implemented, the city's plan will lift the gloom that will otherwise remain as long as this problem is not solved. Environmental officials have told us this can be a most effective response to the problem. Wichita and Kansas are already being recognized for finding a solution that has eluded other areas and left them hobbled for lack of a remedy. In the best Kansas tradition, it would be carried out at the local level without cost to state or federal government. By implementing this unique approach, our city and state may be saluted across the nation for its resourcefulness and attractiveness in economic development.

I urge you not to be misled by one who sought to advance his unsuccessful pursuit for local office by falsely asserting that this bill is unnecessary or could be used for other purposes. I further urge you not to be deterred by those who would block this plan in order to keep it from correcting the situation and nullifying their unjustified pursuit of litigation. Most of all, I urge you to approve this legislation and help Wichita and Kansas move ahead to a better and progressive future. In this instance, what is good for Wichita will certainly be good for Kansas.

TESTIMONY TO HOUSE COMMITTEE  
ON ECONOMIC DEVELOPMENT  
IN SUPPORT OF HOUSE BILL 2124

Marketplace Properties, a development company, has a goal of redeveloping Wichita's historic Old Town Warehouse District into a mixed-use "Gaslight District". We have been involved in the planning process for over two years and are part of the overall redevelopment plan for Downtown Wichita. In August 1990, we signed an Agreement with the City of Wichita and Sedgwick County for a public/private development in the Old Town area in which the City would provide the infrastructure and a City market. At the same time, Marketplace Properties would infuse private sector capital and uses into buildings in the Old Town area.

During our planning process, there were over 20 test holes completed in the warehouse area to check for possible underground water contamination. All registered below the Kansas Action level in chlorinated solvents. Several weeks after our development agreement with the City, KDHE completed and made public the Gilbert-Mosely Site Investigation Study. One test well that KDHE had completed in our area was over the Kansas Action Level in P.E.C., which automatically put our whole area in the Gilbert-Mosley site.

From that point, everything has ground to a halt. Financial institutions will not lend, investors will not invest, property has not changed hands and people will not even lease in the area. All of this is due to the threat that the area could eventually be listed as a Superfund site by the EPA. This threat needs to be eliminated so that Wichita's downtown can again become an economically viable area of the City. The City government has developed a plan that will remove the threat of the Superfund inclusion. The City will take the lead to eliminate the pollution at the Gilbert-Mosely site. Private companies can come and go and therefore there is no assurance that a plan will proceed, but the City of Wichita will always remain. The public sector rather than the private sector must handle the cleanup arrangements and charge the responsible parties or litigation will result for years and Superfund inclusion will most assuredly result.

With the Cash Basis State law, the City is unable to legally sign an agreement with KDHE because the exact cost of the cleanup is not known. The innovative approach that the City has proposed is an inverse tax increment district. This would generate the revenues needed over the years for the cleanup. All existing contributors will help fund the upfront studies and establish the cleanup apparatus while present property owners will continue to pay property taxes as if there were no pollution. In the last six months no one has proposed any other plan, let alone an innovative approach to eliminate the underground pollution occurring at the Gilbert-Mosley site. That leaves only two choices: proceed with the City's plan or do nothing and let the site fall into Superfund. Inclusion in the Superfund would be a legal and financial disaster. I ask you to support House Bill 2124 to amend the Cash Basis law for this specific instance only. Thank you.

  
David Burk  
431 South Roosevelt  
Wichita, Kansas 67218

Eco-Devo  
Attachment #7  
02-28-91



February 28, 1991

House Bill No. 2124

Chairperson Gjerstad, and members of the House Economic Development Committee, I am Randy Summers, Sr. Vice President of Kansas State Bank and Trust Company, Wichita, Kansas. I certainly appreciate the opportunity to appear before you today in support of HB 2124.

First, I concur with Mr. Stephenson's testimony concerning lending institutions liability associated with Super Fund intervention and fully support the ground water contamination clean up plan proposed by the City of Wichita. It is my opinion the City's plan is necessary and should be implemented as quickly as possible. A new economic environment would be established that would again allow financial institutions to provide the necessary capital resources for economic development.

I would like to sight an example of just what happens when such action is not taken. Located in another area in Wichita, which is currently under EPA Super Fund regulation, is a division of a national company that provides storage services to other national companies. Due to market reorganization they chose to sell the facility and operations to local ownership. This sale has been pending since April of 1990. The sales price has been reduced over \$500,000 and, at last report, a clean up on this site only will run in the \$500,000 range. A \$1,000,000 in value is lost. This company has polluted nothing but is being held hostage by the environmental laws and the unavailability to obtain financing. The economic loss to Kansas is three fold, 1) the loss of management jobs which would be local if the sale were consummated, 2) approximately \$800,000 to \$1,000,000 a year in profits which now are being transferred to an out of state company and 3) the assurance the company will remain in Kansas. If a plan, as proposed by the City of Wichita, were in effect in this area we would have a locally owned \$5,000,000 company generating over \$800,000 in wealth for the State's economy today. Wichita cannot afford another site that has lost its economic vitality. The proposal before you I feel is the most viable and I certainly encourage your approval.

*Eco-Devo  
Attachment #8  
02-28-91*

FEB 27 1991

# GOSSEN LIVINGSTON ASSOCIATES, P.A.

420 S. EMPORIA □ WICHITA, KANSAS 67202 □ (316) 265-9367 □ FAX (316) 265-5646

February 26, 1991

The Honorable Diane Gjerstad  
House of Representatives  
Room No. 115-S  
Statehouse  
Topeka, KS 66612

Re: House Bill 2124

Dear Representative Gjerstad:

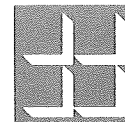
Please support House Bill 2124. The passage of this bill is a necessary step in the process to clean up the groundwater contamination in downtown Wichita.

A private solution to the cleanup is highly desirable to avoid the excessive costs of the site being designated a Superfund area by the EPA.

GLA is located in the area, and has a need to expand our facilities to accommodate our rapid growth. Due to the groundwater problem, not only are we unable to finance our physical expansion needs, but a recent real estate appraisal that we had done shows the market value of our property to be approximately one-half of our mortgage.

Needless to say, we are most anxious to find solutions that will allow the cleanup to take place and allow financing of projects within the contaminated area.

Your support of House Bill 2124 will be appreciated. Further, your assistance in asking our Senators and Representatives in Washington to introduce and support federal legislation that would limit lender liability would be most helpful.



The Honorable Diane Gjerstad  
February 26, 1991  
Page 2

We also would appreciate your support of House Bill 2123 authorizing the City of Wichita to impose additional taxes on meals or drinks and the short-term leasing of motor vehicles. The successful revitalization and redevelopment of the downtown area of Wichita are extremely important to the positive growth of our community, and the funds generated from these taxes are a necessary component of the development financing.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Livingston", with a long horizontal flourish extending to the right.

William B. Livingston, AIA

WBL/dh

P.S. Should you have need for further information on these items, please give me a call.

# Property Banc

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HOUSE ECONOMIC DEVELOPMENT COMMITTEE  
2-28-91

**SUBJECT:** HB 2124

**TO:** Rep. Diane Gjerstad (Wichita) - Chairperson  
Rep. Carol Sader (Prairie Village - Vice-Chairperson  
Rep. Elizabeth Baker (Wichita) - Ranking Minority  
Member  
Rep. Tom Bishop (Wichita)  
Rep. George Dean (Wichita)  
Rep. Richard Edlund (Kansas City)  
Rep. Lee Hamm (Pratt)  
Rep. Tom Love (Kansas City)  
Rep. Joan Wagnon (Topeka)  
Rep. J.R. "Jack" Wempe (Little River)  
Rep. Bill Wisdom (Kansas City)  
Rep. Frank Weimer (Lenexa)  
Rep. Garry Boston (Newton)  
Rep. Georgia Bradford (Wichita)  
Rep. Nancy Brown (Stanley)  
Rep. Rochelle Chronister (Neodosha)  
Rep. Bob Mead (Pawnee Rock)  
Rep. Ellen Samuelson (Newton)  
Rep. Jack Suilter (Wichita)

**PRESENTATION**

**BY:** Mr. Scott A. McMillan - Broker/Owner

**REPRESENTING:** Property Banc - Commercial Real Estate Brokerage Co.

## EXECUTIVE SUMMARY

### I. INTRODUCTION

### II. OVERVIEW

- A. Property Owners & Lenders Affected
- B. Tenants Affected
- C. Financial & Legislative Relief
- D. Attorneys & Groundwater Testing Firms

### III. EXAMPLES OF GROUNDWATER CONTAMINATION'S IMPACT ON PROPERTY OWNERS

- A. Business/Service Bldg. - Outside Boundaries/Unable to Finance
- B. Build-To-Suit - Business Expansion On Hold
- C. Retail Business - Unable to Purchase Bldg. & Expand

### IV. DISADVANTAGES OF DOING NOTHING - NOT SUPPORTING HB: 2124

- A. Declining Real Estate Values
- B. Tax Burden Will Increase for All Property Owners
- C. Stigma of Superfund
- D. Negative Impact of Real Estate Illiquidity for All Property Owners
- E. Inability to Meet Financial Obligations
- F. State & Local Revenues Negatively Affected
- G. Negative Impact on Lenders
- H. Costs to Do Business Greater In Kansas Comparable To Other States
- I. Attorneys & Groundwater Testing Firms Are The Only Winners

### V. ADVANTAGES OF SUPPORTING HB: 2124

- A. Financing, Financing, Financing
- B. Reducing Tax Burdens in a Time of Increased Real Estate Taxes.
- C. Leadership

### VI. SUMMARY

## INTRODUCTION

I am here to request your support for House Bill 2124. I have over eleven (11) years of experience as a commercial real estate broker handling the sales and leasing of a variety of commercial and investment properties in the Wichita area and have owned my company, Property Banc, for the last six (6) years. I work on a daily basis negotiating transactions on properties located within the Kansas Department of Health & Environment's (KDHE's) "Gilbert & Mosley" contaminated groundwater area (approximately 1 mile wide by 4 miles long) with sellers, buyers, tenants, lenders, groundwater remediation firms, among others. I see on a daily basis the devastating effect that groundwater contamination has had on all of these parties. As follows is a general overview of the problem, some examples of actual parties and properties that have been impacted by groundwater contamination, a summary of the disadvantages of not supporting HB 2124, and a summary of the advantages of supporting HB 2124:

## OVERVIEW

### Property Owners & Lenders Affected

In general, the groundwater contamination challenge has, for all practical purposes all but put a stop to the transfer and development of real estate within the "Gilbert & Mosley" boundaries. Financing is basically unattainable. Lenders are requiring Phase I studies (historical uses of the property and its surroundings) and/or Phase II studies (soil/groundwater/hazardous substances) studies. A property such as an office building which has never had a solvent or hazardous chemical on its premises which tests "positive" for groundwater contamination, even though it was not the source, is usually denied financing. Groundwater remediation firms are unwilling to provide owners or lenders on properties such as this with a guarantee that the groundwater can be permanently cleaned up since the source or sources of that contamination may still be present and on-going. KDHE is also unwilling to provide an owner or lender with a guarantee that the site is clean for the same reasons. As a result, a buyer is unable to obtain financing on the property. When a buyer and seller are in agreement on the terms of sale on a property, even in situations where the seller is willing to carry back the financing on the property for the buyer, the buyer's attorney usually advises his client that:

- a) EPA laws are not designed to be fair (a fact which EPA acknowledges) and thus the buyer by merely taking title or "equitable title" to the property could become liable for its clean up;
- b) A seller willing to indemnify the buyer against groundwater contamination liability is meaningless to KDHE and EPA, and does not protect that buyer; and
- c) The buyer could potentially be obligated for a clean-up bill which far exceeds the total value of the property.

In the end the buyer elects not to take the risk of purchasing the property.

### Tenants Affected

Even businesses wanting to lease properties within the groundwater contamination boundaries, especially those businesses which use hazardous substances, such as machine shops, are reluctant to locate within the contamination area boundaries for fear that they will be held responsible for groundwater pollution that existed before they occupied the property. They also are concerned that the possibility exists that KDHE will classify them as a "responsible party" ("RP") or a "potentially responsible party" ("PRP") for this prior contamination and will pursue legal action against them. Again, these businesses say to themselves, "Why take the risk, I will just locate outside the contamination boundaries."



### Financial & Legislative Relief

Already hit hard by real estate taxes that have increased by 200% to 300%, increased vacancies and the inability to sell their property because of groundwater contamination have put a severe financial burden on most owners. As one developer/owner who has five (5) separate properties within the boundaries exclaimed to me "between taxes and groundwater contamination you might as well put a tombstone on downtown. I'll just give the properties to the bank and apply for welfare, at least then I'd be making money."

### Attorneys & Groundwater Testing Firms

During the past year I have received, almost on a weekly basis material soliciting for business or offering educational sessions from groundwater testing firms and law firms. I can assure you that 90% of these businesses did not exist several years ago. The fact that groundwater testing firms and law firms are actively advertising themselves as experts in groundwater contamination problems and holding informational seminars, to me, is an indicator of both the magnitude of the problem and the potential to profit from it. It also is indicative of the need being expressed in the marketplace, real estate brokers included, for assistance and guidance in solving groundwater contamination dilemmas. These firms in general are reputable and provide a needed service but to be honest we would rather not have to spend hard earned money for these services.

## EXAMPLES OF GROUNDWATER CONTAMINATION'S IMPACT ON PROPERTY OWNERS

### Business/Service Building - Outside Boundaries/Unable to Finance

I have a client that purchased a building on a short-term escrow in mid-1990 that was several blocks north outside of the "Gilbert & Mosley" boundary. Shortly after the purchase of the property, KDHE's Gilbert & Mosley Report was published in August, 1990, listing approximately 336 PRP's who "may" be potential contributors. Unfortunately a tenant who had previously occupied this property along with the property's address was listed as one of the PRP's. This list of PRP's was published in The Wichita Eagle. Needless to say the buyer was quite upset to see his property listed. I contacted both the previous owner of the property and the previous tenant, an auto mechanic, who each informed me that they had not received any information from KDHE or others indicating that the property would be listed. Furthermore, the previous tenant indicated that the only solvent he used at the property, which was minimal, was to clean car parts and that it was disposed of by a professional waste handler in the manner provided for by applicable codes. I also contacted the Chief of the Remedial Section, Bureau of Remediation for KDHE, on my client's behalf, to confirm that a) the property was not within the "Gilbert & Mosley" boundaries; and b) a KDHE test well which was listed in the report on the property immediately adjacent to my client's property was "clean." He acknowledged that both of those items were true and further acknowledged that a) the list of PRP's was not available to the public prior to the release of the report in August of 1990 and b) "the PRP list was obtained by KDHE from drive-by windshield inspections and was developed to be used as a tool in the early stages of KDHE's investigation and was not intended to indicate that a PRP on the list was either a proven polluter or that the property was polluted." He further expressed that in his opinion the list was "lousy" and should never have been included in the report. He sent me a written letter confirming these facts which I forwarded to my client. To date my client has still been unable to refinance his property and meet his obligation to pay off the escrow to the Seller because of the fact that the property is on the PRP list. A variety of lenders have informed him that even if he did current testing on the site and found that it was clean that they would not lend on it because of its listing on the PRP list.

### Build-To-Suit - Business Expansion On Hold

Along with a partner, I currently own a parcel of land located just outside the contamination boundaries to the east. We have been working for over a year with a national tenant that wants us to do a build-to-suit to lease to them on a long-term lease. About the time that we were finalizing our negotiations the publicity of the "Gilbert & Mosley" report came out and the tenant's national office decided that they wanted complete testing done on the site. They have offices all over the country and from first-hand experience have learned that EPA could potentially look to them, as a

substantial national company, to be the "deep pockets" to pay for a clean-up, if it were to exist, that they did not create. To date my partner and I are unwilling to pay for the cost of the groundwater testing since the economics of the lease do not justify the additional cost to have the site tested. Furthermore, to be frank, we are not sure that we even want to know if a groundwater contamination problem exists on the property at the present time. As such, a business's expansion plans are on hold as is the development of the property and potential benefit to the City and County for increased tax revenues.

#### **Retail Business - Unable to Purchase Facility and Expand**

A local retail business, The Pawn Shop, currently owns the northwest corner of Lincoln Avenue and Broadway which is located approximately 11 blocks south of downtown. Dick George, the President of The Pawn Shops, recently negotiated to purchase, for a substantial discount, a 20,000 square foot building to the north of his property that had been sitting vacant and was previously occupied by a Pay-N-Pak. Groundwater tests indicated that the groundwater beneath the building was contaminated. After a lengthy investment of time and research, Dick was informed by KDHE representatives that he could probably drink a cup of the groundwater underneath his building every day for a period of ten (10) years and not experience any side effects but because the pollution level of a certain solvent (which was not disposed of on the property) contaminating the groundwater was statistically above that allowed by EPA the groundwater would need to be cleaned up. Dick went back to the seller and after discussing variety of alternatives to solve the problem reached an agreement with the seller to escrow a sum in the neighborhood of \$50,000.00 to handle potential clean up costs. Dick's lender said that he would provide financing for the project if the groundwater remediation firm could identify the cost to clean his site up and assure him that the site would remain clean. Since the site was not the source of the pollution and any pollution cleaned up could return, no guarantees could be given to the lender and as such the lender was not willing to loan on the property. Again, another transaction lost.

## DISADVANTAGES OF DOING NOTHING - NOT SUPPORTING HB: 2124

### Declining Real Estate Values

- the current downward trend of real estate values will continue as the natural cycle of owners wanting and needing to sell discover that lack of financing and the stigma of contamination preclude them from selling their properties.

### Tax Burden Will Increase For All Property Owners

- the tax burden for all property owners, especially residential property owners, will increase as assessed values for real estate within the contamination boundaries must progressively be reduced by the county appraiser to reflect true market conditions and thus be shifted onto everyone.

### Stigma of Superfund

- major out-of-state lenders have already "red-lined" Kansas because of the massive shift of taxes onto real estate resulting from reappraisal and classification. The stigma of having the City's core area designated as a Superfund site would add another stigma to our state and city for both these lenders and prospective new businesses.

### Negative Impact of Real Estate Illiquidity on Business Growth

- business owners rely significantly upon their ability to "tap" the equity in one of the primary assets they own - real estate - for capital improvements, operating capital, and the ability to take advantage of business growth opportunities. The inability to use this equity either because an owner is unable to either refinance or sell the property will place a major limitation on the ability of these Kansas businesses to grow and invest in our state.

- The single-family homeowners within these boundaries, whose largest asset is usually their house, are affected by these same constraints also.

### Inability to Meet Financial Obligations

- many property owners who have existing escrow agreements or financing in place with balloon payment clauses (lump sum payments of the outstanding principal balance) are and will continue to experience financial risk and the potential loss of their properties as they are unable to meet these obligations since financing is unattainable.

### State & Local Revenues Negatively Affected

- applicable sales tax, income tax, and capital gain revenue for the state and local governments will decline as little or no "taxable" transactions occur involving property owners, banks, savings & loans, title companies, real estate brokers, surveyors, contractors, termite inspection companies, appraisers, architects, etc. In a time where we need to expand revenue sources we will in fact be narrowing them.

### Negative Impact On Lenders

- lenders will experience increased foreclosures, enhanced financial risk, and the resulting negative impact on the value of their stock as a steady downward pressure on real estate values places them in a position of increased real estate ownership.

**Cost to Do Business Greater In Kansas Compared to Other States**

- the transaction costs to do business presently has and will continue to increase because of groundwater testing fees, legal fees, environmental studies, and the investment of time and energy required for a company to educate itself and understand the impact of groundwater contamination on its business. This situation puts us at a disadvantage with other states that do not have a groundwater contamination problem.

**Attorneys & Groundwater Testing Firms Are The Only Winners**

- the only winners if we do not solve this problem will be the attorneys and the groundwater testing firms. Endless litigation, and finger-pointing will be costly for everyone. These types of businesses are merely filling a need in the marketplace, but one has to ask ourselves "Do we want our businesses limited capital to be invested in the growth of those businesses and the jobs they create or in the growth of ancillary services based on litigation and remediation?"

## ADVANTAGES OF SUPPORTING HB: 2124

### Financing, Financing, Financing

- support of this legislation will be an integral and irreplaceable step forward in the process of providing a solution to the groundwater contamination challenge and the restoration of lender confidence in both real estate and the ability for a lender to provide financing without the exposure of significant financial risk.

### Reducing Tax Burdens in a Time of Increased Real Estate Taxes

- in addition to the avoidance of shifting the tax burden onto all property owners resulting from a decline of assessed values on properties within the contamination boundaries, the opportunity to expand the tax base as a result of restoring property values and providing an opportunity for new development and the rehabilitation of existing properties will work to the advantage of everyone in the community.

### Leadership

- In my opinion, this is one of the few pieces of legislation that I am aware of that has the broad based consensus support of the City of Wichita, Sedgwick County, U.S.D. 259, lenders, the commercial and residential real estate community, and the majority of property owners inside and outside of the groundwater contamination boundaries who have an in-depth understanding of the current challenge. Your support of this bill and participation in solving the groundwater contamination challenge would continue a leadership trend initiated by our City Manager and local governmental leaders.

## SUMMARY

In summary, the legislation provided for in HB 2124 is a crucial step needed to give the City of Wichita the tools necessary to solve the groundwater contamination problem affecting the "Gilbert & Mosley" site in the heart of our city. Please help the property owners whose savings and investment in over 8,000 parcels of property comprising \$83 million dollars of real estate assessed value that have been held "hostage" to a contamination problem that the majority did not create, to regain control of the destiny of their property. Your support will be recognized as a vote for action, problem-solving, leadership, and indirectly property tax relief. A lack of support will be recognized as a vote for stagnation, continued litigation, and an endorsement that the financial interests of attorneys and environmental remediation firms are valued more than the business of business. I am confident that you will make the right decision.

Thank you for your thoughtful consideration of the opinions expressed in this presentation!



First National Bank in Wichita

William D. Buntin  
President

Box One  
Wichita, Kansas 67201  
Phone 316 268 1111

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# FIRST NATIONAL BANK

## TESTIMONY TO HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

RE: House Bill 2124

"Thank you for giving me the opportunity today to speak in behalf of House Bill 2124.

The main office of the First National Bank in Wichita is located in downtown Wichita. My bank has recently completed the purchase of a major office building in the downtown area. We are currently completing the renovation of portions of that building to house some of our banking operations. Construction of a skywalk connecting that building to our main office is nearing completion. As a property owner, we have a substantial investment in downtown Wichita, and are adding to that investment. We are committed to downtown Wichita.

Many of our banking and trust customers are downtown property owners. The banking services which we provide are necessary to expand, modernize, and operate their downtown properties. Without the availability of banking services the future of these businesses is difficult and, in some instances, threatens their ability to operate in the future.

Downtown groundwater contamination jeopardizes our ability to provide essential banking services, including mortgage financing.

Existing laws expose lenders who lend on properties in the contaminated area to substantial liability. The effect is to curtail needed lending in the contaminated area.

Groundwater contamination has also resulted in the reduction of values in the affected area. It has sharply curtailed economic development in the area.

The failure to eliminate uncertainty and find solutions will result in a reduction of the tax base in the area, shifting the tax burden to taxpayers who are not directly affected by groundwater contamination. Economic expansion and development in the downtown area is at a standstill because of these uncertainties. All Wichitans are suffering in the absence of a solution to the problem.

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*Eco-Devo*  
*Attachment #11*

*02-28-91*

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## FIRST NATIONAL BANK

Tax increment financing, as provided by House Bill 2124, is a key step in reaching an equitable resolution of this problem. It will permit the City to finance the cleanup in an economical manner, financing that cost over a period of years with the cost to be borne by increased taxes from an increase in the value of the properties in the contaminated area. Those who directly benefit from the solution will pay the cost from the added value of their properties. It is an equitable and practical solution.

We, and other banks, have reached an agreement in principle to not withhold financing in the area because of groundwater contamination concerns during the period of cleanup, provided a number of conditions can be met. Passage of the tax increment financing in question is a key to the City meeting some of those conditions.

This is Wichita-specific legislation. It is important for the resumption of economic development in downtown Wichita.

We urge your favorable action in the passage of this bill."



TOPEKA

HOUSE OF  
REPRESENTATIVES

RICHARD LAHTI  
REPRESENTATIVE, EIGHTY-FIFTH DISTRICT  
6428 RODEO  
WICHITA, KS 67226

COMMITTEE ASSIGNMENTS  
MEMBER: EDUCATION  
LOCAL GOVERNMENT  
GOVERNMENTAL ORGANIZATION  
JOINT COMMITTEE: ECONOMIC  
DEVELOPMENT

February 28, 1991

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I would like to show my support for HB 2124. Passage of this bill will give Wichita the necessary authority to implement what I believe to be the best plan for the clean-up of groundwater contamination. The bill which provides for an amendment to the cash basis law via the tax increment finance law is narrowly defined and is needed to ensure KDHE that operation and maintenance costs will be paid for the life of the clean-up. Read the bill carefully, there are several safeguards which will prevent the city of Wichita from acting in any way that is irresponsible.

I encourage you to pass this bill out favorably.

Thank you,

A handwritten signature in cursive script, appearing to read "Richard Lahti".

Richard Lahti

Eco-Devo  
Attachment #12  
02-28-91

TESTIMONY OF BERNIE KOCH  
WICHITA AREA CHAMBER OF COMMERCE  
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT  
February 28, 1991  
H.B. 2124  
Financing Groundwater Contamination Cleanup

Representative Gjerstad, members of the committee, thank you for allowing me to submit testimony on HB 2124.

The Wichita Area Chamber of Commerce supports House Bill 2124. We believe it is an effective and necessary tool to help deal with the groundwater pollution problem in the downtown Wichita area.

The Wichita business community, as well as the community as a whole, has a vital interest in seeing that downtown Wichita is economically health. Cities are often judged by outsiders by their downtown, and first impressions can be critical. Our image as a city and as a region is affected by our the image our downtown projects.

A vital downtown also affects the perceptions of the residents themselves about their own community.

Economically, healthy center cities contribute to the tax base, holding down property taxes elsewhere in the city, county, and school district.

The present groundwater pollution problems in the Gilbert-Mosley area are affecting businesses already located in downtown Wichita, businesses we wish to retain in the area. Lending institutions are reluctant to provide credit to these businesses knowing that the property may have a very low value due to the liabilities associated with the pollution. It's a poor credit risk to loan money for properties that may have little if any value.

For these reasons, the Wichita Area Chamber of Commerce supports House Bill 2124 and urges your favorable consideration.

*Eco-Devo  
Attachment #13  
02-28-91*



February 28, 1991

**SUMMARY OF TESTIMONY OF RANDY RATHBUN**

**HOUSE BILL 2124**

House Bill 2124 would amend K.S.A. 12-1771 to allow the use of tax increment funds, special obligation bonds, or tax increment bonds to finance at least a portion of the clean-up of the contaminated groundwater in the Gilbert and Mosley Site. I am here to address this committee today, not to oppose the City's involvement in the clean-up, but to offer suggestions as to a more equitable, fair, and efficient method of financing the proposed remediation attempts.

First, it must be understood that the common estimates for the cost and duration of the clean-up as stated by KDHE (20 years/\$20,000,000) are mere guesstimates. Although the primary source of the contamination is known, it is impossible at this time to specifically state the actual cost and time required to do the clean-up. My experience has been that initial clean-up estimates generally underestimate the actual cost involved in such remediation attempts.

I believe the use of tax increment financing to fund the remediation is a mistake.

My rationale is as follows:

*Eco-Devo  
Attachment #14  
02-28-91*

1. The pollution underlying downtown Wichita damages the entire city. It is unfair to penalize a small minority of innocent taxpayers in the Gilbert and Mosley Site by requiring them to continue paying taxes at unfairly inflated levels. The argument that their property values will somehow immediately rise to pre-pollution levels once the consent decree is signed is a naive fiction that I doubt even the city officials believe. Property values are a function of what a knowledgeable buyer would pay for these properties. The fact that banks may agree to resume loaning money on these properties solves only a very small part of the problem. Property owners would still be required to find someone brave enough to buy this property. Imagine the sales pitch it will take to sell property next to the extraction wells and air-strippers that will be operating in downtown Wichita for generations.
2. Obviously, a stream of revenue is needed to pay for the remediation. The "increment" that will occur under the tax increment financing plan will be used to provide the stream of revenue. My fear is that this source of revenue will make the City much less determined to have the polluters pay for 100% of the clean-up, which under CERCLA they are required to do. Our American system of values and justice is based upon wrongdoers paying

compensation for their mistakes. The City of Wichita should expect the polluters to pay for 100% of the damage they have caused and not make innocent taxpayers pay for the clean-up.

I am suggesting today that the legislature look to another source of funding for the remediation efforts. By issuing general obligation bonds to fund the remediation, the City of Wichita would still be allowed to enter into a long term agreement with KDHE to clean up the pollution. A very specific exception to the prohibition against using general obligation bonds for operations and maintenance could be enacted to allow general obligation bonds to be issued. The issuance of general obligation bonds to finance the clean-up would present the City with two alternatives. The City could raise everyone's taxes across the City of Wichita to pay for the clean-up. I believe city government will rightfully recognize the problems with this approach. The other alternative, and the alternative that should be pursued, would be to force the polluters to provide the source of revenue to pay the bonds.