

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Representative Kathleen Sebelius at  
Chairperson

1:30 ~~xxx~~/p.m. on Tuesday, March 31, 1992 in room 526-S of the Capitol.

All members were present except:

Representative Sherman Jones - Excused  
Representative Dick Edlund - Excused

Committee staff present:

Mary Galligan, Kansas Legislative Research Department  
Lynne Holt, Kansas Legislative Research Department  
Mary Torrence, Office of the Revisor of Statutes  
Connie Craig, Secretary to the Committee

Conferees appearing before the committee:

SB 401

Ralph Decker, Executive Director, Kansas Lottery

HB 3190

Dan Owen, Lawrence, Kansas  
Jean Barbee, Executive Director, Travel Industry Association of Kansas  
Scott Andrews, Sierra Club, Kansas Chapter  
Mike Ray, Kansas Recreation and Park Association  
Sid Stevenson, Professor, Recreation and Park Management, Kansas State University  
Representative Tom Thompson, 24th District, Mission, Kansas  
Mike Beam, Executive Secretary, Kansas Livestock Association  
Raymond Fowler, Temporary Chairman, Lyon County Landowners and Operators Coalition  
Myron Van Gundy, Lyon County, Reading, Kansas  
Al LeDoux, Committee of Kansas Farm Organizations  
Howard Tice, Kansas Association of Wheat Growers  
Bill Fuller, Assistant Director, Public Affairs Division, Kansas Farm Bureau

Chair Sebelius began the Committee meeting with a request for introduction of legislation.

Sue McKenna, Youth Services Attorney, Kansas Department of Social and Rehabilitation Services (SRS), appeared before the Committee to request introduction of SB 689 in the Kansas House of Representatives.

Representative Graeber made a motion to introduce SB 689. Representative Smith made a second to the motion, which passed on a voice vote. Representative Sprague requested the minutes reflect that he voted against the motion.

SB 401

Chair Sebelius introduced Ralph Decker, Executive Director of the Kansas Lottery.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS,  
room 526-S, Statehouse, at 1:30 ~~xxx~~/p.m. on Tuesday, March 31, 1992

Mr. Decker handed out information to the Committee, Attachment #1, which explained making changes to the Kansas Lottery Act by lowering the percentage of payout to the state, increasing the payout to the players.

There was discussion about last years recommendation to reduce the transfer to the State Gaming Fund from 30% to 22.5%, and now this year's need to drop that amount to 20%.

Mr. Decker reported the next two changes in the proposed amendment, Attachment #1, would be to offer non-monetary items as prizes and to allow the Lottery to be a retailer for promotions at events.

One Committee member asked Mr. Decker to explain the amendment made by the Senate in the original bill on page 2. It was pointed out that in the original bill it is talking about a change in the percentage of prize money, and in the substitute bill, it is talking about a change in the amount being transferred in the gaming fund, and isn't this two different things?

Mr. Decker explained that there is a mandatory payout, and by lowering the return to the State from 30% to 20% it gives you an extra 10% that you can kick back into the prize payout.

Chair Sebelius stated that last year, what caused this Committee great concern was the information handed out showing that you would basically have to double lottery ticket sales in order to recoup the amount the State would lose. She asked Mr. Decker what has changed from last year to this year which leads you to believe that we can have a 50% increase in sales in order to break even.

Chair Sebelius closed the public hearing for SB 401.

HB 3190

Chair Sebelius called the first proponent to testify.

Dan Owen appeared before the Committee to briefly explain what HB 3190 does, Attachment #2, and ask for their support of the bill.

Jean Barbee testified in favor of HB 3190, except for opposition to certain sections as set out in her written testimony, Attachment #3.

Scott Andrews, a proponent of HB 3190, urged the Committee to report the bill favorable for passage, Attachment #4.

Mike Ray asked the Committee to support favorable passage of HB 3190, Attachment #5.

Sid Stevenson appeared before the Committee in support of several

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS,  
room 526-S, Statehouse, at 1:30 ~~xxx~~ p.m. on Tuesday, March 31, 1992.

important issues contained in HB 3190, Attachment #6.

Attachment #7 is written testimony from Representative Tom Thompson in support of HB 3190.

One Committee member asked if canoeists can fish or picnic along the stream that they are canoeing on. It was asked who would be liable if a tree fell on our canoe as we were canoeing and someone was hurt?

Questions from Committee members:

- What is the statute of limitations on criminal trespass?
- Is canoeing on the Walnut River without permission of the landowners on either side a crime?
- Which states are more restrictive?

John Hund appeared before the Committee as an opponent to HB 3190. He explained that he is a farmer and rancher in Wabunsee County and owns Mill Creek runs through his property. He did not want strangers or those without his permission canoeing across his land.

Mike Beam testified to the Committee opposing HB 3190, Attachment #8.

Raymond Fowler urged the Committee to vote against the favorable passage of HB 3190, Attachment #9.

Myron Van Gundy appeared before the Committee as an opponent to HB 3190, Attachment #10.

Al LeDoux presented testimony, Attachment #11, in opposition to HB 3190.

Howard Tice presented written testimony, Attachment #12, urging the Committee to not vote favorably for HB 3190.

Bill Fuller testified to the Committee of his organizations opposition to HB 3190, Attachment 13.

Questions from the Committee:

- Do private property rights make trespassing by canoeing legal?
- What is the appropriate way of getting permission to canoe?
- Does the water in the stream belong to all Kansans?
- Has there ever been any case where any land owner has ever been sued by someone canoeing on one of the three navigable rivers in Kansas?

Chair Sebelius adjourned the meeting.

GUEST LIST

DATE 3-31-92

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
Connie Crittenden	901 S. Kan. Ave	Div. of Water Resources
Robert & Sue McKenna		K D S R S
Dan Owen	1735 W 19th 40 Lawrence 66046	Canoeists
Reg Tom Thompson	54 <sup>th</sup>	
Scott Anderson	Topeka	Siesta Club
KERRY WEDEL	TOPEKA	KS WATER OFFICE
Warren VAN Gundy	R41 Emporia	Individual Farmer
Myron VAN Gundy	RT 2 Box 110 Reading Ks	Co. Commissioner
Raymond Frank	509 Elm Emporia Ks	Gen County owner & operator
Bill Ervin	Topeka	Dept of Admin
POUG CRAIG	TOPEKA	DEPT OF ADMIN
Rogers Brazier	Topeka	ASST. of Admin.
Steve Anderson	Alma	Bow Office
Richard Keyh	Alma	Landowner
Pick Fogey	Paxico	Landowner
Charles Imthurn	Maple Hill	Landowner
ALBERT Lollar	TOPEKA	LOTTERY RETAILER ASSOC.
Nick Roach	Topeka	IGT
DARRELL ADKINS	TOPEKA	
Carl Anderson	Topeka	Kansas Lottery
Deieth L. Sutton	Topeka	Kansas Lottery
Ralph W.E. Decker	Topeka	Kansas Lottery
MURK Wascian	-	DOR
JOE Rickabaugh	Topeka	Ks. HustleK Assoc.
Darrell Monteil	PRATT	DEPT. WILDF. & PARKS
Lela E. Relf	Topeka	DWR-KS BIA

GUEST LIST

DATE 3/31/92

(PLEASE PRINT)

NAME	ADDRESS	WHO YOU REPRESENT
David S Adams	Box 35 Maple Hill, Ks	Adams Ranches
Martha Jenkins	Topeka	Loyalty Man. Group
Susan Hurt		Intern for Rep. Buehler
Jean Barber	Topeka	Travel Industry Assn. of US
Mike Ray	Johnson County	Kansas Recreation's Park Association
LAURA COLEY	TOPEKA	CRPA
Sid Stinson	2612 Snowbird Manhattan, Kan.	myself
LEON K. ROBERTSON	1213 SE 31 ST	my self
Howard W. Tice	Hutchinson	Ks. Ass'n. of Wheat Growers
John Hund	Paris	WAB. County Landowners
Mike Beam	Topeka	Ks Livest. Assn.
Tudy Gray	Newton	just interested grand mother who brought 2 pages today
Trent R. Maul	Lawrence	Intern/Rep Baker

ANALYSIS OF PROCEEDS

AT VARIOUS SALES LEVELS

Sales of Instant (Scratch) tickets for FY91 were approximately \$28,000,000 and the State of Kansas' share of that revenue (30%) was \$8,400,000.

To the State at 20%:

Sales of \$42,000,000 \$8,400,000

Sales increase, 50% (break even point)

(Expected increase 89% based on the experience of ours and other lotteries)

Sales of \$44,800,000 \$8,960,000

Sales increase, 60%. State's increase 7%.

Sales of \$49,000,000 \$9,800,000

Sales increase, 75%. State's increase 16%.

Sales of \$53,000,000 \$10,600,000

Sales increase, 89%. State's increase 26%.

The \$53,000,000 level is believed to be reasonable and expected.

*House Federal & State Affairs  
March 31, 1992  
Attachment #1*

FINAL REVISED SUMMARY OF PROPOSED AMENDMENTS  
TO KANSAS LOTTERY ACT

The Kansas Lottery believes that the proposed amendments to the Kansas Lottery Act are of great concern to the Lottery, and more significantly, to the State of Kansas. The changes presented will have a positive fiscal impact. Proposed changes are summarized in their order of importance.

I. Transfers to the state gaming fund - K.S.A. 1991 Supp. 74-8711(d)

1. Summary. This proposed amendment is intended to reduce the percentage amount of revenues from instant lottery ticket sales presently required by subsection (d)(2) of K.S.A. 1991 Supp. 74-8711, from 30% to 20%. This percentage represents the revenues going into the "state gaming revenues fund." The intent is to specifically and dramatically increase sales on instant lottery products (instant tickets and pull-tabs). The Lottery is only interested in increasing the payout on instant tickets and pull-tabs (representing about 43.5% of our ticket sales), and the increase would not apply to on-line ticket sales.

2. Fiscal Impact. The only increased costs attributable to such a change would be the costs of purchasing additional tickets because of enhanced sales and the costs associated with delivering those tickets. The cost of tickets is reflected in Section II 2. Increased sales would require no additional employees and, no changes appear in the FY92 budget.

3. Background. For the Kansas Lottery to grow and attract appreciable new revenues, it is imperative that the Lottery's FY91 prize payments of almost 50% on instant tickets be increased to as near to 65% as possible. Last year Kansas had nearly the lowest instant pay percentage of any North American lottery for instant ticket winners. A survey of lottery states reflected tremendous increases in sales as a result of increased payouts on instant tickets. The most dramatic story comes from Massachusetts where an increased prize payout from 50% to 65% increased Massachusetts' gross revenues from over 54 million dollars to over 466 million dollars, and the net dollars to the state from almost 22 million dollars to almost 117 million dollars. Although not as dramatic, 15 other states surveyed reflected tremendous revenue increases based upon prize payout increases. Data from the states surveyed graphically illustrates the benefits of such increases, particularly when they reach the 65% level. Increases in instant ticket

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sales have historically bolstered on-line sales, on which we do not anticipate increasing the current payout percentage of 45%. We have additional documents with specific information supporting such a change.

4. Impact on other State agencies. Agencies receiving benefits from the state gaming revenue fund pursuant to K.S.A. 79-4801 et seq. would benefit greatly because of a major growth in revenues generated, which would be going into that fund.

II. Make the Kansas Lottery a retailer - K.S.A. 1991 Supp. 74-8708(a)

1. Summary. The proposed legislation authorizes the Kansas Lottery to become a retailer and make direct sales at locations it chooses within the state, although attempting to minimize the competitive effect on other retailers. In addition to K.S.A. 1991 Supp. 74-8708(a), the statutes affected by the proposed changes are K.S.A. 1991 Supp. 74-8702(e) and (h), and 74-8719(e).

2. Fiscal Impact. The only additional cost would be added ticket costs from increased ticket sales. The cost of tickets is approximately \$20 per 1,000 for instant and \$8.20 per 1,000 for pull-tabs. Retailer commissions currently amounting to 5% would accrue to the Lottery, although there is a minimal increase in ticket costs in the FY92 budget.

3. Background. There are numerous occasions where the Lottery is interested in giving away lottery tickets as promotional prizes, which requires that the party obtaining tickets must purchase tickets from a retailer and subsequently receive credit from the Lottery. This is burdensome on the party conducting the promotion, as well as the Lottery. There are also instances where the Lottery is interested in conducting ticket sales at special events where local retailers are not interested in view of the time, effort and expense involved to make a 5% retailer commission. It is not the Lottery's intention to compete with existing retailers, but merely to benefit everyone involved by selling tickets at regional offices and at promotions or special events which require the availability of a retailer.

Of the 33 lotteries operating in the United States, 22 are permitted to sell lottery tickets at public events or at lottery offices.

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4. Impact on Other State agencies. The only impact on other agencies would be to increase revenue available for those agencies receiving benefits from the state gaming revenues fund pursuant to K.S.A. 79-4801 et seq.

III. Non-monetary prizes - K.S.A. 1991 Supp. 74-8712(b)

1. Summary. Currently, the Lottery is not permitted to pay the holders of valid winning lottery tickets anything other than monetary prizes. We believe that it would be beneficial to be able to actually offer prizes other than cash prizes on occasion, including Kansas produced products whenever possible.

2. Fiscal Impact. For non-monetary prizes purchased there would be a very positive fiscal impact because purchases would be at costs substantially below the retail value of the products. The proposal would actually have a positive effect because it would allow more effective use of the moneys in the prize payment fund.

3. Background. In the past we have advertised certain prizes, such as automobiles or vacation packages as prizes, however, in actuality we paid monetary prices which would permit the purchase of an automobile or a vacation package at a favorable price we had previously negotiated with vendors, or the non-monetary prize was awarded by a sponsor as a part of a co-sponsored promotion with the Lottery. We feel that being able to purchase non-monetary prizes from the prize payment fund, where we could obtain major discounts in price under the state's purchasing system, would benefit the State of Kansas, the Lottery and prize winners.

4. Impact on other State agencies. There would be no impact on any agency benefiting from the state gaming revenues fund under K.S.A. 79-4801 et seq.

The proposed changes will be of tremendous benefit to the Lottery and to the State of Kansas. We expect player interest and revenues to increase significantly.

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## PROPOSED HOUSE Substitute for SENATE BILL NO. 401

By Committee on Federal and State Affairs

AN ACT amending the Kansas lottery act; amending K.S.A. 1991 Supp. 74-8702, 74-8708, 74-8711, 74-8712 and 74-8719 and repealing the existing sections.

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

Section 1. K.S.A. 1991 Supp. 74-8702 is hereby amended to read as follows: 74-8702. As used in this act, unless the context otherwise requires:

(a) "Commission" means the Kansas lottery commission.

(b) "Executive director" means the executive director of the Kansas lottery.

(c) "Gaming equipment" means any electric, electronic or mechanical device or other equipment unique to the Kansas lottery used directly in the operation of any lottery and in the determination of winners pursuant to this act.

(d) "Kansas lottery" means the state agency created by this act to operate a lottery or lotteries pursuant to this act.

(e) "Lottery retailer" means the Kansas lottery and any person with whom the Kansas lottery has contracted to sell lottery tickets or shares, or both, to the public.

(f) "Lottery" or "state lottery" means the lottery or lotteries operated pursuant to this act.

(g) "Major procurement" means any gaming product or service, including but not limited to facilities, advertising and promotional services, annuity contracts, prize payment agreements, consulting services, equipment, tickets and other products and services unique to the Kansas lottery, but not including materials, supplies, equipment and services common to the ordinary operations of state agencies.

(h) "Person" means the Kansas lottery or any natural person,

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association, corporation or partnership.

(i) "Prize" means any prize paid directly by the Kansas lottery pursuant to its rules and regulations.

(j) "Share" means any intangible manifestation authorized by the Kansas lottery to prove participation in a lottery game.

(k) "Ticket" means any tangible evidence issued by the Kansas lottery to prove participation in a lottery game.

(l) "Vendor" means any person who has entered into a major procurement contract with the Kansas lottery.

(m) "Returned ticket" means any ticket which was transferred to a lottery retailer, which was not sold by the lottery retailer and which was returned to the Kansas lottery for refund by issuance of a credit or otherwise.

Sec. 2. K.S.A. 1991 Supp. 74-8708 is hereby amended to read as follows: 74-8708. (a) The executive director shall select as lottery retailers such persons as deemed best able to serve the public convenience and promote the sale of tickets or shares in accordance with marketing plans developed by the Kansas lottery. In the selection of lottery retailers, the executive director shall consider factors such as financial responsibility, security of the applicant's place of business or activity, accessibility of the applicant's place of business or activity, integrity, reputation, volume of expected sales and such other factors as the executive director may deem appropriate. The Kansas lottery may engage in direct sales of tickets at any locations it establishes within the state and shall attempt to minimize the competitive effect of such sales on other lottery retailers. The executive director may select the state fair board as a lottery retailer to sell lottery tickets or shares only on the state fairgrounds and only during the time of the annual state fair. Other persons lawfully engaged in nongovernmental business on state property may be selected as lottery retailers.

(b) The executive director may charge an application fee to persons applying to become lottery retailers.

(c) All lottery retailer contracts awarded by the Kansas lottery under this act shall be renewable annually after issuance unless sooner canceled or terminated.

(d) No lottery retailer contract awarded under this act shall be transferred or assignable.

(e) Each lottery retailer shall be issued a lottery retailer certificate which shall be conspicuously displayed at the place where the lottery retailer is authorized to sell lottery tickets or shares.

(f) Lottery tickets or shares shall only be sold by the lottery retailer at the location stated on the lottery retailer certificate.

(g) To be selected as a lottery retailer, a natural person acting as a sole proprietor must:

(1) Be at least 18 years of age;

(2) have sufficient financial resources to support the activities required to sell lottery tickets or shares;

(3) be current in payment of all taxes, interest and penalties owed to any taxing subdivision where the lottery retailer will sell lottery tickets or shares;

(4) be current in filing all applicable tax returns and in payment of all taxes, interest and penalties owed to the state of Kansas, excluding items under formal appeal pursuant to applicable statutes; and

(5) not be engaged exclusively in the sale of lottery tickets and shares.

(h) No natural person shall be selected as a lottery retailer who:

(1) Has been convicted of a felony in this or any other jurisdiction, unless at least 10 years have passed since satisfactory completion of the sentence or probation imposed by the court for each such felony;

(2) has been convicted of an illegal gambling activity in this or any other jurisdiction;

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(3) has been found to have violated the provisions of this act or any rule and regulation adopted hereunder;

(4) is a vendor or an employee or agent of any vendor doing business with the Kansas lottery;

(5) resides in the same household of an employee of the Kansas lottery or of a member of the commission; or

(6) has made a statement of material fact to the Kansas lottery, knowing such statement to be false.

(i) For a partnership to be selected as a lottery retailer, the partnership must meet the requirements of subsections (g)(2), (g)(3), (g)(4) and (g)(5) and each partner must meet the requirements of subsections (g)(1), (g)(3), (g)(4) and (h)(1) through (h)(6).

(j) For a corporation to be selected as a lottery retailer, the corporation must meet the requirements of subsections (g)(2), (g)(3), (g)(4) and (g)(5) and each officer or director and each stockholder who owns 5% or more of the stock of such corporation must meet the requirements of subsections (g)(3), (g)(4) and (h)(1) through (h)(6).

(k) For an unincorporated association to be selected as a lottery retailer, the association must meet the requirements of subsections (g)(2), (g)(3), (g)(4) and (g)(5) and each officer or director must meet the requirements of subsections (g)(1), (g)(3), (g)(4) and (h)(1) through (h)(6).

(l) The executive director may terminate the certificate of any lottery retailer who fails to meet any of the applicable qualifying standards for selection as a retailer provided in this section or on the grounds for termination provided in the contract pursuant to rules and regulations adopted by the commission.

(m) If a lottery retailer's rental payments for the business premises are contractually computed, in whole or in part, on the basis of a percentage of retail sales, and such computation of retail sales is not explicitly defined to include sale of tickets

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or shares in a state-operated lottery, the compensation received by the lottery retailer from the lottery shall be considered the amount of the retail sale for purposes of computing the rental payment.

Sec. 3. K.S.A. 1991 Supp. 74-8711 is hereby amended to read as follows: 74-8711. (a) There is hereby established in the state treasury the lottery operating fund.

(b) The executive director shall remit at least weekly to the state treasurer all moneys collected from the sale of lottery tickets and shares and any other moneys received by or on behalf of the Kansas lottery. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury and credit it to the lottery operating fund. Moneys credited to the fund shall be expended or transferred only as provided by this act. Expenditures from such fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the executive director or by a person designated by the executive director.

(c) Moneys in the lottery operating fund shall be used for:

(1) The payment of expenses of the lottery, which shall include all costs incurred in the operation and administration of the Kansas lottery; all costs resulting from contracts entered into for the purchase or lease of goods and services needed for operation of the lottery, including but not limited to supplies, materials, tickets, independent studies and surveys, data transmission, advertising, printing, promotion, incentives, public relations, communications, and distribution of tickets and shares; and reimbursement of costs of facilities and services provided by other state agencies;

(2) the payment of compensation to lottery retailers;

(3) transfers of moneys to the lottery prize payment fund pursuant to K.S.A. ~~1988~~ 1991 Supp. 74-8712 and amendments thereto;

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(4) transfers to the state general fund pursuant to K.S.A. ~~1988~~ 1991 Supp. 74-8713 and amendments thereto;

(5) transfers to the state gaming revenues fund pursuant to subsection (d) of this section and as otherwise provided by law; and

(6) the transfers to the county reappraisal fund as prescribed by law.

(d) The director of accounts and reports shall transfer moneys in the lottery operating fund to the state gaming revenues fund created by K.S.A. ~~1988~~ 1991 Supp. 79-4801 and amendments thereto, on or before the 15th day of each month, ~~for--fiscal years--commencing-on-or-after-July-17--1988~~ in an amount certified monthly by the executive director and determined as follows, whichever is greater:

(1) ~~In~~ An amount equal to the moneys in the lottery operating fund in excess of those needed for the purposes described in subsections (c)(1) through (c)(4); or

(2) an amount equal to not less than 30% of total monthly revenues from the sales of on-line lottery tickets and shares plus not less than 20% of total monthly revenues from the sales of instant and pull-tab lottery tickets or shares, less estimated returned tickets.

Sec. 4. K.S.A. 1991 Supp. 74-8712 is hereby amended to read as follows: 74-8712. (a) There is hereby established in the state treasury the lottery prize payment fund.

(b). The executive director shall certify periodically to the director of accounts and reports such amounts as the executive director determines necessary to pay prizes to the holders of valid winning lottery tickets or shares. Upon receipt of such certification, the director of accounts and reports shall promptly transfer the amount certified from the lottery operating fund to the lottery prize payment fund. Moneys credited to the fund shall be expended only for the payment of prizes to the holders of valid winning lottery tickets or shares, for the

purchase of nonmonetary prizes, for the reimbursement of retailers who have paid holders of winning tickets or shares or as otherwise authorized by law. Prior to making any expenditure for reimbursement of a retailer or payment of a prize of \$50 or more, the executive director shall cause all proposed prize payments to be matched against the state debtor files maintained by the director of accounts and reports and shall certify and pay or deliver any matched prize or the cash amount thereof to the director of accounts and reports for setoff as prescribed under K.S.A. 75-6201 et seq. and amendments thereto. Expenditures from such fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports, or a person designated by the director of accounts and reports pursuant to K.S.A. 75-3732 and amendments thereto, issued pursuant to vouchers approved by the executive director, or a person designated by the executive director.

Sec. 5. K.S.A. 1991 Supp. 74-8719 is hereby amended to read as follows: 74-8719. (a) It is unlawful for any person to purchase a lottery ticket or share, or to share in the lottery winnings of a person, knowing that such person is:

- (1) The executive director, a member of the commission or an employee of the Kansas lottery;
- (2) an officer or employee of a vendor contracting with the Kansas lottery to supply gaming equipment or tickets to the Kansas lottery for use in the operation of any lottery conducted pursuant to this act;
- (3) a spouse, child, stepchild, brother, stepbrother, sister, stepsister, parent or stepparent of a person described by subsection (a)(1) or (2); or
- (4) a person who resides in the same household as any person described by subsection (a)(1) or (2).

(b) Violation of subsection (a) is a class A misdemeanor upon conviction of the first offense and a class D felony upon conviction of a second or subsequent offense.

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(c) Notwithstanding subsection (a), the executive director may authorize in writing any employee of the Kansas lottery and any employee of a lottery vendor to purchase a lottery ticket for the purposes of verifying the proper operation of the state lottery with respect to security, systems operation and lottery retailer contract compliance. Any prize awarded as a result of such ticket purchase shall become the property of the Kansas lottery and be added to the prize pools of subsequent lottery games.

(d) Certain classes of persons who, because of the unique nature of the supplies or services they provide for use directly in the operation of a lottery pursuant to this act, may be prohibited, in accordance with rules and regulations adopted by the commission, from participating in any lottery in which such supplies or services are used.

(e) Nothing in this section shall prohibit lottery retailers or their employees, other than the Kansas lottery or its employees, from purchasing lottery tickets and shares or from being paid a prize of a winning ticket or share.

(f) Each person who purchases a lottery ticket or share thereby agrees to be bound by rules and regulations adopted by the commission and by the provisions of this act.

Sec. 6. K.S.A. 1991 Supp. 74-8702, 74-8708, 74-8711, 74-8712 and 74-8719 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the Kansas register.

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# H.B. 3190

## House Committee on Federal and State Affairs

### Testimony of Dan Owen

March 31, 1992

K.S.A 82a-702 provides: "Dedication of Use of Water. All water within the state of Kansas is hereby dedicated to the use of the people of the state. This statute is part of the comprehensive Kansas water law that was adopted in 1945. The law has repeatedly been held constitutional in the face of challenges that it was a taking of private property or deprived landowners of due process. Under the law, no one may use flowing water for agricultural or industrial purposes, even if that water flows through their property, without first applying to the state division of water resources to appropriate that water. If the request for appropriation is denied, the landowner has no rights to the water. In other words, the waters of the state are **public**, and may not be taken for private use without a formal appropriation.

One would think that members of the public would have the right to use the public waters, particularly if that use did not consume any of the water or affect its quality. However, in the case of Meek v. Hays, 246 Kan. 99 (1990), the Kansas Supreme Court said that the public has no right to float canoes on the public waters when they flow over private lands. This was done in spite of the fact that virtually every other state in the Union allows some access to public water flowing across private land. (Incidentally, Kansas has one of the lowest percentages of publicly owned land of any state, and all of the best canoeing rivers in Kansas flow primarily across private land.)

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attachment #2*

In some states, like Missouri and Montana, the courts have found that the public has a right to use public waters flowing over private land, due to the public character of the water. However, the court in Meek said:

When the legislature refuses to create a public trust for recreational purposes in nonnavigable streams, courts should not alter the legislature's statement of public policy by judicial legislation. If nonnavigable waters of this state are to be appropriated for recreational use, the legislative process is the proper method to achieve this goal.

H.B. 3190 sets up a system under which rivers could be nominated for inclusion in the Kansas Recreational River System. The public would then be authorized to float non-powered vessels on these rivers. The bill also treats non-powered vessels like sail boats and motor boats, which must be registered with the state and display their registration numbers. Under H.B. 3190 anyone who wants to be a commercial float trip guide must first obtain a license from the Department of Wildlife and Parks. The bill requires no funding, other than revenues from canoe registrations and float trip guide licenses.

The primary benefit of H.B. 3190 would be promoting tourism, particularly rural tourism in Kansas. The bill would encourage Kansas to stay in their home state to canoe, rather than to leave the state as they currently must. The bill would also allow Kansas to attract tourists from out of state with an interest in canoeing. Finally, it would encourage the formation of a commercial float trip industry in Kansas, where none exists now.

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Travel  
Industry  
Association of  
Kansas

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700 S.W. Jackson St., Suite 702  
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913/233-9465 FAX 913/357-6629

STATEMENT

DATE: March 31, 1992  
TO: HOUSE FEDERAL & STATE AFFAIRS COMMITTEE  
FROM: Jean Barbee, Executive Director  
RE: Kansas Recreational River System (HB-3190)

My name is Jean Barbee. I am the Executive Director of the Travel Industry Association of Kansas which we refer to as TIAK. TIAK is made up of members which represent both the private and public sectors of tourism promotion in the state. That includes, for example, hotels and motels, restaurants, attractions, chambers of commerce, convention and visitors bureaus, and other promoters of travel and tourism in Kansas.

TIAK members believe that one of the goals of economic development through tourism should be to insure adequate public access to natural resources which provide recreational opportunities.

The following economic impact information has been provided to me from the Economic Impacts of Protecting Rivers, Trails and Greenway Corridors: A Resource Book, prepared by Rivers and Trails Conservation Assistance, National Park Service, 1989.

Americans purchased approximately 90,000 canoes in 1988, a fourteen percent increase over purchases in 1985.

For every \$1 paid to canoeing outfitters, customers spent \$5 for gas, groceries, restaurants, campgrounds and other lodging.

Each canoeist spends approximately \$15 per day above equipment and outfitting expenditures.

Kansas does not have the flowing stream resources that are found in Colorado and Arkansas. Canoeing and river running brings in \$50 million and \$20 million respectively to those state economies. With more flexibility in public access to rivers and streams, however, Kansas may be able to increase the state economy by a few million dollars.

The National Park Service information forecasts a participation by a wider segment of society in river boat activities and an increased representation by family groups. Additional trends reported include:

- longer participation throughout people's lifetimes;
- increased numbers of participants from older age groups; and
- increased sport expertise and equipment ownership.

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The market study completed last year for the Kansas Division of Travel and Tourism also clearly pointed to the need for increasing the ability of our state to meet the recreational needs of the populous and tourists. That study indicates that Kansas is likely to lose much of our pass-through tourism. That is why our experts in travel promotion have been so intent in recent years in promoting Kansas as a destination state.

For economic reasons then, TIAK supports the concept of HB-3190.

We do, however, specifically oppose that portion of the bill in New Section 1 which defines "River guide services"; all of New Section 6; and the fee schedule for river guide permit or associate river guide permit in New Section 7. We would ask you to amend this bill to delete those referenced sections.

TIAK members have found the existing commercial guide permit regulations to be detrimental to the promotion of hunting and fishing recreational activities in this state. We believe the river guide service permit procedures would be equally debilitating.

Thank you for your time.



# SIERRA CLUB

## Kansas Chapter

Testimony to State and Federal Affairs

HB 3190 - Recreational Rivers

The Kansas Chapter of the Sierra Club supports passage of HB 3190 which creates a system to open some of the rivers of the state with special scenic and recreational value to canoeing. Kansas currently has the most restrictive laws in the nation on recreational navigation of streams. Only the Kansas, Arkansas and Missouri, declared "navigable" at statehood, are open to floating. Other rivers, except where they flow through public lands, are closed to public passage. The waters of these streams belong to the public, but the streambeds belong to the adjacent landowner and floating over them is considered trespassing.

This bill would allow recreational use after study and designation as state recreational rivers. Benefits include:

- Economic Development and Tourism.
- Recreation for Kansans. With both restrictions on canoeing and one of the lowest percentages of public lands in the nation the people of Kansas need places for outdoor recreation.
- Being able to see the beauty of these streams, more people will take pride in our state and want to protect the waters and natural resources of Kansas.
- Provide the opportunity to focus and coordinate the management and protection of the designated rivers.

Concerns expressed by landowners over similar proposals:

- Littering and vandalism. Roads create more of these problems and other states have not found river users to be a major problem in these regards. The small amount of litter dropped by an occasional canoeist pales beside the garbage routinely dumped from bridges or the mounds of trash dumped into rivers by some adjacent landowners.
- Liability. Landowners are not liable for free recreational use of their lands, much less a designated river.
- Cattle watering access. Nothing in this bill would give the state authority to restrict such use or of running cattle fences across streams. Generally, it is anticipated that larger rivers will be those designated, not the smaller streams which sometimes have fences across them.

We urge your favorable passage of HB 3190.

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HB 3190 - Recreational Rivers

I) The public shall have the right to make recreational use of the waters of designated "state recreational rivers", by navigation in "non-powered vessels" and the right to portage around obstacles including contact with the banks and river-bed as is reasonably necessary.

II) The Secretary of Wildlife and Parks

a) shall identify and study rivers for possible designation, with consideration of:

- scenic and recreational values
- landowner concerns
- impacts of recreational use
- affected wildlife and biological resources
- public interest in designation

b) conduct public hearings

c) make a decision on designation

d) shall prepare and implement a Recreational River Management Plan for designated rivers, including public access facilities, portages, and protection of scenic, wildlife and biological resources.

e) may enter into cooperative agreements with Federal, state, local or private parties for administration and management agreements on designated rivers.

III) Alternatively, a petition with 1,000 signatures can require the Secretary to study a river for possible designation.

IV) Eminent Domain shall not be used to carry out any provisions of the act without specific authorization by the legislature.

V) Requires a permit, fee and qualifications for commercial river guides.

VI) Adds "non-powered vessel" to boating regulations.

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3-3-92  
#4-2



# KANSAS RECREATION AND PARK ASSOCIATION

700 JACKSON, SUITE 705  
TOPEKA, KANSAS 66603

(913) 235-6533  
Laura J. Kelly, Executive Director

## HOUSE BILL NO. 3190

Chairwoman Sebelius, members of the Committee, I am Mike Ray, 1990 Chairman of the Parks and Natural Resources Section for the Kansas Recreation and Park Association. The Association represents over 600 members from approximately 175 governmental entities throughout the State of Kansas. I am here to speak in behalf of the Association's membership in support of Bill 3190, whose intent is to create a recreational river system within the State of Kansas for the benefit of the citizens of Kansas.

The Association believes that parks, open space and recreational services are basic needs of all Kansans and that the quality of life in our State will be greatly enhanced, through the provision of adequate areas for our public's recreational pursuits.

The Association further believes there are not adequate public lands or river areas to meet the demand of the citizens of Kansas for recreation opportunities. Rivers represent a valuable recreational resource, and they are a source of tremendous scenic beauty and diversity on the Kansas landscape. Allowing public use of designated rivers would significantly increase recreational opportunities for the citizens of our State.

The Water Appropriation Act dedicates all waters to the people of the State; however, the vast majority of these same people are not allowed access to these waters for instream recreation.



Rivers in the State are an underused resource both recreationally and economically. The Association believes communities near these rivers would benefit through enhanced recreation opportunities for their citizens, from the influx of tourism revenue and from entrepreneurial opportunities created by this Act.

The Association supports provisions of this bill which would allow recreational use of designated rivers while at the same time ensuring proper resource use and protection of private property rights. We believe this can be accomplished, and we should not let concerns over a small percentage of problem makers inhibit the use of our rivers by the vast majority of law-abiding, responsible citizens who appreciate and respect both the natural resource and rights and concerns of landowners adjoining these rivers. The Association further supports the use of user fees to assist with financing this Act.

Testimony  
to the  
Committee on Federal and State Affairs  
RE: HB 3190  
by Sid Stevenson, Ass't Professor, Recreation and Park Management

Chairwoman Sebelius, Members of the Committee:

Thank you for the opportunity today to speak to you in support of several important issues contained in HB 3190. My name is Sid Stevenson. I am a professor in Recreation and Park Management at Kansas State University. My testimony is my own and though it does not directly represent any special interest group, it is designed to be insightful regarding access to private property for recreation; economic impacts of recreation; and fees and charges. I've recently completed research on each of these areas. My dissertation in 1987 analyzed a peak load pricing strategy for senior citizen recreationists in Colorado. In 1990 I completed a study for the National Park Service, estimating economic impacts and visitation for a proposed Tallgrass National Monument on the Z-Bar Ranch. In 1991, I completed a similar study for the NPS on Wilson Lake; reviewing KDWP (Kansas Dept of Wildlife and Parks) and Corps of Engineers recreation management scenarios. I currently have underway a study analyzing recreation access (fee and free) to private land; which clearly indicates a need for both incentives to private landowners as well as the need for access to additional recreation resources.

Regarding access to rivers, navigable or otherwise, I strongly agree with the statement in the Bill (lines 38-40) "The members of the public shall have the right to make nonconsumptive use, including recreational use, of the waters of recreational rivers in Kansas".

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In writing the KS Supreme Court's opinion regarding the State of Kansas *ex rel. Meek v. Hays*, Justice Lockett provides ample evidence that Kansas' current definition of navigability as well as beneficial uses of its riverways is antiquated. Justice Lockett further charges the Legislature with the responsibility of making the statutes reflect current water use issues. This written opinion cites current KS Statute KSA 82a-702, which provides:

**"Dedication of use of water.** All water within the state of Kansas is hereby dedicated to the use of the people of the state, subject to the control and regulation of the state in the manner herein prescribed"

HB 3190 will address the shortcomings of the KS statutes by allowing the Secretary of Wildlife and Parks to set (for the state of Kansas) the criteria of navigability as it applies to inclusion in a statewide recreational river system. This approach would allow an appropriate state agency to coordinate provisions for water quality, riparian habitat, scenic quality, and river commerce (in the form of tourism).

Currently, one or two landowners unwilling to allow passage can prevent a 50 mile stretch of river from being utilized by the public. Certainly such a stranglehold by so few is not the intent of our laws based on majority rule. River boating (nonmotorized) is a linear activity; characterized by long distance travel, preferably downstream. One simply cannot participate in it adequately in a one or two mile area (where one might have permission) of down and back effort.

Canoeing and other river boating is a recreational pursuit unlike any other in the state. Current public areas are not adequate in that open water and wide, windy stretches characteristic of reservoirs and the rivers feeding each prevents a more enjoyable outing, and

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discourages all but the most dedicated recreationist. Canoeing and river recreation are also important to the poorer segments of Society. Participation in other water based recreation often requires elaborate and expensive equipment. Good canoeing access to our rivers would make close to home accessibility even more affordable.

Just because there are not hundreds of supporters here to back this Bill does not mean the support does not exist. Recreationists are a diverse lot. Lake boaters are different from canoeists, as day users differ from campers. Each focuses only on their pursuit and appears to care little about other. It is still the right thing to do.

In my opinion, the demand for river use is latent. With adequate access and a quality resource, users will multiply. More recreationists that now travel to Missouri, Arkansas or Oklahoma to float will stay at home (and keep their money here as well). Though I will not claim that river recreation will bring a great economic boom to the state, I would suggest that is a piece of the puzzle. Each piece (experience available) serves to bring the state closer to achieving a critical mass of visitor experiences necessary for noteworthy impact.

In summarizing this section I would like to add that recreational use is only one issue of this proposed river system. We will all benefit from the improved water quality and streamside habitat that will occur as a result. Just knowing that floating monitors (recreationists) will view, and report pollution violations should deter some of the environmental degradation of our waterways.

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#16-3

A second component of HB 3190 deals with fixing the amount of fees and charges for certain recreational pursuits. This approach is appropriate in my opinion in that it allows a range of fee possibilities and gives the Commission some latitude in establishing specific prices.

Charging fees is very appropriate for recreation. Fees are more equitable than increased taxes in that fees are paid only by users and recreation users typically benefit clearly more than non users.

KDWP has not fared well in receiving tax support and as a result, the quality of the experience supplied by KDWP have declined. Recreationists must support their activities and these fees are designed to recover more of the costs of supply.

One new fee, that for river guides, is also appropriate in my opinion, at least philosophically. Those persons who financially benefit from public resources must expect to pay a fee for that service(unless full subsidy is necessary to insure that the necessary and appropriate service exists). Essentially concessionaires, these enterprises claim to provide a quality service. Licenseing should serve to better insure that claim. Though the market for such service will dictate the number of enterprises and level of operations, the KDWP may wish to consider limiting entrants to this market via concession contract to protect the viability of a few operations.

Lastly, one fee change is missing that should be considered. The KDWP must limit the use of senior citizen's discount for state park use. Though some form of discount might be

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continued, it should not be valid for peak periods like weekends and holidays. Seniors, by virtue of more free time, continually occupy the best sites and deny younger recreationists access to better quality experiences. Though not all seniors fit into this category, my research has shown that seniors who utilize state park campgrounds are more affluent than the general population...Why should their use be subsidized by those less fortunate?

Thank you again for this opportunity. I would be pleased to answer any questions you may have regarding my testimony.

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#6-5

STATE OF KANSAS



TOPEKA

HOUSE OF  
REPRESENTATIVES

TOM THOMPSON  
REPRESENTATIVE, 24TH DISTRICT  
JOHNSON COUNTY  
5001 ROCK CREEK LANE  
MISSION, KANSAS 66205  
(913) 236-9161

STATE CAPITOL, ROOM 112-S  
TOPEKA, KS 66612  
(913) 296-7686

COMMITTEE ASSIGNMENTS  
MEMBER: ENERGY AND NATURAL RESOURCES  
LOCAL GOVERNMENTS  
ELECTIONS

HB 3190

Proponent

Thank you Madame Chair and members of the Federal and State Affairs Committee for your time and patience hearing HB 3190.

This is a bill that is needed to allow Kansans and individuals visiting our state to more fully enjoy the great natural beauty of this state. HB 3190 has the potential for creating new jobs and bringing tourism money to Kansas. This bill is written to protect the rights of property owners while opening up at least a few rivers in Kansas that the average citizen is currently prohibited from experiencing.

Rather than going into detail, I will allow the individuals that follow me as proponents to tell you why HB 3190 is important. After you hear this testimony I believe you will agree with me that HB 3190 will help Kansas become "The Land of Ahs" even more than it is. I encourage you to pass HB 3190 favorably for passage.

Sincerely,

A handwritten signature in cursive script that reads "Tom".

Tom Thompson

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March 31, 1992  
Attachment # 7



6031 S.W. 37th Street • Topeka, Kansas 66614-5128 • Telephone: (913) 273-5115  
FAX: (913) 273-3399

Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

March 31, 1992

TO: House Federal and State Affairs Committee  
Representative Kathleen Sebelius, Chairperson

FROM: Mike Beam, Executive Secretary, Cow-Calf/Stocker Division

RE: Opposition to HB 3190, Creating a Recreational River System

The Kansas Livestock Association (KLA) is a voluntary trade association consisting of approximately 8,000 members. These members are landowners, many of which own and operate land that would be impacted by this legislation.

Since 1986, three proposals similar to HB 3190 have been considered by the Kansas Legislature and killed by a committee vote. Last year, the House Economic Development Committee held a hearing on a similar bill (HB 2527) on which there has not yet been any action.

The provision of HB 3190 we find most objectionable is Section 2. This section states the public "shall have the right to make non-consumptive use, including recreational use," of recreational rivers in Kansas. Other provisions of the bill create a process for the Wildlife and Parks Department to designate rivers or streams as recreational.

Subsection b authorizes the public to "navigate" vessels such as canoes on rivers flowing across public or private lands. Furthermore, this subsection gives the public the right to "make such contact with the banks and bottom of recreational rivers as may be reasonably necessary for such portaging."

In other words, this bill says if the state recognizes a river or stream running across a private landowners property as a recreational river, the landowner must give up his or her right to restrict trespassers.

This bill could do more than just impair property rights. It could even render a portion of land useless by a landowner. For example, a stream will often cut across a corner of a section of property. Let's assume this land is range land used for pasture by the landowner. If the stream is designated as a recreational river, the landowner would likely have to fence off the banks of the stream. In this example, it would be cost prohibitive to erect a second fence for the tract of land on the other side of the stream. This in effect has created a second pasture. One would have to rotate cattle across the stream, now used by the public, to make use of the property.

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HB 3190  
Page Two

*Will the state compensate a landowner for the cost of fencing along this river? Will the state compensate the landowner for loss of use of the land that is now land locked?*

*As you can see, we have strong objections to this bill. It simply is a proposed law to take away basic property rights of this state's landowners. It makes a statement that if your property has merit, we will give the public the right to trespass on your land.*

*I urge this committee to defeat the bill and send a message that this legislature respects the rights of private property owners and won't delegate trespassing authority to a state agency.*

*I would be happy to respond to any questions or comments. Thank you.*

HF<sup>3</sup> SA  
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Lyon County Landowners and Operators Coalition  
P.O. Box 1233  
Emporia, KS 66801  
(316) 343-9433  
Contact: Raymond Fowler, Temporary Chairman

I would like to thank you for letting me address this committee on H.B. 3190. I am speaking on behalf of some four hundred or more farmers and friends that have signed up in our recently organized group known as Lyon County Owners and Operators Coalition. We held our first meeting on Feb. 6 with only 13 people. On Feb. 20, we advertised an open meeting, over 160 people came from eight counties. We have only two rules, We accept contributions of 50 dollars or less and that we stick to "land rights" issues like the taking of the use of private property for public use with out compensation and stopping us from making a living from that land when we try to abide by the laws.

This bill is a lot more damaging than the bill we organized to oppose because it gives the public a back door approach to all the private owned timbered land a long the waterways in Kansas. The canoer likes to think he should have the right to paddle down the river because he thinks the water belongs to every one. We know that ever one claims the water until it floods our beautiful crops, then it's Gods water.

This is where the trouble starts. They take along a rifle and decide to target practice and I can tell you first hand when you hear those bullets going over your head, as you plant and work your land, you quickly decide you never want another person along your waterway. The next risk is that you don't know who has been on you place when all the tools and battery disappear from the tractor you left at the end of the field and you never even saw a car or person around because they slipped in by paddling down the river.

Many people's homes are built very close to the waterways the barns are usually are closer to the rivers and they are all ready having trouble from trespassers stealing their property and no one ever see them.

The biggest risk to the farmer or landowner is the liability if the person or persons that would traverse the property would get

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hurt especially now that you have also elected to include the riverbanks and riparian areas. Who will be held responsible when someone climbs a tree on the bank and falls and breaks a leg. Farmers cannot afford this type of liability exposure especially for people they knew where there in the first place. We can see a great danger to the owner and it would have a full time job just checking his property for hazards that may have been left by the previous user.

In conclusion I would like to express my dismay that this body elected to introduce a bill at this late date and not allow sufficient time for the public to have an opportunity to express their feelings. I feel this bill should be tabled until next year so that a through study can be made and the public can have the opportunity to make a educated decision. Farm people have lived through some of the most turbulent times in the last 10 years, they do not need the risk of Wildlife and Parks telling them how to run their farms.

We are asking you to table house bill 3190 because we have plenty of public areas for recreational use.

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I am Myron Van Gundy from Lyon County, Kansas, presently serving as Chairman of the Lyon County Commission.

I want to thank you for the opportunity to speak in opposition to House Bill 3190.

First I want to criticize the move to take HB 2527, which had wide-spread opposition, and sneak it over on another bill. The unsuspecting public and opposition had no knowledge of this devious bill that erodes the rights of the property owner in the entire State of Kansas.

Some of the sections of this bill which do take the right of the owner of private property away are:

Lines 26 and 27 of Page 1 - "Recreational river" means a stream or river or sections thereof, designated by the secretary as a "recreational river".

Lines 38, 39, 40 of Page 1 - "New Sec. 2 (a) The members of the public shall have the right to make nonconsumptive use, including recreational use, of the waters of recreational rivers in Kansas."

Lines 1, 2, 3 of Page 2 - "Recreational rivers includes the right to portage around obstacles and to make such contact with the banks and bottom of recreational rivers as may be reasonably necessary for such portage."

Lines 6 and 7 of Page 3 - "Shall not utilize the power of eminent domain to carry out such provisions" -- This section is really moot because other sections of this bill are taking the rights of the property owner without compensation so eminent domain is not needed.

Lines 14, 15, 16, 17 of Page 3 - (c) The secretary shall designate suitable locations for public access on all recreational rivers. Subject to the provisions of appropriation acts, the secretary shall acquire appropriate access rights for such locations.

Lines 20, 21, 22, 23 of Page 3 - "New Sec. 5. In cooperation with affected state and federal agencies and political subdivisions of this state, the secretary shall prepare and implement a recreational river management plan for each component river and its riparian areas.." -- By including the riparian areas in this section of the act it has, in one swoop, taken thousands of acres of

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land in the State of Kansas from the control of the private land owners and operators of this State.

Lines 27 and 28, Page 3 - (a) Public river access facilities and portage areas

These sections, along with the definition of streams which appears in the Kansas Register "Vol. II, No. 2, January 9, 1992, Board of Agriculture Division of Water Resources 5-40-l. item (k) "Stream" means any watercourse which has a well-defined bed and banks. The stream need not flow continuously and may flow only briefly after a rain in the watershed. The drainage area above the point in question must exceed 160 acres ---

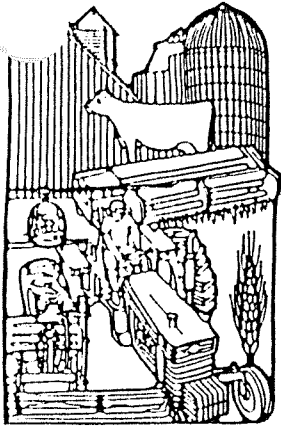
This definition of a stream makes practically every road ditch, draw, gully, and a major portion of land including the riparian areas of a stream public accessible in Kansas. If this bill would have stayed with the original intent to apply only to the three navigatable streams of Kansas, the bill would have some merit.

I again thank you for the opportunity to come before this Committee and bring to light the unfairness to the people of Kansas brought about by sections of this bill.

Respectively submitted,

Myron Van Gundy  
Route 2, Box 110  
Reading, Kansas 66801  
(316) 342 7063

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3/31/92  
#10-2



# Committee of Kansas Farm Organizations

## STATEMENT OF POSITION

### COMMITTEE OF KANSAS FARM ORGANIZATIONS

RE: HOUSE BILL NO. 3190

HOUSE FEDERAL AND STATE AFFAIRS

MARCH 31, 1992

Al LeDoux  
Legislative Agent  
Route 1  
Holtton, KS 66436  
(913) 364-3219

#### Committee of Kansas Farm Organization Members

Associated Milk Producers, Inc.  
Kansas Agri-Women Association  
Kansas Association of Soil  
Conservation Districts  
Kansas Association of  
Wheat Growers  
Kansas Cooperative Council  
Kansas Corn Growers Association  
Kansas Electric Cooperatives  
Kansas Ethanol Association  
Kansas Farm Bureau  
Kansas Fertilizer and  
Chemical Association  
Kansas Grain and Feed Association  
Kansas Livestock Association  
Kansas Meat Processors  
Association  
Kansas Pork Producers Council  
Kansas Rural Water  
Districts Association  
Kansas Seed Industry Association  
Kansas Soybean Association  
Kansas State Grange  
Kansas Veterinary Medical  
Association  
Kansas Water Resources Association  
Kansas Water Well Association  
Mid America Dairymen, Inc.  
Western Retail Implement and  
Hardware Association  
Kansas Grain Sorghum Producers  
Kansas Association of Nurserymen

Madam Chairperson, Members of the Committee: My name is Al LeDoux and I am presenting written testimony to you this afternoon on behalf of the Committee of Kansas Farm Organizations. As you well know, our group is made up of twenty-five (25) Ag and Ag related organizations operating here in Kansas.

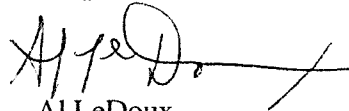
CKFO has elected to unanimously oppose HB 3190. In addition, many of our members have chosen to address this subject because of their strong concerns relating to property rights of Kansans whose property lays contingent or adjacent to watercourses.

Our organization appreciates and supports the concept of recreational water activities for public use, however, it appears that HB 3190 would create a huge liability problem for farmers who own land adjacent to Kansas streams and rivers. Can we actually guarantee the trespassing laws of this state will be upheld? CKFO does not think access to and from state streams can be controlled successfully given the vast dimensions of the proposed system outlined in this bill.

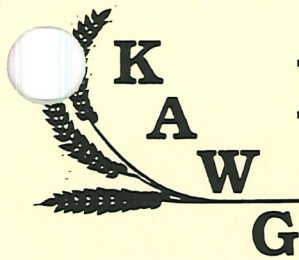
We would therefore suggest HB 3190 be considered unfavorable for passage by this Committee.

Thank you for your consideration.

Respectfully submitted,

  
Al LeDoux

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March 31, 1992  
Attachment #11



# Kansas Association of Wheat Growers

P.O. Box 2349

Hutchinson, KS 67504-2349

(316) 662-2367

## ONE STRONG VOICE FOR WHEAT

### TESTIMONY

HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS  
Representative Kathleen Sibelius, Chair

HB-3190

Chairperson, Sibelius and members of the committee, I regret that I am unable to appear at the public hearing on HB-3190, but I appreciate the opportunity to submit the following written testimony.

The members of the **Kansas Association of Wheat Growers** are opposed to HB-3190, as we have opposed similar bills in the past. The main reason is that proponents seek authorization to use private property for personal pleasure, without paying the owner, considering the legal liabilities of the owner or asking permission.

HB-2527, which was introduced last year, is similar legislation. It differs in that it would create a "**Recreational River System**," with plans for public river access and portage areas. However, the only reference to landowner rights is the requirement that the **Secretary of Wildlife & Parks** include them in his study of any river nominated for the system. HB-2527 was introduced by the **Energy and Natural Resources Committee**, referred to **Appropriations**, re-referred to **Energy**, and then re-referred again to the **Economic Development Committee**. No hearings have been held.

Now we have HB-3190, which goes a few steps further. It specifically authorizes the public to "*navigate or attempt to navigate*" on recreational rivers flowing across public or private lands in **Kansas**. (Navigation, under this act, includes the right to "*portage around obstacles and to make such contact with the banks and bottom or recreational rivers as many be reasonably necessary for such portaging.*" ) The **Secretary of Wildlife and Parks** is given sole authority to create a "**Recreational River System**." Under HB-3190, the **Secretary** is not required to study landowners rights, but is directed to study their "*concerns.*"

The other major difference between the two bills, is the addition of **River Guide Services**. HB-3190 would also allow the public to use private property for personal pleasure, without paying the owner, considering the legal liabilities of the owner or asking permission. --- And it allows "**River Guide Services**" to operate a business on someone else's property, charging a fee for their services, while paying nothing to the owner of the property. Of course, they would have to pay a license fee to the **Wildlife and Parks Department**.

We have also had proposals to create recreational access programs for hunting, hiking, bird watching and other outdoor activities. The last attempt of this nature failed to make it out of the **House Energy and Natural Resources Committee** because no one could come up with an answer to the concern over landowner liability if someone gets hurt. The proposal allowed for voluntary participation by landowners, and a small payment to landowners for the use of the land. However, the proposed payment was grossly inadequate, especially in light of what a landowner would have to pay for liability insurance. The legislature took some steps to lessen the legal liability, but the threat of lawsuits and the non-recoverable cost of defending oneself were not overcome, and the bill died in committee.

The liability question, and the concerns about abuse were the two main reasons for our opposition to the recreational access proposal. They are the main reasons we must oppose HB-3190 as well. While use of eminent domain authority is not permitted, the bill would still authorize the Secretary of Wildlife and Parks to allow the public to use private property without the landowners permission, without compensating the landowner, and without removing liability from the landowner in the event of an accident. In effect, it would authorize the Department of Wildlife and Parks to expose landowners to legal liability, while escaping all responsibility themselves. In addition, landowners have no choice about participating. The program is not voluntary for them.

There is little doubt that members of an organized canoe club would be knowledgeable about safety, and about proper conduct when using access or portage areas. However, there are many others who don't take the time to educate themselves, and are more likely to have an accident. Unfortunately, many of these people also are likely to blame someone else for their misfortune, resulting in costly and time-consuming lawsuits.

These people are also likely to pick their own ingress and egress points, instead of educating themselves about the proper locations. They are also likely to feel they have the right to pull ashore for a picnic wherever they choose, adding to the potential for litter problems. If the group would clean up after themselves, and stay on the riverbank, no harm would be done; but with some people, this would not be the case. To consider extreme, but not improbable situations, one can even envision a costly and dangerous range fire caused by a discarded cigarette or an improperly maintained cooking fire.

Landowners and farmer/operators have been faced with these schemes for many years. With urban populations growing, and higher salaries that allow urban residents to purchase more recreational "toys," it naturally follows that they will want to find a place to use these "toys." However, time and gasoline are more valuable commodities these days, so they're looking closer to home for their activities. Unfortunately, they are still unwilling to pay for the use of private land, or even ask permission to use it.

Many farmers would allow the use of streams that flow across their land, if people would simply stop to ask. Certainly there are those who would be willing to enter into an arrangement with their neighbors to set up a local program where canoe groups or individuals could arrange float trips. All they would have to do is talk to the landowners or operators and agree on a fair price. The landowners would have some income to offset their potential liability, and the canoeists would have regular access to the streams. It might even be possible to arrange trip insurance that would cover the canoeist in the event of an accident, and protect the landowner at the same time. Everyone could be a winner.

Unfortunately, the Department of Wildlife and Parks has a history of being deaf to landowner concerns and uncaring about landowner rights when the possibility of collecting fees is at stake. If that sounds overly harsh, consider the request our members have made time and time again, for a free deer permit, or even a \$5.00 permit in exchange for the crop losses and equipment damage caused by the state's deer herd. Wildlife and Parks won't even consider it.

It appears this bill may be an outgrowth of a 1991 Supreme Court decision which was the result of a landowner objecting to canoeists crossing his land, while traveling down Shoal Creek (in Cherokee County), without obtaining permission. Briefs were filed by the Geary County Fish & Game Association, Kansas Wildlife Federation and the Kansas Canoe Association, arguing in favor of public access on waterways passing through private property.



The **Kansas Supreme Court** upheld private property rights in the case. In the news article reporting the decision, the last two paragraphs of the Court's decision are published. Two quotes from that report are as follows:

*"Owners of the bed of a non-navigable stream have the exclusive right of control of everything above the stream bed, subject only to constitutional and statutory limitations, restrictions and regulations." and "The public has no right to the use of non-navigable water overlying private lands for recreational purposes without the consent of the landowner."*

The court refused to alter **Kansas'** statement of public policy by, what they termed "judicial legislation." The court stated that the legislative process is the proper method to change the law, "if the non-navigable waters of this state are to be appropriated for recreational use." However, we cannot agree that appropriating such waterways for public use is good public policy. It is certainly not fair to the landowner.

The **American** public enjoys the most abundant, most nutritious, the safest and cheapest food in the world. This is one of the reasons the public has more of their income available to pay for the recreational equipment they desire. The reason they have such good food at such a low cost, is the efficiency of the **American** farmer. To continue to insist that they have free use of farm property for recreational purposes without even giving the owner the courtesy of asking permission, is a slap in the face to the people that use that land to feed them.

Our members are tired of getting slapped in the face, and that is why they oppose this, and all similar legislation. When the **Department of Wildlife and Parks**, the **Kansas Wildlife Federation**, the **Kansas Canoe Association** and others with similar desires are willing to sit down with farmers and negotiate a program that is beneficial to everyone concerned, farmers will be willing to listen. As long as these groups insist on appropriating private land for public use, farmers will fight for their rights and oppose them.

A **Kansas** legislator summed up the landowners' position on this and similar proposals a few years ago, when he said, "I'll let them fish in my pond when they let me swim in their swimming pools." The statement can easily be paraphrased to fit hunting, canoeing and other outdoor recreation.

It is time for those who seek recreational access to someone else's property to start giving rural landowners the same respect for property rights that they expect in their own homes and backyards. I urge you to send that message from this committee. On behalf of the members of the **Kansas Association of Wheat Growers**, I urge you to swiftly kill **HB-3190**.

Attachments:

Copy of the news article concerning the January 19th Supreme Court decision

Copies of the **Kansas Association of Wheat Growers** resolutions, developed through a grassroots procedure, and passed at our December, 1991 convention

## High court rules against private waterway access

In a landmark case, the Kansas Livestock Association (KLA) posted a major victory when the Kansas Supreme Court ruled that the public does not have the right to float canoes, etc., on streams and rivers running through private property.

In coming to its decision, the Supreme Court cited legislative and case history. On three separate occasions during the 1986 and 1987 Kansas legislative sessions, KLA worked to defeat bills that would have allowed public access on private waterways. These bills were commonly referred to as the "canoe bills."

"For years KLA has fought numerous battles to protect the private property rights of its members. Because of its precedent-setting nature, this victory is one of the most important in recent memory," said KLA President Lyle Gray, a cow-calf producer from Leon.

The case originated in Cherokee County, where an individual landowner objected to canoeists traveling down Shoal Creek, which passes through his property.

The Kansas Wildlife Federation, Geary County Fish and Game Association and Kansas Canoe Association filed briefs with the Supreme Court arguing

in favor of public access on waterways passing through private property. KLA and Kansas Farm Bureau also filed briefs asking the court to uphold current law protecting private property rights.

The last two paragraphs of the Supreme Court decision, released Jan. 19, read as follows:

"Owners of the bed of a non-navigable stream have the exclusive right of control of everything above the stream

bed, subject only to constitutional and statutory limitations, restrictions and regulations. Where the legislature refuses to create a public trust for recreational purposes in non-navigable streams, courts should not alter the legislature's statement of public policy by judicial legislation. If the non-navigable waters of this state are to be appropriated for recreational use, the legislative process is the proper method to achieve this goal.

"The public has no right to the use of non-navigable water overlying private lands for recreational purposes without the consent of the landowner."

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## KAWG RESOLUTIONS CONCERNING PUBLIC ACCESS TO PRIVATE LAND

Indiscriminate recreational use of farmland, under a state lease, would cause many problems for landowners and tenants, such as pasture gates left open, damage to out buildings and equipment, and injury or death to farm livestock. Such use could also have the possible result of unsafe numbers of hunters in an area at one time.

Indiscriminate recreational use of farmland, under a state lease, would prevent a landowner or tenant from clearly defining the boundaries of leased land, which would surely result in sportsmen straying from leased land onto land not covered by the lease program.

Landowners and tenants who participate in a state lease plan for recreational access, have a responsibility to their neighbors who may not enter into such a lease program, to take all reasonable means to make sportsmen aware of the boundaries of such leased land.

In addition, a farmer's land is his home, his livelihood, and his future, and a farmer has the right to protect his investment.

RESOLUTION: The KAWG opposes any state lease program, for public recreational use of private land, unless landowners and/or tenants retain necessary control over the recreational use of the land, to protect their homes and their business investments. Landowners and/or tenants must retain the right to order anyone from the land, and prevent their return, when they abuse their privileges on the land.

It is extremely difficult to determine where one person's piece of land stops and another's begins. It is also difficult enough for hunters to stay within the confines of a well defined area. Consequently, a poorly defined area would create a next-to-impossible feat of confining hunters.

RESOLUTION: Fee access for public use (or recreation) should be made available in minimum packages of 640 acres, where sectional roads serve as well-defined boundaries. Other easily identified and described, recognized boundaries could also be made available for fee access permit holders. Landowners, farm operators and/or renters within a section, should reach mutual agreement to participate in a public access program, for protection of livestock and the preservation of private property.

RESOLUTION: The KAWG opposes any state lease program, for public recreational use of private land, that does not hold the state, as leaseholder, liable for any accidents or injuries occurring as a result of recreational use of such leased land.

## KAWG RESOLUTION CONCERNING DEER PERMITS FOR LANDOWNERS

Landowners and tenants absorb the cost of feeding the state's deer herd, and bear the burden of added expense from other crop and equipment damage. Landowners and tenants also provide the habitat for the state's deer herd, and can make a strong contribution to deer herd control due to their knowledge of the location of deer on the land they own or rent.

RESOLUTION: The KAWG strongly recommends that landowners and tenants should be provided a permit each year, for use on their own land, for any deer, buck or doe, of either species; mule deer or white tail, at a cost of no more than \$5.00, with no requirement that a hunting license be purchased.

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# PUBLIC POLICY STATEMENT

## SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

### RE: H.B. 3190 - Creating the Kansas Recreational River System and Regulation of River Guide Services

March 31, 1992  
Topeka, Kansas

Presented by:  
Bill Fuller, Assistant Director  
Public Affairs Division  
Kansas Farm Bureau

**Madam Chair and members of the Committee:**

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau. I am speaking on behalf of the farmers and ranchers who are members of the 105 county Farm Bureaus in Kansas. We appreciate this opportunity to express our members' concerns about expanding access to Kansas streams and rivers.

The voting delegates at the last Annual Meeting of Kansas Farm Bureau adopted a number of policy positions on natural resources and water issues. Included were these policy statements:

#### **Landowners' Rights**

#### **CNR-9**

We will vigorously support landowners' rights. We believe eminent domain procedures should include development of an agricultural impact statement, complete with public hearing, appeal, and a determination of compensation for disruption of normal farming practices. Equitable payment must be made for any land in any "taking" or "partial taking" by eminent domain.

Owners of real estate proposed to be taken in a condemnation proceeding shall be allowed to choose one appraiser in the appraisal process. All appraisals shall be made public. A severance allowance shall be paid to those who lease or rent real estate and who will

lose income because such real estate has been taken in an eminent domain or condemnation proceeding. A person whose property is taken by eminent domain or condemnation shall have one year following payment to relocate. Relocation costs shall be borne by the person or entity "taking" the property of another.

All utility lines, cables, and pipelines should be properly installed. Such installations should be adequately marked. A landowner or tenant shall not be held liable for any accidental or inadvertent breakage or disruption of service on any lines, cables or pipelines.

Pipeline companies, and electric, telephone and water utilities, should be required to replace topsoil, repair terraces, and reseed native grass that is dis-

turbed during construction of any facilities. Approved soil conservation practices must be utilized by all utility companies. These companies shall bear the cost of deepening the burial of pipelines or cables, and moving utility poles or other structures when permanent soil and/or water conservation measures are constructed or improved by the landowner.

We believe safeguards should be developed for landowners to protect against costs involved in bringing an abstract up-to-date when these costs are the result of transactions generated or incurred by a gas or oil company, railroads or utilities.

We strongly oppose giving the public free access to private property adjacent to rivers and streams. Landowners should be authorized to charge an "access" fee. Access to or across private property for watercraft use on streams and rivers, if granted by the landowner/operator, should be limited to non-motorized fishing boats and canoes. We strongly oppose the addition of any rivers or streams into the category of "navigable" streams.

We oppose giving any person or governmental agency authority for access to private property for inspection or investigation without permission from the property owner or operator.

### **Public Access to Private Property CNR-12**

We support the present system and procedures available to sportsmen and others who seek access to private property:

1. Ask the owner/operator for permission to be on or to cross the land;
2. Obtain a clear understanding and description of lands which are open to the uses for which access is sought; and
3. Be respectful of land, water and fences and all other property.

Our members believe H.B. 3190 will create real threats to private property owners when it comes to taking away landowner rights and increasing liability risks.

Let me point out some concerns and questions by farmers and ranchers if we provide more access to Kansas streams and rivers:

1. What is the liability to the property owner when a person is injured or killed while on a sandbar, on the stream bank or decides to hike back into the farmer's land?
2. Littering of cans, plastic containers, etc. will increase ... both in the stream and along the banks.
3. Livestock watering can be disrupted.
4. Irrigation pumps become more accessible to vandalism which can result in thousands of dollars of damage to the equipment and/or crops.
5. Will the private landowner be compensated for damages and expenses for the public access to the streams?

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H.B. 3190 states "Navigation of recreational rivers includes the right to portage around obstacles and to make such contact with the banks and bottom of recreational rivers as may be reasonable necessary for such portaging." A question our members ask is where do the individuals and guide services access the streams? While some access may be available from public roads, we fear that H.B. 3190 will encourage and will actually result in more trespass on private property. Our big concern is private property rights. Permission must be asked and granted to cross the land. A second major concern is increased liability to landowners. What is the risk to landowners when bodily injury or death occurs from livestock, machinery or other hazards including abandoned wells. Farm Bureau, often in cooperation with the Extension Service and Soil Conservation Districts, has conducted 114 demonstrations in 87 counties to encourage and help landowners plug abandoned water wells. Many of these wells are a safety hazard. The location of many are unknown.

We ask you not to vote for any legislation that destroys private property rights and increases liability to landowners. We believe H.B. 3190 does both. Thank you!

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