

Approved: Carl Dean Holmes
Date 3-8-95

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes on February 8, 1995 in Room 526-S of the Capitol.

All members were present except: Representative Flower - Excused
Representative Hutchins - Excused
Representative Kline - Excused
Representative Sloan - Excused

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Mary Torrence, Revisor of Statutes
Shirley Wilds, Committee Secretary

Conferees appearing before the committee: Dennis Kissinger - City of Salina
David Burnett - Southeast Kansas Solid Waste Authority
Chris McKenzie - League of KS Municipalities
Larry Knoche - KS Department of Health and Environment
Jim Kalp - City of Hays
Darrel Montai - KS Department of Wildlife and Parks

Others attending: See attached list

Upon inquiry by the Chair of any bill requests, Representative Lawrence moved to introduce a bill clarifying an amendment in the Water Appropriations Act relating to sand and gravel operations water usage. Representative Empson seconded. Motion carried.

Representative Lloyd made a motion to introduce a bill concerning the critical water management area and the possibility of setting up an advisory and/or oversight committee to aid KDHE in the stipulations. Representative McClure seconded. Motion carried.

Chairperson Holmes advised the Committee of minutes before them to be approved at the end of meeting today.

The Chair handed out testimony from Don Low, Kansas Corporation Commission, with responses to previous questions from Committee members (See Attachment #1), and from Jim Haines, Western Resources, written testimony (for the record) of a previous verbal presentation to the Committee and also information in response to Committee questions. (See Attachment #2.)

The Chair reviewed the agenda for next week and outlined the remainder of time left for hearings and action on bills before deadline.

Representative Lloyd made a motion to introduce a bill relating to the corporation commission's involvement in water control and waste water treatment operations. Representative Aurund seconded. Motion carried.

Hearing on HB 2033:

Dennis Kissinger. Mr. Kissinger reported that the City of Salina strongly supports **HB 2033**. He said Salina has 300 acres requiring remediation, most parcels in the site area are not public property, and the measure is critical to their city. He added that this is a very valuable option for Salina or other communities to use in working with the state to protect the public health and environment. Without it, he said many communities may be more reluctant to take a leadership role in these matters. Mr. Kissinger provided a site location map. (See Attachment #3.)

David Burnett. (See Attachment #4.) In recommending the passage of this measure, Mr. Burnett offered three observations for the Committee's recommendation:

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on February 8, 1995.

- * The bill does not solve the problem of unfunded mandates. It leaves our heirs to pay our debt with interest.
- * Most of the 105 counties in Kansas (and countless small towns) do not have the funds or expertise to deal with the potential liabilities of abandoned contaminated properties.
- * Without passage of **HB 2033** numerous counties and towns face the potential of bankruptcy.

The Committee is urged to limit the liability that may be incurred by local units of government due to abandonment for taxes of contaminated properties.

Mr. Burnett concluded his remarks with the contention that loaning the cities and counties money is not funding remediation.

Chris McKenzie. (See Attachment #5.) Speaking in support of **HB 2033**, Mr. McKenzie reports that the League of Kansas Municipalities has been a supporter for years of the revolving loan fund, and the League had supported similar legislation last year. He explained that while most don't want to even consider the possibility of an environmental contamination problem in their communities, most city leaders have either had to face such a problem or know they will in the future. Faced with such a situation he said programs like **HB 2033** will be helpful.

Mr. Kenzie also expressed support for the amendments offered by the City of Hays to extend the availability of loans for remediation efforts on private property under certain limited circumstances.

Larry Knoche. (See Attachment #6.) Mr. Knoche commented that often times governmental entities are unable to bear the financial burden necessary to perform the required environmental investigations and remediation. It would, therefore, be advantageous to the state and local government taxpayers to undertake a program to assist financially. State agencies and local governments are willing to remediate a contaminated site, but loans are usually not available through financial institutions (too great a risk).

Although in support of the concept of **HB 2033**, Mr. Knoche informed the Committee it should be noted that funding for this type of program was not included in the Governor's budget recommendation. Until such time that funding is identified, Mr. Knoche stated that the Department recognizes this legislation may need to be deferred.

Chairperson Holmes referred to written testimony before the Committee from Hannes Zacharias from the City of Hays, and invited Mr. Jim Kalp to present Mr. Zacharias' position.

Jim Kalp. (See Attachment # 7.) Mr. Kalp said that Mr. Zacharias' testimony is basically a reiteration of testimony already presented at this meeting today. He specifically referred to that section of testimony wherein PCE contaminants were revealed involving a public water supply well within a half mile wide by one mile long area (including some of the city's prime retail businesses). Through their investigation KDHE determined the area would probably be declared a "super-fund" site with the EPA - unless the City or other responsible party were to guarantee the area cleanup. If labelling the area as a "super-fund" site, it would most likely reduce the property tax appraisals by 40%, virtually halt all land transactions within the area, and stagnate retail activity.

Mr. Kalp said that in small measure **HB 2033** will lessen the financial burden by making low interest loans accessible to municipalities for such cleanup activities. The bill (as is currently drafted) will not, however, benefit the City of Hays. He offered a proposed amendment to allow them access to the low interest rate loans. He said the amendment would be limited to only those cities that enter into a Contamination Remediation Consent Agreement with KDHE. The bill (with his amendment) will assist cities in the cleanup process thereby accelerating the availability of clean water to Kansas residents.

Chairperson Holmes invited Committee members to peruse a document in his file from the Kansas Water Office addressing this situation. The document lists potential candidate sites that were known in 1993 to be eligible for this type of contamination remediation and ^{the} are sites are well spread across the state of Kansas.

Upon completion of discussion of **HB 2033**, the Chair reopened the meeting to bill requests, recognizing Mr. **Darrel Montai** from Kansas Wildlife and Parks who proposed four bill requests. (See Attachment #8.)

Representative Lawrence moved to adopt introduction of the following bills:

- * A bill that would amend the definition of a private water fishing impoundment ;

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on February 8, 1995.

* A bill that would amend the statute to expand the concept of group fishing licenses and address fishing license requirements for certain individuals involved in fishing clinics;

* A bill to allow the Secretary of Wildlife and Parks to issue, free of charge, certain licenses to any resident individual who is at least 1/16 Indian by blood, with other stipulations;

* A bill giving law enforcement officers authority to enforce provisions of the state's boating laws.

Representative Freeborn seconded the motion. Motion carried.

Representative Myers moved to approve Committee minutes for January 17, 18, 19, 20 and 23. Representative Feuerborn seconded. Motion carried.

The **HB 2036** Subcommittee is meeting upon adjournment.

There being no other business to come before the Committee, the meeting adjourned at 4:40 p.m.

The next meeting is scheduled for February 9, 1995



Kansas Corporation Commission

Bill Graves, Governor Susan M. Seltsam, Chair F.S. Jack Alexander, Commissioner Rachel C. Lipman, Commissioner
Judith McConnell, Executive Director Brian Moline, General Counsel

February 7, 1995

Members of the House Energy
and Natural Resources Committee

Re: HB 2101

Dear Representatives:

During the hearing on the above bill, there were several requests for information from committee members. The following is the Kansas Corporation Commission's (KCC's) response.

First, with regard to the Wolf Creek decommissioning funds, the three owners have the following amounts as of the end of 1994: KEPCo - \$2.030 million; KG&E - \$16.631 million; and KCPL - \$6.517 million (Kansas jurisdictional portion). Their respective annual contributions to the funds are: KEPCo - \$.266 million; KG&E - \$3.655 million; and KCPL - \$.895 million (Kansas portion). The Commission reviews the estimated cost of decommissioning every three years. (The review last year was delayed one year to put the reviews on the same schedule as Missouri's.) Although the estimated cost of decommissioning increased last year, it did not result in rate increases for customers primarily because of expected greater returns on the funds due to loosened investment restrictions allowed by changes in federal law.

In response to the question concerning other states' CWIP policies; neighboring states have the following policies with regard to CWIP, based on a quick review:

Missouri: CWIP is prohibited in ratebase by statute; it is not prohibited in telephone ratebase although it has never been allowed.

2/8/95
Energy & Natural Resources

Oklahoma: energy companies are allowed to earn a return on CWIP to be placed in service within one year of the end of the test period and on CWIP associated with the replacement or improvement of existing plant.

Colorado: CWIP has not been allowed by the PSC since 1980.

Arkansas: a return on CWIP is allowed if the plant is to be placed in service within one year of the end of the test period; the commission considers these to be known and measurable changes.

Lastly, I have taken the liberty of having staff do some present value calculations with regard to the hypothetical presented by Mr. Haines at the hearing. The calculations are attached as Scenario 1. A comparison of the net present values under the "no CWIP" and "CWIP in rate base" reveals that at a discount rate slightly lower than 10%, there is no difference between the two calculations but that if ratepayers have a cost of money higher than 10%, they are better off under the "no CWIP" case.

Also, in reviewing the hypothetical, we noticed that the AFUDC accrual rate and the overall return rate were assumed to be equal at 10%. Under most conditions, short term debts costs are lower than long term debt and equity costs. Thus, the AFUDC rate would be lower than the overall rate of return, especially after the inclusion of taxes in calculating the applicable return. Attached as Scenario 2 are present value calculations using more realistic assumptions of an AFUDC rate of 8% and an overall rate of return of 14% before taxes. A comparison shows that ratepayers are better off with "no CWIP," regardless of the discount value used.

If you have any additional questions about this or any other matter, please do not hesitate to contact me.

Sincerely yours,



Donald A. Low
Utilities Director

cc: Jim Haines

**CWIP IN RATE BASE
SCENARIO #1**

YEAR	EXPENDITURE	AFUDC @ 0%	RATE BASE	DEPRECIATION	RETURN @ 10%	REVENUE REQUIREMENT
1	\$20,000,000	\$0	\$20,000,000	\$0	\$1,000,000	\$1,000,000
2	20,000,000	0	40,000,000	0	3,000,000	3,000,000
3	20,000,000	0	60,000,000	0	5,000,000	5,000,000
4	20,000,000	0	80,000,000	0	7,000,000	7,000,000
5	20,000,000	0	100,000,000	0	9,000,000	9,000,000
6			95,000,000	5,000,000	9,750,000	14,750,000
7			90,000,000	5,000,000	9,250,000	14,250,000
8			85,000,000	5,000,000	8,750,000	13,750,000
9			80,000,000	5,000,000	8,250,000	13,250,000
10			75,000,000	5,000,000	7,750,000	12,750,000
11			70,000,000	5,000,000	7,250,000	12,250,000
12			65,000,000	5,000,000	6,750,000	11,750,000
13			60,000,000	5,000,000	6,250,000	11,250,000
14			55,000,000	5,000,000	5,750,000	10,750,000
15			50,000,000	5,000,000	5,250,000	10,250,000
16			45,000,000	5,000,000	4,750,000	9,750,000
17			40,000,000	5,000,000	4,250,000	9,250,000
18			35,000,000	5,000,000	3,750,000	8,750,000
19			30,000,000	5,000,000	3,250,000	8,250,000
20			25,000,000	5,000,000	2,750,000	7,750,000
21			20,000,000	5,000,000	2,250,000	7,250,000
22			15,000,000	5,000,000	1,750,000	6,750,000
23			10,000,000	5,000,000	1,250,000	6,250,000
24			5,000,000	5,000,000	750,000	5,750,000
25			0	5,000,000	250,000	5,250,000

TOTAL

\$225,000,000

NET PRESENT VALUE @

6%	<u>\$113,911,767</u>
7%	<u>\$103,174,523</u>
8%	<u>\$93,787,362</u>
9%	<u>\$85,547,043</u>
10%	<u>\$78,284,959</u>
11%	<u>\$71,860,675</u>
12%	<u>\$66,156,758</u>
13%	<u>\$61,074,624</u>
14%	<u>\$56,531,200</u>
15%	<u>\$52,456,215</u>
16%	<u>\$48,790,012</u>

NO CWIP IN RATE BASE
SCENARIO #1

YEAR	EXPENDITURE	AFUDC @ 10%	CWIP	RATE BASE	DEPRECIATION	RETURN @ 10%	REVENUE REQUIREMENT
1	\$20,000,000	\$1,000,000	\$21,000,000	\$0	\$0	\$0	\$0
2	20,000,000	3,100,000	44,100,000	0	0	0	0
3	20,000,000	5,410,000	69,510,000	0	0	0	0
4	20,000,000	7,951,000	97,461,000	0	0	0	0
5	20,000,000	10,746,100	128,207,100	0	0	0	0
6				121,796,745	6,410,355	12,500,192	18,910,547
7				115,386,390	6,410,355	11,859,157	18,269,512
8				108,976,035	6,410,355	11,218,121	17,628,476
9				102,565,680	6,410,355	10,577,086	16,987,441
10				96,155,325	6,410,355	9,936,050	16,346,405
11				89,744,970	6,410,355	9,295,015	15,705,370
12				83,334,615	6,410,355	8,653,979	15,064,334
13				76,924,260	6,410,355	8,012,944	14,423,299
14				70,513,905	6,410,355	7,371,908	13,782,263
15				64,103,550	6,410,355	6,730,873	13,141,228
16				57,693,195	6,410,355	6,089,837	12,500,192
17				51,282,840	6,410,355	5,448,802	11,859,157
18				44,872,485	6,410,355	4,807,766	11,218,121
19				38,462,130	6,410,355	4,166,731	10,577,086
20				32,051,775	6,410,355	3,525,695	9,936,050
21				25,641,420	6,410,355	2,884,660	9,295,015
22				19,231,065	6,410,355	2,243,624	8,653,979
23				12,820,710	6,410,355	1,602,589	8,012,944
24				6,410,355	6,410,355	961,553	7,371,908
25				0	6,410,355	320,518	6,730,873

TOTAL

\$256,414,200

NET PRESENT VALUE @

6%	<u>\$120,297,114</u>
7%	<u>\$107,413,185</u>
8%	<u>\$96,219,173</u>
9%	<u>\$86,456,836</u>
10%	<u>\$77,912,184</u>
11%	<u>\$70,407,200</u>
12%	<u>\$63,793,224</u>
13%	<u>\$57,945,644</u>
14%	<u>\$52,759,615</u>
15%	<u>\$48,146,604</u>
16%	<u>\$44,031,588</u>

**NO CWIP IN RATE BASE
SCENARIO #2**

YEAR	EXPENDITURE	AFUDC @ 8%	CWIP	RATE BASE	DEPRECIATION	RETURN @ 14%	REVENUE REQUIREMENT
1	\$20,000,000	\$800,000	\$20,800,000	\$0	\$0	\$0	\$0
2	20,000,000	2,464,000	43,264,000	0	0	0	0
3	20,000,000	4,261,120	67,525,120	0	0	0	0
4	20,000,000	6,202,010	93,727,130	0	0	0	0
5	20,000,000	8,298,170	122,025,300	0	0	0	0
6				115,924,035	6,101,265	16,656,453	22,757,718
7				109,822,770	6,101,265	15,802,276	21,903,541
8				103,721,505	6,101,265	14,948,099	21,049,364
9				97,620,240	6,101,265	14,093,922	20,195,187
10				91,518,975	6,101,265	13,239,745	19,341,010
11				85,417,710	6,101,265	12,385,568	18,486,833
12				79,316,445	6,101,265	11,531,391	17,632,656
13				73,215,180	6,101,265	10,677,214	16,778,479
14				67,113,915	6,101,265	9,823,037	15,924,302
15				61,012,650	6,101,265	8,968,860	15,070,125
16				54,911,385	6,101,265	8,114,682	14,215,947
17				48,810,120	6,101,265	7,260,505	13,361,770
18				42,708,855	6,101,265	6,406,328	12,507,593
19				36,607,590	6,101,265	5,552,151	11,653,416
20				30,506,325	6,101,265	4,697,974	10,799,239
21				24,405,060	6,101,265	3,843,797	9,945,062
22				18,303,795	6,101,265	2,989,620	9,090,885
23				12,202,530	6,101,265	2,135,443	8,236,708
24				6,101,265	6,101,265	1,281,266	7,382,531
25				0	6,101,265	427,089	6,528,354

TOTAL

\$292,860,720

NET PRESENT VALUE @

6%	<u>\$139,377,839</u>
7%	<u>\$124,693,532</u>
8%	<u>\$111,904,019</u>
9%	<u>\$100,724,022</u>
10%	<u>\$90,916,524</u>
11%	<u>\$82,283,837</u>
12%	<u>\$74,660,452</u>
13%	<u>\$67,907,278</u>
14%	<u>\$61,906,998</u>
15%	<u>\$56,560,307</u>
16%	<u>\$51,782,850</u>

**CWIP IN RATE BASE
SCENARIO #2**

YEAR	EXPENDITURE	AFUDC @ 0%	RATE BASE	DEPRECIATION	RETURN @ 14%	REVENUE REQUIREMENT
1	\$20,000,000	\$0	\$20,000,000	\$0	\$1,400,000	\$1,400,000
2	20,000,000	0	40,000,000	0	4,200,000	4,200,000
3	20,000,000	0	60,000,000	0	7,000,000	7,000,000
4	20,000,000	0	80,000,000	0	9,800,000	9,800,000
5	20,000,000	0	100,000,000	0	12,600,000	12,600,000
6			95,000,000	5,000,000	13,650,000	18,650,000
7			90,000,000	5,000,000	12,950,000	17,950,000
8			85,000,000	5,000,000	12,250,000	17,250,000
9			80,000,000	5,000,000	11,550,000	16,550,000
10			75,000,000	5,000,000	10,850,000	15,850,000
11			70,000,000	5,000,000	10,150,000	15,150,000
12			65,000,000	5,000,000	9,450,000	14,450,000
13			60,000,000	5,000,000	8,750,000	13,750,000
14			55,000,000	5,000,000	8,050,000	13,050,000
15			50,000,000	5,000,000	7,350,000	12,350,000
16			45,000,000	5,000,000	6,650,000	11,650,000
17			40,000,000	5,000,000	5,950,000	10,950,000
18			35,000,000	5,000,000	5,250,000	10,250,000
19			30,000,000	5,000,000	4,550,000	9,550,000
20			25,000,000	5,000,000	3,850,000	8,850,000
21			20,000,000	5,000,000	3,150,000	8,150,000
22			15,000,000	5,000,000	2,450,000	7,450,000
23			10,000,000	5,000,000	1,750,000	6,750,000
24			5,000,000	5,000,000	1,050,000	6,050,000
25			0	5,000,000	350,000	5,350,000

TOTAL

\$275,000,000

NET PRESENT VALUE @

6%	<u>\$142,334,489</u>
7%	<u>\$129,337,560</u>
8%	<u>\$117,938,174</u>
9%	<u>\$107,900,003</u>
10%	<u>\$99,026,436</u>
11%	<u>\$91,153,250</u>
12%	<u>\$84,142,735</u>
13%	<u>\$77,878,966</u>
14%	<u>\$72,263,986</u>
15%	<u>\$67,214,712</u>
16%	<u>\$62,660,420</u>

Western
Resources

818 Kansas Avenue
Topeka, Kansas 66612
Phone (913) 575-8208

James Haines
Executive Vice President
and Chief Administrative Officer

February 8, 1995

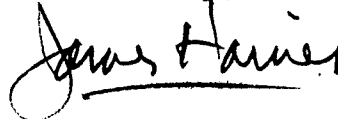
The Honorable Carl Holmes
P.O. Box 2288
Liberal, KS 67905

Dear Representative Holmes:

At the conclusion of the February 6 hearing of the House Committee on Energy and Natural Resources, you asked me to make available to the Committee the notes I used for my presentation. They are attached. Also, during the hearing, Representative McClure asked for the current balance in Kansas Gas and Electric Company's Nuclear Decommissioning Trust Fund. At December 31, 1994, the market value of the fund was \$16,633,000. KG&E's 1995 contribution to the fund will be approximately \$3,655,000. Annual payments thereafter will escalate at 2% annually. Representative McKinney asked for the discount rate at which the two revenue requirement streams in my exhibit would be even on a present value basis. Due to a simplification in the way those revenue requirement streams were calculated, the break even discount rate is 9.69%. If those revenue requirement streams had been calculated as they would actually be calculated for ratemaking purposes they would be slightly different and the discount rate would increase to 10%.

If you or other members of the Committee would like additional information, please let me know.

Sincerely,



cc: Energy and Natural Resources Committee Members
Mr. Don Low
Mr. Louis Stroup

H.B. 2101

Would amend K.S.A. 66-128 to give the KCC discretion to recognize in rates the value of construction work in progress for electric facilities which have been authorized by a siting permit.

Present situation: complete ban for any facility which it takes more than 1 year to construct

Based on a quick review of information from Regulatory Research Associates, a recognized rate/regulatory research firm, Kansas is one of only 8 states with a total statutory ban on rate recognition of the value of CWIP.

What are reasons commonly given for excluding the value of CWIP from rate base?

1. Customers shouldn't have to start paying for a facility until they begin to receive service from it.
2. Customers shouldn't have to start paying for a facility until its proven to be needed and its cost is found prudent.
3. Customers' interest cost is higher than utility's.
4. Create pressure on utility to keep construction of facilities on schedule and within budget.
5. Intergenerational equity: one generation of customers shouldn't pay for facilities to serve the next generation.
6. Discourage construction of new facilities.

Now let's examine each one of those.

1. Customers shouldn't have to start paying for a facility until they begin to receive service from it.
 - This sounds good on the surface, but its really a red herring. For other infrastructure facilities, e.g., schools, roads, bridges, prisons, we issue bonds to finance the facilities and we begin paying interest on those bonds before the facilities are completed. Some contend that unregulated businesses do not charge prices which reflect the cost of money for construction projects, but that is a mistaken contention.
2. Customers shouldn't have to start paying for a facility until its proven to be needed and its cost is found prudent.
 - This might make sense for facilities which have not been approved by the KCC in a siting proceeding. For a facility to get a siting permit, it must first satisfy the requirement of K.S.A. 66-1,162:

. . . . electric utility shall proceed with the introduction of evidence of the necessity for the proposed electric generation facility or addition . . . and of the reasonableness of the proposed location and size of electric generation facility The burden of proof on any such matter shall be upon the electric utility and shall be established by a preponderance of the evidence.

* * *

In addition to any other consideration deemed necessary in making such determination, the commission shall consider and make determinations on the following factors: (1) Whether or not the electric generating capacity of the proposed facility or addition to a facility meets or contributes to the meeting of the electrical energy needs of the people of this state considering the probable future statewide electrical energy needs thereof; and (2) whether or not available electrical generating capacity exists within the state that is capable of being distributed economically, reliably, technically and environmentally.

- Furthermore, the KCC has ongoing general authority to investigate construction progress and satisfy itself that facility is on budget/schedule.
3. Customers' interest cost is higher than utility's.
- It might be, but, as we will see in a moment, there may be offsetting benefits.
4. Create pressure on utility to keep construction of facilities on schedule and within budget.
- Perhaps, but H.B. 2101 gives the KCC discretion to deal with the value of CWIP and if it appears that a construction project is getting out of control, the KCC

could always stop or eliminate rate recognition of the value of CWIP.

- A utility would still be subject to a prudence review at end of project and that creates a much greater incentive to stay on schedule and budget.

5. Intergenerational equity.

- Most customers are with us for more than a few years. This too is superficial, today we are using facilities paid for by our parents, etc. Our economic system has never been so "tidy" that each generation only pays for what it uses.

6. Discourage construction of new facilities.

- This appears to be at the heart of the matter. Its certainly no secret that the present statutory ban on rate recognition of the value of CWIP was initiated by opponents of Wolf Creek.

Now, why would you want KCC to have discretion to recognize the value of CWIP in rate base?

1. Reduces cost of new facilities.
2. Reduces rate impact of new facilities.
3. Permits state the option of encouraging new facilities.
 - Present statutory scheme discourages construction of new electric generating facilities.
 - With changes which are occurring in the electric

industry, it will be possible for developers of electric generating facilities to avoid economic regulation in Kansas if they perceive the regulatory structure to be unfavorable.

- Why would the state want to have a statutory framework which discourages construction of the most vital component of its infrastructure.

Exhibit

pg. 1	No CWIP
pg. 2	CWIP
pg. 3	Comparison

Final comment: H.B. 2101 would not mandate rate recognition of the value of CWIP, it would simply give the KCC discretion to permit it.

Value of CWIP Included in Rate Base
 Generally Case by Specific Generally
 Yes Case Projects(a) No (b)

State

Description of CWIP Provisions

Yes	Case	Projects(a)	No (b)	State	Description of CWIP Provisions
x				Alabama	CWIP is included in electric rate base, with AFUDC added back to net operating income.
				Alaska	n.a.
				Arkansas	n.a.
	x			Arizona	APS allowed to earn a cash return on a portion of CWIP related to PV1; for every \$1 of cash earnings generated by this increase, APS was required to forego \$1.20 of Allowance for funds used during construction earnings.
		x		California	CWIP for major projects is generally excluded from rate base. A Major Addition Adjustment Clause (MAAC) provides for operating & capital costs of the facility can be included in rates or accumulated in a balancing account when it commences commercial operation. Operation of the MAAC prevents any significant changes in company earnings due to a major new facility.
		x		Colorado	PUC has not allowed a cash return on CWIP in recent years.
		x		Connecticut	Legislation prohibits allowing a cash return on CWIP.
	x			Delaware	CWIP is considered for rate base treatment on an case by case basis. Permitted cash return on CWIP for Pollution Control Facilities.
		x		Dist of Columbia	Generally the Commission has excluded CWIP from rate base with the exception of pollution control CWIP.
	x			Florida	CWIP included in rate base on a case by case basis. During periods of high construction the Commission often permitted a cash return on substantial CWIP amounts...
		x		Georgia	CWIP is generally excluded from rate base.
		x		Hawaii	CWIP has not been included in rate base, but AFC's are accrued and included in the original cost of utility plant.
	x			Idaho	By statute the Commission is prohibited from providing a cash return on long-term balances of CWIP except upon findings of extreme emergency. PUC includes short-term CWIP in rate base.
	x			Illinois	Commission has historically included CWIP in rate base on a case by case basis where good cause has been demonstrated. 1983 legislation required the phase-out of the Commission authority to allow a return on CWIP. Investments in projects within 12 months of completion & certain pollution control facilities may still be permitted to earn a cash return.
	x			Indiana	Under 1985 legislation, companies are permitted to include CWIP in rate base for Pollution Control property & the implementation of clean coal technology.
		x		Iowa	While not prohibited by law, the IUB has not allowed a cash return on CWIP, but allows accrual of allowance for funds.
		x		Kansas	The KCC is statutorily prohibited from including long-term CWIP in rate base for a cash return.
x				Kentuckyhave historically been allowed to include virtually all CWIP in rate base for a full cash return.
				Louisiana	n.a.
	x			Maine	...generally does not permit a cash return on CWIP. However a cash return on a portion of Seabrook 1 CWIP was permitted.

Value of CWIP Included in Rate Base

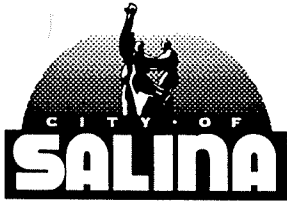
Generally Yes	Case by Case	Specific Projects(a)	Generally No (b)	State	Description of CWIP Provisions
		x		Maryland	Commission policy provides for the capitalization of the carrying charges on CWIP for major facilities which will not contribute to utility service in the near future, unless the proportion of ongoing construction or the financial condition of the utility is such that it is in the overall public interest for present ratepayers to pay a current cash return on CWIP balances. The PSC generally permits electric utilities to earn a cash return on only certain CWIP (Pollution Control).
x			x	Massachusetts Michigan	While not prohibited by law, the DPU has not allowed a cash return on CWIP Allowance for funds credits (AFC) are calculated at the overall return, without compounding. All CWIP is included in rate base. AFC on major projects is generally included as income for the test period and AFC is not compounded. A full cash return is permitted on non-nuclear pollution control CWIP.
x				Minnesota	The Commission regularly permits total rate base inclusion of CWIP but generally offsets such amounts with allowance for funds credits to operating income. Only under extraordinary circumstances does state law permit the PUC to allow an energy utility to earn a cash return on a major project CWIP. The PUC permits utilities to earn a cash return on short-term CWIP.
		x		Mississippi	...provides for short-term CWIP to be included in rate base with an allowance for funds offset.
			x	Missouri	By law the PSC is prohibited from including Electric CWIP in rate base.
			x	Montana	The PSC generally does not permit CWIP in rate base.
				Nebraska	n.a.
		x		Nevada	A Nov. 1991 decision for NVP permitted a cash return on CWIP on specified projects. (First time in a decade CWIP was permitted in Rate Base)
	x			North Carolina	The NCUC has allowed the major electric utilities to include CWIP in rate base when required for financial stability reasons.
	x			North Dakota	The commission has the authority to allow a return on CWIP
			x	New Hampshire	1979 legislation prohibits the inclusion of CWIP.
x				New Jersey	It is the Commission's practice to consider the allowance of CWIP in rate base for a full cash return on a case-by case basis.
			x	New Mexico	Companies have generally not been accorded a cash return on CWIP.
				New York	n.a.
x				Ohio	Legislation provides for allowance of CWIP in rate base at the PUC's discretion if a project is 75% complete, with limits on percent of total rate base to CWIP and other safeguards.
		x		Oklahoma	Energy companies have been allowed to earn a cash return only on non-revenue producing CWIP to be placed in service within one year of the end of the test period and on CWIP associated with the replacement or improvement of existing plant.
			x	Oregon	Inclusion of CWIP is prohibited by law.
		x		Pennsylvania	Inclusion of CWIP in rate base for a cash return is prohibited by law except under limited circumstances. Exceptions are for environmental or safety improvements and PUC ordered coal plant upgrades.
			x	Rhode Island	The Commission does not permit CWIP to be included in rate base.
	x			South Carolina	The PSC has allowed energy companies to include a certain portion of CWIP in rate base without an AFC offset as determined on a case by case basis.

Value of CWIP Included in Rate Base

Generally Yes	Case by Case	Specific Projects(a)	Generally No (b)	State	Description of CWIP Provisions
			x	South Dakota	The PUC does not permit utilities to earn a cash return on CWIP but does permit the accrual of allowance for funds used during construction.
x				Tennessee	CWIP is included in rate base, but allowance for funds credits are added to net operating income.
	x			Texas	In many of the electric rate cases in the 80's, the PUC permitted some amount of CWIP in ratebase for a cash return to enable the utility to maintain financial integrity. (The last instance in which a substantial amount of CWIP was included in rate base was 1991).
			x	Utah	It has not been a general PSC practice to allow a cash return on CWIP.
		x		Vermont	A cash return may be permitted on CWIP if the generation projects are located in Vermont, rely on a renewable resource, and have a near-future scheduled completion date.
x				Virginia	CWIP is included in rate base for most energy companies, with no allowance for funds credits on the CWIP included in rate base.
			x	Washington	In April 1984, the Washington Supreme Court determined that the state's "used & useful" statute prohibits the WUTC from permitting a utility from earning a cash return on CWIP.
	x			West Virginia	Electric companies have been provided a cash return on a portion of their CWIP on a case by case basis, depending on the Commission's "end result" evaluation. Companies may request recovery of CWIP associated with CAAA in their annual energy cost review proceedings.
	x			Wisconsin	Current practice is to examine the need for a current return on CWIP based upon financial and cash flow considerations. In most recent major cases a cash return has been permitted on a portion of CWIP for electric utilities entering into a new construction phase.
			x	Wyoming	The PSC does not permit utilities to earn a cash return on CWIP unless the related projects are placed in service prior to the start of the hearing process.
8	9	9	20		
			46	Total	

37% Generally Include or Case by Case (some may require AFC offsets to income)
 20% Partial Inclusion
 43% Generally Exclude

- Notes:
- (a) Generally environmental, clean coal, or short term construction projects..
 - (b) Of those states which generally prohibit the value of CWIP in rate base, only 8 states (Connecticut, Idaho, Kansas, Missouri, New Hampshire, Oregon, Pennsylvania and Washington) have statutes which prohibit the inclusion of some or all CWIP in rate base.



CITY MANAGER • DENNIS M. KISSINGER
City-County Building • 300 West Ash Street • P.O. Box 736
Salina, Kansas 67402-0736
TELEPHONE (913) 826-7250 • FAX (913) 826-7244

Testimony Notes

By: Dennis M. Kissinger
City Manager
City of Salina, Kansas

Before: House Energy and Natural Resources Committee

Re: HB 2033

Date: February 8, 1995

The city of Salina strongly supports HB 2033 and the proposed amendment drafted by the city of Hays.

We are providing a brief public information sheet which we use in Salina to describe our current groundwater contamination remediation project.

In Salina, we have a large (300 acres; 965 parcels of land) site in the center of the City requiring remediation. We do have a Consent Agreement with KDHE and are working closely with their staff on this. Remediation costs are uncertain, but may range from \$2 million to \$10 million.

Most of parcels in the site area and requiring remediation are not public property, therefore, the Hays amendments are critical to our City. We do have some financing alternatives available, (water revenue bonds, water fund reserves, etc.), but we are not certain at this point which will be legally usable, or whether they will be adequate to complete the task.

HB 2033 (with amendments) would be a very valuable option for us to use in working with the state to protect the public health and environment in our case, or in similar cases in other communities. Without it, many communities may be more reluctant to take a leadership role in these matters.

2/8/95
Energy & Natural Resources
Attachment # 3

Salina Public Water Supply Wells site (P.W.S. Wells Site)

1. What is it?

The groundwater in a relatively large area of Salina shows signs of contamination from certain volatile organic chemicals (VOCs). Primary contaminants of concern are the chlorinated hydrocarbon PCE (tetrachloroethylene or perchloroethylene) as well as certain petroleum constituents.

2. Where is it?

The area of concern is called the Salina PWS Wells Site, located in the central portion of Salina (see map on reverse). The area covers approximately 300 acres and contains 965 parcels of land.

3. What caused it?

PCE is a solvent used commonly in the dry cleaning process or as a degreasing solvent for cleaning metals. State officials believe several types of commercial businesses have utilized VOC-containing materials or generated VOC wastes in or near this site over a long period of years. Groundwater contamination by VOCs is presumably due to handling and disposal practices at businesses, including spillage, leakage or discharge onto the ground. Confirmed sources include five current or former dry cleaning businesses, and numerous active or former gas stations.

4. Why is this a problem?

- A. Federal and State laws and regulations establish standards for groundwater which may be used for public or private drinking water supplies.
- B. Three of the city's sixteen public water supply wells in this area have shown signs of VOC contamination. Those wells have been taken out of service. Concern exists that contaminants could migrate to other wells, or levels could increase.
- C. This groundwater contamination status could result in the area's designation as a Superfund site on the National Priority List. With or without Superfund site status, serious legal and property value issues exist, due to broad federal pollution liability laws.

5. Is my drinking water safe?

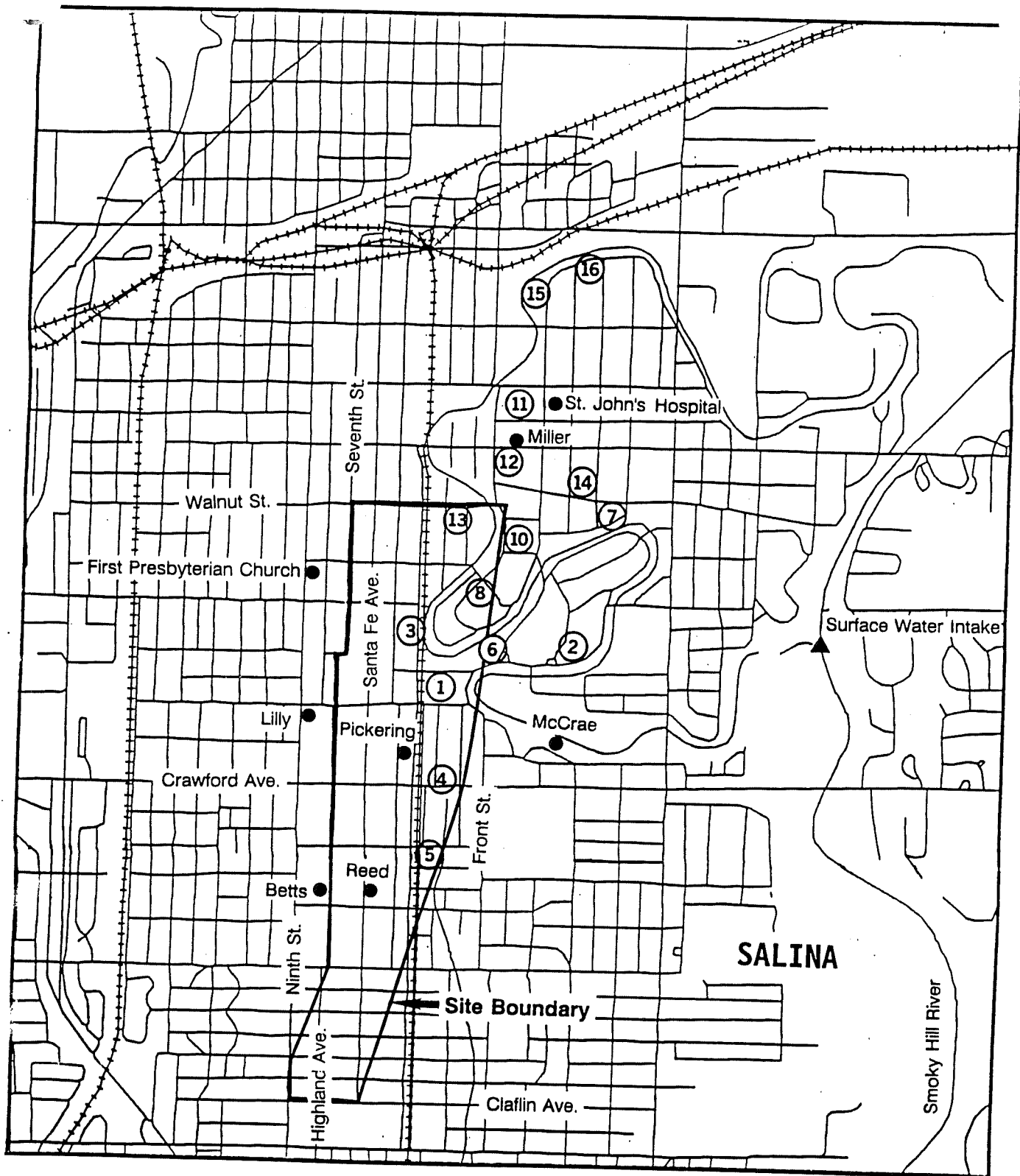
Absolutely. This is a long-term environmental concern. All city water meets safe drinking water standards.

6. What is the City's plan?

- A. City to assume the lead role in investigation and remediation through an agreement with the state of Kansas.
- B. City to take all necessary remediation and/or protective efforts through its water utility operation.
- C. City to provide releases from liability in many cases to "innocent" property owners, operators and lenders, thus mitigating the worst economic and property value impact.

7. How do I get information?

City contacts: Dennis Kissinger; City Manager - 826-7250
Don Hoff; Director of Engineering and Utilities - 826-7290
Greg Bengtson; City Attorney - 823-6325



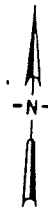
LEGEND: (9) Salina PWS Well
 ● Private Well

SCALE: 1 Inch = 0.3 Mile

SOURCE: Kansas Department of Health and Environment, GIS Center

DATA SOURCES: Political Boundaries - KGS/KCDB
 Hydrology Features - CENSUS/TIGER
 Road Features - CENSUS/TIGER
 Rail Features - KGS/KCDB

**FIGURE 2-2
 SITE LOCATION MAP**



Southeast Kansas Solid Waste Authority

Legislative Position Statement

RE: HB 2033

The nine-county Southeast Kansas Solid Waste Authority requests that House Bill 2033 be given a "Do Pass" recommendation by the House Energy and Natural Resources Committee. In recommending passage of HB 2033 we would offer the following observations for your consideration:

1. HB 2033 does not solve the problem of unfunded mandates. It simply allows our grand children the privilege of paying off our debt with interest. We do not particularly like this option, but we don't see any alternatives on the table at this time.
2. Most of Kansas' 105 counties, and the countless small towns, do not possess the funds or expertise to deal with the potential liabilities that may accrue to them due to the abandonment of contaminated properties. It is unconscionable to allow the small counties and communities of Kansas to assume an unlimited liability to fund remediation, even if you loan them the money to do it.
3. Without passage of this legislation, numerous counties and towns face the real potential of bankruptcy due to their inability to fund remediation of properties abandoned for taxes. This legislation will save some of our communities from that unfortunate likelihood.

We urge you to go further. Limit the liability that our local units of government may incur due to the abandonment for taxes of contaminated properties.

Again, you are passing an unfunded mandate to the cities and counties of Kansas if you do not find some way to fund the remediation of contaminated sites. Loaning them the money is not funding remediation. Either eliminate or limit the liability of the municipalities (as defined in the bill) or step up to the plate and pay the bill.

By all means, pass this bill, but do not let it's passage salve your conscience. This is the very least you can do. You can and should do more.

David T. Burnett, Information Officer
Southeast Kansas Solid Waste Authority

2/8/95
Energy & Natural Resources
Attachment #4



**League
of Kansas
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 112 S.W. 7TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

LEGISLATIVE TESTIMONY

TO: House Energy and natural Resources Committee

FROM: Chris McKenzie, Executive Director

DATE: February 8, 1995

RE: Testimony on HB 2033, Concerning contamination Remediation

It is my pleasure today to appear in support of HB 2033. The League has been a supporter for years of the revolving loan fund which the legislature established a few years ago to finance loans for wastewater system improvements. That program represents an excellent example of the state and federal government cooperating to provide low cost capital to finance necessary local improvements.

Last year the League also appeared in support of legislation similar to HB 2033. I was asked at that time whether there was a sufficient level of interest statewide in such legislation. As a result of that question, I have made it a point to ask city officials with whom I have met over the last year whether such a program might be of interest to them. The overwhelming answer has been "YES". While most of us don't want to even think about the possibility of an environmental contamination problem in our community, most city leaders have either had to face such a problem or know they will in the future. This bill presents just one of the tools we have for addressing such a concern. Most cities will not have the resources to access the capital to do this on their own, so programs like HB 2033 will be helpful.

I also want to express our general support for the amendments that I understand will be offered by the City of Hays to extend the availability of loans for remediation efforts on private property under certain limited circumstances.

Thank you for your leadership in this area. We look forward to working with you on this important legislation.

RECOMMENDATION: We urge the Committee to approve HB 2033.

*2/8/95
Energy & Natural Resources
Attachment # 5*

President: Harry L. Felker, Mayor, Topeka * **Vice President:** John Divine, Commissioner, Salina * **Past President:** Donald L. Anderson, Mayor, Lindsborg * **Directors:** * Chris Cherches, City Manager, Wichita * Yvonne Coon, City Administrator, Clearwater * Ed Eilert, Mayor, Overland Park * John Golden, Mayor, Goodland * Ralph T. Goodnight, Mayor, Lakin * Tom Martin, Commissioner, Dodge City * Larry Mathews, Commissioner, Newton * Nancy Maze, Commissioner, Fort Scott * Mary E. Reed, City Clerk/Director of Finance, Parsons * Neil Shortidge, City Attorney, Roeland Park * Joseph E. Steineger, Jr., Mayor, Kansas City * Melvin Williams, Councilmember, Mission * **Executive Director:** Christopher K. McKenzie

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

House Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

House Bill 2033

Loan Fund for Contamination Remediation
for Municipalities and State Agencies

Federal and State legislation has required us all to examine current and past storage, use and disposal practices for industrial, agricultural and household chemicals. Many substances which were once widely used and accepted have now been identified as being hazardous to public health and/or the environment. Often, governmental entities are unable to bear the financial burden necessary to perform the required environmental investigations and remediation.

Pollution of soil and waters of the state constitutes a menace to public health; creates public nuisances; damages the environment; and impairs domestic, agricultural, recreational and other legitimate beneficial uses. It would be advantageous to the state and local government taxpayers to undertake a program to financially assist response actions to investigate and remediate said pollution.

Frequently state agencies and local governments are willing to remediate a contaminated site, but funding for the remediation is unavailable. In most cases, loans are not available through financial institutions as the risk is considered too great. This bill provides a mechanism for qualifying governmental entities to obtain financing for investigation and remediation activities.

KDHE supports the concept of House Bill 2033 that establishes a revolving loan fund to assist municipalities and other state agencies in dealing with contaminated sites in their area. However, it should be noted that funding for this type of program was not included in the governor's budget recommendations. Until a suitable funding source is identified, the department recognizes that legislative action may need to be deferred.

Testimony presented by: Larry Knoche, Director
Bureau of Environmental Remediation
Division of Environment
February 8, 1995

2/8/95
Energy! Natural Resources

ADMINISTRATIVE OFFICES
HANNES ZACHARIAS, CITY MANAGER
LINTON BARTLETT, ASST. CITY MANAGER
CAROL SUE GRABBE, CITY CLERK-FIN. DIR.
KENT LAAS, CHIEF BUILDING INSPECTOR
SUSAN BILLINGER, PERSONNEL DIRECTOR

HAYS

KANSAS



COMMISSIONERS
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SHARON LEIKAM
DAN RUPP
JOE GLASSMAN
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HAYS, KANSAS 67601-00490

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TESTIMONY OF HANNES ZACHARIAS
CITY MANAGER OF HAYS, KANSAS

RE: SUPPORT FOR H.B. 2033

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

FEBRUARY 8, 1995

Mr. Chairman and Members of the Committee:

I am Hannes Zacharias, City Manager of the City of Hays, Kansas, speaking in support of House Bill 2033 dealing with the creation of a Contamination Remediation Revolving Loan Fund.

The City of Hays is particularly interested in this piece of legislation due to recent contacts with the Kansas Department of Health and Environment concerning groundwater contamination involving PCE's (dry cleaning solvents). In the summer of 1994, KDHE completed its preliminary investigation of the contamination of public water supply well number 20 located along Vine Street in the City of Hays. This Hays water well was one of the largest producing wells in the City, yielding approximately 250 gallons per minute. KDHE's investigation revealed PCE contaminates involving well number 20 within a one-half mile wide by one mile long area including some of the City's prime retail businesses. Based on their investigations, the area would most likely be

2/8/95
Energy & Natural Resources
Attachment #7

-2-

declared a "super-fund" site with the Environmental Protection Agency unless the City or some other responsible party were to step forward and guarantee the area cleanup.

This action places the City of Hays along with Wichita, Hutchinson, and Salina, regarding "super-fund" activities. City staff indicates that this area generates approximately \$600,000 in property tax revenues for the City, Ellis County, U.S.D. 489, and the State of Kansas. Labeling the area as a "super-fund" site would in all likelihood reduce the property tax appraisals by 40%, virtually halt all land transactions within the area, and stagnate retail activity. In gross dollar terms, the combined taxing entities stand to lose approximately one quarter of a million dollars annually by this devaluation.

To mitigate this devastation of the local economy and local taxing jurisdictions, the City is contemplating entering into a Consent Agreement with KDHE to take over the responsibility for cleanup of this contaminated area. Cost estimates currently established indicate a capital cost of approximately 2.6 million dollars with maintenance costs of \$400,000 over the next decade. These expenses will obviously place a financial burden on the City of Hays.

We recognize the State of Kansas does not have the resources to finance the cleanup of these areas. House Bill 2033, however, will in some small measure lessen the financial burden by making

-3-

low interest loans accessible to municipalities for such cleanup activities.

The way the current bill is drafted, however, would not benefit the City of Hays. The current bill limits the scope of these loans under Section 4, part B, number 1, to only those areas owned or operated by State agencies or municipalities. In Hays' situation, none of the contaminated area is owned by the City of Hays. Thus, we are proposing the attached amendment, expanding the current language to allow the City of Hays access to these low interest rate loans. This expanded language would be limited to only those cities that enter into a Contamination Remediation Consent Agreement with KDHE. To protect the State, such cities would guarantee repayment of the loan by allowing the garnishment of State transfer payments to the City, should such loan repayments not be met. We also request that this broadened language be included into Section 18 of the bill dealing with the issuance of General Obligation Bonds for remediation activities.

In summary, let me state that the City of Hays appreciates the State's recognition of the ground water remediation problem by establishing this low interest rate loan program. It is our feeling that water quality is and will continue to be one of the most important issues facing the State. This bill, along with the City of Hays amendment, will assist cities in this cleanup process will accelerate the availability of clean water to Kansas residents. Thank you for your time and support of House Bill 2033.

Proposed Amendments to HB 2033

Sec. 4. (a) . . .

(b) In performing the functions and duties required by subsection (a), the Secretary shall:

(1) Include on the list only contamination remediation projects to prevent or minimize contamination by a release from a source owned or operated by a state agency of municipality at the time of the release unless the Secretary determines that: (A) the source is owned or operated by a state agency or municipality at the time of the contamination remediation project and (B) the state agency or municipality has made reasonable efforts to identify and hold responsible for the costs of remediation each owner or operator of the source at the time of the release; or (B) the owner or operator of the source is neither a state agency nor municipality, however, the municipality making application for the loan has made reasonable efforts to identify and hold responsible for the costs of remediation each owner or operator of the source at the time of the release and has entered into a contamination remediation consent agreement with the Secretary pursuant to subsection (2) of this section:

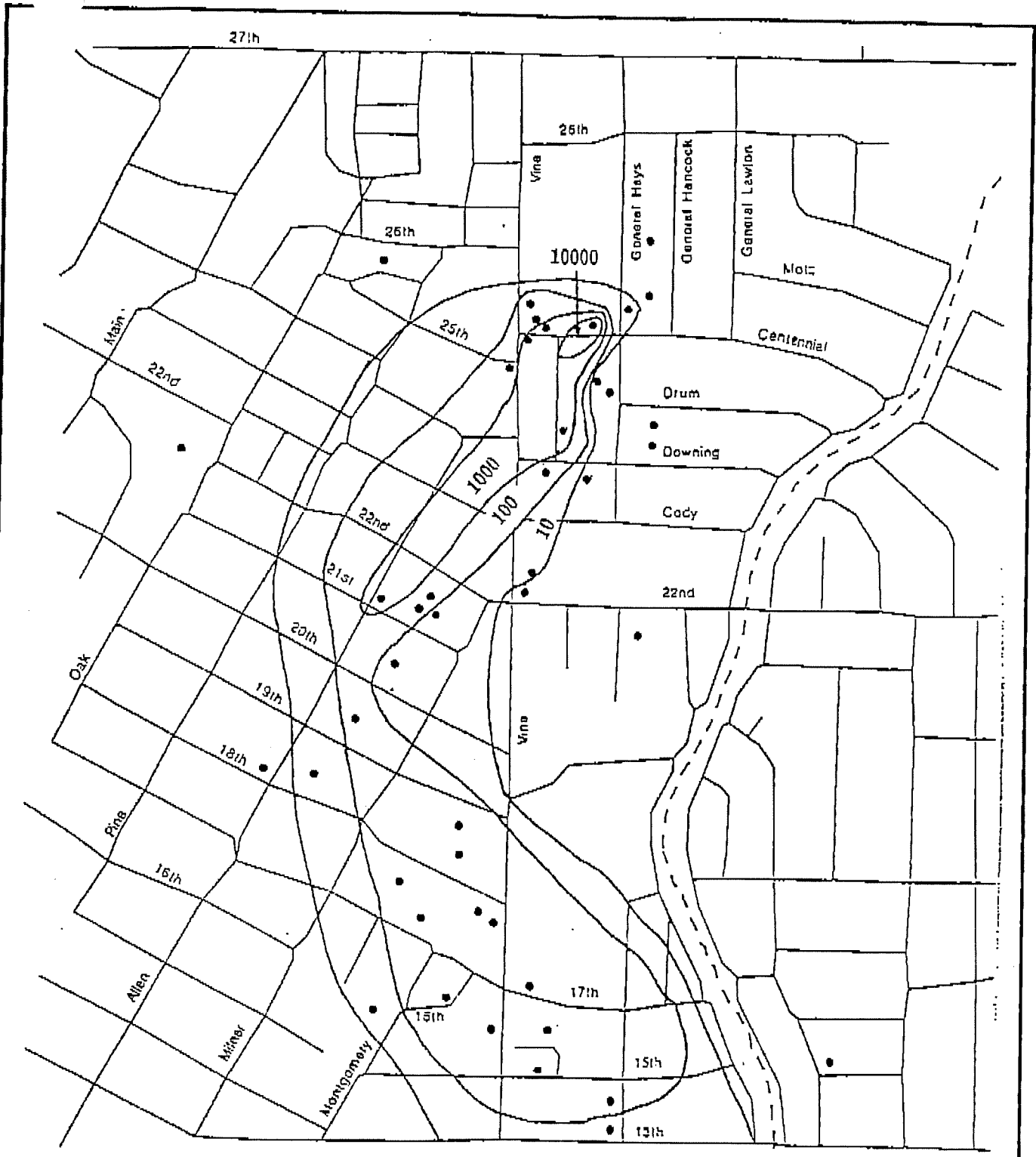
(2) Municipalities may apply for the provision of a loan under this act for projects within their jurisdiction where the source at the time of application is owned or operated by a person or entity other than a state entity or municipality. In making such application the municipality shall submit an application therefore to the Secretary which shall provide, in addition to all other requirements for an application under this act: (A) a contamination remediation consent agreement between the municipality and the Secretary; and (B) an agreement with the Secretary that the municipality shall have the same loan repayment obligations as it would to repay a loan for a contamination remediation project where the source was owned or operated by the municipality at the time of the release;

~~(2)~~ (3) . . .

Sec. 18. (a) . . .

(b) . . .

(3) The source is owned or operated by a party other than a state agency or municipality at the time of the project and (A) the municipality has made reasonable efforts to identify and hold responsible for the costs of remediation each owner or operator of the source at the time of the release, and (B) the municipality has entered into a contamination remediation consent agreement and loan repayment agreement with the Secretary pursuant to the provisions of section 4(b)(2) of this act.



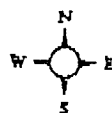
Legend:

- = Wells Sampled
- PCE = Tetrachloroethylene
- ppb = Parts Per Billion

Figure 4-8
PCE Isoconcentration Map

Scale:

1 inch = 714 feet



City of Hays

Source: U.S. Bureau of the Census, Tiger Files, 1990
KHEL, Analytical Data, 1994

PRIVATE WATER FISHING IMPOUNDMENTS
Department of Wildlife and Parks
Legislative Proposal #1

BILL SUMMARY: This proposed legislation would amend the definition of a private water fishing impoundment found under K.S.A. 32-701. Individuals fishing on a private water fishing impoundment are privileged to do so without a fishing license under K.S.A. 32-906. Individuals in possession and control of a private water impoundment, pursuant to K.S.A. 32-974, may propagate or raise fish in the impoundment for private or commercial use without any state license, permit or stamp and without limitation as to numbers, time or manner of taking fish from the impoundment. Thus, the definition of a private water fishing impoundment has bearing on those issues.

The current definition requires that a impoundment be entirely isolated from any other surface water. And that it have no connection, except during periods of flood, with streams or other bodies of water that would permit fish to move between the private water fishing impoundment and streams or other bodies of water. One exception exists which allows the private water fishing impoundment to be connected to a stream or other body of water by a pipe or conduit no larger than 8 inches in diameter if the pipe or conduit is screened to prevent the movement of fish.

The definition was likely prepared to apply to a traditional "farm pond". Although a few commercial fish grower utilize farm ponds, most use a pit or dugout for the raising of fish and generally these are in a series of interconnected pits or dugouts. For those using "farm ponds", these are also often constructed in series. The present definition appears to apply to a private water impoundment, not to a series of otherwise qualified impoundments. Each of the impoundments would have to be isolated or connected only by the screened pipe or conduit as previously mentioned.

Recreational fishing also occurs on some of the impoundments used by commercial fish growers and there are several locations around the state where similar private impoundments are operated strictly for recreational fishing as a business. Under the current definition, these areas may require a fishing license.

The Department's primary interest in private water fishing impoundments is twofold. The first is one of protection of native or "wild" fish species through prevention of release of fish from private water fishing impoundments. The second interest is

2/8/95
Energy: Natural Resources

Attachment # 8

ensuring that native or "wild" fish species existing in the wild as a public resource are not removed from the public sector and used in a private operation. Thus a definition should address proper inflow and outflow controls, but allow for interchange of water, if needed, between private water impoundments that are located within an ownership.

The proposed amendments would recognize the interchange of water between private water fishing impoundments within an ownership. The amendments would maintain that these impoundments not have any connection with streams or other bodies of water, but would remove the reference to pipe or conduit size. It would also recognize other means which would prevent movement of fish into or out of the impoundment or impoundments.

FISCAL IMPACT: No significant fiscal impacts are anticipated as amending the definition is intended to bring it more in line with present conditions and policies.

POLICY IMPLICATIONS: The proposed amendments are not intended to alter state or Department policies in regard to the benefits available to individuals in possession and control of private water fishing impoundments. The Department is not aware of any existing private water fishing impoundment that would lose that status as a result of this proposed legislation. It would however, allow several known impoundments, which for all practical purposes are private water fishing impoundments, to qualify as private water fishing impoundments.

IMPACT ON OTHER STATE AGENCIES: No impact on other state agencies is anticipated.

FISHING LICENSES
Department of Wildlife and Parks
Legislative Proposal #2

BILL SUMMARY: This proposed legislation would amend K.S.A. 32-906 to expand the concept of group fishing licenses and address fishing license requirements for certain individuals involved in fishing clinics that are sponsored or co-sponsored by the Department.

Current law provides for the issuance of institutional group fishing licenses to facilities under the jurisdiction of or licensed by the Secretary of Social and Rehabilitation Services and to any veterans administration medical center in the state. The institutional fishing license allows any individual residing in such center or facility to fish without a license. They are limited to not more than 20 individuals at one time and all laws and regulations regarding seasons, methods of take, size limitations, creel and possession limits, etc. are applicable.

A number of community, civic and charitable organizations are becoming more active in working with developmentally disabled individuals through group fishing activities. Under current law, a fishing license would be required for each individual involved, unless otherwise exempted such as by age. The proposed amendment would allow these groups to secure a "group fishing license" for use during a group fishing activity. Amendment of K.S.A. 32-988 to establish a fee range for such group fishing license is also proposed.

This group fishing license concept was approved by the 1994 Legislature in H.B. 2538 (Omnibus Appropriation Act of 1994). A copy of that legislation is attached to this legislative proposal.

Staff of the community, civic or charitable organization would be authorized to assist individuals involved in the group during the group's fishing activity. A fishing license would not be required of a staff member while assisting group members during the activity. Those provisions regarding staff are not included in current law pertaining to institutional fishing licenses. Proposed amendments to K.S.A. 32-906 would also extend the same privileges to staff assisting under an institutional fishing license.

The Department is involved in many fishing clinics throughout the state, but most are conducted in and around urban centers. The primary purposes of these clinics are to expose people to fishing and teach techniques and ethics. It is the Department's

position that such exposure will provide a wholesome recreational alternative to those involved and some will eventually become license buyers. Generally, the audience is made up of individuals who are under 16 years of age and do not need a fishing license, but there are occasions when participants are over 16 years of age. The Department proposes that individuals who are participating in a fishing clinic sponsored or co-sponsored by the Department be allowed to do so without a fishing license.

FISCAL IMPACT: The cost of a group fishing license was established by H.B. 2538 at \$50. One such license was issued; however, there is a known interest by other organizations that would qualify. Should the provision be enacted, there will be more interest as the various community, civic and charitable organizations become aware of the license's availability. Currently, those organizations which have conducted such group fishing events have been required to purchase a 24 hour fishing license for participants @ \$3.50 per license. In many instances, the one time purchase of a group fishing license, valid for an entire calendar year, will result in some cost saving for the organization. Fiscal impacts on the Department would be insignificant.

Allowing individuals who are participating in a fishing clinic sponsored or co-sponsored by the Department to fish without a fishing license will have insignificant fiscal impact on the Department. Most participants are juveniles and will not need a license anyway due to their age. The license requirement for those 16 years of age and over does serve to reduce the number of individuals who participate. The proposed amendment should help increase participation and eventually help increase license sales.

IMPACT ON OTHER STATE AGENCIES: None

authorized by this act or for which appropriations are made by this act, subject to the restrictions and limitations imposed by this act.

(c) This act shall be known and may be cited as the omnibus appropriation act of 1994 and shall constitute the omnibus reconciliation spending limit bill for the 1994 regular session of the legislature for purposes of subsection (a) of K.S.A. 1993 Supp. 75-6702 and amendments thereto.

Sec. 2.

DEPARTMENT OF WILDLIFE AND PARKS

(a) On July 1, 1994, the expenditure limitation established by section 9(b) of 1994 House Bill No. 2753 on the wildlife fee fund is hereby increased from \$16,195,045 to \$16,216,045.

(b) On July 1, 1994, or as soon thereafter as moneys are available, the director of accounts and reports shall transfer \$802,786 from the state general fund to the wildlife fee fund: *Provided*, That such transfer shall not be made except upon approval of the state finance council acting on this matter which is hereby declared to be a matter of legislative delegation and subject to the guidelines prescribed by subsection (c) of K.S.A. 75-3711c, and amendments thereto, and acting on this matter after the governor and the fish and wildlife service of the United States department of the interior have signed a memorandum of understanding regarding certain federal aid eligibility requirements of the federal sport fish and wildlife restoration program.

(c) In addition to the other purposes for which expenditures may be made from the water plan special revenue fund for the fiscal year ending June 30, 1995, as authorized by section 9(b) of 1994 House Bill No. 2753, the above agency may make expenditures from the water plan special revenue fund for fiscal year 1995 for state operations: *Provided, however*, That expenditures from the water plan special revenue fund for fiscal year 1995 for state operations shall not exceed \$74,200.

(d) The above agency shall make expenditures from appropriations for the fiscal year ending June 30, 1994, and appropriations for the fiscal year ending June 30, 1995, for the purposes of preparing a report which shall be submitted by the secretary of wildlife and parks to the house committee on appropriations and the senate committee on ways and means of the legislature at the beginning of the 1995 regular session detailing all agreements which are proposed or which have been entered into between the department of wildlife and parks and any other party, other than another state agency, which relate to any acquisition of any real estate, or any interest in state, by the department of wildlife and parks during fiscal 1994 or fiscal year 1995 or any such contracting party and which

require expenditures of moneys appropriated for fiscal year 1994 or fiscal year 1995 for payments to any such contracting party or for operating expenditures by the department of wildlife and parks.

(e) In addition to the other purposes for which expenditures may be made by the above agency from the wildlife fee fund for the fiscal year ending June 30, 1994, expenditures shall be made by the above agency from the wildlife fee fund for fiscal year 1994 to provide for and to issue a group fishing license for calendar year 1994 for a fee of \$50, which shall be credited to the wildlife fee fund, to any community civic or charitable organization which is organized as a not-for-profit corporation, for use by such community civic or charitable organization for the sole purpose of conducting group fishing activities for handicapped or developmentally disabled persons, which group fishing license is hereby authorized to be issued by the above agency in the same manner and subject to the same conditions and limitations prescribed by subsection (g) of K.S.A. 32-906, and amendments thereto, except as otherwise provided herein, for annual institutional group fishing licenses thereunder and which group fishing license shall provide the same fishing privileges for supervised groups of not to exceed 20 handicapped or developmentally disabled persons at any one time.

(f) In addition to the other purposes for which expenditures may be made by the above agency from the wildlife fee fund for the fiscal year ending June 30, 1995, the department of wildlife and parks shall make expenditures for fiscal year 1995 of not less than \$769,100 for fisheries projects not previously approved by the legislature during the 1994 regular session of the legislature: *Provided, however*, That no expenditures shall be made from the wildlife fee fund for such fisheries projects except upon approval by the state finance council acting on this matter which is hereby declared to be a matter of legislative delegation and subject to the guidelines prescribed by subsection (c) of K.S.A. 75-3711c, and amendments thereto, and acting on this matter after receiving the specific recommendations of the secretary of wildlife and parks for such fisheries projects which recommendations have been prepared after the department of wildlife and parks has conducted public hearings in different areas of the state to receive public suggestions and proposals regarding such fisheries projects and which recommendations have been prepared with consideration of and are based on the public input received at such hearings.

NATIVE AMERICAN LICENSES
Department of Wildlife and Parks
Legislative Proposal #3

BILL SUMMARY: Pursuant to K.S.A. 32-929, the Secretary shall issue, free of charge, a permanent license to hunt, fish and furharvest to any resident individual who is at least 1/16 Indian by blood and who is enrolled as an American Indian on a tribal membership roll maintained by the Bureau of Indian Affairs of the United State Department of Interior or who has been issued a certificate of degree of Indian blood by such Bureau of Indian Affairs.

The Bureau of Indian Affairs no longer issues certificates of degree of Indian blood nor does the BIA continue to maintain membership rolls of the various tribes. Tribal membership rolls are now maintained by the respective tribes and the tribes have the latitude, pursuant to their respective constitutions, to determine membership and to issue membership cards.

Applications for a permanent license to hunt, fish and furharvest are being received by the Department from Native Americans who might otherwise qualify for the permanent license, but who unable to comply with the statutory requirements of K.S.A. 32-929 and therefore their applications must be rejected.

The Department is proposing amendment to K.S.A. 32-929. The amendments would establish two criteria to be eligible to apply for and receive a permanent license to hunt, fish and furharvest. The minimum requirement of 1/16 Indian by blood would be maintained as one criteria and the other requirement would be membership on a tribal membership roll maintained by a federally recognized tribe. Upon submission of satisfactory proof of the two above requirements, a permanent license would be issued.

For purposes of this statute, a definition of a "federally recognized tribe" is proposed which would mean any American Indian group that has petitioned for and obtained recognition by the United States Department of the Interior under the standards set out in 25 C.F.R. Part 83, as amended.

FISCAL IMPACT: Provisions for this permanent license have existed since 1971 and Department records (although perhaps incomplete) show that slightly over 5,000 such licenses have been issued. Interest in these licenses has increased in more recent times as the Department has been issuing about 240 permanent licenses per year over the last few years. The number of

rejections has increased substantially with the Department sometimes rejecting as many as 5 to 10 applications per week. This represents a hardship on Native Americans and often additional cost as they attempt to obtain necessary documentation. It also results in additional labor and costs to the Department. The proposed amendments will reduce the effort required by Native Americans and reduce labor and costs to the Department for administration of the permanent license.

POLICY IMPLICATIONS: It has been the policy of the State of Kansas since 1971 to issue permanent licenses to resident Native Americans at no cost. The proposed amendment will enable that policy to be continued.

IMPACT ON OTHER STATE AGENCIES: None

FLEEING OR ELUDING - VESSELS
Department of Wildlife and Parks
Legislative Proposal #4

BILL SUMMARY: Law enforcement officers have the authority under K.S.A. 32-1179 to enforce the provisions of the state's boating laws and to stop and board any vessel which is subject to the state's boating laws. This is similar to a law enforcement officer's authority to stop motor vehicles for certain reasons. Under K.S.A. 8-1568 which applies to motor vehicles, attempting to flee from or elude a law enforcement officer is a violation subject to penalties which become more severe after each conviction. There is no similar statute applying to vessels, thus a vessel operator who attempts to flee from or elude an officer has not committed a violation.

This legislative proposal involves enactment of a new statute which would be worded very similar to K.S.A. 8-1568, except it would apply to vessels. Each vessel operator failing to stop upon proper signal by hand, voice, emergency light or siren would be subject to the penalty provisions included in the proposed legislation. Any officer giving such signal would be required to be in uniform and prominently displaying the officer's badge of office. Penalty provisions would become progressively more severe for the first, second and third convictions. Convictions would be defined the same as in K.S.A. 8-1568 to mean a final conviction without regard whether sentence was suspended or probation granted. Forfeiture of bail, bond or collateral deposited, and which forfeiture has not been vacated, would be equivalent to a conviction.

FISCAL IMPACT: This legislation is not expected to have a significant fiscal impact. The number of attempts to flee or elude during the course of a year is not large, but it does happen occasionally. It will enable Department law enforcement personnel to better administer the state's boating laws and regulations. Individuals who may be cited under a fleeing or eluding statute could expect to pay additional fines. These fines would be collected by the courts and disbursed as specified by law. The Department does not receive any portion of the fine money.

POLICY IMPLICATIONS: It is the policy of the state to provide the citizens of Kansas with recreational boating opportunity. And further, to provide that opportunity in a safe and secure manner.

The proposed legislation will help promote that policy.

IMPACT ON OTHER STATE AGENCIES: No impact on other state agencies is anticipated. The amount of additional effort by the court system would be insignificant. Other law enforcement bodies, such as Sheriff's Offices, would also benefit from the legislation as they are occasionally involved in boating work.