

Approved: 3-11-97
Date

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Steve Lloyd at 3:30 p.m. on February 19, 1997 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department
Hank Avila, Legislative Research Department
Mary Torrence, Revisor of Statutes
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Rep. Tom Sloan, State Representative
John C. Gage, Eudora, KS
Kim Gulley, League of Municipalities
M. S. Mitchell, Kansas Building Industry Association
Dave Yearout, President of Planning and Zoning Officials
Duane Sanders, Wichita
Rep. Susan Wagle, State Representative
Rep. Tony Powell, State Representative
Wilmer Freund, Consulting Engineer, Wichita
Dan Wendell, Wichita
Bruce Bodecker, Wichita
Mike Taylor, Wichita
Bill Bider, Director, Bureau of Waste Management, KDHE
Ed Schaub, Western Resources

Others attending: See attached list

Chairman Steve Lloyd called the meeting to order at 3:30 p.m. He opened **HB 2305** for discussion and possible final action:

HB 2305: An act concerning hunting by certain nonresidents; amending K.S.A. 32-980 and repealing the existing section.

Rep. Don Myers made a motion the bill be passed, Rep. Kent Glasscock seconded. Motion passed.

The Chairman opened **HB 2307** for discussion and possible final action:

HB 2307: An act concerning big game permits; relating to nonresident permits; amending K.S.A. 1996 Supp. 32-937 and repealing the existing section.

Rep. Sharon Schwartz made a motion to amend page 2, line 41, to include, or collateral, Rep. Joann Freeborn seconded. Motion passed.

Rep. Laura McClure made a motion to amend page 2, line 36, delete or nonresident, Rep. Sharon Schwartz seconded. Motion passed.

Rep. Richard Alldritt made a motion to change "may" to "shall", page 3, line 15, Rep. Marti Crow seconded. Motion failed.

Rep. Kent Glasscock made a motion the bill be passed as amended, Rep. Becky Hutchins seconded. Motion passed. Rep. Vaughn Flora voted no. Rep. Richard Alldritt voted no.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 526-S Statehouse, at 3:30 p.m. on February 19, 1997.

The Chairman opened public hearing on **HB 2204**:

HB 2204: An act concerning local planning commissions; relating to comprehensive plan provisions addressing stormwater runoff; amending K.S.A. 12-747 and repealing the existing section.

Mary Torrence, Revisor of Statutes, explained the bill.

The Chairman recognized Rep. Tom Sloan. He presented testimony in support of proposed substitute **HB 2204**. (See Attachment 1) This proposal seeks to prevent damage to persons and property downstream by increasing planning requirements before construction begins. Rep. Sloan reviewed key points of the proposal.

The Chairman welcomed John C. Gage, a farmer from Eudora, Kansas. Mr. Gage provided testimony in support of the bill. (See Attachment 2) He explained the problems that have developed at Lawrence, resulting in greatly increased stormwater runoff into the Wakarusa river, which runs through his property.

The Chairman welcomed Kim Gulley, Assistant General Counsel, League of Municipalities, to the committee. She provided testimony in support of the bill, (See Attachment 3) and believes it is good public policy for cities to study the effect that new development may have on stormwater runoff.

The Chairman welcomed M. S. Mitchell, Legislative Chair for the Building Industry Association. Mr. Mitchell spoke in support of the bill. (See Attachment 4) He feels if done early in the planning stage, stormwater runoff management facilities can become a focal point of a development, or redevelopment, save the developer and the public money, and benefit the community. Discussion and questions followed.

The Chairman welcomed Dave Yearout. (no written testimony) He spoke in opposition to the bill and feels it would chase developers away. He feels it should be an optional local issue, not a mandatory water management plan.

The Chairman, hearing no others to address the committee, closed the hearing on **HB 2204**.

The Chairman opened public hearing on **HB 2331**:

HB 2331: An act concerning solid waste; relating to processing facilities and disposal areas; amending K.S.A. 1996 Supp. 65-3407 and repealing the existing section.

Mary Torrence, Revisor of Statutes, explained the bill.

The Chairman welcomed Duane Sanders, Wichita, to the committee. He presented testimony in support of the bill. (See Attachment 5) He feels this bill will give his community an opportunity to counteract measures the City of Wichita used to buy land for a landfill in his community.

The Chairman welcomes Rep. Susan Wagle to the committee. (no written testimony) She spoke in support of the bill and distributed newspaper articles concerning the City of Wichita buying landfill property. She feels citizens should be allowed to vote on this issue.

The Chairman welcomed Rep. Tony Powell to the committee. (no written testimony) Rep. Powell spoke in support of the bill and feels citizens should be allowed to vote on the issue.

The Chairman welcomed Wilmer Freund, Chairman Sedgwick County Conservation District. He provided testimony in support of the bill. (See Attachment 6) He suggests the protest petition area be limited to not more than a ten mile ring surrounding the proposed landfill regardless of county lines or other political boundaries.

The Chairman welcomed Dan Wendell, Wichita, to the committee. Mr. Wendell presented testimony in support of the bill. (See Attachment 7) He asks the legislators of Kansas to amend the bill and give citizens a voice in what happens in the rural areas of Kansas.

The Chairman welcomed Bruce Bodecker, a farmer from Wichita. (no written testimony) He spoke in support of the bill and feels rural people have no voice in the issue of the city buying property and designating how it is to be used. Discussion and questions followed.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 526-S Statehouse, at 3:30 p.m. on February 19, 1997.

The Chairman welcomed Mike Taylor, Wichita. He provided testimony (See Attachment 8) on behalf of the City of Wichita in opposition to the bill. They feel the proposed amendment could prevent a permit from being submitted for review to the secretary of KDHE whether it was determined to be consistent with the county's approved plan or not. The solid waste planning process would therefore not be furthered by the adoption of the proposed amendment.

The Chairman welcomed Bill Bider, Director, Bureau of Waste Management, KDHE. Mr. Bider provided testimony (See Attachment 9) on behalf KDHE. Because this bill primarily addresses the best way for making local choices to siting solid waste facilities, they decided to take a neutral position. The department does have several concerns associated with the implementation of these new provisions. Discussion and questions followed.

The Chairman welcomed Ed Schaub, Western Resources, to the committee, he presented testimony in opposition to the bill. (See Attachment 10) He feels the current landfill application and review process by KDHE is more than sufficient to determine the safe operation of our industrial landfills. He sees no added benefit resulting from this petition and voter participation process which will ultimately determine whether industrial solid waste landfill facilities are allowed to operate.

The Chairman, hearing no others to address the committee, closed the hearing on **HB 2331**. He thanked all of the conferees for appearing and the committee for their attention. He announced that **HB 2226** and **HB 2204** may be worked in tomorrow's meeting.

The meeting adjourned at 6:00 p.m.

The next meeting is scheduled for February 20, 1997

HOUSE ENVIRONMENT COMMITTEE COMMITTEE GUEST LIST

DATE: 2-19-97

NAME	REPRESENTING
Wayne Miller	Furley
Dean Patterson	"
Norma Arline Kerr	"
Archie L Kerr	"
James D. Durrell	"
Frank D. Durrell	"
Wayne G. L.	
Donald D. Peters	
Vivian Smith	^{Furley} Citizens for Responsible Govt
James L. Linnell	Sdg. Co. Cons. Dist.
Erica B. B. B.	"
Dave Holtmans	Western Resources
Wayne Kitcher	Western Resources
Chiquita Cornish	KS BIRP
Bill Bider	KOHE
Kelly Kuitala	City of Overland Park
Glenn Berg	Furley
Virgil Whelan	Furley Wichita, KS.
Jay Whelan	Wichita, KS

HOUSE ENVIRONMENT COMMITTEE COMMITTEE GUEST LIST

DATE: 2-19-97

NAME	REPRESENTING
Gay Sperry	WAKA Kaw
Al Pendleton	Wakarusa-Kazo Drainage Dist
John C. Gage	Blue Jacket Farms
Ralph Parish	Concerned Citizens Furley
Cypha Parish	" " "
Acacia Bodecher	Furley Community rep
Blaine Bodecher	" " "
Glenda Lott	" " "
Bruce Bodecher	" " "
Said Yeant	BUTLER COUNTY
Dean Sanders	S-d Co.
Jan Wendel	" "
Judy Wendell	" "
Gene Turner	" "
Mike McNeil	" "
Mary Ann McNeil	" "
Doris Hopkins	Furley Committee
Freddie Titers	Concerned Citizens in Furley
Miss Thomas	KDW & P

TOM SLOAN
 REPRESENTATIVE, 45TH DISTRICT
 DOUGLAS COUNTY

STATE CAPITOL BUILDING
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 TOPEKA, KANSAS 66612-1504
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 (913) 841-1526



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 MEMBER: ENVIRONMENT
 UTILITIES

TESTIMONY ON SUBSTITUTE HB 2204

February 19, 1997

Thank you Mr. Chairman and Committee members for the opportunity to discuss municipal planning and control of storm water runoff.

As you know, this bill was scheduled to be heard a week ago, but a principal supporter could not be present. The Chairman graciously rescheduled this hearing. As often happens, during the interim period the principal parties interested in storm water policies developed a better, more workable language which creates good public policy and does not create onerous requirements.

The key points of proposed substitute for HB 2204 are:

1. Local planning commissions will require information regarding storm water runoff be added to the existing list of factors they must consider when reviewing a development plan. The existing issues include land use, population and building density, public and transportation facilities, and natural resources.
2. The Planning Commission must ensure that the proposed development will comply with the city or county's storm water runoff policies. The bill further provides guidance on what type of information should be used to address the storm water runoff projections.
3. Whenever a property owner prevails in a legal action brought because of damages caused by an unacceptably high increase in storm water runoff, the court may order reasonable attorney fees be paid by the defendant.

Proposed Substitute for HB 2204 seeks to prevent damage to persons and property downstream by increasing planning requirements before construction begins. It is a simple concept - plan for situations that can reasonably be anticipated and avoid problems for other citizens. Furthermore, it relies on existing local planning commissions and thus maintains local control of standards and the planning process.

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February 19, 1997

TESTIMONY OF JOHN C. GAGE IN SUPPORT OF HOUSE BILL NO. 2204

My name is John C. Gage. My residence address is 1282 E 1900 Road, Eudora, Kansas, which is on a farm through the center of which runs the Wakarusa River. The Wakarusa flows from Clinton Lake past Lawrence to its south and along the edge of the Kaw River valley until it reaches the Kaw River just north and east of Eudora.

Following the devastating 1951 flood, with the primary purpose of flood control, my father and others organized the Mo-Ark (Missouri-Arkansas) Basin Association which was very active in working with Congress and the Corps of Engineers to get 17 dams authorized and built in Kansas, one of which was the Clinton Lake dam. I was Secretary of Mo-Ark for many years up until 1987 and active in a part of this effort.

The construction of the Clinton Lake dam eliminated for many years any flooding on the Wakarusa. Other dams in Kansas have had the same beneficial effect on areas downstream from them. However, residential and commercial development in some towns in Kansas is again causing a serious danger of flooding in some areas both within and outside of cities. This is clearly demonstrated in the Lawrence area.

In June 1996, I wrote an article on the Lawrence situation which I am submitting with this statement and which is incorporated herein. It explains in considerable detail the problems that have developed at Lawrence, resulting in greatly increased storm water runoff into the Wakarusa and resulting damage and danger. Inadequate consideration has been given to things that could have reduced the damage and danger, such as better planning on location of proposed areas of development, diversion of more storm water to the Kaw River and construction of storm water detention facilities.

Addressing these problems in a number of areas should require taking into account the greater emphasis in management of Corps of Engineers reservoirs on storage of water for water districts and municipalities and on recreational use, which have in many cases caused normal pool lake levels to be established at above the optimum for flood prevention. Then when rains come and lake levels begin to rise above these normal pool levels, marinas, swimming areas and picnic or camp grounds are immediately affected, causing greater pressure to increase the amount of discharge into streams below. While persons managing the amount of discharge try to take into account the runoff into streams below the dams, they are having greater problems withholding discharge to avoid flooding and to leave plenty of storage capacity in the reservoirs. Maintenance

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of too high a lake level and lack of adequate discharge contributed to the serious damage at Manhattan and near huge disaster from overflow at Tuttle Creek dam in 1993.

If House Bill No. 2204 becomes law, planning commissions would be required to give some consideration to the impact of development plans on the storm water runoff questions. I was disappointed to note that the current version of the bill does not provide for a review by the Chief Engineer of the Division of Water Resources of provisions of the plans relating to storm water. He is cognizant of the reservoir situations that may affect such plans and has the information necessary to analyze and report on their adequacy in other respects, which few members of the general public will have.

While I am of the opinion that stronger and more effective provisions will be necessary, House Bill 2204 would be a step in the right direction and I respectfully urge the Committee to act favorably upon it.


John C. Gage

Development raises drainage issues

Where does the water go?

By JOHN C. GAGE

The heavy rain that hit the Lawrence vicinity around June 6 and 7 produced some effects that should provide an impetus for careful analysis and reflection.

There was serious flooding in a number of areas in Lawrence, causing much damage in homes, in addition to life-threatening incidents.

There was significant flooding along the Wakarusa River for the third time in four years, whereas there had been no appreciable flooding along the Wakarusa from the time the Clinton Lake dam was completed in 1977 until 1993.

Since 1977, there has been development in the western and southern areas of Lawrence that has exceeded all expectations. The replacement by concrete and rooftops of soil and vegetation surfaces has increased the amount of storm water drainage from stronger storms to what now amounts to alarming proportions.

As the Burns & McDonnell Storm Water Management Study shows, nearly two-thirds of the area of Lawrence in Douglas County (south of the Kaw River) is being drained into the Wakarusa (a total of 8,430 acres) and a little over one-third (4,963 acres) is being drained into the Kansas River.

The Kansas River has the capacity to handle a great deal more storm water. The Wakarusa does not have the capacity to handle more runoff, even if the U.S. Army Corps of Engineers shuts off all discharge from Clinton Lake into the Wakarusa when heavy rains hit the area, as it tries to do.

Bridges on the Wakarusa were not engineered and constructed with sufficient consideration for recurring high water. Good examples occurred just upstream of the Wakarusa bridge on County Road 1057 and the Wakarusa bridge on Kansas Highway 10. They restrict the channel so that they and the road approaches up to them acted as dikes, holding back and forcing water out on land up-stream that would otherwise remain primarily in the river bed and move rapidly downstream to the Kaw River.

There was not only a tremendous amount of storm water drained into the Wakarusa from the City of Lawrence. Storm water around the East Industrial Park and even north of old K-10 for several miles east of Lawrence drained to the Wakarusa, even though it is closer to the Kaw

River. The area around the lower end of the Industrial Park drains under new K-10 to the nearby ski pond. The ski pond serves as a detention facility until it is full, then all overflow goes down a drainage ditch straight south to the Wakarusa. Fortunately, due to the recent very dry weather the ski pond had considerable detention capacity left before it overflowed June 6. Runoff from the concrete in new K-10 and from some fields just north of K-10 adds to this storm water draining to the Wakarusa, but does not go into the ski pond.

A large area around new K-10 drains into the old Kaw river bed (prior to 1843) which filled up and created a sizable lake before it eventually drained into the Wakarusa south of the Wakarusa bridge on new K-10. This old river bed creates a very good detention facility to prevent all the runoff from hitting the Wakarusa during and right after the storm. Even so, substantial flooding occurred south of the new K-10 bridge.

The only detention facility of any consequence that Lawrence has available is the Yankee Tank lake which now receives much of the runoff from the newly developed areas of west Lawrence. In this last storm the lake filled up and flood water ran over the spillway for the first time, flooding Clinton Parkway and the area below it on its way to the Wakarusa. This should be a red flag to persons considering an adequate drainage plan for Lawrence and protection of homes and buildings in the lower areas south of Clinton Parkway.

In 1993, Tuttle Creek Reservoir filled up and went over its spillway. This, plus the maximum discharge due to danger to the dam itself, caused terrible damage in Manhattan and adjacent areas below it. If Clinton Lake should ever get to that point, there would be unimaginable death and destruction not only in south Lawrence, but all the way down the Wakarusa valley.

Fortunately Clinton Lake is not likely to ever get to that point. Its spillway elevation level is 907.4 feet, with 446,430 acre feet capacity. The highest it has ever been was in 1995 at 892.5 feet elevation, with 272,709 acre feet. So the lake still had nearly 40 percent capacity left before water would run over the spillway. Even so, the Corps of Engineers considered the situation so serious in 1995 that a discharge

of 4,000 cubic feet per second was commenced as soon as possible after the rains. This caused the Wakarusa to run bank full just from the Clinton Lake discharge and a sudden, unexpected rain storm could have had very serious consequences. It takes over six hours from the time the discharge is shut down at the dam to lower the river level near Eudora.

Residents of Lawrence should realize how fortunate they are that the Clinton Dam was constructed. Without it, the development of Lawrence to the south and west, with the tremendous increase in storm water drainage, would have created a disastrous situation with the frequent floods in the Wakarusa valley that were normal prior to the construction of Clinton Lake. In fact, the flooding problem would have effectively prohibited much of the development that has taken place in this area.

Serious consideration should be given to amending the Storm Water Drainage Master Plan and taking the necessary steps to divert more storm water to the

Kaw River and to the creation of more effective detention facilities to hold back storm water that has to go to the Wakarusa. A feasibility study might also be in order to see if storm water from west Lawrence could be diverted into Clinton Lake without prohibitive cost.

The June 6 rain caused flooding in areas of Lawrence that are listed in the Storm Water Drainage Master Plan as Priority No. 2, to be given attention after Priority No. 1 projects

have been completed. Priorities under the plan should be reevaluated on the basis of the effects of this storm. Property owners have been seriously damaged in these areas with respect to value of real estate for either sale or rental.

If it is necessary to increase funding to make the necessary changes in the Master Plan, that should be on the agenda for public discussion and action. The possibility of state or federal funding or assistance should be considered.

The problems are only going to get worse, with more danger and damage as Lawrence develops unless steps are taken to deal with them now.

— John C. Gage is a Lawrence attorney. His father, the late Mayor John B. Gage of Kansas City, Mo., was an organizer of the Mo-Ark Assn. which was instrumental in gaining approval for a number of U.S. Army Corps of Engineers projects, including Clinton Lake near Lawrence.



John C. Gage

Residents of Lawrence should realize how fortunate they are that the Clinton Dam was constructed. Without it, the development of Lawrence to the south and west, with the tremendous increase in storm water drainage, would have created a disastrous situation with the frequent floods in the Wakarusa valley that were normal prior to the construction of Clinton Lake.



League of
Kansas
Municipalities

Legal Department
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Legislative Testimony

To: House Environment Committee
From: Kim Gulley, Assistant General Counsel
Date: February 19, 1997
Re: Substitute HB 2204

Thank you for allowing the League to appear today concerning Substitute HB 2204 dealing with planning commissions and comprehensive plans. It is our understanding that the substitute bill that is being offered today will do two things:

- ◆ Add stormwater runoff to the list of studies which must be completed whenever a planning commission adopts or amends a comprehensive plan;
- ◆ Allow for attorneys fees whenever a downstream property owner is successful in a suit for damage caused by increased runoff as a result of new development or redevelopment.

The League encourages cities to consider the environmental impact of all policies that they adopt. This is especially important when considering new development or redevelopment. We believe that it is good public policy for cities to study the effect that new development may have on stormwater runoff and it should be noted that most cities already undertake such studies.

For these reasons, we urge favorable passage of Substitute HB 2204.

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HOUSE ENVIRONMENT COMMITTEE

~~HB 2404~~

2204

February 19, 1997

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am M.S. Mitchell, Legislative Chair for the Kansas Building Industry Association, appearing here today in support of Revised House Bill 2204. From 1957 to 1978 I was the Flood Control and Stream Maintenance Supervisor for the City of Wichita and Sedgwick County. In that role I supervised the design, operation and maintenance of the urban drainage system in a rapidly developing metropolitan area.

Since 1978 I have been a Flood Plain Management and Land Development Specialist working with landowners, developers, builders and contractors to assure that new development is provided a reasonable level of protection from floods and local drainage problems brought on by urbanization.

This bill addresses the adverse effects on downstream properties when urbanization of a drainage system is allowed without assuring that proper improvements are made to the receiving stream or the peak discharge is detained and released in amounts not exceeding existing downstream capacity.

There are many methods of slowing the acceleration of the concentration of stormwater runoff when fields and open areas are converted to streets, parking lots, buildings and other features of urbanization. In residential areas: roadside grassed swales can replace curbs and gutters which dump into storm sewers; dry detention ponds can double as play fields, walking paths and landscaped openspace; and wet detention ponds can be constructed wetlands or small lakes around which housing is built.

Some of the most dramatic demonstrations of stormwater runoff storage and management are found in highly developed commercial and business centers where large lakes manage and clean up the stormwater, at the same time serving as an amenity for public use and enjoyment, all the while saving the high cost of large stormwater sewer pipes and outfall channels.

If done early in the planning stage, stormwater runoff management facilities can become a focal point of a development, or redevelopment, save the developer and the public money, and benefit the community. The Kansas Building Industry Association supports House Bill 2204 and recommends its passage.

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HOUSE ENVIRONMENTAL COMMITTEE

February 19, 1997
Topeka, Kansas

Presented by:
Duane Sanders

Mr. Chairman and Members of the Committee:

In August 1996, a real estate agent came into our community claiming to represent a group of investors who were interested in putting together a large tract of land for a development project. The agent was employed by a prominent real estate agency and was buying options on behalf of Venture Land Company. We could locate no one who knew the identity of Venture Land or had even heard of it. A check with Secretary of State revealed the corporate application papers were filed in May 1996, by a law firm in Wichita, but the corporate officers would remain secret for one year.

The options were \$3,000 per acre for land that might be worth \$1,000 and were bought from mostly absentee landowners. The options we were told were offered to the City of Wichita who wanted more land for a landfill. The city bought the options, purchased the land and annexed it. All the time assuring people they know nothing of who they were dealing with.

After the dust settled we learned who was involved. I'm sure you have heard the statement - "Birds of a Feather flock together". As it turned out, part of the City Council, part of the law firm involved and the one man who made up the group of investors who supposedly owned Venture Land Company were all from the same flock of Birds.

As a community of home and land owners, we were able to do nothing but watch and worry that this land too, would be polluted as are the other landfill sites Wichita has used and abandoned. We're concerned about the blowing plastic bags and papers, the infestation of birds in our milo fields and the influx of 400 trash trucks per day on our quiet rural roads.

House Bill 2331 will give us an opportunity to counteract the seemingly underhanded and deceptive measures used by the City of Wichita. It could be too late to help us, but others will need the benefits provided in days to come.

We the Concerned Citizens for Responsible Government, believe that when another landfill is necessary, the City of Wichita has the land. The land it purchased years ago for that purpose adjacent to the present landfill where the highway network and barrier fence is in place and ready. If a landfill is too unsightly for them, it most certainly is for our neighborhood.

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House Environmental Committee
Statement By Wilmer Freund, Chairman
Sedgwick County Conservation District
9505 West Central, Suite 103, Wichita, Kansas 67212
316-729-0331, February 19, 1997

My name is Wilmer Freund, a retired Consulting Engineer and Chairman of the Sedgwick County Conservation District. I have been a member of the District since 1969, serving as Chairman since 1992. Through the Conservation District, almost \$800,000 is spent annually in Sedgwick County for the wise management of our natural resources, e.g. soil, water, clean air to name a few. Kansas spends \$8 million annually statewide to control pollution and clean up what already has been polluted.

Today I speak to you on behalf of the District regarding HB 2331 sponsored by representatives Wagle, Powell, Samuelson and Thimesch. The District wholeheartedly supports this bill for the following reasons:

1. It would force industry to take a hard look at site selection before ravaging our environment;
2. It provides a mechanism to preserve prime agricultural land for its highest and best use- *to feed the world*;
3. It gives control of our environment back to the people who otherwise have to live with the consequences of bad governmental decisions; and
4. It would force governmental entities to evaluate alternative methods of solid waste management.

At the risk of seeming presumptuous, we suggest the protest petition area be limited to not more than a ten-mile ring surrounding the proposed landfill regardless of county lines or other political boundaries. This is the same premise on which watershed and/or drainage districts are organized. It would make this bill more meaningful and directly applicable to the people most affected.

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Attachment 6

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FEBRUARY 19, 1997

FROM DAN WENDELL
11601 E. 77th ST. NORTH
WICHITA, KANSAS 67226

RE: HOUSE BILL 2331

Thirty-two years ago I left the family farm to seek employment in the city. For thirty-two years my dream has been to move back to the country. Last year I was able to purchase a small acreage in the county and build a new home on it. Within a few months the city of Wichita, purchased 1400 acres of land across the road in front of our new home for a landfill.

Immediately our neighborhood was worried about ground water contamination, contamination running into our ponds, air quality, excessive noise, huge trash trucks on our roads, the possibility of trash trains coming from out of state, blowing trash, excessive birds painting our buildings, excessive dust in the air and the loss of wildlife in the area. Because of the environmental impact this would have on the area we began to fight.

Upon checking with several attorneys we found that due to the laws in Kansas there was nothing that we could do legally. We then tried to fight it politically but since we are unable to vote for Wichita's city commission who had bought this land we soon found we have no voice in what happens in our neighborhood.

We ask that you the legislators of Kansas amend house bill 2331 and give us a voice in what happens in the rural areas of Kansas.

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City of Wichita Testimony Regarding House Bill 2331 House Committee on Environment

H2331 amends the current statutory prerequisites to the issuance of a permit for a solid waste processing or a solid waste disposal area of a solid waste management system by the Kansas Department of Health and Environment (KDHE). New Section 2 provides for a public referendum on the issuance of a permit by KDHE if 5% of the electors of the county file a petition with the county election commissioner. The question of the issuance of such permit must then be submitted to the voters and must be approved by:

(1) a majority of the electors residing in the unincorporated area of the county;

And

(2) a majority of the electors residing within cities located within such county.

Dual Voting Establishes An Unequal Voting Classification

Under current law, the decision whether to permit a waste processing or disposal site is entrusted to the Secretary of KDHE by K.S.A. 65-3406(10). The proposed amendment would allow for a dual majority election in the county where the proposed processing or disposal facility would be located. If a majority of the electors residing in the unincorporated areas of a county approved the permit application, and a majority of the electors residing in cities within the county approved the permit application, then the Secretary could receive and process the application.

Dual majority or "dual-box" elections may violate the Equal Protection clause of the Fourteenth Amendment of the United States Constitution if the classifications of voters have the same interest in the outcome of the election. Solid waste processing and disposal are of county and state wide concern and affect every citizen in terms of economic and environmental impact. The effect of a dual majority voting procedure is that voters in either "box" can help defeat a permit, but a vote in favor of the permit may not help to pass it. The proportion of citizens residing within cities as opposed to unincorporated areas of Sedgwick County is 88.5% according to the 1990 census. Therefore it is possible that a minority of the voters in unincorporated Sedgwick County could defeat a permit application, even though a majority of voters in the election favored it. Since the benefits

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and burdens of solid waste processing and disposal affect every voter in the county, the granting of a disproportionate power to influence the decision through the ballot box effectively disenfranchises a portion of the electorate qualified to vote on the issue. In *Hill v. Stone*, 421 U.S. 289, 95 Sup.Ct. 1637, 44 L.Ed.2d 172 (1975), the United States Supreme Court struck down a "dual-box" voting procedure under which a library bond issue had to be approved by a majority of voters who paid property taxes and a majority of all other registered voters. The property tax voters defeated the bond, but a majority of all votes cast favored issuance of the bond. The Court held that the classification impermissibly disfranchised persons otherwise qualified to vote, solely because they had not paid property taxes. *Id.* at 300, 95 Sup. Ct. at 1644-45.

Municipal Solid Waste Disposal Authority

The proposed amendment could seriously impair the ability of cities to plan and implement municipal solid waste options. City home rule authority is granted to Kansas municipalities under Article 12, Section 5 of the Kansas constitution. It provides that cities are empowered to determine their local affairs and government. Municipal solid waste disposal, along with police and fire protection, has long been recognized as a core function of local municipal government. A city may legally establish and operate a landfill, including the charging of tipping fees under its home rule authority granted under the Kansas Constitution. There is statutory authority for the City to collect and dispose of municipal solid waste:

- K.S.A. 12-2102 provides that the governing body of any city may provide for the collection and disposal of garbage or trash by contract or as a municipal function.
- K.S.A. 12-2105 provides that a contract for collection and disposal may provide that the contractor shall collect the service charges if service charges are provided, or may provide that the city shall collect the service charges and pay the contractor the amount specified in the contract.
- Under K.S.A. 12-2110 the governing body of any city which provides no collection or disposal services, may regulate and license garbage or trash collectors, or both.
- Under K.S.A. 12-2123 the governing body of a city may acquire sites for the disposal of solid waste within or without the city by purchase or condemnation and may construct necessary facilities thereon.
- Under K.S.A. 65-3410 cities may provide for the collection and disposal of solid wastes generated within its boundaries; and shall have the power to purchase all necessary equipment, acquire all necessary land, build any necessary structures necessary for a proper effective solid waste management system including the levying of fees and charges upon persons receiving service.

All of these statutory grants relating to municipal solid waste authority could be negated if cities are prevented from applying for a permit for a processing or disposal facility because a minority of the voters blocked the application process.

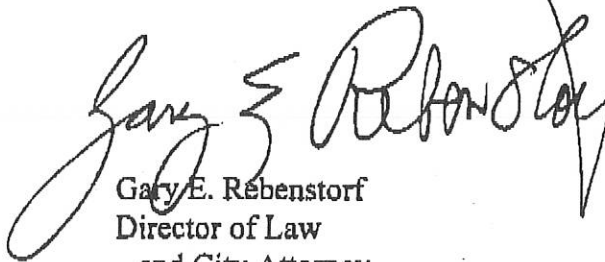
Citizens Already Have Input to the Decision-Making Process for Solid Waste

Citizens already have influence into the solid waste decision-making process through their elected local officials. In addition, public comment concerning permit applications is reviewed by the Secretary of the KDHE and taken into consideration prior to issuing a permit. The decision of whether or not to issue a solid waste disposal permit involves a complex balancing of social, economic and environmental factors which is simply not well-suited to an up or down vote of the electorate. The careful weighing and balancing of the myriad of factors is best accomplished through the existing delegation of authority to the executive branch of government, subject to oversight by the legislative branch in its representative capacity. Citizen input is, of course, important in the process, but would not be enhanced by a dual box voting procedure which unfairly weights one classification of voters over another.

County home rule authority to determine local affairs and government is granted by K.S.A. 19-101 subject to certain exceptions. One such exception is K.S.A. 19-101a(5) which provides that in exercising home rule power, counties shall not supersede or impair city home rule authority without the consent of the governing body of each city within a county which may be affected. It would be inconsistent with the current constitutional and statutory allocation of governmental responsibility and authority to provide an election procedure under which a minority of voters could effectively thwart the will of the majority with respect to a determination which has been entrusted to the local governments and the KDHE.

Under the current allocation of responsibility for permit applications (K.S.A. 65-340), the county government is granted the responsibility for solid waste planning and implementation for the entire county. The input of the cities into the planning process is through the solid waste planning committee. Once a plan has been approved by the KDHE, the responsibility of the county is to determine if an application for a permit is consistent with the approved plan. If an applicant disagrees with a determination by the county that the permit would not be consistent with the plan, they may seek a variance from KDHE. The ultimate decision of whether or not to grant a permit is left with the Secretary of KDHE.

The proposed amendment could prevent a permit from being submitted for review to the Secretary of KDHE whether it was determined to be consistent with the county's approved plan or not. The solid waste planning process would therefore not be furthered by the adoption of the proposed amendment.



Gary E. Rebenstorf
Director of Law
and City Attorney

Cities in Sedgwick County	Population (1990 Census)
Andale	566
Bel Aire	3,695
Bentley	360
Cheney	1,560
Clearwater	1,875
Colwich	1,091
Derby	14,699
Eastborough	896
Garden Plain	731
Goddard	1,804
Haysville	8,364
Kechi	517
Maize	1,520
Mount Hope	805
Mulvane	4,674
Park City	5,050
Sedgwick City	1,438
Valley Center	3,624
Viola	185
Wichita	304,011

Total Population in Cities	357,465	88.5%
Total Population Unincorporated	46,197	11.5%



Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

House Environment Committee

by

The Kansas Department of Health and Environment

House Bill 2331

The Kansas Department of Health and Environment appreciates this opportunity to provide testimony related to House Bill 2331. In some ways, this bill is consistent with the overall philosophy of the department as incorporated into the recently completed state solid waste management plan. This is to allow decisions related to the selection of preferred waste management methods to be made by persons at the local level. However, rather than utilize the well-established local public participation process defined in current law, a new major step in the process is proposed in this bill. The bill adds a public protest period before any permit application is submitted to KDHE, and if there is sufficient opposition to a proposed facility, a vote of the people would be required.

Because this bill primarily addresses the best way for making local choices related to siting solid waste facilities, KDHE has decided to take a neutral position. However, the department does have several concerns associated with the implementation of these new provisions. Our testimony is designed to present those concerns for consideration by the committee.

As currently written, the new requirements set forth in HB 2331 apply to every new solid waste facility including composting operations, transfer stations, household hazardous waste facilities, and construction and demolition landfills. Perhaps this broad coverage was not intended. If the legislature chooses to advance this bill, it may be desirable to limit the new requirements to municipal solid waste landfills only.

Existing state law establishes a very systematic procedure for involving citizens, local businesses, and local officials in the solid waste planning process. Local solid waste committees must be appointed by county and city elected officials for the purpose of preparing local solid waste plans. Before adopting a plan, each affected county must hold a public hearing. Thus, widespread public input is already built into the process.

Solid waste regulations require the official local planning authority, which is usually the county commission, to certify on every solid waste application that the proposed facility or operation is consistent with their final approved plan. Because this requirement is a regulation, the secretary has the authority to grant a variance, if an adequately justified case is made. The department has never received a request for variance to this provision.

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The proposed bill impacts the local planning and decision-making process in that the local plan may no longer be the basis for implementing a comprehensive solid waste management system. For example, a county plan may identify that a county landfill will be supported by a yard waste composting facility and a household hazardous waste facility. Perhaps all of these facilities are to be sited and built over the next five years. Current solid waste law requires the county to implement this plan; however, under these new provisions, implementation would be dependent upon voter approval of each facility. Because the voters may turn down one or all of the planned facilities, the solid waste plan is inadequate. Under these new requirements, local plans would need to either: (1) predict voter preferences, which is not realistic, or (2) present contingencies for voter denial of facilities. Establishing contingencies is also complex because alternative solid waste disposal facilities such as transfer stations would still be subject to a vote of the people. Voters may not approve of any alternative and that can mean disaster for a county as their current disposal method runs out of time. Consideration should be given to allowing the secretary to have the authority to ensure that a county does not end up with no voter approved disposal methods for their trash. The proposed bill could yield that undesirable result.

Some of the department's other concerns associated with this bill are briefly addressed below:

- Unless a majority of the voters in both the incorporated and unincorporated areas of a county approve of a proposed new solid waste facility, the permit application cannot be submitted to KDHE for review even if the facility serves the entire county.
- Many approved local solid waste management plans would need to be modified to account for this new public participation provision. This would cost the state and local governments a considerable amount of money. A decision would need to be made as to whether to allow grant funds to be used for updating plans. If so, less money would be available to support the very popular waste reduction and recycling grant program.
- The state solid waste management plan which was completed in December 1996 would need to be revised to account for this significant change in facility siting requirements.
- The time required to site and permit a new facility would be increased significantly, perhaps by years.
- The cost associated with permitting new facilities would be greatly increased to cover expenses related to holding the necessary elections and to seek voter approval.
- Several solid waste permit applications will probably be undergoing review at the time this law goes into effect. KDHE will have to inform those applicants that review has been put on hold pending completion of these new requirements.
- This bill may conflict with certain sections of the law and statutes. One notable regulatory provision (K.A.R. 28-29-24(b)) allows for the automatic issuance of a construction & demolition landfill permit to a person who has obtained a permit from a city or county that operates a permitting program which is as stringent as the state program.

We would be happy to answer any questions related to our testimony or the solid waste permitting process.

Testimony presented by

Bill Bider, Director
Bureau of Waste Management
February 19, 1997

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**TESTIMONY BEFORE THE
House Environment Committee**

by

Ed Schaub

Western Resources

February 19, 1997

Chairman Lloyd and members of the Committee:

I appear before you today representing Western Resources, Inc. and would like to explain why our Company is opposed to the new language that has been proposed in HB 2331.

HB 2331 proposes to amend the state solid waste laws to require that any person who wishes to file an application with the Kansas Department of Health and Environment (KDHE) pursuant to KSA 65-3407 for the operation or modification of a solid waste processing facility or solid waste disposal area must first allow for certain actions to be taken at both the city and county jurisdictional level. New Section 2 would require a potential applicant to first publish a Notice of Intent to submit the application in the local newspaper. If, as a result of this publication, a citizens' petition against the application is signed by 5% of the voters of the county, such application can not be submitted to KDHE until the question concerning the landfill activity has been submitted and

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approved by a majority of the voters residing both in the county and within the cities (presumably all cities) located in such county. As written, this new requirement would apply to all new and pending applications for solid waste landfills and processing facilities, including industrial landfills.

Western Resources operates a number of flyash disposal areas which are currently classified and permitted as industrial landfills. Any modification or additions to these facilities or proposed new landfill areas would be subject to HB 2331. This flyash material is by definition non-toxic and has been utilized in many types of safe applications by both private citizens and state and county governments. However, because there is not enough demand for flyash as a product, some must be deposited in industrial landfills.

We think the current landfill application and review process by KDHE is more than sufficient to determine the safe operation of our industrial landfills. We see no added benefit, and only the possibilities of delays and increased costs, resulting from this petition and voter participation process which will ultimately determine whether industrial solid waste landfill facilities are allowed to operate. Current statutory law requires the state to seek advice and consult with local health authorities, the county commission, and the Solid Waste Management Plan which is developed by local solid waste committees during the state review process. We think this provides adequate opportunity for public involvement in the application process.

In addition to the above, this proposed legislation raises many unanswered questions.

For example:

- Who will pay for the potentially hundreds of these special elections?
- The current language requires that the application must be approved by a majority of the qualified electors residing in the county. What happens if a majority of voters do not turn out to vote?
- The current language says that the application must also be approved by a majority of the qualified electors of the county and those residing within cities located within such county. Does this mean that each city within the county must hold a special election concerning the pending application?
- What recourse might an applicant have if the voters prohibit the applicant from submitting the application to the state?
- If an industry like ours must have an industrial landfill to operate the plant, much like we need an ash disposal area to generate electricity, does this mean that the local voters can, by denying the landfill application, have the power to shut down the industry?

As you can see Mr. Chairman and members of the Committee, HB 2331 considerably complicates what we think has been an adequate review of industrial landfill activities and we respectfully oppose all changes presently proposed in this bill.