

MINUTES OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT.

The meeting was called to order by Chairman William G. Mason at 3:37 p.m. on March 21, 2000 in Room 522-S of the Capitol.

All members were present except: Representative Thimesch - E
Representative Compton -E

Committee staff present: April Holman, Legislative Research Department
Renae Jefferies, Revisor of Statutes
Rose Marie Glatt, Committee Secretary

Conferees appearing before the committee: Secretary Clyde Graeber, KDHE

Others attending: See Attached List

Representative Aday moved and Representative Campbell seconded that the minutes from the March 14 and 16th meetings be approved. The motion carried.

The Chairman directed the committee's attention to **HB 3021** and invited Secretary Graeber to comment and address questions on the bill.

Secretary Graeber reviewed the intent of the bill stating that this legislation is at the request of KDHE due to the fact that the department is volunteering to assume the oversight of the remediation at the Sunflower site should the OZ project go forward. He believes that the Kansas taxpayers and KDHE should be afforded the protection of the Kansas Tort Claims Act. They are receiving no funds for the oversight, will not be involved in the actual labor and will not release one particle in the air; they are there to oversee the compliance of the remediation with the law and EPA standards. He introduced Julene Miller and Scott Hesse from the Attorney General's office in attendance to answer any questions on the Tort Act and litigation concerns.

The question was asked that in the event the state refused to be involved in the remediation process at this point what would be the consequences. Secretary Graeber stated that they are committed to the project, based on the legislation passed last session. The consent agreement is almost finalized and they have received the final drafts of the insurance policies and the pre-paid third party financial guarantee. They have the irrevocable trust almost drafted and in place, so everything has proceeded with their involvement. If they were to back out at this time, it would seriously hamper the entire project.

Representative Gatewood asked that if **HB 3021** became law would anyone be able to file suit against the state. Scott Hesse stated that anyone can file a lawsuit against Kansas, but the state would use the Kansas Tort Claims Act as a shield to prevent them from obtaining liability over Kansas. If there was any wrong doing on the part of Kansas then the court would make a judgement. The Secretary stated that the bill takes Kansas and KDHE out of the chain of responsible parties that could be held liable for any mistakes made in the remediation process and provides immunity from judgements for lawsuits in their role of overseeing the process.

The Secretary noted that the way the bill is drafted, it brings under the Tort Claims protection, the entire statute that the Legislature passed last year dealing with Federal Enclaves and people taking over Federal Enclaves and cleaning them up; where it does apply to Sunflower it also apply to all. If OZ doesn't work out an arrangement with Sunflower and a new entity was given the project, KDHE would still be protected.

Representative Vickrey asked if the state should be shielded from responsibility if Kansas is at fault. The response was that the state is not responsible for the error and Kansas is there only for oversight of the remediation. When questioned why the EPA is not doing the oversight, the response was that the statute passed last year gives the EPA or KDHE the authority to oversee the project. It gives KDHE the ability to assume that responsibility, which is why Kansas has voluntarily taken over the project. KDHE's involvement, at this point, has gone too far to switch the oversight responsibility to the EPA.

The status of the KDHE employees involved in the remediation was discussed. There will be three employees, two of which will be contracted through KDHE for the project. The liability of EPA was addressed. Since they are not part of the remediation, it seems unlikely they would be involved in any lawsuits, however they set the guidelines from which KDHE oversees the projects. It is the consent degree that is signed by the OZ corporation that mandates the standard of clean-up that they must perform. The consent degree has been drafted very carefully, with EPA being part of that team, assuring that KDHE would meet the EPA environmental standards. That will be the map they use to oversee the clean-up and mandate that they complete it accordingly. If they don't clean-up to a particular level, KDHE would then declare them in default.

The question was asked that if the actions taken by KDHE in drafting the consent agreement with EPA, relieved EPA from any liability. The Secretary stated that he did not know the answer to that question and agreed to find out and direct a memorandum regarding that issue back to the committee members no later than Thursday, March 23. It was pointed out that the question had no effect on **HB 3021**.

Discussion followed regarding the consent degree; the process and negotiations that have taken place resulting in the current draft. In the event of errors in the consent degree, there is an additional \$50 million insurance policy (expiration date-2030), to guarantee funding to clean up any unknown contaminants found at a later date. To a question about the Army's liability, the Secretary responded that if all the plans fail, the Army has the ultimate responsibility to clean up the site, no matter how long it takes. He explained the process and procedures that would be used in the event that there were disputes over quality of work performed compared to the EPA guidelines. He reviewed the various policies and safeguards in place to insure that the site would be cleaned properly and the public protected. He was asked whether all 9,000 acres would be cleaned up to residential standards and he stated that currently the IT contract, for \$37 million says they will clean the entire site to residential standards. If it runs over \$40 million, the army has signed an addendum to the consent order saying they will assume the responsibility at that time. At that point they would use the insurance policies and funding to help them complete their responsibility. The army has said that they will clean *only* to industrial standards, which is why there is the difference between the \$37 million contract amount and the \$45 million pre-paid financial insurance. That difference would pay for the cost necessary to clean from industrial standards to residential standards. That is the plan, however if something unknown would occur, that \$37 million could be spent on the first 2,000 acres and there is no guarantee that the \$8 million would clean up the remaining acres. Several Representatives voiced their concerns regarding possible future problems.

Representative Aday moved that **HB 3021** be passed out favorably. Representative Stone seconded.

Discussions followed regarding a point of order, liability safeguards in place in the event that remediation is not successful, the responsible parties that created the contaminants and the importance of the bill in the master plan to move forward with remediation of the site. The Chairman called for a vote. The motion carried.

The Chairman stated that this ends the work of the Economic Development Committee, thanked the members for their work and adjourned the meeting at 4:20 p.m.

Secretary Clyde D. Graeber's Memorandum received March 23, 2000 (Attachment 1)



KANSAS

DEPARTMENT OF HEALTH & ENVIRONMENT

BILL GRAVES, GOVERNOR

Clyde D. Graeber, Secretary

MEMORANDUM

TO: Members of the House Economic Development Committee

FROM: Clyde D. Graeber *Clyde*

SUBJECT: Committee Questions

DATE: March 23, 2000

During the House Economic Development Committee meeting this week, the question was raised asking "Is EPA relieved of all liability by virtue of KDHE's Memorandum of Agreement (MOA) with EPA?"

EPA is neither relieved of its responsibility for Sunflower Army Ammunition Plant nor relieved of its liability from lawsuits by virtue of the MOA.

The MOA gives KDHE the right to be the lead agency to oversee the remediation activities at the Sunflower Army Ammunition Plant (SFAAP).

In the MOA, EPA has reserved the right to take enforcement action in the following instances:

- (a) KDHE is unable to ensure completion of remediation activities if the Respondent (Oz Entertainment Co.) fails or refuses to complete the necessary action in a timely manner;
- (b) EPA determines that the site, or any portion thereof may present an imminent and substantial danger to the public health or welfare, or the environment, including emergencies;
- (c) EPA determines that implementation of the Consent Order will not control human exposures and groundwater releases.