Approved: February 22, 2000

MINUTES OF THE HOUSE COMMITTEE ON LOCAL GOVERNMENT

The meeting was called to order by Chairperson Carlos Mayans at 3:30 p.m. on February 15, 2000 in Room 519-S of the State Capitol.

All members were present except: Representative Sue Storm, excused

Committee staff present:
Michael Heim, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Lisa Montgomery, Office of the Revisor of Statutes
Lois Hedrick, Committee Secretary

Conferees appearing before the committee:
John Altevogt, Citizen Columnist
Davis "Buzz" Merritt, Retired Editor, Wichita Eagle
Rick Thames, Editor, Wichita Eagle
Mary Rupert, News Editor, Kansas City Kansan
Jeff Burkhead, Editor, Emporia Gazette
Craig Nienaber, Projects Editor, Kansas City Star
(Written Testimony) Vernon Keel, Chairman, Kansas Sunshine Coalition for Open Government
Representative Peggy Long
Dr. Stanley Skaer, Commission Chairman, Greenwood County Commission
Cole Conard, Rancher, Greenwood County
Pam Collinge, Educator and Member of Greenwood County Solid Waste Committee
Karla Boone, Farmwife and Small Business Owner
Gene Perkins, President, Elk County Landfill Watch Group
Aimee Cook, Mother, Elk County
Timothy Rhone, Fall River
Kim Hodges, Elk Falls
William Bider, Director, KDHE Bureau of Waste Management
Ken Meier, Commissioner, Harvey County Commission
(Written Testimony) Marti Vernon, Sedan
(Written Testimony) Terry Vernon, Sedan
(Written Testimony) D. Sean White, Deffenbaugh Industries, Inc., Shawnee
(Written Testimony) Steve Kearney for Waste Management of Kansas
(Written Testimony) Wayne Kitchen, Vice President, Western Resources

Others attending: See Guest List, Attachment 1

The Chair welcomed everyone to the meeting. He advised Committee members an amended agenda is scheduled for Thursday, February 17 when **HB 2815** (change in classification of cities of third class; notice to county clerk) will be heard and, possibly, action taken on bills previously heard. He noted he had visited with the Governor about the committee's work on the issue of open records and the Governor stated his accord with the intent of the work. The Chair also related his request (which was granted) to House leadership to "bless" one of the open records bills to extend the time the committee will have to work on the issue. The "blessed" bill, **HB 2864** (Powers and duties of attorney general and agencies subject to the open public records act and the open public meetings act) has been re-referred to the House Appropriations Committee.

The Chair opened the hearing on the issue of open records. He noted there was a panel of journalists to testify on their experiences and provide recommendations on the issue. Their testimonies follow.

John Altevogt, a citizen columnist, described some of his experiences as a journalist, from North Dakota to Kansas, involving open records. Currently he has a complaint pending that involves Youthfriends, The

Greater Kansas City Community Foundation, and the state Attorney General's office. He believes his request for documents have been "stonewalled." His testimony included recommendations: (1) to make any entity expending and supported in part by public funds appropriated by the state should be subject to the open records statutes; (2) the responsibility for oversight should be located in a bi-partisan office, like Legislative Research; (3) citizens should be able to obtain reasonable amounts of information without cost, perhaps minor fees for larger requests; and (4) large for-profit organizations, like the news media, should bear some of the costs involved when making large requests. (See testimony, Attachment 2.)

David "Buzz" Merrick provided some historic perspective to the open records act and the changes caused over time by technology and culture. He cited the imparity of costs between various governmental agencies; the disregard of the law by many agencies; and new governmental functions established with the declaration that various kinds of information will not be open. (See testimony, Attachment 3.)

In response to a question from Representative Dahl, Mr. Merrick cited (1) lack of enforcement and (2) breaking the computer log jam as primary areas of concern. He also suggested some mechanism be installed to quickly reverse a wrongful denial of a record.

Rick Thames described the news media survey in which journalists requested records in all Kansas counties and found adverse actions by several counties to deny all or partial access to the records. He believes many state government agencies do not respect the citizen's right to know. He urged penalties and enforcement be strengthened. (See Attachment 4.) The Chair asked him about the $500 fine in the bill; he answered that is adequate and noted some states go up to $2,500 for severity and frequency of violations.

Mary Rupert narrated experiences to obtain records while she was a small-town reporter and noted her belief that denial of public records will cause erosion of the public trust. (See Attachment 5.)

Jeff Burkhead noted the need for increased training of government and law enforcement agencies regarding the law; recommended penalties to insure compliance, and placing a limit on fees for records. (See Attachment 6.)

Craig Nienaber focused his testimony on the proposed Freedom of Information officer (FOI) and the penalty for violating the law. He concurred with the bill on several factors, such as imposing a fine for violations and placing the FOI officer in the Attorney General's office and providing the officer sufficient authority to act. He suggested including an option to go directly to court when access is denied. (See Attachment 7.)

The Chair directed attention to written testimony of Vernon Keel, who listed several suggestions of the Kansas Sunshine Coalition for Open Government (see Attachment 8).

Representative O'Connor asked Mr. Merrick what has changed the hostile climate concerning open records. He answered the post-World War II rise of Watergate and other investigative reportings have raised increased media attention to business and government.

There being no others present to testify, the discussion on the issue of open records was closed.

The Chair opened the hearing on **HB 2698** (Regional solid waste processing facility or disposal areas; election required) and introduced Representative Peggy Long.

Representative Long stated the bill is in response to a divisive issue concerning a proposed regional landfill proposed to be built in Greenwood County. See her testimony, Attachment 9.

The following conferees testified in support of **HB 2698**, each defining their concerns about attempts to build the regional landfill near them and the opposition that mounted to recall petitions of their three county commissioners:

Dr. Stanley Skaer, new Chairman, Greenwood County Commission (Attachment 10)
Cole Conard, Rancher, Greenwood County

Karla Boone, Farmwife and Small Business Owner (Attachment 11)
Pam Collinge, Educator and Member, Greenwood County Solid Waste Commission (Attachment 12)

The following conferees, members of the Elk County Landfill Watch Group, presented testimony in support of **HB 2698**:

Gene Perkins, President of the Watch Group (Attachment 13)
Aimee Cook, Farmer (Attachment 14)
Tim Rhone, Water Superintendent, Severy (Attachment 15
Kim Hodges, Secretary of the Watch Group (Attachment 16)
(Written testimony) Marti Vernon, Sedan (Attachment 17)
(Written testimony) Terry Vernon, Sedan (Attachment 18)

The following conferees spoke in opposition to the bill.

William L. Bider, Director, KDHE's Bureau of Waste Management, stated opposition to the bill because the Bureau believes it could adversely impact management practices and costs (see Attachment 19).

Ken Meier, County Commissioner, Harvey County, stated there should be no state mandate as required in **HB 2698** since present law provides constituents participation in the decisions. On Representative Dahl's inquiry, Mr. Meir specifically opposed Section 1(m) and new Section 2(a) and offered their deletion as a friendly amendment if the bill is further considered.

The Chair noted written testimonies in opposition to **HB 2698** that had been received from:

D. Sean White, Deffenbaugh Industries, Inc. (Attachment 20)
Steve Kearney, on behalf of Waste Management of Kansas (Attachment 21)
Wayne Kitchen, Vice President, Western Resources (Attachment 22)

There being no others present to testify, the hearing on **HB 2698** was closed.

The meeting was adjourned at 5:40 p.m.

The next meeting of the committee is scheduled for February 17, 2000.

HOUSE COMMITTEE ON LOCAL GOVERNMENT
GUEST LIST
FEBRUARY 15, 2000

[PLEASE PRINT]

NAME	REPRESENTING
Pam Collinge	Greenwood County
Karla Boone	Greenwood County
Cole Conard	Greenwood County
STAN SKAER	GREENWOOD COUNTY; COMMISSIONER
Tim Rhone	Elk County
Anna Marie Powell	Greenwood County
Boyd Powell	Greenwood County
Ray Mya	Greenwood County
Sheryl Vogt	Greenwood County
Marion Applins	Greenwood County
Chris Middley	Jefferson County
Vernita Bishop	Elk County
Mrs. V. Arlene Isley	Elk County
Sandra A. Simpson	Elk County
Craig Nienaber	Kansas City Star
Gene Perkins	Howard KS
Kim Hodges	Elk Falls, KS
Aimee A. Cook	Elk Falls, KS
Don Moler	LKM
Kim Gulley	LKM
Mary Rupert	Kansas City Kansas

HOUSE COMMITTEE ON LOCAL GOVERNMENT
GUEST LIST
FEBRUARY 15, 2000

[PLEASE PRINT]

NAME	REPRESENTING
John Altevogt	Me
~~Dave Hoeth~~	WR
Roger Tallman	Senator Hensley
Betty Lange	SRS
John C. Botterberg	Dieffenbacher
Pat Michaelis	KSHS
Dick Bauman	KDOT
Diane Gjerstad	Wichita Public Schools
Marci Hess	Sedgwick County
Terry Nuckolls	KCC
Steve Phillips	AG
Buzz Merritt	Self

Good afternoon, my name is John Altevogt. I am a former Chairman of the Wyandotte County Republican Party, a former Associate Vice-Chair of the Kansas Republican Party, and I currently write a regularly scheduled column in the *Kansas City Star*.

Unlike the rest of the panel you'll be hearing from today, I do not have an institutional affiliation to depend on when I have problems gathering data for my research. For that reason a strong open records law is even more important to me (and the average citizen) than it is to those with the resources to pursue legal action (as in the recent Kansas City Star action that came before the Supreme Court).

Why are open records important to a non-journalist? Taxpayers may want to compare their property taxes to those of their neighbors, or their legislator. Parents might want information regarding educational programs for their children. Concerned citizens might want to form a watchdog group over a state agency. The list is endless, but let me give an example of the impact citizen participation can have on the political process.

In the early 1980's as part of a citizen group that opposed corruption in the North Dakota State Health Department I researched the Health Department's travel records and found that they had made multiple claims for reimbursement on the same expense receipts. This discovery came shortly after an internal audit had given the department a clean bill of health.

Independent citizen research and involvement in the political process led to the dismissal of the State Health Officer and corruption in the Health Department became a central issue in the gubernatorial contest.

That involvement was facilitated by a commitment in North Dakota to a strong open records/meetings process. Throughout my research I was never so much as asked to pay for copies of documents, nor was I ever denied access to even the most sensitive of financial records.

Unfortunately, Kansas has not made a similar commitment.

In just the two days that I have been preparing for this hearing my pastor was denied access to public information regarding the payment structure for foster care parents and Rep. Susan Wagle has accused the Attorney General of withholding information from her legislative committee.

Additionally, I have been thwarted in my attempts to obtain even trivial information on two politically well-connected charities. And despite early interest in my difficulties, once the names of the principles became known, the Attorney General's office has become far less aggressive in their desire to pursue the matter.

Following up on two stories by Scott Rothchild of *The Wichita Eagle*, I began doing research on YouthFriends, a charity whose Executive Director is Lisa Ashner Adkins, the wife of Rep. David Adkins.

Rothchild's stories concerned a controversial state grant given to YouthFriends by a committee chaired by her husband. I also received complaints from citizens who had received mailings from YouthFriends similar in appearance to some very hateful mailings that they received during the previous election cycle.

Both mailings were attributed to Rob McKnight, a close friend and political ally of the Adkins family.

When I contacted YouthFriends I was asked why I wanted information about their vendors and financial dealings and I sent them copies of the *Eagle* articles. While they initially admitted that McKnight had done some mailings for them they were extremely defensive, and when several phone calls failed to get any answers to my questions, I jotted down a brief list of questions relevant to the controversy and submitted it to them.

In response, I received the letter dated November 24, 1999 refusing to provide any information regarding either the finances or operation of YouthFriends and requesting any relevant statutory authority.

After contacting Mr. Phillips with the Attorney General's office, I received and forwarded to YouthFriends a copy of an Attorney General's opinion on the topic of open meetings and open records. Mr. Phillips was very helpful and promised to help me follow up if the agency again failed to provide the requested information.

I again submitted a request to YouthFriends along with the AG's opinion and a request for a copy of their IRS 990 form. Again they refused to provide any of the specific information and in place of their own IRS 990, they submitted one for The Greater Kansas City Foundation. With the exception of Lisa Adkins 1998 salary and benefits package, that document gave no further insight into the workings of YouthFriends.

I again called Mr. Phillips, this time advising him of the specifics of the matter. During our first conversation, I had not indicated the name of the agency, or of any of the parties involved, and he was very helpful. This time I was dumped me off on the AG's press person Mary Tritsch. After more than a week had gone by I contacted Ms. Tritsch and was told that Mr. Phillips was reviewing the matter.

Strangely, however, Ms Tritsch seemed to be able to tell me the gist of what Mr. Phillips would find when he completed his research despite the fact that it was not yet completed. Essentially, one got the feeling that certain conclusions were a part of Mr. Phillips assignment. To date I have yet to hear anything further from the AG's office on the matter.

According to Kansas law, any "entity receiving or expending and supported in part by public funds appropriated by the state" is subject to the open records statutes. Given that YouthFriends had indicated that all their funds, including money received from the state, were being handled by The Greater Kansas City Community Foundation (Mr. Adkins

employer), I requested the same information concerning YouthFriends from them. In addition, I requested information on Mr. Adkins workload and salary and any monies paid to other public officials.

The Foundation also refused to provide the information, and indeed, refuses even to name the lawyer or law firm advising them to withhold the information.

These organizations receive substantial grants from Kansas taxpayers. The Foundation has hundreds of millions of dollars in charitable donations (for which the donors receive tax breaks) and yet they refuse to respond to legitimate concerns that their agencies may be being exploited to promote a narrow political agenda.

Among the Board and Advisory Committee of the Greater Kansas City Foundation are Linda Graves, wife of Governor Bill Graves, Senate President Dick Bond, Senator Audrey Langworthy, Bill Nelson, a longtime Bill Graves ally and one of the leaders of Republicans for Moore, and District Court Judge Cordell Meeks, Jr.

If an organization these people influence are setting a standard of stonewalling legitimate investigations, how can we expect the average government employee to have a commitment to open records?

A few things have become clear from my experience. First, any oversight of open records violations should be located in a bi-partisan office like Legislative Research and not in the partisan political offices of either the Secretary of State or Attorney General.

Secondly, no barriers or sources of intimidation should be put in the way of those requesting information. Citizens should be able to obtain reasonable amounts of information without any cost whatsoever, with only minor fees charged for larger requests.

For-profit entities, such as news organizations, making extensive requests for information should be expected to shoulder some of the burden of their data gathering requests. Ironically, the situation is currently reversed with the average citizen being charged large copying fees, while news organizations frequently receive their information free.

Finally, enforcement capability must be made available to the ordinary citizen.

Thank you for you time.

YouthFriends

30 Broadway Suite 30[illegible]
[illegible]s City MO 64024
[illegible]
[illegible]543-0082 (toll free)
[illegible]816 842 1990
www.youthfriends.org

John D. Altevogt
Fax: 631-0324

Dear Mr. Altevogt:

We are in receipt of your written memorandum dated November 23, 1999 received by fax. We have also received several telephone calls from you in which you request certain information relating to the internal operation of YouthFriends, which is a private not-for-profit organization.

Please be advised that YouthFriends is not a public governmental body or public agency. Accordingly, it is not subject to such a request.

If you believe YouthFriends is such an organization, please furnish any statutory authority that a private organization's records are publicly available.

You might make inquiry to the office of Juvenile Justice Authority and/or the Kansas Youth Authority in Topeka, Kansas who can make a determination whether the information sought is a public record of that commission.

Sincerely,

Sandi Hackman
Vice President, Program Development

Submission
House Local Government Affairs Committee
Feb. 15, 2000
Davis Merritt, Wichita KS

More than two decades ago, as editor of The Wichita Eagle, I was involved in the first discussions of the present Open Records Act. Being "present at the creation" was both an honor and a frustration. Then, as now, the tensions between citizen access to government and citizen privacy were complex. Those of us involved in the initial consultations felt, after some weeks and much deliberation, that we had forged a compromise that everyone could live with.

The good feelings did not last very long. Within one or two legislative sessions, the relatively clean bill that had been put together was burdened with exceptions, some designed for narrow, special interests, others designed to address problems unforeseen in the original discussions.

In the intervening years, while the act has been useful its intent has been further eroded and experience has exposed other weaknesses. Today, it is, as much as anything else, a testament to confused priorities and lack of clear focus.

Let me explain that judgment, which some may consider to be rather harsh.

In the twenty-plus years since the present act was passed, the environment in which it operates has changed substantially. Among the changes:

--The arrival of the computer age, with its vast capacity for amassing and managing data.

--The parallel rise in concerns about privacy of information.

--The development of new technologies, processes and ideas by business, which has led to both legitimate and illegitimate concerns about the status of proprietary information.

--The growth in governmental oversight in many areas, which had led to the collection of more and more of that arguably proprietary information from businesses and institutions.

--And, paralleling all of those, the rise of legitimate interest—on the part of citizens, their various organizations and a much more broadly-based news media—in the workings of that larger and more deeply layered set of governments.

Against that backdrop of change, we can examine the core principles that were involved in the discussions that led to the present act.

The major change from then-existing law was a fundamental one. The act declared that any records kept by governments are presumed to be open, absent a compelling reason to close

them. This presumption of openness also implied that closing a record would require an amendment to the act itself.

Other important ideas incorporated into the act were:

--Custodians of requested records were required to respond in a reasonable time to requests.

--In situations in which open and closed information was comingled, the burden for separating them was on the custodian.

--A "reasonable" fee could be charged for copying.

--Expedited recourse to the courts was provided for those denied access.

Among the other ideas discussed and not incorporated were:

--A mandatory penalty for willful and/or wrongful denial of a record.

--Using the presumption of openness to place on the record-keeping entity the total cost of righting wrongful denial.

The penalties—which would have been the real teeth of the legislation—were watered down when representatives of local governments argued that such language would "criminalize" the actions of local clerks and other custodians.

The environmental changes mentioned above also worked to erode parts of the other key ideas.

--Fees "for copying" were interpreted by some custodians to include all kinds of office overhead—electricity, copying machine maintenance and the like. They became, in some offices, clearly not "reasonable." But the fee issue was magnified enormously by the arrival of large computer data bases. In most government offices, a citizen could not access the records on her own; the systems were too complex and the computer allowed for the comingling and co-analysis of open and closed data. This meant that a citizen wishing access to clearly public information was told that he had to pay for the writing of a computer program to extract that information—despite the act's placing the burden on the custodian to make such separations.

Even more burdensome, in some cases, legislation outside the Open Records Act set specific, per-copy costs for certain information, such as drivers license data. While the fee for a single record was not unreasonable, when a researcher needed multiple records, application of the per-copy fee made such research prohibitively expensive. In one case, The Eagle was told it would have to pay more than $100,000 for a complete copy of drivers' license information, when, in fact, the actual cost for spinning off a full copy was a few dollars.

--Many custodians looked at the law and its lack of teeth and said, in effect, "so sue me." This places a huge expense burden on the seeker of the records: hiring an attorney, filing motions,

arguing in court. The custodians could risk a lawsuit with relative impunity because of the lack of a penalty for willful and/or wrongful withholding. Not only the burden of proving the record's open nature fell on the citizen, but also the cost of the whole legal affair.

--Literally dozens and dozens of laws relating to the establishment of new government functions or amending them contained declarations that various kinds of information would not be open, ignoring in the process the existence of the Open Records Act itself and failing to cite a compelling reason. Far more public information is sequestered by those acts than by the exceptions written into the act itself.

And, in a broad way, the experience of the past twenty years has obscured the original purpose of the act, which was to address the tension between *citizen* privacy and *citizen* right to access.

Open records legislation is not supposed to be about the tension between citizens and government; or between the news media and bureaucrats; or between the proprietary concerns of business and the curiosity of reporters. It is supposed to protect the conflicting concerns of citizens, whether the citizens be ordinary people, a research or news organization, or a corporate citizen.

Twenty years ago, the issue was in some ways simpler because governments collected far less information on citizens of all sorts, private or corporate or institutional. But the underlying principle is not changed by today's complexities. Information collected by governments, for whatever reason, should be readily and reasonably available to any person absent a compelling—truly compelling—reason for locking it out of sight.

You will hear, during this discussion and in the coming months, many arguments about why specific records should not be public, and many defenses of the existing exceptions. I urge you to adopt the position that the reasons for closing public access to government information should be truly compelling. Inconvenience is not compelling. Potential embarrassment is not compelling. Commercial interest on the part of the person seeking the information is not compelling. Even potential abuse of the information by the seeker is not a sufficiently compelling reason to override the principle of open government.

The failure of many custodians to understand this principle is made clear when those seeking information are asked, as they often are, "Why do you want it?" That questions has no place in a discussion of public records. Their status as public is reason enough.

I ask you to consider one more environmental change that has occurred in the past twenty years as a reason for improving access. Unfortunately the past two decades have seen a drastic

drop in citizen engagement in public life. Many reasons exist for this drop, but prominent among them is citizen distrust and cynicism about government as an institution. Those citizens who remain interested in being engaged should not be further frustrated in that effort by closed files and locked-away information. Governments at all levels have a large stake in preserving citizen engagement. Even-handed, expedited access to government information can do much to encourage such citizens.

Others you will hear from this afternoon will address their specific experiences and suggest changes in the current law. You also have, I assume, a memo from Vernon Keel of Wichita State University detailing changes suggested by the Kansas Sunshine Coalition for Open Government.

It would probably be expeditious to hear from them first, then base your questions on the total presentation; but if you have immediate questions, I am at your call. Thank you.

The Wichita Eagle

RICK THAMES
EDITOR

To: Rep. Carlos Mayans, Chair, House Local Government Committee
From: Rick Thames, Editor, The Wichita Eagle
Subj: The Kansas Open Records Law
Date: Feb. 15, 2000

Thank you for the opportunity to talk today about a matter that I believe is absolutely essential to the preservation of a democratic government and a free society.

This is about providing citizens the information they need to ensure that we always remain a government of the people, for the people and by the people.

I don't have to tell you how important it is to your duties as legislators to have access to information. You can't make good decisions without it. Can't size up the worth of a bill, for example. Can't know who is doing their job and who isn't. Can't begin to know if the state is wisely spending taxpayers' money.

It's no different for the people of Kansas. Under our form of government, they are the boss. And no boss can do the job right without access to the company's files.

That's the point of the Kansas Open Records Act. And that's why the Eagle and 18 other newspapers across the state set out to see how well it works for everyday citizens.

Journalists from these newspapers visited all 105 counties, same as ordinary citizens, and tried to get records that obviously could be of help to anyone involved in their communities.

Without disclosing their occupations, they simply went to the counters of the appropriate agencies and asked for the following:

- Sheriff's crime reports.
- High school football coaches' salaries.
- City bills approved for payment.
- Minutes from the most recent county commission meeting.

What we discovered should alarm all of us. Many agencies readily ignore all or portions of the law when average citizens ask for a look at what are clearly the public's records. Here is a summary of the results:

- Thirty-four of the 420 requests were flatly denied.
- Another 36 were granted only in part, with agencies releasing information rather than a document, or refusing to allow documents to be copied.
- In 13 cases, agencies charged $5 per page to simply provide a photocopy of a public record.
- And in more than half the visits, agencies asked more questions of the person requesting the public record than the law allows. Invasive questions. Intimidating questions. "Why do you want this?" "What are you going to do with it?" "Who do you work for?"

HOUSE LOCAL GOVERNMENT
2-15-00
Attachment 4

WICHITA KANSAS 67202
EMAIL RTHAMES@WICHITAEAGLE.COM

Now, you are legislators and I'm a journalist. We're practiced at explaining ourselves to an officer of the state. But imagine yourselves in the place of a retiree who asks to see crime reports because he's concerned that the sheriff's office is not providing adequate police patrols on his street. Or the mother of a high school student who is trying to learn if the coach's salary is growing at the expense of the library and debate club.

How do these citizens know that their answers to these invasive questions won't lead to ridicule or even retribution?

As it was, some journalists who simply asked for public records found their names being entered into computers for "criminal background checks," literally the first step of a criminal investigation.

And one reporter from the Eagle was held against her will by a Harper County sheriff's deputy when she declined to provide more information than the law requires.

They were guilty of nothing more than asking for records that are clearly public by law.

Now, some have suggested that the law is working fine, as is, because most agencies eventually complied with at least with some portion of it. I couldn't disagree more. This spotty compliance is a strong signal that many offices of our state government do not respect a citizen's right to know what those offices are doing.

And that lack of respect most likely runs deeper than this experiment suggests.

The fact is, we asked for records so common that even most people outside of government recognize that they are public. You should also take into account that the people asking for the records are trained to gather information even in the face of an unfriendly environment.

Had these folks been typical citizens asking for more obscure documents, you can be sure that compliance would have been even more disappointing.

In closing, I'd like you to know that I'm not shocked that some agencies get defensive when members of the public ask to have a look at their documents. Records, after all, are the evidence of what an agency is doing, how it is doing it and how *well* it is doing. The people in charge of those records have a stake in the story that they tell. For that reason, some government employees will never find it comfortable to disclose records.

But if we care about integrity and accountability in our state government, we will move to make the consequences more *uncomfortable* for people who ignore our open records law. That's why I'm urging you today to strengthen this law by providing penalties and authorizing a state agency to be responsible for its enforcement.

Thank you.

Rick Thames

Mary Rupert
News editor, Kansas City Kansan
House Local Government Committee
Feb. 15, 2000

I was not part of the study that took place recently on open records in Kansas, but it replicated some of my experiences as a small-town reporter in another Kansas county in the early 1990s.

For the most part, I was provided with documents that I requested, but sooner or later, most reporters are not provided with a document that they request, and that experience can be frustrating.

I found that different government agencies had their own interpretations of the open records law. For example, in one small law enforcement agency, the top person would read the police reports to me, one by one, as I took notes. "May I see that?" I asked. "No," he would say. Sometimes he would turn over a report in the stack without mentioning it at all. On occasion, a reporter from another paper would mention that more than a week would go by before they could get access to the reports.

At another law enforcement agency in that county, the policies were a little better. I was given a stack of reports that I copied into my notebook. Occasionally, I would ask if I could use their nearby photocopying machine, and the answer was "no."

I had a great deal of respect and trust for these law enforcement officers and their work, but I thought that they either didn't fully understand or care about the open records law. I had been trained to use a number of methods, including researching public documents, attending meetings and interviewing sources, and having copies of the records would have been better documentation.

Yet, because we had some form of access to the information at the law enforcement agencies, we did not challenge it.

Sometimes, covering other groups, I occasionally disagreed with someone about whether a record was public. In some of the cases where it was decided that the record was public, by the time it was decided and released, it was too late for my use. My story had already been published, because a commission vote had already taken place.

At other times, I got the records I requested, and much more. While covering county commission meetings in that county, I routinely asked to read almost all documents that came before it. I once did a story based on documents concerning a commissioner's business tax appeal. Shortly afterward, the commission voted to initiate an audit of every business in the county. I suspect the purpose was to draw attention to perceived flaws in the tax process. Later, after a large protest from the community, the audits were called off. But, as one commissioner told me, he made sure all the newspapers in the county were audited first.

At our small mom-and-pop weekly newspaper, we did not have funds available to take local governments to court. That, and wanting to keep a good relationship with the community we covered – we had to come back and talk to the same people each week – are reasons why some newspapers do not challenge closed records.

And as a small newspaper, we could not afford large copying fees. I would wonder why governments could charge 25 cents or 50 cents a page for copies, when I would drive past convenience stores every day that would advertise copies for 5 cents or 8 cents a page.

There are times when the issue of public records must seem unimportant to public officials, in comparison to the other decisions they make every day. But I think public access to records is just as important, if not more so. Public access to government records and decisions plays an important role in a democracy. Our society was founded on the premise of the public being able to participate in the government and its decision-making, and denial of this essential right will lead to erosion of public trust in government and eventual damage to democracy.

THE EMPORIA GAZETTE

Before House Local Government Committee
Feb. 15, 2000

Mr. Chairman and members of the committee:

Thank you for the opportunity to address this committee. My name is Jeff Burkhead. I am editor of The Emporia Gazette and president of the board of directors of the Kansas Press Association, the trade association that serves the state's 250 daily and weekly newspapers.

As the KPA's executive director, David Furnas, has testified to this committee previously, our association's position is that while overall the majority of Kansas' government agencies comply with the open records law — as reported in last fall's statewide survey — the project also revealed a number of abuses and pointed out the need for ...

1. Increased training of governmental and law enforcement officials and employees regarding open records laws.

2. More enforcement powers of the open records law and some type of penalty to ensure compliance.

3. And, when charges are assessed for copies of records, they must be "reasonable," or similar to what the person would pay at a commercial copying center.

In response to the results of the newspapers' survey — which, again, found that most government agencies comply with the records law, though sometimes grudgingly — the director of the Kansas Law Enforcement Training Center has already said he plans to include an open records session in the state's two-week sheriff's orientation school.

Better education of the public records law is important. Almost everyone agrees this is an important area. In Emporia, the local school district, in response to the newspaper survey, took the initiative to re-evaluate its procedures for educating employees about open records. Hopefully, this sort of effort will happen with other government agencies throughout the state.

There are different opinions on whether a separate board or commission should be formed to handle open records complaints, or whether the attorney general's office or secretary of state's office should act as the agency responsible for enforcement. If access is denied, citizens needs to have a place to go. It is the KPA's opinion that the attorney general's office, which is responsible for the enforcement of Kansas laws, would be the logical choice for enforcing the state's open records laws.

There also needs to be specific penalties for violations of open records laws. As it stands now, there are no fines for violating the open records law. The KPA agrees with the proposed change that any person who violates the open records law shall be liable of a civil

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.lty for an amount set by the court, not to exceed $500 for each violation. The pena. should be severe enough to deter agencies from not complying.

Current law says any fees charged for copies of public records should be reasonable. However, as shown in the survey last year, the definition of reasonable varied greatly, from no charge to $5 per copy. The cost to taxpayers should be kept to a minimum.

The goal of the survey was to test access to public records for the average person, not just newspapers. While the vast majority of records requests were granted, even in some of those cases, a number of participants were subjected to hostility, questioning, suspicion and background checks.

As The Kansas City Star said in an editorial today, "This is not about percentages such as hitting averages in baseball. This is about public officials obeying the law. Anything less than 100 percent compliance with the law cannot be tolerated." That certainly should be the goal.

The KPA supports efforts to increase awareness about open records, both among the public and those in government, and encourages better education, more enforcement powers and stiffer penalties for those who violate the law.

Thank you again for the opportunity to come before the committee today. I would be happy to answer questions.

Jeff Burkhead
KPA president

Testimony
of
Craig Nienaber
Projects editor, Kansas City Star
Feb. 15, 2000

Thank you for the opportunity to talk to you today about open records laws in Kansas.

Among the several issues you have before you this session I'd like to focus on two: The freedom of information officer and the proposed penalty for violating the law.

Freedom of Information Officer

This provision could be an improvement in the way open records disputes are resolved, as it has been in some other states. Primarily, an officer could decide appeals of open records requests much more quickly and cheaply than the courts.

However, the law must establish the position correctly for it to work well. Among the factors that need to be considered:

-- The position needs to be full-time and placed in the proper department. That would be the attorney general's office, not the secretary of state, both because the attorney general's office is more accustomed to issuing legal opinions and because traditionally many of abuses of the open records law have come in the law enforcement arena.

-- The law must provide the officer with powers that are clear enough to act in any situation. The officer should issue advisory opinions in disputes, as House Bill 2864 provides, and hold hearings when necessary to gather information.

-- The law also must give the officer broad deadlines for issuing opinions and scheduling hearings so disputes don't linger as long as they do currently in court.

-- There should be, however, an option for the public when denied open records to go directly to court instead of to the freedom of information officer. This option would be seldom used but would be helpful when the public party is certain that a public office will appeal an unfavorable ruling from the freedom of information officer. In that case, the FOI officer's opinion would only slow the final resolution of the case.

(In addition, some states have required that an initial court filing over an open records denial always must go to the top of the court docket, saving months in the resolution of the dispute.)

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-- The law should make it clear that legal appeals of an FOI officer's decision are allowed for either side in a dispute. The law also should make recovery of attorney fees possible.

-- The educational function of the office, especially as it relates to public officials at all levels, should be emphasized. The natural inclination of many officials to regard public records as belonging to their own office rather than the public, combined with the complex list of exemptions in Kansas law, makes education a crucial need.

Penalty for violation

At least three bills establish a $500 penalty for violating the open records act. This seems to be a minimal penalty and yet I've heard that some people question whether it's fair to public officials. After all, the law is complex and how can a local official be expected to understand it?

First, it seems odd that this is one state law directly affecting the conduct of public office that public officials are not expected to know and abide by. It also happens to be a watershed law that defines the very philosophy under which an office operates: Whether it is a public trust or a personal fiefdom.

Secondly, offices, whether state or local, have legal resources that can help sort out a question when confusion arrises over an open records request.

Thirdly, in practice a $500 fine would only be used in egregious cases, not in the case of a lowly public official who makes a mistake the first time in dealing with an open records request.

In fact, it can be more easily argued that $500 is not nearly enough.

The experience of Missouri, which has a $500 penalty, is instructive. A bill in the Missouri legislature this session would raise the maximum fine to $25,000, and with good reason. Missouri legislators have discovered that public officials reluctant to follow the law regard a $500 penalty as merely the cost of doing business should they get caught.

In a meeting this month, the treasurer of the Nodaway County Ambulance Board talked about having gone to the board's attorney with a question about open records. ``The attorney we talked to said, `It's the Sunshine Law, it's only a $500 fine,' " the treasurer said. We've also heard about a board that knowingly went into an illegal closed meeting because at worst it would only cost the board $500.

At the very least, then, a $500 fine would seem to be very reasonable when considering a penalty for knowingly violating the open records law.

KANSAS SUNSHINE COALITION FOR OPEN GOVERNMENT

1845 N. Fairmount
P.O. Box 31
Wichita, KS 67260-0031

(316) 978-6060

February 14, 2000

TO: Rep. Carlos Mayans, Chairman, House Local Government Committee

FROM: Vernon Keel, President, Kansas Sunshine Coalition for Open Government

First of all, my apologies for having to communicate with you through faxed memos, but my university teaching schedule makes it difficult for me to be in Topeka at the time your committee usually meets. I do appreciate your willingness to accept our suggestions in this manner for changes in the Kansas Open Records Law.

What follows is my best attempt to summarize suggestions we have for changes in the law that address concerns about enforcement, penalties, copying fees, and other issues related to problems with the records law. I hope you find these suggestions helpful.

1) **Agency Responsible for Enforcement.** Ideally, a neutral officer operating independently from existing agencies would have responsibility for assisting individuals with requests and complaints, monitoring application of the open government laws and enforcing compliance. This is similar to the Indiana Public Access Counselor. It is not likely here at this time because of the additional costs. Therefore, it is our conclusion that the Office of the Attorney General, which already has responsibility for the enforcement of Kansas law, should be responsible for enforcement of the Kansas open records and open meetings laws.

2) **Attorney Fees.** H. B. 2722 and H.B. 2729 amend K.S.A. 45-222 (c) by requiring that the court *shall* award attorney fees to the plaintiff. We agree with the proposal to make the law more specific by recommending that the words "not in good faith and without a reasonable basis in fact or law" be replaced with the single word "unlawful." The revision we favor would amend (c) to read as follows:

> (c) In any action hereunder, the court ~~may~~ *shall* award attorney fees to the plaintiff if the court finds that the agency's denial of access to the public record was ~~not in good faith and without a reasonable basis in facto or law~~ *unlawful.* The award shall be assessed against the public agency that the court determines to be responsible for the violation.

Explanation: This removes the very high standard of not in good faith, etc., which is already the standard in enforcement of the open meetings violations. So far, courts have been reluctant to find for the plaintiff unless there has been a pattern of repeated offenses.

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Promoting open government in Kansas at all levels--state, county and local!

3) **Penalties for Violations.** H. B. 2722 and H.B. 2729 recommend important changes in Sec. 4. K.S.A. 45-223 that would set specific penalties for violations of the open records act. We agree with the proposed changes except that we recommend the language be strengthened, mainly by removing the "without reasonable basis . . ." standard (see 2 above). The version we recommend reads as follows:

> Sec. 4. K.S. A. 45-223 is hereby amended to read as follows: 45-223. ~~No public agency nor any officer or employee of a public agency shall be liable for damages resulting from the failure to provide access to a public record in violation of this act.~~ *(a) Any person subject to this act who knowingly violates any of the provisions of this act or who intentionally fails to furnish information as required by this act shall be liable for the payment of a civil penalty in an action brought by the attorney general or county or district attorney, in a sum set by the court of not to exceed five hundred dollars ($500) for each violation.*
>
> *(b) Civil penalties sued for and recovered hereunder by the attorney general shall be paid into the state general fund. Civil penalties sued for and recovered hereunder by a county or district attorney shall be paid into the general fund of the county where the proceedings were instigated.*

Explanation: This language tightens up what constitutes a violation of the records act and avoids the high standard for a plaintiff to have to prove that the violations were made "without reasonable basis in fact or law." It directs penalties paid to go to the general fund, without specifying at this point anything more specific, pending some decision on which agency will be responsible for enforcement of the law.

4) **Responsible Party.** Some concern has been expressed about just who should be the individual held responsible for violations of the open records law. While an office clerk may have been involved in a record denial, it is our view that the official custodian of the record (the agency head) is the one who should be held responsible since it is this person who is the "person subject to this act" referred to in 45-223 (a) mentioned in Point 3 above.

5) **Fees for records.** House Bill 2722 (*Sec. 2. K.S.A. 1999 Supp. 45-219, (c) (1)*) proposes specific fees for copies of records. Our concern is that many agencies at all levels of government, which do not now charge for reasonable requests for copies, would feel compelled to charge. Also, specific fees set in the law require amendments when charges must be changed.

We propose, instead, the following language for Section (c)(1):

> (1) In the case of fees for copies of records, *agencies may absorb the costs of reasonable requests for copies as part of agency operating expenses, and when charges are assessed they must be reasonable charges similar to what the individual requesting the record would pay to a commercial copying center for such copies.*

Explanation: This allows agencies to continue the practice of not charging for reasonable requests, but if charges are assessed, they must be "reasonable." Reasonable here is defined as similar to what a commercial copying center would charge. That gives everyone a standard by which to consider "reasonable."

8-2

6. Sunset Proposal. We support the proposal in H.B. 2920 that provides a "sunset" provision on all exemptions to the open records law by having them expire on July 1, 2005, and in New Sec. 3, subsequent exemptions must meet a three-part test and shall be reviewed every five years.

7. Changes in Existing Exemptions. We recommend the following changes in the current listing of exemptions to Sec. 4. K.S. A. 45-221 regarding records not required to be open.

First of all, tighten up the language for Exemption 25 as follows:

(25) Records which represent ~~and constitute the work product of an attorney~~ legal opinion or advice from an attorney or advice from an attorney in which an attorney-client relationship reasonably exists.

Secondly, remove exemptions (3), (4), (6), (17), (23), and (24) and replace them with a revised (30) as follows:

~~(3) Medical, psychiatric, psychological or alcoholism or drug dependency treatment records which pertain to identifiable patients.~~

~~(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such.~~

~~(6) Letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.~~

~~(17) Applications, financial statements and other information submitted in connection with applications for student financial assistance where financial need is a consideration for the award.~~

~~(23) Library patron and circulation records which pertain to identifiable individuals.~~

~~(24) Records which are compiled for census or research purposes and which pertain to identifiable individuals.~~

(30) Public records containing *personal* information ~~of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy~~ about an identifiable person including: Medical, psychiatric, psychological or alcoholism or drug dependency records; Personnel records, performance ratings or other employment records of employees or applicants for employment; Letters of reference or recommendation pertaining to the character or qualifications of a specific individual; Applications, financial statements and other information submitted in connection with applications for student financial assistance; Library patron and circulation records pertaining to identifiable individuals; Or records compiled for census or research purposes pertaining to identifiable individuals.

Explanation: While this is a start in reducing the total number of exemptions, it replaces the very broad "anything that would be interpreted to be a clearly unwarranted violation of personal privacy provision" with specific statement of items already enumerated elsewhere in the statute. This is just a first step in reducing the number of exemptions and tightening the language of others, a larger project that could be assigned to an interim committee.

8-3

STATE OF KANSAS

PEGGY LONG
REPRESENTATIVE, 76TH DISTRICT
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
HEALTH & HUMAN SERVICES
JUDICIARY
TAXATION

Testimony before the Local Governments Committee
February 15, 2000

I want to thank you for the opportunity to speak on behalf of a great concern in my district currently. My district consists of Greenwood, Elk, Chautauqua and part of Lyon County. Those counties contain some of the prettiest prairie anyone could ever have the pleasure of viewing. Some of it also contains beautiful big trees and rocky areas that look very much like the Ozarks. As a matter of fact, one of my communities calls itself the Ozarks of Kansas.

With this as background, add the factor that the communities are small and the people are content with the security and simplicity of living in a rural area. Now try to consider the impact that many huge garbage trucks going down highway 99 (which runs the length of my district) would have. Highway 99 is narrow, with little to no shoulders in many areas. It is due to have major renovation with the new highway plan; but that need will not even be addressed for several years.

These people are of the mindset that each county should be addressing their problems individually, but with the necessary closing of a large landfill in an urban area, the need to locate in a surrounding area has made it necessary for my constituents to feel like the future of their lives, the lives of their children and neighbors as well as the county may be swayed by the lure of financial gain or economic aid to the county above the importance of the lifestyles and future perils brought on by the decision of three county commissioners.

We are not talking about Wichita trash here. We are talking about a regional landfill that will open the borders up to trash from the east coast coming into Kansas and turning the Flinthills into a wasteland. Please give a compassionate ear to these people who are working very hard to protect their property and the property of their neighbors by appearing before you today.

Thank you.

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Stanley A. Skaer, MD
Commission Chairman
Greenwood County Commission
Rt. 2 Box 9
Eureka, Kansas 67045

February 12, 2000

TESTIMONY BEFORE THE LOCAL GOVERNMENT COMMITTEE
KANSAS STATE HOUSE OF REPRESENTATIVES
FEBRUARY 15, 2000

Honorable Chairman and Committee members, I am Dr. Stanley Skaer, Chairman of the Greenwood County Board of Commissioners. I wish to thank you for the opportunity to address the House Local Government Committee concerning HB 2698. I wish to express my support of this purposed legislation.

Let me first say that we in Greenwood County have experienced a terribly divisive issue over the past 18 months. This issue concerns solid waste and its management. This issue and the associated fallout have literally torn our county apart. To be sure part of this problem is our own in that prior comprehensive planning and zoning, which might have prevented the problem, had not been done.

As you know, the old style landfills must stop accepting trash by October 1, 2001, and closure of these landfills must be completed within 180 days. This has forced a frenzy of activity by all communities and their agents to find places to go with that trash.

This frenzy began for us in 1998. At that time Browning Ferris Industries attempted to locate a new Subtitle D landfill in an existing rock quarry, within ¼ mile of the town of Severy's water supply. Before the public had knowledge of these plans a change in State law had been proposed and submitted to a Senate committee suggesting changing the law to allow a landfill inside the ½ mile KDHE guideline limit. Before the public had knowledge BFI had sought a KDHE permit for a landfill. Before the public had knowledge our county government was involved in negotiations with BFI on a proposed host agreement. Later due to resistance in southern Greenwood County a site 9 miles east of Eureka was chosen and an option to purchase was taken out with a landowner for 8-10 times the sale price of ranch land in our area.

Some citizen resistance developed and a petition of opposition with hundreds of names was submitted to our commissioners. Weekly concerns were expressed for months at our commission meetings. After nearly 6 months of fruitless efforts to obtain a public vote or referendum other measures were taken. There have been successful recall elections of 2 of the commissioners and another is scheduled for March 21, 2000 for documented and flagrant violations of the Kansas Open Meeting Act.

These abbreviated issues have deeply divided our county. They have paralyzed government. Thousands of dollars have spent and hours of time utilized by both citizens and our

county, most feel because of another county's inability to deal with their own problems. The major assets we have in Greenwood County are our environmentally sensitive range land, our water supply, and our clean air. We know pollution from landfill debri, methane, leachate and other contaminants will occur, but we don't know when. We are worried about our health and our children's future. We are terrified of the long-term effects on our environment and the huge costs of future cleanup. As Betsy Gwin stated in the Wichita Eagle on September 16,1999, when she chastised concerned citizens of Greenwood and Marion counties, and referred to her county and some of yours, "Protecting our water, protecting our land, protecting our families – that's of obvious importance to me." Do you wonder how we feel?

In the United States, only county commissioners are both the legislative and executive branches of government wrapped into one. When government of the people and for the people fails, we need some mechanism to help us, without disrupting government completely. You must not deny people the democratic process. People should have the right to decide their own destiny, not some company or other entity.

In the name of democracy, I urge you to favorably consider HB 2698.

Thank you for your consideration.

Karla Y. Boone
Farmwife, mother and small business owner
R.R.1 Box 65
Toronto, Kansas 66777

TESTIMONY BEFORE THE LOCAL GOVERNMENT COMMITTEE KANSAS STATE HOUSE OF REPRESENTATIVES FEBRUARY 15, 2000

Honorable Chairman and Committee Members. I would like to thank you for the opportunity to address the House Local Government Committee concerning House Bill 2698. I also wish to express my support of this bill.

Kansas… a land known for sunflowers, wheat, beef production and it's lush rolling prairies. A state which is also recognized as 4th of all states in the importation of solid waste. Realize that following E.P.A. guidelines, all landfills in all 50 states must close by October 2001 if they are not constructed according to Subtitle D standards. Already barges of solid waste sit along the East Coast looking for a home. The closure of further landfills in Kansas and throughout the nation will only accelerate the current dilemma of where to dispose of solid waste. Today I ask you, where will solid waste be disposed of in the future? With the central location of Kansas, low population density and good interstate highway system, Kansas is, and we are prime targets for large regional landfills. By interstate commerce law, the importation of solid waste cannot be restricted once a company has established a regional landfill. This fact alone could accelerate the current state trend for importing solid waste.

In the past municipal solid waste landfills have been associated with pollution problems throughout the nation. In an attempt to eliminate future pollution problems E.P.A. introduced the new Subtitle D landfill method of construction. The liner system used in Subtitle D landfills has yet to prove that it will effectively prevent landfill pollutants from leaching out into the surrounding environment. There is no long-term evidence to guarantee that these liners will indeed prevent pollution problems twenty, thirty or even 50 years down the road. Thus, there is a risk for environmental pollution wherever a landfill is located. It only goes to reason that with the operation of a large regional landfill comes large volume of trash and an increased risk of pollution should the landfill liner fail. Citizens within some counties may be willing to accept the risk and others may not. County citizens have the right to decide whether or not a regional landfill will be built in their county, after all it is they who will live with it. Now and in the future.

We know that there is a need for solid waste management and landfills. We know that trash companies, whatever their names, are many times huge conglomerates with unlimited financial and legal resources. Through unscrupulous means tipping fees can sometimes be avoided, contracts can be so complex that loopholes are not apparent and

sham companies and corporate bankruptcies abound. Usually small entities are those on bottom.

As we have seen firsthand in Greenwood County, Kansas counties need the right to the democratic process. We need the right to vote upon whether or not we want a regional landfill in our backyards. We vote on bond issues, we vote on county, state and federal officials and we vote on school board representation. Why can't we vote on our future? I urge you to support House Bill 2698.

Thank you for your time.

Karla G. Boone

TESTIMONY BEFORE THE LOCAL GOVERNMENT COMMITTEE
KANSAS STATE HOUSE OF REPRESENTATIVES
FEBRUARY 15, 2000

Honorable Chairman and Committee Members. I wish to thank you for the opportunity to address the House Local Government Committee concerning HB 2698. I also wish to express my support of this bill.

My testimony is to help you understand how government failed us in Greenwood County and to convince you of the need for legislation like HB 2698.

In 1991 rumors circulated about locating a regional landfill in Greenwood County. Petitions were circulated and hundreds of names were obtained in opposition. The issue subsided temporarily.

In late 1998 efforts to change State law to allow a landfill close to Severy's water supply were secretly begun by our own commissioners. This was proven when Senator David Corbin produced a letter signed by 3 of our commissioners requesting such action.

We understand that efforts were made to obtain a landfill permit from KDHE without our knowledge and before local citizen input could be organized.

When opposition was organized and the Severy site found to be impossible, a new site east of Eureka was offered and an option to purchase 320 acres was finalized. Our Commission was secretive in announcing the site and in host agreement negotiations. This was in the name of confidential business.

Weekly Commission meetings were flooded by concerned citizens. The Commissioners would not provide an adequate meeting site and the Sheriff threatened arrests if the capacity of the meeting room (21 people including commissioners, clerk, reporters, etc.) was exceeded. Only when ordered to provide adequate space and audio systems, by the State Attorney General, were the commission meetings moved across the street to an available auditorium.

Public testimony, editorials, and educational meetings were ignored by our governmental representatives.

Requests for a public referendum, although non-binding on the commission, were ignored.

Because of documented violations of the Kansas Open Meetings Act, recall efforts were undertaken. Certainly this approach was taken out of desperation. "Ouster" was thought a much more difficult and expensive route.

A pole taken at the county fair showed **95%** of people responding to be opposed to accepting out of area trash.

Recall #1 petition was filed on July 6,1999 alleging violation of KOMA law. Our own County Attorney would not rule on the petition's validity due to "conflict of interest." Within the month, the State Attorney General ruled the petition valid. The petitions were circulated and rapidly 572 signatures were obtained, 480 were needed. An election was ordered by the clerk. This "ruling" was protested by the involved commissioner, and he filed legal action against our county clerk. An out of district judge, Judge Stephen Hill, ruled the action appropriate. The election held on September 14, 1999 showed 563 favoring recall and 195 against, **74% in favor**. The county commission voted to pay for the legal expenses of the subject commissioner, even though he filed the suit as a private citizen, coincidentally.

Recall #2 petition was filed on September 20, 1999 for similar reasons. This was ruled valid by our County Attorney on September 28,1999. Petitions returned 563 signatures favoring recall with 381 being needed. The election held December 7, 1999 showed 382 in favor of recall, with 151 opposed, **72% in favor.**

Recall #3 petition was filed December 21, 1999 for similar reasons. The petition was ruled valid on December 28, 1999. The petition was circulated and 331 people favoring recall were returned January 20, 2000. 238 signatures were needed. The election for recall is scheduled for March 21, 2000.

Now we realize that this is in part a county problem and I only bore you with the details to illustrate a point. **When government fails, we need some reasonable option, rather than disrupting our system and our lives.** We only ask that our right as constituents to be heard and to be represented be insured. We need the right to the **democratic process.** We are able to vote on other issues, why can't we vote on our futures. I urge your support of this HB 2698.

Thank you for your concern.

Pam Collinge
Educator
Member of Greenwood County
Solid Waste Committee

An Opportunity

One of the goals when our Elk County Landfill Watch Group was forming last November was to seek and pursue the positive outcomes of our efforts. Here is an example of one of our positive outcomes of those efforts.

Two weeks ago, my retired fuel supplier was elated to tell me that he was asked to take someone to our courthouse to register to vote. I envisioned him taking his grandson or granddaughter to become involved in our democratic process for the first time. Instead, the request to Larry Mitchell came from his 86 year old father who hadn't voted in over 20 years. Larry's father, Wm. Rex, also took the time and effort to explain to his great granddaughter the importance of voting as the base of democracy in our great country.

As hardworking elected officials I am sure you have been disappointed by low voter registration, low voter turnout, and high voter apathy. Ladies and Gentlemen, your support of this bill is a great opportunity to increase voter registration and voter turnout. Now is your opportunity to reverse voter apathy. On our local level, the Elk County Landfill Watch Group currently has a voter registration drive in progress. Our group views this action as one of the positive outcomes from our initial goals.

My request to this committee is; please support HB 2698 as an opportunity for your constituents to be more involved in our democratic process. Respectfully submitted, I thank you for your time and attention.

Gene Perkins
President, Elk County Landfill Watch Group
Howard, Kansas

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Protecting Kansas Families

I am Aimee Cook. I have been a life long resident of Kansas. My husband Steve and our three children live just one and one half to two miles from the site of the proposed landfill in Elk County. We farm, raise purebred Gelbvieh cattle and own a small business in Wichita.

We have been very concerned about the effects of a landfill on our family. The issues of clean drinking water and the possibility of contracting a serious illness from human generated waste really hits home when I look at my little ones.

We have worked very hard to improve our property and hope to spend the rest of our lives on our farm. However, if for some unforeseen reason in the future we decide to sell; we would want our lifetime investment to be worth something.

It makes me very frustrated that right now in Elk County only a few people have the power to decide whether or not to approve a landfill which could potentially affect every person in the county.

I believe that House Bill 2698 should be adopted into Kansas law. This Bill will allow the people, who could be potentially affected by a proposed landfill, the opportunity to decide for themselves if they want a landfill near their property.

This is a very important issue to many Kansans and I appreciate your support of this bill. Thank you.

Aimee Cook
A Concerned Mother

HOUSE LOCAL GOVERNMENT
2-15-00
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February 15, 2000

Timothy Rhone
RR 1 Box 264
Fall River, KS 67047

RE: House Bill 2698

Dear: Honorable Chairman and Fellow Representatives,

I, Tim Rhone, am here today to show support for House Bill 2698. Passage of this Bill will put the issue of County Solid Waste Control into the hands of the general public of each county. Additionally, passage of this Bill will take pressure off the County Commissioners and bring about more involvement by the general population in their county's Solid Waste Needs. This in turn will promote more interest in and local concern for the county's water and environmental needs.

I have seen issues surrounding solid waste management cause splits in families, friends, and even entire counties. Some of these Solid Waste Companies have budgets bigger than the state of Kansas. They create a lot of pressure for County Commissioners when they introduce their ideas with dollar signs.

I have also seen Solid Waste Companies go so far as to convince the County Commissioners to apply for changes in state water Laws to accomplish their wants for a waste site. The passage of Bill 2698 will make it more difficult to apply this kind of pressure to local governments.

Additionally, this bill will turn back local control to the county citizens that will be affected. If a decision is made to build a dumpsite in a county, that decision is forever. If the dump leaks or contaminates soil or water, many generations are placed in jeopardy. You cannot just pick up a dumpsite and move it.

If changes are not made soon, the Solid Waste Issue will only become more ambiguous as environmental regulations tighten.

So I end with this: Please pass Bill 2698. In doing so you will be turn back local environmental issues to the people that they most impact, take pressure off County Commissioners, and motivate more people to look into environmental issues. Together we can "Keep Kansas Beautiful".

Thank You,

Tim Rhone

Tim Rhone

HOUSE LOCAL GOVERNMENT
2-15-00
Attachment 15

Undue Influence

My name is Kim Hodges. My husband, Kevan, and I are farmers in Elk County. I have come to speak on behalf of every citizen in Kansas who would like their vote to count. I strongly support this bill due to the fact that every one of you are aware of the influence that large, well-funded corporations and other special interests can have over political bodies. This can be especially true in small counties such as mine. We are always short of operating funds and we have three commissioners to make all the decisions.

In the case of landfills, decisions can dramatically affect the county for generations to come. This bill would go a long way towards making county governments do the bidding of the people they represent, instead of being influenced by outside interests. I feel this bill will provide the people of our state a voice in controlling the development of future enterprises.

Thank you in advance for supporting HB 2698.

Kim Hodges
Concerned Citizen
Elk Falls, Kansas

Marti Vernon
Owner and operator of future Shadow Fox Gallery and Botanical Garden, Elk Falls

Supports adopting Bill #2698 as law

401 E. Cherokee, Elgin
Sedan, Ks. 67361
315-346-2312

The issue of landfill location is larger than "where can cities transport garbage!" This issue of landfills is about Kansas, and will it become the "Garbage State" instead of the "Sunflower State?"

We have approximately 300 landfill sites in the state of Kansas right now. This ranks us third in the nation for landfill quantity. Some cities want to create new landfills in rural areas that will accommodate their garbage. This is not a solution for the landfill problem. There is no justification for cities that don't want garbage and think that relocation is free of consequence. There is a backlash from creating new landfills that hurts us as a state. When we allow landfills in rural areas, we allow the destruction of natural areas: we allow the destruction of nature areas, the areas that still possess much of the beauty that Kansas is known for.

There is a movement to enlarge the tourist interest and present Kansas as state worthy of time and money. The country surrounding cities is a large part of this attraction. More landfills will create not only waste lands comprised of polluted water and land that is not user friendly, but land that is toxic and deadly!

I grew up in my birth city of Atlanta Georgia. As a young mother and wife, I lived in the suburbs of Atlanta, but for relaxation I visited the surrounding countryside. Now I live in Kansas, in the country. I love my new life in this beautiful state. I want to create an environment in my little niche of the state for people to visit, a place of beauty to share with those who want to get away. I am opening an art gallery, and resurrecting a botanical garden that was once a tourist attraction.

Please give the people who also wish to preserve the natural beauty of this state a chance to vote for their best interest and not let the power of decision go to a few!

Highway 99 and Highway 160 are both scenic routes through Kansas. There is nothing scenic about dumps or garbage trucks.

Please let us have a vote in the decision to save what is so beautiful and considered God's country. Help us keep Kansas from being "Garbage Country!"

Terry Vernon:
Site Designer in Civil Engineering
Vice President, Elk county Landfill Watch Group
Landowner in Elk and Chautaqua County
Concerned Resident

Supports adopting Bill #2698 as law

401 E. Cherokee, Elgin
Sedan, Ks. 67361
316-346-2312

I am in favor of this bill because it gives me my vote on what I consider to be my destiny.

As a small child growing up in Caney Kansas and later as a teenager, I use to look across the fields of wheat and corn, and I would be awe struck by their beauty.

I'll never forget going for Sunday afternoon rides on the dirt roads and coming over a hill and seeing the most beautiful scenery God has ever put anywhere. You could see for miles, and as the wind blew you could see the tops of the wheat rippling in the wind. It looked as if the whole field was swaying to some unheard music. That is when I promised myself that someday I would own a piece of God's Country so I could enjoy this beauty not only on Sunday afternoon, but each and every day of the week.

Ladies and Gentlemen, I have started to accomplish that dream in Elk County, Kansas, and nowhere in that dream or scenery is a landfill. You see ladies and gentlemen, I have had this dream for many years, and I have worked hard to make that dream a reality. Nobody ever told me that my dream couldn't become a reality because I was raised in that era of "you can be or do anything if you work hard towards that goal." That's why I feel this bill is so important. This bill gives me and my neighbors who own land, the opportunity to say, "NO!, we don't want a landfill", rather than letting a commissioner who possibly lives in town and goes for Sunday afternoon drives decide if a landfill goes in or not. I mean, "what's it to him?" All he would have to do is change his route to somewhere else.

So, ladies and gentlemen, I am in support of this bill because it will give me a vote on a dream that I have wanted to fulfill since childhood.

Please, don't give the vote to a commissioner who has no idea about my dreams.

KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Clyde D. Graeber, Secretary

Testimony presented to

House Committee on Local Government

by

William L. Bider, Director, Bureau of Waste Management
Kansas Department of Health and Environment

House Bill 2698

The Department of Health and Environment appreciates this opportunity to provide testimony on House Bill 2698. The department does not support the new solid waste facility permitting requirements proposed in this bill. This bill would require every "regional" solid waste facility to be approved by a vote of the people in the county before a permit application could be submitted to KDHE for consideration. As drafted, the requirement applies to all *processing* and *disposal* facilities, not just municipal solid waste landfills. This means household hazardous waste facilities, composting facilities, construction demolition landfills, waste tire monofills and other types of less controversial facilities would also be subject to this election requirement.

KDHE is opposed to this legislation for the following reasons:

(1) The Local Solid Waste Planning Process Already Includes Extensive Public Participation

A well-defined public participation process already exists in state law to involve the citizens of the county in decisions related to the establishment of new solid waste facilities. Each county must appoint a solid waste committee representing the people. The committee oversees the preparation of a draft plan which is reviewed with interested county citizens at a required public hearing. After the hearing, the commission must adopt the plan, with or without revisions. **The county plan then serves as the key document for deciding whether newly proposed facilities will be allowed in the county.** County commissioners are required to certify on every solid waste permit application that the type of proposed facility is consistent with their approved plan and that the proposed site is properly zoned for the type of proposed facility or that the facility is compatible with surrounding land uses. If the commission cannot make these certifications, the application will be considered incomplete by KDHE and returned to the applicant.

(2) Proposed Requirement Will Impact Many Non-Controversial or Beneficial Waste Management Practices

As drafted, the election requirement would apply to "regional" waste processing facilities in addition to landfills including household hazardous waste (HHW) facilities. KDHE encourages the establishment of new HHW facilities and expanded regionalization of collection programs to increase the diversion of hazardous household materials from our landfills. It is common for a permanent collection program to develop partnerships with their neighbors to maximize overall operational efficiency. This law would require a vote of the people to convert a single county program to a regional program or to expand a regional program to add another county. Also, many counties have chosen to close their landfills and ship their waste to regional facilities. These decisions, particularly in eastern Kansas, have led to a statewide waste management system which includes many regional facilities. Partnering with your neighboring counties is encouraged by KDHE because it improves the overall feasibility of operating effective and efficient facilities.

(3) All Regional Facilities Do Not Present Similar Concerns

The term "regional" as applied to a proposed facility is not defined. Without further clarification, KDHE would conclude that a regional facility would be any that takes waste from two or more counties or from out-of-state. However, the amount and types of waste transferred or transported from outside of the county could vary significantly. For example, some small landfills in western Kansas may take some waste from a small town in a neighboring county because the transportation distance is shorter than to the in-county landfill. Other landfills may just take certain special wastes which are transported directly from manufacturing facilities outside their counties. The HHW example explained above also represents the transfer of waste from county to county. Because of such wide variations in waste transfer practices, it would be necessary to define when a regional facility should be subject to this rule.

(4) New Facility Siting Will Become Very Difficult Regardless of Facility Type

A requirement to hold a public election for every type of regional solid waste facility will severely impact the likelihood of establishing new facilities. Recent developments related to finding a future home for Sedgwick County waste have demonstrated that the anti-waste management facility philosophy is strong. Private companies may be reluctant to pursue new regional facilities in Kansas given this requirement and in time overall facility capacities may begin to shrink. In addition, new desirable facilities such as HHW, central composting, and medical waste processing may never be considered.

(5) Current Proposal Applies to Major Permit Modifications as Well as New Facilities

The requirement for a local election would apply to currently permitted regional facilities if they wish to make a major modification to their existing permit such as an expansion of the permitted disposal area or the addition of a new activity at the site such a composting or the disposal of processed waste tires in a small monofill. Such facility changes require the submission of a new permit application and the issuance of a revised permit.

(6) A Similar Bill (HB 2331) Was Introduced and Rejected in 1997

When similar legislation was introduced in 1997, a substitute bill was introduced and considered a better alternative to the requirement for a vote of the people. The public participation process during county planning and the required commissioner certifications on the application were selected as the preferred way to ensure that the public could participate in the process.

(7) County Commissions Can Choose to Hold Elections

If a county commission is uncertain as to how to proceed with a proposed solid waste facility, they have the authority to hold an election to determine the wishes of the citizens of their county. Alternatively, they can choose to make their decisions through the public hearing process and other means by which they gauge public opinion.

In summary, KDHE does not believe this change to the permitting law is necessary and it could adversely impact waste management practices and costs. Thank you for allowing KDHE to provide testimony on HB 2698.

DEFFENBAUGH INDUSTRIES, INC.
POST OFFICE BOX 3220
SHAWNEE, KANSAS 66203
913-631-3300

February 15, 2000

The Honorable Representative Carlos Mayans, Chairperson
Committee on Local Government
Kansas House of Representatives
State of Kansas
Topeka KS 66612

RE: House Bill No.2698

Chairperson Mayans and Members of the Committee:

Deffenbaugh Industries opposes passage of House Bill 2698. Deffenbaugh, headquartered in Shawnee, has been a leader in solid waste management in Kansas for over 25 years. Deffenbaugh and its affiliate companies employ over 1,200 people at various locations in Kansas. We take great pride in our ability to provide efficient, cost-effective, and environmentally protective solid waste management and recycling services to the citizens and businesses of our state.

We oppose House Bill 2698 because it would short circuit long-standing land use and zoning ordinances at the municipal and county levels. Indeed, one of the reasons that we citizens elect city council persons and county commissioners is to delegate complex decision making to them.

House Bill 2698 would also wreak havoc with existing solid waste management plans made by Kansas communities. In fact, K.S.A. 65-3405 sets forth a process by which communities plan for solid waste management and includes provisions for extensive public involvement in the planning process.

We also oppose House Bill 2698 because local approval of solid waste projects is already provided for in Kansas Statutes. K.S.A 65-3407(l) specifies that:

> *"...Before reviewing any application for a solid waste processing facility or solid waste disposal area, the secretary shall require the following information as part of the application:*
>
> *(1) Certification by the board of county commissioners or the mayor of a designated city responsible for the development and adoption of the solid waste management plan for the location where the processing facility or disposal area*

is or will be located that the processing facility or disposal area is consistent with the plan. This certification shall not apply to a solid waste disposal area for disposal of only solid waste produced on site from manufacturing and industrial processes or from on-site construction or demolition activities.

(2) If the location is zoned, certification by the local planning and zoning authority that the processing facility or disposal area is consistent with local land use restrictions or, if the location is not zoned, certification from the board of county commissioners that the processing facility or disposal area is compatible with surrounding land use..."

For these reasons, Deffenbaugh Industries urges the committee not to support passage of House Bill 2698. Thanks for your thoughtful consideration of our comments regarding this issue. Please feel free to call me at 913-631-3300, xt. 116 if you or members of the committee have any question regarding Deffenbaugh's position on this bill.

Very Truly Yours,

D. Sean White

cc: Ronald D. Deffenbaugh, President

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Testimony on behalf of Waste Management of Kansas
February 15, 2000
Regarding House Bill 2698
Before the House Local Government Committee

Chairman Mayans and members of the committee:

I am Steve Kearney and am submitting the following comments on behalf of Waste Management of Kansas concerning House Bill 2698 in my capacity as their legislative counsel.

Waste Management opposes the concept proposed in House Bill 2698 that would require that a new permit application be submitted to the qualified electors of the county in which a new solid waste processing facility is planned to be sited.

Current law contains adequate safeguards for the residents of a given county by requiring that the Board of County Commissioners certify that the proposed landfill site is in compliance with the County's solid waste management plan and that if the location is zoned that the local planning and zoning authority also certify that the proposed landfill is compatible with surrounding land use.

The opportunity for public comment during this process provides for input from the electorate in the form of open public meetings. Thank you for the opportunity to offer our comments.

Testimony
before the
HOUSE COMMITTEE ON LOCAL GOVERNMENT
by
Wayne Kitchen, Vice President, Regulatory/Environmental Affairs
Western Resources
February 15, 2000

Chairman Mayans and members of the Committee:

HB 2698 proposes to amend the state solid waste laws to require that prior to state review of an application for a regional solid waste processing facility or solid waste disposal site, the county in which the facility is to be located must hold an election approving by majority vote construction and operation of such a facility.

Western Resources believes the proposed language needs some clarification to avoid being unintentionally broad in scope. The required election provisions are aimed at regional solid waste processing and regional solid waste disposal areas. However, Section 1. paragraph (m)(1) as proposed refers to solid disposal area. This should be changed to regional solid waste disposal area to reflect the intent. As further clarification we are proposing changes to Section 1. paragraph (m)(2) and New Section 2. paragraph (b), to indicate that the provisions of these sections do not apply to industrial solid waste disposal areas which would adversely impact our ability to handle solid waste areas on our own property.

Western Resources operates a number of flyash disposal areas which are currently classified and permitted as industrial landfills. 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 onsite industrial landfills. Any modifications or additions to these or future industrial landfills should not be subject to the election process being proposed for regional solid waste disposal or regional solid waste processing facilities.

Please accept our proposed amendments to alleviate the infringement on our onsite flyash handling and disposal.

Session of 2000

HOUSE BILL No. 2698

By Committee on Local Government

1-24

AN ACT concerning solid waste; relating to the disposal thereof; amending K.S.A. 1999 Supp. 65-3407 and repealing the existing section.

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

Section 1. K.S.A. 1999 Supp. 65-3407 is hereby amended to read as follows: 65-3407. (a) Except as otherwise provided by K.S.A. 1999 Supp. 65-3407c and amendments thereto, no person shall construct, alter or operate a solid waste processing facility or a solid waste disposal area of a solid waste management system, except for clean rubble disposal sites, without first obtaining a permit from the secretary.

(b) Every person desiring to obtain a permit to construct, alter or operate a solid waste processing facility or disposal area shall make application for such a permit on forms provided for such purpose by the rules and regulations of the secretary and shall provide the secretary with such information as necessary to show that the facility or area will comply with the purpose of this act. Upon receipt of any application and payment of the application fee, the secretary, with advice and counsel from the local health authorities and the county commission, shall make an investigation of the proposed solid waste processing facility or disposal area and determine whether it complies with the provisions of this act and any rules and regulations and standards adopted thereunder. The secretary also may consider the need for the facility or area in conjunction with the county or regional solid waste management plan. If the investigation reveals that the facility or area conforms with the provisions of the act and the rules and regulations and standards adopted thereunder, the secretary shall approve the application and shall issue a permit for the operation of each solid waste processing or disposal facility or area set forth in the application. If the facility or area fails to meet the rules and regulations and standards required by this act the secretary shall issue a report to the applicant stating the deficiencies in the application. The secretary may issue temporary permits conditioned upon corrections of construction methods being completed and implemented.

(c) Before reviewing any application for permit, the secretary shall conduct a background investigation of the applicant. The secretary shall consider the financial, technical and management capabilities of the ap-

plicant as conditions for issuance of a permit. The secretary may reject the application prior to conducting an investigation into the merits of the application if the secretary finds that:

(1) The applicant currently holds, or in the past has held, a permit under this section and while the applicant held a permit under this section the applicant violated a provision of subsection (a) of K.S.A. 65-3409, and amendments thereto; or

(2) the applicant previously held a permit under this section and that permit was revoked by the secretary; or

(3) the applicant failed or continues to fail to comply with any of the provisions of the air, water or waste statutes, including rules and regulations issued thereunder, relating to environmental protection or to the protection of public health in this or any other state or the federal government of the United States, or any condition of any permit or license issued by the secretary; or if the secretary finds that the applicant has shown a lack of ability or intention to comply with any provision of any law referred to in this subsection or any rule and regulation or order or permit issued pursuant to any such law as indicated by past or continuing violations; or

(4) the applicant is a corporation and any principal, shareholder, or other person capable of exercising total or partial control of such corporation could be determined ineligible to receive a permit pursuant to subsection (c)(1), (2) or (3) above.

(d) Before reviewing any application for a permit, the secretary may request that the attorney general perform a comprehensive criminal background investigation of the applicant; or in the case of a corporate applicant, any principal, shareholder or other person capable of exercising total or partial control of the corporation. The secretary may reject the application prior to conducting an investigation into the merits of the application if the secretary finds that serious criminal violations have been committed by the applicant or a principal of the corporation.

(e) The fees for a solid waste processing or disposal permit shall be established by rules and regulations adopted by the secretary. The fee for the application and original permit shall not exceed $5,000. The annual permit renewal fee shall not exceed $2,000. No refund shall be made in case of revocation. In establishing fees for a construction and demolition landfill, the secretary shall adopt a differential fee schedule based upon the volume of construction and demolition waste to be disposed of at such landfill. All fees shall be deposited in the state treasury and credited to the solid waste management fund. A city, county, other political subdivision or state agency shall be exempt from payment of the fee but shall meet all other provisions of this act.

(f) Plans, designs and relevant data for the construction of solid waste

processing facilities and disposal sites shall be prepared by a professional engineer licensed to practice in Kansas and shall be submitted to the department for approval prior to the construction, alteration or operation of such facility or area. In adopting rules and regulations, the secretary may specify sites, areas or facilities where the environmental impact is

minimal and may waive such preparation requirements provided that a review of such plans is conducted by a professional engineer licensed to practice in Kansas.

(g) Each permit granted by the secretary, as provided in this act, shall be subject to such conditions as the secretary deems necessary to protect human health and the environment and to conserve the sites. Such conditions shall include approval by the secretary of the types and quantities of solid waste allowable for processing or disposal at the permitted location.

(h) As a condition of granting a permit to operate any processing facility or disposal area for solid waste, the secretary shall require the permittee to: (1) Provide a trust fund, surety bond guaranteeing payment, irrevocable letter of credit or insurance policy, to pay the costs of closure and postclosure care; or (2) pass a financial test or obtain a financial guarantee from a related entity, to guarantee the future availability of funds to pay the costs of closure and postclosure care. The secretary shall prescribe the methods to be used by a permittee to demonstrate sufficient financial strength to become eligible to use a financial test or a financial guarantee procedure in lieu of providing the financial instruments listed in (1) above. Solid waste processing facilities or disposal areas, except municipal solid waste landfills, ~~may~~ also *may* demonstrate financial assurance for closure and postclosure care costs by use of ad valorem taxing power. In addition, the secretary shall require the permittee to provide liability insurance coverage during the period that the facility or area is active, and during the term of the facility or area is subject to postclosure care, in such amount as determined by the secretary to insure the financial responsibility of the permittee for accidental occurrences at the site of the facility or area. Any such liability insurance as may be required pursuant to this subsection or pursuant to the rules and regulations of the secretary shall be issued by an insurance company authorized to do business in Kansas or by a licensed insurance agent operating under authority of K.S.A. 40-246b, and amendments thereto, and shall be subject to the insurer's policy provisions filed with and approved by the commissioner of insurance pursuant to K.S.A. 40-216, and amendments thereto, except as authorized by K.S.A. 40-246b, and amendments thereto. Nothing contained in this subsection shall be deemed to apply to any state agency or department or agency of the federal government.

(i) Permits granted by the secretary, as provided in this act: (1) Shall not be transferable except that a permit for a solid waste disposal area may be transferred if both of the following conditions are met: (A) The area is permitted for only solid waste produced on site from manufacturing and industrial processes or on-site construction or demolition activities; and (B) the only change in the permit is a name change resulting from a merger, acquisition, sale, corporate restructuring or other business transaction; and (2) shall be revocable or subject to suspension whenever the secretary shall determine that the solid waste processing or disposal facility or area is, or has been constructed or operated in violation of this act or the rules and regulations or standards adopted pursuant to the act, or is creating or threatens to create a hazard to persons or property in the area or to the environment, or is creating or threatens to create a public nuisance, or upon the failure to make payment of any fee required

under this act. The secretary also may revoke, suspend or refuse to issue a permit when the secretary determines that past or continuing violations of the provisions of subsection (c)(3) of K.S.A. 65-3407, and amendments thereto, have been committed by a permittee, or any principal, shareholder or other person capable of exercising partial or total control over a permittee.

(j) In case any permit is denied, suspended or revoked the person, city, county or other political subdivision or state agency may request a hearing before the secretary in accordance with K.S.A. 65-3412, and amendments thereto.

(k) (1) No permit to construct or operate a solid waste disposal area shall be issued on or after the effective date of this act if such area is located within 1/2 mile of a navigable stream used for interstate commerce or within one mile of an intake point for any public surface water supply system.

(2) Any permit, issued before the effective date of this act, to construct or operate a solid waste disposal area is hereby declared void if such area is not yet in operation and is located within 1/2 mile of a navigable stream used for interstate commerce or within one mile of an intake point for any public surface water supply system.

(3) The provisions of this subsection shall not be construed to prohibit: (A) Issuance of a permit for lateral expansion onto land contiguous to a permitted solid waste disposal area in operation on the effective date of this act; (B) issuance of a permit for a solid waste disposal area for disposal of a solid waste by-product produced on-site; (C) renewal of an existing permit for a solid waste area in operation on the effective date of this act; or (D) activities which are regulated under K.S.A. 65-163 through 65-165 or 65-171d, and amendments thereto.

(l) Before reviewing any application for a solid waste processing facility or solid waste disposal area, the secretary shall require the following information as part of the application:

(1) Certification by the board of county commissioners or the mayor of a designated city responsible for the development and adoption of the solid waste management plan for the location where the processing facility or disposal area is or will be located that the processing facility or disposal area is consistent with the plan. This certification shall not apply to a solid waste disposal area for disposal of only solid waste produced on site from manufacturing and industrial processes or from on-site construction or demolition activities.

(2) If the location is zoned, certification by the local planning and zoning authority that the processing facility or disposal area is consistent with local land use restrictions or, if the location is not zoned, certification from the board of county commissioners that the processing facility or disposal area is compatible with surrounding land use.

(3) For a solid waste disposal area permit issued on or after July 1, 1999, proof that the permittee owns the land where the disposal area will be located, if the disposal area is: (A) A municipal solid waste landfill; or (B) a solid waste disposal area that has: (i) A leachate or gas collection or treatment system; (ii) waste containment systems or appurtenances with planned maintenance schedules; or (iii) an environmental monitoring system with planned maintenance schedules or periodic sampling and analysis requirements. This requirement shall not apply to a permit for lateral

or vertical expansion contiguous to a permitted solid waste disposal area in operation on July 1, 1999, if such expansion is on land leased by the permittee before April 1, 1999.

(m) (1) No permit to construct or operate a regional solid waste processing facility or solid disposal area shall be issued on or after the effective date of this act unless the question of the construction or operation of such facility or area has been submitted to and approved at an election called and held in the manner provided by section 2, and amendments thereto. A copy of the certification of the results of such election shall be submitted to the secretary as part of the application for a permit required by this section.

regional

(2) The provisions of this subsection shall not apply to any permit for which an application has been submitted to the secretary prior to the effective date of this act.

industrial solid waste disposal area or any

New Sec. 2. (a) Prior to submitting an application for a permit to construct or operate a regional solid waste processing facility or regional solid waste disposal area, the board of county commissioners of the county in which such facility or area is to be located shall submit the question of the construction or operation of such facility or area to the qualified electors of the county in which such facility or area is to be located. The

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election shall be held at the next special, primary or general election of the county at which all qualified electors of the county are eligible to vote. Such election shall be called and held in the manner provided by the general election law. If a majority of the voters voting at such election vote in favor thereof, an application for a permit for the construction or operation of such facility or area may be submitted as required by K.S.A. 65-3407, and amendments thereto.

(b) The provisions of this section shall not apply to any permit for which an application has been submitted to the secretary prior to the effective date of this act.

industrial solid waste disposal area or any

Sec. 3. K.S.A. 1999 Supp. 65-3407 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.
