

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Senator Lana Oleen at 11:10 a.m. on April 4, 2000 in Room 245-N of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research Department  
Theresa Kiernan, Revisor of Statutes  
Russell Mills, Legislative Research Department  
Judy Glasgow, Committee Secretary

Conferees appearing before the committee: Clyde Graeber, Secretary Ks Dept. Health & Environment  
Terry Humphrey, Kansas Trial Lawyers Association  
Kirk Lawry, President of KTLA

Chairman Oleen recognized Clyde Graeber, Kansas Department of Health and Environment, for bill introduction. Secretary Graeber stated that because of a Kansas Supreme Court ruling on March 10 this bill is necessary. Secretary Graeber requested a bill concerning water pollution prevention. Senator Vidricksen moved to introduce a bill to put the Kansas Department of Health and Environment in compliance with federal regulations. Senator Biggs seconded the motion. The motion carried

Chairman Oleen opened the hearing on

**HB 3020—Act establishing the sunflower army ammunition plant remediation trust fund**

Chairman Oleen recognized Clyde Graeber, Secretary, Kansas Department of Health and Environment, as a proponent to **HB 3020**. Secretary Graeber stated that any entity proposing to take title to a federal enclave must provide prepaid third party financial guarantees to ensure full and complete remediation of the land. (Attachment 1). Secretary Graeber explained that in the event Oz fail to pay its remediation contractor, this legislation provides the authority for KDHE to access the payment financial guarantee and pay the contractor for the remediation work performed.

There were no opponent to this bill. Chairman Oleen closed the hearing on **HB 3020**.

Chairman Oleen opened the hearing on:

**HB 3021— Act amending the Kansas Tort Claims act, concerning exemption from liability**

Chairman Oleen recognized Clyde Graeber, Secretary, Kansas Department of Health and Environment (KDHE), as a proponent to **HB 3021**. Secretary Graeber stated that this bill would provide that a governmental entity or an employee acting within the scope of employment will not be liable for damages resulting from any activity pursuant to the statute governing the development of a project on a federal enclave. (Attachment 2). Secretary Graeber stated that the project to which the law indirectly refers is the theme park proposed by the Oz Entertainment Company to be located at the Sunflower Army Ammunition Plant site.

Terry Humphrey, Executive Director Kansas Trial Lawyers Association (KTLA) stated that KTLA is an opponent to **HB 3021** and introduced Kirk Lawry, President of the KTLA. Mr. Lawry stated that KTLA is concerned that by creating a separate provision granting immunity to KDHE for supervising cleanup of the Sunflower Army Ammunition Plant, Kansas citizens and the environment may be subject to an unwarranted risk of an inadequate cleanup. (Attachment 3) Mr. Lawry stated that KTLA offered an amendment which would not eliminate the liability of the contractor or other party responsible for cleanup of hazardous substances at the Sunflower Army Ammunition Plant.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 245-N Statehouse, at 11:10 A.M. on April 4, 2000.

Senator Vidricksen stated that he would be opposed to any amendment at this time as it would complicate the bill.

Chairman Oleen closed the hearing on HB 3021 and announced that action would be taken on these bills later this week.

Chairman Oleen ask the committee to return to HB 2355–Topeka State Hospital Memorial, which had a hearing in this committee on March 16, 2000. Chairman Oleen stated that there was an amendment offered by the Kansas Association for the Blind and Visually Impaired, Inc. concerning relocations of the blind services. Chairman Oleen stated that these concerns have been addressed by a variety of other committees. Senator Oleen expressed concern about the maintenance work being done by the department of administration and suggested that maintenance be allowed to be contracted out. Senator Biggs moved that the technical amendment to clarify the Department of Administration ability to contract out the maintenance work be adopted and the date be changed to the Register. Senator Vratil seconded the motion. The motion carried. Senator Biggs moved to report the bill as amended favorably to the full Senate. Senator Vratil seconded the motion. The motion passed.

Chairman Oleen returned to Sub HB 2013–Bingo, to clarified where the funds for problem gambling would come from; 60% Kansas Lottery, 20% parimutuel, and 20% from bingo. She stated that the 80% from Lottery and parimutuel would come from the State Gaming Fund before it went into the EDIF account.

Chairman Oleen stated that time would be given today for amendments to be discussed on SB 667–electronic gaming machines. She stated that Senator Barone had indicated that he would possible have an amendment to this bill, but didn't have it ready yet. Senator Bleeker discussed the possibility of having contiguous counties be allowed to vote on the issue. Discussion by the committee concerned whether it would be a majority of the voters or whether it would have to pass in each county. Also that each location would be an independent voter base. Senator Vratil brought up a possible amendment that would change section 8, which concerns the distribution of the proceeds. He discussed an amendment that would repeal new section 8 in two years and have the legislature review the distribution of the revenue to see if all the revenue should go to the state at that time. Senator Oleen discussed a concern about the Kansas Lottery being in charge in name only, since the brains of the operations would not be located in the Kansas Lottery headquarters but at each of the tracks. No action was taken on the proposals before the committee.

Chairman Oleen ask for action on Minutes before the committee for meetings held on March 23, March 24 and March 28. Senator Becker moved to approved the minutes for the above dates; Senator Bleeker seconded the motion. The motion carried.

The meeting adjourned at 12:05 p.m. The next meeting will be March 5, 2000 at 11:00 a.m.



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

---

**Testimony on HB 3020**  
**presented to the**  
**Senate Federal and State Affairs Committee**  
**by Secretary Clyde D. Graeber**

**April 4, 2000**

HB 3020 is the result of the provision in 1999 Supp. 74-8922(c)(2) which provides that any entity proposing to take title to a federal enclave must provide prepaid third party financial guarantees to the state or any instrumentality thereof to ensure full and complete remediation of the land within the federal enclave as required in the consent decree agreement.

Kansas statutes mandate that KDHE be provided statutory authority to access the guarantee. This authority will allow KDHE to invoke the surety bond for any required payments and distribute funds for payment of remediation work.

This statutory authority will be accomplished with the passage of House Bill 3020.

In the event that Oz fails to pay its remediation contractor, this legislation provides the necessary statutory authority for KDHE to access the payment financial guarantee and pay the contractor for the remediation work performed on this project. If Oz fails to pay the contractor performing the remediation of the contamination at the federal enclave for Qualified Expenses, those Qualified Expenses may be submitted to KDHE for payment from the guarantee.



# KANSAS

## DEPARTMENT OF HEALTH & ENVIRONMENT

BILL GRAVES, GOVERNOR

Clyde D. Graeber, Secretary

---

**Testimony on HB 3021  
presented to the  
Senate Federal and State Affairs Committee  
by Secretary Clyde D. Graeber**

**April 4, 2000**

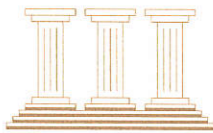
House Bill 3021 brings the 1999 Oz Statute under the Tort Claims Law.

House Bill 3021 is legislation requested by KDHE and its purpose is simply to protect KDHE and the state of Kansas from any possible lawsuits that might arise by reason of KDHE's voluntarily agreeing to oversee the remediation of the Sunflower Army Ammunition site and assume that oversight from the EPA.

House Bill 3021 amends the Kansas Tort Claims Act. In paragraph W of HB 3021, it brings under the Tort Claims Act the 1999 legislation which created the statutory authority that enables Oz project to move forward.

I feel that the provisions of HB 3021 will provide protective assurance to KDHE and the state of Kansas.





KANSAS TRIAL LAWYERS ASSOCIATION

*Lawyers Representing Consumers*

TO: Chairperson Lana Oleen and Members of the Senate Federal and State Affairs Committee

FROM: Kirk Lowry, President  
Kansas Trial Lawyers Association

RE: HB 3021 and proposed amendment

DATE: April 4, 2000

Chairperson Oleen and Members of the Senate Federal and State Affairs Committee, I am Kirk Lowry, President of the Kansas Trial Lawyers Association . I appreciate the opportunity to meet with you today to express our concern about H.B. 3021.

KTLA has no position on the proposed Oz Theme Park and no position on Kansas Department of Health and Environment participating in this project. However, KTLA is concerned that by creating a separate provision granting immunity to KDHE for supervising cleanup of the Sunflower Army Ammunition Plant, Kansas citizens and the environment may be subject to an unwarranted risk of an inadequate cleanup.

Our specific concern is that if KDHE oversees the cleanup which is poorly done by those responsible for the contamination, (or the contractor hired by those responsible), the immunity granted to KDHE by H.B. 3021 will be used as a defense by those performing the cleanup in any action against them for spread of contamination caused by inappropriate, inadequate or negligent cleanup. Specifically, the concern is if hazardous substances are released during the cleanup due to the negligence of the individual or individuals who are cleaning up the site, they will attempt to defend any claims against them on the basis that they were simply following the orders, dictates or directives of KDHE which will have been granted immunity pursuant to H.B. 3021. The responsible parties will attempt to use the immunity granted to KDHE as a shield from liability for any additional damage they cause to the environment or public health.

In order to remedy this problem KTLA believes that House Bill 3021 should be amended to specifically state that even though KDHE is being granted immunity, that grant of immunity in no way eliminates, lessens, or diminishes the liability of the contractor or other party responsible for undertaking cleanup of hazardous substances at the Sunflower Army Ammunition Plant for any damages caused by the cleanup process.

*Terry Humphrey, Executive Director*

Jayhawk Tower • 700 SW Jackson, Suite 706 • Topeka, Kansas 66603-3758 • 785.232.7

E-Mail: [triallaw@ink.org](mailto:triallaw@ink.org)

Sen. Federal & State Affairs Con

Date: 4-4-00

Attachment: # 3-1

Therefore, we respectfully request the following amendment to Section 1.(w) line 28:

Nothing in this section is intended and shall not be construed to relieve any person or entity responsible for any contamination of the subject property, including but not limited to, that caused by the contractors or parties hired to perform the cleanup, environmental remediation or removal of contaminants from the subject property, from any duty, responsibility, or liability for any contamination of the land as may be imposed or required under State or Federal law”.

Thank you for your consideration of our concern and the proposed amendment