

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on February 15, 2001 in Room 231-N of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Kansas Legislative Research Department  
Mary Torrence, Revisor of Statute's Office  
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Maurice Korphage, Director, Conservation Division, Kansas Corporation Commission, 130 S. Market, Rm 2078, Wichita, KS 67202  
Elizabeth Johnson, 24700 227<sup>th</sup> Street, Leavenworth, KS 66048  
Elmer Ronnebaum, Kansas Rural Water Association, PO Box 226, Seneca, KS 66538  
Gary Hanson, Kansas Rural Water Association, 2887 SW MacVicar, Topeka, KS 66611  
Gere White, Kansans for Common Sense Water Policy, PO Box 446, Garnett, Kansas 66032  
Dave Murphy, Friends of the Kaw, PO Box 328, Shawnee Mission, KS 66201  
Charles Benjamin, Sierra Club, Kansas Chapter, PO Box 2642, Lawrence, KS 66044-8642  
Clyde Graeber, Secretary, Kansas Department Health and Environment, 400 SW 8<sup>th</sup>, Ste 200, Topeka, KS 66603  
Bill Fuller, Kansas Farm Bureau, 2627 KFB Plaza, Manhattan, KS 66505-8508  
Richard Jones, Kansas Association of Conservation Districts, 522 Winn Road, Salina, KS 67401  
John Strickler, 1523 University Drive, Manhattan, KS 66502  
Ron Klataske, Executive Director, Audubon of Kansas, PO Box 156, Manhattan, KS 66502  
Steve Williams, Secretary, Kansas Wildlife and Parks, 900 SW Jackson, Ste 502, Topeka, KS 66612-1220  
Terry DeWeese, Co-Chair, Kansas Recreation and Park Association, 700 SW Jackson Street Ste 805, Topeka, KS 66603-3737

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She opened **HB2317** for discussion and possible action.

**HB2317:** **An act concerning oil and gas; relating to pollution from certain lease facilities and conditions.**

Rep. Dan Johnson made a motion the bill be passed favorably. Rep. Tom Sloan seconded the motion. Motion carried. Rep. Bill Light and Rep. Sharon Schwartz voted no. Rep. Dan Johnson will carry the bill on the House Floor.

The Chairperson opened hearing on **HB2200** .

**HB2200:** **An act concerning oil and gas; relating to disposition of certain fees.**

The Chairperson welcomed Maurice Korphage, Kansas Corporation Commission, to the committee. He testified in support of the bill and believes the monies raised through financial assurance fees should be set

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aside to pay for potential future plugging liabilities of orphaned wells that may not be met through the current Abandoned Well/Site Remediation Fund (orphaned wells drilled after to July 1, 1996) or those plugging liabilities which are incurred by the Division by acting as a bonding agent for certain operators who are unable to secure bonding (section (d)(4) of the statute). The statutory changes embodied in this bill through amendments to KSA 55-155, KSA 55-161, KSA 55-179, and KSA 55-180, specifically earmark those fees generated from the financial assurance process into such a dedicated well plugging assurance fund and is again supported by the Commission. (See attachment 1) Questions and discussion followed.

Written only testimony in support of the bill was submitted by Robert Krehbiel, Kansas Independent Oil and Gas Association. (See attachment 2)

There were no opponents to the bill. The Chairperson closed the hearing on **HB2200**. She asked if the committee wished to make a motion.

Rep. Tom Sloan made a motion the bill be passed favorably. Rep. Sharon Schwartz seconded the motion. Motion carried. Rep. Dennis McKinney will carry the bill on the House Floor.

The Chairperson opened **HB2131** for discussion and possible action.

**HB2131:** **An act concerning waste tires.**

Mary Torrence, Revisor to Statutes, distributed copies of the Sub-Committee report and explained the changes that were made to the bill. (See attachment 3) Discussion followed.

Rep. Tom Sloan made a motion the Sub-Committee report be adopted. Rep. Clay Aurand seconded the motion. Motion carried. Questions and discussion followed.

Rep. Tom Sloan made a motion to strike on page 8, line 6, (A) "Public education regarding proper management of waste tires"(the cost of using contractors to provide) and on page 10 strike (i) (1) "Assist in disseminating information to all tire retailers on the requirements of solid waste laws and rules and regulations relating to waste tires". Motion failed for lack of a second.

Rep. Sharon Schwartz made a motion to reinsert "16% or \$200,000 which ever is less" on line 17, page 7 ; strike "18% or \$250,000" on line 19, page 7; and reinsert "after July 1, 2002", line 19, page 7. Rep. Jeff Peterson seconded the motion. Motion failed. 6 yes to 8 nos.

Rep. Tom Sloan made a motion to strike line 41, page 5, "private companies". Rep. Bruce Larkin seconded the motion. Motion failed.

Rep. Dennis McKinney made a motion the bill be passed favorably as amended. Rep. Sharon Schwartz seconded the motion. Motion carried. Rep. Bill Light will carry the bill on the House Floor.

The Chairperson opened **HB2133** for discussion and possible action.

**HB2133:** **An act amending the multipurpose small lakes program act.**

Mary Torrence, Revisor of Statutes, distributed copies of a balloon to committee members and explained changes to the bill. (See attachment 4) Discussion followed.

Rep. Tom Sloan made a motion to adopt the balloon. Rep. Dan Johnson seconded the motion. Motion carried.

Rep. Tom Sloan made a motion the bill be passed favorably as amended. Rep. Jonathan Wells seconded the motion. Motion carried. Rep. Tom Sloan will carry the bill on the House Floor.

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MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol at 3:30 p.m. on February 15, 2001.

Chairperson Freeborn opened **HCR5009** for discussion and possible action.

**HCR5009: A concurrent resolution urging the Congress of the United States to address the conservation and preservation of the High Plains Aquifer.**

Chairperson Freeborn distributed copies of a balloon and explained changes that were made to the bill. (See attachment 5) Discussion followed.

Rep. Dan Johnson made a motion to adopt the balloon. Rep. Dennis McKinney seconded the motion. Motion carried.

Rep. Dennis McKinney made a motion the bill be passed as amended. Rep. Ray Merrick seconded the motion. Motion carried. Rep. Bill Light will carry the bill on the House Floor.

The Chairperson opened **HB2134** for discussion and possible action.

**HB2134: An act concerning solid waste.**

Mary Torrence, Revisor of Statutes, distributed copies of the Sub-Committee report, and explained changes made to the bill. (See attachment 6) Discussion followed.

Rep. Tom Sloan made a motion to adopt the Sub-Committee report. Rep. Dan Johnson seconded the motion. Motion carried.

Rep. Don Myers made a motion the bill be passed as amended. Rep. Vaughn Flora seconded the motion. Motion carried. Rep. Bill Light will carry the bill on the House Floor.

Chairperson Freeborn thanked members of the Sub-Committee on **HB2134** for their attention and hard work on the Sub-Committee report. She opened the hearing on **HB2234**:

**HB2234: An act concerning rural water districts; relating to the procedure for release of lands from a district.**

The Chairperson welcomed Elizabeth Johnson, Leavenworth, KS, to the committee. She presented testimony from John Zoellner, JD, AICP, Planning Director, Leavenworth County Planning Department, in opposition to the bill. (See attachment 7) He believes the bill seems to allow disagreements between the rural water district and the property owner to be settled in the courts. Due to the importance of water availability in the development process, the location, size, and capacities of rural water districts should be a function of the planning process. County Planning Commissioners and County Commissions should be involved in the process of rural water district land exchanges.

Elmer Ronnebaum, General Manager, Kansas Rural Water Association, was welcomed to the committee. He testified in support of the bill. In 2000, KRWA asked six attorneys who actively represent more than 50 rural water districts to consider the question of an appropriate remedy for any owner of land who requests to be released from a rural water district and who is not satisfied with the determination of a rural water board of directors, in other words, denied release. This bill reflects the recommendations formulated by that committee. KRWA encourages that the bill be approved, it would provide a recourse to landowners that presently does not exist; KRWA believes the District Court is best suited to hear such appeals. (See attachment 8)

Gary Hanson, Kansas Rural Water Association, was welcomed. He testified in support of the bill and believes the bill is the result of the efforts of an informal committee organized by KRWA to draft a bill to address the issue. The members of the committee concurred that this bill would provide a workable solution to the perceived problems with the current law and is preferable to **SB405**, and urges the committee to give it favorable consideration. (See attachment 9) Committee questions and discussion followed.

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The Chairperson closed the hearing on **HB2234**. She asked if the committee wished to make a motion.

Rep. Bruce Larkin made a motion the bill be passed favorably as amended, page 1, line 38, change "benefits" to "benefit". Rep. Dan Johnson seconded the motion. Motion carried. 11 yes, 2 nos. Rep. Ted Powers voted no. Rep. Sharon Schwartz will carry the bill on the House Floor.

Chairperson Freeborn opened the hearing on **HB2373**.

**HB2373: An act concerning the waters of the state; relating to classified streams.**

Chairperson Freeborn welcomed Gere White, Kansans for Common Sense Water Policy, to the committee. He testified in support of the bill and believes the bill provides a realistic approach to protecting the water quality in streams, lakes, and wetlands in Kansas and allows precious economic resources allocated for that protection to be targeted towards the highest priority watersheds and not towards dry and intermittent streams. The proposed bill provides a new definition for classified streams that will correct a fundamental problem within the water quality standards. (See attachment 10) Questions and discussion followed.

Written only testimony in support of the bill was submitted by Kansas Grain & Feed Association and the Kansas Fertilizer & Chemical Association (See attachment 11), and Kansas Farm Bureau (See attachment 12)

The Chairperson welcomed Dave Murphy, Friends of the Kaw, to the committee. He testified on behalf of the Friends of the Kaw in opposition to the bill. He believes the bill would reverse thirty years of water quality improvements in Kansas. It would put Kansas in clear violation of the Federal Clean Water Act, and it would threaten all uses of our rivers and streams. Also, he believes the bill was introduced without full knowledge or appreciation for the problems that the new rules could cause for water quality across the state. He believes it was drafted in haste and without consideration for other water users in the state. (See attachment 13)

Charles Benjamin, Sierra Club, Kansas Chapter, was welcomed. He testified in opposition to the bill and believes the bill will eliminate all protection from many important Kansas streams; eliminate protection of surface waters and aquifers for use as drinking water; eliminate protection of lakes and wetlands; eliminate any protection of aquatic life; and create an inevitable legal clash with EPA. Kansas is due for another triennial review of its water quality standards in 2002. He believes it would be better for all Kansans if the proposals contained in this legislation were considered in an open public process over several months rather than in a legislative hearing where there are time pressures to consider many different bills and issues. (See attachment 14) Questions and discussion followed.

Written only testimony in opposition to the bill was submitted by John Metzler, Johnson County Wastewater (See attachment 15) and Shelley King, Kansas Society of Professional Engineers. (See attachment 16)

The Chairperson welcomed Clyde Graeber, Secretary, Kansas Department of Health and Environment, to the committee. He addressed the committee in a neutral position to the bill. KDHE has concerns regarding certain provisions of the bill that they believe would hinder the adequate protection of the surface waters of the state. These provisions also place in jeopardy, Kansas' compliance with federal laws and regulations. He asked the committee to consider allowing the latitude, not only to KDHE but also others concerned with this legislation, to work toward the development of substitute legislation that will accomplish the intended goals and still properly protect the waters of our state. (See attachment 17) Questions and discussion followed.

The Chairperson thanked Mr. Graeber for addressing the committee and his staff for being on hand to answer questions raised by the committee.

Chairperson Freeborn closed the hearing on **HB2373** and opened the hearing on **HB2471**.

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**HB2471: An act creating the Kansas natural resource legacy alliance; providing for development of a vision for the state's natural resources.**

The Chairperson welcomed Bill Fuller, Kansas Farm Bureau, to the committee. He testified in support of the bill and believes the bill proposes to create the "Kansas Natural Resource Legacy Alliance" charged with developing a vision and proposing recommendations for protecting and enhancing the state's natural resources. A Working Group organized to develop a quality of life initiative related to natural resources, the environment and economic development was formed and has been working several months examining needs, programs and resources. The core group has consisted of representatives of private organizations and state agencies. The bill proposes to create a 13-member alliance appointed by the legislative leadership and the governor. (See attachment 18)

Richard Jones, Kansas Association of Conservation Districts, was welcomed. He testified in support of the bill. The 105 Conservation Districts in Kansas are at work locally everyday protecting and improving the state's natural resources. They set goals and establish local priorities directed at improving resources at their local level. A Kansas Natural Resources Legacy Alliance with membership from natural resources, environmental, and industrial organizations and groups working together to develop a long range plan and policy for our state's natural resources will provide Conservation Districts a better opportunity to; Set priorities at the local level that fit into a State Long Range Plan; Direct local natural resource programs to meet the objectives identified in a Long Range Plan; and Inform and Educate local citizens on the importance of protecting local resources. (See attachment 19)

John Strickler, Manhattan, Kansas, was welcomed to the committee. He testified in support of the bill, he did not represent any specific organization, but has been involved with a core group of individuals and organizations interested in the areas of natural resources and the environment in Kansas. The Alliance created by this bill will be an attempt to take a pro-active look at these areas and develop a long range plan to identify and address future environmental and natural resource priorities and needs. The Alliance will also be an opportunity to explore the options to develop and expand public/private partnerships to achieve the desired future within the context of balanced economic development, a healthy environment, and sustainable natural resources. (See attachment 20)

Ron Klataske, Executive Director, Audubon of Kansas, was welcomed. He testified on behalf of Audubon of Kansas, which represents 5,000 members of eleven chapters and their statewide organization in Kansas. Audubon members, like most residents, enjoy the wildlife and other natural resources of the state. Hunting, wildlife watching, fishing and other forms of outdoor recreation and nature appreciation are of great importance to the quality of life of Kansans and to the State of Kansas. He believes the bill is very well written and offered one important addition to the language of the bill. Following the phrase fish and wildlife resources on line 19 of page 2, please add "prairie and grasslands resources". (See attachment 21)

Steve Williams, Secretary of Wildlife and Parks, was welcomed to the committee. He testified in support of the bill. On behalf of the six state agencies (Department of Health and Environment, Department of Agriculture, Kansas Water Office, Kansas Forest Service, State Conservation Commission and Department of Wildlife and Parks) that have worked with private partners to develop the concept and draft this bill, wants to applaud this committee for considering, and indicates a strong support for the bill. This bill is an act that establishes a Kansas Natural Resource Legacy Alliance to develop a vision for the state's natural resources. He believes this bill represents an unprecedented effort and opportunity to draw on the collective wisdom and vision of the Governor, the Kansas legislature, state agencies, private organizations, and private individuals to build the foundation for future natural resource management in Kansas. (See attachment 22)

Terry DeWeese, Co-Chair, Kansas Recreation and Park Association, was welcomed. He testified in support of the bill. The Kansas Recreation and Park Association has been involved with a Working Group made up of private organizations and state agencies to develop a quality of life initiative related to natural resources, the environment and economic development that was formed to examine the needs, programs and resources across the State of Kansas. This bill requests that the Kansas Natural Resource Legacy Alliance made up of

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13 voting members and 6 ex-officio members be created. (See attachment 23) Questions and discussion followed.

There were no opponents to the bill. The Chairperson closed the hearing on **HB2471**. She asked if the committee wished to make a motion.

Rep. Laura McClure made a motion to change page 2, line 2, replace “decent economic standard” with “economic development”, line 3, add “protection of natural resources” & “opportunities for natural resource and environmental education”, line 19, add “prairie and grassland resources”, line 36, replace “committee” with “alliance”. Rep. Dan Johnson seconded the motion. Motion carried.

Rep. Dan Johnson made a motion the bill be passed as amended. Rep. Laura McClure seconded the motion. Motion carried. Rep. Joann Freeborn will carry the bill on the House Floor.

Chairperson Freeborn reviewed the committee agenda for Tuesday, February 20.

The meeting adjourned at 7:25 p.m. The next meeting is scheduled for Tuesday, February 20, 2001.

# HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: February 15, 2001

NAME	REPRESENTING
John Strickler	Myself
Jim Allen	EKOGA
Andy Shaw	SWKIA
Mike Beam	Ks. Lustr Assn.
Jodd Johnson	KLA
Butt Myers	KAVG
Travis Myers	Page
Bo Koehn	Page
Julie Jimisin	KGFA
Doug Wareham	KGFA / KECA
Kacy Street	SCC
Scott Carlson	see
David Miller	DOB
Steve Holman	KDWP
Tom Day	KCC
Ken Peterson	KDC
TERRY DUVALL	KWO
Jamie Clover Adams	KS Dept. of Agriculture
Rebecca Reed	KS Dept. of Agriculture

Joe Fund

Terry Newhouse

KDHE

Kansas Recreation Park Association

# HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: February 15, 2001

NAME	REPRESENTING
Margaret Faust	Ks Water Office
DAVID Muehl	Ks Rural WATER Ass'n
ELMER RONNEBAUM	Ks Rural Water
GARY Hanson	Ks Rural Water
Elizabeth Johnson	self.
DAVE MURPHY	FRIENDS OF THE KAW
Mike Atwell	Friends of the KAW
Don Ryz	KACD
Richard G Jones	KACD
Bill Juller	Kansas Farm Bureau
Leslie Kaufman	Ks Farm Bureau
Shawn Smith	MAFDAC
Gene M. Ballew	KEAV
Karl Muehlner	KDHE



Testimony of M.L. Korphage  
Director  
Conservation Division  
of the  
State Corporation Commission  
before the  
House Committee on the Environment  
February 15, 2001

Good afternoon, Chair Freeborn and members of the committee. I am M.L. Korphage, Director, of the Conservation Division of the State Corporation Commission. I am appearing here today to testify in support of HB 2200.

During the 1996 legislative session K.S.A. 55-155 was amended to provide additional requirements for all operators who operate oil and gas wells in Kansas. Specifically those operators were required, beginning in January of 1998, to demonstrate to the Commission some kind of financial assurance. The statute was very specific as to the amount and kinds of financial assurances that would be required for oil and gas operators when they applied for a KCC license to operate. Those types of assurances included:

- A. Operators with an acceptable level of compliance over the preceding 36 months with Commission rules and regulations would provide assurance through the payment of a \$50 non refundable fee.
- B. Operators that have not been licensed for at least the 36 preceding months or have not met the acceptable record of compliance requirement must furnish one of the following as financial assurance on an annual basis:
  1. A performance bond or letter of credit in the amount equal to \$.75 X the aggregate depth of all wells under their control
  2. A blanket bond or letter of credit between \$5,000 and \$30,000 based on the depth and number of all wells operated.
  3. A fee equal to 3% of the blanket bond required under 1 or 2 above.
  4. A first lien on equipment equal to the bond requirement.
  5. Other financial assurances as approved by the Commission.

The 1996 amendment to K.S.A. 55-155 further directed the Commission to deposit all revenues generated pursuant to these requirements into the conservation fee fund. As such those funds could be used to plug abandoned wells and remediation sites or could be used to pay general operating expenses of the Conservation Division.

*House Environment  
2-15-01  
Attachment 1*

During the 1997-1998 audit of the Conservation Division the audit team from legislative post-audit suggested that the Division seek clarification of legislative intent with respect to these funds. The question being: "Did the legislature intend these funds to be used for future well pluggings not covered by the Abandoned Well / Site Remediation Fund or should the monies be used to fund normal operations of the Conservation Division?" During the past three calendar years since the implementation of financial assurance requirements the Conservation Division has tracked the amount of financial assurance monies generated through the licensing process as set out in the 1996 amendment to K.S.A. 55-155 and set those monies aside. During this time period the Division has provided this information during our annual status report to this and other legislative committees. In calendar year 1998 those fees generated in excess of \$160,000 and in calendar year 1999 in excess of \$150,000. This last year the assurance fees generated in excess of \$200,000.

The Commission believes the monies raised through financial assurance fees should be set aside to pay for potential future plugging liabilities of orphaned wells that may not be met through the current Abandoned Well/ Site Remediation Fund ( orphaned wells drilled after to July 1, 1996) or those plugging liabilities which are incurred by the Division by acting as a bonding agent for certain operators who are unable to secure bonding (section (d)(4) of the statute). The statutory changes embodied in HB 2200 through amendments to K.S.A . 55-155, K.S.A . 55-161, K.S.A .55-179, and K.S.A . 55-180, specifically earmark those fees generated from the financial assurance process into such a dedicated well plugging assurance fund and is again supported by the Commission.

Should the members of the Committee have any questions I would be glad to address them.



## KANSAS INDEPENDENT OIL & GAS ASSOCIATION

105 S. BROADWAY • SUITE 500 • WICHITA, KANSAS 67202-4262  
(316) 263-7297 • FAX (316) 263-3021

TESTIMONY OF  
ROBERT E. KREHBIEL, EXEC. V.P.  
KANSAS INDEPENDENT OIL & GAS ASSOCIATION  
ON HB 2200  
February 15, 2001

Madame Chair and Members of the Committee:

My name is Robert E. Krehbiel and I am appearing on behalf of the Kansas Independent Oil & Gas Association. The Kansas Independent Oil & Gas Association was organized 64 years ago and consists of independent oil and gas producers, service companies and professionals serving the oil and gas industry in Kansas. I appear here to support HB 2200.

The abandoned well fund was created during the 1996 Legislative Session with the passage of H. Sub for SB 755. The purpose of the fund was to provide the Conservation Division with additional funding with which to plug existing abandoned oil and gas wells. Funding of \$1.6 million came from the four different sources with which you are familiar.

In addition to the creation of the fund to plug abandoned wells in existence at the time the bill became effective, the legislation directed that oil and gas operators establish financial assurance before a license is granted to assure that all wells drilled after July 1, 1996, the effective date of the act, would be properly plugged upon abandonment.

It was the understanding of our Association that the abandoned well fund was to be utilized for plugging abandoned wells drilled before July 1, 1996, and that financial assurance funds and requirements were to be used to assure plugging of wells drilled after July 1, 1996.

We believe it would be contrary to the intention of H. Sub for SB 755 to use financial assurance funds to pay for plugging old oil and gas wells. We therefore, support the creation of a well plugging assurance fund in the state treasury to affirm this intent.

Thank you very much.

*House Environment  
2-15-01  
Attachment 2*

HOUSE BILL No. 2131

By Committee on Environment

1-23

House Environment  
2-15-01  
Attachment 3

9 AN ACT concerning waste tires; amending K.S.A. 2000 Supp. 65-3424,  
10 65-3424a, ~~65-3424d~~, 65-3424f, 65-3424g, 65-3424k and 65-3426 and  
11 repealing the existing sections. 65-3424b,

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2000 Supp. 65-3424 is hereby amended to read as  
15 follows: 65-3424. As used in K.S.A. 65-3424 through 65-3424i, and  
16 amendments thereto, unless the context otherwise requires:

17 (a) *Terms have the meaning provided by K.S.A. 65-3402, and amend-*  
18 *ments thereto.*

19 (b) "Abatement" means the processing or removing to an approved  
20 storage site of waste tires which are creating a danger or nuisance.

21 ~~(b)~~ (c) "Beneficial use" means the use or storage of waste tires in a  
22 way that creates an on-site economic benefit, ~~other than from processing~~  
23 ~~or recycling,~~ to the owner of the tires.

24 ~~(c)~~ (d) "Contaminated waste tire" means a tire which, as determined  
25 in accordance with rules and regulations adopted by the secretary, is re-  
26 covered in a project to abate a waste tire accumulation and is so coated  
27 by or filled with dirt, mud, sludge or other natural substances as to render  
28 the tire substantially unsuitable for processing.

29 ~~(d)~~ (e) "Landfill" means a disposal site in which the method of dis-  
30 posing of solid waste is by landfill, dump or pit and which has a solid  
31 waste disposal area permit issued under K.S.A. 65-3401 et seq., and  
32 amendments thereto.

33 ~~(e)~~ (f) "Mobile waste tire processor" means a person who processes  
34 waste tires at other than a fixed site.

35 ~~(f)~~ "Municipal landfill" means a landfill where residential waste, or  
36 residential and other nonhazardous waste, is placed for disposal.

37 ~~(g)~~ "Person" means any individual, association, partnership, limited  
38 partnership, corporation or other entity.

39 ~~(h)~~ (g) "Process" means ~~bale or:~~ (1) Cut or otherwise alter whole  
40 waste tires so that they are no longer whole; or (2) *bale for disposal or*  
41 *beneficial use.*

42 ~~(i)~~ "Secretary" means the secretary of health and environment.

43 ~~(j)~~ (h) "Store" or "storage" means the placing of waste tires in a man-

3-2

1 ner that does not constitute disposal of the waste tires. Storage includes  
2 the beneficial use of waste tires as silo covers and such other beneficial  
3 uses as the secretary determines do not create health or environmental  
4 risks.

5 ~~(k)~~ (i) "Tire" means a continuous solid or pneumatic rubber covering  
6 used to encircle the wheel of a vehicle or aircraft, or an innertube of such  
7 a covering.

8 ~~(l)~~ (j) "Tire retailer" means a person in the business of selling new or  
9 used replacement tires at retail.

10 ~~(m)~~ (k) "Used tire" means a tire that: (1) Has been removed from a  
11 wheel following a period of use or remains on a wheel removed from a  
12 vehicle or aircraft following a period of use; and (2) has been determined  
13 to have value in accordance with rules and regulations established pur-  
14 suant to subsection (e)(7) of K.S.A. 65-3424b, and amendments thereto.

15 ~~(n)~~ (l) "Vehicle" has the meaning provided by K.S.A. 8-1485 and  
16 amendments thereto and includes implements of husbandry, as defined  
17 by K.S.A. 8-1427 and amendments thereto.

18 ~~(o)~~ (m) "Waste tire" means a whole tire that: (1) Has been removed  
19 from a wheel following a period of use or remains on a wheel removed  
20 from a vehicle or aircraft following a period of use; and (2) is no longer  
21 suitable for its original intended purpose because of wear, damage or  
22 defect.

23 ~~(p)~~ (n) "Waste tire collection center" means a site where used or  
24 waste tires are collected from the public or from customers of a business  
25 prior to being offered for recycling or disposal.

26 ~~(q)~~ (o) "Waste tire processing facility" means a fixed site where equip-  
27 ment is used to process waste tires.

28 ~~(r)~~ (p) "Waste tire site" means a site at which 1,000 or more whole  
29 waste tires are accumulated. "Waste tire site" does not include: (1) A site  
30 that is an integral part of a permitted waste tire processing facility; (2) an  
31 accumulation of tires on the premises of a tire retreading business, for  
32 use in the business; (3) an accumulation of tires on the premises of a  
33 business that, in the ordinary course of business, removes tires from mo-  
34 tor vehicles; ~~or~~ (4) an accumulation of tires on the premises of a tire  
35 retailer, accumulated in the normal course of the tire retailer's business;  
36 *or (5) an accumulation of tires which has a beneficial use approved by*  
37 *statute or rules and regulations adopted by the secretary, or by the sec-*  
38 *retary pursuant to statute or rules and regulations.*

39 Sec. 2. K.S.A. 2000 Supp. 65-3424a is hereby amended to read as  
40 follows: 65-3424a. (a) The owner or operator of any waste tire site shall  
41 provide the department with information concerning the site's location  
42 and size and the approximate number of waste tires that are accumulated  
43 at the site.

(b) No person shall:

(1) Maintain a waste tire site unless such person holds a valid permit issued for such site pursuant to K.S.A. 65-3424b and amendments thereto;

(2) dispose of waste tires in the state unless the waste tires are disposed of for processing, or collected for processing, at a solid waste processing facility, a waste tire site which is an integral part of a waste tire processing facility, a waste tire processing facility or a waste tire collection center or are made available to: (A) The department of wildlife and parks for use by the department; or (B) a person engaged in a farming or ranching activity, including the operation of a feedlot as defined by K.S.A. 47-1501, and amendments thereto, as long as the accumulation has a beneficial use to the person accumulating the tires and (i) the secretary determines that the use has no adverse environmental effects and (ii) the accumulation is in accordance with all applicable zoning regulations;

(3) deposit waste tires in a landfill as a method of ultimate disposal, except that the secretary *may authorize*, by rules and regulations, ~~may authorize or by permits issued pursuant to K.S.A. 65-3407, and amendments thereto:~~ (A) The final disposal, ~~before July 1, 2000, of uncontaminated of processed waste tires at a municipal landfill if the tires have been cut into sufficiently small parts to assure their proper disposal,~~ (B) the final disposal of processed waste tires at a permitted waste tire monofill; ~~(C) permitted municipal solid waste landfills and permitted waste tire monofills;~~ (B) the final disposal of contaminated whole, unprocessed waste tires at ~~a municipal landfill or permitted waste tire monofill,~~ (D) ~~permitted municipal solid waste landfills and permitted waste tire monofills;~~ (C) the use of waste tires in their original state as part of a proven and approved leachate collection system at a landfill; or ~~(E) (D) the use of waste tires which have been cut into two or more parts as daily cover material for a landfill;~~ or

(4) receive money in exchange for waste tires unless: (A) The person holds a permit issued by the secretary pursuant to K.S.A. 65-3424b, and amendments thereto; or (B) the person is a tire retailer who collects waste tires from the public in the ordinary course of business.

Insert section 3, attached, and renumber remaining sections

Sec. 3. K.S.A. 2000 Supp. 65-3424d is hereby amended to read as follows: 65-3424d. (a) In addition to any other tax imposed upon the retail sale of new vehicle tires, there is hereby imposed on retail sales of new vehicle tires (excluding innertubes), including new tires mounted on a vehicle sold at retail for the first time, an excise tax at the following rate: ~~(1) Before July 1, 2001, of \$ .50 per vehicle tire, and (2) on or after July 1, 2001, \$ .25.~~ Such tax shall be paid by the purchaser of such tires and collected by the retailer thereof.

at the rate of \$.50 per vehicle tire before July 1, 2003, and \$.25 per vehicle tire on and after July 1, 2003

(b) The tax imposed by this section collected by the retailer shall

1 become due and payable as follows: When the total tax for which any  
2 retailer is liable under this act does not exceed the sum of \$80 in any  
3 calendar year, the retailer shall file an annual return on or before January  
4 25 of the following year; when the total tax liability does not exceed \$1,600  
5 in any calendar year, the retailer shall file returns quarterly on or before  
6 the 25th day of the month following the end of each calendar quarter;  
7 when the total tax liability exceeds \$1,600 in any calendar year, the retailer  
8 shall file a return for each month on or before the 25th day of the follow-  
9 ing month. Each person collecting the tax imposed pursuant to this sec-  
10 tion shall make a true report to the department of revenue, on a form  
11 prescribed by the secretary of revenue, providing such information as may  
12 be necessary to determine the amounts of taxes due and payable here-  
13 under for the applicable month or months, which report shall be accom-  
14 panied by the tax disclosed thereby. Records of sales of new tires shall be  
15 kept separate and apart from the records of other retail sales made by  
16 the person charged to collect the tax imposed pursuant to this section in  
17 order to facilitate the examination of books and records as provided  
18 herein.

19 (c) The secretary of revenue or the secretary's authorized represen-  
20 tative shall have the right at all reasonable times during business hours  
21 to make such examination and inspection of the books and records of the  
22 person required to collect the tax imposed pursuant to this section as may  
23 be necessary to determine the accuracy of such reports required  
24 hereunder.

25 (d) The secretary of revenue is hereby authorized to administer and  
26 collect the tax imposed by this section and to adopt such rules and reg-  
27 ulations as may be necessary for the efficient and effective administration  
28 and enforcement of the collection thereof. Whenever any person liable  
29 to collect the taxes imposed hereunder refuses or neglects to pay them,  
30 the amount, including any penalty, shall be collected in the manner pre-  
31 scribed for the collection of the retailers' sales tax by K.S.A. 79-3617 and  
32 amendments thereto.

33 (e) The secretary of revenue shall remit daily to the state treasurer  
34 all revenue collected under the provisions of this section. The state trea-  
35 surer shall deposit the entire amount of each remittance in the state  
36 treasury and credit it to the waste tire management fund.

37 (f) Whenever, in the judgment of the secretary of revenue, it is nec-  
38 essary, in order to secure the collection of any taxes, penalties or interest  
39 due, or to become due, under the provisions of this act, the secretary may  
40 require any person charged with the collection of such tax to file a bond  
41 with the director of taxation under conditions established by and in such  
42 form and amount as prescribed by rules and regulations adopted by the  
43 secretary.

(g) The secretary of revenue and the secretary of health and environment shall cooperate to: (1) Ensure that retailers required to collect the tax imposed by this section collect such tax on sales of tires for all vehicles, as defined by K.S.A. 65-3424 and amendments thereto; and (2) develop and distribute to tire retailers educational materials that emphasize appropriate waste tire management practices.

Sec. 4. K.S.A. 2000 Supp. 65-3424f is hereby amended to read as follows: 65-3424f. ~~(a) The secretary shall establish a program to make abatement grants to private companies, cities and counties which, individually or collectively, submit to the secretary plans approved by the secretary. Abatement grants shall be used for: (1) Projects to abate waste tire accumulations in existence before July 1, 1990, but no grants for such projects shall be used for any tires accumulated, or added to an existing accumulation, on or after July 1, 1990, and (2) programs to allow free lawful disposal of waste tires not generated in the ordinary course of a business, but not more than one such program shall be conducted per county. Not more than one abatement grant shall be awarded to abate the same waste tire accumulation unless it can be demonstrated by the applicant that the waste tire accumulation exceeded initial quantity estimates or that unknown circumstances, identified by the applicant, increased project difficulty and cost. No abatement grant payment shall be made on or after July 1, 2002. In awarding abatement grants, the secretary shall give preference to projects which include waste tire recycling or energy recovery. The secretary may authorize waste tire landfilling under abatement grant projects if the waste tires are contaminated or if no practical in-state markets are identified.~~

~~(b) The secretary shall establish a program to make enforcement grants to counties having populations of more than 100,000 which, individually or collectively, submit to the secretary plans approved by the secretary. Enforcement grants shall be used to pay the county's or counties' costs of assessing and enforcing compliance with this act and rules and regulations adopted under this act and to educate the public on the provisions and purposes of this act. Enforcement grants shall be for an amount not exceeding 75% of the costs incurred by the county or counties for eligible costs.~~

~~(c) The secretary shall establish a competitive waste tire recycling grant program to stimulate the processing of waste tires and the use and purchase of tire-derived products. Recycling grants under such program may be made to cities, counties, schools, colleges, universities, regional entities that are part of an interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq., and amendments thereto, and nonprofit organizations to purchase tire-derived products for playgrounds, running tracks, hiking trails or other uses approved by the secretary to stimulate in-state~~

(a)

private companies

tire chips and other

, septic systems



1 businesses and institutions to process waste tires and utilize tire-derived  
 2 material to manufacture and market consumer products. Waste tire re-  
 3 cycling grants shall be in an amount not exceeding ~~75%~~ of the cost of the  
 4 approved purchase. Approved purchases may be from in-state and out-  
 5 of-state companies in fiscal years 2002 and 2003. After July 1, 2003, ap-  
 6 proved purchases shall be only from companies which are located in Kan-  
 7 sas ~~and which recycle waste tires generated in Kansas at a minimum rate~~  
 8 ~~of 50% of total waste tire throughput.~~ Applications for waste tire recycling  
 9 grants shall be reviewed by the solid waste grants advisory committee  
 10 established pursuant to K.S.A. 65-3426, and amendments thereto, which  
 11 shall make recommendations to the secretary regarding project eligibility  
 12 and funding.

, commercial or industrial

50%

. Grants may be awarded only for purchases from companies utilizing a minimum of 50% Kansas-generated waste tires in their recycling process.

13 ~~(e) Private companies, cities and counties may join together, pooling~~  
 14 ~~their financial resources, when utilizing their grants for the purposes de-~~  
 15 ~~scribed in subsection (a).~~

(b)

16 ~~(d) The secretary may provide technical assistance, upon request, to~~  
 17 ~~a private company, city, county or group of private companies, cities or~~  
 18 ~~counties desiring assistance any eligible entity in applying for waste tire~~  
 19 ~~grants or choosing a method of waste tire management which would be~~  
 20 ~~an eligible use of the grant funds described in subsections (a) and (b).~~

subsection (a)

21 ~~(c) The secretary shall submit to the legislature, on or before the first~~  
 22 ~~day of the regular legislative session each year, a report of all grants made~~  
 23 ~~pursuant to this section. The report shall include: (1) The total contract~~  
 24 ~~amounts awarded for each type of grant in each fiscal year and, of those~~  
 25 ~~amounts, the total amount awarded to individual counties, groups of~~  
 26 ~~counties and private entities; and (2) with respect to each grant awarded,~~  
 27 ~~the contract amount and type of grant, the recipient, a description of the~~  
 28 ~~project for which the grant was awarded, the number of tires involved~~  
 29 ~~and the amount actually spent. The secretary shall submit the report by~~  
 30 ~~filing it with the secretary of the senate, the chief clerk of the house of~~  
 31 ~~representatives and the chairperson and ranking minority member of each~~  
 32 ~~of the senate and house committees on energy and natural resources.~~

(c)

33 Sec. 5. K.S.A. 2000 Supp. 65-3424g is hereby amended to read as  
 34 follows: 65-3424g. (a) There is hereby established in the state treasury  
 35 the waste tire management fund.

36 (b) Money from the following sources shall be credited to the waste  
 37 tire management fund:

- 38 (1) Revenue collected from the excise tax by K.S.A. 65-3424d and
- 39 amendments thereto;
- 40 (2) permit application and renewal fees provided for by K.S.A. 65-
- 41 24b and amendments thereto;
- 42 (3) interest provided for by subsection (e);
- 43 (4) additional sources of funding such as reimbursements and appro-

priations intended to be used for the purposes of the fund;

(5) any recoveries from abatement and enforcement actions provided for by K.S.A. 2000 Supp. 65-3424k and amendments thereto;

(6) any interagency fund transfers relevant to providing business development grants for businesses engaged in recycling or utilizing waste tires in resource recovery programs provided for by K.S.A. 65-3424f and amendments thereto; and

(7) any other moneys provided by law.

(c) Moneys in the waste tire management fund shall be used only for the purpose of:

(1) Making grants as provided by K.S.A. 65-3424f, and amendments thereto;

(2) paying compensation and other expenses of employing personnel to carry out the duties of the secretary pursuant to K.S.A. 65-3424 through 65-3424h, and amendments thereto, but not more than the following shall be used for such purpose: (A) For fiscal years beginning before July 1, 2002, 16% or \$200,000, whichever amount is less, of the moneys credited to the fund during the preceding fiscal year; and (B) for fiscal years beginning on or after July 1, 2002, 32% or \$200,000, whichever amount is less, of the moneys credited to the fund during the preceding fiscal year;

18% or \$250,000

~~(3) action by the department before July 1, 2001, to abate waste tires accumulated prior to July 1, 1990, or to abate a nuisance or risk to the public health or the environment created or which could be created by waste tires accumulated after July 1, 1990, if the owner or operator of the site has not been identified or has not abated the nuisance;~~

(3) action by the department before July 1, 2003, to abate waste tires accumulated prior to July 1, 1990;  
(4) action by the department to implement interim measures to minimize nuisances or risks to public health or the environment that are or could be created by waste tire accumulations, until the responsible party can fully abate the site or until a state clean-up occurs pursuant to K.S.A. 65-3424k, and amendments thereto;  
(5) action by the department, with the consent of the city or county, to pay

~~(4) action by the department before July 1, 2001, to abate waste tires accumulated by a city or county as a result of a temporary waste tire amnesty collection program, authorized by the department, to allow residents of the city or county free disposal of waste tires generated by farming and ranching activities and waste tires not generated in the ordinary course of any other business, provided that not more than one such amnesty program is conducted by the city or county after January 1, 1990, and~~

~~(5) action by the department after July 1, 2001, to implement interim measures to minimize nuisances or risks to public health or the environment that are or could be created by waste tire accumulations, until the responsible party or county can fully abate the site~~

~~(3) with the consent of the city or county, payment for the removal and disposal or on-site stabilization of waste tires which have been illegally accumulated or, with respect to the conditions of a permit issued by the department pursuant to K.S.A. 65-3407 or 65-3424b, and amendments thereto, illegally managed, when the responsible party is unknown or~~

after July 1, 1990,

1 *unwilling or unable to perform the necessary corrective action, provided*  
2 *moneys in the fund shall only be used to pay up to 75% of the costs of*  
3 *the required abatement action and the city or county shall pay the re-*  
4 *maining 25% of such costs; and*

5 ~~(4) the costs of using contractors to provide public education and~~  
6 ~~technical training to persons involved with the management of waste tires.~~

7 (d) All expenditures from the waste tire management fund shall be  
8 made in accordance with appropriations acts upon warrants of the direc-  
9 tor of accounts and reports issued pursuant to vouchers approved by the  
10 secretary.

11 (e) On or before the 10th of each month, the director of accounts  
12 and reports shall transfer from the state general fund to the waste tire  
13 management fund interest earnings based on: (1) The average daily bal-  
14 ance of moneys in the waste tire management fund for the preceding  
15 month; and (2) the net earnings rate for the pooled money investment  
16 portfolio for the preceding month.

17 Sec. 6. K.S.A. 2000 Supp. 65-3424k is hereby amended to read as  
18 follows: 65-3424k. (a) ~~Before July 1, 2001, the secretary may undertake~~  
19 ~~appropriate abatement action and may enter into contracts, including~~  
20 ~~grant contracts, for abatement of waste tire accumulations, utilizing funds~~  
21 ~~from the waste tire management fund. After July 1, 2001, the secretary's~~  
22 ~~actions shall be limited to contractual services to perform interim meas-~~  
23 ~~ures designed to minimize nuisances or risks to public health or the en-~~  
24 ~~vironment created by a waste tire accumulation.~~

25 ~~(b) Any authorized representative of the secretary may enter, at rea-~~  
26 ~~sonable times and upon written notice, onto any property or premises~~  
27 ~~where an accumulation of waste tires is located to conduct an abatement~~  
28 ~~of the accumulation or to perform interim measures to minimize nu-~~  
29 ~~isances or risks: (1) An inspection and site assessment to determine whether~~  
30 ~~the accumulation creates a nuisance or risk to public health or and safety~~  
31 ~~or to the environment created by a waste tire accumulation; or (2) interim~~  
32 ~~measures to minimize risk to public health and safety or to the~~  
33 ~~environment.~~

34 ~~(c) [b]~~ Whenever the secretary has reason to believe that an owner  
35 ~~or operator has accumulated waste tires that create accumulation of waste~~  
36 ~~tires creates a nuisance or risk to public health or and safety or to the~~  
37 ~~environment or is in violation of rules and regulations adopted by the~~  
38 ~~secretary or conditions of a permit issued by the secretary, the secretary~~  
39 ~~may require that owner or operator to abate the accumulation the person~~  
40 ~~or persons responsible for the accumulation to carry out abatement activ-~~  
41 ~~ities. Such abatement activities shall be performed in accordance with a~~  
42 ~~plan approved by the secretary. The secretary shall give notice, by letter,~~  
43 ~~to the property owner and operator responsible parties that the waste~~

(6) the costs of using contractors to provide: (A) Public education regarding proper management of waste tires; (B) technical training of persons on the requirements of solid waste laws and rules and regulations relating to waste tires; and (C) services described in subsection (i) of K.S.A. 65-3424k, and amendments thereto

Before July 1, 2003, the secretary may undertake appropriate abatement action and may enter into contracts for the abatement of waste tires accumulated before July 1, 1990, utilizing funds from the waste tire management fund.

(b)

(c)

3-9

1 tires constitute a nuisance or risk to public health or the environment,  
 2 and that the waste tire accumulation must be abated within a specified  
 3 period. ~~Before July 1, 2001,~~ The secretary may undertake abatement action  
 4 utilizing funds from the waste tire management fund if ~~the owner or~~  
 5 ~~operator fails~~ *responsible parties fail to take the required action within*  
 6 ~~the specified time period.~~ After July 1, 2001, the secretary's actions shall  
 7 be limited to contractual services to perform interim measures designed  
 8 to minimize nuisances or risks to public health or the environment created  
 9 by a waste tire accumulation. *The department and its representatives are*  
 10 *authorized to enter private property to perform abatement activities if*  
 11 *the responsible party fails to perform required clean-up work, but no*  
 12 *entry shall be made without the property owner's consent except upon*  
 13 *notice and hearing in accordance with the Kansas administrative proce-*  
 14 *dures act.*

(1) The waste tires were accumulated before July 1, 1990, and abated  
 before July 1, 2003; or  
 (2) the waste tires were accumulated after July 1, 1990, and the  
 responsible parties fail to take the required action within the time period  
 specified in the notice.

15 ~~[(c)]~~ All costs incurred by the secretary in abatement of waste tires ac-  
 16 cumulated after July 1, 1990, or in performing interim measures, includ-  
 17 ing administrative and legal expenses, are recoverable from ~~an owner or~~  
 18 ~~operator a responsible party or parties~~ and may be recovered in a civil  
 19 action in district court brought by the secretary. ~~Abatement costs recov-~~  
 20 ~~ered under this section~~ *If any abatement costs are recovered under this*  
 21 *section, the city or county that shared in the cost of the abatement action*  
 22 *shall be reimbursed its costs not to exceed 25% of the amount recovered.*  
 23 *The remaining amount recovered shall be remitted to the state treasurer,*  
 24 *who shall deposit the entire amount in the state treasury and credit it to*  
 25 *the waste tire management fund. An action to recover abatement or in-*  
 26 *terim measures costs may be commenced at any stage of an abatement.*

(d)

accumulated after July 1, 1990

27 (d) ~~In performing or entering contracts for abatement actions under~~  
 28 ~~this section, the secretary shall give preference to actions that recycle the~~  
 29 ~~waste tires or burn the waste tires for energy recovery. Direct abatement~~  
 30 ~~expenditures may include landfilling when waste tires are contaminated~~  
 31 ~~or when practical in-state markets cannot be identified.~~

(e) In performing or entering contracts for abatement actions under this  
 section, the secretary shall give preference to actions that recycle waste  
 tires or burn waste tires for energy recovery. Direct abatement  
 expenditures may include landfilling when waste tires are contaminated or  
 when feasible in-state markets cannot be identified.

32 ~~[(d)]~~ *Permits granted by the secretary pursuant to K.S.A. 65-3424b,*  
 33 *and amendments thereto, shall not be transferable and may be revoked*  
 34 *or suspended whenever the secretary determines that the permit holder*  
 35 *is operating in violation of this act or rules and regulations adopted pur-*  
 36 *suant to the act; is creating or threatens to create a hazard to persons,*  
 37 *property or the environment; or is creating or threatens to create a public*  
 38 *nuisance. The secretary may also revoke, suspend or refuse to issue a*  
 39 *permit when the secretary determines that past or continuing violations*  
 40 *of the provisions of K.S.A. 65-3409, and amendments thereto, have been*  
 41 *committed by the applicant or permit holder.*

(f)

42 (e) Neither the state of Kansas nor the waste tire management fund  
 43 shall be liable to any owner or operator or responsible party for the loss

(g)

1 of business, damages or taking of property associated with any abatement  
2 or enforcement action taken pursuant to this section.

3 ~~(g)~~ If the secretary determines that the recipient of a grant, awarded  
4 pursuant to K.S.A. 65-3424f, and amendments thereto, has utilized grant  
5 moneys for purposes not authorized in the grant contract, the secretary  
6 may order the repayment of such moneys and cancel any remaining de-  
7 partment commitments under the grant. If the grant recipient fails to  
8 comply with the secretary's order, the secretary may initiate a civil action  
9 in district court to recover any unapproved expenditures, including ad-  
10 ministrative and legal expenses incurred to pursue such action. Recovered  
11 grant moneys shall be remitted to the state treasurer, who shall deposit  
12 the entire amount in the state treasury and credit it to the waste tire  
13 management fund.

14 Sec. 7. K.S.A. 2000 Supp. 65-3426 is hereby amended to read as  
15 follows: 65-3426. (a) There is hereby established within the department  
16 of health and environment the solid waste grants advisory committee,  
17 which shall be composed of seven members as follows:

18 (1) Six members appointed by the governor, two of whom shall rep-  
19 resent the interests of regional solid waste management entities, two of  
20 whom shall represent the interests of counties, one of whom shall rep-  
21 resent the interests of cities and one of whom shall represent the interests  
22 of the private sector;

23 (2) the secretary of health and environment or the secretary's  
24 designee.

25 (b) Appointive members of the solid waste grants advisory committee  
26 shall serve terms of two years. The secretary of health and environment  
27 or the person designated by the secretary shall serve as chairperson of  
28 the advisory committee.

29 (c) Members of the solid waste grants advisory committee shall re-  
30 ceive amounts provided by subsection (e) of K.S.A. 75-3223 and amend-  
31 ments thereto for each day of actual attendance at any meeting of the  
32 advisory committee or any subcommittee meeting authorized by the ad-  
33 visory committee.

34 (d) The secretary of health and environment shall provide technical  
35 support related to the activities of the solid waste grants advisory com-  
36 mittee, including but not limited to establishing project selection criteria,  
37 performing technology evaluations, assessing technical feasibility and de-  
38 termining consistency with the statewide solid waste management plan,  
39 the applicable county or regional solid waste management plan and re-  
40 gional activities.

41 (e) In accordance with schedules established by the secretary of  
42 health and environment, the solid waste grants advisory committee shall  
43 meet to review competitive grant applications submitted pursuant to sub-

(h)

(i) The secretary shall enter into contracts with one or more associations of tire retailers to: (1) Assist in disseminating information to all tire retailers on the requirements of solid waste laws and rules and regulations relating to waste tires; (2) establish a point of contact for persons to report suspected violations of solid waste laws and rules and regulations relating to waste tires; (3) evaluate suspected violations reported to the association, including making contact with potential violators as appropriate to gather factual information and to provide notice of possible violations; and (4) refer cases to the secretary as appropriate to initiate administrative enforcement procedures pursuant to the provisions of the solid waste management act. Any such contract shall ensure that the secretary's authority to implement enforcement actions is not compromised by the actions of the contractor.

1 section ~~(c)~~ of K.S.A. 65-3415 and K.S.A. 65-3424f, and amendments  
2 thereto. The advisory committee shall establish a project priority list for  
3 each fiscal year *in each grant program* based upon the availability of funds  
4 as estimated by the secretary and shall make recommendations regarding  
5 the selection of grantees and the disbursement of moneys.

(b)

6 Sec. 8. K.S.A. 2000 Supp. 65-3424, 65-3424a, 65-3424d, 65-3424f,  
7 65-3424g, 65-3424k and 65-3426 are hereby repealed.

65-3424b,

8 Sec. 9. This act shall take effect and be in force from and after its  
9 publication in the statute book.

Sec. 3. K.S.A. 2000 Supp. 65-3424b is hereby amended to read as follows: 65-3424b.

(a) The secretary shall establish a system of permits for mobile waste tire processors and waste tire processing facilities and permits for waste tire transporters and collection centers. Such permits shall be issued for a period of one year and shall require an application fee established by the secretary in an amount not exceeding \$250 per year.

(b) The secretary shall adopt rules and regulations establishing standards for mobile waste tire processors, waste tire processing facilities and associated waste tire sites, waste tire collection centers and waste tire transporters. Such standards shall include a requirement that the permittee file with the secretary a bond or other financial assurance in an amount determined by the secretary to be sufficient to pay any costs which may be incurred by the state to process any waste tires or dispose of any waste tires or processed waste tires if the permittee ceases business or fails to comply with this act.

(c) Any person who contracts or arranges with another person to collect or transport waste tires for storage, processing or disposal shall so contract or arrange only with a person holding a permit from the secretary. Any person contracting or arranging with a person, permitted by the secretary, to collect or transport waste tires for storage, processing or disposal, transfers ownership of those waste tires to the permitted person and the person contracting or arranging with the person holding such permit to collect or transport such tires shall be released from liability therefor. Any person contracting or arranging with any person, permitted by the secretary, for the collection ~~or, transportation, storage, processing or disposal~~ of such tires shall maintain a record of such transaction for a period of not less than five years following the date of the transfer of such tires.

(d) No person shall:

(1) Own or operate a waste tire processing facility or waste tire collection center or act as a mobile waste tire processor or waste tire transporter unless such person holds a valid permit issued therefor pursuant to subsection (a); or

(2) own or operate a waste tire processing facility or waste tire collection center or act as a mobile waste tire processor or waste tire transporter except in compliance with the standards established by the secretary pursuant to subsection (b).

(e) The provisions of subsection (d)(1) shall not apply to:

(1) A tire retreading business where fewer than 1,000 waste tires are kept on the business premises;

(2) a business that, in the ordinary course of business, removes tires from motor vehicles if fewer than 1,500 of these tires are kept on the business premises;

(3) a retail tire-selling business which is serving as a waste tire collection center if fewer than 1,500 waste tires are kept on the business premises;

(4) the department of wildlife and parks;

(5) a person engaged in a farming or ranching activity, including the operation of a feedlot as defined by K.S.A. 47-1501, and amendments thereto, as long as the accumulation has a beneficial use;

(6) a waste tire collection center where fewer than 1,500 used tires are kept on the premises;

(7) a waste tire collection center where 1,500 or more used tires are kept on the premises, if the owner demonstrates through sales and inventory records that such tires have value, as established in accordance with standards adopted by rules and regulations of the secretary;

(8) local units of government operating solid waste processing facilities and solid waste disposal areas permitted by the secretary under the authority of K.S.A. 65-3407 and amendments thereto;

(9) a person transporting: (A) Waste tires mixed with other municipal solid waste; (B) fewer than five waste tires for lawful disposal; (C) waste tires generated by the business, farming activities of the person or the person's employer; or (D) waste tires for a beneficial use approved by statute or rules and regulations adopted by the secretary; or

(10) a business engaged in processing, for resource recovery purposes, only waste tires generated by the business.

(f) All fees collected by the secretary pursuant to this section shall be remitted to the state treasurer. The state treasurer shall deposit the entire amount of the remittance in the state treasury and credit it to the waste tire management fund.



there is no current sponsor.

(f) (g) "General plan" means a preliminary engineering report describing the characteristics of the project area, the nature and methods of dealing with the soil and water problems within the project area, and the projects proposed to be undertaken by the sponsor within the project area. Such plan shall include maps, descriptions and other data as may be necessary for the location, identification and establishment of the character of the work to be undertaken; a cost-benefit analysis of alternatives to the project, including but not limited to, nonstructural flood control options and water conservation and reuse to reduce need for new water supply storage; and any other data and information as the chief engineer may require.

(g) (h) "Land right" means real property as that term is defined by the laws of the state of Kansas and all rights thereto and interest therein and shall include any road, highway, bridge, street, easement or other right-of-way thereon.

(h) (i) "Multipurpose small lake project" means a dam and lake containing (1) flood control storage and (2) either public water supply storage or recreation features or both.

(i) (j) "Public water supply" means a water supply for municipal, industrial or domestic use.

(j) (k) "Public water supply storage" means storage of water for municipal, industrial or domestic use.

(k) (l) "Recreation feature" means water storage and related facilities for activities such as swimming, fishing, boating, camping or other related activities.

(l) (m) "~~Renovation of an existing project~~" means repair or restoration of an existing lake which contains water storage space for use as a public water supply and ~~either recreational purposes or for flood control~~, or both.

which has either recreational purposes or flood control purposes

(m) (n) "Sponsor" means: (1) Any political subdivision of the state which has the power of taxation and the right of eminent domain; (2) any public wholesale water supply district; or (3) any rural water district.

(n) (o) "Water user" means any city, rural water district, wholesale water district or any other political subdivision of the state which is in the business of furnishing municipal or industrial water to the public.

Sec. 3. K.S.A. 82a-1604 is hereby amended to read as follows: 82a-1604. (a) The state may participate with a sponsor in the development, construction or renovation of a class I multipurpose small lake project if the sponsor has a general plan which has been submitted to and approved by the chief engineer in the manner provided by K.S.A. 24-1213 and 24-1214, and amendments thereto. If the Kansas water office determines that additional public water supply storage shall be needed in that area of the state within 20 years from the time such project is to be completed

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1 and a water user is not available to finance public water supply storage,  
 2 the state may include *future use* public water supply storage in the project.  
 3 The Kansas water office shall apply for a water appropriation right suf-  
 4 ficient to insure a dependable yield from the public water supply storage.  
 5 The Kansas water office shall be exempt from all applicable fees imposed  
 6 pursuant to K.S.A. 82a-701 *et seq.*, and amendments thereto, for such  
 7 applications. *The Kansas water office shall have authority to adopt rules*  
 8 *and regulations relative to the inclusion of ~~future use~~ public water supply*  
 9 *storage in proposed projects under this act and the disposition of state-*  
 10 *owned water rights and associated public water supply storage space in*  
 11 *such projects.*

12 (b) The sponsor of such class I project shall be responsible for ac-  
 13 quiring land rights and for the costs of operation and maintenance of such  
 14 project. ~~The sponsor participating in the construction of recreation fea-~~  
 15 ~~tures of a project shall pay for that portion of the project attributable to~~  
 16 ~~recreation.~~ The state may provide up to 50% of the engineering and  
 17 construction costs and up to 50% of the costs of land rights associated  
 18 with recreation features. Subject to the provisions of ~~subsection (a)~~, the  
 19 state may pay up to 100% of the engineering and construction costs of  
 20 flood control and public water supply storage. All other costs of such  
 21 project, including land, construction, operation and maintenance shall be  
 22 paid by the sponsor.

subsections (a) and (c)

The state shall not participate in the costs of public water supply storage in a renovation project unless the Kansas water office determines that renovation is the most cost effective alternative for such storage. The state shall be authorized to pay only up to 50% of the engineering and construction costs of public water supply storage in such a renovation project.

(d)

23 (c) The Kansas water office may recover the state's costs incurred in  
 24 providing public water supply storage in such class I project, *and interest*  
 25 *on such costs*, by selling such storage and the associated water rights.  
 26 *Interest on such costs shall be computed at a rate per annum which is*  
 27 *equal to the greater of: (1) The average rate of interest earned the past*  
 28 *calendar year on repurchase agreements of less than 30 days' duration*  
 29 *entered into by the pooled money investment board, less 5%; or (2) four*  
 30 *percent.*

31 Sec. 4. K.S.A. 82a-1605 is hereby amended to read as follows: 82a-  
 32 1605. (a) The state may participate with a sponsor in the development,  
 33 construction or renovation of a class II multipurpose small lake project if  
 34 the sponsor has a general plan which has been submitted to and approved  
 35 by the chief engineer in the manner provided by K.S.A. 24-1213 and 24-  
 36 1214, and amendments thereto. If the Kansas water office determines  
 37 that additional public water supply storage shall be needed in that area  
 38 of the state within 20 years from the time such project is to be completed  
 39 and a water user is not available to finance public water supply storage,  
 40 the state may include *future use* public water supply storage in the project.  
 41 The Kansas water office shall apply for a water appropriation right suf-  
 42 ficient to insure a dependable yield from public water supply storage. The  
 43 Kansas water office shall be exempt from all applicable fees imposed

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5-3

pursuant to K.S.A. 82a-701 *et seq.*, and amendments thereto, for such applications. *The Kansas water office shall have authority to adopt rules and regulations relative to the inclusion of ~~future use~~ public water supply storage in proposed projects under this act and the disposition of state-owned water rights and associated public water supply storage space in such projects.*

(b) In a class II project, the state may assume initial financial obligations for public water supply storage in watersheds by entering into long-term contracts with the federal government. In order to provide security to the federal government, the state may grant assignments of water rights, either appropriation rights or water reservation rights; assignments of rights under existing or prospective water purchase contracts; assignments, mortgages or other transfers of interests in real property held by the state and devoted to the specific small lake project for which security is sought; or may provide other security that is permissible under state law and acceptable by the federal government. Instead of contracting to repay costs under long-term contracts, the state may pay all of the required costs of the public water supply storage in a lump sum.

(c) The sponsor of such class II project shall be responsible for acquiring land rights and for the costs of operation and maintenance of such project. ~~The sponsor participating in the construction of recreation features of a project shall pay for that portion of the project attributable to recreation.~~ The state or federal government may provide up to 50% of the engineering and construction costs and up to 50% of the costs of land rights associated with recreation features.

(d) The Kansas water office may recover the state's costs incurred in providing public water supply storage in such class II project, *and interest on such costs*, by selling such storage and the associated water rights. *Interest on such costs shall be computed at a rate per annum which is equal to the greater of: (1) The average rate of interest earned the past calendar year on repurchase agreements of less than 30 days' duration entered into by the pooled money investment board, less 5%; or (2) four percent.*

Sec. 5. K.S.A. 82a-1606 is hereby amended to read as follows: 82a-1606. (a) The state may participate with a sponsor in the development, construction or renovation of a class III multipurpose small lake project if the sponsor has a general plan which has been submitted to and approved by the chief engineer in the manner provided by K.S.A. 24-1213 and 24-1214, and amendments thereto. If public water supply storage is included in the project, the sponsor of such class III project shall pay for 100% of the costs associated with the public water supply storage portion of such project unless the Kansas water office determines that additional public water supply storage shall be needed in that area of the state within

Subject to the provisions of subsection (d), the state may pay up to 100% of the engineering and construction costs of flood control and public water supply storage. All other costs of such project, including land, construction, operation and maintenance shall be paid by the sponsor.

(d) The state shall not participate in the costs of public water supply storage in a renovation project unless the Kansas water office determines that renovation is the most cost effective alternative for such storage. The state shall be authorized to pay only up to 50% of the engineering and construction costs of public water supply storage in such a renovation project.

(e)

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1 20 years from the time such project is to be completed and a sponsor is  
 2 not available to finance 100% of the costs associated with the public water  
 3 supply storage, the state may participate in the *future use* public water  
 4 supply storage costs of the project. If the state participates in the public  
 5 water supply storage costs, the Kansas water office shall apply for a water  
 6 appropriation right sufficient to insure a dependable yield from public  
 7 water supply storage. The Kansas water office shall be exempt from all  
 8 applicable fees imposed pursuant to K.S.A. 82a-701 *et seq.*, and amend-  
 9 ments thereto, for such applications. *The Kansas water office shall have*  
 10 *authority to adopt rules and regulations relative to the inclusion of ~~future~~*  
 11 *~~use~~ public water supply storage in proposed projects under this act and*  
 12 *the disposition of state-owned water rights and associated public water*  
 13 *supply storage space in such projects.*

14 (b) The sponsor of such class III project shall be responsible for ac-  
 15 quiring land rights and for the costs of operation and maintenance of the  
 16 project. ~~The sponsor participating in the construction of recreation fea-~~  
 17 ~~tures of a project shall pay for that portion of the project attributable to~~  
 18 ~~recreation.~~ The state may provide up to 50% of the engineering and  
 19 construction costs and up to 50% of the costs of land rights associated  
 20 with recreation features. ~~The state may pay up to 100% of the engineering~~  
 21 ~~and construction costs of flood control storage and public water supply~~  
 22 ~~storage. All other costs of such project, including land, construction, op-~~  
 23 ~~eration and maintenance, shall be paid by the sponsor.~~

24 (c) The Kansas water office may recover the state's costs incurred in  
 25 providing public water supply storage in such class III project, and inter-  
 26 est on such costs, by selling such storage and the associated water rights.  
 27 Interest on such costs shall be computed at a rate per annum which is  
 28 equal to the greater of: (1) The average rate of interest earned the past  
 29 calendar year on repurchase agreements of less than 30 days' duration  
 30 entered into by the pooled money investment board, less 5%; or (2) four  
 31 percent.

32 Sec. 6. K.S.A. 82a-1602, 82a-1603, 82a-1604, 82a-1605 and 82a-1606  
 33 are hereby repealed.

34 Sec. 7. This act shall take effect and be in force from and after its  
 35 publication in the statute book.

Subject to the provisions of subsection (c), the

The state shall not participate in the costs of public water supply storage in a renovation project unless the Kansas water office determines that renovation is the most cost effective alternative for such storage. The state shall be authorized to pay only up to 50% of the engineering and construction costs of public water supply storage in such a renovation project.

(d)

# House Concurrent Resolution No. 5009

By Committee on Environment

1-30

House Environment  
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Attachment 5

9 A CONCURRENT RESOLUTION urging the Congress of the United  
10 States to address the conservation and preservation of the High Plains  
11 Aquifer.

12  
13 WHEREAS, The High Plains Aquifer is the most important water  
14 resource in the eight-state High Plains Region, including Kansas; and

15 WHEREAS, The water tables of the High Plains Aquifer in Kansas,  
16 particularly in the Ogallala portion, have declined dramatically over the  
17 past four decades; and

18 WHEREAS, The projected depletion of the High Plains Aquifer ~~will~~  
19 require the necessary transition to dryland farming for many areas of  
20 Kansas; and

21 WHEREAS, The State is addressing the groundwater depletion  
22 through conservation programs and new management approaches; and

23 WHEREAS, The federal farm program has a significant impact on  
24 farmers' agricultural practices; and

25 WHEREAS, Some of the farm program costs to the government could  
26 be transferred as incentives to the farmers to convert irrigated land to  
27 dryland and other conservation actions ~~instead of price supports for excess~~  
28 ~~production~~; and

29 WHEREAS, Much of the western Kansas economy is based on irri-  
30 gated agriculture, and assistance is needed to transition the economy as  
31 well as conserve and preserve the High Plains Aquifer: Now, therefore,

32 *Be it resolved by the House of Representatives of the State of Kansas,*  
33 *the Senate concurring therein:* That the Legislature of the State of Kan-  
34 sas urges the Congress of the United States to ~~take action~~ to conserve  
35 and preserve the High Plains Aquifer consistent with the recommenda-  
36 tion contained in the Kansas Water Office Committee Report on Federal  
37 Actions Necessary for the Conservation and Environmental Preservation  
38 of the High Plains Aquifer dated October 27, 2000; and

39 *Be it further resolved:* That the Secretary of State is directed to send  
40 enrolled copies of this resolution and the Committee Report to the Pres-  
41 ident of the United States, George W. Bush; Senator Richard G. Lugar,  
42 Chairman, United States Senate Committee on Agriculture, Nutrition  
43 and Forestry, Room 328A, Russell Senate Office Building, Washington,

may

appropriate funds through the federal farm program to assist states

**HOUSE BILL No. 2134**

By Committee on Environment

1-23

9 AN ACT concerning solid waste; amending K.S.A. 2000 Supp. 65-3402,  
10 65-3407, 65-3407c, 65-3409 and 65-3415 and repealing the existing  
11 sections.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2000 Supp. 65-3402 is hereby amended to read as  
15 follows: 65-3402. As used in this act, unless the context otherwise  
16 requires:

17 (a) "Solid waste" means garbage, refuse, *waste tires as defined by*  
18 *K.S.A. 65-3424, and amendments thereto*, and other discarded materials,  
19 including, but not limited to, solid, semisolid, sludges, liquid and con-  
20 tained gaseous waste materials resulting from industrial, commercial, ag-  
21 ricultural and domestic activities. Solid waste does not include hazardous  
22 wastes as defined by subsection (f) of K.S.A. 65-3430, and amendments  
23 thereto, recyclables or the waste of domestic animals as described by  
24 subsection (a)(1) of K.S.A. 65-3409, and amendments thereto.

25 (b) "Solid waste management system" means the entire process of  
26 storage, collection, transportation, processing, and disposal of solid wastes  
27 by any person engaging in such process as a business, or by any state  
28 agency, city, authority, county or any combination thereof.

29 (c) "Solid waste processing facility" means incinerator, composting  
30 facility, household hazardous waste facility, waste-to-energy facility, trans-  
31 fer station, reclamation facility or any other location where solid wastes  
32 are consolidated, temporarily stored, salvaged or otherwise processed  
33 prior to being transported to a final disposal site. This term does not  
34 include a scrap material recycling and processing facility.

35 (d) "Solid waste disposal area" means any area used for the disposal  
36 of solid waste from more than one residential premises, or one or more  
37 commercial, industrial, manufacturing or municipal operations. "*Solid*  
38 *waste disposal area*" includes all property described or included within  
39 any permit issued pursuant to K.S.A. 65-3407, and amendments thereto.

40 (e) "Person" means individual, partnership, firm, trust, company, as-  
41 sociation, corporation, individual or individuals having controlling or ma-  
42 jority interest in a corporation, institution, political subdivision, state  
43 agency or federal department or agency.

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1 (f) "Waters of the state" means all streams and springs, and all bodies  
of surface or groundwater, whether natural or artificial, within the bound-  
aries of the state.

4 (g) "Secretary" means the secretary of health and environment.

5 (h) "Department" means the Kansas department of health and  
6 environment.

7 (i) "Disposal" means the discharge, deposit, injection, dumping, spill-  
8 ing, leaking or placing of any solid waste into or on any land or water so  
9 that such solid waste or any constituent thereof may enter the environ-  
10 ment or be emitted into the air or discharged into any water.

11 (j) "Open dumping" means the disposal of solid waste at any solid  
12 waste disposal area or facility which is not permitted by the secretary  
13 under the authority of K.S.A. 65-3407, and amendments thereto, or the  
14 disposal of solid waste contrary to rules and regulations adopted pursuant  
15 to K.S.A. 65-3406, and amendments thereto.

16 (k) "Generator" means any person who produces or brings into ex-  
17 istence solid waste.

18 (l) "Monitoring" means all procedures used to (1) systematically in-  
19 spect and collect data on the operational parameters of a facility, an area  
20 or a transporter, or (2) to systematically collect and analyze data on the  
21 quality of the air, groundwater, surface water or soils on or in the vicinity  
22 of a solid waste processing facility or solid waste disposal area.

23 (m) "Closure" means the permanent cessation of active disposal op-  
24 erations, abandonment of the disposal area, revocation of the permit or  
25 filling with waste of all areas and volume specified in the permit and  
26 preparing the area for the long-term care.

27 (n) "Postclosure" means that period of time subsequent to closure of  
28 a solid waste disposal area when actions at the site must be performed.

29 (o) "Reclamation facility" means any location at which material con-  
30 taining a component defined as a hazardous substance pursuant to K.S.A.  
31 65-3452a and amendments thereto or as an industrial waste pursuant to  
32 this section is processed.

33 (p) "Designated city" means a city or group of cities which, through  
34 interlocal agreement with the county in which they are located, is dele-  
35 gated the responsibility for preparation, adoption or implementation of  
36 the county solid waste plan.

37 (q) "Nonhazardous special waste" means any solid waste designated  
38 by the secretary as requiring extraordinary handling in a solid waste dis-  
39 posal area.

40 (r) "Recyclables" means any materials that will be used or reused, or  
41 prepared for use or reuse, as an ingredient in an industrial process to  
42 make a product, or as an effective substitute for a commercial product.  
43 "Recyclables" includes, but is not limited to, paper, glass, plastic, munic-

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- 1 ipal water treatment residues, as defined by K.S.A. 65-163 and amend-  
ments thereto, and metal, but does not include yard waste.
- 2 (s) "Scrap material processing industry" means any person who ac-  
3 cepts, processes and markets recyclables.
- 4 (t) "Scrap material recycling and processing facility" means a fixed  
5 location that utilizes machinery and equipment for processing only  
6 recyclables.
- 7 (u) "Construction and demolition waste" means solid waste resulting  
8 from the construction, remodeling, repair and demolition of structures,  
9 roads, sidewalks and utilities; untreated wood and untreated sawdust from  
10 any source; solid waste consisting of motor vehicle window glass; and solid  
11 waste consisting of vegetation from land clearing and grubbing, utility  
12 maintenance, and seasonal or storm-related cleanup. Such wastes include,  
13 but are not limited to, bricks, concrete and other masonry materials, roof-  
14 ing materials, soil, rock, wood, wood products, wall or floor coverings,  
15 plaster, drywall, plumbing fixtures, electrical wiring, electrical compo-  
16 nents containing no hazardous materials, nonasbestos insulation and con-  
17 struction related packaging. "Construction and demolition waste" shall  
18 not include waste material containing friable asbestos, garbage, furniture,  
19 appliances, electrical equipment containing hazardous materials, tires,  
20 drums and containers even though such wastes resulted from construction  
21 and demolition activities. Clean rubble that is mixed with other construc-  
22 tion and demolition waste during demolition or transportation shall be  
23 considered to be construction and demolition waste.
- 24 (v) "Construction and demolition landfill" means a permitted solid  
25 waste disposal area used exclusively for the disposal on land of construc-  
26 tion and demolition wastes. This term shall not include a site that is used  
27 exclusively for the disposal of clean rubble.
- 28 (w) "Clean rubble" means inert uncontaminated construction and  
29 demolition waste which includes concrete and concrete products, rein-  
30 forcing steel, asphalt pavement, brick, soil or rock.
- 31 (x) "Industrial waste" means all solid waste resulting from manufac-  
32 turing, commercial and industrial processes which is not suitable for dis-  
33 charge to a sanitary sewer or treatment in a community sewage treatment  
34 plant or is not beneficially used in a manner that meets the definition of  
35 recyclables. Industrial waste includes, but is not limited to: Mining wastes  
36 from extraction, beneficiation and processing of ores and minerals unless  
37 those minerals are returned to the mine site; fly ash, bottom ash, slag and  
38 flue gas emission wastes generated primarily from the combustion of coal  
39 or other fossil fuels; cement kiln dust; waste oil and sludges; waste oil  
40 filters; and fluorescent lamps.
- 41 (y) "Composting facility" means any facility that composts wastes and  
42 has a composting area larger than one-half acre.
- 43



1 (z) "Household hazardous waste facility" means a facility established  
2 for the purpose of collecting, accumulating and managing household haz-  
3 ardous waste and may also include small quantity generator waste or ag-  
4 ricultural pesticide waste, or both. Household hazardous wastes are con-  
5 sumer products that when discarded exhibit hazardous characteristics.

6 (aa) "Waste-to-energy facility" means a facility that processes solid  
7 waste to produce energy or fuel.

8 (bb) "Transfer station" means any facility where solid wastes are  
9 transferred from one vehicle to another or where solid wastes are stored  
10 and consolidated before being transported elsewhere, but shall not in-  
11 clude a collection box provided for public use as a part of a county-op-  
12 erated solid waste management system if the box is not equipped with  
13 compaction mechanisms or has a volume smaller than 20 cubic yards.

14 (cc) "Municipal solid waste landfill" means a solid waste disposal area  
15 where residential waste is placed for disposal. A municipal solid waste  
16 landfill also may receive other nonhazardous wastes, including commer-  
17 cial solid waste, sludge and industrial solid waste.

18 (dd) "Construction related packaging" means small quantities of  
19 packaging wastes that are generated in the construction, remodeling or  
20 repair of structures and related appurtenances. "Construction related  
21 packaging" does not include packaging wastes that are generated at retail  
22 establishments selling construction materials, chemical containers gen-  
23 erated from any source or packaging wastes generated during mainte-  
24 nance of existing structures.

25 Sec. 2. K.S.A. 2000 Supp. 65-3407 is hereby amended to read as  
26 follows: 65-3407. (a) Except as otherwise provided by K.S.A. 2000 Supp.  
27 65-3407c and amendments thereto, no person shall construct, alter or  
28 operate a solid waste processing facility or a solid waste disposal area of  
29 a solid waste management system, except for clean rubble disposal sites,  
30 without first obtaining a permit from the secretary.

31 (b) Every person desiring to obtain a permit to construct, alter or  
32 operate a solid waste processing facility or disposal area shall make ap-  
33 plication for such a permit on forms provided for such purpose by the  
34 rules and regulations of the secretary and shall provide the secretary with  
35 such information as necessary to show that the facility or area will comply  
36 with the purpose of this act. Upon receipt of any application and payment  
37 of the application fee, the secretary, with advice and counsel from the  
38 local health authorities and the county commission, shall make an inves-  
39 tigation of the proposed solid waste processing facility or disposal area  
40 and determine whether it complies with the provisions of this act and any  
41 rules and regulations and standards adopted thereunder. The secretary  
42 also may consider the need for the facility or area in conjunction with the  
/ county or regional solid waste management plan. If the investigation re-

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6-5  
veals 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 applicant 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.

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

13 (f) Plans, designs and relevant data for the construction of solid waste  
14 processing facilities and disposal sites shall be prepared by a professional  
15 engineer licensed to practice in Kansas and shall be submitted to the  
16 department for approval prior to the construction, alteration or operation  
17 of such facility or area. In adopting rules and regulations, the secretary  
18 may specify sites, areas or facilities where the environmental impact is  
19 minimal and may waive such preparation requirements provided that a  
20 review of such plans is conducted by a professional engineer licensed to  
21 practice in Kansas.

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

28 (h) As a condition of granting a permit to operate any processing  
29 facility or disposal area for solid waste, the secretary shall require the  
30 permittee to: (1) Provide a trust fund, surety bond guaranteeing pay-  
31 ment, irrevocable letter of credit or insurance policy, to pay the costs of  
32 closure and postclosure care; or (2) pass a financial test or obtain a finan-  
33 cial guarantee from a related entity, to guarantee the future availability  
34 of funds to pay the costs of closure and postclosure care. The secretary  
35 shall prescribe the methods to be used by a permittee to demonstrate  
36 sufficient financial strength to become eligible to use a financial test or a  
37 financial guarantee procedure in lieu of providing the financial instru-  
38 ments listed in (1) above. Solid waste processing facilities or disposal  
39 areas, except municipal solid waste landfills, may also demonstrate finan-  
40 cial assurance for closure and postclosure care costs by use of ad valorem  
41 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

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he 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, 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 K.S.A. 65-3409, subsection (c)(3) of K.S.A. 65-3407 or K.S.A. 65-3424b, 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 navi-

(1) Permits granted by the secretary as provided by this act shall not be transferrable except as follows:

(A) A

the

and

(B) A permit for a solid waste disposal area or a solid waste processing facility maybe transferred if the secretary approves of the transfer based upon information submitted to the secretary sufficient to conduct a background investigation of the new owner as specified in subsections (c) and (d) of K.S.A. 65-3407, and amendments thereto, and a financial assurance evaluation as specified in subsection (h) of K.S.A. 65-3407, and amendments thereto. Such information shall be submitted to the secretary not more than one year nor less than 60 days before the transfer. If the secretary does not approve of disapprove the transfer within 30 days after all required information is submitted to the secretary, the transfer shall be deemed to have been approved.

(2) Permits granted by the secretary as provided by this act

(3)

(j) Except as otherwise provided by subsection (i)(1), the secretary may require a new permit application to be submitted for a solid waste processing facility or a solid waste disposal area in response to any change, either directly or indirectly, in ownership or control of the permitted real property or the existing permittee.

[reletter remaining subsections accordingly]

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1 gable stream used for interstate commerce or within one mile of an intake  
2 point for any public surface water supply system.

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

11 (1) Before reviewing any application for a solid waste processing fa-  
12 cility or solid waste disposal area, the secretary shall require the following  
13 information as part of the application:

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

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

27 (3) For a solid waste disposal area permit issued on or after July 1,  
28 1999, proof that the permittee owns the land where the disposal area will  
29 be located, if the disposal area is: (A) A municipal solid waste landfill; or  
30 (B) a solid waste disposal area that has: (i) A leachate or gas collection or  
31 treatment system; (ii) waste containment systems or appurtenances with  
32 planned maintenance schedules; or (iii) an environmental monitoring sys-  
33 tem with planned maintenance schedules or periodic sampling and anal-  
34 ysis requirements. This requirement shall not apply to a permit for lateral  
35 or vertical expansion contiguous to a permitted solid waste disposal area  
36 in operation on July 1, 1999, if such expansion is on land leased by the  
37 permittee before April 1, 1999.

38 Sec. 3. K.S.A. 2000 Supp. 65-3407c is hereby amended to read as  
39 follows: 65-3407c. (a) The secretary may authorize persons to carry out  
40 the following activities without a solid waste permit issued pursuant to  
41 K.S.A. 65-3407, and amendments thereto:

42 (1) Dispose of solid waste at a site where the waste has been accu-  
43 mulated or illegally dumped. Disposal of some or all such waste must be

1 identified as an integral part of a site cleanup and closure plan submitted  
2 to the department by the person responsible for the site. No additional  
3 waste may be brought to the site following the department's approval of  
4 the site cleanup and closure plan.

5 (2) Perform temporary projects to remediate soils contaminated by  
6 organic constituents capable of being reduced in concentration by biod-  
7 egradation processes or volatilization, or both. Soil to be treated may be  
8 generated on-site or off-site. A project operating plan and a site closure  
9 plan must be submitted to the department as part of the project approval  
10 process.

11 (3) Dispose of demolition waste resulting from demolition of an en-  
12 tire building or structure if such waste is disposed of at the site where  
13 the building or structure was located. Prior to the department's authori-  
14 zation, written approval for the disposal must be obtained from the land-  
15 owner and the local governmental or zoning authority having jurisdiction  
16 over the disposal site. The disposal area must be covered with a minimum  
17 of two feet of soil and seeded, rocked or paved. The final grades for the  
18 disposal site must be compatible with and not detract from the appear-  
19 ance of adjacent properties.

20 (4) Dispose of solid waste generated as a result of a transportation  
21 accident if such waste is disposed of on property adjacent to or near the  
22 accident site. Prior to the department's authorization, written approval  
23 for the disposal must be obtained from the landowner and the local gov-  
24 ernmental or zoning authority having jurisdiction over the disposal site.  
25 A closure plan must be submitted to the department as part of the au-  
26 thorization process.

27 (5) Dispose of whole unprocessed livestock carcasses on property at,  
28 adjacent or near where the animals died if: (A) Such animals died as a  
29 result of a natural disaster or their presence has created an emergency  
30 situation; and (B) proper procedures are followed to minimize threats to  
31 human health and the environment. Prior to the department's authori-  
32 zation, written approval for the disposal must be obtained from the land-  
33 owner and the local governmental or zoning authority having jurisdiction  
34 over the disposal site.

35 (6) Dispose of solid waste resulting from natural disasters, such as  
36 storms, tornadoes, floods and fires, or other such emergencies, when a  
37 request for disposal is made by the local governmental authority having  
38 jurisdiction over the area. Authorization shall be granted by the depart-  
39 ment only when failure to act quickly could jeopardize human health or  
40 the environment. Prior to the department's authorization, written ap-  
41 proval for the disposal must be obtained from the landowner and the local  
42 governmental or zoning authority having jurisdiction over the disposal  
43 site. The local governmental authority must agree to provide proper clo-

6-10

1 sure and postclosure maintenance of the disposal site as a condition of  
2 authorization.

3 (7) *Store solid waste resulting from natural disasters, such as storms,*  
4 *tornadoes, floods and fires, or other such emergencies, at temporary waste*  
5 *transfer sites, when a request for storage is made by the local govern-*  
6 *mental authority having jurisdiction over the area. Authorization shall be*  
7 *granted by the department only when failure to act quickly could jeop-*  
8 *ardize human health or the environment. Prior to the department's au-*  
9 *thorization, written approval for the storage must be obtained from the*  
10 *landowner and the local governmental or zoning authority having juris-*  
11 *isdiction over the storage site. The local governmental authority must agree*  
12 *to provide proper closure of the storage and transfer site as a condition*  
13 *of authorization.*

14 (b) The secretary shall consider the following factors when determin-  
15 ing eligibility for an exemption to the solid waste permitting requirements  
16 under this section:

17 (1) Potential impacts to human health and the environment.

18 (2) Urgency to perform necessary work compared to typical permit-  
19 ting timeframes.

20 (3) Costs and impacts of alternative waste handling methods.

21 (4) Local land use restrictions.

22 (5) Financial resources of responsible parties.

23 (6) Technical feasibility of proposed project.

24 (7) Technical capabilities of persons performing proposed work.

25 (c) The secretary may seek counsel from local government officials  
26 prior to exempting activities from solid waste permitting requirements  
27 under this section.

28 Sec. 4: K.S.A. 2000 Supp. 65-3409 is hereby amended to read as  
29 follows: 65-3409. (a) It shall be unlawful for any person to:

30 (1) Dispose of any solid waste by open dumping, but this provision  
31 shall not prohibit: (A) The use of solid wastes, *except for waste tires, as*  
32 *defined by K.S.A. 65-3424, and amendments thereto*, in normal farming  
33 operations or in the processing or manufacturing of other products in a  
34 manner that will not create a public nuisance or adversely affect the public  
35 health; or (B) an individual from dumping or depositing solid wastes re-  
36 sulting from such individual's own residential or agricultural activities  
37 onto the surface of land owned or leased by such individual when such  
38 wastes do not create a public nuisance or adversely affect the public health  
39 or the environment.

40 (2) Except as otherwise provided by K.S.A. 2000 Supp. 65-3407c, *and*  
41 *amendments thereto*, construct, alter or operate a solid waste ~~storage,~~  
42 ~~processing or disposal facility or area of a solid waste management system~~  
*or act as a waste tire transporter or mobile waste tire processor, as defined*

11-9

by K.S.A. 65-3424, and amendments thereto, without a permit or be in violation of the rules and regulations, standards or orders of the secretary.

3 (3) Violate any condition of any permit issued under K.S.A. 65-3407  
4 or 65-3424b, and amendments thereto.

5 (4) Conduct any solid waste burning operations in violation of the  
6 provisions of the Kansas air quality act.

7 (5) Store, collect, transport, process, treat or dispose of solid waste  
8 contrary to the rules and regulations, standards or orders of the secretary  
9 or in such a manner as to create a public nuisance.

10 (6) Refuse or hinder entry, inspection, sampling and the examination  
11 or copying of records related to the purposes of this act by an agent or  
12 employee of the secretary after such agent or employee identifies and  
13 gives notice of their purpose.

14 (7) Violate subsection (b) of K.S.A. 65-3424a, subsection (c) of K.S.A.  
15 65-3424b or K.S.A. 65-3424i, and amendments thereto.

16 ~~(8) Divide, sell, transfer, divest or otherwise encumber any portion~~  
17 ~~of the real property included in a permitted solid waste disposal area or~~  
18 ~~solid waste processing facility without receiving prior approval from the~~  
19 ~~secretary.~~

20 (b) No person shall be held responsible for failure to secure a permit  
21 under the provisions of this section for the dumping or depositing of any  
22 solid waste on land owned or leased by such person without such person's  
23 expressed or implied consent, permission or knowledge.

24 (c) Any person who violates any provision of subsection (a) shall be  
25 guilty of a class A misdemeanor and, upon conviction thereof, shall be  
26 punished as provided by law.

27 Sec. 5. K.S.A. 2000 Supp. 65-3415 is hereby amended to read as  
28 follows: 65-3415. (a) The secretary is authorized to assist counties, des-  
29 ignated cities or regional solid waste management entities by administer-  
30 ing grants to pay up to 60% of the costs of preparing and revising official  
31 plans for solid waste management systems in accordance with the require-  
32 ments of this act and the rules and regulations and standards adopted  
33 pursuant to this act, and for carrying out related studies, surveys, inves-  
34 tigation, inquiries, research and analyses.

35 (b) The secretary is authorized to assist counties, designated cities,  
36 municipalities, regional solid waste management entities that are part of  
37 an interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq.  
38 and amendments thereto or other applicable statutes, colleges, universi-  
39 ties, schools, state agencies or private entities, by administering compet-  
40 itive grants that pay up to 75% of eligible costs incurred by such a county,  
41 city, regional entity, college, university, school, state agency or private  
42 entity pursuant to an approved solid waste management plan, for any  
43 project related to the development and operation of recycling, source

(8) Divide a solid waste disposal area which has been issued a permit pursuant to K.S.A. 65-3407, and amendments thereto, into two or more parcels of real property for the purpose of selling or transferring a portion of the permitted area to a new owner without receiving prior approval of the secretary. If the secretary does not approve the division of the area within 60 days after the matter is submitted to the secretary for approval, the division shall be deemed to have been approved. Approval pursuant to this subsection shall not be necessary for transfer of a permitted solid waste disposal area as allowed by subsection (i)(1) of K.S.A. 65-3407, and amendments thereto.



6-12

1 reduction, waste minimization and solid waste management public edu-  
2 cation programs. Such projects shall include, but not be limited to, the  
3 implementation of innovative waste processing technologies which dem-  
4 onstrate nontraditional methods to reduce waste volume by recovering  
5 materials or by converting the waste into usable by-products or energy  
6 through chemical or physical processes. To be eligible for competitive  
7 grants awarded pursuant to this section, a county, designated city, regional  
8 entity, *college, university, school, state agency* or private entity must be  
9 implementing a project which is part of a solid waste management plan  
10 approved by the secretary or implementing a project with statewide sig-  
11 nificance as determined by the secretary with the advice and counsel of  
12 the solid waste grants advisory committee.

13 (c) The secretary is authorized to assist counties, cities or regional  
14 solid waste management entities that are part of an interlocal agreement  
15 entered into pursuant to K.S.A. 12-2901 et seq. and amendments thereto  
16 or other applicable statutes, by administering grants that pay up to 60%  
17 of costs incurred by such a county, city or regional entity for:

18 (1) The development or enhancement of temporary and permanent  
19 household hazardous waste programs operated in accordance with K.S.A.  
20 65-3460 and amendments thereto;

21 (2) the first year of operation following initial start-up of temporary  
22 and permanent household hazardous waste programs; and

23 (3) educating the public regarding changes in household hazardous  
24 waste collection program operations or services.

25 (d) The secretary is authorized to assist counties, cities or regional  
26 solid waste management entities that are part of an interlocal agreement  
27 entered into pursuant to K.S.A. 12-2901 et seq. and amendments thereto  
28 or other applicable statutes, by administering grants that pay up to 75%  
29 of costs incurred by such a county, city or regional entity to develop and  
30 implement temporary agricultural pesticide collection programs.

31 (e) The secretary is authorized to assist counties, cities or regional  
32 solid waste management entities that are part of an interlocal agreement  
33 entered into pursuant to K.S.A. 12-2901 et seq. and amendments thereto  
34 or other applicable statutes, by administering grants that pay up to 75%  
35 of costs incurred by such a county, city, or regional entity to develop and  
36 implement exempt small quantity hazardous waste generator waste col-  
37 lection programs, subject to the following:

38 (1) The aggregate amount of all such grants made for a fiscal year  
39 shall not exceed \$150,000; and

40 (2) no grantee shall receive any such grants in an aggregate amount  
41 exceeding \$50,000.

42 (f) (1) Failure of ~~a~~ *any* public or private entity ~~owning a municipal~~  
~~solid waste landfill~~ to pay solid waste tonnage fees ~~on wastes disposed in~~

~~Kansas~~ as required pursuant to K.S.A. 65-3415b, and amendments thereto, shall bar receipt of any grant funds by such entity until fees and related penalties have been paid.

(2) Failure of a county or regional authority to perform annual solid waste plan reviews and five year public hearings, and submit appropriate notification to the secretary that such actions have been carried out pursuant to K.S.A. 65-3405, and amendments thereto, shall bar receipt of any grant funds by any entity within the jurisdiction of such county or regional authority unless the grant would support a project expected to yield benefits to counties outside the jurisdiction of such county or regional authority.

, college, university, school, state agency

(3) A city, county, regional authority or private entity shall not be eligible to receive grants authorized in K.S.A. 65-3415, and amendments thereto, if the department determines that such city, county, regional authority or private entity is operating in substantial violation of applicable solid and hazardous waste laws or rules and regulations.

, college, university, school, state agency

(4) The secretary may establish additional minimum requirements for grant eligibility.

(g) If the secretary determines that a grant recipient has utilized grant moneys for purposes not authorized in the grant contract, the secretary may order the repayment of such moneys and cancel any remaining department commitments under the grant. If the grant recipient fails to comply with the secretary's order, the secretary may initiate a civil action in district court to recover any unapproved expenditures, including administrative and legal expenses incurred to pursue such action. Recovered grant moneys or expenses shall be remitted to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the solid waste management fund.

(h) All grants shall be made in accordance with appropriation acts from moneys in the solid waste management fund created by K.S.A. 65-3415a and amendments thereto.

(i) Local match requirements for all solid waste grant programs may be met by in-kind contributions from ~~counties, designated cities, regional solid waste management entities or private entities.~~

delete

Sec. 6. K.S.A. 2000 Supp. 65-3402, 65-3407, 65-3407c, 65-3409 and 65-3415 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

39  
40  
41  
42  
43

**Leavenworth County Planning Department**  
Courthouse, 300 Walnut  
Leavenworth, KS 66048  
Phone: 913-684-0465

February 15, 2001

**RE: Exchanging Lands Between Rural Water Districts**


You have before you a Bill concerning the release of rural water district lands. In rapidly growing areas, such as Leavenworth County, the need for cooperation and coordination between the County, Cities, and utility companies is imperative if we are to manage the growth. When rural water districts have lands on their edges that can better be served by a district other than the one these lands currently belong to, it is often necessary that an exchange or simple release of the land is in order.

Your Bill seems to allow disagreements between the rural water district and the property owner to be settled in the courts. Due to the importance of water availability in the development process, the location, size, and capacities of rural water districts should be a function of the planning process. County Planning Commissioners and County Commissions should be involved in the process of rural water district land exchanges. I would suggest that the following process be followed for review of such land trades or annexations:

1. An application for the land change should be made to the rural water district and to the County Planning Commission for its input;
2. The rural water district should review the application and make its decision, incorporating the recommendation of the Planning Commission into its decision-making process;
3. If the property owner does not agree with the ruling of the rural water district board, the application would be forwarded to the County Commissioners for review. The County Commission would hold a hearing and receive input from all sides.
4. The County Commissions decision could be reviewed by the district court.

I believe that coordination of water facilities with the County Comprehensive Plan is very important. This can only be done through the cooperative efforts of everyone involved in the development process. The State can help this cooperation by requiring the water districts to work with local governments and become part of their Comprehensive Planning process. If you have any questions, please call me.

Sincerely,

  
John Zoellner, JD, AICP  
Planning Director

TOTAL P.01

*House Environment  
2-15-01  
Attachment 7*



P.O. Box 226 • Seneca, KS 66538 • 785/336-3760  
FAX 785/336-2751 • <http://www.krwa.net>

COMMENTS ON HOUSE BILL 2234  
BEFORE THE HOUSE ENVIRONMENT COMMITTEE  
February 15, 2001

Madam Chairwoman and Members of the Committee:

I am Elmer Ronnebaum, General Manager of the Kansas Rural Water Association. The Association has worked to provide training and guidance to rural water districts for nearly 35 years. Kansas has nearly 300 of these districts, some formed in the early 1950's and others continuing to be formed today. They provide very critical services to over 100,000 residences and farms and livestock operations. Many smaller cities receive their water supply from rural water districts. I have attached the most recent statewide map of the general service areas of rural water districts in Kansas.

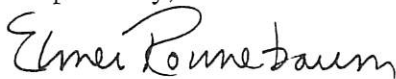
Rural water district boundaries are established based on the petition that is generated by landowners requesting the county to form the district. As a result, as you see on the map, Kansas has developed somewhat of a quilt pattern of district boundaries. Often districts share a common boundary. It's very common for there to be limited facilities on the outer reaches of the districts. As a result, new applicants cannot always be served without significant costs being incurred. Generally, it is up to the applicant to pay for the extensions to an existing system because of funding issues. Sometimes, a neighboring system can provide service at a more reasonable cost to the applicant than the district where the land is located. While "good neighbor" policies generally prevail, there are instances where the governing body of the district in which the land is located has declined release of the property so that the applicant can obtain service at the more reasonable cost from the neighboring district. In other cases, the district has not acted on the petition for release in a timely manner.

In 2000, KRWA asked six attorneys who actively represent more than 50 rural water districts to consider the question of an appropriate remedy for any owner of land who requests to be released from a rural water district and who is not satisfied with the determination of a rural water board of directors, in other words, denied release. HB 2234 reflects the recommendations formulated by that committee.

Mr. Gary Hanson of the Topeka law firm, Stumbo, Hanson & Hendricks is present to also testify as a proponent of this bill. Mr. Hanson was a member of the committee and so if you have questions that lean to legal aspects, I encourage you to place those to him.

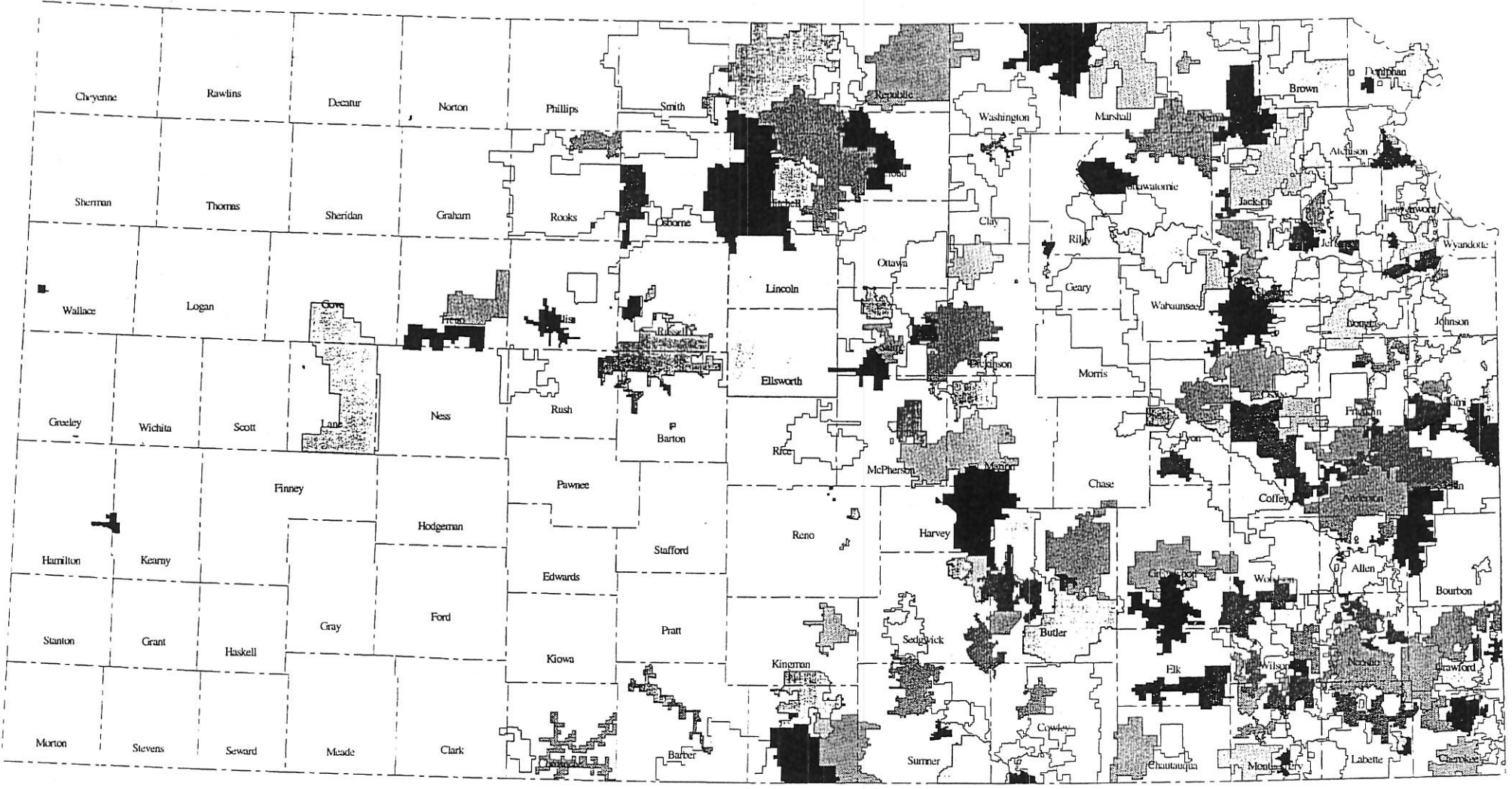
Kansas Rural Water Association encourages that HB 2234 be approved. The bill would provide a recourse to landowners that presently does not exist; KRWA believes the District Court is best suited to hear such appeals.

Respectfully,

  
Elmer Ronnebaum

*House Environment  
2-15-01  
Attachment 8*

# Rural Water Districts in Kansas



Published cooperatively by:  
Kansas Rural Water Association  
Kansas Water Office  
Kansas Department of Health and Environment

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February 15, 2001

**Testimony Before House Committee on Environment**

**Re: House Bill 2234**

Dear Chairperson Freeborn and Members of the Committee:

As general counsel to the Kansas Rural Water Association (KRWA), I am testifying in support of HB 2234.

Kansas statutes provide for the creation of rural water districts for the purpose of providing a source of drinking water to users within their boundaries. Boundaries are established by order of the board of county commissioners in the county in which the district is organized.

Frequently, there is land within the boundaries of a rural water district that does not have direct access to the water district's water distribution system. Kansas statutes, as interpreted by the Supreme Court, prohibit a water supplier from extending water service to land that is located within the boundaries of another rural water district. There is a method provided in the statutes at K.S.A. 82a-630 whereby land located within a rural water district may be released from the territory of that district, thus allowing that land to be attached to a different rural water district, to be served by a nearby city, or to be served from some other source.

According to current K.S.A. 82a-630, such release may occur on order of the board of county commissioners only if approved by 75% of the owners of the land requesting release and if approved by the board of directors of the rural water district from which release is sought. The board of directors can approve or deny the request, or can decline to act on the request at all.

There is concern that this absolute discretion by rural water districts' boards of directors on whether or not to grant requested releases of lands from their districts is subject to abuse by refusing to grant or, in some instances, even consider releases of lands for which the district has no present or future ability to provide water service. This concern needs to be balanced against rural water districts' concerns that there be certainty to their boundaries, that lands be generally released only when the facts truly justify release, and not merely as a convenience to certain landowners.

*House Environment  
2-15-01  
Attachment 9*

Senate Bill 405 was introduced in the last session in an effort to address some of these issues. Several rural water districts and their counsel objected to that Bill as creating more problems than it solved.

I believe HB 2234 strikes a good balance between these competing interests. The Bill still requires 75% of the owners of land to petition the board of directors of the district for the release. It allows the board to collect a fee to offset the costs reasonably expected to be incurred by the district in considering the request.

The Bill then goes on to prescribe criteria that the board of directors of the district must consider in determining whether to approve or reject the release, and requires that the board act on the request within 120 days of its receipt, to record its findings, and mail such findings to the petitioners.

Anyone dissatisfied with the determination of the board of directors may bring an action in the district court, where the district court is to determine whether the board of directors abused its discretion.

This Bill is the result of the efforts of an informal committee organized by KRWA to draft a Bill to address this issue. The members of the committee concurred that this Bill would provide a workable solution to the perceived problems with the current law and is preferable to SB 405. I urge you to give favorable consideration to HB 2234.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gary H. Hanson", with a long horizontal flourish extending to the right.

GARY H. HANSON

GHH:de

# Kansans for Common Sense Water Policy

Kansas Farm Bureau • Kansas Livestock Association • Kansas Corn Growers Association • Kansas Grain Sorghum Producers Association • Kansas Association of Wheat Growers • Kansas Fertilizer and Chemical Association • Kansas Grain and Feed Association • Kansas Dairy Association • Farmland • Agriliance • U.S. Premium Beef

Thank you Madame Chairperson and members of the committee for the opportunity to provide testimony today. I am Jere White, spokesperson for the Kansans for Common Sense Water Policy. Members of this coalition are listed above. We are here today to provide testimony in support of House Bill 2373 addressing waters of the state. The proposed bill provides a realistic approach to protecting the water quality in streams, lakes, and wetlands in Kansas and allows precious economic resources allocated for that protection to be targeted towards the highest priority watersheds and not towards dry and intermittent streams.

The proposed bill provides a new definition for classified streams that will correct a fundamental problem within the water quality standards. In 1994, at the recommendation of EPA, the state overextended the network of classified streams statewide to include numerous small headwaters and streams in the upper reaches of small and large watersheds. Many of those streams included in that assignment, and currently considered classified, are not streams at all and convey water intermittently or only during significant precipitation events. The new definition ensures only those streams that truly are perennial and are capable of supporting recreational uses, sustaining fully-developed, healthy aquatic communities, contain federal or state threatened or endangered species, or are used as drinking water supplies will be classified streams and subject to water quality standards. It is clearly the role of the state under the Clean Water Act to define which waters should be classified. Since its 1994 assignment, the state has not acted responsibly in this role; passage of this legislation is the first step toward correcting the problem and the state assuming that responsibility.

*House Environment  
2-15-01  
Attachment 10*



The proposed bill also repeals the existing Surface Water Register of classified streams and requires the Kansas Department of Health and Environment to justify the classification of any stream not meeting the new statutory definition. This ensures the existing; flawed registry of classified waters is not grandfathered into the revised definition, which would result in greater chaos and uncertainty than exists now.

House Bill 2373 redefines two of the seven designated use categories found in the surface water quality standards: agricultural and recreational designated uses. These revised definitions provide a real-life perspective on the actual and historic uses of streams and rivers in Kansas. The new subcategories for recreational uses provide a more accurate characterization to place on many waters of the State, but in no way results in the degradation of the water quality in those streams. The revised definition and new use subcategories for recreation recognize that a stream cannot be used for fishing or swimming if the water depth is insufficient to support those activities. The new definition and subcategories also acknowledges streams where recreational activities are not available because access to the water is restricted by land ownership. The new definition and use subcategories still provide protection of human health in those waters used by the public for recreational activities but does not unnecessarily apply recreational uses to those streams where recreation is not possible because access is not available.

The revised definition for agricultural use appropriately distinguishes conveyances like grassed waterways and storm water ditches, used exclusively for transporting precipitation runoff around and through agriculture lands, should not have other inappropriate designated uses assigned to them like recreation and aquatic life.

Although the bill primarily addresses fundamental problems within Kansas' Surface Water Quality Standards, it also provides solutions to some of the federal water quality standards proposed by EPA last summer. With a new definition for classified waters and new recreational use subcategories, many of the 1292 streams designated for primary contact recreation in EPA's regulations will no longer need to be assessed, because they simply will not meet the new definition of a classified stream. Streams that do meet the new definition will be assigned more appropriate recreational designated use categories. Additionally, the

new definition for classified water also remedies EPA's proposal to remove Kansas' default low flow provision. Application and implementation of the new definition for classified streams will alleviate the large economic burden that could be placed on small Kansas communities should EPA's proposed regulations be finalized.

In the summer of 1999 fourteen agricultural organizations joined together to form the TMDL Agricultural Working Group. This group was the result of a series of meetings between industry representatives and the Kansas Department of Agriculture, Kansas State University Research and Extension, and State Conservation Commission. The purpose of the group was to educate and inform our respective memberships on the importance of water quality, the proposed total maximum daily loads (TMDLs) and what members could do to protect water quality on their farms and ranches.

The working group held meetings with industry leaders throughout the state, hired a technician to work with landowners, and sought additional funding for state programs to improve water quality. Our main focus was to educate and inform producers of all sizes about the benefits of protecting water quality and programs available to assist producers in meeting water quality standards. In addition, the groups made certain that agricultural interests attended and commented on proposed TMDLs for a number of basins throughout the state. In short the agricultural organizations were actively engaged in efforts to meet water quality standards.

In the summer of 2000, the focus of the groups' efforts was greatly shifted from one of education and information to defense of individual rights and overly aggressive regulation. On July 3, 2000, EPA proposed water quality standards for Kansas that essentially called for the regulation of farm ponds that were totally surrounded by private property; designation of nearly 1,400 streams and lakes for primary contact recreation; and regulation of nonpoint pollution through an antidegradation policy. These regulations were considered overreaching. The agricultural community viewed the regulations as unnecessary and without authority under the law. The short period of time for response, forced the coalition to shift virtually all efforts to defeating or greatly modifying the regulations.

The coalition participated in informal meetings with EPA and made numerous suggestions as to how the regulations may be improved. During that meeting, it became clear that the coalition would need to file extensive comments. The coalition joined together to hire outside legal counsel to assist in the preparation of comments. The coalition then sought to inform and educate our members on the importance of the proposed regulations and the potential impacts on farms and ranches across the state. Our members were outraged and threatened by the proposed regulations. They demanded that we take all necessary actions to prepare comprehensive comments to EPA. In addition, nearly 1500 farmers and ranchers attended hearings in September expressing their grave concerns with the regulations. The coalition gathered affidavits and photographs of nearly 100 stream segments to illustrate to EPA and KDHE that many streams segments do not meet the definition of a classified stream and certainly would not support any type of recreation.

Since the filing of the comments, Coalition members have met with Governor Graves and appreciate his concerns with the issues. We have also met on several occasions with KDHE staff. We had requested that KDHE bring forward ideas for improving the classifications and recreational use designations. However, it was only yesterday morning that such a meaningful dialogue was started.

We understand that the administration has some concerns with the bill, and we stand ready to explain our positions and seek solutions to these problems. This bill primarily focuses on the issue of classification of streams and establishment of recreational uses. The bill does not address the private ponds issue because the Coalition believes current Kansas law and the recent ruling in the *Solid Waste Agency of Northern Cook County v. United States Corp of Engineers*, --S.Ct.—2001 Daily Journal, D.A.R. 267 (Jan. 9,2001) addressed these issues. The bill does not address the antidegradation issues because the Coalition is waiting for clarification of this issue by KDHE and EPA. It is our understanding that there is confusion among the regulators as to what was the intent of EPA.

Specifically, in writing the Clean Water Act, the Congress outlined specific goals and policies for improving the nation's waters. There are several sections of the Clean Water Act (CWA) that are relevant to the discussions of House Bill 2373. Clearly, Congress intended for the states to have the primary role in

planning the development and use of land and water resources within its jurisdiction. Congress also intended for widespread public participation in the process

Kansas, through regulations promulgated by the Kansas Department of Health and Environment, has determined what waters will be classified. The regulation states that “surface waters shall be classified as follows: (1) Classified streams shall include all streams with mean summer base flows exceeding 0.003 cubic meters per second. Regardless of flow, a stream shall be classified if studies conducted or accepted by the department show that pooling of water during periods of zero flow provides important refuges for aquatic life and permits biological recolonization of intermittently flowing segments.” K.A.R. 28-16-28d(c)(1) provides for assignment of uses to surface waters. The section states that a minimum, all classified surface waters shall be designated for the noncontact recreational use and one of the three categories of aquatic life support use. It further states, “Classified surface water shall be designated for uses based upon the results of use attainability analyses conducted or accepted by the department.”

House Bill 2373 is only intended to address the definition of “classified streams”. The coalition does not seek to alter the definitions of “classified wetlands” or “classified lakes.” House Bill 2373 sets the perimeters to protect streams with actual flows, threatened or endangered species, and streams that KDHE determines need protection after review of scientific data, social and economic impacts. The coalition contacted engineers familiar with water quality standards in many states. When asked whether the current Kansas regulations were overprotective, they responded by saying that they knew of no other state that had such a restrictive standard and that they knew of no scientific reason for using the current .003 cubic meters per second level. The coalition strongly supports the language in House Bill 2373 because it will classify streams that actually have water and target state resources to those areas that are truly in need of protection.

Further, during our investigations and reviews of Kansas water quality standards in preparation for comment to EPA this fall, coalition members spent a number of hours visiting with KDHE personnel inquiring why so many stream segments were “classified” and how this classification was done. The

department acknowledged that the United States Geological Survey River Reach 2 map was used to determine what streams would be classified. There was little or no field review to determine whether the stream would meet the definition of a classified stream. House Bill 2373 provides that stream segments should not be classified where the department has no evidence that the stream meets the new definition of a classified stream. This only makes sense. The state should not be directing its resources to areas that are not true flowing streams.

Kansas establishes its designated uses of classified waters in K.A.R. 28-16-28d. Uses outlined include food procurement, groundwater recharge use, industrial water supply use, aquatic life support use, special aquatic life use waters, expected aquatic life use, restricted aquatic life use, agricultural, and recreational uses. House Bill 2373 broadens the agricultural use category and creates subcategories of recreational use. The coalition strongly supports these changes.

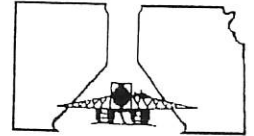
During the public hearings on EPA's proposed regulations it became apparent that not only did the state classify some stream segments that did not have actual flows, but that the state also designated all classified waters for noncontact recreational use and one of the three categories of aquatic life support use. (K.A.R. 28-16-28d(c.)(1)). The EPA, in turn stated that these waters should be designated for primary contact recreation. EPA asserts that the CWA contains a "rebuttable presumption" that in the absence of a Use Attainability Analysis ("UAA"), primary contact recreation uses are attainable. However, this "rebuttable presumption" does not exist in the CWA itself. Moreover, by relying on this assertion, EPA absolves itself of its legal duty to provide clear basis and support for a proposed rule. Finally, EPA shifts this legal duty to the citizens of Kansas by asking numerous times in the proposed rule for information, data, and support to rebut EPA's presumption.

During the public hearings, and through written comments, the coalition presented evidence that many streams classified by KDHE would not support either secondary or primary contact recreation. The coalition collected pictures and affidavits from nearly 100 landowners whose property contains stream

segments classified by KDHE, listed for secondary contact recreation, and whose streams would be designated for primary contact recreation. This process is absurd. Clearly, these pictures and affidavits rebut the presumption of use for primary contact recreation. The coalition also asserts that many of these stream segments would not support secondary contact recreation. In short, recreational use is not appropriate on these streams as there is not enough water to support recreation and/or that these lands are privately held and no public access is allowed therefore no recreational use can be achieved without permission.

House Bill 2373 would put in law what is reality in Kansas. First, by changing the definition of a classified stream, the bill would classify only those streams with flow, threatened or endangered species, or those needing protection based upon scientific reviews. Second, by breaking the recreational use provisions into subcategories, there is recognition of private property rights and an affirmation of state law that nonnavigable waters are not open to the public. The Clean Water Act applies to navigable waters. (See 33U.S.C. 1313(c) (2)(A) and *Solid Waste Agency of Northern Cook County v. United States Army Corp of Engineers*, --S.Ct. ---, 2001 Daily Journal D.A.R. 267, (Jan. 9, 2001)) State law states that nonnavigable waters are not open to the public. This bill combines these realities and states that recreational uses are not attainable on lands that are not open to the public or where there is insufficient flow to support recreational uses. It is not the intent of the coalition that these streams not be listed for other uses. The coalition simply does not support listing of such streams for recreational uses.

Madame Chairperson, members of the committee, we understand that there might be additional work beyond the current provisions of House Bill 2373. Our coalition stands ready to work with the Legislature, Administration, and other stakeholders to improve the language in this bill. On behalf of my colleagues, and the tens of thousands of Kansas citizens and landowners we represent, I ask for the committee's favorable passage of House Bill 2373. Thank you.



STATEMENT OF THE  
KANSAS GRAIN & FEED ASSOCIATION  
AND THE  
KANSAS FERTILIZER & CHEMICAL ASSOCIATION  
PRESENTED TO  
HOUSE ENVIRONMENT COMMITTEE  
REGARDING HB 2373  
REPRESENTATIVE JOANN FREEBORN, CHAIR  
FEBRUARY 15, 2001

KGFA & KFCA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTEGRAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

816 SW Tyler, Topeka KS 66612 - 785-234-0461 - Fax: 785-234-2930

*House Environment  
2-15-01  
Attachment 11*

The following statement is submitted on behalf of the Kansas Fertilizer and Chemical Association (KFCA) and the Kansas Grain and Feed Association (KGFA). KFCA's over 550 members are primarily plant nutrient and crop protection retail dealers with a proven record of supporting Kansas producers by providing the latest crop protection products and services. KGFA is comprised of more than 1100 member firms including country elevators -- both independent and cooperative -- terminal elevators, grain merchandisers, feed manufacturers and associated businesses. KGFA's membership represents 99% of the over 860 million bushels of commercially licensed grain storage space in the state of Kansas.

KGFA and KFCA want to express support for House Bill 2373, which accomplishes the following:

- H.B. 2373 ensures the Kansas Department of Health and Environment considers the social, economic and regulatory costs associated with the classification of streams.
- H.B. 2373 establishes a credible and practical definition for "classified streams" based on a one cubic foot per second low flow. (This is the current standard in place in Nebraska.)
- H.B. 2373 provides special consideration in cases where streams are inhabited by threatened or endangered species.
- H.B. 2373 provides special consideration in cases where pooling occurs in low flow streams and serves as a refuge for aquatic life.
- H.B. 2373 more clearly defines the term "agriculture use" with regards to Kansas Surface Water Quality Standards.
- H.B. 2373 establishes practical recreational use designations for classified streams in Kansas that account for seasonal climatic conditions and historical recreational use timeframes.
- H.B. 2373 strengthens private property rights in Kansas by ensuring that primary contact recreational uses (swimming, etc.) do not apply to private lands where public access is not authorized.



With the advent of the Environmental Protection Agency's proposed water quality standards, which if adopted would force Kansas to apply the most stringent recreational use designation to all "classified streams", it is paramount that Kansas exercise its right and responsibility to only classify streams that have the ability to realistically support recreational activities. If left unchecked, the inappropriate classification of streams and the stringent EPA mandated standards that follow will not only negatively impact Kansas agriculture but also the hundreds of small rural communities in Kansas whose livelihood depends on a strong agricultural economy.

It is our hope, that the Kansas Legislature will not sit idly by as streams are inappropriately classified and stream uses are inappropriately designated. The cost associated with unjustified classifications and designations is simply too great to ignore. The Kansas Legislature must ensure that the limited resources available for water quality improvement in Kansas are targeted to rivers and streams that have a realistic chance at meeting all of the uses designated for that specific stream. This can only be accomplished if our standards for stream classification and stream use designation are also realistic.

It is clearly time for reason rather than emotion, time for common sense rather than command and control regulations and time for practical solutions rather than unattainable standards. KGFA and KFCA believe it is time for positive consideration of House Bill 2373. Thank you for the opportunity to present this statement of support.

*For information contact Doug Wareham, Vice President, Government Affairs at 785-234-0461 (office) or 785-224-1848 (cell).*



# PUBLIC POLICY STATEMENT

## HOUSE COMMITTEE ON THE ENVIRONMENT

**RE: HB 2373 - regarding classification of streams and designated uses.**

**February 15, 2001  
Topeka, Kansas**

**Presented by:  
Leslie J. Kaufman, Associate Director  
Public Policy Division  
Kansas Farm Bureau**

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Chairperson Freeborn and members of the committee, thank you for the opportunity to present testimony on behalf of Kansas Farm Bureau's farmer and rancher members across the state and express our support for HB 2373. I am Leslie Kaufman and I serve KFB as an Associate Director of Public Policy.

Kansas Farm Bureau is a member of the alliance, Kansans for Common Sense Water Policy. We fully support the testimony presented to this committee on behalf of the coalition. In addition, we feel it is important to supplement that presentation with a statement specific to KFB policy.

Farm Bureau members are aware of the important and vital role the state fulfills in determining how Kansas will meet the requirements of the federal Clean Water Act. Hundreds of farmers and ranchers from across the state filled meeting rooms in Topeka and Dodge City this past fall expressing concern with the U.S. Environmental Protection Agency's proposed water quality standards for Kansas and the way in which EPA was trying to interject itself into matters of the state.

These concerns were raised again when the voting delegates to the Kansas Farm Bureau Annual Meeting debated and adopted new language regarding the state's authority under the federal Clean Water Act:

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Attachment 12*

***“We support the authority of the state of Kansas to regulate water quality under the federal Clean Water Act. We also support the current state exemption for certain private waters from water quality standards.”***

Kansans for Common Sense Water Policy has appeared previously in the Senate Natural Resources Committee in support of SB 204, the Senate companion bill to HB 2373. Kansas Farm Bureau submitted independent written testimony in support of SB 204 and Kansans for Common Sense Water Policy's position statement.

Currently, the coalition is working with KDHE to address language that needs clarification. So, from that perspective, HB 2373 might be considered the starting point to accomplishing legislative guidance through statutory definition and direction that is needed to ensure Kansas' stream classifications and use designations are appropriate, reasonable and scientifically based. We support the concepts of the bill and encourage the committee to act favorably on these concepts. Thank you.

HB 2374  
February 15, 2001  
Room 231 – N, 3:30 PM  
Joann Freeborn, Chairperson

Testimony of Dave Murphy

P. O. Box 328  
Shawnee Mission, KS 66201-0328  
913-406-2260

Good afternoon, my name is Dave Murphy. I am a businessman, a lifelong resident of Kansas and a landowner. I am here to speak on behalf of Friends of the Kaw, an organization that has a real-life, practical knowledge of rivers and water quality. We are opposed to HB2374.

This bill would reverse thirty years of water quality improvements in Kansas. It would put Kansas in clear violation of the Federal Clean Water Act, and it would threaten all uses of our rivers and streams. My written testimony will bear that out, but since time is limited I will concentrate on an easy solution to the coalition's concern about recreational uses of dry streambeds.

*At this time KDHE has enough federal funds to hire a summer staff to do all the Use Attainability Assessments in the parts of the state that have not already been completed (see the attached map). This would resolve the concern over whether a stream was a stream, a ditch, or a seasonal waterway and end this dangerous debate over making quick, overly dramatic and questionably safe changes to our water quality standards.*

All that is needed for this change is for the legislature to order the use of the Use Attainability Assessment protocols that were developed last summer. The recreational studies could be expedited on any requested streams, and completed on any questionable streams by the end of the summer. The usual public review period would be carried out during the following fall and winter. These protocols have already been through the full public comment period and are ready to go. Your order would expedite them so that KDHE could complete the process, and avoid this dangerous experiment proposed in HB2374.

This bill was introduced without full knowledge or appreciation for the problems that the new rules could cause for water quality across the state. It was drafted in haste and without consideration for other water users in the state.

Here are the worst technical problems in this bill:

1. This bill removes all surface water uses besides agricultural and recreational uses. Whatever happened to the uses for drinking water, aquatic life, and the other uses required under law and common sense? The coalition says they didn't have time to think this through on this point. I don't think they thought it through at all.
2. This bill strips away current stream classifications without Use Attainability Assessments. That is against federal law. They didn't think that through either.
3. Only 14 rivers in the entire state meet their baseline flow of one cubic foot per second at 10-year low flows (7Q10). When informed of this by state

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- official yesterday the coalition said they didn't know that, but that isn't true, because I told them more than a week ago in my Senate testimony.
4. Their definition of "agricultural use" encompasses almost every bit of Kansas that is not paved or someone's lawn. The Kansas River "flows to, through, or from agricultural operations". Are we to understand that they claim the Kansas River, the Arkansas, and all the other rivers as well?
  5. This bill strips away most of the recreational use protections of surface waters of the state. Every stream with water in it that I know of in the middle and eastern parts of the state have kids playing in them spring through fall. Publicly navigable access or not. The state cannot legislate away the safety of our waters to expedite a convenience for any industry, agriculture or not. What goes into our streams eventually ends up in our rivers. The water in those rivers is bad enough without this turn for the worse. Politics has little to do with safety. The ag lobby is powerful but this time they are wrong.
  6. The bill limits recreational protection to only five months of the year. The season for outdoor recreation knows no season, and if there was one it would extend far beyond both ends of May and September. If the season is to be limited, April 1 through October 31 is a reasonable compromise. Months of testimony compiled at last year's UAA meetings bear this out.
  7. The bill dangerously redefines recreation. Class A recreation should be defined as "activities where some ingestion of water is intermittently probable.
  8. Class B recreation should be defined as "activities where some ingestion of water is unlikely. Their definition and their examples allow high contamination in waters where intermittent ingestion is probable. They are playing loose with the waters of our state and our health for their private gain and convenience.
  9. The bill redefines canoeing and kayaking as class B recreation. Last summer the testimony and input from public hearings convinced the experts who study these things that canoeing and kayaking are full contact, class A recreation activities. Let the experts decide not this coalition.
  10. The UAA protocol for recreation is easy and straightforward. The field assessment section is only about a page long with one page of easy questions to answer. A topographical map and a camera are required. I have attached a copy of the proposed recreational UAA for your information. If I had a ranch with a dry streambed and had been classified as recreational, I would take some pictures, download the topo off the internet, fill out the form and send it in. I would do this because I would rather be a steward of the land and do my share, than support a bill like this that would endanger other people and threaten water quality across the state.
  11. The proponents of this bill will tell you what hardships they would have to go through under the proposed EPA regulations. But not one Kansas farmer or rancher has ever been cited, let alone prosecuted for agricultural or livestock contamination of a dry streambed or farm pond through normal agricultural or grazing practices. Normal and ordinary agricultural use of the land is guaranteed under the Freedom to Farm Act.

I have provided a safe, fast, and cost effective alternative. It provides a cure for the ranchers and farmers and protects the waters of the state. Please use

my recommendation. The governor has asked the state agencies to lay low on this, so you will have to ask direct questions repeatedly to get complete answers.

Within the next few months my wife and I plan to buy a larger piece of ground along a stream somewhere in eastern Kansas. Even though my land is "private", I still want to be able to swim, boat and fish in the river. Under common law and under the laws of this nation all of us have the right to this natural resource, and no person or group of people has the right to destroy or pollute those resources held in public trust. This bill flies in the face of common law and the Federal Clean Water Act and, if passed, it would guarantee intervention by EPA.

Every expert I have spoken to throughout the state has condemned this bill. There is not a paragraph in it that is technically correct. It was thrown together at the last minute without regard of the safety of our water or our people. This is a very complex issue. Many experts have made good judgements concerning the best ways to protect and preserve our water supplies. To date, no one is being harmed or threatened by the current regulations. But this bill puts at stake is the health and wellbeing of our precious and all too scarce water.

A cheap, fast and effective method has been proposed to resolve the needs of the coalition. Stay the course of Kansas water quality and leave the regulation of water quality to the experts. Do not make a rash decision that could be costly in many ways.

Oppose HB 2374

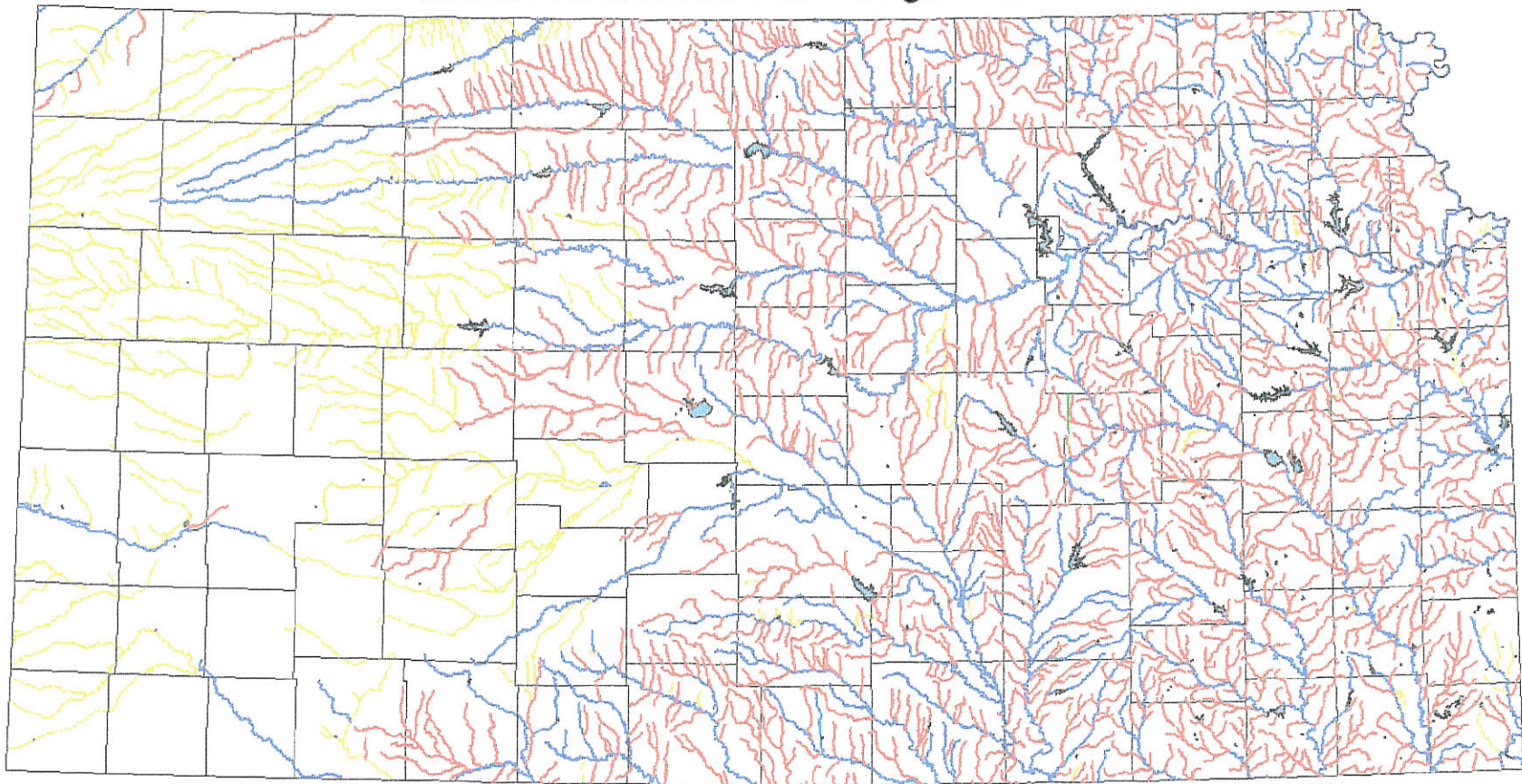
Thank you  
Dave Murphy

#### Possible questions

1. Could all stream segments get a recreational UAA by the end of the summer? No. They are not needed. We already know the streams that definitely have plenty of water all year. The emphasis will be placed at the upper reaches of each stream. See the map provided.
2. How long does it take to do a recreational UAA? It depends on whether you are already familiar with the stream or not and how far you have to drive to get to it. How long does it take to shoot a roll of film up and down a segment of stream, circle it on a topo, and answer some easy questions? Not so long that would be a hardship on anyone. This is not something that anybody is being told they have to do. The state will do it for the farmers, or they can do it themselves if they want to. It is fair for everyone.
3. Where are the stream segments the coalition is showing pictures of? We don't know, but if they send those pictures with the areas circled on a topo map and if they can fill out an easy questionnaire, it begs you to wonder why they are wasting your time and threatening our state's waters over such a no-brainer.

The Yellowed streams have already had UAAs and have had recreational uses removed. The blue lines are the only streams that meet the criteria. The reds are the ones in question. Most are void except for upper reaches.






### Stream Recreation Use Designations



**DATA SOURCES:**

Political boundaries: KGS/KCDB  
Hydrology: US EPA

KDHE/BEFS 9/5/00 DRAFT

-  Proposed EPA Primary Contact Recreation Streams
-  Counties
-  Lakes
- Contact Recreation classification 1994 standards**
-  not attainable
-  attainable

USE ATTAINABILITY ANALYSIS (UAA)  
FOR  
PRIMARY AND SECONDARY CONTACT RECREATION  
(INCLUDING FOOD PROCUREMENT)

RESOURCES AVAILABLE

PREPARATION FOR UAA

Review all applicable files, databases and maps in order to become thoroughly familiar with the waterbody to be inspected and to determine what assessment should be accomplished.

The following materials are available from Kansas Department of Wildlife and Parks (KDWP) and may obviate the need for onsite survey:

- fishery resource maps and designations
- stream survey maps and collection information
- fish collection records from KDWP stream surveys

USE ASSESSMENT PROCEDURES

CHECK A BOX

Recreation use shall be designated for all classified waterbodies in Kansas. It shall be considered existing if indications of such use are evident and attainable if the waterbody meets the criteria for classification set forth in K.A.R 28-16-28d(b), which state: "Surface waters shall be classified as follows:

- 1. Classified streams shall include all streams with mean summer base flows exceeding 0.03 cubic meters per second (0.1 cfs). Regardless of flow, a stream shall be classified if studies conducted or accepted by the department show that pooling of water during periods of zero flow provides important refuges for aquatic life and permits biological recolonization of intermittently flowing segments.
- 2. Classified lakes shall be all lakes owned by federal, state, county or municipal authorities and all privately owned lakes that serve as public drinking water supplies or that are open to the general public for primary or secondary contact recreation.
- 3. Classified wetlands shall be all wetlands owned by federal, state, county, or municipal authorities, all privately owned wetlands open to the general public for hunting, trapping or other forms of secondary contact recreation, and all wetlands classified as outstanding natural resource waters or designated as special aquatic life waters..."

CHECK APPROPRIATE BOXES

Primary contact recreation use shall be considered existing in waterbodies in which indications of the following uses are evident:

- |  |                                      |
|--|--------------------------------------|
| <input type="checkbox"/> swimming          | <input type="checkbox"/> skin diving |
| <input type="checkbox"/> boating           | <input type="checkbox"/> waterskiing |
| <input type="checkbox"/> mussel harvesting | <input type="checkbox"/> windsurfing |



streamside landowners or other knowledgeable individuals or other dated documentation).

In order to protect public health, the primary contact recreation use shall be considered attainable if the waterbody otherwise meets the criteria for designation set forth in this document. The use will also be assigned to all waters along: (check applicable conditions)

public parks

public parkways

urban streams

and other waters with a high probability of public access: (check applicable conditions)

boat ramps

nature trails

camping areas

playgrounds

Secondary contact recreation - At a minimum, all classified surface waters shall be designated for this use. It shall be considered existing in waterbodies in which indications of the following uses are evident:

wading

trapping

fishing

hunting

or which were used for this purpose on or after November 28, 1975 (based on interviews with streamside landowners or other knowledgeable individuals or other dated documentation).

The secondary contact recreation use shall be considered attainable if:

the waterbody meets the criteria for classification set forth in K.A.R. 28-16-28d(b).

Food procurement - Because of its impact on public health, food procurement use is herein considered a subset of the recreational uses. For waterbodies designated for aquatic life support use, the food procurement use shall be considered existing in waterbodies in which there is visual or recorded (i.e., KDWP creel census or fishery survey) evidence of the following uses:

fishing

consumption of crawfish, mussels or aquatic macrophytes

waterfowl hunting activities

or which were used for this purpose on or after November 28, 1975 (based on interviews with streamside landowners or other knowledgeable individuals or other dated documentation).

FIELD ASSESSMENT FOR PRIMARY CONTACT RECREATION

A. Field activities should begin with a visual inspection of the targeted waterbody at several locations. Those stream sites deemed most likely to support primary contact recreation should be selected for further study. For a lake or wetland, one site may be adequate to characterize existing or potential uses. The number of sites to be assessed on a given waterbody should be determined prior to commencement of field activities. Form E-1 should be used to record findings.

B. Assessment sites should be designated for each UAA and clearly marked on 1:24,000 (7.5 minute series) USGS topographic maps (available at: [www.topozone.com](http://www.topozone.com)). When

*check appropriate boxes*

*Done in the field*

recorded on field forms.

- Done in the field*
- C. If access to the waterbody is to be made on private property, landowner or resident permission should be secured prior to access.(K.S.A. 21-3721)
  - D. Narrative UAA site assessments are to be clearly recorded, either by electronic or written means, at each assessment site. To eliminate risk of mistakes or confusion regarding existing or attainable uses among multiple sites, it is necessary to record observations before moving to the next assessment site.

The written assessment shall include waterbody assessed, legal location, GPS coordinates, field physical data, photographic exposure information, stream width, depth and flow estimations, existing uses actually observed, and any other observations of unusual conditions.

- E. A photographic record should be made of sites assessed for the UAA. Photographs should include an upstream view, downstream view, and any photographs required to document observed or potential uses. Photographs should be documented to indicate what is being shown by the photograph.
- F. Whenever possible, streamside or other local landowners or residents should be interviewed regarding present or past uses of the waterbody. Persons interviewed should be identified by name and legal address in the written assessment.

#### FINDINGS OF PRIMARY CONTACT RECREATION UAA:

A written statement of finding and all supporting documentation must be presented to KDHE for review. This statement should include pertinent findings that support the designation being proposed for adoption in the Kansas Surface Water Quality Standard, K.A.R. 28-16-28d.

Form E-1

USE ATTAINABILITY ANALYSIS (UAA)  
FOR  
PRIMARY CONTACT RECREATION AND FOOD PROCUREMENT

AVAILABLE FROM  
KOHE BY PHONE  
OR FAX OR MAIL

fill out this

Stream or Lake Name: \_\_\_\_\_ HUC: \_\_\_\_\_  
Basin: \_\_\_\_\_ Segment: \_\_\_\_\_

Location (Legal): \_\_\_\_\_ 1/4 \_\_\_\_\_ 1/4 Sec. \_\_\_\_\_ Township. \_\_\_\_\_ Range \_\_\_\_\_ Quadrangle \_\_\_\_\_

Evaluators: \_\_\_\_\_ Date: \_\_\_\_\_

Site Location Map or attach photographs:

Charles M. Benjamin, Ph.D., J.D.  
Attorney at Law  
P.O. Box 2642  
Lawrence, Kansas 66044-8642  
(785) 841-5902  
(785 841-5922 fax)

February 15, 2001

Testimony Before the Kansas House Environment Committee  
In Opposition to H.B. 2373  
On Behalf of the Kansas Chapter of Sierra Club

Madam Chairman, members of the Committee, thank you for giving me the opportunity to testify in opposition to H.B. 2373. This bill will:

- Eliminate all protection from many important Kansas streams.
- Eliminate protection of surface waters and aquifers for use as drinking water.
- Eliminate protection of lakes and wetlands.
- Eliminate any protection of aquatic life.
- Create an inevitable legal clash with EPA.

Do You Need to Pass This Legislation?

Section 303(c)(1) requires that "the Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with the date of enactment of the Federal Water Pollution Control Act Amendments of 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator (of EPA)."

In plain language of the Clean Water Act provides a procedure for reviewing the state's water quality standards that is binding on this state. It is called a triennial review of water quality and it is required of all states under the federal Clean Water Act. Every state is required to completely review, and if necessary, update their water quality standards at least every three years. In the past, that process in Kansas has been conducted by KDHE over many months while allowing for input by all stakeholders, including the scientific and public health community.

Kansas is due for another triennial review of its water quality standards in 2002. Wouldn't it be better for all Kansans if the proposals contained in this legislation were considered in an open public process over several months rather than in a legislative hearing where you are under time pressures to consider many different bills and issues? Many Kansans will be impacted by such a

*House Environment<sup>1</sup>  
2-15-01  
Attachment 14*

dramatic change in water quality standards. All who are affected should have an opportunity for input and good science should be applied to this process rather than politics.

### Is it Legal for the State Legislature to Change the State's Water Quality Standards?

As you can see from the plain language of the Clean Water Act quoted above, Congress intended for the Governor, or the states pollution control agency, to set water quality standards. Nowhere in the Clean Water Act does it mention that state legislatures should set water quality standards. Congress clearly intended for the setting of water quality standards to be a state administrative process, not a legislative process. Proponents of this bill will tell you that a few state legislatures have made changes to their water quality standards. However, it is important that you examine very carefully what those other states have actually done. To my knowledge, wholesale changes in stream designations by the state legislature, as proposed in H.B. 2373, have not occurred anywhere else. And even if they have, it does not make it legal. It only means no one has challenged it in court. By passing this legislation you are putting the state of Kansas into direct conflict with federal law. Are you sure the taxpayers of the state want to pay the legal fees to try to uphold a law that on its face is of questionable validity?

Why is the EPA proposing to designate 1400 water bodies in Kansas for "primary contact recreation?"

Section 101(a)(2) of the Clean Water Act establishes the national goal of "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and ...recreation in and on the water, wherever attainable". This national goal is commonly referred to as the "fishable/swimmable" goal of the Clean Water Act. Section 303(c)(2)(A) requires State water quality standards to "protect the public health and welfare, enhance the quality of water, and serve the purposes of this Act."

EPA's regulations, found at 40 CFR Part 131, interpret and implement these CWA provisions by requiring that water quality standards provide for Clean Water Act section 101(a) goals uses unless those uses have been shown to be unattainable. These EPA regulations are legally binding upon states because they have been adopted pursuant to the federal Administrative Procedures Act, have the force of law and override any state law to the contrary. These regulations create a "rebuttable presumption" that all the waters of a state that are regulated under the Clean Water Act are to be designated "fishable/swimmable" unless the state proves otherwise.

The mechanism in EPA's regulations used to rebut this presumption is a "use attainability analysis." Under 40 CFR 131.10(j) states are required to

conduct a "use attainability analysis" (UAA) whenever the state designates or has designated uses that do not include the CWA Section 101(a) goal uses, or when the state wishes to remove CWA section 101(a) goal uses, or when the state adopts subcategories of uses that require less stringent criteria.

A UAA is defined in 40 CFR 131.3(g) as a "structured scientific assessment of the factors affecting the attainment of the use which may include physical, chemical, biological, and economic factors." In a UAA, the physical, chemical and biological factors affecting the attainment of a use are evaluated through a water body survey and assessment.

This rebuttable presumption approach is designed to preserve the state's paramount role in establishing water quality standards in weighing any available evidence regarding the attainable uses of a particular water body. The rebuttable presumption approach does not restrict the discretion that states have to determine that CWA section 101(a) goal uses are not, in fact, attainable in a particular case. Rather, if the water quality goals articulated by Congress are not to be met in a particular water body, the regulations simply require that such a determination be based upon a credible "structured scientific assessment" of use attainability.

Since the early 1980's EPA has identified the State's lack of justification for waters not designated with Section 101(a) goal uses, particularly primary contact recreation, as a significant issue that the State has failed to address. Nevertheless, as part of its 1998 approval action, EPA approved over 300 revised use designations as a result of use attainability analyses that were submitted by KDHE. However, Kansas did not include supporting use attainability analyses for all the surface waters that the State did not designate for primary contact recreation. EPA therefore disapproved those use designations as being inconsistent with 40 CFR 131.10(g).

In plain language, Congress intended for all "waters of the United States" to be "fishable/swimmable." The reason is to prevent states from conducting exactly the kind of wholesale categorization of waters in the state that is proposed in H.B. 2373. This presumption can be rebutted by a state for any given water body by carrying out a use attainability analysis (UAA). Since, 1980 Kansas has been out of compliance with this section of the Clean Water Act. KDHE is aware of this fact and has developed a protocol for conducting these UAAs.

### What Should the Legislature Do About Water Quality Standards?

You should follow the dictates of the Clean Water Act, which is legally binding upon the state of Kansas. Kansas signed a memorandum of understanding with EPA approximately 25 years ago, whereby the state agreed to carry out the Clean Water Act on behalf of the federal government in return for receiving millions of dollars of federal funds every year. Currently, over 80% of KHDE's budget comes from transfers from the federal government through EPA.

There is already a citizen complaint filed with EPA requesting withdrawal of this state's authority to carry out the Clean Water Act and issue permits. That is because the Kansas Supreme Court, in an opinion issued last spring, cited Kansas' failure to comply with certain provisions of federal regulations allowing for direct judicial appeals in state district court of permits issued by KDHE. The KDHE Secretary asked the legislature to remedy that situation last year but the legislature refused to act. EPA is currently reviewing the state's compliance with the Clean Water Act.

Similarly, the EPA expected the state legislature, in 1991, to remedy the lack of compliance with the Clean Water Act on the so-called private ponds issue, whereby individuals whose private ponds are polluted by someone else have no remedy in state law and must pursue private tort actions. The legislature again failed to act. Now you have a bill before you that would reclassify hundreds of water bodies in this state in clear violation of the Clean Water Act.

Some of you may hope the new administration won't act to sanction the state if the legislature passes legislation like H.B. 2373 that is so clearly in violation of the Clean Water Act. Section 505(a)(2) of the Clean Water Act states that "any citizen may commence a civil action on his own behalf against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator."

The fact is that the EPA Administrator has failed in the past to perform her non-discretionary duty to require the state of Kansas to carry out duties the state agreed to over twenty-five years ago. The state of Kansas and EPA failed to set TMDLs for impaired streams for over twenty years. The Kansas Sierra Club and KNRC had to file suit in federal court that resulted in a schedule of compliance that is now being carried out.

For twenty years, Kansas has failed to justify setting less than a primary contact recreation designation for some 1400 water bodies and EPA failed to act. For a decade, Kansas has refused to put itself into compliance with the private ponds rules that are the law in 47 other states and EPA failed to act. Again, Sierra Club and KNRC had to go to federal court and obtain a consent decree whereby EPA is finally promulgating those rules the state refuses to comply with.

No one takes pleasure in filing lawsuits. And if you think I am getting rich from them, think again. I made just a little over \$2600 from the settlement of the last lawsuit with EPA. That won't make many mortgage payments. Congress gave the citizens of the United States the opportunity, and the duty, to bring a civil suit in U.S. District court when the EPA Administrator fails to carry out the Clean Water Act. My clients in the Kansas Sierra Club have filed these lawsuits only as a last resort. In every case the EPA was out of compliance with the Clean Water Act for many years. The members of the Kansas Sierra Club believe that environmental laws of the United States apply to Kansas and they intend to continue seeing to it that those laws are fully carried out in Kansas.

Thank you for your time and attention. I would be happy to respond to any questions.

meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

**(b) Proposed regulations**

(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, if—

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section;

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

**(c) Review; revised standard; publication**

(1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with October 18, 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

(2)(A) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(B) Whenever a State reviews water quality standards pursuant to paragraph (1) of this subsection, or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria for all toxic pollutants listed pursuant to section 1317(a)(1) of this title for which criteria have been published under section 1314(a) of this title, the discharge or presence of which in the affected waters could reasonably be

expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. Such criteria shall be specific numerical criteria for such toxic pollutants. Where such numerical criteria are not available, whenever a State reviews water quality standards pursuant to paragraph (1), or revises or adopts new standards pursuant to this paragraph, such State shall adopt criteria based on biological monitoring or assessment methods consistent with information published pursuant to section 1314(a)(8) of this title. Nothing in this section shall be construed to limit or delay the use of effluent limitations or other permit conditions based on or involving biological monitoring or assessment methods or previously adopted numerical criteria.

(3) If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this chapter, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this chapter, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved—

(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this chapter, or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter.

The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this chapter.

**(d) Identification of areas with insufficient controls; maximum daily load; certain effluent limitations revision**

(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the sever-

ity of the pollution waters.

(B) Each State thereof within its thermal discharge not stringent enough of a balance of fish, and wildlife.

(C) Each State identified in paragraph accordance with a maximum daily load, if the Administrator identifies as suitable for such established at a applicable water quality standards and a margin any lack of knowledge between effluent

(D) Each State identified in paragraph maximum daily load protection and propagation of such population of such sources shall take measures, flow sources of heat in the identified waters shall include a margin that can be made a margin of safety of knowledge concerning water quality criteria in the identified

(2) Each State from time to time later than one hundred of publication of under section 1313 al the waters identified under paragraph of this subsection. The Administrator shall prove or disapprove later than thirty days after the Administrator load, such State plan under such Administrator load, he shall not of such disapproval and establish such standards applicable to such waters. Identification and establishment of them into its water quality section.

(3) For the purposes of this section, each State boundaries within paragraph (1)(A) an





Johnson County, Kansas

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TO: The Honorable Joann Freeborn, Chairperson  
Members, House Environment Committee

FROM: John Metzler

DATE: February 15, 2001

RE: Opposition to H.B. 2373 -- Classification of Streams

I am a registered professional engineer and I am Chief Engineer with Johnson County Wastewater, a sewer utility that provides sanitary sewers to approximately 300,000 customers in Johnson County.

While House Bill 2373 addresses valid concerns about designated uses in the state Water Quality Standards (WQS), we believe the bill should not be approved for the following reasons:

1. The bill proposes to remove designated uses from most streams in Kansas by redefining what a classified stream is. Because this part of the bill gives as a deadline the publication of the bill for reinstating these uses, as a practical matter, it will permanently remove many important designated uses from most streams in Kansas, including protection of aquatic life and public health.
2. The streams left without protection under the WQS include virtually all streams in Johnson County. Perhaps more familiar to this committee, the Shunganunga and Soldier Creeks here in Topeka will also lose this protection.
3. KDHE does not have the staffing to conduct the thousands of studies that would be required to evaluate whether these uses should be restored to the streams. KDHE does not have sufficient staffing for implementing the current WQS program, and cannot take on these additional studies.
4. The bill appears contrary to EPA regulations, which requires a Use Attainability Analysis (a structured scientific analysis), before a use is removed. Under the bill, uses for thousands of streams will be removed without benefit of a Use Attainability Analysis. It is difficult to conceive of a position a court could take in support of this concept should it be challenged in court.
5. The classification and use designation of streams in Kansas and virtually all other states in the country have always been under the purview of regulation, not law. There is no justification for this significant change to the regulatory scheme.
6. The proposed change to the period when the primary recreational use criterion is in effect from April through October to a reduced period of May through September may have merit, but such a change should only be made after scientific analysis of data on usage and practices of nearby states.
7. The issues raised by this bill are largely scientific, rather than legal. We strongly urge that the issues raised by proposed H.B. 2373 be studied by a permanent Water Quality Commission as proposed in S.B. 221. As this committee is no doubt aware, the previous Water Quality Commission lead to significant reforms of KDHE's Water Quality Standards in 1999.

Thank you for this opportunity to provide comments on proposed House Bill 2373.

Administrator's Office 111 South Cherry Street, Suite 3300, Olathe, Kansas 66061-3441

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# Kansas Society of Professional Engineers

*A state society of the National Society of Professional Engineers*

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## TESTIMONY BEFORE SENATE NATURAL RESOURCES COMMITTEE

### Hearing on House Bill 2373

### AN ACT concerning the waters of the state; relating to classified streams.

3:30 p.m., 02/14/2001

**Presented by: Shelley King**  
**Kansas Society of Professional Engineers (KSPE)**

My name is Shelley King. I am associate director for the Kansas Society of Professional Engineers. KSPE is a professional organization made up of approximately 900 engineers practicing in Kansas. KSPE believes that Kansas should devote the necessary resources for the development, maintenance and implementation of water quality standards appropriate for Kansas that are protective of aquatic life and public health. Many of our members work with counties, cities, and several industrial and agricultural groups in regards to water issues. Although House Bill 2373 addresses valid concerns about designated uses in the state Water Quality Standards, KSPE opposes House Bill 2373 for the following reasons:

- The language in House Bill 2373 removes designated uses from most streams in Kansas by changing the definition of what constitutes a classified stream. If passed into law House Bill 2373 would permanently remove several designated uses from most streams in Kansas, including protection of aquatic life and public health concerns surrounding swimming, fishing and boating.
- Virtually all streams in Kansas would be left without water quality standards. For an example, visualize Shunga Creek here in Topeka being left without any protection from degradation. Shunga Creek flows along a popular, scenic trail, which is enjoyed by many children, joggers and bicyclists. Without any protection, one wonders how long Shunga creek would remain a safe public resource.
- KDHE does not have the labor force to conduct the thousands of studies necessary to determine whether or not these uses should be restored to the streams.
- The bill is clearly contrary to EPA regulations, which requires a Use Attainability Analysis, which is a structured scientific analysis, before a

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use is removed. Under House Bill 2373, uses for thousands of streams will be removed without benefit of a Use Attainability Analysis. If judicial intervention were to occur, the possibility of a judge taking issue with the change in use is quite high.

- The classification and use designation of streams in Kansas and virtually all other states in the country have always been under the preview of regulation, not law. KSPE cannot rationalize any reason for such a drastic change in the regulatory scheme.
- The proposed change to the period when the primary recreational use criterion is in effect from April through October to a reduced period of May through September may have merit. However, such a change should only be made after scientific analysis of data on actual Kansas usage and the practices of nearby states has been conducted.

The issues raised here in this hearing relying heavily on scientific analysis and findings and should be treated as such. For this reason, KSPE would like to take this opportunity to state that we are supportive of SB 221 which creates a permanent Water Quality Commission. The issues that we have concerning House Bill 2373 should be studied and evaluated by a permanent Water Quality Commission. As this committee is no doubt aware, the previous Water Quality Commission lead to significant reforms of KDHE Water Quality Standards. In developing the 1999 standards, KDHE relied heavily on the Commission's recommendations to use actual stream data rather than desktop analysis in making water quality decisions.

The Kansas Society of Professional Engineers would like to thank the committee for the opportunity to present these views. Thank you.

# State of Kansas



## Department of Health and Environment

CAPITOL TOWER  
400 SW 8<sup>TH</sup> AVE., STE. 200  
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PHONE (785) 296-0461  
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BILL GRAVES  
GOVERNOR

CLYDE D. GRAEBER  
SECRETARY

Testimony on House Bill 2373  
presented by  
Secretary Clyde D. Graeber  
to the  
House Environment Committee  
February 15, 2001

Chairman Freeborn and members of the Committee, I appear before you today to express concerns KDHE has regarding certain provisions of House Bill 2373 that we believe would hinder the adequate protection of the surface waters of our state. These provisions also place in jeopardy, Kansas' compliance with federal laws and regulations.

On February 8<sup>th</sup>, the Senate Natural Resource Committee held a hearing on SB 204 which is the Senate version of HB 2373. At that time I stated I had offered to meet and work with the proponents of this legislation to review the questioned provisions of HB 2373. At the close of that hearing, the Chairman of the Senate Committee appointed a Subcommittee to work on the language of SB 204. The Subcommittee met on Monday of this week and we met again early this morning.

It is my intent to work with this coalition and all other interested parties. My hope is that together we can craft revised language that may be acceptable to all parties involved. Yesterday morning, we held a meeting with the Ag Coalition and another stakeholder to discuss our concerns with the provisions of SB 204. All parties involved agreed that the main question is that once a stream has been classified in State regulation, whether the State can declassify the stream or is a Use Attainability Analysis (UAA) required to declassify or lessen the streams use designation.

I would ask this Committee to consider allowing the latitude, not only to KDHE but also others concerned with this legislation, to work toward the development of substitute legislation that will accomplish the intended goals and still properly protect the waters of our state.

I again thank the Chairman and members of the Committee for this opportunity.

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# PUBLIC POLICY STATEMENT

## HOUSE ENVIRONMENT COMMITTEE

**RE: HB 2471 - Creates the "Kansas Natural Resource Legacy Alliance."**

**February 15, 2001  
Topeka, Kansas**

**Presented by:  
Bill Fuller, Associate Director  
Public Policy Division  
Kansas Farm Bureau**

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Chairperson Freeborn and members of the House Committee on Environment, Farm Bureau certainly appreciates this opportunity to express strong support for HB 2471. The bill proposes to create the "Kansas Natural Resource Legacy Alliance" charged with developing a vision and proposing recommendations for protecting and enhancing the state's natural resources.

My name is Bill Fuller. I serve Kansas Farm Bureau as the Associate Director of the Public Policy Division.

A Working Group organized to develop a quality of life initiative related to natural resources, the environment and economic development was formed and has been working several months examining needs, programs and resources. The core group has consisted of representatives of private organizations (Kansas Association of Conservation Districts, Kansas Farm Bureau, Kansas Chapter of the Nature Conservancy, Kansas Recreation and Parks Association) and state agencies (Kansas Department of Agriculture, State Conservation Commission, Kansas Water Office, Kansas Department of Wildlife and Parks, Kansas Forest Service and Kansas Department of Health and Environment). In addition to the core group, other

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organizations were brought into the discussions (Kansas Wildlife Federation, Kansas Livestock Association, Kansas Audubon Society, Pheasants Forever and Kansas Land Improvement Contractors Association).

HB 2471 proposes to create a 13-member alliance appointed by the legislative leadership and the governor:

- Three members appointed by the President of the Senate;
- Two members appointed by the Minority Leader of the Senate;
- Three members appointed by the Speaker of the House;
- Two members appointed by the Minority Leader of the House; and
- Three members appointed by the Governor.

We believe the provision in Section 1 (d) requiring the officials making the appointments to consult and coordinate in order to achieve a membership that represents a balance of knowledge and experience among various interests is vital to the success of the alliance:

- Natural resources;
- Environment;
- Economic development;
- Parks and recreation;
- Soil and water conservation;
- Travel and tourism,
- Outdoor recreation;
- Landowners and homeowners;
- Fish and wildlife;
- Forest resources; and
- Municipalities.

The farm and ranch members of Kansas Farm Bureau recognized the importance of involving all interests and addressing issues important to all Kansans when the members adopted the following policy:

*“A program that would provide additional support to protect and enhance natural resources should be a balance of rural and urban needs.”*

Section 2 (a) of HB 2471 outlines the purpose and establishes the mission by directing the alliance to “Develop a vision for the state’s natural resources that will assure:

- Decent economic standard
- Healthy environment
- Quality of life for Kansas families and individual citizens”

We respectfully encourage the committee to consider the following amendments to Section 2 (a):

1. Replace “an decent economic standard” with “economic development”
2. Add “natural resource protection”
3. Add “natural resource and environmental education”

HB 2471 outlines the process that will be used to develop the vision for the state’s natural resources:

- First meeting of the alliance will be called by the governor at which time a chairperson and vice-chairperson shall be elected;
- Conduct public hearings across the state to seek citizen input and provide information to the public;
- Seek input from state and local governmental agencies;
- Examine the state’s current natural resource and environment programs;
- Consider the impact of the state’s natural resources and programs on economic development;
- Examine the state’s current and future resource needs;
- Expand public/private partnerships that support and implement the vision.
- Submit preliminary and final reports to the governor and legislature;

In addition to developing a vision and recommending programs, we anticipate the alliance will examine the current and future resource needs, both funding and staffing, that will be required. The farm and ranch members of Farm Bureau have developed and adopted extensive policy focusing on protecting the natural resources of the state (see attachment) and will be active participants in this important mission.

We respectfully recommend the House Committee on Environment approve HB 2471 and advance the measure to the full House.

Thank you!

We encourage additional efforts to prevent contamination of ground water and surface water in Kansas. Success is dependent upon partnering and cooperation by government agencies at all levels, by and with organizations representing agriculture, business, homeowners, natural resource and environmental interests. All these entities must participate in order to increase public awareness and encourage appropriate action.

An increased focus and allocation of resources should be directed at developing crop and livestock management practices, which protect natural resources, the agricultural economy and the opportunity for continued use of crop and livestock protection products. Researchers, agencies and agricultural producers must all be involved in developing management practices, which are effective and widely utilized.

Since the protection of natural resources is vital to all Kansans, and important for future generations of Kansans, we support creating a dedicated source of funding, expanding cost-share programs, creating tax incentives and establishing a state revolving-loan fund for resource protection. A program that would provide additional support to protect and enhance natural resources should be a balance of rural and urban needs. There must be adequate funding to assist landowners with projects like implementing the new Total Maximum Daily Load (TMDL) requirements, installing stream buffers, constructing livestock waste management facilities, developing crop and livestock best management practices, treating highly erodible lands, plugging abandoned wells and upgrading rural septic systems.

The funding plan must prohibit any governmental entity from using the new revenues to purchase private farm and ranch lands.



KANSAS HOUSE OF REPRESENTATIVES

ENVIRONMENT COMMITTEE

TESTIMONY ON HOUSE BILL NO. 2471 - by the Kansas Association of Conservation Districts.

Madam Chair, I am Richard G. Jones, Executive Director of the Kansas Association of Conservation Districts and I am pleased to have the opportunity to address the Committee in support of House Bill No. 2471, AN ACT creating the Kansas Natural Resources Legacy Alliance.

The 105 Conservation Districts in Kansas are at work locally everyday protecting and improving our state's natural resources. They set goals and establish local priorities directed at improving resources at their local level.

A "Kansas Natural Resources Legacy Alliance with membership from natural resources, environmental, and industrial organizations and groups working together to develop a long range plan and policy for our state's natural resources will provide Conservation Districts a better opportunity to:

- \*\* Set priorities at the local level that fit into a State Long Range Plan
- \*\* Direct local natural resource programs to meet the objectives identified in a Long Range Plan
- \*\* Inform and Educate local citizens on the importance of protecting local resources.

We encourage you to establish a Kansas Natural Resource Legacy Alliance that will develop a long range vision for our state's natural resources.

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**JOHN K. STRICKLER**  
**1523 University Drive**  
**Manhattan, KS 66502-3447**  
**Phone: 785/565-9731**  
**Fax: 785/532-3305**  
**jstrickl@oznet.ksu.edu**

February 15, 2001

TO: House Committee on Environment, Representative Joann Freeborn, Chair

SUBJECT: House Bill No. 2471, Kansas Natural Resource Legacy Alliance

Thank you for the opportunity to express my support for House Bill No. 2471. I am not representing any specific organization, but I have been involved with a core group of individuals and organizations interested in the areas of natural resources and the environment in Kansas. I have spent 44 years of my life working in the natural resources field—mostly as a forester. Forty of those years have been in Kansas. I have worked for the Kansas Forest Service, as well as serving as Acting Secretary of Wildlife and Parks for both Governor Hayden and Governor Graves, and spent two years as Special Assistant for Environment and Natural Resources to Governor Hayden.

Kansas is a diverse state with an abundance of prime agricultural lands and other natural resources. Much of our economic base is built on those natural resources. Protection and wise management of these natural resources are essential for maintaining and growing the Kansas economy in a manner that meets present resource needs while assuring an economic standard, healthy environment and quality of life for future generations. Without adequate attention paid to our environment and to our water, soil and other natural resources, sustainable economic development will be difficult to achieve. More and more in the competitive economic development arena, you hear references to “Quality of Life” as a major selling point. Without a clean, adequate supply of water, what are the chances of attracting new businesses or expanding established businesses against the competition? What is the future of agriculture without adequate protection of our water and soil resources? Cities are facing increased costs of water treatment for use and treatment of wastewater after use. There are growing concerns about nonpoint source pollution from runoff from our farms and cities, and the burden that land treatment will place on individual landowners to install needed best management practices. At the same time, there is growing concern about the impact of burdensome environmental regulations on the landowners and businesses. Issues such as the current ones related to depletion of the High Plains Aquifer, costs and availability of energy, and water quality regulations all point to the need for long term planning related to our environment and natural resources.

The Alliance created by HB 2471 will be an attempt to take a pro-active look at these areas and develop a long-range plan to identify and address future environmental and natural resource priorities and needs. The Alliance will also be an opportunity to explore the options to develop and expand public/private partnerships to achieve the desired future within the context of balanced economic development, a healthy environment, and sustainable natural resources. I have been impressed with the diverse interests that have agreed on the need for this effort and are willing to support the creation of the Alliance. I respectfully urge your support of this bill.

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**Statement of Ron Klataske**  
**Executive Director, Audubon of Kansas, Inc.**  
**to the**  
**Kansas House of Representatives,**  
**Committee on Environment**  
**In Support of HOUSE BILL 2471**

My name is Ron Klataske. I live in Manhattan and serve as Executive Director of Audubon of Kansas, Inc. I am a native of Kansas and have been involved in wildlife conservation and farming/ranching most of my life.

I am here today on behalf of Audubon of Kansas. Audubon of Kansas represents 5,000 members of eleven chapters and our statewide organization in Kansas. Audubon members, like most residents, enjoy the wildlife and other natural resources of the state. Hunting, wildlife watching, fishing and other forms of outdoor recreation and nature appreciation are of great importance to the quality of life of Kansans and to the State of Kansas.

The economies of communities throughout the state benefit from the natural resources that are described in and the subject of House Bill 2471. The state will benefit more in the future as we draw attention to these resources and the opportunities to enjoy them. We have observed the successes of other states, including the Design for Conservation program in Missouri and the Environmental Trust Fund in Nebraska. Many of these programs started with initiatives similar to that envisioned with creation of the Kansas Natural Resource Legacy Alliance.

**WE URGE THIS COMMITTEE AND THE KANSAS LEGISLATURE TO ENACT HOUSE BILL 2471.**

The bill is very well written, and we offer only one important addition to the language of the bill. Following the phrase fish and wildlife resources on line 19 of page 2, please add "prairie and grassland resources". It will then continue with forest resources, parks and lakes, wetlands and riparian areas, soil and water conservation and air quality. Kansas is increasingly noted for its prairies and grassland resources--both native rangelands and re-established grasslands included in programs like the Conservation Reserve Program. Prairie lands can be seen and enjoyed along Kansas roadways throughout many regions of the state. We have the Tallgrass Prairie National Preserve and the Cimarron National Grassland. Ranchers throughout the state take pride in native rangelands, and many landowners cherish prairie hay meadows that flower each year with a diversity of native wildflowers. All who enjoy improved water quality, pheasant hunting and seeing our state bird, the meadowlark, benefit from the hundreds of thousands of acres enrolled in the CRP program.

Unfortunately, as evidenced by the omission in this bill, we often overlook the unique prairie and grassland resources that we enjoy in Kansas. In observance of this often missed opportunity, Audubon of Kansas has highlighted our state's prairies under the heading of "TAKING PRIDE IN PRAIRIES" in our organizational brochure (attached), and we are working with others--including the Kansas Department of Transportation--to draw attention to the most characteristic natural landscape in the state. Many of us hope that Kansas will become known as "The Prairie State", and we can help by adding this language to this bill and looking for other opportunities to highlight our state's prairie and grassland resources.

Thank you.

*House Environment*  
*2-15-01*  
*Attachment 21*

**House Committee on Environment**  
February 15, 2001

**Testimony on House Bill No. 2471**  
Steve Williams, Secretary  
Department of Wildlife and Parks

Thank you for the opportunity to appear before the committee to discuss HB 2471, an act that establishes a Kansas Natural Resource Legacy Alliance to develop a vision for the state's natural resources.

On behalf of the six state agencies (Department of Health and Environment, Department of Agriculture, Kansas Water Office, Kansas Forest Service, State Conservation Commission and Department of Wildlife and Parks) that have worked with private partners to develop the concept and draft this bill, I want to applaud this committee for considering, and indicate our strong support for, HB 2471. This bill represents an unprecedented effort and opportunity to draw on the collective wisdom and vision of the Governor, the Kansas legislature, state agencies, private organizations, and private individuals to build the foundation for future natural resource management in Kansas.

In spite of the cloud of disagreement and debate about environmental issues that currently confronts Kansas, HB 2471 promises to provide a forum for a comprehensive review of these issues and others with respect to economic development, health of our environment, and our quality of life. Most important, this effort will help ensure that future generations of Kansans enjoy the natural resources that have blessed past and present residents of this state.

The six state agencies mentioned previously, stand ready to assist in leaving a high quality, natural resource legacy for future generations. This is clearly our collective responsibility to Kansas and Kansans. We recommend and encourage your favorable consideration of HB 2471.

*House Environment*  
*2-15-01*  
*Attachment 22*

# KRPA

KANSAS RECREATION AND PARK ASSOCIATION

HB 2471

Testimony presented to the  
House Environment Committee  
February 15, 2001

Terry DeWeese, Co-Chair  
Kansas Recreation and Park Association  
Public Policy Committee

I am Terry DeWeese, Director of Parks and Recreation for the City of Manhattan. I appear before you today on behalf of the Kansas Recreation and Park Association, representing 900 professionals and citizen advocates from communities, large and small, urban and rural, all across the state.

The Kansas Recreation and Park Association has been involved with a Working Group made up of private organizations and state agencies to develop a quality of life initiative related to natural resources, the environment and economic development that was formed to examine the needs, programs and resources across the State of Kansas. House Bill 2471 requests that the Kansas Natural Resource Legacy Alliance made up of 13 voting members and 6 ex-officio members be created.

As detailed in HB 2471, the Kansas Natural Resource Legacy Alliance will establish goals and priorities in the various natural resource and environment areas that will help develop a vision for the State's natural resources that will assure an economic standard, healthy environment and quality of life for Kansas families and citizens in the future. This bill ensures a thoughtful process with opportunities and expectations of involvement and cooperation from state and local governments, the business community and private citizens.

The Kansas Recreation and Park Association, with its statewide resources, looks forward to being an integral participant in this process and strongly encourage your support for HB 2471.

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*House Environment*  
*2-15-01*  
*Attachment 23*