

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE.

The meeting was called to order by Chairperson Robert Tyson at 8:30 a.m. on February 15, 2001 in Room 423-S of the Capitol.

All members were present except: all present

Committee staff present: Raney Gilliland, Legislative Research Department  
Jill Wolters, Office of Revisor of Statutes  
Judy Krase, Committee Secretary

Conferees appearing before the committee:

Jolene Grabill, Regional Economic Area Partnership (REAP)  
Mike Taylor, City of Wichita  
David Pope, Chief Engineer, Division of Water Resources,  
Department of Agriculture  
Gary Blackburn, Director, Bureau of Environmental Remediation, KDHE  
Tom Palace, Petroleum Marketers

Others attending: See attached list

Senator Tyson said he had hoped there would be a report to the Committee from the Subcommittee concerning **SB 204** this day, but details were still being worked out on the bill. He noted **SB 204** would not be discussed on Monday, February 19 as previously thought, but would be sent to Ways and Means to be blessed and then returned to Natural Resources in order to give the Committee more time to work the bill. He also said there would be another Subcommittee meeting scheduled the following week to discuss the bill.

Senator Huelskamp moved that the minutes from the February 8, 2001 meeting be approved, seconded by Senator Schmidt. The motion carried.

Senator Tyson started the meeting with the continuation of the hearing on **SB 264** and Senator Downey explained the history of the bill and brought everyone up to date.

The first conferee and proponent, Jolene Grabill representing REAP, continued with her testimony from the previous Monday (Attachment 7, February 12). She noted that Groundwater Management District (GMD) No. 1, District No. 3 and District No. 4 have endorsed the concept of the legislation, but this bill would only affect Groundwater Management District No. 2 (Equus Beds). Questions and discussion followed.

The second conferee and proponent was Mike Taylor from the City of Wichita (Attachment 1). Questions and discussion followed.

Senator Tyson asked David Pope from the Department of Agriculture to comment on the bill. Mr. Pope said the GMDs are a very integral part of the state's water management system and the state relies very extensively on them to come up with local rules and regulations that are submitted to his office for adoption. He said there is truly a partnership between the desire and ability to provide local control and input so long as it is not inconsistent with state laws and policies. He said they were ok with the bill.

Senator Tyson declared the hearing closed on **SB 264**.

The Committee's attention was turned to **SB 183**, an act concerning the Kansas Storage Tank Act. Staff of Legislative Research explained the bill. Raney Gilliland said this bill would extend two funds currently provided for in the statutes, the Underground Fund and the Aboveground Fund. The language extends the funds from 2004 to 2014.

The first conferee and proponent of **SB 183** was Gary Blackburn, Director, Bureau of Environmental Remediation (Attachment 2). Questions and discussion followed his testimony.

The next conferee and proponent of the bill was Tom Palace, Petroleum Marketers. He said PMCA would like to see the bill amended to allow for a return of unused premium back to tank owners (Attachment 3). Senator Tyson asked Mr. Palace to come back tomorrow since time was running short.

Senator Tyson said the Committee would be working **SB 264** on Monday, February 19.

The meeting adjourned at 9:30.

The next meeting is scheduled for February 16 at 8:00 a.m.

SENATE NATURAL RESOURCES COMMITTEE

GUEST LIST

DATE: 2-15-01

NAME	REPRESENTING
Gary Blackburn	Ks Department of Health and Environment
JUAN SEXTON	PMCA
JON PALACE	PMCA
Dick Cook	K& Ins. Dept.
David Miller	DOB
MIKE TAYLOR	City of Wichita
Woody Moses	Ks. Agg. Prod. Assn.
Margaret East	Ks. Water office
David L. Pope	KDA
Jae A. Lieber	KS County Council
Gene Malin	REAP
Gordon Schmidt	Self



# ***TESTIMONY***

City of Wichita  
Mike Taylor, Government Relations Director  
455 N Main, Wichita, KS. 67202  
Phone: 316.268.4351 Fax: 316.268.4519  
Taylor\_m@ci.wichita.ks.us

---

## **Senate Bill 264**

### **Equus Beds Groundwater Management District Funding**

**Delivered February 12, 2001**  
**Senate Natural Resources Committee**

The City of Wichita recognizes its responsibility to be a good steward of the natural resources its citizens use. The City of Wichita accepts its duty and obligation to preserve and protect those natural resources.

Protection of the Equus Beds Groundwater Aquifer, which is the primary source of quality water for 500,000 citizens, is crucial for the future of Wichita and South Central Kansas. State laws and administrative procedures should provide for vigorous protection of the Equus Beds from contamination and waste.

The City of Wichita supports increased funding for Equus Beds Groundwater Management District Number 2. Present land and water assessment rate limits are not generating sufficient revenues to pay for the water management programs and public services required to protect the crucial Equus Beds Aquifer.

The City of Wichita, as the largest single user of the Equus Beds, wants to make sure the changes being made accomplish the goal of giving the Groundwater Management District adequate financial resources to protect the aquifer. Removing the assessment cap is necessary to protect the aquifer. Raising the cap and simply reimposing limits, especially limits which may not keep pace with the needs few years from now, is a stop gap solution. While raising the cap is better than nothing, it is not the best solution.

The City of Wichita fully supports the concept and goal of Senate Bill 264. But, we urge that the bill be allowed to do what is intended by making sure the assessment rate meets and keeps pace with the funding levels required to protect the Equus Beds. From the City of Wichita's viewpoint, that is best done at the local level with the Board of Directors of the Groundwater Management District and the users of the Equus Beds making the decision.

Senate Natural Resources Committee

Date *2-15-01*

Attachment # *1*



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

---

**Testimony on The Kansas Storage Tank Act**  
to  
**Senate Natural Resources Committee**  
**Presented by Gary Blackburn**

**February 15, 2001**

Chairperson Tyson and members of the Natural Resources Committee, I am pleased to appear before you today to discuss the amendments to the Storage Tank Act which would extend the underground and aboveground funds.

The federal Environmental Protection Agency (EPA) passed regulations affecting underground storage tanks (USTs) in December of 1988 which included the requirement for owners and operators of underground tanks to obtain pollution liability insurance. The Kansas Storage Tank Act created the reimbursement fund for underground tanks to satisfy that requirement. The provisions for the third party insurance coverage were assigned to a program within the Insurance Department. The act was amended in 1992 to include a reimbursement fund for aboveground tanks.

In addition to satisfying insurance requirements the funds provide real financial relief to tank owners for the cost of corrective action at their sites. The funds reimburse applicants for approved costs of remedial action after payment of the appropriate deductible. Without this mechanism to comply with the insurance requirements, many UST owners would be forced out of business.

Since the inception of the funds owners of about 1900 sites have participated in the underground and aboveground funds with an average of 9 new sites being added each month. Current projections indicate that the underground and aboveground funds will continue to add 9 to 10 sites per month.

The funds as established required that competitive bidding be used as a cost control measure. Although those provisions were initially difficult to employ the results have been very effective. Over the years, other states have developed reimbursement funds without the cost control measures that the Kansas Legislature included in the Kansas Act. Many of those programs have suffered financial shortfalls. I would request that the underground and aboveground funds be extended with all of the current provisions in tact. I have had the pleasure of implementing the underground and aboveground funds for the department over the last 10 years and have experienced what I believed to be an overwhelming success due to the very well thought out design of the statutes. The credit for that success goes to those who had the forethought to include adequate funding and provisions

for cost control which allowed the agency to operate well within the established budget.

The funding for this assistance program is collected as a one cent per gallon fee on all petroleum products sold within the state. The provisions of the statute prevent the program from collecting excessive fees. Without this assistance program many of the petroleum marketing facilities will be unable to remain in business. Although this program costs tax payers a penny per gallon at the pump, the program as established allows KDHE to take the actions necessary to protect the public. Our recent experience with MtBE provide a reminder of the advantage of the reimbursement funds over an insurance program. KDHE's motivation is to protect the public for the impact of a petroleum release, where an insurance provider must first determine if their insured is responsible for the incident.

Additionally, extension of the sunset will save about \$100,000 per year in state general funds which would be needed after 2004 to replace underground funds which are currently being used to match a federal Leaking Underground Storage Tank (LUST) grant.

In closing, KDHE urges support for S.B. 183.

I thank you for the opportunity to appear before the Natural Resources Committee and will gladly stand for questions the committee may have on this topic.



MEMO TO: Senate Committee on Natural Resources  
FROM: Thomas M. Palace, Executive Director of the Petroleum Marketers and  
Convenience Store Association of Kansas  
DATE: February 15, 2001  
RE: Comments on SB 183

Mr. Chairman and members of the Senate Natural Resources Committee, my name is Tom Palace and

I am the Executive Director of the Petroleum Marketers and Convenience Store Association of Kansas (PMCA), a statewide trade association that represents over 360 independent petroleum marketers and convenience stores throughout Kansas.

I appreciate the opportunity to appear before you today in support of SB 183.

PMCA of Kansas urges the Senate Natural Resources Committee to approve of the extension of the underground and aboveground trust fund when it sunsets in 2004. Kansas is very fortunate to have one of the best environmental trust funds in the country, not only as to how the fund was established but also by the management of the fund by the Kansas Department of Health and Environment. The trust fund provides the financial assurance to the people of Kansas that they will live in a clean and safe environment where any spill or leak from an underground or aboveground storage tank can be remediated quickly and successfully.

You will recall that the Environmental Protection Agency (EPA) required owners of underground storage tanks to upgrade their tanks by December 22, 1998. The expense to tank owner was tremendous; it even put some people out of business. Today, most underground tanks are new or have the proper safe guards to warn a tank owner of a potential leak. Having said that, we know that there are sites in Kansas that require remediation and believe that there will be sites in the future that need to be cleanedup due to system failures as well as human error.

The old saying, "if it ain't broke, don't fix it" speaks directly to the reason that the trust fund should be extended another 10 years.

In addition, PMCA would like to amend SB 183 to allow for a return of unused premium back to the tank owner.

Current Kansas law, requires third part liability coverage to protect business owners, homeowners or land owners for incidences involving petroleum releases that may impact their property. The premiums for third party liability insurance are paid by the tank owners and the premiums usually range from \$250-\$350 per tank. The required coverages have been in place since 1991.



The state established an advisory board - the Kansas Underground storage Tank Liability Plan - comprised of a Board of Trustees appointed by the Commissioner of Insurance. The Board of Trustees is required to meet annually to review and prescribe operating rules of the plan, as well as review the financial stability of the plan.

From 1991 to 1999, the plan has received premiums totaling \$11,607,303. In 1999 premiums paid was totaled \$1,015,605. Since the program's inception, there have been 73-claims with little or no indemnity paid to a third party. Total claims paid since the inception of the plan \$131,122. As we note the large discrepancy between the premiums paid into the plan and the lack of claims paid-out, we should applaud the efforts of the Kansas Department of Health and Environment and the tank owners for staying in federal and state compliance, keeping the Kansas environment clean and safe to live.

Under current statute, if there is any excess of losses and expenses over premiums earned, the difference is to be transferred to the trust fund. My amendment would refund or return the overpayment of premiums back to the tank owners.

Looking at the total premiums for 1999, (\$1,008,064), and deducting out loses, expenses and reserve levels for the same year, you will note that there is an overage of \$674,537 that will be transferred back to the trust fund.

To help you understand the funding of the trust fund: when the trust fund falls below \$2,000,000 in unencumbered reserves, a one-cent fee is added to every gallon of gas that people buy in Kansas. When the reserve account balance reaches \$5,000,000, the one-cent fee is removed. The Kansas Department of Revenue notifies the marketers when this fee goes on and off.

Looking back at the difference between the premiums paid and claims paid out of the Kansas Underground Storage Tank Liability Plan, it makes sense to return a portion of the overage of premium paid. By doing so, the integrity of the plan stays intact: whereas, if a major claim took place and the plan needed the money, there would be no dividend. On the other hand, if history continues to repeat itself and claims remain minimal, the overage of premiums should be paid back to the tank owner.

Compliance for underground and aboveground tanks does not come cheap. Minor changes in the petroleum laws are very expensive. With the current energy crunch, marketers are working on razor thin margins due to the high cost of regulations, credit card fees, gas theft, and competition selling below cost. It is unfair that tank owners, while acting in good faith and complying with the law, are being penalized due to the absence of claims. It is important to keep the integrity of the trust fund in tact without reducing premiums which could hurt the plan if a major loss did occur. However, if the history of little to no losses continues, tank owners should not be required to subsidize the state trust fund with overpayments of premiums for third party liability. They should follow other insurance trends and receive similar benefits (dividends) to reward their sound environmental practices and procedures.

Mr. Chairman that concludes my remarks and I will stand for questions.



# 65-34,126

## Chapter 65.--PUBLIC HEALTH Article 34.--SOLID ANDHAZARDOUS WASTE

**65-34,126. Third party liability insurance plan.** (a) The commissioner of insurance shall adopt and implement a plan for applicants for insurance who are in good faith entitled to insurance necessary to achieve compliance with the financial responsibility requirements for third-party liability imposed by 40 CFR part 280, subpart H, and part 281 adopted by the federal environmental protection agency. Insurers undertaking to transact the kinds of insurance specified in subsection (b) or (c) of K.S.A. 40-1102 and amendments thereto and rating organizations which file rates for such insurance shall cooperate in the preparation and submission to the commissioner of insurance of a plan or plans for the insurance specified in this section. Such plan shall provide:

(1) Insurance necessary to achieve compliance with the financial responsibility requirements for third-party liability imposed by 40 CFR part 280, subpart H, and part 281;

(2) for the appointment by the plan of a servicing carrier which shall be: (A) An insurance company authorized to transact business in this state; (B) an insurance company which is listed with the commissioner pursuant to K.S.A. 40-246e and amendments thereto; or (C) a risk retention group, as defined by K.S.A. 40-4101 and amendments thereto, which meets the requirements established under the federal liability risk retention act of 1986 (15 U.S.C. 3901 *et seq.*) and has registered with the commissioner pursuant to K.S.A. 40-4103 and amendments thereto;

(3) reasonable rules governing the plan, including provisions requiring, at the request of the applicant, an immediate assumption of the risk by an insurer or insurers upon completion of an application, payment of the specified premium and deposit of the application and the premium in the United States mail, postage prepaid and addressed to the plan's office;

(4) rates and rate modifications applicable to such risks, which rates shall be established as provided by subsection (b);

(5) the limits of liability which the insurer shall be required to assume;

(6) coverage for only underground storage tanks located within this state;

(7) coverage for at least 12 months from the date of the original application with respect to any underground storage tank which has been installed for less than 10 years, and may provide such coverage with respect to any such tank which has been installed 10 or more years, without requiring tank integrity tests, soil tests or other tests for insurability if, within six months immediately preceding application for insurance, the tank has been made to comply with all provisions of federal and state law, and all applicable rules and regulations adopted pursuant thereto, but the plan may provide for renewal or continuation of such coverage to be contingent upon

satisfactory evidence that the tank or tanks to be insured continue to be in compliance with such laws and rules and regulations;

(8) exclusion from coverage of any damages for noneconomic loss and any damages resulting from intentional acts of the insured or agents of the insured;

(9) to the extent allowed by law, subrogation of the insurer to all rights of recovery from other sources for damages covered by the plan or plans;

(10) an optional deductible of the first \$2,500, \$5,000 or \$10,000 of liability per occurrence at any one location for compensation of third parties for bodily injury and property damage caused by either gradual or sudden and accidental releases from underground petroleum storage tanks, but no such deductible shall apply to reasonable and necessary attorney fees and other reasonable and necessary expenses incurred in defending a claim for such compensation;

(11) coverage only of claims for occurrences that commenced during the term of the policy and that are discovered and reported to the insurer during the policy period or within six months after the effective date of the cancellation or termination of the policy;

(12) a method whereby applicants for insurance, insureds and insurers may have a hearing on grievances and the right of appeal to the commissioner;

(13) a method whereby adequate reserves are established for open claims and claims incurred but not reported based on advice from an independent actuary retained by the plan at least annually, the cost of which shall be borne by the plan;

(14) a method whereby the plan shall compare the premiums earned to the losses and expenses sustained by the plan for the preceding fiscal year and if, for that year: (A) There is any excess of losses and expenses over premiums earned, plus amounts transferred pursuant to subsection (a)(15), an amount equal to such excess losses and expenses shall be transferred from the underground fund established by K.S.A. 65-34,114 and amendments thereto to the plan; or (B) there is any surplus of premiums earned, plus amounts transferred pursuant to subsection (a)(15), over losses, including loss reserves, and expenses sustained, an amount equal to such surplus shall be transferred to such fund from returned to the insureds prorata from the plan; and

(15) a method whereby, during any fiscal year, whenever the losses and expenses sustained by the plan exceed premiums earned, an amount equal to the excess of losses and expenses shall be transferred from the underground fund established by K.S.A. 65-34,114 and amendments thereto to the plan upon receipt by the secretary of health and environment of evidence, satisfactory to the secretary, of the amount of the excess losses and expenses.

(b) The commissioner of insurance shall establish rates, effective January 1 of each year, for coverage provided under the plan adopted pursuant to this section. Such rates shall be reasonable, adequate and not unfairly discriminatory. Such rates shall be based on loss and expense experience developed by risks insured by the

plan and shall be in an amount deemed sufficient by the commissioner to fund anticipated claims based upon reasonably prudent actuarial principles, except that:

(1) Due consideration shall be given to the loss and expense experience developed by similar plans operating or trust funds offering third party liability coverage in other states and the voluntary market; and

(2) before January 1, 1992, the annual rate shall be not more than \$500 for each tank for which coverage is provided under the plan with selection of a \$10,000 deductible.

In establishing rates pursuant to this subsection, the commissioner shall establish, as appropriate, lower rates for tanks complying with all federal standards, including design, construction, installation, operation and release detection standards, with which such tanks are or will be required to comply by 40 C.F.R part 280 as in effect on the effective date of this act.

(c) The commissioner of insurance shall appoint a governing board for the plan. The governing board shall meet at least annually to review and prescribe operating rules of the plan. Such board shall consist of five members appointed as follows: One representing domestic or foreign insurance companies, one representing independent insurance agents, one representing underground storage tank owners and operators and two representing the general public. No member representing the general public shall be, or be affiliated with, an insurance company, independent insurance agent or underground storage tank operator. Members shall be appointed for terms of three years, except that the initial appointment shall include two members appointed for two-year terms and one member appointed for a one-year term, as designated by the commissioner.

(d) Before adoption of a plan pursuant to this section, the commissioner of insurance shall hold a hearing thereon.

(e) An insurer participating in the plan adopted by the commissioner of insurance pursuant to this section may pay a commission with respect to insurance assigned under the plan to an agent licensed for any other insurer participating in the plan or to any insurer participating in the plan.

(f) The commissioner of insurance may adopt such rules and regulations as necessary to administer the provisions of this section.

(g) The department of health and environment and the plan shall provide to each other such information as necessary to implement and administer the provisions of this section. Any such information which is confidential while in the possession of the department or plan shall remain confidential after being provided to the other pursuant to this subsection.

(h) This section shall be part of and supplemental to the Kansas storage tank act.

**History:** L. 1990, ch. 229, § 5; L. 1992, ch. 311, § 21; July 1.

**KANSAS UNDERGROUND STORAGE TANK LIABILITY PLAN**  
**STATEMENTS OF INCOME (LOSS)**  
**FOR THE YEARS ENDED JUNE 30**

3-6

	1999	1998	1997	1996	1995	1994	1993	1992	1991	TOTAL
<b>UNDERWRITING INCOME:</b>										
Premiums written	\$ 1,008,064	\$ 1,231,062	\$ 1,326,492	\$ 1,414,797	\$ 1,488,478	\$ 1,500,182	\$ 1,464,621	\$ 1,566,576	\$ 607,031	\$ 11,607,303
Change in unearned premiums	124,014	53,536	43,802	25,728	7,241	35,155	88,412	(382,323)	(509,912)	(514,347)
Premiums earned	<u>1,132,078</u>	<u>1,284,598</u>	<u>1,370,294</u>	<u>1,440,525</u>	<u>1,495,719</u>	<u>1,535,337</u>	<u>1,553,033</u>	<u>1,184,253</u>	<u>97,119</u>	<u>11,092,956</u>
Loss payments	15,000	114,000	17,122	0	0	0	0	0	0	146,122
Change in unpaid losses	172,841	265,706	349,556	360,381	204,152	375,569	512,501	374,293	48,559	2,663,558
Losses incurred	<u>187,841</u>	<u>379,706</u>	<u>366,678</u>	<u>360,381</u>	<u>204,152</u>	<u>375,569</u>	<u>512,501</u>	<u>374,293</u>	<u>48,559</u>	<u>2,809,680</u>
Allocated claim expenses paid	2,657	65,025	12,869	13,618	4,703	0	0	0	0	98,872
Change in unpaid loss expenses	51,853	79,711	104,867	108,114	61,246	112,671	153,751	112,288	14,568	799,069
Loss expenses incurred	<u>54,510</u>	<u>144,736</u>	<u>117,736</u>	<u>121,732</u>	<u>65,949</u>	<u>112,671</u>	<u>153,751</u>	<u>112,288</u>	<u>14,568</u>	<u>897,941</u>
Total losses and loss expenses incurred	<u>242,351</u>	<u>524,442</u>	<u>484,414</u>	<u>482,113</u>	<u>270,101</u>	<u>488,240</u>	<u>666,252</u>	<u>486,581</u>	<u>63,127</u>	<u>3,707,621</u>
Balance	<u>889,727</u>	<u>760,156</u>	<u>885,880</u>	<u>958,412</u>	<u>1,225,618</u>	<u>1,047,097</u>	<u>886,781</u>	<u>697,672</u>	<u>33,992</u>	<u>7,385,335</u>
Underwriting expenses -										
Commissions	100,806	123,106	132,649	141,480	148,848	150,018	146,462	156,658	60,703	1,160,730
Servicing carrier fees	304,090	335,570	347,239	361,368	373,157	375,029	383,986	344,647	133,547	2,958,633
Taxes, licenses and fees	20,161	24,621	26,530	28,296	29,770	30,004	29,292	31,332	12,141	232,147
Other underwriting expenses	7,916	7,494	8,742	8,342	7,079	8,007	8,774	9,054	19,358	84,766
Total underwriting expenses	<u>432,973</u>	<u>490,791</u>	<u>515,160</u>	<u>539,486</u>	<u>558,854</u>	<u>563,058</u>	<u>568,514</u>	<u>541,691</u>	<u>225,749</u>	<u>4,436,276</u>
Net underwriting income (loss)	<u>456,754</u>	<u>269,365</u>	<u>370,720</u>	<u>418,926</u>	<u>666,764</u>	<u>484,039</u>	<u>318,267</u>	<u>155,981</u>	<u>(191,757)</u>	<u>2,949,059</u>
<b>INVESTMENT INCOME:</b>										
Interest income earned	217,783	212,774	202,896	192,776	157,901	89,597	68,346	40,370	3,063	1,185,506
Net income (loss)	<u>\$ 674,537</u>	<u>\$ 482,139</u>	<u>\$ 573,616</u>	<u>\$ 611,702</u>	<u>\$ 824,665</u>	<u>\$ 573,636</u>	<u>\$ 366,613</u>	<u>\$ 196,351</u>	<u>\$ (188,694)</u>	<u>\$ 4,134,565</u>
<b>RATIOS:</b>										
Earned to incurred loss ratio	16.6%	29.6%	26.8%	25.0%	13.6%	24.5%	33.0%	31.6%	50.0%	25.3%
Written to paid loss ratio	1.5%	9.3%	1.3%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	1.3%
Loss expense payments to losses paid	17.7%	57.0%	75.2%	N/A	N/A	N/A	N/A	N/A	N/A	67.7%
Loss expenses incurred to incurred losses	29.0%	38.1%	32.1%	33.8%	32.3%	30.0%	30.0%	30.0%	30.0%	32.0%
Commissions to written premiums	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%
Servicing carrier fees to written premiums	30.2%	27.3%	26.2%	25.5%	25.1%	25.0%	26.2%	22.0%	22.0%	25.5%
Combined ratio (earned to incurred)	59.7%	79.0%	72.9%	70.9%	55.4%	68.5%	79.5%	86.8%	297.4%	73.4%