

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE.

The meeting was called to order by Chairperson Robert Tyson at 8:30 a.m. on March 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:

Terry Duvall, Kansas Water Office  
Bill Bider, Director, Bureau of Waste Management, KDHE  
Jim Aller, Kansas Outfitters Association  
Clint Riley, Kansas Department of Wildlife and Parks  
Stan Christiansen

Others attending: See attached list

Senator Huelskamp moved that the minutes from the March 1, 2, 8, 9, and 12 meetings be approved, seconded by Senator Schmidt. The motion passed.

Senator Tyson started the meeting with the hearing on **HB 2133**, concerning amending the Multipurpose Small Lakes Program Act.

The first conferee and proponent of the bill was Terry Duvall, Kansas Water Office (Attachment 1). Ms. Duvall noted that there were amendments in the House suggested by the State Conservation Commission, and the Kansas Water Office agrees with those amendments. Questions and discussion followed.

Written testimony was submitted by Tracy Streeter, State Conservation Commission (Attachment 2).

Senator Tyson closed the hearing on **HB 2133**.

The hearing on **HB 2134** was next on the agenda. Staff of Legislative Research explained the bill. Raney Gilliland said that HB 2134 provides for a number of changes to the Kansas solid waste law including adding waste tires to the definition of "solid waste" and clarifying that a "solid waste disposal area" includes all property described or included within any permit issued under the solid waste law.

The second conferee and a proponent of the bill was Bill Bider, Director, Bureau of Waste Management, KDHE (Attachment 3). Mr Bider suggested a balloon amendment which would add "or deny" on page 12, line 5 of **HB 2134** (Attachment 4).

Senator Tyson closed the hearing on **HB 2134**.

The hearing on **HB 2098** which relates to commercial guide services was next on the agenda.

The third conferee and a proponent of **HB 2098** was Clint Riley, Kansas Department of Wildlife and Parks (Attachment 5). Questions and discussion followed.

The fourth conferee and a proponent of the bill was Jim Aller, Kansas Outfitters Association (Attachment 6). He said this new bill is in the best interests of the hunting industry in Kansas and it would help make Kansas a state with a strong guide industry of high standards.

The fifth conferee and an opponent of **HB 2098** was Stan Christiansen (Attachment 7).

Written testimony was submitted by Jean Barbee, Travel Industry Association of Kansas (Attachment 8).

The hearing on **HB 2098** closed.

Senator Tyson asked proponents and opponents of **SB 240**, concerning solid waste and creating the municipal solid waste landfill perpetual care trust fund, to please submit their written testimony. Senator Tyson said they would not be working **SB 240** this year and he would request an interim study on this bill. Those who handed in their written comments on **SB 240** were Bill Bider, Director, Bureau of Waste Management, KDHE (Attachment 9), Don Seifert, City of Olathe (Attachment 10), and John C. Bottenberg, Deffenbaugh Industries (Attachment 11).

The meeting adjourned at 9:30.

The next meeting is scheduled for March 16 at 8:00 a.m. in Room 423-S.

SENATE NATURAL RESOURCES COMMITTEE

GUEST LIST

DATE: 3-15-01

NAME	REPRESENTING
Jury Duwall	KS water office
Jim ALLER	Kansas Outfitters
John Doty	Kansas Outfitters
Pauline Doty	" "
CHAD WCE	KDWP
David Miller	DOB
Rod Berlin	KDH
Bill Bider	KDHE
Jan Christiansen	Privately owned Cerwick Handover
Clint Riley	<del>_____</del> KDWP
Jan Babin	Travel Industry Assn
Drew Deloy	KDA
[Signature]	Hemp/weir chrtl
John Peterson	K2 Government Consulting

STATE OF KANSAS



Bill Graves, Governor

KANSAS WATER OFFICE  
Al LeDoux  
Director

901 S. Kansas Ave.  
Topeka, Kansas 66612-1249

785-296-3185  
FAX 785-296-0878  
TTY 785-296-6604

**TESTIMONY BEFORE THE  
SENATE NATURAL RESOURCES COMMITTEE  
Friday, March 9, 2001 at 8:30 a.m. in Room 423-S  
Presented by Terry Duvall, Kansas Water Office on  
Multipurpose Small Lakes Legislation**

**Background**

The Multipurpose Small Lakes Program (K.S.A. 82a-1601) was established in 1985 and is administered by the State Conservation Commission. The program was designed to allow for the addition of public water supply storage space and/or recreation benefits to proposed watershed projects. One of the guiding principles behind the development of this program was that the State would pay for the costs of including public water supply storage in the lake over and above that needed immediately by a local public water supply sponsor, if it is determined by the Director of the Kansas Water Office (KWO) that the additional public water supply will be needed in the area within the next 20 years. By statute, the KWO obtains the water right for the add-on public water supply. Users of this "future use" water supply will, through a contract with the KWO, repay the State's costs for the public water supply storage space. Upon payment of those costs, the water right is transferred to the user.

Following a review and study of the program and its operating policies by the KWO, the Kansas Water Authority, in 1998 established a moratorium on consideration of new projects until problems and issues identified by the study were addressed. These changes have been made with the exception of those changes proposed in this legislation.

**Purpose of Proposed Amendments to the Act**

As we have gained experience in operating the program, several problems have emerged:

1. Due to language in existing rules and regulations promulgated by the Conservation Commission, local sponsors have the mistaken idea that the program provided for a "construction loan" for their immediate use portion of the water supply storage space. Since by statute the KWO is the agency responsible for determining the need for the "future use" public water supply

Senate Natural Resources Committee  
Date 3-15-01

Attachment # /



storage space, filing for the required water right to store water in that space, and contracting with users to recapture the State's investment costs, we propose that the KWO be given authority to promulgate rules and regulations relative to this process.

2. Revisions to the Act in 1991 provided for interest to be calculated and charged to the ultimate user on Class III projects only. Because there is no significant difference between the three classes of projects as it pertains to the financing of the public water supply portion of the projects, we believe there should be no interest penalty to one class of projects over another. If interest is to be charged on the State's investment in public water supply storage space, it should be charged for all three classes of projects.
3. Renovation of existing projects has been provided for in the Act since it was established. As a practical matter; however, proposals for renovation of public water supply lakes has not been allowed because the Act requires that flood control storage space **must** be included in the project. Most public water supply lakes were built by cities and rural water districts without a flood control component, and may not be within an area needing flood protection. Even though the city or rural water district may have the **required** taxing authority, or the right of eminent domain, because the proposed project did not have a flood control, it cannot be renovated under this program.

In order to lift the moratorium imposed by the Kansas Water Authority, and to ensure the efficient and proper utilization of the program, the Kansas Water Authority has authorized the Kansas Water Office to submit this legislation during the 2001 Session of the Kansas Legislature to address these issues. These changes are embodied in House Bill 2133.



# State Conservation Commission

109 SW 9<sup>th</sup> Street  
Suite 500, Mills Building  
Topeka, KS 66612-1299

Telephone: (785) 296-3600 • Fax (785) 296-6172



Senate Natural Resources Committee  
March 15, 2001

Testimony on House Bill 2133  
Tracy Streeter, Executive Director

Mr. Chairman and Members of the Committee, thank you for the opportunity to provide testimony in support of HB 2133. This bill, as amended by the House, will enable the Multipurpose Small Lakes Program (MPSLP) to assist local public entities in the renovation of existing water supply and recreation lakes.

The State Conservation Commission administers the MPSLP. The Kansas Water Office and the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture is also charged with specific duties as prescribed in the MPSLP Act. Currently, the MPSLP provides state financial assistance for the construction or renovation of a lake containing at least two of the following purposes: 1) Flood control, 2) Water supply, 3) Recreation. The statute requires flood control to be included in all projects. The statute also establishes the cost-share arrangements for each purpose as follows:

1. Flood control – Up to a 100 percent grant for the flood control storage portion of the project.
2. Water Supply – Based upon a future need determination by the Kansas Water Office, the state may pay for up to 100 percent of the water supply if no local water supply sponsor is identified. The state may recover its cost through the sale of all or a portion of the water right.
3. Recreation – Up to a 50 percent grant for the recreation storage, recreation land rights and facilities.
4. Non-Point Source Pollution – Each funded project must have a NPS pollution management plan for the lake's drainage area. Cost-share funding may be provided through the MPSLP to protect the lake from NPS pollution.

HB 2133 will modify the MPSLP Act by addressing three issues: 1) rules and regulation authority for the Kansas Water Office, 2) eligibility requirements for renovation projects, and 3) maximum cost-share levels for renovation projects. The first provides the Kansas Water Office with the authority to develop rules and regulations for the portion of the Act for which they are responsible.

The second issue pertains to renovation project eligibility and allows flood control to be an optional feature for renovation projects. Most of Kansas' lakes constructed prior to the 1950's do not contain flood control storage. In other words, runoff entering a lake with normal water levels is allowed to pass through the spillway with a minimal amount of detention. In order to be eligible for renovation assistance, these lakes would be required to add dam height to detain runoff from at least a 25 year, 24 hour runoff event. In addition to dam enhancement, additional land adjacent to the existing lake would have to be acquired to temporarily store the floodwater. Existing infrastructure, roads, parks, buildings, and in some cases, homes would have to be moved to provide for the additional flood storage. As a result, the addition of flood control to an existing reservoir has been and will continue to be unacceptable to local sponsors and could be cost prohibitive.

Senate Natural Resources Committee  
Date 3-15-01

Attachment # 2

**Senate Natural Resources Committee**

**HB 2133**

**March 15, 2001**

**Page 2**

A number of the older, existing lakes do provide public water supply storage. These lakes have lost capacity over the years due to siltation and in some cases, have dam and spillway repair needs. The proposed language does provide an opportunity to address lakes containing water supply storage. The MPSLP is currently capable of providing recreation assistance for both new and renovation projects. Most existing lakes provide some form of water-based recreation and as such, should be eligible to receive assistance for the renovation of recreational storage.

The third issue relates to the cost-share percentage allowed for water supply renovation. The current statute allows the state to provide financial assistance up to 100 percent for water supply only if the Water Office determines that a future need for water exists in the area within the next 20 years. To provide water supply assistance in a renovation project, the project is not creating a supply for future use, but is rather reclaiming the use of existing storage. The amended language allows for a maximum of 50 percent state participation for water supply renovation.

In summary, HB 2133 contains the necessary modifications to the MPSLP Act to provide greater opportunities for the renovation of Kansas lakes. Thank you for the opportunity to provide information. I will be pleased to answer questions at the appropriate time.



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

---

**Testimony on House Bill 2134**  
**Miscellaneous Solid Waste Amendments**  
**to**  
**Senate Energy and Natural Resources Committee**

presented by  
Bill Bider, Director, Bureau of Waste Management

March 15, 2001

The Department of Health and Environment appreciates this opportunity to present testimony in support of House Bill 2134. This bill updates several sections of the solid waste statutes. Some changes clarify existing requirements; other changes improve the efficiency and effectiveness of the state regulatory and grant programs.

Following the initial introduction of this bill in the House, KDHE worked with several interested persons representing businesses and government units to address their concerns related to certain key provisions regulating the transfer of solid waste permits or the breaking up of permitted solid waste disposal areas. The version of this bill which was passed by the House adequately addresses KDHE's concerns about loop-holes in the current law as well as the concerns voiced by private businesses. One additional amendment is needed to correct a provision which was added by the revisor's office as a last minute change to the bill. The revisor agreed that the change which KDHE is suggesting in this testimony is appropriate.

Overall, changes are proposed in the sections of law related to permits, enforcement, and grants. Some statutory definitions also need to be revised to support other changes. A brief overview of the changes proposed for each section of law follows:

**K.S.A. 65-3402 : Definitions**

- The definition of "solid waste" is revised to include "waste tires." This change is needed to confirm the department's enforcement authority related to the illegal disposal of waste tires. The department's position has always been that the solid waste enforcement authorities did apply to waste tires, but that authority has not been explicitly stated.

- The definition of “solid waste disposal area” is revised to clarify that it includes the entire permitted area, not just the disposal cells. This supports another proposed change to the law prohibiting the breaking up of permitted sites as explained in the following section.

**K.S.A. 65-3407 and 65-3407c: Permit Requirements**

- KDHE authority to revoke solid waste permits is expanded to include the revocation of permits for violations of all “unlawful” solid waste acts or for violations of waste tire permit laws. Currently permits can only be revoked for violations of solid waste permit laws (K.S.A. 65-3407).
- KDHE is given new authority to waive permitting requirements for solid waste transfer stations or temporary solid waste storage sites used to manage waste generated by natural disasters such as tornados, floods, fires, etc.
- KDHE is given new authority to approve of the transfer of solid waste permits if the new owner submits all information necessary to conduct a background investigation and evaluate financial assurance a minimum of 60 days before the transfer.
- KDHE may request that a new permit application be submitted whenever there is a change in ownership or control of a solid waste disposal area, unless the permit transfer is one of the special cases exempted by current law.

**K.S.A. 65-3409: Enforcement**

- The list of “unlawful acts” is expanded to include the following: (1) transporting waste tires without a permit, (2) acting as a mobile processor of waste tires without a permit, (3) violating any provision of the waste tire permit laws specified in K.S.A. 65-3424b, and (4) an action by a solid waste permit holder to break up the real property of a permitted “solid waste disposal area” for the purpose of selling or transferring a portion of the site without receiving KDHE approval.

A minor amendment is needed to clarify the KDHE approval process whenever a landfill permit holder requests permission to divide a permitted site into two or more parts. Page 12 of the attached balloon adds the words “or deny” giving KDHE the option to “approve or deny” requests to divide a permitted facility within 60 days of the request. Currently, the bill says that KDHE must approve of the request within 60 days, or it is approved. There is no provision to deny a request even if the proposed division of the site includes breaking off a portion of the site which is contaminated or is vital with respect to closure, post-closure care, or necessary corrective measures.

**K.S.A. 65-3415: Grants**

- The entities eligible to receive solid waste reduction grants for recycling, composting, and public education is expanded to include schools, colleges, universities, and state agencies.
- Grant eligibility criteria are clarified to ensure that no grant funds will be disbursed to any applicant or entity that has already received a grant unless they have paid all applicable tonnage fees. Currently the law only applies this criteria to owners or operators of municipal solid waste landfills. It should also apply to transfer station owners or other landfill owners who may be required to pay fees.

The key provisions of this bill will establish additional safeguards in the solid waste law to prevent the transfer of a landfill permit without a department investigation of the qualifications and background of a new potential owner. It will also prevent a current permit holder from breaking up a permitted disposal site for the purpose of selling off parts of the site without first receiving approval from KDHE to do so. KDHE believes that it has always been the legislature's intent to prohibit the change in the owner of part or all of a commercial landfill without performing necessary background checks or technical reviews. Without the statutory changes included in this bill, there are loop-holes in the law which could allow major commercial landfills to change hands without any determination of capabilities or compliance records.

KDHE appreciates this opportunity to appear before the committee in support of HB 2134.

1 permit pursuant to K.S.A. 65-3407, and amendments thereto, into  
 2 two or more parcels of real property for the purpose of selling or  
 3 transferring a portion of the permitted area to a new owner with-  
 4 out receiving prior approval of the secretary. If the secretary does  
 5 not approve the division of the area within 60 days after the matter \_\_\_\_\_ or deny  
 6 is submitted to the secretary for approval, the division shall be  
 7 deemed to have been approved. Approval pursuant to this subsec-  
 8 tion shall not be necessary for transfer of a permitted solid waste  
 9 disposal area as allowed by subsection (i)(1) of K.S.A. 65-3407, and  
 10 amendments thereto.

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

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

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

26 (b) The secretary is authorized to assist counties, designated cities,  
 27 municipalities, regional solid waste management entities that are part of  
 28 an interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq.  
 29 and amendments thereto or other applicable statutes, *colleges, universi-*  
 30 *ties, schools, state agencies* or private entities, by administering compet-  
 31 itive grants that pay up to 75% of eligible costs incurred by such a county  
 32 city, regional entity, *college, university, school, state agency* or private  
 33 entity pursuant to an approved solid waste management plan, for any  
 34 project related to the development and operation of recycling, source  
 35 reduction, waste minimization and solid waste management public edu-  
 36 cation programs. Such projects shall include, but not be limited to, the  
 37 implementation of innovative waste processing technologies which dem-  
 38 onstrate nontraditional methods to reduce waste volume by recovering  
 39 materials or by converting the waste into usable by-products or energy  
 40 through chemical or physical processes. To be eligible for competitive  
 41 grants awarded pursuant to this section, a county, designated city, regiona  
 42 entity, *college, university, school, state agency* or private entity must be  
 43 implementing a project which is part of a solid waste management plan





STATE OF KANSAS  
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary  
900 SW Jackson, Suite 502  
Topeka, KS 66612-1233  
785/296-2281 FAX 785/296-6953



HOUSE BILL NO. 2098

Testimony Provided to  
Senate Committee on Natural Resources  
March 15, 2001

House Bill No. 2098 addresses a number of issues concerning commercial hunting and fishing guides and guide permitting requirements. This bill was one of the department's legislative initiatives and is supported by the department.

Over the last couple of years, a number of issues have arisen concerning rules for commercial guide permits. In some cases, these questions came from current guides or from public comments at Wildlife and Parks Commission meetings held throughout the state. HB 2098 pulls together many of those issues into one bill. Most of the bill's proposals are distinct and separate, and are included together in an attempt to address as many issues as possible while the statute is being amended. This testimony will address each issue in the order it appears in the bill, and not necessarily in order of priority or importance.

1. Expungement: Current law allows guide permits to be revoked, denied, or suspended for certain criminal violations. In at least one case, the department has become aware of a guide applicant who has had series of wildlife convictions expunged. The bill would add the department to the list of entities that may receive information about previous convictions, even after expungement, but only for the purposes of evaluating eligibility for a guide permit.

2. "Provisional Guide" vs. Commercial Basis: Under current law, a person guiding fewer than 5 days and receiving less than \$500 compensation in one year is required to register as a provisional guide, rather than obtain a commercial guide permit. Very few people who perform these incidental guiding services actually do register, however. More important, concerns have been raised that some individuals have abused the provisional guide provision, for example by linking a number of provisional guides so that no single person has to obtain a permit. The department believes that someone providing guide services on a truly commercial basis, as a business, should be required to obtain a commercial guide permit. The department does not believe, however, that someone who happens to take a friend or relative hunting and receives a token amount of compensation to cover expenses should be subject to this requirement. Consequently, the bill proposes to eliminate provisional guides, and at the same time establish a definition of "commercial basis" that more accurately allows the permit requirement to incorporate those who truly are providing commercial guide services.

3. Educational and not-for-profit events: The bill clarifies a current exemption concerning department-approved activities for which a guide permit is not required, including clarification so

Senate Natural Resources Committee

Date 3-15-01

Attachment # 5

that a person would still be required to obtain a guide permit if providing guide services other than for that activity.

4. Monetary Compensation: By further defining commercial basis, above, the bill can also eliminate the exemption for “guides” who don’t receive monetary compensation. Confusion has resulted when a person may be guiding for money, but has not yet actually been paid.

5. Minimum Age: The bill would establish a minimum age of 16 years for commercial guides. No minimum age currently exists, and there still would be no minimum age for associate guides who work under a commercial guide.

6. Application Date: The bill would establish authority for the department to set a date by which guide applications must be received. Although different dates may be necessary for different types of guiding (e.g. big game hunting vs. fishing), this would help ensure that the department would be able to review and respond to applicants well before the beginning of the relevant hunting or fishing season.

7. Associate Guides: A person working for a commercial guide as a guide is currently required to obtain a associate guide permit. The bill would specify that, if the person already has a full commercial guide permit, a separate associate guide permit is unnecessary.

8. Written Permission of Landowner: In response to concerns that some commercial guides have either committed trespass or have not informed a landowner that the guide is operating a commercial venture, the bill would require that a guide have written permission of the landowner to perform guide services on that property.

9. Grounds for Denial of a Permit: Current law specifies that a permit may be denied, suspended, or revoked for conviction of a felony within five years or for failure to comply with Kansas Wildlife and Parks laws or regulations. Concerns have been raised that a hunting or other relevant violation in another jurisdiction should also be considered grounds for denial, and that some felonies should be considered even after five years. Any decision to deny, suspend, or revoke a permit would continue to be subject to an administrative hearing. An amendment in the House Committee requires the department to deny, suspend, or revoke a permit for a felony involving the use of violence or a weapon.

10. Access to Criminal History Information: Some questions have arisen concerning the department’s authority to conduct certain types of criminal background checks in conjunction with guide applications. In order to allow the department to check the requirements outlined in the law, the bill would specify authority to receive criminal information from the KBI. The department would have obtain criminal background information from other states directly from those states, as necessary.

11. Results of Prosecutions: The bill would also clarify that the department is to receive reports of the disposition of a Wildlife and Parks related prosecution, even if the prosecution settles and does not actually go to trial.

Discussions concerning HB 2098 in the House Committee and by the House Committee as a Whole focused on removal of “provisional guides.” Concern was expressed that removing this option might require certain individuals to obtain a commercial guide permit who currently could register as a provisional guide. To address this concern, the department offered additional language that the House Committee amended to the definition of “commercial basis,” to reinforce the definition, so that the permit requirement would only apply to persons who are operating on a truly commercial basis. With this additional language, we believe those concerns were addressed.

The department feels each of these distinct proposals in HB 2098 would help improve the quality of service provided by commercial guides in Kansas, and would help the department protect the natural resources. We ask that HB 2098 be approved by the Committee.

W:\WPDOCS\LEGISLAT\01BILLS\HB2098T3.WPD

## HOUSE BILL 2098

Ladies and Gentleman,

My name is Jim Aller, current secretary of the Kansas Outfitters Association (KOA). I also own and manage Wolf River Outfitters LLC located in Hiawatha, Kansas. I have been guiding and outfitting in Kansas in for 7 years. I am representing the KOA on this matter of House Bill 2098. We wish to be shown as in favor of supporting this bill as written by the Kansas Dept. of Wildlife and Parks. This bill was started by the KOA to help relieve some of the problems that have occurred in the outfitting business in Kansas due to what some people have thought to be a lucrative income with little investments of their time or money. This has brought about many negative comments with the honest and hard-working guides and outfitters of Kansas. This is not what the KOA wants or what the Ks. Dept. of Wildlife and Parks would want for the reputation of Kansas hunting.

The first thing we wish to address is the removal of provisional guides in Kansas. Many outfitters have been using this loophole to skirt the law for self-gain due to not needing to insure more guides, not needing to pay for more guide fees, and for many non-resident outfitters the inconvenience of taking the time and expense to make their guides legal. It is hard for the law enforcement people to enforce violations when it is very difficult to show how many days a person has been guiding when they don't have to file guide reports with the KDW & P. We feel it shouldn't matter whether a person is guiding for a day or 365 days a year on whether they should have a guides permit. First of all, we all are required to have first aid, cpr, and pass a test to certify ourselves as legal guides in Kansas. This is in part to keep safety in hand as hunting is done with either bows, pistols, rifles and etc. These are dangerous weapons which people should be trained for all the possibilities which might occur in the field. It is also to assure that all laws are learned and adhered to by the hunters. We also must have a valid hunting license and hunter education course completed. Why should anyone guide for any amount of money for a commercial business and not have these credentials? There is no valid reason to not be in support of this bill. As written, a person could still guide for an educational or not-for-profit event without a guide's license. This would not affect events such as the Governor's One Shot Turkey Hunt. It also will not restrain individuals from taking out a buddy or acquaintance for a hunt. It will not hurt the guide industry in Kansas either. In fact, it would solidify the quality of guides and outfitters in our state. Why should a business or an illegal person or persons be able to make a profit in our state because of a loophole in our laws? This bill would close this loophole without any inconvenience to any legal guide or outfitter in the state. Many dollars leave this state to non-resident outfitters and guides without any money staying in the state. The legal guides and outfitters pay taxes in the state for their services as well as for the many products which they purchase. Please support this new bill as it is in the best interests of the hunting industry in Kansas.

The second portion we approve of is the background checks, and the refusal of guide permits if there is a violation by an outfitter/guide in any other state as well as our own. This would get rid of a number of outfitters/guides who have lost permits in one or more states but are still able to guide in Kansas as it now stands. Many of you are aware of problems which have occurred in our state already from these individuals. Not only are they taking advantage of people's money and dreams, they are tarnishing the reputation of legal outfitters/guides in our state. The KOA fields many complaints from people who have been taken advantage of from unscrupulous outfitters/guides who have violations in other states. This bill would put more teeth in the KDW&P's law enforcement methods. Our hopes are that eventually the multi-state game compact law can be developed in Kansas and we can join the increasing number of states which are members of it already. Please support this and help make Kansas a state with a strong guide industry of high standards.

Once again, please support this bill as it is now written. The KOA is in support of House Bill 2098. If I can answer any questions for you I will do my best to do so.

Thanks, Jim Aller

Secretary, Kansas Outfitters Association



ACKLEY FINANCIAL  
GROUP

Stan E. Christiansen

March 14, 2001  
RE. H.B. 2098

Committee on Environment  
423 South, Capital Building  
Topeka, Ks, 66601

Dear Committee on Environment,

I feel a landowner tenant should be exempt from having to get a guide's permit. They do not need a hunting or fishing license, to hunt or fish their own land now, why do they need a guide permit if they advertise services on their own land.

In 1993 the Kansas Legislature passed H.B. 2106 taking the privately owned cervidae, domesticated deer, elk, moose, etc. away from fish & game and they are handled under Kansas Animal Health. We advertise and sell our animals the same as cattle, sheep, swine, and horses.

Registered Representative New England Securities  
569 NE 120th Street Hudson, KS 67545 316-458-3182  
Branch Office: 16800 Dallas Parkway, Suite 200, Dallas, Texas 75248 469-737-4000 Fax 469-737-4084

Senate Natural Resources Committee  
Date 3-15-01

Attachment # 7





ACKLEY FINANCIAL  
GROUP

Stan E. Christiansen

If this bill passes we would be required to have a guide permit. We already have a domesticated deer permit. Most of us have a U.S.D.A. permit (Zoo) also.

The guide permit is another tax which we do not need. We need to be exempt.

No other state requires a cervidae owner to have a guide permit.

Wildlife and Parks appears to be trying to regain control of the privately owned cervidae industry with this bill by requiring us to have a guide permit.

Under this bill if Wildlife and Parks can receive information about any previous convictions, even after expungement, they will be able to pick and choose who they allow to receive guide permits. If the Highway Patrol had this authorization, half the people of Kansas would not have a drivers license. I do not believe the KBI or F.B.I. has this authority.

Registered Representative New England Securities  
569 NE 120th Street Hudson, KS 67545 316-458-3182  
Branch Office: 16800 Dallas Parkway, Suite 200, Dallas, Texas 75248 469-737-4000 Fax 469-737-4084





ACKLEY FINANCIAL  
GROUP

Stan E. Christiansen

*I thank you for your time  
and consideration*

*Respectfully*

*Stan Christiansen*

STAN E. CHRISTIANSEN

Registered Representative New England Securities  
569 NE 120th Street Hudson, KS 67545 316-458-3182  
Branch Office: 16800 Dallas Parkway, Suite 200, Dallas, Texas 75248 469-737-4000 Fax 469-737-4084



**Travel  
Industry  
Association of  
Kansas**

**3 SW Eighth – 3<sup>rd</sup> Floor  
Topeka, KS 666 3**

**785-233-9465**

## **TESTIMONY**

**DATE:** March 15, 2001  
**TO:** Senate Energy & Natural Resources Committee  
**FROM:** Jean Barbee, Executive Director  
**RE:** Commercial Guide Requirements (HB-2098)

My name is Jean Barbee and I represent the Travel Industry Association of Kansas. That organization is made up primarily of convention and visitors bureaus, attractions and tourist services. The major expertise of TIAK members is in marketing and promotion, with lesser emphasis on product development and services. We do, however, work closely with other entities that are more focused on these 'legs' of the tripod, i.e. those who develop products and deliver services to Kansas visitors. In some instances these entities may be private developers while in others they may be public agencies.

TIAK supports this bill as amended by the House Tourism Committee. The travel industry has been more than pleased with the Department's recognition of the tourism aspects of hunting and fishing. We have seen the Department refine the development of their products and the servicing of their customers. These same customers are very often visitors, possibly to the state, possibly just from one community to the other.

In 1991, the Department passed what I believe was the first Kansas Commercial Guide statutes, requiring permits of those who provided guide services for hunting or fishing in the state. The tourism industry viewed this as a step in the right direction toward increasing the hunting and fishing tourism to the state. We supported the effort. One year later, we had to come back to the Legislature and say, "this isn't working." Many of the people who had traditionally provided guide services were put off by the requirements. One year after the law was passed, we had no licensed commercial guides in roughly 2/3 of the state.

Senate Natural Resources Committee

Date *3-15-01*

Attachment # *8*

We came back to the Legislature with the issue and in 1992 the Legislature passed the 'Provisional' guides portion of the statutes. For persons who earned less than \$500 per year for guide services, registration with the department was the extent of the requirements.

TIAK has a fairly extensive grass roots network extending across the state. We have members in every major city, most small cities and many small towns. Since the law change in 1992, we have had little adverse feedback from the Commercial Guide and Provisional Guide permit requirements. Our small towns in Western Kansas again have guide service available for visitors at all levels, and commercial guide service is becoming a growing industry.

With the trophy deer and other outstanding wildlife in this state, Commercial Guide Servicing is becoming a bigger and bigger industry. That pleases us. We are proud of the joint efforts made by the State and local communities to build on that tourism business. But as the Commercial Guide business becomes BIG business, requiring increased permit fees, we believe that is all the more justification for leaving the very small operator alone.

We had originally asked that the provisional guide language be reinstated in the bill. We are satisfied, however, with the new language on page seven, lines 2 through 11, and lines 25 – 29, though we believe there is a missing 'or' in the (c) (1) – (4) sequence.

We respectfully request that you retain these House amendments in House Bill 2098.



# KANSAS

## DEPARTMENT OF HEALTH & ENVIRONMENT

BILL GRAVES, GOVERNOR

Clyde D. Graeber, Secretary

---

**Testimony on  
Senate Bill 240  
Perpetual Care Trust Fund for Private Municipal Solid Waste Landfills  
to  
the Senate Energy and Natural Resources Committee  
presented by  
Bill Bider, Director, Bureau of Waste Management**

March 15, 2001

The Department of Health and Environment appreciates this opportunity to provide testimony in support of Senate Bill 240. This bill establishes a trust fund which would be used to perform activities at private municipal solid waste (MSW) landfills which are necessary to protect human health or the environment when the responsible party is unable to perform the work and when standard financial assurance mechanisms fail or have expired.

The idea for this bill was originated by Senator Corbin following a public meeting in Elk County more than a year ago regarding the possible siting of a new privately run landfill in the county for Sedgwick County's waste. While representing KDHE, I was asked by members of the public whether there were any circumstances where the citizens of Elk County or the entire State of Kansas could become liable for environmental costs associated with the operation, closure, long-term care at a large municipal solid waste landfill. Although state and federal regulations do require that private landfill operators demonstrate a method of "financial assurance" for such costs, the regulatory system is not foolproof. Scenarios could occur where financial liability could transfer to the county or state. For this reason, KDHE supports the concept of this bill. It would provide greater assurance to the people of Kansas that any necessary actions at operating or closed MSW landfills would not burden taxpayers.

The costs to: (1) close a large private MSW landfill, (2) monitor the closed facility for a minimum of 30 years and perform post-closure care at the site, and (3) carry out any necessary corrective measures at a landfill could exceed tens of millions of dollars. Long-term financial liability cannot be clearly established because it is impossible to know whether a facility will leak and contaminate the environment, including public drinking water supplies. The financial assurance demonstrated by a private landfill company must only address known liabilities, thus no money would be available to carry out corrective measures caused by a future release. Because landfills are designed with multi-layer liners and leachate collection systems, and operated to keep liquids out, releases to the environment may be significantly delayed. It may be several decades before a liner system fails and local groundwater is impacted.

Another factor which could result in long-term taxpayer liability relates to the dynamic situation in the corporate world of waste management. In recent years, these specialized companies have undergone major mergers, buyouts, and bankruptcies. If these business trends continue, the companies which currently own Kansas landfills could change significantly over the years with the potential for the total disappearance of some companies. Another risk is the stability of the third party corporations which provide financial assurance services to the landfill owners. Many companies utilize surety bonds to demonstrate the availability of funds to cover known closure and post-closure costs, but bonding companies can fail and the financial assurance they have provided could become worthless. An example of waste company bankruptcy combined with bond company failure occurred last year affecting nearly every state in the nation. A major hazardous waste management company went bankrupt and their bonding company failed at the same time. If the waste management company had not chosen to re-organize and emerge from bankruptcy, the states would have had to expend hundreds of millions of dollars to close and clean-up their many sites. The company in question owns several facilities in Kansas including a large commercial hazardous waste incinerator in Coffeyville.

KDHE agrees with the provisions of the bill which apply the perpetual care program to private MSW landfills only. This is primarily due to the following two reasons: (1) Most publicly-owned landfills utilize a test of financial strength and stability to demonstrate financial assurance -- a mechanism which is not available to private companies. This test is allowed by law and regulations because local governments are considered permanent and they have taxing power to generate the revenue needed to take care of landfill problems. (2) Provisions exist in K.S.A. 65-3415f to allow counties to establish a dedicated fund for closure and post-closure care at MSW landfills when they are owned by the county. This would allow counties to establish their own funds, if they choose to do so, to address long term impacts and costs.

The bill does provide incentives for companies to design, construct, and operate their landfills in the best manner possible. Their tonnage fees will be lower if they can demonstrate that they are following quality practices and if they have had good compliance records.

Another benefit of this bill is that it would require all users of private Kansas landfills to share in the long-term costs of corrective measures at these facilities including out-of-state users. Without such a fund, in-state citizens would have to absorb the total costs if the responsibility shifted to the taxpayers.

This bill would add several new responsibilities to KDHE including the establishment of a fee schedule for all affected facilities and every aspect of managing and utilizing this new fund. The department believes it will be possible to absorb this work utilizing existing landfill program staff.

KDHE is recommending some minor but important amendments to the bill. The suggested changes: (1) establish the effective date of fees as July 1, 2002; (2) recommend the transfer of interest to the solid waste management fund after the fund cap is reached; and (3) correct some typographical errors. Thank you for this opportunity to present testimony in support of SB 240.

SENATE BILL No. 240

By Senator Corbin

2-6

AN ACT concerning solid waste; creating the municipal solid waste landfill perpetual care trust fund; amending K.S.A. 2000 Supp. 65-3406 and repealing the existing section.

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

New Section 1. (a) There is hereby created in the state treasury the municipal solid waste landfill perpetual care trust fund.

(b) The secretary shall remit at least monthly to the state treasurer all moneys collected or received by the secretary from the following sources:

- (1) Landfill perpetual care fees paid pursuant to subsection (e);
- (2) landfill transfer fees paid pursuant to subsection ~~(f)~~ (g);
- (3) gifts, grants, reimbursements or appropriations intended to be used for the purposes of the fund, but excluding federal grants and cooperative agreements; and
- (4) any other moneys provided by law.

Upon receipt thereof, the state treasurer shall deposit in the state treasury any amount remitted pursuant to this subsection and shall credit the entire amount to the municipal solid waste landfill perpetual care trust fund.

(c) Moneys in the municipal solid waste landfill perpetual care fund may be expended for closure, post-closure care and the remediation of ~~imminent~~ or actual releases to the environment at privately-owned municipal solid waste landfills when:

- (1) A private owner is unwilling or unable to carry out necessary work and standard financial assurance mechanisms provided by the owner pursuant to subsection (h) of K.S.A. 65-3407, and amendments thereto, fail or provide inadequate resources to cover the costs of actions necessary to protect public health and safety or the environment; or
- (2) public health and safety or environmental risks or damages occur after the private owner has been released from post-closure responsibility by the secretary.

(d) The secretary may utilize moneys from the fund for the following specific purposes at privately-owned municipal solid waste landfills:

- (1) Maintenance of closed landfills including, but not limited to, cap

1 repair, monitoring well repair or replacement, drainage system repairs,  
2 vegetative cover maintenance or repair, security maintenance and repairs,  
3 and leachate or gas monitoring system maintenance and repairs;

4 (2) the design and installation and operation of new or enhanced  
5 monitoring systems for groundwater, surface water and landfill gas;

6 (3) routine long-term groundwater and gas monitoring in accordance  
7 with post-closure plans approved by the secretary including field sampling  
8 and laboratory analytical work;

9 (4) the design and implementation of corrective actions to contain or  
10 clean-up contaminant releases from closed landfills;

11 (5) public education and communications regarding landfill condi-  
12 tions, impacts and state actions; and

13 (6) administrative, technical and legal expenses incurred by the sec-  
14 retary to carry out the provisions of this section.

15 (e) There is hereby imposed a state municipal solid waste landfill  
16 perpetual care fee on every ton or equivalent volume of solid waste dis-  
17 posed of in any privately-owned municipal solid waste landfill in this state.  
18 The amount of such fee shall range from \$.50 to \$2.00 per ton based  
19 upon specific landfill conditions and characteristics including, but not  
20 limited to, local geology, design and construction methods, existing  
21 groundwater contamination and compliance history. The secretary shall  
22 adopt rules and regulations establishing a fee schedule for all operating

23 privately-owned municipal solid waste landfills. ~~The secretary shall classify every~~  
24 privately-owned municipal solid waste landfill. ~~The secretary shall classify~~

25 ~~every private municipal solid waste landfill~~ annually with respect to the  
26 fee schedule and notify all private landfill owners of their classification  
27 and fee rate on or before April 1 of every year. Such fee rates shall become  
28 applicable on July 1.

29 (f) Annually, the secretary shall develop a cost estimate of the state-  
30 wide liability for closure, post-closure and potential corrective measures  
31 at privately-owned municipal solid waste landfills. This estimate shall be  
32 used to establish a cap for the municipal solid waste perpetual care trust  
33 fund. The cap shall be set at 25% of estimated statewide liability or the  
34 sum of the calculated liability for the two landfills with the greatest esti-  
35 mated liability, whichever is greatest. The secretary shall notify all pri-  
36 vately-owned municipal solid waste landfill owners whenever the cap has  
37 been reached and fee payments may be temporarily discontinued. When  
38 fees are to be re-instituted because the liability estimate increases or  
39 because money is expended from the fund, the secretary shall give private  
40 landfill owners a minimum of six-months notice before the fee payments  
41 resume.

'2 (g) When a publicly-owned municipal solid waste landfill is purchased  
3 by a private owner, that landfill immediately becomes subject to the pro-

-owned  
Fees shall become effective on July 1, 2002.  
delete

The secretary shall also provide an annual report to the director of accounts on or before  
June 1 establishing the fund cap for the state fiscal year which will begin on the following  
July 1.



visions of subsection (e). The purchaser shall pay a one-time lump sum landfill transfer fee to qualify the site for eligibility under the privately-owned municipal solid waste landfill perpetual care program. The secretary shall adopt rules and regulations which establish transfer fees based upon the amount of waste in the landfill and other facility characteristics and conditions as listed in subsection (e). The secretary may allow this transfer fee to be paid over a period of time not to exceed five years or the estimated operating life of the landfill, whichever is less.

(h) When moneys from the municipal solid waste landfill perpetual care trust fund are used to perform work at any closed privately-owned municipal solid waste landfills because the financial assurance provided by the private company failed or did not adequately meet all maintenance or corrective action needs, and the private company was unwilling to perform such action, the secretary may initiate cost recovery actions from such private landfill owners, assigns and successors, and providers of a failed financial assurance instrument. If such private landfill owners fails to comply with the secretary's order to repay funds, the secretary may initiate a civil action in district court to recover any expenditures from the fund and administrative and legal expenses incurred to pursue such action. Recovered moneys shall be remitted to the state treasurer, who shall deposit the entire amount in the state treasury and credit it to the municipal solid waste landfill perpetual care trust fund.

(i) The secretary shall prepare and deliver to the legislature on or before the first day of each regular legislative session, a report which summarizes all payments to the municipal solid waste landfill perpetual care trust fund, expenditures from the fund, fund balance and the department's estimate of long-term private municipal solid waste landfill liability.

(j) Expenditures from the municipal solid waste landfill perpetual care trust fund shall be made in accordance with appropriations acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or a person designated by the secretary.

(k) On or before the 10th day of the month, the director of accounts and reports shall transfer from the state general fund to the municipal solid waste landfill perpetual care trust fund interest earnings based on:

(1) The average daily balance of moneys in the municipal solid waste landfill perpetual care trust fund for the preceding month; and

(2) the net earning rate of the pooled money investment portfolio for the preceding month.

(l) The municipal solid waste landfill perpetual care trust fund shall be used for the purposes set forth in this act and for no other governmental purposes. It is the intent of the legislature that the fund shall remain intact and inviolate for the purposes set forth in the act, and

After the municipal solid waste landfill perpetual care trust fund cap has been reached, interest earnings shall be transferred to the solid waste management fund.

1 moneys in the fund shall not be subject to the provisions of K.S.A. 75-  
2 3725a and 75-3726a, and amendments thereto.

3 (m) As used in this section, "secretary" means the secretary of health  
4 and environment.

5 Sec. 2. K.S.A. 2000 Supp. 65-3406 is hereby amended to read as  
6 follows: 65-3406. (a) The secretary is authorized and directed to:

7 (1) Adopt such rules and regulations, standards and procedures rel-  
8 ative to solid waste management as necessary to protect the public health  
9 and environment, prevent public nuisances and enable the secretary to  
10 carry out the purposes and provisions of this act.

11 (2) Report to the legislature on further assistance needed to admin-  
12 ister the solid waste management program.

13 (3) Administer the solid waste management program pursuant to pro-  
14 visions of this act.

15 (4) Cooperate with appropriate federal, state, interstate and local  
16 units of government and with appropriate private organizations in carry-  
17 ing out duties under this act.

18 (5) Develop a statewide solid waste management plan.

19 (6) Provide technical assistance, including the training of personnel  
20 to cities, counties and other political subdivisions.

21 (7) Initiate, conduct and support research, demonstration projects  
22 and investigations and coordinate all state agency research programs with  
23 applicable federal programs pertaining to solid waste management  
24 systems.

25 (8) Establish policies for effective solid waste management systems.

26 (9) Assist counties and groups of counties to establish and implement  
27 solid waste planning and management.

28 (10) Authorize issuance of such permits and orders and conduct such  
29 inspections as may be necessary to implement the provisions of this act  
30 and the rules and regulations and standards adopted pursuant to this act.

31 (11) Conduct and contract for research and investigations in the over-  
32 all area of solid waste storage, collection, transportation, processing, treat-  
33 ment, recovery and disposal including, but not limited to, new and novel  
34 procedures.

35 (12) Adopt rules and regulations for permitting of all solid waste dis-  
36 posal areas, including those that are privately owned.

37 (13) Adopt rules and regulations establishing criteria for the location  
38 of processing facilities and disposal areas for solid wastes.

39 (14) Adopt rules and regulations establishing appropriate measures  
40 for monitoring solid waste disposal areas and processing facilities, both  
41 during operation and after closure.

42 (15) Adopt rules and regulations requiring that, for such period of  
time as the secretary shall specify, any assignment, sale, conveyance or

1 transfer of all or any part of the property upon which a permitted disposal  
2 area for solid waste is or has been located shall be subject to such terms  
3 and conditions as to the use of such property as the secretary shall specify  
4 to protect human health and the environment.

5 (16) Adopt suitable measures, including rules and regulations if ap-  
6 propriate, to encourage recovery and recycling of solid waste for reuse  
7 whenever feasible.

8 (17) Adopt rules and regulations establishing standards for trans-  
9 porters of solid waste.

10 (18) Adopt rules and regulations establishing minimum standards for  
11 closing, termination, and long-term care of sites for the land disposal of  
12 solid waste. In this subsection, "site" refers to a site for the land disposal  
13 of solid waste which has a permit issued under K.S.A. 65-3407 and  
14 amendments thereto. The owner of a site shall be responsible for the  
15 long-term care of the site for *a minimum of 30 years* after the closing of  
16 the site, ~~except the secretary may extend the long-term care responsibility~~  
17 ~~of a particular site or sites as~~. *For municipal solid waste landfills only, the*  
18 *secretary deems shall evaluate the need to extend the post-closure period*  
19 *every five years following the date of closure. Based upon site specific*  
20 *conditions including, but not limited to, local geology, design and con-*  
21 *struction methods, operating practices, actual or potential contaminant*  
22 *releases, and future maintenance requirements, the secretary may estab-*  
23 *lish a new post-closure period not to exceed 30 years beyond the date of*  
24 *the evaluation. For any solid waste disposal area, the secretary may eval-*  
25 *uate the adequacy of the post-closure period at any time based upon*  
26 *identified contaminant releases or structural failures of landfill systems to*  
27 *promptly extend post-closure periods as necessary to protect the public*  
28 *health and safety or the environment. Any person acquiring rights of*  
29 *ownership, possession or operation in a permitted site or facility for the*  
30 *land disposal of solid waste at any time after the site has begun to accept*  
31 *waste and prior to closure shall be subject to all requirements of the*  
32 *permit for the site or facility, including the requirements relating to long-*  
33 *term care of the site or facility.*

34 (19) Enter into cooperative agreements with the secretary of com-  
35 merce for the development and implementation of statewide market de-  
36 velopment for recyclable materials.

37 (20) Adopt rules and regulations for the management of nonhazar-  
38 dous special wastes.

39 (b) In adopting rules and regulations, the secretary shall allow the  
40 exemption contained in subsection (f)(1) of 40 CFR 258.1 (October 9,  
41 1991), as amended and in effect on the effective date of this act.

42 (c) (1) Any rules and regulations adopted by the secretary which es-  
tablish standards for solid waste processing facilities or solid waste dis-

1 posal areas that are more stringent than the standards required by federal  
2 law or applicable federal regulations on such date shall not become ef-  
3 fective until 45 days after the beginning of the next ensuing session of  
4 the legislature, which date shall be specifically provided in such rule and  
5 regulation.

6 (2) The provisions of subsection (c)(1) shall not apply to rules and  
7 regulations adopted before January 1, 1995, which establish standards for  
8 location, design and operation of solid waste processing facilities and dis-  
9 posal areas.

10 (d) Any solid waste disposal area which qualifies for the exemption  
11 provided for by subsection (b) and which successfully demonstrates that  
12 naturally occurring geological conditions provide sufficient protection  
13 against groundwater contamination shall not be required to construct a  
14 landfill liner or leachate collection system. The secretary shall adopt rules  
15 and regulations which establish criteria for performing this demonstration  
16 and standards for liner and leachate collection systems for exempt landfills  
17 which fail the demonstration. Solid waste disposal areas which qualify for  
18 the exemption provided for by subsection (b) may be designed with  
19 trenches or units which have straight vertical walls. All solid waste disposal  
20 areas which qualify for the exemption provided for by subsection (b) shall  
21 be required to comply with all applicable rules and regulations adopted  
22 by the secretary and approved by the U.S. environmental protection  
23 agency, including location restrictions, operating requirements and clo-  
24 sure standards for municipal solid waste landfills. Operating requirements  
25 include, but are not limited to, hazardous waste screening, daily cover,  
26 intermediate cover, disease vector control, gas monitoring and manage-  
27 ment, air emissions, survey controls, compaction, recordkeeping and  
28 groundwater monitoring.

29 The identification of groundwater contamination caused by disposal  
30 activities at a solid waste disposal area which has qualified for the exemp-  
31 tion provided for by subsection (b) shall result in:

32 (1) The loss of such exemption; and

33 (2) the application of all corrective action and design requirements  
34 specified in federal laws and regulations, or in equivalent rules and reg-  
35 ulations adopted by the secretary and approved by the U.S. environmental  
36 protection agency, to such disposal area.

37 Sec. 3. K.S.A. 2000 Supp. 65-3406 is hereby repealed.

38 Sec. 4. This act shall take effect and be in force from and after its  
39 publication in the statute book.

40  
41  
42



MEMORANDUM

**TO:** Members of the Senate Natural Resources Committee  
**FROM:** Donald R. Seifert, Policy Development Leader *DS*  
**SUBJECT:** **Senate Bill 240**; Landfill Perpetual Care Trust Fund  
**DATE:** March 15, 2001

Thank you for the opportunity to express some concerns about this bill on behalf of the city of Olathe. SB 240 would increase the solid waste tipping fee by \$.50 to \$2.00 per ton disposed at private landfills and create a municipal solid waste landfill perpetual care trust fund. The fund, estimated to generate \$3.75 million annually, would be used by KDHE for closure and post-closure costs at private landfills where the responsible party failed to perform required activities. The fee would not apply to publicly owned and operated landfills.

The city understands that landfill closure and post-closure costs are absolutely necessary to protect the environment. We also recognize that future risks associated with closed landfills are very difficult to predict now. However, under current law, KDHE has the authority to inspect and enforce compliance with closure standards and require financial assurances for closure and post-closure work. The costs for such assurances are built into the landfill disposal rates. Customers of private landfills currently pay, or should be paying, for closure and post-closure costs. For example, the operator of the private landfill receiving Olathe's solid waste has established a trust fund. We are very concerned that our citizens not pay for a second fund through a state imposed fee.

The city of Olathe has operated a solid waste utility for many years. The city currently handles about 80,000 tons of solid waste per year, which is collected at a transfer station and ultimately disposed at a private Kansas landfill. Based on a \$.50 to \$2.00 per ton increase for the perpetual care fund, the city's disposal costs would increase approximately \$40,000 to \$160,000 annually. This would increase a residential customer's monthly rate by \$.10 to \$.35 per month for costs the customer is already paying.

The city encourages the committee to look for alternatives to address this national issue other than collecting funds from responsible parties and rewarding irresponsible operators. One suggestion may be strengthening the financial assurance provisions in current law. Perhaps an interim study could devise other alternatives.

Thank you for the opportunity to comment on this bill.

Senate Natural Resources Committee  
Date *3-15-01*

Attachment # *10*

P.O. Box 3220  
Shawnee, Kansas 66203  
Telephone (913) 631-3300  
Fax (913) 631-6647

George R. McGrew  
General Counsel

March 15, 2001

TO THE SENATE NATURAL RESOURCES COMMITTEE  
Attn: Mr. Robert Tyson, Chair  
State Capitol, Room 128-S  
Topeka, Kansas 66612

Re: Senate Bill 240

Deffenbaugh Industries, Inc.<sup>1</sup> opposes the proposed legislation and amendments to K.S.A. 2000 Supp. 65-3406 contained in Senate Bill 240 (Session of 2001). This bill proposes to create in the state treasury the municipal solid waste landfill perpetual care trust fund (Issue One).<sup>2</sup> This bill also proposes to give the secretary of health and environment (the "Secretary") the unlimited discretionary authority to extend for an indefinite period of time the 30-year post-closure long-term care responsibilities of an owner of a municipal solid waste landfill or solid waste disposal area (Issue Two).<sup>3</sup>

**Issue One – Perpetual Care Trust Fund**

SB 240 proposes to create in the state treasury the municipal solid waste (MSW) landfill perpetual care trust fund (the "Fund"). Moneys in the Fund may be expended for certain closure, post-closure and remedial activities when (1) a private owner is unwilling or unable to carry out necessary work and standard financial assurance mechanisms provided by the owner pursuant to state law<sup>4</sup> fail or provide inadequate resources to cover costs of actions necessary to protect public health and safety of the environment or (2) public health and safety or environmental risks

<sup>1</sup> Deffenbaugh Industries, Inc. is a waste management and landfill operations company headquartered in Shawnee, Johnson County, Kansas. The company has approximately 2,000 employees.

<sup>2</sup> SB 240, page 1, lines 14-15.

<sup>3</sup> SB 240, page 5, lines 10-33.

<sup>4</sup> K.S.A. 65-3407(h), as amended.



or damages occur after the private owner has been released from post-closure responsibility by the secretary.<sup>5</sup>

The proposed legislation attempts to create a slush fund underwritten by all MSW landfills in the state, based on the unjustified and unsupported presumption that existing statutorily mandated financial assurance mechanisms covering each MSW landfill are inadequate guarantees of the payment of the anticipated closure or post-closure costs associated with each respective MSW landfill. Annually, the Secretary reviews, adjusts and approves the statutorily mandated financial assurance mechanisms for each MSW landfill. Thus annually, the Secretary has the opportunity to satisfy himself that each permittee has sufficient resources to assure proper closure, and post-closure care. The proposed Fund does nothing but attempt to protect the Secretary in the event he makes an error or mistake in approving the financial assurance mechanisms for any given MSW landfill. The state's MSW landfills should not be forced to insure against such errors or mistakes. The cost of having such a Fund substantially outweighs any potential benefit that may be derived. In Deffenbaugh's case, such a Fund could cost between \$1.3 million and \$5.1 million annually. Such costs are in addition to the significant fees presently paid in connection with having the financial assurance mechanisms mandated and approved by the state in place. We ask the committee to keep in mind that most of the financial assurance mechanisms are designed to be cash equivalents, with the cash being easily accessible to the Secretary, thus further diminishing the need for this proposed Fund.

Furthermore, the proposed legislation attempts to extend this statewide Fund to cover instances when public health and safety or environmental risks or damages occur after the Secretary has released a private owner from post-closure responsibility. Again, the proposed Fund does nothing but relieve the Secretary from responsibility for making an error or mistake in releasing a private owner from post-closure responsibility. Businesses should not be forced through the Fund to insure the Secretary against such errors or mistakes. If the Secretary is insecure in releasing a private owner from its 30-year post-closure responsibilities, the Secretary currently has the statutory authority to extend the owner's post-closure responsibilities "as necessary to protect the public health and safety or the environment."<sup>6</sup> This brings us to the next issue.

### Issue Two – Extension of 30-year Post-Closure Responsibilities

SB 240 proposes to give the Secretary the unlimited discretionary authority to extend for an indefinite period of time an MSW landfill owner's 30-year post-closure care responsibilities.<sup>7</sup> Our first objection is that the proposed language is unnecessary since the Secretary has existing authority to extend the owner's post-closure responsibilities as necessary to protect the public health and safety or the environment.<sup>8</sup> Our second objection is that the proposed language

---

<sup>5</sup> SB 240, page 1, lines 29-40.

<sup>6</sup> K.S.A. 2000 Supp. 65-3406 (a) (18).

<sup>7</sup> SB 240, page 5, lines 10-33.

<sup>8</sup> K.S.A. 2000 Supp. 65-3406 (a) (18).

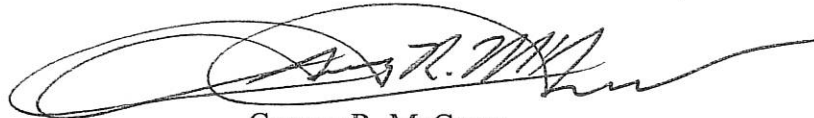


provides the Secretary with unlimited discretion as to whether to release the MSW landfill owner from its post-closure care responsibilities. For example, in the twenty-fifth year of post-closure care of an MSW landfill, the Secretary could arbitrarily extend the post-closure period thirty years, for a total of fifty-five years. Likewise, in the fiftieth year the Secretary could then extend post-closure responsibilities another thirty years, and so on. Absent a definitive post-closure time period, an MSW landfill owner will find it nearly impossible to obtain statutorily mandated financial assurance instruments covering the MSW landfill. Insurance and bonding companies will not view this scenario favorably and will likely refuse to consider insuring or bonding against the risk.

For the forgoing reasons, we respectfully submit that this proposed legislation weighs against public policy and, since existing law provides a proven and viable alternative in the form of financial assurance mechanisms, request that the proposed legislation be rejected. In the alternative, SB240 should be the subject of an extensive interim study committee due to its complexity and far reaching impact, expense and burden placed on municipal solid waste landfill owners.

Sincerely,

DEFFENBAUGH INDUSTRIES, INC.

A handwritten signature in black ink, appearing to read "G. R. McGrew", is written over a large, loopy scribble that extends across the width of the signature area.

George R. McGrew  
General Counsel

GRM:me