

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE.

The meeting was called to order by Chairperson Robert Tyson at 8:30 a.m. on March 19, 2001 in Room 423-S of the Capitol.

All members were present except: Senator Lana Oleen - excused

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

Conferees appearing before the committee:

Others attending: See attached list

Senator Tyson said the Committee would work several bills this hour, starting with **HB 2133**. Staff of Legislative Research reviewed the bill and discussion followed.

Senator Corbin moved that **HB 2133** be passed out favorably, seconded by Senator Huelskamp. The motion passed.

The second bill to be worked was **HB 2134**. Staff of Legislative Research reviewed the bill and questions and discussion followed. Bill Bider, Director, Bureau of Waste Management, Kansas Department of Health and Environment was present to answer questions.

Senator Lee made a conceptual motion to amend **HB 2134** and to pass it out as amended, seconded by Senator Corbin. The motion carried.

The third bill to be worked was **HB 2047** and Senator Tyson asked the Subcommittee Chairman, Senator Taddiken, to give a report on revisions that were made to the bill (Attachment 1).

Senator Taddiken moved that the Committee adopt the amendments that the Subcommittee proposed, seconded by Senator Downey. The motion passed.

Senator Huelskamp moved that **HB 2047** be passed as amended, seconded by Senator Lee. The motion carried.

The fourth bill to be worked was **HB 2098**. Clint Riley, Kansas Department of Wildlife and Parks submitted a memorandum for further clarification concerning certain issues raised by conferees during the hearing on **HB 2098** held March 15 (Attachment 2).

Senator Huelskamp moved that lines 36 through 41 on page 9 be stricken from the bill, and lines 31 and 32 on page 9 be reinstated, seconded by Senator Lee. The motion passed. In addition, Senator Huelskamp moved that the word "or" on page 7, line 24 be reinstated, seconded by Senator Lee. The motion carried.

Senator Lee moved that **HB 2098** be passed as amended, seconded by Senator Downey. The motion carried.

The fifth bill to be worked was **HB 2131**. Senator Tyson and Senator Lee presented a balloon to the bill and Bill Bider from Kansas Department of Health and Environment explained the balloon (Attachment 3).

Senator Downey moved to amend the balloon by deleting lines 29 through 39 on page 12 of the balloon, and to strike internal references to grant program on page 13. It was seconded by Senator Lee. The motion passed.

Senator Lee moved to approve the amendments that were requested, seconded by Senator Schmidt. The motion carried.

Senator Lee moved that **HB 2131** be passed as amended, seconded by Senator Taddiken. The motion passed.

The sixth bill to be worked was **HB 2234**. Senator Lee moved that **HB 2234** be passed favorably, seconded by Senator Corbin. The motion carried.

The seventh bill to be worked was **HCR 5008**. Senator Corbin moved that the bill be passed out favorably, seconded by Senator Lee. The motion passed.

The meeting adjourned at 9:30.

The next meeting is scheduled for March 22 at 8:30 a.m. in Room 423-S.

SENATE NATURAL RESOURCES COMMITTEE

GUEST LIST

DATE: 3-19-01

NAME	REPRESENTING
Shawn Hennich	MATDA
Joe Lieber	Ks Co-op Council
David Miller	DOB
Bill Bider	KDHE
Mike Beam	Ks. LUSTK. Assn.
Vent Weatherby	Kansas River Water Assurance
Judy Shaw	SWKIA
Doug Smith	Pinegar-Smith Company
Clint Riley	KDWP
CHAD WICE	KDWP
E.R. Woods "Moss"	Ks. Agg. Prod. Assn.
Leslie Kaufman	<del>##</del> Ks Farm Bureau
Edward Rowe	League of Women Voters/Ks
Jamie Clover Adams	Ks Department of Agriculture
Margaret Fast	Ks water office
Katrina Hull	AP
Ron APPLETOFT	WATER DIST No 1 of JoCo.
Jadene Cole	Sen. Jordan's Office Staff

As Amended by House Committee

Session of 2001

**HOUSE BILL No. 2047**

By Committee on Environment

1-17

10 AN ACT concerning water rights; relating to water banking; enacting the  
11 Kansas water banking act.

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

14 Section 1. This act may be cited as the Kansas water banking act.

15 Sec. 2. As used in this act:

16 (a) "Bank boundary" means the geographic area where a water bank  
17 operates and conducts the functions of a water bank and may encompass  
18 more than one hydrologic unit.

19 (b) "Bank charter" means a document that sets out the articles of  
20 incorporation and principal functions of a water bank.

21 (c) "Bankable water right" means a water right that has been deter-  
22 mined pursuant to section 4, and amendments thereto, to be bankable.

23 (d) "Chief engineer" means the chief engineer of the division.

24 (e) "Conservation element" means the portion of a deposit that is  
25 taken out of use for the duration of the deposit and is not allowed to be  
26 withdrawn and used by subsequent users.

27 (f) "Deposit," other than as used in "safe deposit account," refers to  
28 the deposit of a water right, or portion of a water right, in a water bank  
29 for the purpose of having the bank lease water from such water right, or  
30 portion of a water right, to another person or entity.

31 (g) "Division" means the division of water resources of the Kansas  
Department of agriculture.

(h) "Hydrologic unit" means a defined area from which water rights  
originating from a source of supply may be deposited  
from which water from the same source of supply may be leased, in  
accordance with the provisions of this act, without causing impairment of  
existing water rights or a significantly different hydrological effect to other  
uses of water from the same source or hydraulically connected sources  
of water.

"Linked water rights" means two or more water rights that au-  
thorize common points of diversion or a common place of use, or both.

"Safe deposit account" means a personal account held in a water  
bank where unused water from a bankable water right is placed for use



1 in future years.

2 (k) "Term permit" means a permit to appropriate water for a speci-  
3 fied period of time.

4 (l) "Water bank" means a private not-for-profit corporation that: (1)  
5 Leases water from water rights that have been deposited in the bank; and  
6 (2) ~~provides is authorized to provide~~ safe deposit accounts. A water  
7 bank may be a groundwater bank or a surface water bank, or both.

8 Sec. 3. (a) A water bank shall be authorized to enter into contracts  
9 with holders of water rights for deposit in the bank of all or a portion of  
10 any water right from a hydrologic unit within the bank boundary, subject  
11 to the following:

12 (1) The bank shall accept for deposit only a water right, or portion of  
13 a water right, that has been determined to be a bankable water right under  
14 section 4, and amendments thereto;

15 (2) a deposit of a groundwater water right shall be for a period of not  
16 more than five years;

17 (3) a deposit shall be subject to such terms and conditions as provided  
18 by the contract between the bank and the depositor, including penalty  
19 provisions for breach of any contract conditions; and

20 (4) a deposit shall be subject to such terms and conditions, and such  
21 approval by the chief engineer, as provided by rules and regulations of  
22 the chief engineer.

23 (b) A water bank shall be authorized to lease water from any water  
24 right, or portion of a water right, that has been deposited in the bank,  
25 subject to the following:

26 (1) Any water leased must be used within the bank boundary and in  
27 the same hydrologic unit from which the water right authorizing diversion  
28 of the water is deposited;

29 (2) use of leased water shall be subject to all provisions of the Kansas  
30 water appropriation act, including but not limited to all requirements  
31 relating to term permits;

32 (3) a lease shall be subject to such terms and conditions as provided  
33 by the contract between the bank and the lessor, including penalty pro-  
34 visions for breach of any contract conditions;

35 (4) a lease shall be subject to such terms and conditions, and such  
36 approval by the chief engineer, as provided by rules and regulations of  
37 the chief engineer; and

38 (5) a water bank's decision of whether or not to lease water shall not  
39 be based on the proposed use of the water.

40 (c) A water bank shall ~~may~~ provide safe deposit accounts where a  
41 holder of a water right may place unused water from the water right for  
42 future withdrawal, subject to the following:

43 (1) A water right holder shall place in a safe deposit account only

shall

1 water from a water right that has been determined to be a bankable water  
2 right under section 4 and amendments thereto;

3 (2) only water that was unused in the immediate past calendar year  
4 may be placed in a safe deposit account and the amount that shall be  
5 placed in such account shall be less than the total amount of unused water  
6 from the bankable water right in that year;

7 (3) only water from one water right shall be placed in a safe deposit  
8 account and water from a water right shall not be placed in more than  
9 one safe deposit account, except that water from linked water rights may  
10 be placed in a single safe deposit account;

11 (4) each calendar year that water remains in a safe deposit account,  
12 the amount of water held in the account shall decrease by a percentage  
13 established by the charter of the bank but in no case less than 10% an-  
14 nually of all amounts placed in the account;

15 (5) the total amount of water accumulated in a safe deposit account  
16 shall not exceed the maximum annual quantity authorized to be diverted  
17 under the water right or the aggregate maximum quantity authorized to  
18 be diverted under all linked water rights from which water is deposited  
19 in the account;

20 (6) use of water withdrawn from a safe deposit account shall be sub-  
21 ject to all provisions of the Kansas water appropriation act, including but  
22 not limited to all requirements relating to term permits;

23 (7) a safe deposit account shall be subject to such terms and condi-  
24 tions as provided by the contract between the bank and the account  
25 holder, including penalty provisions for breach of any contract conditions;

26 ~~and~~  
27 (8) a safe deposit account shall be subject to such terms and condi-  
28 tions, and such approval by the chief engineer, as provided by rules and  
29 regulations of the chief engineer;

30 (d) A water bank may provide services to facilitate the sale or lease  
31 of water rights.

32 (e) A water bank shall not own, buy or sell water rights.

33 Sec. 4. Before a water right or portion of a water right shall be ac-  
34 cepted for deposit in a water bank or water from a water right shall be  
35 placed in a safe deposit account, the bank, with the assistance of the  
36 division, shall determine whether the water right is bankable, as follows:

37 (a) The right is vested or has been issued a certificate of appropriation;  
38 and (b) the right has not been abandoned and is in good standing, based  
39 on past water usage and compliance with the terms of the holder's permit  
40 and all applicable provisions of law and orders of the chief engineer.

41 Sec. 5. (a) Before a water bank is authorized to operate in the state,  
42 the bank's charter must be approved by the chief engineer. Prior to ap-  
43 proval, the body wishing to charter the bank shall submit to the chief

; and

(9) the operation of safe deposit accounts by the bank shall not result in an increase in the amount of net consumptive use of water in any hydrologic unit, computed on a long-term rolling average compared to a representative past period

1 engineer the proposed bank charter and any other information required  
2 by rules and regulations of the chief engineer to determine whether the  
3 bank shall be chartered to operate in the state.

4 (b) The chief engineer shall approve the charter of a water bank only  
5 if the chief engineer determines that:

6 (1) The charter ensures that the operations and policies of the bank  
7 will be consistent with the provisions of this act, the state water plan and  
8 all applicable statutes, rules and regulations, findings and orders of the  
9 chief engineer, groundwater management district policies and water as-  
10 surance district operations plans;

11 (2) there is sufficient participation by water right holders and water  
12 users to make the operations of the bank practical and feasible;

13 (3) the governing body of the bank has at least five members and is  
14 reasonably representative of public and private interests in water within  
15 the bank boundary;

16 (4) the bank would not lease or accept for placement in a safe deposit  
17 account water from the same hydrologic unit as another chartered bank  
18 or accept for deposit a water right that authorizes diversion of water from  
19 the same hydrologic unit as another chartered water bank;

20 (5) the charter ensures that, for each calendar year, the aggregate  
21 amount of all bank deposits (determined by multiplying the amount of  
22 each water right deposited by the length of time of the deposit and then  
23 adding together the resulting amounts for all deposits) will equal or ex-  
24 ceed the sum of the aggregate amount of water leased by the bank (de-  
25 termined by multiplying the amount of each lease by the length of time  
26 of the lease and then adding together the resulting amounts for all leases)  
27 plus the aggregate conservation element of all leases (determined by mul-  
28 tiplying the conservation element of each lease by the length of the lease  
29 and then adding together the resulting amounts for all leases);

30 (6) the charter ensures that the operations of the bank will not result  
31 in impairment of existing water rights or an increase in depletion of se-  
32 verely depleted groundwater aquifers or stream courses;

33 (7) the charter ensures that the operations of the bank will result in  
34 a savings of 10% or more in the total amount of groundwater consumed  
35 **for a representative past period** pursuant to water rights deposited in  
36 the bank, ~~excluding groundwater located in an intensive groundwater use~~  
37 ~~control area where corrective control provisions have reduced the allo-~~  
38 ~~cation of groundwater to less than the quantity previously authorized by~~  
39 ~~water rights in the area;~~

40 (8) the charter provides a procedure for resolution of complaints by  
41 bank participants and others impacted by the bank policies, practices and  
42 operations; and

43 (9) the charter ensures that the determination of the portion of a

1 water right that is bankable shall be subject to the following:

2 (A) The determination shall be primarily based on a representative  
3 period of average water consumption for the hydrologic unit from which  
4 water is authorized to be diverted under the water right; ~~\_\_\_\_\_~~

and

5 (B) the method of determination shall not penalize past implemen-  
6 tation of water conservation practices;

7 ~~(C) deposit of a portion of a water right for irrigation pursuant to  
8 subsection (a) of section 3, and amendments thereto, shall not be allowed  
9 unless: (i) A proportional amount of the authorized place of use of water  
10 diverted under the water right will not receive water during the period  
11 that the water right is deposited in the bank; or (ii) the conservation  
12 element is applied to the portion of the water right that is not deposited;  
13 and~~

14 (D) the method of determining the portion of a water right that is  
15 bankable for purposes of placing of water in a safe deposit account pur-  
16 suant to subsection (c) of section 3, and amendments thereto, shall in-  
17 clude: (i) Consideration of the reasons why such water was unused, in-  
18 cluding, but not limited to, adequate rainfall and the supply of water's  
19 being unavailable for use; and (ii) criteria that assure the bank's safe de-  
20 posit account operations do not result in a net increase in consumptive  
21 ~~use in the affected hydrologic unit, and~~

22 (10) ~~the charter ensures that the total amount of groundwater  
23 leased each year from each hydrologic unit does not exceed 90%  
24 of the historic average annual amount collectively diverted pur-  
25 suant to all deposited water rights or portions of water rights from  
26 such unit for a representative past period.~~

; and

27 (c) Prior to July 1, 2002, not more than one water bank shall be  
28 chartered to operate in the state. ~~Such water bank shall be a ground-  
29 water bank. On or after July 1, 2002, and before July 1, 2003, not more  
30 than two additional water banks shall be chartered to operate in the state.  
31 On or after July 1, 2003, and before July 1, 2004, not more than two  
32 additional water banks shall be chartered to operate in the state. On and  
33 after July 1, 2004, no additional water banks shall be chartered to operate  
34 in the state until the first report of an evaluation team is submitted pur-  
35 suant to section 7, and amendments thereto one additional water bank  
36 shall be chartered to operate in the state. Such water bank shall  
37 be a surface water bank or a surface water and groundwater bank.~~

may

38 (d) A water bank shall be chartered for a period of not more than  
39 seven years, at which time the bank shall be subject to review in accord-  
40 ance with section 7, and amendments thereto, to determine whether the  
41 bank's charter shall be extended.

42 (e) Any amendment to the charter of a water bank must be approved  
43 by the chief engineer prior to adoption of the amendment.

(11) the charter provides a procedure for the  
dissolution of the bank, specifically stating how the  
remaining deposits and safe deposit accounts will be  
distributed

1 Sec. 6. (a) On or before February 10 of each year, each water bank  
2 shall submit to the chief engineer a report containing the following:

3 (1) With regard to water rights or portions of water rights on deposit  
4 in the bank during the last year: (A) The total quantity of water authorized  
5 to be diverted annually pursuant to each such water right or portion of a  
6 water right; (B) the total quantity of water used, by purpose of use, and  
7 acres irrigated for the portion authorized to be used for irrigation, during  
8 the last year as a result of leases of such water rights or portions of water  
9 rights; and (C) the total quantity of water used, by purpose of use, and  
10 acres irrigated for the portion authorized for irrigation pursuant to such  
11 water rights or portions of water rights during the two years preceding  
12 the last year; and

13 (2) with regard to water in each safe deposit account in the bank: (A)  
14 An accounting of the total quantity of water placed in such accounts dur-  
15 ing the past year and a balance at year end; (B) the total quantity of water  
16 used during the past year, and acres irrigated if an irrigation water right,  
17 from the account; (C) the total quantity of water authorized to be diverted  
18 annually, the quantity actually used and the acres irrigated, if an irrigation  
19 water right, during the past year pursuant to the water rights or linked  
20 water rights related to such account; and (D) the total quantity of water  
21 used and acres irrigated pursuant to such water rights during the two  
22 years preceding the last year.

23 (b) The chief engineer may require owners of water rights deposited  
24 in a water bank, owners of water rights that have placed water in safety  
25 deposit accounts in a water bank and persons leasing water from a water  
26 bank to file annual water use reports at a date earlier than that provided  
27 by K.S.A. 82a-732, and amendments thereto.

28 (c) The report required by this section shall be in the form prescribed  
29 by the chief engineer.

30 Sec. 7. (a) Not later than five years after the establishment of a water  
31 bank, the director of the Kansas ~~geological survey~~ shall convene a team  
32 to evaluate the operation of the bank. The team shall consist of:

33 (1) The director of the Kansas ~~geological survey~~, or the director's  
34 designee, who shall serve as chairperson of the team;  
35 ~~(2) two~~ members who represent water right holders and water users  
36 who have used the bank's services, which members shall be selected by  
37 the governing body of the bank; and

38 ~~(3) two~~ members selected by the chief engineer as follows: (A) ~~Two mem-~~  
39 bers engaged in teaching or research at institutions of postsecondary ed-  
40 ucation in subjects involving water resources, including but not limited  
41 to water resources engineering and hydrology; (B) a member who is an  
42 economist with knowledge and experience in water resources; ~~(C) one~~  
43 member having knowledge and experience in water law; ~~(D) two mem-~~

water office

(2) the director of the Kansas geological survey, or  
the director's designee;

(3) four

(4)

(B)

(C)

1 bers having knowledge and experience in water policy issues and residing  
 2 outside the bank boundary, who shall represent the public interest ~~(E)~~  
 3 ~~and~~ representative of each groundwater management district located in  
 4 whole or in part within the bank boundary ~~and (F) one~~ representative of  
 5 each water assurance district located in whole or in part within the bank  
 6 boundary.

(5) One

selected by the board of directors of such district; and

(6) One

7 (b) The staff of the Kansas ~~geological survey~~ shall provide staff assis-  
 8 tance to the evaluation team.

selected by the board of directors of such district

9 (c) Not more than one year after a team is convened pursuant to this  
 10 section, the team shall submit a report of its evaluation and recommen-  
 11 dations to the governor, the Kansas water office, the Kansas water au-  
 12 thority, the secretary of agriculture, the chief engineer and the senate  
 13 standing committee on energy and natural resources and the house stand-  
 14 ing committee on environment, or the successors to such committees  
 15 regarding:

water office

16 (1) The operations and policies of the bank and whether they are  
 17 consistent with the provisions of this act, the state water plan and all  
 18 applicable statutes, rules and regulations, findings and orders of the chief  
 19 engineer, groundwater management district policies and water assurance  
 20 district operations plans;

21 (2) whether the operations of the bank are achieving the goals and  
 22 objectives of water banking as set out in the state water plan and whether  
 23 changes could be made to further those goals and objectives;

24 (3) whether the charter of the bank should be extended;

25 (4) the terms under which the bank's charter should be allowed to  
 26 lapse, if the team recommends that the charter not be extended; ~~and~~

27 ~~(5) any other matters that the team determines relevant to the future~~  
 28 of water banking in the state.

(5) the bank's impact on the entire area of all hydrologic units any parts of which are encompassed in the bank's boundary; and

(6)

29 (d) Unless otherwise provided by law, the chief engineer, in accord-  
 30 ance with the recommendations of the team, may extend the charter of  
 31 the bank for an additional period not to exceed seven years or may allow  
 32 the bank charter to lapse under the terms recommended by the team.

33 Sec. 8. Depositing a water right in a water bank or placement of  
 34 water in a safe deposit account in a water bank shall constitute due and  
 35 sufficient cause pursuant to K.S.A. 82a-718, and amendments thereto, for  
 36 failure to use water for a lawful, beneficial use for the term of the deposit  
 37 or the placement.

38 Sec. 9. The chief engineer may adopt rules and regulations to ad-  
 39 minister and enforce the provisions of this act.

40 Sec. 10. (a) In addition to any other provision of this act or the Kansas  
 41 water appropriation act, and subject to the provisions of subsection (b),  
 42 the chief engineer may suspend the use of water under a term permit,  
 43 an approved application for a permit to appropriate water for beneficial



1 use, an appropriation right or a vested right, acquired pursuant to the  
2 provisions of the Kansas water appropriation act, for the failure to comply  
3 with the provisions of this act. The suspension may be for a defined period  
4 in a subsequent calendar year or years but does not include or prevent  
5 the enforcement of the terms, conditions and limitations of a water right  
6 or permit during the current year of use.

7 (b) The chief engineer shall suspend the use of water under a permit  
8 or water right pursuant to subsection (a) only upon notice and hearing in  
9 accordance with the provisions of the Kansas administrative procedure  
10 act.

11 (c) Orders of the chief engineer issued pursuant to this section are  
12 subject to review in accordance with the provisions of K.S.A. 2000 Supp.  
13 82a-1901, and amendments thereto.

14 Sec. 11. Each water bank shall pay all costs incurred by the division  
15 ~~and by the Kansas geological survey~~ for assistance and services provided  
16 pursuant to this act, including, but not limited to, costs for personnel  
17 necessary to provide such assistance and services.

18 Sec. 12. (a) There is hereby created in the state treasury the water  
19 resources cost fund. The chief engineer shall remit to the state treasurer  
20 all moneys received by the division to reimburse costs as required by  
21 section 11, and amendments thereto. Upon receipt, the state treasurer  
22 shall deposit the entire amount in the state treasury and credit it to the  
23 water resources cost fund.

24 (b) Moneys in the water resources cost fund shall be expended only  
25 for the division's costs of providing assistance and services as provided by  
26 this act.

27 (c) On or before the 10th of each month, the director of accounts  
28 and reports shall transfer from the state general fund to the water re-  
29 sources cost fund interest earnings based on:

30 (1) The average daily balance of moneys in the water resources cost  
31 fund for the preceding month; and

32 (2) the net earnings rate for the pooled money investment portfolio  
33 for the preceding month.

34 (d) All expenditures from the water resources cost fund shall be made  
35 in accordance with appropriation acts upon warrants of the director of  
36 accounts and reports issued pursuant to vouchers approved by the chief  
37 engineer for the purposes set forth in this section.

38 ~~Sec. 13. (a) There is hereby created in the state treasury the geolog-  
ical survey cost fund. The director of the Kansas geological survey shall  
remit to the state treasurer all moneys received by the geological survey  
to reimburse costs as required by section 11, and amendments thereto.  
Upon receipt, the state treasurer shall deposit the entire amount in the  
state treasury and credit it to the geological survey cost fund.~~

1 ~~(b) Moneys in the geological survey cost fund shall be expended only~~  
2 for the Kansas geological survey's costs of providing assistance and serv-  
3 ices as provided by this act.

4 (c) On or before the 10th of each month, the director of accounts  
5 and reports shall transfer from the state general fund to the geological  
6 survey cost fund interest earnings based on:

7 (1) The average daily balance of moneys in the geological survey cost  
8 fund for the preceding month; and

9 (2) the net earnings rate for the pooled money investment portfolio  
10 for the preceding month.

11 (d) All expenditures from the geological survey cost fund shall be  
12 made in accordance with appropriation acts upon warrants of the director  
13 of accounts and reports issued pursuant to vouchers approved by the  
14 director of the Kansas geological survey for the purposes set forth in this  
15 ~~section.~~

16 Sec. 14. This act shall take effect and be in force from and after its  
17 publication in the statute book.

Renumber remaining sections accordingly





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



MEMORANDUM

To: Senator Robert Tyson, Chair  
Senate Committee on Natural Resources

From: Clint Riley, KDWP *CR*

Date: March 15, 2001

Re: House Bill No. 2098

In response to your request for further clarification concerning certain issues raised by conferees during the hearing for HB 2098, our department offers the following information.

1. Landowner/Tenant Exemption

Current law defines "commercial guide services," requires that someone providing commercial guide services be permitted, and then establishes certain exemptions from this requirement. However, HB 2098 does not affect the exemptions in current law that allow landowners and tenants to provide commercial guide services on their own land, without obtaining a commercial guide permit. These exemptions are found on Page 7, lines 20-24. Consequently, landowners and tenants on their own land would continue to be exempt, even if their actions would qualify as "commercial guide services." HB 2098 does provide a further definition of "commercial basis" to better determine what constitutes "commercial guide services," but the exemption for landowners and tenants applies regardless of the definition.

2. Domesticated Deer and Elk Ranching

Current law (and HB 2098) defines commercial guides services by referring to hunting and fishing activities. Persons breeding domesticated deer or elk are regulated by the Animal Health Department, rather than the Department of Wildlife and Parks, and these animals are categorized as livestock, rather than wildlife. Consequently, any activities involving these animals would not be subject the commercial guide permitting requirements.

3. Exemption for "Free" Guiding Services

A current exemption for someone who "does not receive monetary compensation" would be removed by HB 2098, as explained in our department's testimony. As further explained in our testimony, however, the added definition of "commercial basis" means that guide services

Senate Natural Resources Committee  
Date 3-19-01

Attachment # 2

are only considered “commercial” if the recipient agrees to pay valuable consideration, among other provisions. Consequently, under HB 2098 this exemption is no longer necessary, because a person would not be required to have a commercial guide permit in the first place if the recipient is not providing any compensation.

2

#### 4. Felonies Involving the Use of Violence or Weapons

Current law provides that a permit may be denied, suspended or revoked if the applicant has been convicted of a felony in the past five years. As introduced, HB 2098 would remove this five-year limitation if the felony involved the use of violence or the use of weapons, but would not require that the permit be denied. As amended by the House Committee, HB 2098 makes it mandatory to deny, suspend, or revoke a permit for conviction of a felony involving the use of violence or weapons, regardless of time. The department proposed the language in the bill as introduced, but did not oppose the language offered by the House Committee.

If the Committee would like further explanation of these or any other provisions in HB 2098, we would be happy to discuss them.

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HOUSE BILL No. 2131

By Committee on Environment

1-23

10 AN ACT concerning waste tires; amending K.S.A. 2000 Supp. 65-3424,  
11 65-3424a, **65-3424b**, 65-3424d, 65-3424f, 65-3424g, 65-3424k and 65-  
12 3426 and repealing the existing sections.

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~(j)~~ (h) “Store” or “storage” means the placing of waste tires in a man-  
 2 ner that does not constitute disposal of the waste tires. Storage includes  
 3 the beneficial use of waste tires as silo covers and such other beneficial  
 4 uses as the secretary determines do not create health or environmental  
 5 risks.

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

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

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

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

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

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

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

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

40 Sec. 2. K.S.A. 2000 Supp. 65-3424a is hereby amended to read as

41 follows: 65-3424a. (a) The owner or operator of any waste tire site shall  
 42 provide the department with information concerning the site’s location  
 43 and size and the approximate number of waste tires that are accumulated

at the site.

(b) No person shall:

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

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

(3) deposit waste tires in a landfill as a method of ultimate disposal, except that the secretary *may authorize*, by rules and regulations, ~~may authorize or by permits issued pursuant to K.S.A. 65-3407, and amendments thereto:~~ (A) The final disposal, ~~before July 1, 1999, of uncontaminated of processed waste tires at a municipal landfill if the tires have been cut into sufficiently small parts to assure their proper disposal,~~ (B) the final disposal of processed waste tires at a permitted waste tire monofill, ~~(C) permitted municipal solid waste landfills and permitted waste tire monofills;~~ (B) the final disposal of contaminated whole, unprocessed waste tires at a municipal landfill or permitted waste tire monofill, ~~(D) permitted municipal solid waste landfills and permitted waste tire monofills;~~ (C) the use of waste tires in their original state as part of a proven and approved leachate collection system at a landfill; or ~~(E) (D) the use of waste tires which have been cut into two or more parts as daily cover material for a landfill;~~ or

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

**Sec. 3. K.S.A. 2000 Supp. 65-3424b is hereby amended to read as follows: 65-3424b. (a) The secretary shall establish a system of permits for mobile waste tire processors and waste tire processing facilities and permits for waste tire transporters and collection centers. Such permits shall be issued for a period of one year and shall require an application fee established by the secretary in an amount not exceeding \$250 per year.**

(b) The secretary shall adopt rules and regulations establishing

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

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

(d) No person shall:

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

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

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

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

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

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

(4) the department of wildlife and parks;

(5) a person engaged in a farming or ranching activity, includ-

1 ing the operation of a feedlot as defined by K.S.A. 47-1501, and  
 2 amendments thereto, as long as the accumulation has a beneficial  
 3 use;

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

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

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

14 (9) a person transporting: (A) Waste tires mixed with other mu-  
 15 nicipal solid waste; (B) fewer than five waste tires for lawful dis-  
 16 posal; (C) waste tires generated by the business, farming activities  
 17 of the person or the person's employer; or (D) waste tires for a  
 18 beneficial use approved by statute or rules and regulations  
 19 adopted by the secretary; or

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

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

26 Sec. 3. K.S.A. 2000 Supp. 65-3424d is hereby amended to read  
 27 as follows: 65-3424d. (a) In addition to any other tax imposed upon the  
 28 retail sale of new vehicle tires, there is hereby imposed on retail sales of  
 29 new vehicle tires (excluding innertubes), including new tires mounted on  
 30 a vehicle sold at retail for the first time, an excise tax at the following rate:

31 ~~(1) Before July 1, 2001, of \$ .50 per vehicle tire, and (2) on or after July~~  
 32 ~~1, 2001, \$ .25 at the rate of \$ .50 per vehicle tire before July 1, 2003,~~  
 33 ~~and \$ .25 per vehicle tire on and after July 1, 2003.~~ Such tax shall be

34 paid by the purchaser of such tires and collected by the retailer thereof.

35 (b) The tax imposed by this section collected by the retailer shall  
 36 become due and payable as follows: When the total tax for which any  
 37 retailer is liable under this act does not exceed the sum of \$80 in any  
 38 calendar year, the retailer shall file an annual return on or before January  
 39 25 of the following year; when the total tax liability does not exceed \$1,600  
 40 in any calendar year, the retailer shall file returns quarterly on or before  
 41 the 25th day of the month following the end of each calendar quarter;  
 42 when the total tax liability exceeds \$1,600 in any calendar year, the retailer  
 43 shall file a return for each month on or before the 25th day of the follow-

of \$.25 per vehicle tire.



1 ing month. Each person collecting the tax imposed pursuant to this sec-  
2 tion shall make a true report to the department of revenue, on a form  
3 prescribed by the secretary of revenue, providing such information as may  
4 be necessary to determine the amounts of taxes due and payable here-  
5 under for the applicable month or months, which report shall be accom-  
6 panied by the tax disclosed thereby. Records of sales of new tires shall be  
7 kept separate and apart from the records of other retail sales made by  
8 the person charged to collect the tax imposed pursuant to this section in  
9 order to facilitate the examination of books and records as provided  
10 herein.

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

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

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

29 (f) Whenever, in the judgment of the secretary of revenue, it is nec-  
30 essary, in order to secure the collection of any taxes, penalties or interest  
31 due, or to become due, under the provisions of this act, the secretary may  
32 require any person charged with the collection of such tax to file a bond  
33 with the director of taxation under conditions established by and in such  
34 form and amount as prescribed by rules and regulations adopted by the  
35 secretary.

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

42 Sec. 4-5. K.S.A. 2000 Supp. 65-3424f is hereby amended to read as  
43 follows: 65-3424f. (a) ~~The secretary shall establish a program to make~~



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

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

~~(b) (a) The secretary shall establish a competitive waste tire recycling grant program to stimulate the processing of waste tires and the use and purchase of tire-derived products. Recycling grants under such program may be made to cities, counties, schools, colleges, universities, regional entities that are part of an interlocal agreement entered into pursuant to K.S.A. 12-2901 et seq., and amendments thereto, private companies and nonprofit organizations to purchase tire chips and other tire-derived products for playgrounds, running tracks, hiking trails, septic systems or other uses approved by the secretary to stimulate in-state businesses and institutions to process waste tires and utilize tire-derived material to manufacture and market consumer, commercial or industrial products. Waste tire recycling grants shall be in an amount not exceeding 75% 50% of the cost of the approved purchase. Approved purchases may be from in-state and out-of-state companies in fiscal years 2002 and 2003. After July 1, 2003, approved purchases shall be only from companies which are located in Kansas and which recycle waste tires generated in Kansas at a~~

Delete

~~1 minimum rate of 50% of total waste tire throughput. Grants may be  
 2 awarded only for purchases from companies utilizing a minimum  
 3 of 50% Kansas-generated waste tires in their recycling process.  
 4 Applications for waste tire recycling grants shall be reviewed by the solid  
 5 waste grants advisory committee established pursuant to K.S.A. 65-3426,  
 6 and amendments thereto, which shall make recommendations to the sec-  
 7 retary regarding project eligibility and funding.~~

Delete

~~8 (e) Private companies, Cities and counties may join together, pooling  
 9 their financial resources, when utilizing their grants for the purposes de-  
 10 scribed in subsection (a).~~

~~11 (d) (b) The secretary may provide technical assistance, upon request,  
 12 to a private company, city, county or group of private companies, cities  
 13 or counties desiring assistance any eligible entity in applying for waste  
 14 tire grants or choosing a method of waste tire management which would  
 15 be an eligible use of the grant funds described in subsections (a) and (b).  
 16 subsection (a)~~

Delete

~~17 (e) (e) The secretary shall submit to the legislature, on or before the  
 18 first day of the regular legislative session each year, a report of all grants  
 19 made pursuant to this section. The report shall include: (1) The total  
 20 contract amounts awarded for each type of grant in each fiscal year and,  
 21 of those amounts, the total amount awarded to individual counties, groups  
 22 of counties and private entities, and (2) with respect to each grant  
 23 awarded, the contract amount and type of grant, the recipient, a descrip-  
 24 tion of the project for which the grant was awarded, the number of tires  
 25 involved and the amount actually spent. The secretary shall submit the  
 26 report by filing it with the secretary of the senate, the chief clerk of the  
 27 house of representatives and the chairperson and ranking minority mem-  
 28 ber of each of the senate and house committees on energy and natural  
 29 resources.~~

Delete

30 Sec. ~~5~~ 6. K.S.A. 2000 Supp. 65-3424g is hereby amended to read as  
 31 follows: 65-3424g. (a) There is hereby established in the state treasury  
 32 the waste tire management fund.

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

35 (1) Revenue collected from the excise tax by K.S.A. 65-3424d and  
 36 amendments thereto;

37 (2) permit application and renewal fees provided for by K.S.A. 65-  
 38 3424b and amendments thereto;

39 (3) interest provided for by subsection (e);

40 (4) additional sources of funding such as reimbursements and appro-  
 priations intended to be used for the purposes of the fund;

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

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

Delete

(7) any other moneys provided by law.

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

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

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

(1)

\$300,000 or 43%, whichever is less, of the moneys credited to the fund during the preceding fiscal year.

delete

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

~~(4) action by the department before July 1, 2001, to abate waste tires accumulated by a city or county as a result of a temporary waste tire amnesty collection program, authorized by the department, to allow residents of the city or county free disposal of waste tires generated by farming and ranching activities and waste tires not generated in the ordinary course of any other business, provided that not more than one such amnesty program is conducted by the city or county after January 1999; and~~

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

(2)

~~(3) with the consent of the city or county, payment (3) action by the department before July 1, 2003, to abate waste tires accumulated prior to July 1, 1990;~~

(3)

~~(4) action by the department to implement interim measures to minimize nuisances or risks to public health or the environment that are or could be created by waste tire accumulations, until the responsible party can fully abate the site or until a state clean-up occurs pursuant to K.S.A. 65-3424k, and amendments thereto;~~

~~55~~ **action by the department, with the consent of the city or** (4)

**county, to pay for the removal and disposal or on-site stabilization of waste tires which have been illegally accumulated after July 1, 1990 or, with respect to the conditions of a permit issued by the department pursuant to K.S.A. 65-3407 or 65-3424b, and amendments thereto, illegally managed, when the responsible party is unknown or unwilling or unable to perform the necessary corrective action, provided moneys in the fund shall only be used to pay up to 75% of the costs of the required abatement action and the city or county shall pay the remaining 25% of such costs; and**

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

~~56~~ **the costs of using contractors to provide: (A) Public education regarding proper management of waste tires; (B) technical training of persons on the requirements of solid waste laws and rules and regulations relating to waste tires; and (C) services described in subsection (i) of K.S.A. 65-3424k, and amendments thereto.**

(d) All expenditures from the waste tire management 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.

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

Sec. 6. 7. K.S.A. 2000 Supp. 65-3424k is hereby amended to read as follows: 65-3424k. (a) ~~Before July 1, 2001, the secretary may undertake appropriate abatement action and may enter into contracts, including grant contracts, for abatement of waste tire accumulations, utilizing funds from the waste tire management fund. After July 1, 2001, the secretary's actions shall be limited to contractual services to perform interim measures designed to minimize nuisances or risks to public health or the environment created by a waste tire accumulation. Before July 1, 2003, the secretary may undertake appropriate abatement action and may enter into contracts for the abatement of waste tires accumulated before July 1, 1990, utilizing funds from the waste tire management fund.~~

(b) ~~(b)~~ Any authorized representative of the secretary may enter, at reasonable times ~~and upon written notice,~~ **and upon written notice** onto any property or premises where an accumulation of waste tires is located to conduct ~~an abatement of the accumulation or to perform interim measures to minimize nui-~~

~~nuisances or risks:~~ (1) An inspection and site assessment to determine whether the accumulation creates a nuisance or risk to public health ~~or and safety~~ or to the environment ~~created by a waste tire accumulation~~; or (2) interim measures to minimize risk to public health and safety or to the environment.

~~(e) (b) (c)~~ Whenever the secretary has reason to believe that an ~~owner or operator~~ has accumulated waste tires that create accumulation of waste tires creates a nuisance or risk to public health ~~or and safety~~ or to the environment or is in violation of rules and regulations adopted by the secretary or conditions of a permit issued by the secretary, the secretary may require ~~that owner or operator~~ to abate ~~the accumulation~~ the person or persons responsible for the accumulation to carry out abatement activities. Such abatement activities shall be performed in accordance with a plan approved by the secretary. The secretary shall give notice, by letter, to the property owner and ~~operator~~ responsible parties that the waste tires constitute a nuisance or risk to public health or the environment, and that the waste tire accumulation must be abated within a specified period. ~~Before July 1, 2001,~~ The secretary may undertake abatement action utilizing funds from the waste tire management fund if ~~the owner or operator~~ fails ~~responsible parties~~ fail to take the required action within the specified time period. After July 1, 2001, the secretary's actions shall be limited to contractual services to perform interim measures designed to minimize nuisances or risks to public health or the environment created by a waste tire accumulation: (1) **The waste tires were accumulated before July 1, 1990, and abated before July 1, 2003; or**

(2) **the waste tires were accumulated after July 1, 1990, and the responsible parties fail to take the required action within the time period specified in the notice.** *The department and its representatives are authorized to enter private property to perform abatement activities if the responsible party fails to perform required clean-up work, but no entry shall be made without the property owner's consent except upon notice and hearing in accordance with the Kansas administrative procedures act.*

~~(e) (d)~~ All costs incurred by the secretary in abatement of waste tires ~~accumulated after July 1, 1990~~ **accumulated after July 1, 1990**, or in performing interim measures, including administrative and legal expenses, are recoverable from ~~an owner or operator~~ a responsible party or parties and may be recovered in a civil action in district court brought by the secretary. ~~Abatement costs recovered under this section~~ *If any abatement costs are recovered under this section, the city or county that shared in the cost of the abatement action shall be reimbursed its costs not to exceed 25% of the amount recovered. The remaining amount recovered shall be remitted to the state treasurer, who shall deposit the entire*

amount in the state treasury and credit it to the waste tire management fund. An action to recover abatement or interim measures costs may be commenced at any stage of an abatement.

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

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

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

~~(g)~~ **(g)** Neither the state of Kansas nor the waste tire management fund shall be liable to any owner or, operator or responsible party for the loss of business, damages or taking of property associated with any abatement or enforcement action taken pursuant to this section.

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

**(i) The secretary shall enter into contracts with one or more associations of tire retailers to: (1) Assist in disseminating information to all tire retailers on the requirements of solid waste laws and rules and regulations relating to waste tires; (2) establish a**



point of contact for persons ~~to report suspected violations of solid waste laws and rules and regulations relating to waste tires; (3) evaluate suspected violations reported to the association, including making contact with potential violators as appropriate to gather factual information and to provide notice of possible violations; and (4) refer cases to the secretary as appropriate to initiate administrative enforcement procedures pursuant to the provisions of the solid waste management act. Any such contract shall ensure that the secretary's authority to implement enforcement actions is not compromised by the actions of the contractor.~~

requesting information on

(3) assist in planning and implementing conferences, workshops, and other requested training events for persons involved in the generation, transportation, processing, or disposal of waste tires; and (4) assemble and analyze data on waste tire management by tire retailers in Kansas.

Sec. 7. 8. K.S.A. 2000 Supp. 65-3426 is hereby amended to read as follows: 65-3426. (a) There is hereby established within the department of health and environment the solid waste grants advisory committee, which shall be composed of seven members as follows:

(1) Six members appointed by the governor, two of whom shall represent the interests of regional solid waste management entities, two of whom shall represent the interests of counties, one of whom shall represent the interests of cities and one of whom shall represent the interests of the private sector;

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

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

(c) Members of the solid waste grants advisory committee shall receive amounts provided by subsection (e) of K.S.A. 75-3223 and amendments thereto for each day of actual attendance at any meeting of the advisory committee or any subcommittee meeting authorized by the advisory committee.

(d) The secretary of health and environment shall provide technical support related to the activities of the solid waste grants advisory committee, including but not limited to establishing project selection criteria, performing technology evaluations, assessing technical feasibility and determining consistency with the statewide solid waste management plan, the applicable county or regional solid waste management plan and regional activities.

(e) In accordance with schedules established by the secretary of health and environment, the solid waste grants advisory committee shall meet to review competitive grant applications submitted pursuant to subsection ~~(e)~~ (b) of K.S.A. 65-3415 and K.S.A. 65-3424f, and amendments thereto. The advisory committee shall establish a project priority list for each fiscal year ~~in each grant program~~ based upon the availability of funds

as estimated by the secretary and shall make recommendations regarding  
the selection of grantees and the disbursement of moneys.

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3 Sec. ~~8~~ **9**. K.S.A. 2000 Supp. 65-3424, 65-3424a, **65-3424b**, 65-  
4 3424d, 65-3424f, 65-3424g, 65-3424k and 65-3426 are hereby repealed.

5 Sec. ~~9~~ **10**. This act shall take effect and be in force from and after  
6 its publication in the statute book.

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