

MINUTES OF THE SENATE PUBLIC HEALTH AND WELFARE.

The meeting was called to order by Chairperson Senator Susan Wagle at 1:30 p.m. on February 14, 2001 in Room 231-N of the Capitol.

All members were present except:

Committee staff present: Ms. Emalene Correll, Legislative Research Department
Ms. Renae Jefferies, Revisor of Statutes
Ms. Lisa Montgomery, Revisor of Statutes
Ms. Margaret Cianciarulo, Administrative Assistant

Conferees appearing before the committee: Ms. Christine Ross-Baze, Director, Child Care Licensing & Registration Section, Bureau of Consumer Health
Dr. Dennis Allin, MD, Vice Chair of the Advisory Committee On Trauma
Dr. Richard Morrissey, Director, Office of Local and Rural Health, KDHE
Ms. Darlene Whitlock, M.S.N. ARNP, Kansas State Nurses Association.
Mr. Thomas Bell, Senior Vice President/Legal Counsel, Kansas Hospital Association
Mr. Bill Bider, Director, Bureau of Waste Management
Senator Corbin, District 16
Ms. Judy Moler, General Counsel/Legislative Services Dir.
Mr. Charles Sedlock, Division Manager Hamm Companies
Mr. Steve Kearney, Lobbyist, Association Management, Inc.
Mr. John Bottenburg, Deffenbaugh Industries

Others attending: See Attached Guest List

Continued Hearing on SB 195 - Release of information in records of child care facilities

Upon calling the meeting to order, Chairperson Wagle reminded the Committee that they would hear testimony from Ms. Christine Ross-Baze, Director, Child Care Licensing and Registration Section, Bureau of Consumer Health regarding **SB 195** that was being heard in yesterday's meeting when time ran out. Ms. Ross-Baze gave a brief history of last years legislation and how the new amendments are intended to clarify areas in the statute that have been found to be confusing or problematic. A copy of her testimony is (Attachment #1) attached hereto and incorporated into the Minutes by reference.

Written testimony was also provided by Ms. Lisa Dowd, Child Care Association of Johnson County. A copy of her testimony is (Attachment #2) attached hereto and incorporated into the Minutes by reference.

Hearing on SB 239 - Kansas Trauma System Plan

As there were no questions from the Committee, the next order of business on the agenda was the hearing on **SB 239**.

Dr. Dennis Allin, MD, Vice Chair of the Advisory Committee on Trauma, was the first conferee called before the Committee to give proponent testimony. Dr. Allin presented a short history on the Advisory Committee on Trauma. A copy of his testimony is (Attachment #3) attached hereto and incorporated into the Minutes by reference.

The next proponent conferees was Dr. Richard Morrissey, Director, Office of Local and Rural Health, KDHE stating that the KDHE has worked with the committee a number of years. A copy of Dr. Morrissey's testimony is (Attachment #4) attached hereto and incorporated into the Minutes by reference.

Next on the list was Ms. Darlene Whitlock, M. S. N., ARNP representing KSNA stating it is through the Advisory Committee that they are making progress in implementing the system for better trauma care for Kansas. A copy of Ms. Whitlock's testimony is (Attachment #5) attached hereto and incorporated into the Minutes by reference.

The last proponent conferee was Mr. Thomas Bell, Senior Vice President/Legal Counsel, Kansas Hospital Association stating that the Advisory Committee represents the process of developing consensus on related issues. A copy of his testimony is (Attachment #6) attached hereto and incorporated into the Minutes by reference

Action on SB 239 and SB 195

As there was no Opponent or Neutral Testimony or questions or concerns from the Committee, Senator Praeger thanked the Advisory Committee on all of the hard worked and made a motion that the Committee recommend **SB 239** as amended favorably for passage. Senator Haley seconded. The motion carried.

Chairperson Wagle asked that **SB 195** be worked. Ms. Emalene Correll, Legislative Research Department, requested to amend line 26 of the bill. Ms. Renae Jefferies, Revisor of Statutes felt that it was OK as is. After more discussion, Senator Haley motioned to amend "name" to "home" on page 2, line 4 and was seconded by Senator Barnett. The motion passed.

Senator Brungardt motioned that the Committee recommend **SB 195** as amended favorably for passage. Senator Praeger seconded. The motion carried.

Hearing on SB 240 - creating the municipal solid waste landfill perpetual care trust fund,

Next on the agenda was the hearing on **SB 240**, an act concerning solid waste. The first conferee to come before the committee was Mr. Bill Bider, Director of Bureau of Waste Management who gave a brief history of the bill, the cost of closing a large private landfill, and carry out corrective measures. A copy of his testimony is (Attachment #7) attached hereto and incorporated into the Minutes by reference.

Chairperson Wagle asked the Committee if they had questions or comments. A discussion between Ms. Emalene Correll, Legislative Research Department, Senator Wagle and Mr. Bider ensued regarding measuring, combining acts, and county level fee.

The next proponent conferee was Senator Corbin who had no written testimony, but gave an overview of a meeting he attended in Ark City, where questions were asked regarding what happens after a normal 30 year contract runs out and the company has gone away. He suggested some kind of fund be started. Questions again arose from Ms. Correll and Senator Wagle ranging from who has liability for cleaning up the waste to owner responsibility.

As Ms. Moler, General Counsel/Legislative Services Director, the last proponent conferee, was unavailable, a copy of her written testimony is (Attachment #8) attached hereto and incorporated into the Minutes by reference.

The next conferee to come before the Committee was Mr. Charles Sedlock, Division Manager, Hamm Companies fees that if a trust fund is established and it is user fee funded then the fees should be risk-based for each participating landfill site. A copy of his testimony (Attachment #9) is attached hereto and incorporated into the Minutes by reference.

Mr. Steve Kearney, Lobbyist, Association Management, Inc, representing Waste Management of Kansas, was not able to present written testimony because of the short notice of the hearing, but did refer to line 17 of the bill."the secretary can". He questioned whether this was constitutional and also questioned the tipping fee.

The last opponent conferee was Mr. John Bottenburg, Deffenbaugh Industries, Inc. who presented testimony in behalf of Mr. George R. McGrew, General Counsel. A copy of Mr. McGrew's testimony is (Attachment 10) attached hereto and incorporated into the Minutes by reference.

Adjournment

Following testimony, Chairperson Wagle requested comments or questions from the committee. As there were none, Chairperson Wagle thanked the conferees for their testimony. As it was 2:28 p.m., the meeting was adjourned.

The next meeting is scheduled for February 15, 2001.

GUEST LIST

22

DATE: Wednesday, February 14

NAME	REPRESENTING
Terri Roberts	Kansas State Nurses Assn.
Kent Munzer	SRS - CFP
Chris Ross Bagg	KDHE
Eugene Jagers	KDHE
Stephen M. Dargie	KDHE
Tom Sips	KHA
Tom Bell	KHA
Rachel Katwin	SRS - EES
Mona Pater	SRS - CFP
Scott Brunner	DOB
Sue Hein	Hein + West
Steve Keaveney	WASTE MANAGEMENT
John A. Satterberg	Deffenbaugh
Charlie Sallat	Hamm
Bill Bider	KDHE
Darlene Whitlock	KSNA & EOA



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

Testimony on Senate Bill 195
to
Senate Public Health and Welfare Committee
Presented by
Christine Ross-Baze, Director
Child Care Licensing and Registration Section
Bureau of Consumer Health
February 13, 2001

Senator Wagle and members of the Senate Public Health and Welfare Committee, I am pleased to appear before you today to discuss Senate Bill 195 and its impact on the Department of Health and Environment and on child care in Kansas.

Last year the Department requested the Legislature consider amendments to K.S.A. 65-525 to clarify the extent to which identifying information, including the name, address and telephone number of a child care facility, family day care home or maternity center was to be released publicly by the Department. Clarification was requested as the Department, in response to many requests from the public, was in the process of developing an Internet application for the Child Care Licensing and Registration data base. The Internet application was intended to make records in the possession of the Department more accessible to parents, other child care partners and the public. However, concerns were raised about the safety of children in child care if the exact locations and telephone numbers of home child care providers and foster parents were put on the Internet. Some feared that persons who might do harm to the children could utilize access to these records to further their evil designs. The statutory language in K.S.A. 65-525 did not provide clear authority to withhold these records from the public.

The bill introduced last year at the request of KDHE was substantially amended by the Legislature prior to passage. All identifying information about child care providers of all types was made confidential. The Department and other child care agencies and partners have implemented the statute as amended. Unfortunately, in its current form the statute has made child care provider information confidential to the point it is now interfering with the Department's

ability, to protect children and is creating a burden on local agencies needing access to records. The proposed amendments in Senate Bill 195 are intended to clarify areas in the statute that have been found to be confusing or problematic; authorize the Secretary to disseminate records as necessary to protect the public health, safety and welfare and to authorize additional local agencies to access records held by the Department.

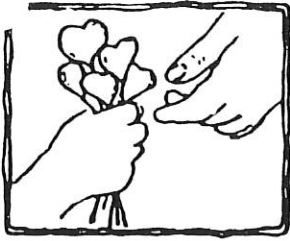
The language being added to K.S.A. 525(b) is intended limit the confidentiality provision to records in the possession of KDHE and KDHE's agents. The current statutory language is very broad and is being interpreted inconsistently across agencies. The language is also creating barriers between agencies in sharing information that is important to protect children. For example, staff in some agencies have declined to give KDHE staff the name, address or telephone number of a child care facility that they believe is not providing adequate care to children because they feel they are prohibited from doing so by the current language in this section. Without the name or location of the child care facility KDHE can not investigate complaints of inadequate child care. The Department's original intent in requesting clarification was to address records and information in the possession of the Department and the Department's designated agents. The language in (b) is intended to resolve the inconsistencies in interpretation and the perceived barriers in sharing information.

Of significant importance to the Department is the provision in new section (e) which authorizes the Secretary of the Department of Health and Environment to release the name, address and telephone number of child care facilities, maternity centers and family day care homes when the Secretary determines the release is necessary to protect the health, safety or welfare of the public, patients or children in care. In FY 00 there were 24 emergency suspensions issued by the Secretary. These emergency actions were necessary to protect children from harm. The Secretary was unable to publish these emergency actions in the newspaper. Circumstances included, sexual abuse, physical abuse, unsafe and unhealthy environments and young children being abandoned. In one instance there was an outbreak of Shigella in a child care center licensed for 90 children. Shigella is a highly contagious disease that results in severe diarrhea. It spreads easily in groups of children through inadequate hand washing after toileting, after diapering or after assisting a child in the bathroom. The emergency suspension was issued as the disease was wide spread and the center had too few uninfected staff able to care for the children without further spreading the disease. The suspension remained in effect until a sufficient number of staff were no longer symptomatic and the facility, toys and equipment were thoroughly cleaned and disinfected. The Secretary was unable to notify the community of the outbreak and of the closure of the center. The inability to publicize this type of information significantly hinders the Secretary's ability to protect the public health and safety in communities and to control communicable disease outbreaks in child care. Fortunately in this particular case, the center cooperated with the Department and the outbreak was brought under control. This is not always the case. In other instances, parents were not told by the

child care provider that the Department closed the child care facility and children remained in unsafe conditions without their parent's knowledge. In FY 00 the Secretary issued 237 administrative actions to close facilities that were operating in noncompliance with regulatory requirements affecting over 2,000 children and their families. The Department did not publicize any of these actions in the newspaper.

The Department supports passage of Senate Bill 195 and recommends a technical change on page 2 line 4. The term "family day care name" should be changed to "family day care home".

I thank you for the opportunity to appear before the Senate Public Health and Welfare Committee and will gladly stand for questions the committee may have on this topic.



Child Care Association
of Johnson County
7369 West 97th Street
Overland Park, Kansas 66212
(913) 341- 6200

TESTIMONY FROM LISA K. DOWD (CHILD CARE ASSOCIATION OF JOHNSON COUNTY)

HOUSE BILL 2755 / SENATE BILL 195

CONCERNS REGARDING THIS BILL:

- Since this bill was passed, the Child Care Association estimates that we have spent well over 40 hours of staff time and well over \$2,000 updating our referral database, mailings to providers, updating our directories, etc. The staff continues to spend extra time and effort to be careful regarding any lists or labels we print out for other agencies making sure we only give them the providers with a consent form.
- This bill was confusing to the providers currently on our referral database. They felt that they had already given us permission to refer them because they had filled out the referral data sheet(s) when they were originally placed on the referral.
- The choices regarding child care have been cut tremendously due to the consent forms. Before House Bill 2755 was enacted our referral database had approximately 1,400 active providers. Currently our provider database has around 900 active providers.
- Along with our referral database, our agency also has directories of all the full day child care centers, preschools, parent's day out programs and school age programs. Since House Bill 2755 was enacted we have had to spend a lot of staff time deleting those programs without consent forms, adding them back in when the form was returned, etc. To this day we still have not received all of the consent forms back and therefore our directories really are not complete. Because of this, we can no longer tell parents that the directories contain ALL of the centers, etc. in Johnson County. We have had parents call us after receiving the directories and want to know why a certain program near their home was not listed. They ask, "is it because they are not licensed?" "is it because their license has been revoked?" etc. We have to explain House Bill 2755 and for those who have known about our services for years this new way of "customer service" isn't very friendly. Also I have received several calls from parents who just need/want to know the phone number or mailing address of a certain center they happened to pass by, etc. We have had to make sure they not only were active, but also if they had returned the consent form in order to help the caller.
- Recently our office received a call from the Environmental & Protection Agency. They wanted a list of the providers in the counties we serve in order to send them updated information about lead poisoning. We were not able to send them the list of providers who have not yet returned their consent forms and therefore those providers were not able to receive that important information.

*Senate Public Health & Welfare Committee
Meeting Date February 14, 2001
Attachment 2-1*



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

Testimony on Senate Bill No. 239
before the
Senate Committee on Public Health and Welfare

Presented by Dennis Allin, MD
Advisory Committee on Trauma

February 14, 2001

Chairperson Wagle and members of the Senate Committee on Public Health and Welfare, I am pleased to appear before you today as Vice Chairman of the Advisory Committee on Trauma to discuss the proposed amendments in Senate Bill No. 239.

The 1999 Kansas Legislature passed K.S.A. 75-5663 et seq. creating the Advisory Committee on Trauma and directing the Secretary of Health and Environment to develop a statewide trauma system plan utilizing the 1998 *Kansas EMS/Trauma Systems Plan* as a guide in that process. K.S.A. 75-5664 (h) required the advisory committee to make a final report and recommendations to this committee which we did in January. At that time, we presented the recommendations of the Advisory Committee on Trauma. Those recommendations have been incorporated into senate bill 239.

The Advisory Committee on Trauma is organized to provide technical expertise on the development of the trauma system, it insures that the major stakeholders are represented in the policy process, and it functions to provide statewide coordination of policy necessary to integrate the planning and activities of the Regional Trauma Councils. The members of the Advisory Committee represent a broad constituency of professionals involved in the care of the trauma patient working in partnership with KDHE and the Board of Emergency Medical Services. The Advisory Committee on Trauma is an important part of the governance structure of the developing trauma system and should be continued and the Kansas Department of Health and Environment should continue as the administering agency.

We support the change in K.S.A. 75-5664 (b) which increases membership of the Advisory Committee from 15 to 21 members, with each of the regional trauma councils having a representative on the Advisory Committee on Trauma. This change will help us to assure that state and local efforts are coordinated and that state policy is informed by the local participants in the trauma system.

DIVISION OF HEALTH
Office of Local & Rural Health

Landon State Office Building
900 SW Jackson, Room 1051
(785) 296-1200

Printed on Recycled Paper

Topeka, KS 66612-1290
FAX (785) 296-1231

*Senate Public Health & Welfare Committee
Meeting Date February 14, 2001
Attachment 3-1*

Page Two
Testimony on S.B. No. 239

In addition, the Advisory Committee supports the amendment to K.S.A 75-5664 (c) which authorizes the Governor to set the length of term for all of the appointments to the committee. The current statute made it impossible to implement the requirement for staggered terms for committee members.

I thank you for the opportunity to appear before you and will gladly answer any questions.

Attachment 3-2



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

Testimony on Senate Bill No. 239
to
Senate Committee on Public Health and Welfare

Presented by Richard Morrissey, Director
Office of Local and Rural Health

February 14, 2001

Chairperson Wagel and members of the Senate Committee on Public Health and Welfare, I am pleased to appear before you today in support of Senate Bill No. 239.

The Department of Health and Environment has worked with the group of partners represented on the Advisory Committee on Trauma for a number of years to get to this point. We share a vision of an inclusive trauma system for Kansas that saves lives and reduces suffering.

The Advisory Committee is an essential element in the system and brings to the effort needed expertise and points of view. We believe its functioning will be improved by linking it more directly to the Regional Trauma Councils with designated representatives and by making it possible to implement staggered terms for the members as proposed in Senate Bill No. 239.

We urge the committee to recommend Senate Bill No. 239 favorably for passage.

Thank you for the opportunity to appear before the Senate Committee on Public Health and Welfare. I will gladly stand for questions the Committee may have on this topic.

DIVISION OF HEALTH
Office of Local & Rural Health

Landon State Office Building
900 SW Jackson, Room 1051
(785) 296-1200

Printed on Recycled Paper

Topeka, KS 66612-1290
FAX (785) 296-1231

*Senate Public Health & Welfare Committee
Meeting Date February 14, 2001
Attachment 4-1*



1208 SW Tyler
Topeka, Kansas 66612-1735
785.233.8638 * FAX 785.233.5222
www.nursingworld.org/snas/ks
the Voice of Nursing in Kansas

Emma Doherty, M.A.,
President

Terri Roberts, J.D., R.N.
Executive Director

For More Information Contact
Terri Roberts J.D., R.N.
233-8638 Fax 233-5222
February 14, 2001

S.B. 239 KANSAS TRAUMA SYSTEM

Chairperson Wagle and members of the Senate Public Health and Welfare Committee, my name is Darlene Whitlock M.S.N., ARNP and I am here today representing the KANSAS STATE NURSES ASSOCIATION (KSNA). KSNA is the professional organization for registered nurses in the state and has been an active supporter of the work towards a comprehensive statewide trauma system.

KSNA supports the very significant provision of S.B. 239 which eliminates the sunset provision regarding the Advisory Committee of Trauma. Prior to the legislation enacting this Committee two years ago, all of the professions and the institutions involved with the delivery of trauma care spent three years developing the basic framework for a trauma system for our state. It is through the Advisory Committee that we are making progress in implementing the system for better trauma care for Kansas citizens, and we ask for your support to continue this most important work. The bill proposes to add a representative from each of the 6 regional trauma councils to the advisory committee and will permit the Governor to provide for terms of appointment that are staggered. The additional representation from the regional trauma councils will foster enhanced communication and cooperation and the terms of appointment being staggered will provide continuity to the Advisory Committee.

Registered nurses throughout our state are enthusiastic about this endeavor, and in August of last year KSNA sponsored a Trauma Summit in Salina to update nurses involved in trauma care about the progress of the Committee. We continue to communicate regularly through a very active e-mail list where information is shared and exchanged.

Thank you for your support of our work to date and,
we hope that you will vote in favor of S.B. 239.

Darlene Whitlock MSN, ARNP,
Home: 785.582.5122
Work: 1-800-362-0070

The mission of the Kansas State Nurses Association is to promote professional nursing, to provide a unified voice for nursing in Kansas and to advocate for the health and well-being of all people.

Constituent of The American Nurses Association

*Senate Public Health & Welfare Committee
Meeting Date February 14, 2001
Attachment 5-1*



Memorandum

Donald A. Wilson
President

February 14, 2001

To: Senate Public Health and Welfare Committee

From: Thomas L. Bell,
Senior Vice President/Legal Counsel

Subject: Senate Bill 239

Thank you for the opportunity to comment today. We are here in support of Senate Bill 239 which amends the enabling legislation establishing the Kansas Advisory Committee on Trauma. While the amendments appear minor, they allow for stability in the Advisory Committee.

Three hospital representatives are currently members of the Advisory Committee on Trauma – west to east they are Roger John, Great Plains Health Alliance, Phillipsburg; John Broberg, Salina Regional Health Center, Salina; and Tajquah Hudson, Kansas University Medical Center, Kansas City. Potential requirements that could be imposed by a state trauma plan will affect all Kansas hospitals in different ways depending on their size and location. KHA will continue to support the process of consensus building and appreciates the opportunity for involvement.

The Advisory Committee on Trauma represents the process of developing consensus on related issues, educating stakeholders, implementing a process to improve the care of trauma patients and, wherever possible, preventing the serious injuries we refer to as trauma. Building a trauma plan is an evolutionary process and will be continued in 2001 and in years to come if the amendments presented in SB 239 are adopted.

In developing the implementation strategies outlined in the plan, the KACT and the KDHE staff have worked closely with those most affected by the process to assure that the requirements will have the least adverse impact and achieve the most positive results. Kansas has a long way to go in improving our prevention and treatment efforts in the area of trauma. The Advisory Committee is at the core of these improvements.

Thank you again for the opportunity to comment.

Kansas Hospital Association

215 SE 8th Ave. • P.O. Box 2308 • Topeka, KS • 66601 • 785/233-7436 • Fax: 785/233-6955 • www.kha-net.org

*Senate Public Health & Welfare Committee
Meeting Date February 14, 2001
Attachment 6-1*



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 Public Health and Welfare Committee
presented by
Bill Bider, Director, Bureau of Waste Management

February 14, 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 about 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 cost 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 or 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 establish a start date for the first payment of fees in July 2002, recommend the transfer of interest to the solid waste management fund after the fund cap is reached, and correct certain typographical errors.

We thank you for this opportunity to present testimony in support of SB 240.



KANSAS
ASSOCIATION OF
COUNTIES

Kansas Association of Counties
Written Testimony on SB 240
Before the Senate Public Health and Welfare Committee
By Judy A. Moler, General Counsel/Legislative Services Director
February 14, 2001

The Kansas Association of Counties is in support of SB 240 which creates municipal solid waste landfill perpetual care trust fund.

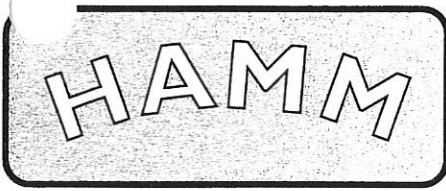
This bill would provide an "insurance policy" for counties and the state when privately-owned municipal landfills refuse or are not capable of paying for the closure of such landfill. Currently, if such a closure occurred, the state or local government would be left "holding the bag" of responsibility. Long-term health risks as well as economic risks could result as the state or county search for the resources to close and remediate the abandoned privately owned landfill.

The Kansas Association of Counties supports the passage of SB 240.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to the KAC by calling (785) 272-2585.

6206 SW 9th Terrace
Topeka, KS 66615
785•272•2585
Fax 785•272•3585
email kac@ink.org

*Senate Public Health & Welfare Committee
Meeting Date February 14, 2001
Attachment 8-1*



QUARRIES
CONSTRUCTION
ASPHALT
WASTE MANAGEMENT

609 Perry Place
PO Box 17
Perry, KS 66073-0017
Telephone 785-597-5111
FAX 785-597-5117

TESTIMONY

Before: The Senate Committee on Public Health and Welfare

By: Charles Sedlock^{cms}, Division Manager, Hamm Companies

Regarding: Senate Bill No. 210

Madam Chair and Members of the Committee:

Thank you for conducting this hearing on Senate Bill #240 concerning long-term care and responsibilities at Kansas landfills. There is pent-up demand for discussion on this topic and your meeting is a good start to satisfy it. As to the differences of opinion shared, healthy debate among all parties is the only way to generate ideas and provide input for effective policy development.

N. R. Hamm Quarry, Inc. does have concerns about the establishment of a trust fund for long term care for landfills. First, we feel that, if a trust fund is established and it is user fee funded, then such fees should be risk-based for each participating landfill site. Landfills such as ours employ operating practices that reduce our long-term care risk and long-term costs. Thus any user fees should reflect the associated risk each site "brings to the table." In order to determine risk-based user fees on landfills, a number site characteristics should be used such as the following:

- Landfill age
- Pre-Subtitle C Operation
- Total tons in place vis a vie subtitle D tons in place
- Extent of groundwater monitor system
- Groundwater contaminant detections
- Full subtitle D or arid site
- Extent of liner system
- Gas system
- Life expectancy of landfill
- Site geology
- Bioreactor operating practices
- Adequate closure/post-closure funding without the use of "taxable authority" for counties/municipalities
- Actual financial strength of landfill operator using GAAP principles for all landfill operators including counties/municipalities.

*Senate Public Health & Welfare Committee
Meeting Date February 14, 2001
Attachment 9-1*

These are just some of the characteristics, which could be used to develop a formula for risk based user fees. Additionally, Hamm is concerned with eligibility standards for determining which sites could apply or use the trust fund and what obligations would an impacted site operator have.

In closing we are opposed to Senate Bill No. 210 in its current form. Should the committee desire to continue with this bill we will be happy to work with it addressing our concerns. In terms of applicability, all landfills, public and private, are subject to current solid waste fee and should be subject to any such proposed fee for long term care. Additionally, monies collected from landfills should be held in site specific sub-accounts for that landfill; and, if current closure/post closure trust funds are sufficient, then said sub-account should be refunded to the operator. Lastly, the cost spread for the per ton fee should be \$0.10 to \$2.00 to reflect the reflect the substantial differences in landfill characteristics and management.

I thank you for your time and attention today.

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

George R. McGrew
General Counsel

February 14, 2001

Senate Public Health and Welfare Committee
Attn: Ms. Susan Wagle, Chair

Re: Senate Bill 240

To the Senate Public Health and Welfare Committee:

Deffenbaugh Industries, Inc.¹ 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).² 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).³

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 law⁴ 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

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

² SB 240, page 1, lines 14-15.

³ SB 240, page 5, lines 10-33.

⁴ 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.⁵

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."⁶ 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.⁷ 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.⁸ Our second objection is that the proposed language

⁵ SB 240, page 1, lines 29-40.

⁶ K.S.A. 2000 Supp. 65-3406 (a) (18).

⁷ SB 240, page 5, lines 10-33.

⁸ 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.

Sincerely,

DEFFENBAUGH INDUSTRIES, INC.



George R. McGrew
General Counsel

GRM:me