

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on March 14, 2002 in Room 231-N of the Capitol.

All members were present except: Representative Clay Aurand - excused  
Representative Daniel Thimesch - excused  
Representative Jeff Peterson - excused

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

Conferees appearing before the committee: David M. Traster, 700 Bank of America Center, Wichita, KS 67202  
Jim Spencer, Waste Connections Inc. 2745 N. Ohio, Wichita, KS 67219  
David Lies, 4631 S. Palisade, Wichita, KS 67217  
Larry Connell, Sunflower Sanitation, 208 SE 21<sup>st</sup> Street, Topeka, KS 66612  
Rick Lemons, Waste Management, 3611 NW 16<sup>th</sup>, Topeka, KS 66618  
Terry Stone, 3901 S. West Street, Wichita, KS 67202  
Mark Raccuglia, 2915 N. Emporia Circle, Wichita, KS 67219  
Michelle Mendoza, 566C S. Oliver, Wichita, KS 67218  
Randy Allen, 6206 SW 9<sup>th</sup> Terr., Topeka, KS 66615  
Robert W. Parnacott, County Courthouse, 525 N. Main, Suite 359, Wichita, KS 67203  
Leroy D. Alsup, PO Box 1629/7th & Walnut, Coffeyville, KS 67337  
Kim Gulley, 300 SW 8<sup>th</sup> Avenue, Topeka, KS 66603-3912  
Lee Parker, City Attorney, Bel Aire, KS  
Bruce Snead, Mayor, Manhattan, KS  
Mike Lechner, Chisolm Trail  
Joel Elsea, 8918 W. 21<sup>st</sup> N. Suite 200, PMB 232, Wichita, KS 67205  
Gilbert Ballinger, 405 Baehr, Wichita, KS 27212

Others attending: See Attached Sheet

Chairperson Joann Freeborn called the meeting to order at 3:30 p.m. She welcomed 26 members from the Kansas Environmental Leadership Program (KELP) attending the committee meeting today.

The Chairperson opened **SB504** for discussion and possible action.

**SB504:** Repeals sunset provision allowing hunting in controlled shooting area without hunter education.

Rep. Bill Light made a motion to amend **SB430** - "Physicians from other states to certify disabilities for hunting permits" and **SB431** - "Issuance of wild turkey permits to person's under 14", into **SB504**. Rep. Jonathan Wells seconded the motion. Motion carried.

Rep. Ray Merrick made a motion **SB504** be passed favorably as amended. Rep. Bill Light seconded the motion. Motion carried. Rep. Ray Merrick will carry the bill on the House Floor.

Rep. Sharon Schwartz was recognized. She worked with Mary Torrence, Legislative Revisor of Statutes, to clarify language in **HB2710** as to the authority of Groundwater Management Districts. Rep. Schwartz explained the rationale to adopt a substitute bill. She believes during discussion of the bill there seemed to be confusion among conferees as to the authority of the GMD's and believes it comes down to the interpretation of current law. Policies that are being enforced as law today are being done without being

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol  
at 3:30 p.m. on March 14, 2002.

approved by the Chief Engineer. She called attention to page two, section (o), "Such rules and regulations shall be of no force and effect unless and until adopted by the Chief Engineer to implement the provisions of article 7 of chapter 82a of the Kansas Statutes Annotated". (See attachment 1)

Mary Torrence, Revisor of Statutes, distributed a proposed substitute bill and explained Rep. Schwartz's amendment and the concept of **HB2710** which was amended into **House Substitute for SB430**.

Rep. Sharon Schwartz made a motion to adopt language for House Substitute for SB430. The motion was seconded. Motion carried.

Rep. Tom Sloan made a conceptional motion "to provide for GMD's to submit proposed rules and regulations to state agencies other than the division of water resources when the rules and regulations are not within the authority of the chief engineer. Standards, policies and orders of a GMD which are within the authority of a state agency other than DWR would be void after January 1, 2004, unless adopted by rules and regulations of that agency". Rep. Bruce Larkin seconded the motion. Motion carried.

Rep. Sharon Schwartz made a motion House Substitute for SB430 be passed favorably as amended. Rep. Tom Sloan seconded the motion. Motion carried. Rep. Sharon Schwartz will carry the bill on the House Floor.

Written comments on **House Substitute for SB430** were distributed from Wayne Bossert, Manager GMD #4, in opposition to the bill. (See attachment 2)

The Chairperson opened the hearing on **HB3002**.

**HB3002: Procedures required for municipalities to discontinue use of existing private solid waste services providers.**

David Traster, Attorney, Foulston Siefkin, was welcomed to the committee. He testified in support of the bill which he drafted for Waste Connections of Kansas. The focus of this bill is to make it clear that to provide solid waste and recyclable collection services when doing so excludes preexisting private enterprise is a taking which entitles the private enterprise to compensation. The bill then provides an escape clause for cities who want to take over this function without providing compensation to the affected businesses. By providing seven years notice, cities can take over this function without having to pay for it. This period of time allows private industry time to recoup their investments, pay off loans and make other adjustments so they are not injured by the city's decision. (See attachment 3)

Jim Spencer, Waste Connections of Kansas, was welcomed to the committee. He presented testimony in support of the bill. He believes this legislation is very straightforward and sorely needed. Similar legislation has been passed by more than fifteen states over the past seven years. What each of the legislatures in those respective states saw in reviewing, and ultimately passing similar legislation, was the obvious benefits to the local government of just compensation legislation, as well as the fairness to the private industry of such legislation. (See attachment 4)

David Lies, Lies Trash Service, was welcomed. He testified in support of the bill and believes this bill would help protect their company from cities franchising to single-hauler contracts. Single-hauler contracts take away the \$3,000,000 business they've worked over 40 years to build. Without this bill their customers would be taken from them, given to another company without compensation to them. (See attachment 5)

Larry Connell, Sunflower Sanitation, was welcomed. He testified in support of the bill. (No Written Testimony)

Rick Lemmons, Waste Management, Inc., was welcomed to the committee. He testified in support of the bill. (No Written Testimony)

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol  
at 3:30 p.m. on March 14, 2002.

Terry Stone, Automated Waste Services, was welcomed to the committee. He testified in support of the bill and believes the foremost reason that the committee's decision here today is vitally important to his business, as well as the businesses of the other speakers, is that if other municipalities are allowed to pass ordinances similar to that enacted by the City of Bel Aire, these collective decisions will eliminate the local waste hauler and deprive Kansas residents of any choice in waste service providers. Eliminating competition in the industry is ultimately bad for the consumer and detrimental to this state. (See attachment 6)

Mark Raccuglia, Wichita Sanitation Services, Inc., was welcomed and testified in support of the bill. He feels the bill would fairly compensate the haulers or give them time to recuperate their investment without infringing on the cities' freedom to franchise. The bill provides an option for immediate enactment through compensating the haulers or future enactment if the cities wish to avoid the cost of compensation. All this bill really does is to make the city plan ahead. (See attachment 7)

Michelle Mendoza, Mendoza Services, was welcomed to the committee. She testified in support of the bill. She is the owner of Mendoza Trash Services, which has been in operation for four years now. She believes she and her family are taking advantage of the American dream by working together to secure their future. Her business now has 900 customers in the city of Wichita and has three employees at this time. All the groundwork has been laid and she is ready to take this business to the next level. She supports the bill to protect her investment and would greatly appreciate the committee's support by passing it. (See attachment 8)

Committee discussion and questioning of the proponents followed.

The Chairperson welcomed Randy Allen, Kansas Association of Counties, to the committee. He testified in opposition to the bill. He believes this bill would provide extraordinary protections to solid waste service providers at the expense of the home rule authority of counties. In addition to their concern about restricting the ability of county commissioners to do what they believe to be in the best interest of the public through their home rule powers, they listed three other issues and believe this bill to be an unreasonable and unworkable solution to what may be an isolated issue which is currently in litigation. (See attachment 9)

Robert W. Parnacott, Assistant County Counselor, Sedgwick County, was welcomed. He testified in opposition to the bill. He believes this bill would limit the ability of counties and cities to effectively plan for and manage local solid waste collection; drive up the cost of solid waste collection, which in turn would be passed on to the consumer; and would encourage other private commercial interests to seek legislation to further restrict local governments from controlling matters of public health and safety concerns and create additional property rights not currently recognized by law. (See attachment 10)

Leroy Alsup, City Manager, Coffeyville, was welcomed to the committee. He testified in opposition to the bill and believes the City of Coffeyville has determined that if they want to continue the momentum that they have experienced over the last few years that it is critical they substantially enhance the initial image projected by their community. The City has initiated several activities to clean up and improve the general appearance and overall attractiveness of their community. Based on input from the Chamber of Commerce, Leadership Coffeyville, the Board of Realtors, various Civic Clubs and Service Organizations, and citizen input at multiple City Commission meetings, it is clear that their residents feel that city wide mandatory trash pickup is a key to cleaning up and maintaining an attractive community. He feels this bill is not consistent with the past wisdom displayed by the State Legislature, nor is it consistent with the concepts of free enterprise. (See attachment 11)

Kim Gulley, League of Kansas Municipalities, was welcomed. She testified in opposition to the bill and believes that the legislation has many points of concern, two primary areas of interest to municipalities in Kansas is the Home Rule and the Taking issue. She believes that solid waste is a public function and each community must have the ability to adopt a solution that is appropriate to their specific needs and their constituents' desires. The League opposes tying the hands of locally elected officials with this legislation. (See attachment 12)

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol  
at 3:30 p.m. on March 14, 2002.

Lee Parker, City Attorney for Bel Aire, was welcomed. He testified in opposition to the bill. (No Written Testimony)

Bruce Snead, Mayor of Manhattan, was welcomed and testified in opposition to the bill. (No Written Testimony)

Written only testimony in opposition to the bill was submitted by Ashley Sherard, Government Relations Manager. (See attachment 13)

Committee questioning of the opponents and discussion followed.

The Chairperson welcomed Mike Lechner, Chisolm Trail, to the committee. He testified in support of the bill. (No Written Testimony)

Joel Elsea, Air Capital Disposal, was welcomed. He testified in support of the bill and believes waste hauling is an industry that doesn't require a formal education. This industry is the American dream to many local minority haulers that will have their dreams crushed if they are displaced. Then what do they do? He has always dreamed of running his own small business and growing that business through hard work, good service and a competitive price. Without this bill, he will have a bulls eye on his back and can not only be instantly put out of business, but also forced into bankruptcy for providing a good service at a fair price. (See attachment 14)

Marleena Stein, Ballinger Trash Service, was welcomed to the committee. She testified in support of the bill on behalf of Gilbert Ballinger, owner of Ballinger Trash Service and believes this bill would restore some fairness to the haulers without prohibiting the cities' right to franchise, if they so choose. The bill would require cities that choose to franchise trash service to either provide advance notice of their intention, in order to allow the haulers time to recover their investments, or to provide just compensation to the affected haulers. This bill simply calls for cities to do a better job of advance planning, which, in turn, would benefit all of the parties involved. (See attachment 15)

The Chairperson thanked the conferees for their interest and committee members and guests for their attention.

The meeting adjourned at 6:20 p.m. The next meeting is scheduled for Tuesday, March 19, 2002.



# HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: March 14, 2002

NAME	REPRESENTING
Michael Whit	Kearney Law
Lick Lemons	WASTE MANAGEMENT
Larry Connell	Sunflower Sanitation
Dan Smading	KELP
Michelle Mendoza	Mendoza Trash Service
Mary Howell	KELP
LEROY P. ALSUP	CITY OF COFFEVILLE
M.S. Mitchell	KBIA
Alexis Wilson	KS Dairy Ass'n
Ken Stone	Automated Waste
Dan P.	Lies Trash Serv.
Julie	AIR CAPITAL DISPOSAL
Gene Jones	KELP
MIKE TATE	KDHE
MARK EISENBARTH	KELP City of Garden City
Susan Erlenwein	KELP Sedwick Co. Environmental
Tom Willson	KELP Kansas State University
Don D. Strub	K.E.L.P., U.A.B.A.C.
Eowyn K. Floyd	K.ELP., N.R.C.S.

Pat Fryson                      K.E.L.P. F.S.C.C.  
 John A Head                    KELP  
 Eileen Hack                    K.E.L.P. Johnson County  
 Allan Grilliot                   - KELP      Reno Co.

# HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: March 14, 2002

NAME	REPRESENTING
Morgan Powell	KELP KSU
David M. Traster	Faulstich Siefkim LLP Wichita for Waste Connections
Jim Spencer	Waste Connections Inc.
Bill Bider	KDHE
Kevin Debbas	KANSAS BIOLOGICAL SURVEY
Carl L Rogers	Coffey Co. Con. District
ARNOLD BOSS WEBBER	KLRBAC KELP
Jaime Jensen	KELP - KDHE
Bob Parnacott	Sedgewick County
Judy WILLINGHAM	KELP - KSU
BRUCE SNEAD	CITY OF MANHATTAN
Mark Raccuglia + Paul Raccuglia	Wichita Sanitation Services Inc
Marlene Stein <sup>For: Gilberto</sup> Ballinger	Ballinger's Trash Service
Randall Allen	(KS) Association of Counties
Harold George	KELP K-State Research & Ext., Miami
Lee Parker	City of Bel Aire
Earl Lewis	Kansas Water Office
Charles Benjamin	KS Sierra Club

## 82a-1020

### Chapter 82a.--WATERS AND WATERCOURSES Article 10.--GROUNDWATERMANAGEMENT DISTRICTS

**82a-1020. Legislative declaration.** It is hereby recognized that a need exists for the creation of special districts for the proper management of the groundwater resources of the state; for the conservation of groundwater resources; for the prevention of economic deterioration; for associated endeavors within the state of Kansas through the stabilization of agriculture; and to secure for Kansas the benefit of its fertile soils and favorable location with respect to national and world markets. It is the policy of this act to preserve basic water use doctrine and to establish the right of local water users to determine their destiny with respect to the use of the groundwater insofar as it does not conflict with the basic laws and policies of the state of Kansas. It is, therefore, declared that in the public interest it is necessary and advisable to permit the establishment of groundwater management districts.

**History:** L. 1972, ch. 386, § 1; July 1.

## 82a-1028

### Chapter 82a.--WATERS AND WATERCOURSES Article 10.--GROUNDWATERMANAGEMENT DISTRICTS

**82a-1028. District powers; home office.** Every groundwater management district organized under this act shall be a body politic and corporate and shall have the power to:

- (a) Adopt a seal;
- (b) sue and be sued in its corporate name;
- (c) rent space, maintain and equip an office, and pay other administrative expenses;
- (d) employ such legal, engineering, technical, and clerical services as may be deemed necessary by the board;
- (e) purchase, hold, sell and convey land, water rights and personal property, and execute such contracts as may, in the opinion of the board, be deemed necessary or convenient;
- (f) acquire land and interests in land by gift, exchange or eminent domain, the power of eminent domain to be exercised within the boundaries of the district in like manner as provided by K.S.A. 26-501 to 26-516, inclusive, and any acts amendatory thereof or supplemental thereto, except that any land holdings acquired pursuant hereto or in accordance with the provisions of the next preceding subsection shall not in the aggregate exceed one thousand (1,000) acres. In any case where a district has land holdings in excess of the described limitation, the district shall dispose of such excess in a reasonable and expeditious manner;

*House Environment  
3-14-02  
Attachment 1*



(g) construct, operate and maintain such works as may be determined necessary for drainage, recharge, storage, distribution or importation of water, and all other appropriate facilities of concern to the district;

(h) levy water user charges and land assessments, issue general and special bonds and incur indebtedness within the limitations prescribed by this act;

(i) contract with persons, firms, associations, partnerships, corporations or agencies of the state or federal government, and enter into cooperative agreements with any of them;

(j) take appropriate actions to extend or reduce the territories of the district as prescribed by this act;

(k) construct and establish research, development, and demonstration projects, and collect and disseminate research data and technical information concerning the conservation of groundwater;

(l) install or require the installation of meters, gauges, or other measuring devices and read or require water users to read and report those readings as may be necessary to determine the quantity of water withdrawn;

(m) provide advice and assistance in the management of drainage problems, storage, groundwater recharge, surface water management, and all other appropriate matters of concern to the district;

(n) adopt, amend, promulgate, and enforce by suitable action, administrative or otherwise, reasonable standards and policies relating to the conservation and management of groundwater within the district which are not inconsistent with the provisions of this act or article 7 of chapter 82a of the Kansas Statutes Annotated, and all acts amendatory thereof or supplemental thereto;

(o) recommend to the chief engineer rules and regulations necessary to implement and enforce the policies of the board. **Such rules and regulations shall be of no force and effect unless and until adopted by the chief engineer to implement the provisions of article 7 of chapter 82a of the Kansas Statutes Annotated, and all acts amendatory thereof or supplemental thereto. All such regulations adopted shall be effective only within a specified district;**

(p) enter upon private property within the district for inspection purposes, to determine conformance of the use of water with established rules and regulations, including measurements of flow, depth of water, water wastage and for such other purposes as are necessary and not inconsistent with the purposes of this act;

(q) select a residence or home office for the groundwater management district which shall be at a place in a county in which the district or any part thereof is located and may be either within or without the boundaries of the district. The board shall designate the county in which the residence or home office is located as the official county for the filing of all official acts and assessments;



(r) seek and accept grants or other financial assistance that the federal government and other public or private sources shall make available and to utilize the same to carry out the purposes and functions of the district; and

(s) recommend to the chief engineer the initiation of proceedings for the designation of a certain area within the district as an intensive groundwater use control area.

**From:** "Wayne Bossert" <wbossert@ixks.com>  
**To:** <freeborn@house.state.ks.us>, <maryT@rs.state.ks.us>  
**Date:** Thu, Mar 14, 2002 12:06 PM  
**Subject:** Proposed Substitute Bill

FOR DISTRIBUTION TO ALL ENVIRONMENT COMMITTEE MEMBERS

Representative Freeborn:

I have reviewed the draft bill Mary Torrence sent this morning (Proposed House Substitute for Senate Bill No \_\_\_ ) and have the following comments to make.

You told me this morning you consider this language a result of earlier hearings on SB 287 and HB 2710, and that there are no substantive changes. Therefore you will not be hearing any additional comments on this bill.

We see these changes as being substantially different from any yet discussed in either the SB 287 or the HB 2710 process to date. For example, amending KSA 82a-1028 (n) had never been suggested before. Moreover, we and every other GMD have repeatedly testified in opposition to any amendments to the existing GMD Act. Please understand that these are significant changes not previously discussed, and that our first notice of this bill draft arrived today - the day of the committee deliberations.

The original idea of the GMD Act provided local stakeholders the ability to place additional emphasis on groundwater issues of their choice - as long as they formally organized, and all their activities were consistent with state law and policy and the GMD Act. They could address abandoned wells if KDHE would not. Or tailwater problems in a more timely, less expensive and/or more aggressive manner than DWR. Or have additional well construction specifications for special areas. Or any other issue they felt was important and in need of additional attention. The system allowed for self-assessments to accomplish these locally decided goals, which were directed by an elected board who had to either justify these choices or not be re-elected. Most would see this as an effective model for local decision-making.

This proposed legislation effectively eliminates any form of local enforcement. This may appear to be good for those who don't want any enhanced enforcement, but is a terrible idea for those who want the capability of added emphasis on issues of local importance - again, within well established guidelines. For example, with passage of this bill only DWR will can enforce any chosen goal within a GMD. What happens if DWR cannot, or chooses not to address your issue? DWR is a well-intentioned state agency who sincerely wants to eliminate tailwater wastage, but they will have significant problems servicing all of NW Kansas in this regard - a local goal that has been consistently promoted since even before district formation.

We see this legislation simply deciding that state groundwater management is better than the local system we have all invested nearly 25 years in. We therefore oppose it and ask that you vote against it.

\*\*\*\*\*

Wayne Bossert, Manager  
Northwest Kansas GMD 4  
Phone: (785) 462-3915  
Fax: (785) 462-2693  
URL: [HTTP://colby.ixks.com/~wbossert](http://colby.ixks.com/~wbossert)

*House Environment  
3-14-02  
Attachment 2*

**David M. Traster**  
**FOULSTON SIEFKIN LLP**  
700 Bank of America Center  
Wichita, KS 67202  
(316) 291-9725  
FAX (316) 267-6345  
dtraster@foulston.com

**TESTIMONY IN SUPPORT OF HB3002**  
**MARCH 14, 2002**

---

My name is David M. Traster. I am an attorney practicing with the law firm of Foulston Siefkin LLP in Wichita. Prior to my practice in Wichita, I was general counsel and then assistant secretary and general counsel for KDHE (1988-1991). Before that, I practiced law in Hugoton, Kansas.

I drafted this bill for my client, Waste Connections of Kansas, Inc., and want to give you a brief overview of its provisions.

**The Problem**

While many, if not most, communities in Kansas collect their citizens' trash using their own employees and equipment, or using a single contractor who provides the service to the exclusion of other contractors, some have left this important function to private enterprise.

Some of these communities are now deciding that they should provide this service themselves rather than leave this function to the private sector. While there are probably lots of factors driving this trend, lower fees and an increased emphasis on recycling seem to be major issues.

It is critically important to recognize that the businesses providing these services have spent large amounts of time and money to build their businesses, and that tax dollars have not been spent to provide these services or to provide necessary infrastructure.

A problem arises when a community decides that it is going to provide waste and recyclable collection services to its citizens and exclude private businesses which have been providing those services. The industry contends that cities and counties should not be able to take their business away from them without compensating them for the lost business.

### **The Solution**

The focus of this bill is to make it clear that to provide solid waste and recyclable collection services when doing so excludes preexisting private enterprise is a taking which entitles the private enterprise to compensation.

The bill then provides an escape clause for cities who want to take over this function without providing compensation to the affected businesses. By providing seven years notice, cities can take over this function without having to pay for it. This period of time allows private industry time to recoup their investments, pay off loans and make other adjustments so they are not injured by the city's decision.

For years, some municipalities have allowed private industry to build the waste services' infrastructure for their communities. Despite this acquiescence in and, indeed, expectation of private investment, opponents of this legislation believe that the municipality should be allowed to take the business from private industry without warning and without reparation for the sizeable investments made. In this regard, opponents ask that the matter be resolved in the courts. There are no Kansas cases holding that the exclusion of a private entity with an established business operation amounts to an unconstitutional "taking." A takings claim is far from a sure thing. *Compare Coeur d'Alene Garbage Serv. v. City of Coeur d'Alene*, 759 P.2d 879 (Id. Sup. Ct. 1988) (allowing a takings claim) with *Laidlaw Waste Sys., Inc. v. City of Phoenix*, 815 P.2d 932 (Ariz. App. 1991) (denying a takings claim). In fact, the old common law rule is that a business is not property covered by the constitutional prohibition against the taking of private property for use without payment of just compensation. 4 PATRICK J. ROHAN AND MELVIN A. RESKIN, NICHOLS ON EMINENT DOMAIN (3d ed.) § 13.13[1]. However, courts are beginning to allow such compensation. 8A NICHOLS § 29.03[1][a]. While we believe that this trend is the better-reasoned approach, we do not know how the Kansas courts will resolve the issue.



Even if one assumes that the courts will allow a takings claim, a number of uncertainties remain unresolved; not the least of which is the difficulty and expense of establishing the value of a business in an eminent domain proceeding. See, e.g., *SizeWise Rentals, Inc. v. Mediq/PRN Life Support Servs., Inc.*, 87 F. Supp. 2d 1194, 1200 (D. Kan. 2000) (finding that it can be very difficult to place a value on goodwill, brand recognition, and customer contacts). Affected businesses are likely to incur many losses, including investment in trucks, equipment, personnel training and education, and physical plant. Equipment purchased to honor contracts and franchises becomes surplus, lowering their market value often below indebted worth. There are also losses which are even more difficult to quantify, such as the value of goodwill and the loss of expertise when personnel are laid off. For small waste service firms, these losses may cause bankruptcy. For a large firm, the sizeable debt could jeopardize operations in other communities. See Alice P. Jacobsohn, *Just Compensation and Hauler Displacement*, NSWMA Research Bulletin 00 1a (June 2000).

Adding to this uncertainty is the fact that it is not entirely clear what would be recoverable in a takings claim in Kansas. The argument is especially difficult because goodwill, loss of customer lists, and other intangible assets are not currently among the non-exhaustive factors to be considered in setting the amount of compensation in an eminent domain proceeding. K.S.A. 26-513(d). Nevertheless, such compensation may be constitutionally required. See, e.g., *Kimball Laundry Co. v. United States*, 338 U.S. 1 (1949).

Even if Kansas courts recognize a takings claim, litigating the issue will be expensive to all parties involved. First, both parties will need experts to set the fair market value of the business. Such lawsuits will also undoubtedly involve large legal fees for all parties involved. Furthermore, if the court determines that a taking has occurred, the taxpayers will be required to pay the fair market value of the business, which will also involve the payment of large amounts of taxpayer money. All of this adds up to a significant expenditure of both private and public funds; an expenditure that can be avoided with the proposed legislation.

Finally, the remedy proposed by the opponents of this legislation will still be available if this legislation is passed. In fact, the proposed legislation specifically allows for eminent domain proceedings if the municipality wishes to pursue that route. As a result, the municipality, under the proposed legislation, could immediately take over the waste removal business in the

community if it so chooses. Thus, the strategy proposed by the opponents of this legislation, while inefficient, is still available. The change afforded by this legislation is some assurance to the waste removal firms, both large and small, that they will get some remuneration (either in the form of seven years worth of business under the free market or the fair market value of the business from the municipality) in return for their sizeable investments in our communities.

### **Ongoing Litigation**

This legislation is not likely to affect existing litigation. Waste Connections and others have filed a lawsuit against the City of Bel Aire in federal court in Wichita. The judge has refused to grant a preliminary injunction and the matter is now on appeal to the 10<sup>th</sup> Circuit Court of Appeals in Denver.

Legislation is not applied retroactively without an express indication by the legislature that it intends that it be so applied (sometimes not even then). There is nothing in this Bill which would indicate an intent that the Bill apply retroactively. Thus, it is not likely to affect the outcome of that litigation.

### **Binding Future Governmental Bodies**

Nothing about giving the notice required by this statute forces future city councils or commissions to actually take over the waste hauling business. The Notice is an expression of intent, not a commitment to take action in the future.

### **Length of Notice Period**

The seven year Notice period is needed to allow a reasonable time to recover investments in business assets. We believe that this is actually a relatively short period of time for this purpose. For example, the purchase of goodwill can be amortized over a 15 years period under Section 197 of the Internal Revenue Code.

## **Conclusion**

The proposed legislation offers the best and most efficient solution to the problem. It is a better solution for many reasons, including: (1) allowing the affected businesses to fairly recoup their investments into programs the municipalities expect and encourage them to enter into; (2) saving taxpayer dollars because it does not require large expenditures to litigate takings claims or to pay the market value of affected businesses; (3) providing an alternative to litigation in the courts; and (4) nothing in the proposed legislation precludes a municipality, if it so chooses, from purchasing the businesses, having the businesses donated to it, or using its eminent domain power to take the businesses by paying the fair market value and, thus, entering into the market immediately.

We urge the Committee to favorably recommend Bill 3002 to the full House.

Good afternoon. Thank you for the opportunity to speak before you today. My name is Jim Spencer, and I am a Divisional Vice President of Waste Connections with responsibility for all operations in the State of Kansas. Waste Connections is the fourth largest publicly traded solid waste company in the U.S. Currently, Waste Connections employs over 350 people in Kansas, which represents nearly 10% of the total employees of the Company which operates in 18 states in the West, Midwest, and South. So, clearly, Kansas is a very important state to the Company. Waste Connections is the second largest solid waste service provider in the State of Kansas. Over the past two years, our Company has invested more than \$120 million of our stockholders capital into acquiring and developing solid waste service operations throughout the state, including landfill and transfer station operations, recycling collection and processing operations, and solid waste collection operations serving more than 125,000 residential, commercial, and industrial customers throughout the State. We pride ourselves on the quality of service we provide our customers, and the work environment we strive for our employees.

The legislation you have before you is very straightforward and sorely needed. Similar legislation has been passed by more than fifteen states over the past seven years. What each of the legislatures in those respective states saw in reviewing, and ultimately passing similar legislation, was the obvious benefits to the local government of just compensation legislation, as well as the fairness to the private industry of such legislation.

Let's look at the issues from a macro approach. Can any of you imagine local county or city government deciding unilaterally that in any given jurisdiction at any time,

*House Environment  
3-14-02  
Attachment 4*



there would be only one pizza parlor, one plumber, one electrician, one hamburger store, one barber, one landscaping company? Of course you cannot, it is preposterous, it is un-American, and it flies in the face of everything our democratic free enterprise economy has stood for. But ironically, when the conversation turns to solid waste, garbage, suddenly politically elected local officials have absolutely no hesitation in contemplating doing exactly what I outlined just moments ago, taking away all choice for the customer, be they residential, commercial, or industrial. Again, I ask you, can you imagine having no choice of barber, plumber, electrician, fast food restaurant, pizza parlor, landscaper? Why is solid waste different? It is not, that's the bottom line. The only difference is elected officials believe it is an opportunity for them to garner political goodwill in an area people do not care about as much.

Firstly, we are not disputing local governments police powers authority to choose a single service provider if that is what they would like to do, and believe is the will of the people that is not the issue. We concur that is a local political decision. In fact, in many states, we have contracts with local government to provide just such service. The issue is a very narrow one, should local governments be allowed to unilaterally, without reasonable notice and compensation, displace private industry? We believe this is fundamentally wrong, and so do at least fifteen other states legislatures. Again, I doubt you would allow local government to decide that only one hair salon, or one pizza parlor or one landscaper is allowed in a jurisdiction. And certainly if such an outlandish decision was made, I have got to believe you would think it reasonable for other hair salons, pizza parlors, and landscapers to be compensated for the investment they made and business that was taken from them. This simplistic analogy I keep rehashing is exactly what local government is

doing, or attempting to do in Kansas today. Why is it different for garbage service? Like all of the other businesses I have mentioned before, garbage service providers in Kansas compete for their customers on the basis of service and price day to day. Like all of the other businesses, garbage service providers invest heavily in capital equipment in trucks, containers, and facilities and have a reasonable expectation of being able to recoup that investment by competing for business. Like all other businesses, garbage service providers provide employment, and pay taxes. The damages for unilaterally taking away the right to compete for customers is large and far-reaching. So, again, why is it that local government believes they can do this to the garbage industry, and would not ever think of it in any other industry I have outlined before? It is very simple, there are three reasons.

Firstly, garbage is political. Anytime something is political you run a danger of how it is perceived. Municipal government officials, both elected and appointed will parade before you and argue that they have to be able to “protect their local citizenry”, and that by giving one company all of the business, they can achieve a better price for the citizens. No kidding, and you do not think that you could get a better price on haircuts, or pizzas, or landscaping or any other service or product if you gave one Company 100% of all the customers. This is obvious. Nobody ever said free enterprise led to the lowest prices, it leads to the freedom of choice, the highest level of service quality, product and service innovation and a check and balance on the market, but not necessarily the lowest price. What every political official latches onto is I want to look good in my local community, and lowering prices is a good thing, it will make me look good, and it is garbage, who cares. Again, would they think of doing this to local restaurants, barbers, etc.? Never.

Secondly, local government staff will hide behind the police powers protectionist responsibility and argue that unlike other businesses, garbage has an effect on health and sanitation, and it is their duty to ascertain the highest levels of sanitation. Our industry understands this, and local staff is correct. But just like other industries, build in service performance standards into a licensing or permit process, and this objective can be accomplished, this is exactly what local health departments do in overseeing restaurants and other establishments the public is in. This is a scapegoat argument, and not relevant to the true underlying political issue. Again, would you let local government throw all pizza parlors out of a town but one because staff was concerned about sanitation of one pizza parlor? No, you would not because that is not the issue.

Thirdly, local government will argue that they do not think this legislation is proper because there is a concern about binding future elected bodies to a particular notice period or way of doing things. Again, this is ridiculous. This is exactly what has been occurring for the past fifty plus years where elected officials have been committing future elected bodies to specific courses of action by either acting or not acting in many cases on a whole host of issues.

Private industry, and specifically our Company, has made significant capital investments to the solid waste infrastructure of this State in many markets. This private investment has directly benefited the customers, as well as all taxpayers within each geographical area because local government did not need to spend taxpayer dollars, or go out and issue revenue bonds to develop solid waste facilities to service the sanitation needs

of its customers, the exact customers who are constituents of local elected officials. This private investment of our stockholders' money, was done on a reliance that the free enterprise, democratic and capitalist society we live and operate in was sound and would be protected. We are not asking for legislation taking away local governments decision-making ability to be able to implement the will of its people, we are merely asking for a reasonable period of time to recoup some of the investment we have that has benefited local government, and in many cases they stood side by side with us begging us to make for they had no other alternatives at the time.

It seems to us this is only fair and reasonable. If not, we truly do need someone to answer the question, would you allow local government to do this to local barbers, pizza parlors, landscapers, etc., without notice and compensation? I think the answer is no. Then why the garbage industry?

Thank you again for your time and consideration today.



David Lies  
Lies Trash Service  
4631 S. Palisade  
Wichita, Ks. 67217  
Phone: (316) 522-1699  
Fax: (316) 522-2785  
Email: liescollector@aol.com

Testimony in support of House bill 3002

Dear Chairwoman Freeborn and committee members,

Lies Trash Service has been in the solid waste industry for 41 years. We currently service 9,000 customers in Sedgwick County, and currently have a 20% growth rate. We are a local family-owned and operated company. 15 people are currently employed with our company.

We support house bill 3002. This bill would help protect our company from cities franchising to single-hauler contracts. Single-hauler contracts take away the \$3,000,000 business we've worked over 40 years to build.

Without house bill 3002, our customers would be taken from us, given to another company without compensation to us. We would be left with an enormous debt load, with no incoming revenues to cover our creditors. Without this bill, we have to challenge this issue in court. Small family-owned businesses cannot afford expensive drawn out legal battles. The costs would be too great.

We would ask you to please pass House Bill 3002 to help protect our American Dream.

Sincerely,



David Lies  
Operations Manager  
Lies Trash Service

*House Environment  
3-14-02  
Attachment 5*

TERRY STONE  
AUTOMATED WASTE SERVICES  
3901 S. WEST ST., WICHITA, KS  
316-524-2000 PHONE  
316-524-6001 FAX  
TSTONE3749@AOL.COM

March 14, 2002

**Testimony in Support of House Bill 3002**

Dear Chairwoman Freeborn and Committee Members:

Thank you for the opportunity to speak to you today. My name is Terry Stone and I am the Managing Member of Automated Waste Services. I appreciate your desire to receive my input as well as the input from the other speakers here this afternoon. Although my comments will be brief, I hope that they provide you with information that you will consider when contemplating the important issues for which we are gathered here today.

I should tell you up front, I am not a lawyer and I do not profess to know all relevant case law dealing with the legal aspects of House Bill 3002. I am, however, a life long entrepreneur and businessman. Nearly 35 years ago I started my first trash business in Iowa. After selling that and relocating to Missouri, I started my second trash business which I sold 15 years ago. I started my current business, which operates here in Kansas, two years ago. I share with you this background to demonstrate that my thoughts and comments have been cultivated by a lifetime spent starting small businesses and spending long hours each day working to make them successful.

When I began looking for a location to open my most recent business venture I had certain criteria in mind that I felt were important to the final decision. One of the most important criteria was to do business in a free, open market environment - a market free from overburdening government regulation. With this business planning in mind, I chose Kansas, in part because of the relative openness of the competitive markets in trash hauling. My business currently serves the markets of Wichita, Bel Aire, Derby, and Haysville. Relatively few cities and municipalities in this state franchise their residential waste needs and even fewer do so in a way such as that done by the city of Bel Aire. Having chosen Kansas to open my newest business venture, I invested my family's life savings to start this small, four truck operation. That is why I am here before you today. Surely you understand that your decision on this bill is important to me and my family and will have significant long term effects on my business as well as the businesses of others here to speak to you today.

The foremost reason that your decision here today is vitally important to my business, as well as the businesses of the other speakers, is that if other municipalities are allowed to pass ordinances similar to that enacted by the City of Bel Aire, these collective decisions

*House Environment  
3-14-02  
Attachment 6*

will eliminate the local waste hauler and deprive Kansas residents of any choice in waste service providers. Eliminating competition in the industry is ultimately bad for the consumer and detrimental to this state.

House Bill 3002 is also important because of the financial resources required to start a waste services company. The waste services industry is very capital intensive, it requires large outlays of cash for trucks, containers and other equipment required to start, maintain, and grow the business. Few individuals have such resources available and most therefore depend on financial institutions to provide financing. These financial institutions are more comfortable when lending to a person who is starting a business in a market where competition allows a hardworking businessperson to gain customers by providing superior service. When these institutions learn that by the stroke of a pen a local government can alter the free market system and take customers from a hardworking businessman without providing either notice or just compensation, one can only conclude that these lenders will be less likely to provide necessary capital. Many, if not all, independent haulers will be forced to close their doors because of a lack of ability to obtain financing if municipalities are allowed to act in a manner such as that done by the city of Bel Aire.

Your decision is also important because a customer is the most simple building block that forms a strong, profitable business. This is true whether we are talking about trash haulers, big phone companies, or your local five and dime. The customer is what gives value to any business. If a company cannot protect its customers, that company suffers in value. Allowing a local government to usurp a company's customers unjustly deprives that company of what it has worked so hard to attain.

This bill goes a long way toward remedying the unfair, unjust, and I would hope illegal, attempts of a local government to remove value from a company without properly compensating the company for its loss or advising the company well ahead of time so that it may plan accordingly.

Where a local municipality displaces waste service providers without providing sufficient notice or compensating the existing hauler for its lost customers, that situation is similar to a condemnation by a government body. A condemnation, or a taking by a public body of private property, requires just compensation. For instance, when the government needs to build a highway and needs your land on which to build that highway, the government cannot just come in and take your land for nothing. Rather, the government must pay you just compensation for depriving you of an asset that you formerly owned.

House Bill 3002 is correct in that it equates the taking a company's customer without providing just compensation to the taking of the land of a person. In such a situation where land is taken, compensation should be given to the deprived party. This Bill mandates such compensation or, in the alternative, requires a government body to provide seven years notice of its intent to franchise the waste hauling needs of its residents so that businesses may plan accordingly. This Bill's provisions provide the proper mechanism to

balance the interests of private companies with the interests of local municipalities in providing waste collection services to their residents.

I am here today to alert you to the fact that the small companies in this industry do not have the financial ability to fight numerous court battles on various fronts. Without the passage of House Bill 3002 these small companies will be forced out of business because they simply cannot afford to fight each one of these municipalities in court when that town displaces waste services providers without providing sufficient notice or just compensation. Some large companies may be able to afford these costly court battles, but not the small independent waste haulers. Most, if not all, small, independent waste haulers are in the same financial situation and will be eliminated from competing in Kansas without the passage of House Bill 3002.

For these reasons I support, and urge this Committee to approve, House Bill 3002.

Wichita Sanitation Services, Inc.  
2915 N. Emporia Cir.  
Wichita KS 67219  
Mark and April Raccuglia, Owners  
Wichita, KS  
(316) 652-7254  
M. (316) 761-4656  
e-mail [raccugliamj@afo.net](mailto:raccugliamj@afo.net)

We have been in business for five years and we have approximately five thousand residential customers. We don't provide commercial service.

#### TESTIMONY IN SUPPORT OF HOUSE BILL 3002

Dear Chairperson Freeborn and Committee Members:

I am in favor of House Bill 3002 and would like to ask you to support this bill. I feel the bill would fairly compensate the haulers' or give us time to recuperate our investment without infringing on the cities' freedom to franchise. The bill provides an option for immediate enactment through compensating the haulers or future enactment if the cities wish to avoid the cost of compensation. All this bill really does is to make the city plan ahead.

When we started our business, we didn't have a lot of money. All we had was a small savings account and a good credit rating. We took all of our savings and borrowed more money to buy a trash truck and a few trash carts. Unfortunately, we didn't have money for things like an office, advertising or salaries. Because of this, my wife and I both continued to work full time jobs to pay our personal bills and help with the start up expenses. Our living room had to do for an office. For advertising, I would walk door to door every evening to talk to people face to face in an attempt to gain their business. As far as a salary goes it turned out to be over two years before the company gave me my first, modest paycheck.

*House Environment  
3-14-02  
Attachment 7*

During that time finances were very tight and we went without many things. But we were happy to make the sacrifice because we were sacrificing for our future. We could look at our customer list and see that our business was growing. We knew the value of a trash business is not in the trucks or the trash carts but, like other route businesses, it is in the customers. If we wanted to sell our business, the value would be calculated by multiplying the number of customers by the amount that they are being billed; this product is then multiplied by a negotiated numbers of months. This is standard practice for valuing trash companies all across the country. So, as you can see, even though the company lost money the first couple of years, we were growing and thus building value within our company; getting closer to the realization of our dream.

My dream started as a child when I spent a lot of time living with my grandparents on the family farm. Now farming wasn't for me. In order to succeed you had to be a good businessman, a common laborer, a lawyer to understand the government programs available and if you got all that right, you still had to be able to control the weather and I couldn't control the weather. But the thing I took away from that experience was an idea, a concept that no matter what happened, you always had your land. If we fell on hard times, we could always go back to the farm and some way we would survive. When we started this business, that is what we had in mind. We were building for our future something permanent, something we could pass on to our children, something they could always fall back on if times were bad.



I understand the government can take property in the name of progress. In fact, I agree that sometimes a few must sacrifice for the good of the many. I'm willing to sacrifice my hard work and plans if the city says it is in the best interest of the majority of the people. However, if they built a highway through Grandpa's farm, they would pay him for his land; or if they took your business away in the name of expansion, they would pay you for the building and lost business. I'm just asking for the same treatment anyone else would get if their property was taken away. Fair treatment NOT special treatment.

Sometimes cities may feel it is in the best interest of the taxpayers to take away our businesses with out compensating us in any way, after all it's the taxpayer's money that will be paying us. But that argument could be applied to any business that the government feels they can run for less. Government has to balance cost on one hand and fairness on the other. The reason we are here today is some government entities forgot the second half of the equation. They are taking our businesses without fairly compensating us. As we have seen this results in law suits. (Our courts are crowded enough already without adding these to the docket.)

In a lawsuit both the city and business owners lose. The large national trash companies can afford a long, protracted lawsuit. However, a suit like that would put the "mom and pops" companies like ours out of business and force us to file bankruptcy long before any decision was reached. I see House Bill # 3002 as a logical and much needed clarification of existing law. It fairly addresses the haulers' position while allowing the city options if they feel franchising is in their citizens' best interest.

In conclusion, I have worked five years to create a permanent means of supporting my family. Some Wichita haulers have worked forty years toward the same goal. We feel that House Bill #3002 would keep this debate out of the court system, ensure fair treatment of the trash haulers without putting undue burden on the cities involved. Thank you for your time and attention.

MICHELLE MENDOZA  
MENDOZA SERVICES

---

566C S. Oliver  
Wichita, Ks  
67218  
(316) 942-6445

March 13, 2002

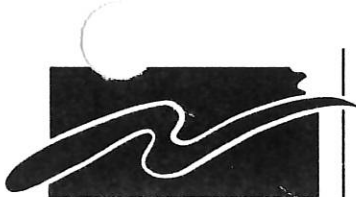
Dear Chairperson Freeborn and Committee Members,

My name is Michelle Mendoza and I am here to give testimony in support of House Bill 3002. I am owner of Mendoza Trash Services, which has been in operation for four years now. I am also a single parent raising three children ages 13, 8 and 4. My ex husband started this business with the intention of providing for our children's futures. He worked full time at a packinghouse at the time and recruited three customers. It started out to be something he did on weekends. Fortunately, this business grew to a point he was working every evening after work in addition to weekends. I was also working full time as a registered nurse and managing the office details in the evenings. To make a long story short, eventually, I couldn't keep up with hand written invoices. And the time came for him to leave his full time job to dedicate himself full time to this venture. Many hours, money and sacrifice were put in by both of us to get this company off the ground. We never took out a loan. All carts, equipment, truck repair and maintenance were paid for from our savings. The business growth was slow but sure. We were taking advantage of the American dream working together to secure our future. And it took its toll. The marriage ended but the vision is still the same. Work hard and provide a future for our children. I recognized that this business had the potential to secure that future better than even a bachelor's degree in nursing could. So I left my position last year to focus on this business full time. I have 900 customers now in the city of Wichita, most of whom are Hispanic. I'm able to provide them the convenience of transacting business in their native language. I have three employees at this time. All the groundwork has been laid and I'm ready to take this business to the next level. I support House Bill 3002 to protect my investment and would greatly appreciate your support by passing it.

Sincerely,

Michelle Mendoza  
Mendoza Services

*House Environment  
3-14-02  
Attachment 8*



**KANSAS**  
ASSOCIATION OF  
**COUNTIES**

**TESTIMONY**

concerning House Bill No. 3002

**re. Solid Waste Providers**

House Environment Committee

Presented by Randy Allen, Executive Director

March 14, 2002

Madam Chair and members of the committee, my name is Randy Allen, Executive Director of the Kansas Association of Counties. I am here today to express our opposition to House Bill No. 3002. The bill would provide extraordinary protections to solid waste service providers at the expense of the home rule authority of counties. In addition to our concern about restricting the ability of county commissioners to do what they believe to be in the best interest of the public through their home rule powers, we have concerns about the proposed legislation, as follows:

- Section 2 (b) (1) requires a municipality to enact an ordinance declaring its intention to displace solid waste providers, and Section 2 (b) (3) requires that a seven-year advance notice be given under certain circumstances. County policymakers (i.e. boards of county commissioners) do not establish policy through ordinance, but rather by resolution. A resolution, once adopted, can be rescinded by another resolution. Governing bodies of counties, just like legislatures, cannot bind successor governing bodies. Legislators would not appreciate prior legislative bodies binding their ability to act; as such, boards of county commissioners appreciate the same latitude in the exercise of their judgment. As such, we believe this section of the bill is inherently unenforceable.
- Section 2 (b) (5) establishes bidding requirements for certain solid waste services contracts. Kansas law is conspicuously silent in imposing strict requirements on local governments bidding services. This is not to say that counties do not operate in a business-like manner with respect to procuring services. What it says, we believe, is that the Legislature has not historically interjected itself in the middle of local government's business. As such, we object to the idea of the Legislature imposing bidding requirements for one particular kind of service.
- Section 2 (b) (5) directly conflicts with the Interlocal Cooperation Act which allows counties to contract with other counties or cities to provide services. This section of HB 3002 would preclude a county from contracting with another county or a county from contracting with a city(s) to provide such solid waste services. This is totally contrary to the idea of local units of government working together to maximize benefit and minimize costs.

We believe HB 3002 to be an unreasonable and unworkable solution to what may be an isolated issue which is currently in litigation. As such, we urge the committee to kill HB 3002.

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 Randy Allen or Judy Moler by calling (785) 272-2585.

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

*House Environment  
3-14-02  
Attachment 9*





**SEDGWICK COUNTY, KANSAS  
OFFICE OF THE COUNTY COUNSELOR**

**ROBERT W. PARNACOTT  
Assistant County Counselor**

---

COUNTY COURTHOUSE • 525 N. MAIN, SUITE 359 • WICHITA, KS 67203-3790  
PHONE (316) 383-7111 • FAX (316) 383-7007

**TESTIMONY HB 3002  
Before The House Environment Committee  
By Robert W. Parnacott, Assistant County Counselor  
March 14, 2002**

Honorable Chair Freeborn and members of the Committee—thank you for allowing me the opportunity to testify in opposition to HB 3002. In its current form this bill provides that a city or county cannot implement a new solid waste collection plan that would “displace” an existing collector unless it either gives seven years’ advance notice or it pays the collector the fair market value of the collector’s business.

By way of background, the legislature has recognized that solid waste management and planning decisions must be made at the local level. To this end, the legislature has authorized that local solid waste management committees be created with the duty to develop local solid waste management plans to be approved and implemented by counties. The legislature has also provided counties and cities with statutory authority to provide for and to regulate the collection of solid waste generated within the boundaries of the respective government entity. Furthermore, cities have been given the authority to enter into exclusive contracts for the collection of solid waste. Courts have repeatedly upheld a local government’s power to provide for the collection of solid waste.

Sound reasons against granting this statutory authority include:

- This bill would limit the ability of counties and cities to effectively plan for and manage local solid waste collection.
- This bill would drive up the cost of solid waste collection—which in turn would be passed on to the consumer.
- This bill would encourage other private commercial interests to seek legislation to further restrict local governments from controlling matters of public health and safety concerns and create additional property rights not currently recognized by law.

For the above stated reasons Sedgwick County strongly opposes HB 3002.

*“...To Be The Best We Can Be.”*

*House Environment  
3-14-02  
Attachment 10*





Insulated Wire Corporation and Amazon.com as two of our newest corporate residents. Our community has diligently worked to provide an environment conducive to the stability and growth of our existing local business and industry. A prime example of these efforts is Farmland Industries' \$260 Million nitrogen fertilizer facility.

Coffeyville has invested millions of dollars to improve its public infrastructure to enhance the quality of life of our existing residents and to make our community more attractive to future residents. Veterans Memorial Stadium is one of the premier sports facilities in Southeast Kansas. In addition to providing a first class venue for football, track & soccer athletic competition, outdoor concerts and a multitude of special events; it provides us an opportunity to showcase our community to visiting teams, sports fans and special guests throughout the year.

The Public Golf Course originally designed by Perry Maxwell has been substantially renovated and expanded to eighteen holes utilizing the original style and concepts of Mr. Maxwell. Later this year, Coffeyville will be dedicating the opening of a new Aquatic Center, breaking ground for a \$16 Million expansion and renovation of the Coffeyville Regional Medical Center and implementing a \$19.9 Million School Bond Issue that was approved by local voters on Tuesday of this week with a very affirmative 73% approval.

I hope these few examples that I have just shared with you enhanced your awareness that our community is working together and that our local residents have encouraged and endorsed a wide range of public/private partnerships to move our community towards a shared vision of the future. We have accomplished a lot in a short period of time by the hard work of a vast number of local residents committed to a better community and the good fortune of the cooperative spirit and direct assistance that we have received by a number of state agencies that you all oversee and fund each year. Still we have a long way to go and a lot of work to do to recapture the stature that Coffeyville had achieved in the middle of the last Century.

Our community has determined that if we want to continue the momentum that we have experienced over the last few years that it is critical that we substantially enhance the initial image projected by our community. The City has initiated several activities to clean-up and improve the general appearance and overall attractiveness of our community. Based on input from the Chamber of Commerce, Leadership Coffeyville, the Board of Realtors, various Civic Clubs and Service Organizations, and citizen input at multiple City Commission Meetings it is clear that our residents feel that city-wide mandatory trash pickup is a key to cleaning up and maintaining an attractive community.

House Bill No. 3002 would prohibit the City from effectively implementing mandatory trash pick-up in Coffeyville for at least the next seven years, unless we wanted to spend millions of tax dollars buying out the existing service providers.

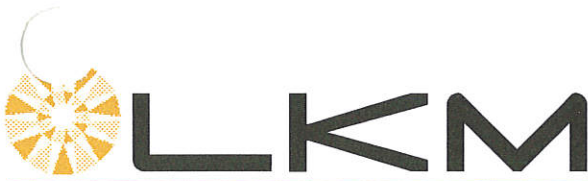
I don't want to offend or insult any of the committee members here today, but I would respectfully suggest that House Bill No. 3002 is not consistent with the past wisdom displayed by the State Legislature, nor is it consistent with the concepts of free enterprise..

In Mr. Traster's remarks in the Wichita Eagle he mentions free enterprise. I thought in free enterprise a businessman was rewarded a profit because there was some inherent risk involved in the operation of private enterprise. When the existing service providers invested their money in the solid waste business, I think they inherently new the risk involved, now they want the Kansas Legislature to guarantee them a service territory similar to a public utility. What's next, paving contractors make a substantial investment in equipment and time, is the State Legislature going to adopt a statute that usurps the home rule of local government to pave streets and repair potholes for seven years unless we buyout the existing pavement contractors.

Further, in Mr. Traster's remarks he talked about the fact that there may be as many as four to five solid waste service providers picking up trash on the same city block. How efficient and cost effective can this format of wasted effort and duplication of services be for the residents of our state?

The City of Coffeyville very respectfully request that the Kansas Legislature not approve or adopt House Bill No. 3002.

Thank you in advance for your consideration and for allowing me the honor of addressing the committee today.



League of Kansas Municipalities

To: House Environment Committee  
From: Kim Gulley, Director of Policy Development & Communications  
Date: March 14, 2002  
Re: Opposition to HB 3002

Thank you for allowing me to appear on behalf of the League of Kansas Municipalities and our member cities. We appear today in opposition to HB 3002. Although we believe that the legislation has many points of concern, we offer two primary areas of interest to municipalities in Kansas:

- **Home Rule.** This legislation preempts local control with regard to solid waste services. Cities and counties in Kansas have fashioned unique, localized solutions to the challenge of providing appropriate solid waste services to their citizens. In some communities, the service is provided directly by the municipal government. In others, the city or county contracts with private companies to provide the service. Still other communities franchise private providers to provide the service. HB 3002 limits the ability cities and counties to fashion unique solutions in their community. Under this legislation, cities would be forced to wait seven years before addressing an issue of concern within their communities. Although the bill offers an alternative which allows the city to pay a specified amount to the solid waste service provider, this option is really no alternative at all because the taxpayers of the city would then be forced to pay both for the new service and the cost of paying the previous provider under this bill.
- **Takings Issue.** The issue has been raised that when a city or a county alters its policy regarding private solid waste companies, that a taking has occurred. However, this argument does not withstand legal scrutiny. Because the public health and safety is directly affected by the collection and disposal of solid waste, such services are inherently public, municipal functions. Kansas statutes make this point very clear. K.S.A. 12-2101 *et seq.* has been on the books since 1947 and specifically authorizes cities to contract to provide solid waste services or to provide the service themselves. In either case, the local government is directly involved in providing solid waste services. The presence of a contract with a private company does not, in itself, make the service itself a private one. In any case, if a company believes that a taking has occurred, there is currently a remedy available. Takings claims are handled by courts on a case-by-case basis and, in fact, litigation is currently pending in Kansas on the very issues addressed by this legislation.

In summary, we believe that solid waste is a public function and each community must have the ability to adopt a solution that is appropriate to their specific needs and their constituents' desires. We oppose tying the hands of locally elected officials with this legislation, and therefore, respectfully request that you do not take favorable action on HB 3002.



Johnson County, Kansas

---

## OFFICE OF THE COUNTY MANAGER

To: The Honorable Joann Freeborn, Chairman  
The Honorable Don Myers, Vice-Chairman  
Members, House Environment Committee

From: Ashley Sherard, Government Relations Manager

Date: March 14, 2002

Subject: **Opposition to HB 3002**

---

On behalf of the Johnson County Commission, I would like to express our opposition to HB 3002, which establishes procedures required for municipalities to discontinue use of existing private solid waste services providers.

First, the Commission is concerned because, in an attempt to carve out special protections for a single industry, the bill directly preempts traditional local government authority. As a general principle, we believe communities are best served when local officials are allowed to conduct the business of their jurisdiction in a manner that best reflects residents' values and standards and best benefits that community. To that end, we believe it is critical that longstanding principles of local decisionmaking be respected and retained.

Second, we are concerned that HB 3002 unnecessarily legislates key elements of certain contracts. As a matter of public policy, we believe the voluntary parties to a contractual relationship should be allowed to negotiate the provisions under which they will operate, rather than the state.

Lastly, Johnson County has serious concerns about the poor precedent set by specific provisions of the bill, including sections related to notice, bidding, service mandates, and condemnation. These provisions are potentially costly and burdensome for local governments, and those costs would ultimately be borne by taxpayers – an effect that may be amplified if other industries seek similar “protection.”

For these reasons, the Johnson County Commission urges you to recommend HB 3002 unfavorable for passage. Thank you for your time and consideration.

*House Environment  
3-14-02  
Attachment 13*



Joel D. Elsea

Air Capital Disposal, Inc.  
8918 W. 21<sup>st</sup> N. Suite 200, PMB 232  
Wichita, KS. 67205

(316) 729-5377 ph.

(316) 773-4528 fac.

[joel.elsea@aircapitaldisposal.com](mailto:joel.elsea@aircapitaldisposal.com)

## Testimony in support of House bill 3002

Dear Chairwoman Freeborn and committee members...

I would like to express my support for House bill 3002 and respectfully request that this bill be passed into law.

Without this law all of the blood, sweat and tears I've put into my business means absolutely nothing. My wife and I relocated to Wichita Kansas in August of 2001 from Washington, D.C. because we wanted to raise our seven-month old daughter close to parents, grandparents and friends here in Kansas. We are both originally from Wichita and after living in Kansas City, St. Louis and Baltimore / Washington, we decided that Kansas was the best place to raise our daughter and start our business. We have invested essentially our life savings to uproot and begin pursuing our dream of owning and operating our own business with the intent of creating a better life for our daughter. And now it appears that this dream will not only be ripped from our hands, but that we will be thrown into bankruptcy and unemployment as additional perks. If a homeowner lives next to an airport and the airport decides to add a runway where the home sits, the homeowner is paid fair market value for their investment. The owner never has his home stolen from him and forced into bankruptcy. Apparently, my wife and I have built our business next to an airport also. The difference is, the airport our investment sits next to is invisible. Does that make us less deserving of remedy provided to the homeowner?

We began hauling trash and recycling in October of 2001 and in that time we have earned approximately 500 customers in the Wichita Metropolitan area. I have put my blood, sweat and tears into this business over the last year with no compensation, although we are beginning to make strides. We are not large enough to haul an entire municipality but we do provide excellent service at a very competitive rate to many customers in Maize, Goddard, Valley Center, Park City, Kechi and Bel Aire Kansas. These people appreciate the service we provide, we have not lost one customer yet due to price or service.

We do business with many other family owned businesses in our area. We advertise, buy parts, fuel, have our trucks serviced, buy printing, monogramming, art work, signs, tires, decals and hired a small accountant. I am sure that I'm forgetting a few things but if we were put out of business it won't help these companies either. If a municipality provides exclusive solid waste services, a large portion of this commerce will disappear putting additional pressure on other small family owned businesses. In spite of the tough economic conditions in our area and the large amount of lay-offs, family owned independent haulers are still collecting trash and recycling and spending money on goods and services with other small businesses.

*House Environment  
3-14-02  
Attachment 14*



Additionally, it historically has been the small haulers that have provided the competition that has helped keep collection rates low. Displacing these haulers will only reduce options and service standards not improve them. Just look at the cable television rates or the air fare rates in Wichita to prove that the lack of competition means higher rates and reduced service standards. Bankrupt these haulers and they won't be able to provide the competition when needed if a "Fair fares" trash hauling rate campaign is announced because rates have gotten excessively high or service has deteriorated.

Waste hauling is an industry that doesn't require a formal education. This industry is the American Dream to many local minority haulers that will have their dreams crushed if they are displaced. Then what do they do? I have always dreamed of running my own small business and growing that business through hard work, good service and a competitive price. Without this bill, I now have a bulls-eye on my back and I can not only be instantly put out of business, but also forced into bankruptcy for providing a good service at a fair price. What's fair about this and what's American about this?

Again, I would please ask that Chairwoman Freeborn and the committee members please pass House bill 3002.

Ballinger's Trash Service  
405 Baehr  
Wichita, KS 27212  
Gilbert Ballinger, Owner  
Wichita, KS  
Office: (316)-943-7910  
Cell #: (316)-806-022  
Fax #: (316)-943-7134  
March 14, 2001

Ballinger's Trash Service has been in operation for over 60 years and currently provides weekly curbside cart service to approximately 10,000 residential customers and recycling services to over 300 homes. We also provide 1-8 yard steel container service to over 300 commercial accounts every week.

**TESTIMONY IN SUPPORT OF HOUSE BILL #3002**

Dear Chairperson Freeborn and Committee Members:

I strongly support House Bill #3002 and am requesting that you show your support too by passing this important bill. This bill would restore some fairness to the haulers without prohibiting the cities' right to franchise, if they so choose. The bill would require cities that choose to franchise trash service to either provide advance notice of their intention, in order to allow the haulers time to recover our investments, or to provide just compensation to the affected haulers. This bill simply calls for cities to do a better job of advance planning, which, in turn, would benefit all of the parties involved.

My father, Frank Ballinger, established our business over 60 years ago. After just surviving the depression, it wasn't easy to overcome the obstacles of a wartime economy and start up a new business. It took a lot of very hard work and sacrifice to get it done. But my father was willing to risk everything, because he had a vision. He saw an opportunity to build a business that would serve a permanent need in the community and that could grow with the city and that would support the Ballinger family for many generations to come. He believed in the American dream, he persevered and he did what he set out to do.

When I joined the family business in 1946, I fully expected it to support my family throughout my lifetime and then to pass it on to support my children, my grand children, my great grand children, their children and so on, for as long as Ballingers went forth. That was my dream. It wasn't easy for my wife and me either. There have been a lot of challenges and a lot of changes over the last 56 years. I'm 74 years old now and, except for the college years, my two sons have worked the business all their lives and my daughter runs the office. In addition to my family members, I employ seven other workers. Ballinger's has had the same facility at the same location for over 50 years and

*House Environment  
3-14-02  
Attachment 15*

we now own and operate 10 late model collection vehicles and supply our customers from our huge inventory of carts and containers. So, you can see that we have a very sizable investment in property, vehicles, equipment and employees and we've endured a lot of hard work and hardships, over the decades, to grow this business to the place where it could support and maintain our family and our investment. Ballinger's is a stable, 100% above board business that has faithfully served many of our current customers for over 40 years and I believe that makes us an asset to the community.

With all that said, I am deeply troubled by the existing legal environment that seems to me to be unfair and to put my family and my business in jeopardy with no hope for any real justice. I agree that individual city governments should have the right to make choices they feel are in the best interests of their citizens, many of whom are probably also taxpayers and voters. For example, when the Kellogg expansion project was going to cause a loss of business or property to folks, they were provided with what they accepted as fair compensation for their losses. That's the American way. Now, for example, a city's governing body can decide to try to save money by franchising their trash service, effectively putting the existing haulers out of business. However, as it now stands under the law, a city can do so without providing any compensation to the haulers they are hurting, or even providing enough notice for the haulers to recover their investment and possibly protect the business it may have taken many decades to build. This does not seem to me to be the American way of liberty and justice for all. If cities have the liberty, or freedom, to franchise they should certainly also have the responsibility to provide justice through fair compensation or, at the very least, adequate notice. Anything less leads to costly law suits where neither side really wins without loss. In the meantime, good people stand to lose what they labored a lifetime to build and find themselves forced into bankruptcy and, perhaps, even public assistance. What a needless nightmare.

That's why I urge you to move forward with the passage of House Bill #3002. This bill fairly speaks to the haulers' needs while preserving the cities' freedom to choose franchising. It seems to me that passage of this bill would result in several worthwhile accomplishments – it would protect both liberty and justice, it would promote taxpayer trust in their lawmakers, it would reduce the court's calendar and it would just make good sense.

Thank you so much for your time and your consideration, and may God bless America.