Approved: March 27, 2002
Date

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:15 a.m. on March 12, 2002 in Room 123-S of the Capitol.

All members were present except:

Committee staff present:
Sherman Parks, Revisor of Statutes
Norman Furse, Revisor of Statutes
April Holman Legislative Research
Debra Hollon, Legislative Research
Lea Gerard, Committee Secretary

Conferees appearing before the committee:
Charles Benjamin, Attorney
Kansas Chapter of the Sierra Club
Marilyn Nichols, Register of Deeds Assoc.
Suzanne Simon, Wabaunsee Register of Deeds
Michael McDermott, Taxpayer

Others attending:
See attached list.

In accordance with KSA 75-3715a the fiscal note for **SB 635** was submitted to committee members.

Hearings on **SB 635**–Mortgage registration fees; use of monies for historical and cultural heritage purposes:

April Holman, Legislative Research, briefed the committee on **SB 635**. The bill would amend the current law governing mortgage registration fees as it relates to the Heritage Trust Fund. Under current law a mortgage registration fee is due which is equal to .26 cents per $100. of the principle debt secured by a mortgage. This fee or tax is administered and collected by the County Register of Deeds and of the .26 cents, .01 cent goes to the Heritage Trust Fund up to a maximum of $100,000. per year in any county. The balance goes to the County General Fund. The Heritage Trust fund was created in 1990 to provide assistance for the preservation of historic property in Kansas. Property listed in the National Register of Historic Places are eligible to receive the Heritage Trust grants. Under **SB 635**, any money in excess of the $100,000. which were credited to the county General Fund per year can only be expended for historical and cultural heritage purposes.

Marilyn Nichols, Kansas Register of Deeds Association, testified in opposition to **SB 635** stating that the association did not want any of the funds going into the County General fund earmarked for any additional special needs. (Attachment 1).

Suzanne Simon, Register of Deeds Wabaunsee County, testified in opposition to **SB 635** (Attachment 2).

There being no further conferees wishing to testify, the hearing for **SB 635** is closed.

Continued Hearings on **SB 611**–Concerning the redevelopment of the sunflower army ammunition plant for Johnson County:

Charles Benjamin, Attorney at Law, representing the Kansas Chapter of the Sierra Club and a member of the Sunflower Advisory Board testified in opposition to **SB 611** (Attachment 3). During production at the Sunflower Army Ammunition Plant, spills and releases of propellant and materials contaminated several plant locations which could be potential liability for the taxpayers of Johnson County and the State of Kansas. By passing this bill and allowing development to occur before the facility is completely cleaned-up, the state is potentially putting Johnson County taxpayers at risk for any future claims.

Senator Brownlee asked Charles Benjamin what the Sunflower Advisory Board was. He stated whenever military facilities are cleaned-up there is a citizens advisory board that is created by the Department of Defense and EPA.

Senator Brownlee stated she had spoken with a representative from Senator Brownback's office regarding CERCLA and federal legislation that would exempt the redevelopment authority participants of the liability as it relates to clean-up. She stated there have been some efforts on the federal level in this direction and she requested that it be specific as it relates to the federal enclaves. As the legislation moves through, others try to make it more encompassing. This would be a very important piece to place in **SB 611** because the liability issue is so immense. The State must make sure in the transfer that the Federal government will remain liable. It means nothing for state legislators to work in Kansas law, that the state will not be liable whereas the federal CERC:A law states anyone that touches the chain of title will be liable.

Michael McDermott, Taxpayer, testified in opposition to **SB 611** stating that Johnson County does not need another 9,000 acres for development. The population in Johnson County grows by the population of Abilene every 8.7 months; the population of Johnson County grows by the population of Topeka every thirteen years with a tax base that increased 12% from 4.6 billion to 5.2 billion. Development in Johnson County is healthy and does not need to take on this state asset.

There being no further conferees wishing to testify, the hearings on **SB 611** was closed.

Chairperson Brownlee recognized Don Jarrett, Attorney for Johnson County and requested that he be available for questions so that committee members would fully understand what impact the bill would have on Johnson County.

Don Jarrett, Attorney for Johnson County, stated the intent of the bill is to provide some mechanisms to address the opportunity of the land for Johnson County from the disposition of the Sunflower Army Ammunition Plant. The federal government owns the land and is in the process of disposing of it and Johnson County needs to be proactive in this process. Johnson County has a comprehensive development plan approved for the property which has led to the proposal of **SB 611**. The bill is an enabling piece of legislation and does not commit the state to fund money, to purchase the property, or commit the state to use any incentives.

Senator Jordan asked Don Jarrett to comment on the liability issues from the county standpoint. Don Jarrett stated the liability issue is a concern but under federal law the United States Army is liable and is responsible for the contamination that is existing at and on the facility today. With Johnson County stepping in the process either through a redevelopment district or some other mechanism including taking chain of title, it does not alleviate the army of the contamination responsibility. There is also a comprehensive insurance package that is available for remediation and is eligible for federal funding. In addition, every discussion that has taken place with federal officials and the EPA is to ensure that the responsibility stays with the Army and that as the transfer or redevelopment goes forward it is properly financed and insured.

Senator Barone asked Don Jarrett would this apply to the citizens of Crawford County. Don Jarrett answered yes it would apply. Senator Barone then asked if he would be willing to put any language in the bill fully recognizing that it may be superfluous with the state premise that if there is ever any liability on this it would not fall to the citizens of Kansas but would remain with the citizens of Johnson County. Don Jarrett stated he personally would not have any problem with that provision but would have to see how it is written and what all is to be covered. With respect to the assumption of environmental issues, he stated he would have not problem with that.

Chairperson Brownlee announced the committee will work the bill on Thursday, March 14, 2002.

The meeting was adjourned at 9:30 a.m.

The next meeting is scheduled for March 13, 2002 at 8:30 a.m.

SENATE COMMERCE COMMITTEE
GUEST LIST
DATE: March 12, 2002

NAME	REPRESENTING
Missie Geritzen	Kearny Co. Register of Deeds
Suzanne Simon	Wabaunsee Co. Reg. of Deeds
Marilyn Nichols	Shawnee Co. Register of Deeds
Ted Ensley	Shawnee Co Comm
Dick Loeffler	KDWP
Charles Benjamin	KS Chapter of Sierra Club
JACK BRUER	KANSAS DEV. FINANCE AUTHORITY
RaeAnne Davis	KDOT
Mike Beezley	Ks Govt Consulting
Larry Besthorn	KOFA
Erik Sartorius	City of Overland Park
Michael McDERMOTT	TAXPAYER
Ed O'Malley	OP Chamber

KANSAS REGISTER OF DEEDS ASSOCIATION

Marilyn L. Nichols
Shawnee County Register of Deeds
700 SE 7th Street, Room 108
Topeka, Kansas 66603-3932

TESTIMONY OF THE KANSAS REGISTER OF DEEDS ASSOCIATION
TO THE HOUSE COMMERCE COMMITEE

SENATE BILL 635

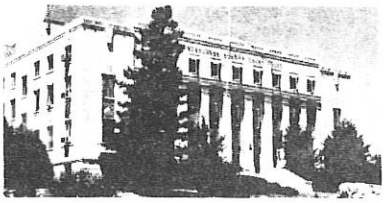
March 12, 2002

Madam Chairwoman and Members of the Committee:

I am here today on behalf of the Kansas Register of Deeds Association. We thank you for the opportunity to provide input during your decision making process.

We have to admit that we do not have a clear understanding of this bill. We believe that the intent is to create a fund earmarked for cultural heritage purposes. Such fund to be derived from the monies now collected through the register of deeds office on mortgages wherein mortgage tax is paid.

The Association's concern is with any monies now being deposited into the county general fund being earmarked for any additional special needs. We think that not all counties will be effected simply because of the $100,000.00 threshold in place. Some counties will not collect that much in fees to ever reach the ability to create the fund at all. We do have concern for the counties that do and will have a mandate for funds to be expended that are already a critical part of the entire budgetary consideration. We simply cannot support another piece of the taxpayers pie earmarked for a "special cause" no matter how noble that cause might seem. We are all struggling to support and finance the most necessary matters of county government. The Kansas Register of Deeds Association opposes SB 635 insofar as the funds being derived from mortgage registration taxes.



WABAUNSEE COUNTY COURT HOUSE

OF . OF REGISTER OF DEEDS
Wabaunsee County
215 Kansas, P.O. Box 278
Alma, Kansas 66401-0278

C. SUZANNE SIMON
Register of Deeds

PHONE 913-765-3822 FAX 913-765-2339

SENATE BILL 635

March 12, 2002

Madam Chairwoman & Members of the Committee:

I am Suzanne Simon, Register of Deeds of Wabaunsee County. I am here today on behalf of myself and the Wabaunsee County Commission. Thank you for the opportunity to express our opposition to SB 635.

Our understanding of the intent of this bill is to amend KSA 79-3107b and set forth terms by which the excess heritage trust funds must be spent by the counties. The passage of this bill will impose undue burdens on the counties. Some of these include: 1) how will the money be divided, 2) must there be an application process set up for the distribution of these funds, and if so, 3) how will the counties fund additional manpower to handle that? At the present time, we feel the counties are responsibly appropriating the excess heritage trust funds, and thereby, a change in the statute from its current reading is not needed.

Thank you for your consideration of our position on this issue. I will be happy to stand for any questions.

Senate Commerce Committee
March 12, 2002
Attachment 2-1

Charles M. Benjamin, Ph.D., J.D.

Attorney at Law

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Addendum to Testimony in Opposition to SB 611

On Behalf of the Kansas Chapter of the Sierra Club

Kansas Senate Commerce Committee

March 12, 2002

Senate Commerce Committee
March 12, 2002
Attachment 3-1

INSTALLATION DESCRIPTION

DESCRIPTION

Sunflower Army Ammunition Plant (SFAAP) is an inactive Operations Support Command installation being disposed of by GSA. The state of Kansas has expressed interest in obtaining plant property in its entirety.

HISTORY

Sunflower Army Ammuntion Plan, originally known as the Sunflower Ordnance works, was established in 1941 on 10,747 acres as the world's largest powder and propellant plant. Production of propellant began in 1943 and played a significant role in U.S. history by providing munitions for three major military conflicts - WWII, the Korean Conflict and the Vietnam Conflict. The installation has been determined to be in excess of Army needs, and GSA has begun the process of disposing of all Sunflower property.

Additional installation operations included the manufacture and regeneration of nitric and sulfuric acids, and munitions proving.

During the course of its 50-plus years of operation various hazardous substances were released both inadvertently and intentionally to the environment. These releases, which are not uncommon at major industrial facilities, were from production line areas and 52 RCRA solid waste management units (SWMU). The EPA proposed listing the installation on the National Priorities List (NPL) in 1995.

Preliminary and final investigations have been conducted on all SWMU's. In addition to studying each SWMU, two SWMU's have received final closure. Studies show that seven SWMU's will not require any remedial action. Special work perfomed on the plant includes a community relations plan, groundwater investigation, a benthic macroinvertebrate study, grazing study, ecological risk assessment, public health assessment (ATSDR), an off-site well survey, and an installation wide stream study.

The plant has an active RAB that represents a broad range of community views. An active Technical Review Committee consisting of installation personnel, EPA, KDHE, the U.S. Army Corps of Engineers, and contractors meets monthly to discuss restoration activities and devise ways to reduce regulatory impediments.

CONTAMINATION ASSESSMENT

MISSION

Sunflower Army Ammunition Plant no longer has a military mission. The property is in the process of being disposed of by GSA.

OVERVIEW

The Sunflower Army Ammunition Plant was built to produce artillery and rocket propellant. These materials were produced during WWII, Korea, Vietnam and between 1984 and 1992. During production, spills and releases of propellant and materials contaminated several plant locations, primarily with heavy metals and nitrate compounds.

Past sampling has revealed that hazardous substances are in the soil, sediment and groundwater beneath the plant. Sunflower is continuing concentrated efforts to demolish buildings and clean-up of all production sites contaminated with these materials.

Fifty-two Solid Waste Management Units (SWMUs) are included in the RCRA investigations. During preparation of RFI work plans (1993), the SWMU's were subdivided into six groups based on industrial activities, treatment processes and disposal methods. These categories are: N-5 Propellant Production Sites, Nitroguanidine Production Site, Landfill Sites, Waste Treatment Sites, Support Area Sites, and a Single Base Propellant Area.

As site specific sample data becomes available from the initial RFI studies, discussions are held at regular intervals with the Project team, EPA and KDHE to ensure that the IRP program continues to address those SWMUs with the greatest potential to impact human health and the environment.

Evaluation of Draft RFIs received to date show 11 SWMUs requiring additional sampling to fill data gaps prior to remedy selection; 6 SWMUs which can proceed to closure documentation for no further action; 33 SWMUs which require remedial design and remediation; and 2 SWMUs which require LTM only.

A corrective measures study (CMS) was completed for SFAAP-010, 011, 022, and 032. The corrective measures implementation (CMI) for SFAAP-010 and 011 began in 1999. A Groundwater Study and Grazing Study are in the review process.

Based on this process, the current planned responses include completion of RFI reports for those SWMUs where investigations are under way, collect data on nature and extent of contamination at SWMUs that are yet to be characterized, begin CMS on the highest priority SWMUs and undertake CMI at SWMUs where required.

The State of Kansas' plan to acquire all plant property and transfer it to a private corporation for redevelopment is a major uncertainty which may affect the cleanup schedule and type of action for many of the SWMUs. The Kansas Department of Health and Environment developed a consent order describing cleanup activities a third party owner must complete.

The activities detailed in this IAP will be accomplished using specifically appropriated funds for the cleanup of contamination resulting from past releases of potentially hazardous substances to the environment. In addition, the Army also separately addresses additional environmental issues including concerns related to existing structures and equipment and are paid for through the yearly allocation of funds.

~~comments and objections to the~~ authority, ~~which~~ shall ~~modify, approve or~~ deny the plan. If the redevelopment plan is consistent with the comprehensive ~~general~~ *development* plan of the county, then the authority may adopt the redevelopment plan by a resolution passed by a majority of the board of directors of the authority. Any substantial changes to the plan as adopted shall be made in the same manner, with notice and approval of the board of county commissioners and adoption of a resolution by the authority. A redevelopment plan may be adopted by the authority, pursuant to these procedures, at the same time that the authority establishes the redevelopment district under K.S.A. 2001 Supp. 74-8921, and amendments thereto. ~~Any redevelopment plan which proposes to undertake a project of statewide as well as local importance in a county which according to the 1990 decennial census contained a population greater than 25,000 shall be adopted prior to July 1, 2001 or, if a developer has complied with the provisions of K.S.A. 74-8930 and amendments thereto, 2002.~~

(c) (1) Under no circumstances shall the state of Kansas, any of its political subdivisions, the Kansas development finance authority or any unit of local government assume responsibility or otherwise be responsible for any environmental remediation which may be required to be performed within the redevelopment district designated through any redevelopment plan. ~~Any person or entity, other than the state, an instrumentality of the state, or a unit of local government, who proposes to take legal title to land which is located at a site designated as a federal enclave prior to January 1, 1998, for the purpose of developing a project of statewide as well as local importance shall: (1) prior to taking such title, enter into a consent decree agreement with the Kansas department of health and environment or the United States environmental protection agency under which such person or entity expressly agrees to be responsible for and to complete the remediation of all environmental contamination of such land according to established standards and levels for appropriate property uses, except that part, if any, of the remediation which is, by agreement approved by the governor, to be retained by the federal government or any agency thereof and (2) prior to taking title to any of the land, provide prepaid third-party financial guarantees to the state or an instrumentality thereof sufficient in form and amount to insure full and complete remediation of all of the land within the federal enclave as required in the consent decree agreement. Nothing in this section is intended and shall not be construed to relieve the United States army, the federal government or any agency thereof from any duty, responsibility or liability for any contamination or remediation of the land as may be imposed or required under state or federal law; and~~

land within ~~a former federal enclave~~ *the sunflower army ammunition plant* or in any other way exposing the state to potential liability for environmental remediation of such property, the state or any instrumentality of the state shall obtain the written opinion of a competent attorney, specializing in environmental law and maintaining professional liability insurance, regarding the state's potential liability resulting from taking title, possession or otherwise exercising control over the land.

Sec. 9. K.S.A. 2001 Supp. 74-8923 is hereby amended to read as follows: 74-8923. The authority may use the proceeds of bonds issued pursuant to subsection (e) of K.S.A. 74-8905, and amendments thereto, or upon approval by the board of county commissioners or other taxing subdivision in which the redevelopment district is located any uncommitted funds derived from those sources set forth in K.S.A. 2001 Supp. 74-8924, and amendments thereto, or other funds pledged for the payment of such bonds to implement the redevelopment plan~~, including the payment or reimbursement of all costs of the project of statewide as well as local importance~~ to the extent authorized in the redevelopment plan implementation agreement adopted pursuant to K.S.A. 74-8921, and amendments thereto. Any excess revenue not otherwise needed or committed for the repayment of bonds or other project costs authorized in the agreement shall upon approval by the authority be paid out by the state treasurer proportionately to the appropriate taxing authorities.

Sec. 10. K.S.A. 2001 Supp. 74-8924 is hereby amended to read as follows: 74-8924. (a) Any bonds issued by the authority under subsection (e) of K.S.A. 74-8905, and amendments thereto, *or by Johnson county under this act* to finance the undertaking of any *redevelopment* project ~~of statewide as well as local importance~~ in accordance with the provisions of this act, shall be made payable, both as to principal and interest:

(1) From property tax increments allocated to, and paid into a special fund of the authority under the provisions of K.S.A. 2001 Supp. 74-8925, and amendments thereto;

(2) from revenues of the authority or the developer derived from or held in connection with the undertaking and carrying out of any redevelopment plan under this act;

(3) from any private sources, contributions or other financial assistance from the state or federal government;

(4) from the revenue collected by the state under K.S.A. 2001 Supp. 74-8927, and amendments thereto;

(5) from a portion or all increased revenue received by any city *or county* from franchise fees collected from utilities and other businesses using public right-of-way within the redevelopment district;

(6) from a portion or all of the revenue received from sales taxes

1994

The Challenge of Cleaning Up Military Wastes When U.S. Bases Are Closed

*Richard A. Wegman**
*Harold G. Bailey, Jr.***

CONTENTS

* Partner, Garvey, Schubert & Barer, Washington D.C. B.A. 1960, Brown University; J.D. 1965, Harvard University.

** Partner, Garvey, Schubert & Barer, Washington D.C. B.A. 1981, Williams College; J.D. 1984, Georgetown University. The authors wish to thank Madelyn Creedon, Gordon Davidson, Samuel Goodhope, Donald Gray, Lawrence Hourcle, and Elsie Munsell for their very helpful comments on drafts of this article.

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House-Senate conferees sought to grapple with this issue in a recent defense authorization bill. The conference report states: "The leases should be for the length of time necessary to foster redevelopment but not so long as to discourage the cleanup of the property as expeditiously as possible."[296] One way of dealing with this question would be to tailor the term of a lease to the type of environmental contamination at a facility. Where limited surface contamination exists, a shorter term lease may be favored. But where long-term remediation will likely be required, a long-term lease with special provisions for access and health protection may be appropriate. In such situations, however, the DOD should be prevented by law from approving any lease extension option without making a finding—in which EPA and state authorities concur—that cleanup progress has been made and that firm plans are in place for completing the cleanup effort. This will help to avoid any perception that the lease has been structured to avoid the CERCLA cleanup and property transfer requirements, as happened with the Pease lease in New Hampshire.[297]

3. *Liability and Indemnification*

The prospect of CERCLA liability for subsequent owners also impedes expeditious conversion. While CERCLA section 120 provides that federal agencies remain responsible for final cleanup of contaminated facilities after transfer,[298] CERCLA section 107 provides that subsequent facility "owners" or "operators" are also liable for cleanup or for any damages that may be caused by contamination at the facility.[299] Thus, entities acquiring converted properties through lease or sale are frequently concerned about potential CERCLA liability and want the DOD to indemnify them against financially debilitating claims that might be brought against them in the

leases with high redevelopment potential. 1993 SENATE DEMOCRATIC REINVESTMENT TASK FORCE, *supra* note 93, at 8.

296. H.R. CONF. REP. NO. 357, *supra* note 287, at 807. The report also states: "The conferees are sensitive to several competing interests related to closing bases which have environmentally contaminated property. One interest is the remediation of the contamination on an expedited basis. . . . Another interest is the community's desire to generate new jobs. . . . If the lease is too short, redevelopment prospects would be discouraged from making the necessary capital investment . . . ." *Id.*

297. *Conservation Law Found.*, 1994 WL 5177697, at *4.

298. 42 U.S.C. § 9620(h). Congress reaffirmed this policy in CERCLA as amended by CERFA, which states that, when any real property is transferred to another person, "the United States Government should remain responsible for conducting any remedial or corrective action . . . with respect to any hazardous substance or petroleum product or its derivatives, including aviation fuel and motor oil, that was present on such real property at the time of transfer." *Id.* § 9620(h)(5).

299. *Id.* § 9607; *see id.* § 9601(20)(A) (broad definition of "operator").

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302. Katy Podagrosi
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303. *See* DOD, 199

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future.[300] Such liability concerns often require lengthy negotiations to resolve.[301] Furthermore, the Defense Department has in the past aggravated this problem by insisting that municipalities waive the right to indemnification before it will allow a base to be converted to civilian use.[302]

Congress, however, has indicated that the armed services should more freely indemnify transferees.[303] When the Pease Air Force Base was closed in 1991, Congress addressed transferee liability concerns by enacting a special bill indemnifying the State of New Hampshire and lenders against any liability associated with Air Force contamination at the base.[304] In 1992, Congress attempted to treat the indemnification problem more broadly by declaring that the DOD should indemnify transferees from any claim "that results from . . . any hazardous substance or pollutant . . . as a result of Department of Defense activities at any military installation (or portion thereof) that is closed pursuant to a base closure law."[305]

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300. The National Association of Counties has pointed out that: "[L]ocal governments and businesses will not find lenders willing to invest in construction of new facilities on closed bases unless lenders are assured that the federal government will be responsible for damages arising from toxic contamination caused by DOD. Indemnification is a waiver of sovereign immunity that places the federal government in the same position as any other owner of contaminated property. By waiving its sovereign immunity rights, the federal government will enhance the value of its property by making new investment possible." *1993 Senate Armed Servs. Hearings*, *supra* note 14, at 72 (statement of Larry E. Naake, Executive Director, Nat'l Ass'n of Counties).

301. *See Hearings Before the Subcomm. on Transp. & Hazardous Materials of the House Comm. on Energy & Commerce*, 103d Cong., 2d Sess. 486 (1994) (testimony of Alfred Pollard, Director of Gov't Relations, Sav. & Community Bankers of Am.).

302. Katy Podagrosi, Presentation to the Senate Democratic Defense Reinvestment Task Force 3-4 (June 7, 1993) (on file with the *Ecology Law Quarterly*). Katy Podagrosi, the Mayor of Rantoul, Illinois, blamed disputes over indemnification language and other liability considerations for a "gridlock" of 4.5 years in converting the nearby Chanute Air Force facility to civilian use. *Id.*

303. *See* DOD, 1991 TASK FORCE REPORT, *supra* note 190, at 7.

304. *Id.*

305. National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, § 330(a), 106 Stat. 2315, 2371 (1992). In the fiscal year 1993 appropriations law, Congress also attempted to deal with this issue, but used different terms and in the process created significant confusion in this area. Department of Defense Appropriations Act, 1993, Pub. L. No. 102-396, tit. II, 106 Stat. 1836, 1884 (1992). The authorization law's indemnification provisions were restricted to base closures, used the CERCLA definitions of hazardous substance and contaminant, and required a claimant to notify the DOD within 2 years after a claim "accrues." § 330, 106 Stat. at 2371-72. By contrast, the appropriations provisions applied only to any property that was "transferred" to a state or political subdivision, and the definition of hazardous substance specifically included petroleum and natural gas (substances not defined as "hazardous" under CERCLA). Title II, 106 Stat. at 1884. For a time, the DOD apparently refused to enter into certain leases unless communities waived their right to DOD indemnification. In its refusals the DOD cited the conflicting provisions of the Fiscal Year 1993 DOD Authorization and Appropriations Acts. *See 1993 Senate Env't & Pub. Works Hearings*, *supra* note 5, at 13 (joint statement of John D. Dunlap, Chief Deputy Director, Dep't of Toxic Substances Control, Cal. EPA & David Wang,

3.7

Currently, in order to be reimbursed by the military, municipalities and lessees must prove that the Defense Department caused the subsequently discovered contamination.[306] Understandably, the DOD will fight hard to avoid liability if the contamination cannot be proved to be "as a result of" military activities; but redevelopment authorities and their lessees will remain equally determined to be indemnified for contamination not of their doing. This tug-of-war is likely to be repeated many times as the pace of base closures accelerates, and at present there are few mechanisms to ameliorate the situation.[307]

To deal with this problem, the National Association of Attorneys General has suggested that the burden be reversed so that the military could be relieved of liability only if it establishes that it did not cause the contamination.[308] This may be a reasonable solution given the probability that the contamination at most of these facilities is likely to be DOD-based. Shifting the legal burden would send an important signal to local communities that the federal government is ready and willing to assume cleanup obligations and hold transferees harmless from costly claims and legal proceedings.

Chief, Base Closure Branch, Dep't of Toxic Substances Control, Cal. EPA). Congress sought to eliminate the confusion by repealing the appropriations language in the Fiscal Year 1994 Supplemental Appropriations Bill passed in the summer of 1993. *See* 139 CONG. REC. H4378 (1993).

306. 42 U.S.C. § 9620(h)(3)(B)(ii). A similar problem arises in situations where part of the contamination is attributable to a subsequent transferee or lessee that later becomes insolvent. Under CERCLA, the insolvency of a subsequent owner or operator forces the DOD to bear the full cost of remediation. *See id.* §§ 9607, 9613(f). To protect the government from such an eventuality, the DOD may insist on various forms of guarantees or bonding arrangements to ensure that transferees will be able to fulfill any potential obligation for remediation. However, the DOD needs to maintain a balanced posture in this area; otherwise, the additional costs that the DOD attempts to impose on communities and businesses involved in redevelopment could pose a major obstacle to the defense conversion process.

307. *See id.* § 9607. Allocation of liability and determination of indemnification rights for cleanup are difficult irrespective of whether the cause of the contamination is known definitively. Under CERCLA, both current and past owners or operators are liable on a joint and several basis, and CERCLA itself provides little guidance for allocating liability among these groups. *Id.* The House Commerce Committee report accompanying the passage of CERCLA states that: "[The C]ommittee intends that the usual common law principles of causation . . . should govern the determination of whether a defendant 'caused or contributed' to a release or threatened release." H.R. REP. NO. 1016, *supra* note 96, at 34. Subsequently decided case law tended to place a heavier liability burden on an owner or operator who performed dumping, affirmatively allowed dumping, or benefited from dumping. *See, e.g.*, Amoco Oil Co. v. Dingwell, 690 F. Supp. 78 (D. Me. 1988); Jersey City Dev. Auth. v. PPG Indus., 655 F. Supp. 1257 (D.N.J. 1987); United States v. R.W. Meyer, Inc., 932 F.2d 568 (6th Cir. 1991). The proposed Superfund reforms sought to deal with this issue by encouraging potentially responsible parties to have their share of liability determined early in the CERCLA process. *See* H.R. 3800, *supra* note 148, at 19-20.

308. *See* NATIONAL GOVERNORS' ASS'N & NAT'L ASS'N OF ATTORNEYS GEN., *supra* note 117, at 2.

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have been calls for Con
closure cleanups on beh
Hearings on Dep't of De
the Envtl. Restoration Pa
106 (1992) (testimony of
Proponents of this appr
competent cleanup firm
Id. at 8-27. Opponents
carrying out base closur
bidders even without in
tractor indemnification
remain within the Adm
Indemnifications, DEF.
22.

311. *See* REVITALIZ

312. *See* National I
160, § 2903, 107 Stat. 1

313. 42 U.S.C. § 96
least 6 months before t

3.8