

MINUTES OF THE SENATE COMMERCE COMMITTEE.

The meeting was called to order by Chairperson Karin Brownlee at 8:00 a.m. on March 12, 2003 in Room 123-S of the Capitol.

All members were present except:

Committee staff present: April Holman, Legislative Research
Deb Hollon, Legislative Research
Mitch Rice, Revisor of Statutes
Jodie Anspaugh, Secretary

Conferees appearing before the committee: Bob Eye, Kansas Trial Lawyers Association
Patricia Casey, Kansas Department of Human Resources

Others attending: See attached list.

Senator Jordan moved to approve the minutes from February 4, 5, 6, 7, 11, 12, 13, and 18. Senator Steineger seconded. The motion carried.

Senator Brownlee continued the hearing on SB 237. Bob Eye, Kansas Trial Lawyers Association, testified in opposition to the bill. (Attachment 1) He read testimony from John Parisi, President of KTLA. He is concerned with potential claims of liability associated with this property. His main concern is with the payment of attorneys' fees on page 15, lines 17-21. Mr. Eye answered questions regarding the cleanup of the property and the Brownfield amendments to the federal code.

Senator Emler engaged in conversation with Mr. Eye regarding the payment of attorney's fees. Senator Emler asked him if it was his position that he could not draft legislation making the losing party responsible for the state's attorneys fees. Mr. Eye said that it is possible, but that it is probably not good public policy. Senator Emler disagreed, and stated that last year this committee decided that it was good public policy and that is why the bill was drafted the way it was.

Patricia Casey, Kansas Department of Health and Environment, testified as neutral to SB 237. (Attachments 2 and 3) She explained the FOSET system, or Finding of Suitability for Early Transfer. Under certain circumstances the Army can transfer title to a property before all of the contamination existing on the federal property has been cleaned up. The FOSET contains information about the property which is intended to provide the Governor of the state where the property is located enough information to approve the Army's FOSET and thereby defer the covenant that all remedial action necessary to protect human health and the environment has been taken on the property. KDHE estimated that it will cost between \$97,494,000 and \$138,164,000 to complete the cleanup of all contaminated areas.

Senator Brownlee closed the hearing on SB 237.

Senator Jordan moved to amend page 2, line 29, to change "may" to "shall." Senator Brungardt seconded. The motion carried.

Senator Barone moved to change "near" to "adjacent to" on page 2, line 37. Senator Steineger seconded. The motion carried.

Senator Barone moved to remove the italicized language on page 15, lines 15-16, regarding others having to pay legal fees for the state in the event of a lawsuit against the state. Senator Bunten seconded. Senator Kerr moved a conceptual substitute motion that exempted action by the federal government for enforcement of federal law, which Senator Emler seconded. The substitute motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE at 8:00 a.m. on March 12, 2003 in Room 123-S of the Capitol.

Senator Barone moved to change language on page 5, line 23 and add a new section allowing the board of county commissioners to abolish the redevelopment authority should they decide it is no longer needed, in which case the board would assume the duties of the authority. Senator Jordan seconded. The motion carried.

Senator Wagle moved to clarify language on page 19, Section 14 (a) to read, "a pledge of the revenue derived from the state and countywide retailers' sales tax is otherwise authorized by law to be pledged for the repayment of bonds issued to finance or refinance the redevelopment." Senator Jordan seconded. The motion carried.

Senator Jordan moved to pass the bill favorably as amended. Senator Emler seconded. The motion carried.

Senator Barone moved to approve ERO 30. Senator Emler seconded. The motion carried.

The committee turned to work SB 222. Mitch Rice distributed copies of his balloon amendment, and Steve Weatherford also distributed copies of suggested amendments. (Attachments 4 and 5)

Senator Wagle moved to change the statutory reference in the title of the bill and to add "modular home" on page 3, line 16. Senator Steineger seconded. The motion carried.

Senator Barone moved to change the language on page 4 to clarify that KDFA will not be in the business of originating loans themselves. Senator Jordan seconded. The motion carried.

Senator Emler moved to change the language on page 10 per Mitch Rice's balloon amendment. (Attachment 4) Senator Barone seconded. The motion carried.

Senator Kerr moved to strike new section 5 and section 6 and renumber accordingly. This creates a statewide authority but still allows local authorities to exist. Senator Brungardt seconded. The motion carried.

Senator Brownlee announced that the committee meeting will begin at 8:15 a.m. tomorrow morning to finish working this bill.

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

The next meeting is scheduled for March 13, 2003 at 8:15 a.m. in Room 123-S.

SENATE COMMERCE COMMITTEE

GUEST LIST

DATE: Wednesday, March 12, 2003

NAME	REPRESENTING
Martha Jean Smith	KMHA
Danielle Noe	Johnson County
Erik Sartorius	City of Overland Park
Pat Luscy	KDHE
Barb Coxall	KTRA
Charles Benjamin	KS Sierra Club
Megan Chafant	Burgess and Associates
Jul Bell	State Rep 43 Dist
Ron Appletoft	Water One
Chuck Stones	Ks Bankers Assoc
Steve Weatherford	KDFA
Christine Reimler	KDOCH
Matthew Goddard	Hearland Community Bankers Assoc
Mike Pepon	Sedgwick County
Brad Snapp	Sedgwick County
Chris Wilson	KBIA
Whitney Damron	City of Topeka
SUE PETERSON	K-STATE
Jon Josseland	KU
Jammy Dishman	KDFA
Scott Young	Kessinger Hunter
Fred Bentley	



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Commerce Committee

FROM: John Parisi
President
Kansas Trial Lawyers Association

RE: 2003 SB 237

DATE: March 12, 2003

Chairman Brownlee and members of the Senate Commerce Committee, I am John Parisi, president of the Kansas Trial Lawyers Association (KTLA). KTLA is a statewide, nonprofit organization of lawyers who represent consumers and advocate for the safety of families and the preservation of the civil justice system. We appreciate the opportunity to appear before you today in opposition to SB 237.

KTLA has concerns regarding exposing the State to unknown liability during the remediation of the land which once housed the Sunflower Ammunition Plant. I would like to take this opportunity to explain KTLA's opposition to SB 237, amending K.S.A. § 74-8921(c)(1). Although KTLA has several concerns about SB 237, the most significant concern is Sec. 10(c)(1) which states:

"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, or any fees which may relate thereto, which may be required to be performed within the redevelopment district designated through any redevelopment plan, and any attorneys fees incurred by the State of Kansas as a defendant in any litigation arising from any such environmental remediation or fees relating thereto shall be paid by the party or parties bringing the litigation or otherwise causing the State of Kansas to be a party to the litigation."

This provision of the bill, which attempts to immunize the State from remediation costs, conflicts with liability provisions of the Comprehensive Environmental Response and Liability Act (CERCLA), codified at 42 U.S.C. § 9601, et seq, a federal statute which provides for liability for environmental contamination by an owner or other "potentially responsible party" (PRP) of the contaminated property. Despite the apparent attempt of SB 237 to immunize the State from liability, federal law imposes potential liability on the State of Kansas for environmental remediation, in the event the State is named as a responsible party or as a potentially responsible party under CERCLA.

Terry Humphrey, Executive Director

Fire Station No. 2 • 719 SW Van Buren Street, Suite 100 • Topeka, Ks 66603-3715 •

E-Mail: triallaw@ink.org

Senate Commerce Committee

3-12-03
Attachment 1-1

An attempt to shift the responsibility to pay the State's attorneys fees to a party who brings an action which ultimately causes the State of Kansas to pay attorneys fees is misguided and potentially unconstitutional. To the extent the federal government names the State of Kansas as a potentially responsible party (PRP) under CERCLA, the State can not make the federal government pay the attorney fees of the State.

Moreover, the act could result in an individual who was injured during a remediation activity having to pay the State's attorneys fees in the event that someone else in the litigation compares the State's fault. The basis for such a comparison of fault is the Kansas One Action Rule, embodied in K.S.A. § 60-258a which provides that the fault of all parties is to be compared in one action. The "One Action" Rule of K.S.A. § 60-258a further provides that any party to the litigation may seek to compare the fault of any other entity responsible for the damage sustained by the plaintiff.

In the event a defendant in a lawsuit brings in the State for purposes of comparing fault under K.S.A. § 60-258a, the plaintiff in that lawsuit would have to adopt those allegations in order to be able to fully recover their damages in the event damages were available from the State. In such instance, because the plaintiff "brought" an action in which claims were made against the state, pursuant to SB 237 the plaintiff would be forced to pay the State's attorneys fees. Importantly, even if the plaintiff did not adopt the defendant's allegations against the State, the plaintiff could arguably be made to pay attorney fees to the State under SB 237 because the plaintiff instituted the original action which "caused" the State to incur fees when a defendant to the original suit brought the State into the litigation. Such a result is unjustified and clearly unfairly penalizes the injured party.

KTLA also opposes SB 237 because it shifts the burden of attorney's fees from the State of Kansas to the plaintiff. KTLA opposes this fee shifting provision because it violates the long-standing American Rule that requires each party to litigation pay their own attorney's fees. In contrast to the American Rule, the English Rule requires the losing party to pay the other side's fees. The English Rule runs counter to the longstanding common law American tradition that both sides pay their own attorney fees in a litigated dispute. KTLA strongly supports the American Rule and condemns the English Rule as it blocks access to the courthouse for those with legitimate claims but are least able to afford to litigate if they should lose the dispute and have to pay the attorney fees of the other side.

As you are aware, the result in litigation is by no means a certainty. Many legitimate disputes are filed, and lost, by the parties seeking redress. Access to the courthouse should not be effectively closed by the threat of having to pay the other side's attorney fees should they lose a legitimate but disputed claim. That is exactly why the English Rule has been uniformly rejected in America. SB 237 goes even further than the English Rule by, in every instance, requiring the party who brings the lawsuit which ultimately causes the State to incur attorney fees, to pay the State's fees regardless of the outcome. **This provision is unprecedented under Kansas law.** It erects a barrier to the

courthouse which goes beyond the disfavored English Rule and in the view of KTLA, presents an impermissible barrier to Kansans' constitutional right of access to the courts.

Moreover, to the extent that the bill tries to insulate Kansas from the effects of federal environmental laws, such as CERCLA, the Resource Conservation and Recovery Act (RCRA), Clean Water Act (CWA), Clean Air Act (CAA), or other federal environmental statutes, it is unenforceable. In that regard, please see the attached April 9, 2002 letter that was sent by Randy Rathbun, a Kansas attorney and recognized practitioner in environmental law and former United States Attorney for the State of Kansas, to Sen. John Vratil opposing this bill in its 2002 form, SB 611.

We appreciate this opportunity to explain KTLA's opposition to SB 237. The bill unfairly penalizes plaintiffs and effectively closes the courthouse doors to any individual who is injured by remediation activity. The threat of paying the State's attorney fees will preclude most injured parties from being able to afford to bring an action.

DEPEW AND GILLEN, L.L.C.

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April 9, 2002

Senator John Vratil
Room 120-S
State Capitol
Topcka, KS 66612

RE: SB 611

Dear Senator Vratil:

I very much appreciate the chance to share with you my views on the above-referenced legislation. By way of background, I graduated from Washburn School of Law and have had a practice that, but for three years in which I served as United States Attorney, has emphasized environmental litigation. In reviewing the proposed amendments contained at page 12 of the Substitute for Senate Bill 611, which relates to amendments to K.S.A. 74-8921(c)(1), I have two overriding concerns. The concerns are as follows:

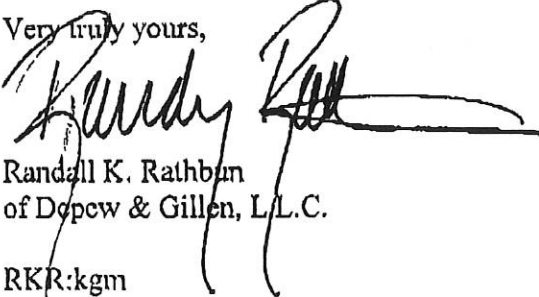
- (1) To the extent a worker was injured in remediation activities that may be ongoing at the site, third parties may arise. These third parties may attempt to compare the fault of the State of Kansas and attempt to bring them into the litigation. It could be argued that the plaintiff would be responsible for the attorneys' fees for the State of Kansas simply because the plaintiff had brought the litigation. This could be the case even though the plaintiff may resist comparing the fault of the State and object to the State actually being in the lawsuit.
- (2) A more philosophical concern about this litigation is that it is most likely unenforceable. Congress has preempted the field of hazardous waste remediation by passage of the Comprehensive Environmental Response Compensation and Liability Act, the well-known Superfund or CERCLA Act. The statute sets forth a clear scheme of authority which makes any owners of the property PRPs

Senator John Vratil
April 9, 2002
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(Potentially Responsible Party) and responsible for clean up at the site in question. Obviously, the state cannot avoid its liability by simply taking a position that it is not going to be responsible for clean up.

I would welcome the chance to discuss either of these concerns with you if you are interested. I greatly appreciate your taking the time to consider these points.

Very truly yours,



Randall K. Rathbun
of Depew & Gillen, L.L.C.

RKR:kgm



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

Senate Bill No. 237

**to the
Senate Commerce Committee**

**by
Patricia Casey, Counsel for the
Kansas Department of Health and Environment
March 11, 2003**

I am pleased to appear before the Senate Commerce Committee to give information about the Finding Of Suitability For Early Transfer (FOSET) generally and as that process is being applied to the Sunflower Army Ammunition Plant.

Statutory Background of a FOSET

Normally, the Army is required to provide a covenant in the deed of transfer that all remedial action necessary to protect human health and the environment has been taken on the property. [42 USC Sect. 9620(h)(3)(A)]

Under certain circumstances the Army can transfer title to the property before all of the contamination existing on the federal property has been cleaned up; this is called an "Early Transfer". [42 U.S.Code Sect. 9620(h)(3)(C)]

This process starts with the Army making and preparing a Finding of Suitability for Early Transfer (FOSET). The FOSET contains information about the property which is intended to provide the Governor of the state where the property is located enough information to approve the Army's FOSET and thereby "defer" the covenant that all remedial action necessary to protect human health and the environment has been taken on the property.[42 U.S.C. Sect. 9620(h)(3)(C)]

Senate Commerce Committee

3-12-03

Attachment 2-1

OFFICE OF THE SECRETARY

Legal Services

CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE. 560, TOPEKA, KS 66612-1368

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Fax 785-291-3607

<http://www.kdhe.state.ks.us>

Sunflower FOSET Process

The process being used for Sunflower is different in that a Preliminary FOSET was published for a thirty (30) day public comment on February 13, 2003. That comment period expires on March 17, 2003. After that period expires, the Army will prepare a Response to Comments and append that Response to the Preliminary FOSET. After the Army signs the Preliminary FOSET, it will be sent to the Governor for approval or disapproval as a Preliminary Request for Covenant Deferral.

The reason why a Preliminary FOSET and not a Final FOSET is being used initially, is that there are several documents, which were on the website referenced in the Public Notice accompanying the Preliminary FOSET, which may be negotiated in the event that the Governor preliminarily approves Preliminary FOSET. Among those documents are an Army/Developer Agreement, a KDHE/Developer Consent Order, a KDHE/Developer Classification Plan Deeds of Transfer containing the Covenant and Deeds of Transfer containing the Deferred Covenant.

If all of the documents necessary to transfer title to Sunflower are negotiated to completion, a Final FOSET will be prepared by the Army. That Final FOSET and all of the completed transfer documents will be published for an additional thirty (30) day public comment period. After that comment period expires, the Army will prepare a Response to Comments and append that Response, along with the completed transfer documents, to the Final FOSET. After the Army signs the Final FOSET, it will be sent to the Governor for approval or disapproval as a Request for Covenant Deferral.

Sunflower Preliminary FOSET

It provides that title will be passed from the Army to a state agency authorized to take title to property, in this case Sunflower.

This state agency will then convey that title to the Developer prior to the completion of the environmental remediation.

The property will be re-developed consistent with the July 23, 1998, Johnson County Comprehensive Land Use Plan.

The level of cleanup will be determined by the use described in the Johnson County Comprehensive Land Use Plan

OUTLINE OF THE SUNFLOWER FOSET PROCESS

1. Army determined Sunflower is appropriate for a Finding Of Suitability For Early Transfer
2. Army prepared a Preliminary FOSET
3. The Preliminary FOSET is published accompanied by a Public Notice, providing for a public comment period of thirty (30) days. Here 2/13/03 through 3/17/03.
4. Army will prepare a Response to Comments and append that to the Preliminary FOSET.
5. The Preliminary FOSET and Response will be forwarded to the appropriate Army Officers for review and signature.
6. The executed Preliminary FOSET and Response will be transmitted to the Governor accompanied by a Preliminary Request for Covenant Deferral.
7. The Governor will either agree/disagree to the Preliminary Request for Covenant Deferral, thereby either approving/disapproving the Preliminary FOSET.
8. If the Governor agrees/approves the Preliminary Request for Covenant Deferral, the transfer documents for Sunflower will be negotiated by the respective parties. (See next page)
KDHE/Developer Consent Order
Army/Developer Agreement
KDHE/Developer Classification Agreement
Memo of Agreement Conveyance Agreement (Deeds)
9. If all the transfer documents are negotiated to completion, a Final FOSET will be prepared by the Army.
10. The Final FOSET will be published for a thirty (30) day public comment period. All of the negotiated transfer documents will be available to the public for comment.
11. After the thirty (30) day comment period, the Army will prepare a Response to Comments, which will be appended to the Final FOSET.
12. The Final FOSET and Response will be forwarded to the appropriate Army Officers for review and signature.
13. The executed Final FOSET and Response will be transmitted to the Governor accompanied by a Final Request for Covenant Deferral.
14. The Governor will either agree/disagree to the Final Request for Covenant Deferral, thereby either approving/disapproving the Final FOSET.

ARMY Properties

- [* Main Library](#) [* Online Mapping](#) [* Points of Contact](#)
[* Web Site Map](#) [* FAQ](#) [* Search](#) [* MP Home](#)

*The following documents may be too large for your computer to handle.
Hard copies of the documents are available at the Johnson County libraries
and the Olathe Library (201 E. Park Street, Olathe, KS 913-393-6888).*

Sunflower Preliminary FOSET NEW

- Site map with legal description of property
- Site map depicting areas with explosively contaminated buildings, structures and foundations (does not include industrial sewer lines)
- Johnson County Reuse Plan
- Contents of Deed or Transfer Agreement
- List of Environmental Studies
- Explosive Categorization Matrix
- Site maps depicting explosively contaminated underground industrial sewer lines
- SWMU Map & Description
- Hazardous substance storage activities
- Public comments; Response to public comments; Unresolved comments

KDHE/Developer Consent Order Template NEW

- Army/Developer Agreement
- Exhibits

Draft Section 106 MOA

SFAAP Cultural Resources Management Plan

Pre-1955 buildings surveyed for Section 106 Compliance

- MOA Conveyance Agreement (190KB)
- Exhibits

Public Benefit Transfer Agreements

- University of Kansas Acquisition Agreement
- Kansas State University Acquisition Agreement
- City of DeSoto Acquisition Agreement
- Johnson County Water District Acquisition Agreement
- Johnson County Parks and Recreation Acquisition Agreement
- DeSoto Acquisition Agreement
- Public Benefit Donation, Conceptual Block Diagram

- Final SFAAP Environmental Assessment (104MB)
- Environmental Assessment findings

- SFAAP Environmental Assessment Signature Page (77KB)
- Separate signature page for easy reference

- Final SFAAP FONSI (77KB)
- Finding of No Significant Impact for proposed property disposal (January 3, 2000)

- Sunflower Army Ammunition Plant
- Plant information from the EPA, Region 7.

- SFAAP
- Defense Environmental Restoration Program Annual Report on Sunflower AAP

- Johnson County
- Plant capability information from the Army IOC web page

- Sunflower Restoration Advisory Board Meeting Minutes
- February 2001

*Badger, AAP
Kansas, AAP
Sunflower, AAP*

*Images
Library
Links
Newsletter
AP Home*

*Twin Cities, AAI
Volunteer, AAP*

**Army Newsletters*

2-4

PUBLIC NOTICE

The U.S. Government intends to transfer all real property at the Sunflower Army Ammunition Plant (Sunflower), in DeSoto, Kansas, consisting of 9,065 acres, to a duly authorized agency of the State of Kansas for subsequent conveyance to a private developer for mixed-use general development consistent with the Johnson County Comprehensive Land Use Plan. Sunflower was used primarily for the production of propellant needed for the Department of Defense. Currently the Army is undertaking environmental investigation and remedial activities at Sunflower to address hazardous substance contamination on the installation, but such activities will not be completed prior to the transfer of some portions of the property. The Sunflower Environmental Baseline Survey may be viewed at the DeSoto Public Library in DeSoto, Kansas.

Under Federal Law, the Army may transfer Sunflower prior to the completion of remediation activities if the Governor of Kansas determines, among other facts, that: the property is suitable for transfer; the intended use is consistent with the protection of human health and the environment; adequate assurance exists that all necessary response actions will be taken; and the required response actions will not be substantially delayed or disrupted. The specific statutory requirements are set forth in Section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The mechanism through which this occurs is called a Covenant Deferral Request.

The Army is seeking public and regulatory comments on a Preliminary Finding Of Suitability For Early Transfer (FOSET) no later than 30 days from the date of this public notice. The Sunflower FOSET was prepared to provide the Governor of Kansas the necessary information to make a preliminary determination regarding the transfer of certain portions of Sunflower prior to completion of all remedial actions. The Preliminary FOSET summarizes the environmental conditions at Sunflower and identifies restrictions and controls to allow the property to be transferred without causing an unacceptable risk to human health and the environment and without interfering with the on-going Sunflower environmental remedial activities. In particular, the Preliminary FOSET is contingent upon completion of certain Sunflower Early Transfer documents such as a KDHE/Developer consent order, an Army/Developer agreement, and a State Agency/Developer transfer agreement.

The effect of the approval of the Preliminary FOSET (Covenant Deferral Request) by the Governor will be to allow Sunflower early transfer negotiations to proceed. Upon completion of the Sunflower early transfer documents, a final Sunflower FOSET will be prepared and made available for public comment. A Final FOSET (Covenant Deferral Request) incorporating the early transfer documents will be submitted to the Governor of Kansas. The effect of the approval of this request by the Governor will be to allow transfer of the property prior to the completion of remediation activities in accordance with CERCLA Section 120(h)(3)(C).

The Preliminary FOSET may be viewed at http://propertydisposal.gsa.gov/mip/army/sunflower/sunflower_library.asp. Copies of the Preliminary FOSET may also be obtained at the Johnson County Public Libraries in

DeSoto, Olathe, and Overland Park, or at the Sunflower Army Ammunition Plant, office of Commander's Representative. A template of the consent order between KDHE and the developer may be viewed at <http://www.kdhe.state.ks.us/ber/index.html>. Comments on the Preliminary FOSET and the suitability of this property for transfer subject to a Covenant Deferral should be mailed no later than 30 days from the date of this public notice to: Commander's Representative, Sunflower Army Ammunition Plant, Attn: Mr. Tony E. Spaar, Department of the Army, Sunflower Army Ammunition Plant, P.O. Box 640, DeSoto, KS 66018-0640.

PRELIMINARY

**FINDING OF SUITABILITY
FOR EARLY TRANSFER
(FOSET)**

**SUNFLOWER ARMY AMMUNITION PLANT
DESOTO, KS**

February 2003

**ENVIRONMENTAL MANAGEMENT OFFICE
SUNFLOWER ARMY AMMUNITION PLANT (SFAAP)
DESOTO, KANSAS**

PRELIMINARY FINDING OF SUITABILITY FOR EARLY TRANSFER
FOR THE
SUNFLOWER ARMY AMMUNITION PLANT
DESOTO, KANSAS

1.0 BACKGROUND

Sunflower Army Ammunition Plant ("Sunflower") is a military installation comprising approximately 9,063 acres of land. It is located near the city of DeSoto, Johnson County, Kansas. In 1941, the United States of America (hereinafter sometimes referred to as the "Government" or "Grantee") acquired ownership of the Sunflower site. Sunflower was subsequently constructed on the site and used by the U.S. Army to manufacture propellants (i.e., composed of nitroglycerine, nitrocellulose, and nitroguanidine) until 1992. A history of Sunflower's propellant production area activities is at Attachment 1.

In 1997, the U.S. Army determined Sunflower was excess to its needs and available for disposal. In September 1998, the U.S. Army, pursuant to authority of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377, 40 U.S.C. §§471, et seq.) as amended, and rules, orders, and regulations issued pursuant thereto, requested the General Services Administration (GSA) to dispose of the federal property associated with Sunflower. A site map providing the legal description of the property is provided at Attachment 2.

2.0 PURPOSE

When a federal agency transfers real property, the deed must contain a covenant warranting that all remedial action necessary to protect human health and the environment has been taken before the date of transfer, 42 U.S.C. §9620(h)(3)(A) and §9620(h)(4)(D) (the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) Covenant). However, the Governor of the State may approve the deferral of the CERCLA Covenant requirement pertaining to federal property that is not listed on the National Priorities List (NPL). See 42 U.S.C. §9620(h)(3)(C).

The purpose of this Preliminary Finding Of Suitability For Early Transfer (FOSET) is to provide the information necessary to allow the Governor of Kansas to make a preliminary determination regarding the deferral of the CERCLA Covenant requirement and the transfer of certain portions (approximately 6, 239 acres) of Sunflower prior to completion of all remedial action. A final FOSET will be prepared and made available for public comment upon the completion of a KDHE/Developer Consent Order and other agreements relating to the transfer of Sunflower (See Section 4.0 for additional information).

The early transfer will not include the following portions of Sunflower (approximately 2,824 acres):

- Areas containing explosive residue.

- Buildings/Structures and Production Equipment. All areas containing explosively contaminated buildings/structures and production equipment will be separately transferred after explosive decontamination is completed in accordance with the Department of Defense Explosive Safety Board (DDESB) Explosive Site Submission (ESS) dated June 2000. A map identifying these areas is provided at Attachment 3.
- Industrial Sewer/Process Lines and Building Foundations. All areas containing explosively contaminated industrial sewer/process lines and building foundations (if applicable) will be separately transferred. The Army will prepare a separate ESS to address explosive decontamination of the industrial sewer/process lines and building foundations. A map identifying the underground industrial sewers is provided at Attachment 8.

See Section 7.1 for additional information on Sunflower Explosive Contamination.

- Remediated Areas. This FOSET will not include those portions of Sunflower where all remedial action has been completed. Instead, the Army will provide the CERCLA Covenant that all necessary remedial action has been taken. The remediated areas will be determined by a Final Classification Report, which will be prepared pursuant to a separate Classification Agreement between the Developer and the Kansas Department of Health and the Environment (KDHE), setting out the procedures, criteria, and requirements for information to be used in the determination of all current remediated properties.

3.0 INTENDED REUSE

In order to facilitate beneficial reuse, the State of Kansas has expressed an interest in acquiring Sunflower through a duly authorized State agency prior to the completion of all environmental remediation. The State agency will subsequently reconvey the entire property to a private developer, Kessinger/Hunter & Co., L.C., for mixed-use general development. While the State and Developer negotiations have not been finalized, it is anticipated that the redevelopment of Sunflower will be subject to and consistent with the Johnson County Comprehensive Land Use Plan for Sunflower dated July 23, 1998 (Attachment 4). The Johnson County Land Use Plan contemplates a broad spectrum of uses for the property, including residential, park/recreation, retail, commercial, light industrial, etc.

Note – a previous proposed early transfer of Sunflower contemplated the development of a “Wonderful World of Oz” theme park. There will be no theme park included in the current Sunflower redevelopment plan.

4.0 Future Remediation:

The Army is in the process of investigating solid waste management units and areas of concern, including the preparation of risk assessments, and remediating certain portions of Sunflower. While the Army is ultimately responsible for ensuring that any and all necessary response actions are taken at Sunflower, it is anticipated that the Developer will assume responsibility for a significant portion of the Sunflower cleanup program.

- KDHE/Developer Consent Order - Prior to completing the Sunflower early transfer, the Developer and KDHE will enter into a consent order outlining investigation and remediation to be completed on the property by the Developer. The Consent Order will identify the scope of the Developer's investigation and remediation responsibilities, cleanup standards, and requirements for environmental remediation insurance. The Developer's remediation actions will be performed in accordance with the SFAAP RCRA Hazardous Waste Management Permit and applicable federal and state laws and will be subject to oversight by KDHE.
- Army/Developer Agreement - Prior to completing the Sunflower AAP early transfer, the Army and Developer will enter into an agreement outlining investigation and remediation to be completed on the property by the Army. Specifically, the Army will agree to mitigate any explosive hazards in buildings/structures, production equipment, industrial sewers/process lines, and building foundations and will perform other environmental remediation as determined by the Army and the Developer. The Army's remediation actions will be performed in accordance with applicable federal and state laws and will be subject to oversight by KDHE and EPA Region VII.
- RCRA Hazardous Waste Management Permit – No later than 90 days prior to completing the Sunflower AAP early transfer, the Army and the Developer will request a modification to the permit issued September 30, 1991 to make the Developer the Owner and Operator. The Developer shall comply with the permit and any re-issued permit. The remediation of Sunflower pursuant to the KDHE/Developer Consent Order shall be conducted in a manner to be protective of human health and the environment and to obviate the need for further corrective action under the Sunflower RCRA Hazardous Waste Management Permit and other applicable environmental laws and regulations.
- State Agency/Developer Agreement - Prior to completing the Sunflower early transfer, the State Agency taking title to Sunflower and the Developer will enter into an agreement outlining the conditions under which the State Agency will take title to Sunflower , including but not limited to indemnification of/holding harmless the State Agency as well as the State of Kansas, consistent with the KDHE/Developer Consent Order template. A copy of the KDHE/Developer Consent Order template is also available at : <http://www.kdhe.state.ks.us/ber/index.html>.

The Army hereby acknowledges that the early transfer of any portion of Sunflower pursuant to this FOSET is conditioned upon the completion of the KDHE/Developer Consent Order, the Army/Developer Agreement, and a KDHE/EPA Region VII Memorandum of Agreement (KDHE/EPA MOA) defining roles and responsibilities for oversight of the Sunflower remediation. The KDHE/Developer Consent Order, the Army/Developer Agreement, and the KDHE/EPA MOA will follow the basic terms and conditions set forth in a consent order and agreement that were developed by KDHE, the Army and a previous State-selected Developer for the early transfer of Sunflower. The KDHE/Developer Consent Order, the Army/Developer Agreement, and KDHE/EPA MOA will be revised as necessary to reflect new site conditions and other aspects related to this proposed early transfer of Sunflower. A copy of the previous Army/Developer agreement, the KDHE/Developer consent order template, the KDHE/EPA MOA and other documents are available at _

5.0. RESPONSE ACTION ASSURANCES

5.1 The Deferred Covenant Deed shall include all necessary restrictions on the use of the property to ensure protection of human health and the environment and ensure that required government remedial investigations, response action, and oversight activities will not be disrupted by the Property Owner. A summary of the restrictions to be included in the "Deferred Covenant Deed" is provided at Attachment 5.

5.2 The ultimate sales agreement to be completed and entered into by the Government and the non-federal purchaser, whether a person or entity shall: (1) identify the schedules for investigation and completion of all necessary response actions; and (2), require the Army to submit a budget request to the Director of the Office of Management and Budget that adequately addresses schedules for investigation and completion of all necessary response action.

In addition, the Army acknowledges that notwithstanding any future KDHE/Developer Consent Agreement, Army/Developer Agreement, and any future RCRA Hazardous Waste Management Permit transfer, the Army remains ultimately responsible for ensuring that any and all response actions are completed to the extent required by CERCLA 120(h).

6.0. NATURE AND EXTENT OF CONTAMINATION IMPACTING THE PROPERTY

Based on investigations, studies, and documentation, the Army has identified certain portions of Sunflower that contain hazardous substances that will require further investigation and response actions (See Section 7.2 for additional information). This information was obtained as a result of a complete search of Army Department files developed during the Sunflower Environmental Baseline Survey(s) dated August 1998 and through the RCRA corrective action process. A complete list of all environmental studies is found in Attachment 6.

7.0 ENVIRONMENTAL CONDITIONS OF THE PROPERTY

7.1 EXPLOSIVE CONTAMINATION:

Some of the buildings/structures, production equipment, industrial sewer/process lines, and foundations on the property contain residue from explosive production. An explosive categorization matrix, Attachment 7, describes each building/structure explosive category. To date 1,429 buildings/structures have been disposed via thermal decomposition in accordance with the DDESB Explosive Site Submission (ESS) dated June 2000. The remaining explosive-impacted buildings/structures will be disposed by the same means. The Army is developing an ESS to address explosive decontamination of the industrial sewer/process lines and foundations. A map depicting the location of the industrial sewer/process lines that are potentially explosively-impacted is provided at Attachment 8.

Protective Measures - The explosive residue risk will be mitigated by restricting public access by use of fencing (including the 6 foot high Sunflower perimeter fence) and warning signs until such time as explosive-impacted buildings/structures and production equipment are explosively

decontaminated and restricting excavation activities until explosive-impacted industrial sewer/production lines and foundations are explosively decontaminated. These areas will not be transferred until explosive decontamination is completed in accordance with the applicable DDESB ESS.

7.2 SWMUs, AREAS OF CONCERN, AND NEW SWMUS:

The hazardous waste management permit issued on September 30, 1991, identified forty-nine (49) Solid Waste Management Units (SWMUs). Eighteen (18) additional SWMUs were subsequently identified from Army investigations. In addition, twenty-two (22) Areas of Concern (AOCs) have been identified from Army investigations. These AOCs do not have a documented history of the storage, release, or disposal of hazardous substances, but require further investigation because of prior use or suspected activities. These AOCs will all require a RCRA Facility Investigation, and, if necessary, a Corrective Measures Study and Remedial Action. A map and description of the SWMUs and AOCs is at attachment 9.

7.3 GROUNDWATER CONTAMINATION:

The main groundwater contaminants are propellant compounds including nitrates, sulfates, and metals. Groundwater contamination has migrated outside certain SWMU boundaries inclusive of SWMUs 13, 27, 41, and 48. Further investigation is required to determine the extent of groundwater contamination within or beyond SWMU and AOC boundaries. SWMUs which may have contaminated groundwater, within or beyond their boundaries: 1, 2, 4, 5, 6, 10, 11, 14, 16, 17, 18, 19, 21, 22, 24, 25, 30, 31, 33, 35, 36, 38, 40, 43, 44, 45, 47, 49, 53, and 54.

Protective Measures - The groundwater contamination on the property is located at depths ranging from 0.5 feet to 41.5 feet. The groundwater contamination poses a potential threat to human health through contact with and ingestion of contaminated groundwater or to the environment if discharged to surface water. The Army and Developer shall mitigate any immediate threat to human health from the groundwater through restricting groundwater usage in accordance with the Army/Developer Agreement and the KDHE/Developer Consent Order.. Groundwater contamination shall be remediated to provide long-term protection of human health and the environment.

7.4 Soil Contamination

The main soil contaminant is lead, along with propellant compounds including nitrocellulose, nitroglycerine, and nitroguanidine. Small pieces of propellant may be present on the ground or in shallow soil. Sediments in drainage ditches and streams may be contaminated from releases of hazardous constituents. Further investigation may be required to determine the extent of soil contamination within or beyond SWMU and AOC boundaries and sediment contamination.

Protective Measures - The soil contamination poses a potential threat to human health through contact with and ingestion of contaminants. The Army and the Developer shall mitigate any immediate threat to human health from soil or propellant in accordance with the Army/Developer Agreement and the KDHE/Developer Consent Order. Soil contamination and propellants shall be remediated to provide long-term protection of human health and the

environment.

8.0 OTHER ENVIRONMENTAL CONDITIONS

8.1 STORAGE, RELEASE, OR DISPOSAL OF HAZARDOUS SUBSTANCES:

There are no ongoing hazardous substance storage activities at Sunflower. A summary of the buildings or areas in which hazardous substances were stored for more than one year, released, or disposed of is provided in Attachment 10.

8.2 ASBESTOS:

There is approximately 44 miles of asbestos insulated above ground steam lines. There are many areas where the asbestos insulation is friable, exposed to the weather and falling off onto the ground. Currently the risk to human health is low due to restricted public access to SFAAP. The remediation of the friable asbestos on the steam lines and in the soil under the steam lines will be addressed as part of the Army/Developer agreement (See Section 4.0).

8.3 LEAD-BASED PAINT (LBP):

Virtually all structures (e.g., buildings and tanks) at SFAAP were constructed before 1978. All painted surfaces on structures built before 1978 should be assumed to have been painted with lead-based paint, unless analytical testing indicates otherwise. These structures are not intended to be used for residential purposes .

8.4 POLYCHLORINATED BIPHENYLS (PCBs).

There are approximately 280 electrical stations located at Sunflower that had one or more transformers containing oil with various concentrations of polychlorinated biphenyls (PCBs) that have operated since the 1940's. All transformers with PCB concentrations greater than 50 parts per million were removed from Sunflower by December 1999. Historical information regarding past releases and the concentration of the PCBs in transformers at the electrical stations is limited. The past PCB releases will be addressed as part of the KDHE/Developer Consent Order, the Army/Developer Agreement, and the RCRA Hazardous Waste Management Permit.

9.0 CONTENTS OF DEFERRED COVENANT DEED AND TRANSFER AGREEMENT:

Given the explosive, soil, and groundwater contamination on Sunflower, the deed transferring the property will include a no-residential-use, excavation, and groundwater restrictions pending completion of remediation activities. In addition, the property will have interim restrictions limiting activities in or adjacent to SWMUs or AOCs to further investigation, study, analysis, and remediation, unless KDHE specifically approves other activities. Finally, the deed will include a provision reserving the Army's right to conduct remediation activities on the property. See Attachment 5.

10.0 REGULATORY/PUBLIC COORDINATION

The Army provided public notice of its contemplated use of the Early Transfer Authority and its intent to request approval by the Governor of Kansas of covenant deferral, by publishing a notice in local newspapers, on February 13, 2003. The United States Environmental Protection Agency (EPA), Region 7, and the KDHE were also notified of the initiation of this Preliminary FOSET on February 13, 2003 and given an opportunity to provide comments. The comments will be reviewed and addressed before this document is presented to the Governor of Kansas for a preliminary determination on the transfer of certain portions of Sunflower prior to completion of all remedial action. The comments, responses, and unresolved comments will be added to the FOSET as Attachment 11, as appropriate. A final FOSET will be prepared and made available for public comment upon the completion of a KDHE/Developer Consent Order and other agreements relating to the Sunflower early transfer.

11.0 SUITABILITY DECLARATION:

As the Department of the Army official authorized to make such determinations, I, the undersigned, conclude that all Department of the Army requirements to reach a preliminary finding of suitability for early transfer of the Property to conduct remediation and redevelop the property for mixed use, general development, non-residential property have been met subject to the reservations, restrictions, covenants, and controls discussed in this FOSET and its attachments. With the reservations, restrictions, covenants, and controls set forth in this FOSET, the Army has made a preliminary determination that the Property may be transferred in its present condition for remediation and uses contemplated under the proposed Comprehensive Land Use Plan for Sunflower that has been developed by the Board of County Commissioners for Johnson County, Kansas, without causing an unacceptable risk to human health and the environment and without interfering with the on-going Sunflower environmental response actions. A final FOSET will be submitted to the Kansas Governor upon completion of a KDHE/Developer Consent Order and other agreements relating to the Sunflower early transfer.

Date

Raymond J. Fatz
Deputy Assistant Secretary of the Army
(Environment, Safety, and Occupational Health
OASA (Installations and Environment))

**SUNFLOWER FOSET
LIST OF ATTACHMENTS**

1. Explosive Production History
2. Site map w/legal description of property
3. Site map depicting areas with explosively contaminated buildings, structures and foundations (does not include industrial sewer lines)
4. Johnson County Reuse Plan
5. Contents of Deed or Transfer Agreement
6. List of environmental studies
7. Explosive Categorization Matrix
8. Site maps depicting explosively contaminated underground industrial sewer lines
9. SWMU Map & Description
10. Hazardous substance storage activities
11. Public comments; Response to public comments; Unresolved comments

Sunflower Army Ammunition Plant Contamination

KDHE's current estimate to complete remediation of all the Sunflower SWMU's and AOC's ranges from \$ 97,494,000 to \$ 138,164,000.

Of the 6,000 acres, approximately 3,300 acres are contaminated (SWMU's and AOC's). Most of the uncontaminated 2,700 acres of Sunflower are areas between/among the areas of contamination. This is due to the fact that wherever the Army had a processing facility, contamination is found.

Of those 3,300 contaminated acres, approximately 1,300 acres, as well as three contaminated groundwater plumes, need investigation to determine the extent of contamination and remediation. This spring the Army is sampling the 30 unassessed sites in order to build them into their cost estimate with some degree of confidence.

To give some sense of proportion to the remediation at Sunflower, the Army estimated there were 139,530 cu. yds. of known contaminated soil, while Oz estimated 200,000 cu. yds. The remediation method used for the contaminated soil is excavation, treatment, hauling and disposal. As an illustration, a semi-trailer holds about 20 cu.yds. of dirt.

SENATE BILL No. 222

By Committee on Ways and Means

2-13

AN ACT concerning housing; relating to the Kansas development finance authority; authorizing the issuance of mortgage revenue bonds; amending K.S.A. 12-5233, 74-8902, 74-8904, 74-8905 and 74-8912 and repealing the existing sections.

74-8903,

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

Section 1. K.S.A. 74-8902 is hereby amended to read as follows: 74-8902. The following words or terms used in this act shall have the following meanings unless a different meaning clearly appears from the context:

(a) "Act" means the Kansas development finance authority act.

(b) "Authority" means the Kansas development finance authority created by K.S.A. 74-8903, and amendments thereto.

(c) "Agricultural business enterprises" means facilities supporting or utilized in the operation of farms, ranches and other agricultural, aquacultural or silvicultural commodity producers and services provided in conjunction with the foregoing. "Agricultural business enterprise" shall not include a swine production facility on agricultural land which is owned, acquired, obtained or leased by a corporation, limited liability company, limited partnership, corporate partnership or trust.

(d) "Agricultural land," "corporation," "corporate partnership," "limited liability company," "limited partnership," "swine production facility" and "trust" have the meanings ascribed pursuant to K.S.A. 17-5903, and amendments thereto.

(e) "Board of directors" means the board of directors of the authority created by K.S.A. 74-8903, and amendments thereto.

(f) "Bonds" means any bonds, notes, debentures, interim certificates, grant and revenue anticipation notes, interest in a lease, lease certificate of participation or other evidences of indebtedness, whether or not the interest on which is subject to federal income taxation, issued by the authority pursuant to this act.

(g) "Capital improvements" means any physical public betterment or improvement or any preliminary plans, studies or surveys relative thereto; land or rights in land, including, without limitations, leases, air rights, easements, rights-of-way or licenses; and any furnishings, machinery, vehicles, apparatus or equipment for any public betterment or

Senate Commerce Committee

3-12-03

Attachment 4-1

ensus contained a population of 25,000 or less, not less than 150 permanent and seasonal employment positions as defined by K.S.A. 74-50,114, and amendments thereto, will be created in the state by such project; (iii) is located outside of the city limits of any city at the time of such finding; and (iv) is to be located at a site designated as a federal enclave as of January 1, 1998.

(r) "State" means the state of Kansas.

(s) "State agency" means any office, department, board, commission, bureau, division, public corporation, agency or instrumentality of this state.

(t) "Home" means (1) (A) a one to four family residence;

(B) a condominium as defined in K.S.A. 58-3102, and amendments thereto;

(C) a manufactured home, as defined by K.S.A. 58-4202, and amendments thereto; or

(D) a mobile home, as defined by K.S.A. 58-4202, and amendments thereto, having a permanent foundation which may not be removed intact from the land; and

(2) consists of the land and improvements thereon, which is either owned and occupied or is owned and is to be occupied by the mortgagor, and in the case of a two to four family residence one unit of the residence, shall be either owned and occupied or is owned and is to be occupied by the mortgagor.

(u) "Home mortgage loan" means a loan to a mortgagor evidenced by a promissory note and secured by a mortgage, purchased or originated by the authority made for the purpose of acquiring, constructing or improving a home.

(v) "Lending institution" means any bank, bank holding company, credit union, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker or other financial institution which customarily originates or services home mortgages.

(w) "Mortgagor" means any person of low or moderate income who has received or qualifies to receive a home mortgage loan on a home.

(x) "Persons of low or moderate income" means a person or family, consisting of one or more persons all of whom occupy or will occupy the home, whose aggregate gross income shall not exceed a maximum amount to be established by the authority, determined in accordance with appropriate criteria, rules and regulations and approved by the authority in connection with the implementation of a residential housing finance plan.

(y) "Residential housing finance plan" means a program implemented under this act by the authority to assist persons of low or moderate income in acquiring safe, decent and sanitary housing. Such plan shall include

or modular

2-7

provisions allowing each lending institution with an office located within the state, an equal opportunity to participate in accordance with the standards and requirements established by the authority. Nothing in this section shall preclude the use of out-of-state master servicers.

Sec. 2. K.S.A. 74-8904 is hereby amended to read as follows: 74-8904. Except as otherwise limited by this act, the authority shall have the following powers to:

- (a) Sue and be sued;
- (b) have a seal and alter such seal;
- (c) make and alter bylaws for its organization and internal management;
- (d) adopt such rules and regulations as may be necessary to carry out the purposes of this act;
- (e) acquire, hold and dispose of real and personal property for its corporate purposes;
- (f) appoint officers, agents and employees, prescribe their duties and qualifications and fix their compensation;
- (g) borrow money and to issue notes, bonds and other obligations pursuant to K.S.A. 74-8905, and amendments thereto, whether or not the interest on which is subject to federal income taxation, and to provide for the rights of the lenders or holders thereof;
- (h) purchase notes or participations in notes evidencing loans which are secured by mortgages or security interests and to enter into contracts in that regard;

(i) make secured or unsecured loans for any of the purposes for which bonds of the authority may be issued under this act or to low and moderate income multifamily rental housing projects participating in programs established in section 42 of the federal internal revenue code and provide financing for housing projects and programs in participation with programs established by the United States department of housing and urban development or the Kansas department of housing and community development.

~~Except as otherwise provided in this subsection, nothing in this act shall be construed to authorize the authority to make loans directly to individuals to finance housing developments.~~

(j) sell mortgages and security interests at public or private sale, to negotiate modifications or alterations in mortgage and security interests, to foreclose on any mortgage or security interest in default or commence any action to protect or enforce any right conferred upon it by any law, mortgage, security agreement, contract or other agreement, and to bid for and purchase property which was the subject of such mortgage or security interest at any foreclosure or at any other sale, to acquire or take possession of any such property, and to exercise any and all rights as provided by law for the benefit or protection of the authority or mortgage

except as otherwise provided in this subsection, nothing in this act shall be construed to authorize the authority shall not be authorized to make loans directly to individuals to finance housing developments (1) originate home mortgage loans secured by a first lien in competition with private lending institutions or (2) originate home mortgage loans secured by a junior lien in competition with private lending institutions unless such home mortgage loans secured by a junior lien are made only to pay all or a portion of a mortgagor's required down payment or closing costs in connection the acquisition of a home;

with

4-3

4-4

1 resort. The bonds and the interest thereon shall be payable solely from
 2 revenues of the resort and shall not be deemed to be an obligation or
 3 indebtedness of the state within the meaning of section 6 of article 11 of
 4 the constitution of the state of Kansas. The authority may contract with
 5 a subsidiary corporation formed pursuant to subsection (v) of K.S.A. 74-
 6 8904, and amendments thereto, or others to lease or operate such resort.
 7 The provisions of K.S.A. 32-867, 32-868, 32-870 through 32-873 and 32-
 8 874a through 32-874d, and amendments thereto, shall apply to resorts
 9 and bonds issued pursuant to this subsection.

10 (h) *The authority may issue bonds for the purpose of financing, ac-*
 11 *quiring or originating home mortgage loans.* ✓

12 (h) (i) The authority may use the proceeds of any bond issues herein
 13 authorized, together with any other available funds, for venture capital
 14 investments or for purchasing, leasing, constructing, restoring, renovat-
 15 ing, altering or repairing facilities as herein authorized, for making loans,
 16 purchasing mortgages or security interests in loan participations and pay-
 17 ing all incidental expenses therewith, paying expenses of authorizing and
 18 issuing the bonds, paying interest on the bonds until revenues thereof are
 19 available in sufficient amounts, purchasing bond insurance or other credit
 20 enhancements on the bonds, and funding such reserves as the authority
 21 deems necessary and desirable. All moneys received by the authority,
 22 other than moneys received by virtue of an appropriation, are hereby
 23 specifically declared to be cash funds, restricted in their use and to be
 24 used solely as provided herein. No moneys of the authority other than
 25 moneys received by appropriation shall be deposited with the state
 26 treasurer.

27 (i) (j) Any time the authority is required to publish a notification pur-
 28 suant to the tax equity and fiscal responsibility act of 1982, the authority
 29 shall further publish such notification in the Kansas register.

30 (i) (k) Any time the authority issues *private activity* bonds pursuant
 31 to this section, *other than bonds issued pursuant to subsection (h)* the
 32 authority shall publish notification of such issuance at least 14 days prior
 33 to any bond hearing in the official county newspaper of the county in
 34 which the project or activity financed by such bonds are located and in
 35 the Kansas register.

36 Sec. 4. K.S.A. 74-8912 is hereby amended to read as follows: 74-
 37 8912. Bonds may be issued for the purpose of refunding, either at ma-
 38 turity or in advance of maturity, any bonds issued under this act *and any*
 39 *bonds issued by a political subdivision pursuant to the local residential*
 40 *housing finance law, K.S.A. 12-5219 et seq., and amendments thereto, or*
 41 *for any other purpose for which bonds may be issued under this act.* Such
 42 refunding bonds may either be sold or delivered in exchange for the bonds
 43 being refunded. If sold, the proceeds may either be applied to the pay-

Any moneys derived by the authority from the issuance of bonds
 under this subsection (h) and not used directly to finance, acquire or
 originate home mortgage loans shall be used by the authority to
 support programs or activities related to low or moderate income
 housing.

4-5

ment of the bonds being refunded or deposited in trust and there main-
 3- funded, as shall be specified by the authority and the authorizing
 4- resolution or trust indenture securing such refunding bonds. The au-
 5- thorizing resolution or trust indenture securing the refunding bonds may
 6- provide that the refunding bonds shall have the same security for their
 7- payment as provided for the bonds being refunded. Refunding bonds
 8- shall be sold and secured in accordance with the provisions of this act
 9- pertaining to the sale and security of the bonds.

(a)

10- New Sec. 5. The authority shall be the exclusive governmental issuer
 11- or sponsor within the state of programs involving the issuance of bonds,
 12- notes or other evidences of indebtedness, trust certificates, and partner-
 13- ship interests and other evidences of equity participations that finance,
 14- or are payable in whole or in part from, home mortgage loans, and any
 15- mortgage credit certificates program, including the refunding or refi-
 16- nancing of any such programs; provided that the authority may issue
 17- bonds to refund bonds, notes or other evidences of indebtedness issued
 18- by a political subdivision prior to the effective date of this section to
 19- finance, which are payable in whole or in part from, home mortgage loans
 20- only pursuant to an agreement between the authority and such political
 21- subdivision with respect to refunding such bonds, notes or other evi-
 22- dences of indebtedness and, absent such agreement, such political sub-
 23- division may refund such bonds, notes or other evidences of indebtedness.

or

24- Sec. 6. K.S.A. 12-5233 is hereby amended to read as follows: 12-
 25- 5233. The powers conferred by this act are in addition and supplemental
 26- to, and the limitations imposed by this act shall not affect, the powers
 27- conferred upon municipalities under the provisions of the constitution or
 28- laws of the state of Kansas. Home mortgage loans may be acquired, pur-
 29- chased and financed, and, *subject only to new section 5, and amendments*
 30- *thereto*, bonds may be issued under this act for such purposes, notwith-
 31- standing that any other law may provide for the acquisition, purchase and
 32- financing of like home mortgage loans, or the issuance of bonds for like
 33- purposes, and such home mortgage loans may be made upon such terms
 34- and conditions and contain such provisions as the governing body of the
 35- city or county determines consistent with the provisions of this act not-
 36- withstanding and without regard to the requirements, restrictions, limi-
 37- tations or other provisions contained in any law or any other resolution.
 38- Nothing in this act shall be deemed or construed to prohibit the exercise
 39- of the powers conferred upon municipalities in connection with the fi-
 40- nancing of federally assisted housing for persons of low and moderate
 41- income.

; and provided that, notwithstanding the provisions of this section, a
 political subdivision may issue single family mortgage revenue
 bonds to the extent that, and in the amount of, any allocation of
 private activity state volume cap pursuant to section 146 of the
 federal internal revenue code carried forward from years prior to
 2003 which, pursuant to federal income tax laws, could not be
 utilized by the authority.

(b) Programs funded with proceeds of bonds issued under subsection
 (h) of K.S.A. 74-8905, and amendments thereto, shall not be
 restricted by the authority to prevent such programs from being
 available in all counties of the state and the authority shall adopt
 policies to facilitate the financing of home mortgage loans in those
 areas of the state which are not included in any metropolitan
 statistical area. For a period of at least 90 days following the
 issuance of bonds under subsection (h) of K.S.A. 74-8905, and
 amendments thereto, the authority shall reserve for use in financing
 home mortgage loans in those areas of the state which are not
 included in any metropolitan statistical area a minimum of 20% of
 the amount of the proceeds of such bonds that are available to
 finance home mortgage loans.

42- Sec. 7. K.S.A. 12-5233, 74-8902, 74-8904, 74-8905 and 74-8912 are
 43- hereby repealed.

insert attached section 7

74-8903

Sec.7 K.S.A. 74-8903 is hereby amended to read as follows: 74-8903

(a) There is hereby created, with such duties and powers as are hereinafter set forth to carry out the provisions of this act, a public body politic and corporate, with corporate succession, to be an independent instrumentality of this state exercising essential public functions, and to be known as the Kansas development finance authority.

(b) The board of directors of the authority shall consist of the ~~five~~ *seven* members to be appointed by the governor. *Two of such members shall be individuals with housing expertise, as determined by the governor.* Not less than ~~three~~ *four* voting members of such board shall be representative of the general public and not more than ~~three~~ *four* voting members shall be members of the same political party.

(c) Members appointed by the governor shall be subject to confirmation by the senate as provided by K.S.A. 75-4315b, and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the board, whose appointment is subject to confirmation shall exercise any power, duty or function as a member of the authority until confirmed by the senate. Except as provided by subsection (d), such members shall serve for terms of four years and until their successors are appointed and confirmed. Any vacancy in the board occurring other than by expiration of term shall be filled by the appointment of the governor, but for the unexpired term only.

(d) The terms of members who are appointed by the governor and who are serving on the authority on the effective date of this act shall expire on January 15, of the year in which such member's term would have expired under the provisions of this section prior to amendment by this act. Thereafter, members shall be appointed for terms of four years and until their successors are appointed and confirmed.

(e) The governor shall designate the chairperson and vice-chairperson of the board from the members of such board.

(f) The authority shall have such rights, powers and privileges and shall be subject to such duties as provided by this act.

(g) The governor shall appoint a president who shall serve at the will of the governor. The president shall appoint and employ such additional officers, accountants, financial advisors or experts, bond counsel or other attorneys, agents and employees as it may require and shall determine

their qualifications, duties and compensation subject to the approval of the board of directors. The president shall be an ex officio nonvoting member of the board and may be elected secretary of the board. The powers of the authority shall be vested in the members of the board of directors and ~~three~~ *four* members of the board shall constitute a quorum at any meeting thereof. Action may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of a majority of present and voting board members. Any motion and resolution to authorize an issue of bonds, to approve a loan application, to authorize a lease transaction or to approve a bond guaranty shall have the affirmative vote of at least ~~three~~ *four* board members.

(h) Before the issuance of any bonds, each member of the board of directors of the authority shall execute a surety bond in the penal sum of \$250,000 and the president of the authority shall execute a surety bond in the penal sum of \$250,000, each surety bond to be conditioned upon the faithful performance of the duties of the office by such board member or president, as the case may be, to be executed by a surety company authorized to transact business in the state of Kansas, as surety, and to be approved by the attorney general. At all times after the issuance of any bonds by the authority, each member of the board of directors of the authority shall maintain such surety bonds in full force and effect. All costs of such surety bonds shall be borne by the authority.

(i) The members of the board of directors of the authority shall serve without compensation, but the authority may reimburse its board members for mileage and subsistence expenses incurred in the discharge of their official duties as provided by subsections (b) and (c) of K.S.A. 75-3223, and amendments thereto.

(j) No part of the funds of the authority shall inure to the benefit of, or be distributed to, its employees, officers or board of directors, except that the authority shall be authorized and empowered to pay its employees reasonable compensation.

(k) The authority may be dissolved by act of the legislature on condition that the authority has no debts or obligations outstanding or provision has been made for the payment or retirement of such debts or obligations. Upon any such dissolution of the authority, all property, funds and assets thereof shall be vested in the state.

03/11/03 proposed changes to Senate Bill No. 222 and House Bill No. 2395,
Session of 2003

A. No Direct Lending. Page 4, line 32; in Section 2 of the bills, revise last three lines of subsection (i) of 74-8904 to read as follows:

except as otherwise provided in this subsection, nothing in this act shall be construed to authorize the authority shall not be authorized to make loans directly to individuals to finance housing developments (1) originate home mortgage loans secured by a first lien in competition with private lending institutions or (2) originate home mortgage loans secured by a junior lien in competition with private lending institutions unless such home mortgage loans secured by a junior lien are made only to pay all or a portion of a mortgagor's required down payment or closing costs in connection the acquisition of a home;

B. Use of Proceeds for Housing Programs. Page 10, line 11; in Section 3 of the bills, add a second sentence to subsection (h) of 74-8905, as follows:

Any moneys derived by the authority from the issuance of bonds under this subsection (h) and not used directly to finance, acquire or originate home mortgage loans shall be used by the authority to support programs or activities related to low or moderate income housing.

C. Typographical Fix. Page 11, line 19; in New Section 5 of the bills, add "or" following "finance,".

D. Volume Cap Carry Forward. Page 11, line 23; in New Section 5 of the bills add the following proviso to New Section 5:

; and provided that, notwithstanding the provisions of this new section 5, a political subdivision may issue single family mortgage revenue bonds to the extent that, and in the amount of, any allocation of private activity state volume cap pursuant to section 146 of the federal internal revenue code carried forward from years prior to 2003 which, pursuant to federal income tax laws, could not be utilized by the authority.

E. Rural Set Aside. Page 11, line 10; in New Section 5 of the bills:

Insert "(a)" before the existing provisions of new section 5; and

Add the following new paragraph (b):

(b) Programs funded with proceeds of bonds issued under subsection (h) of K.S.A. 74-8905 shall not be restricted by the authority to prevent such programs from being available in all counties of the state and the authority shall adopt policies to facilitate the financing of home mortgage loans in those areas of the state which are

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not included in any metropolitan statistical area. For a period of at least 90 days following the issuance of bonds under subsection (h) of K.S.A. 74-8905, the authority shall reserve for use in financing home mortgage loans in those areas of the state which are not included in any metropolitan statistical area a minimum of twenty percent of the amount of the proceeds of such bonds that are available to finance home mortgage loans.