

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE.

The meeting was called to order by Chairman Senator Robert Tyson at 8:30 a.m. on March 14, 2003 in Room 423-S of the Capitol.

Members present: Senator Schmidt, Senator Downey, Senator Lee, Senator Tyson, Senator Taddiken, Senator Umbarger, Senator Huelskamp, Senator Corbin, Senator Adkins

Committee staff present: Raney Gilliland, Legislative Research
Lisa Montgomery, Revisor of Statutes
Shannon Stone, Secretary

Conferees appearing before the committee:

Gary Blackburn, Bureau of Environmental Remediation, Kansas Department of Health and Environment
Charles Benjamin, Sierra Club
Ray Cheatham, Koch Industries, Incorporated; ARCADIS G & M, Incorporated
Doug Wareham, Kansas Grain and Feed, Kansas Agribusiness Retailers Association
Todd Johnson, Kansas Livestock Association
Mike Taylor, City of Wichita, (written testimony only)
Representative Tom Sloan

Others attending: See attached guest list

Hearing on House Bill 2247

Raney Gilliland presented a brief overview of **HB 2247** to the Committee.

Gary Blackburn, Director of the Bureau of Environmental Remediation at KDHE presented testimony in support of the bill. He explained that the purpose of the bill was to "provide a voluntary mechanism to assist existing state cleanup programs to address environmental contamination in a cost effective manner through environmental controls." The program intent is to restore contaminated property to a condition so that usage of the land would be unrestricted. (Attachment 1)

Charles M. Benjamin, Kansas Sierra Club supported the passage of **HB 2247**. They praised the bill because it did not prevent prospective buyers from purchasing contaminated land. Buyers could purchase land and clean it up and the environmental use control could be removed. (Attachment 2)

Ray Cheatham of Koch Industries, ARCADIS G&M Inc., summarized the history of environmental regulations to help bring clarity to the value of the proposed legislation. On behalf of the organizations he represented, Mr. Cheatham voiced support for **HB 2247**. (Attachment 3)

Kansas Grain and Feed Association (KGFA), Kansas Agribusiness Retailers Association (KARA) representative, Doug Wareham stated that the bill "codifies the process of enabling contaminated site owners to utilize environmental use controls (EUC) in lieu of cleaning a site to residential standards." KARA and KGFA supported the bill. (Attachment 4)

Todd Johnson, representative for Kansas Livestock Association provided some background on the issue. Although they felt the original bill was overly broad, they supported the present wording of the bill. (Attachment 5)

Mike Taylor, Government Relations Director for the city of Wichita submitted written testimony supporting **HB 2247**. Calling the bill "a common-sense approach", he applauded its intent in allowing polluted lands to be put to a useful purpose. (Attachment 6)

CONTINUATION SHEET

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE at 8:30 a.m. on March 14, 2003
in Room 423-S of the Capitol.

On behalf of the agriculture community of Douglas County, representative Tom Sloan presented an amendment to the bill which would exempt production agriculture from falling under State Historic Preservation Officer jurisdiction if a county requires farmers/ranchers to obtain building and demolition permits. He provided Committee members copies of his amendment. (Attachment 7)

Written Testimony

The Kansas State Historical Society submitted testimony stating that they did not object the proposed amendment as it would have a "negligible effect" upon their operations. (Attachment 8)

Adjournment

Discussion over contamination, liens, and control of land followed testimony.

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

SENATE NATURAL RESOURCES COMMITTEE

GUEST LIST

DATE: March 4

NAME	REPRESENTING
Mary Allman	Kansas State Historical Society
J. P. Small	KOCH INDUSTRIES
Dag Wareham	KGFA / KARA
Mary Jane Stattelman	KGFA / KARA / KARB
Rep. Von Sloan	
Todd Johnson	KLA
Michael Hunt	Kearney & Assoc.
Leslie Kaufman	KFB
John Fredrick	Boeing
marci francisco	Lawrence Preservation Alliance
Kyr PETERSON	KS Petroleum Council
Steve Slamm	KDWP
Rick Bean	KDHE
Gary Blackburn	KDHE
Woody Mores	KAPA
Ray Cheatham	ARCADIS / Koch



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on Environmental Use Controls Act
to
Senate Natural Resources Committee
Presented by Gary Blackburn, Director
Bureau of Environmental Remediation**

March 14, 2003

Chairman Tyson and members of the Natural Resources Committee, I am pleased to appear before you today in support of House Bill 2247 related to Environmental Use Controls.

During the 2002 legislative session, KDHE testified in support of House Bill 2830 related to Environmental Use Controls which subsequently passed the House and was tabled by the Senate. During the fall of 2002, KDHE developed an Environmental Use Control Committee consisting of fifteen stakeholders to revise the original bill. A list of organizations participating on this committee is included as attachment #1 to this testimony. The concerted efforts of the committee are represented by new House Bill 2247.

There were four proponents and one opponent during hearings on House Bill 2247 before the House Environment Committee. During cooperative negotiations with the one opponent, a compromise in the bill was attained to satisfy the concerns of the opponent and proponents. Language added as part of the compromise emphasizes that the intent of this act is to provide a voluntary mechanism to assist existing state cleanup programs to address environmental contamination in a cost effective manner through environmental use controls. House Bill 2247 as amended exempts confined feeding facilities from participation in the Environmental Use Control Program. Another section of the bill that was amended includes the use of existing local controls in conjunction with any environmental use controls approved by the department.

The Kansas Department of Health and Environment works with responsible parties to address hundreds of contaminated properties throughout the state each year. These sites are addressed through a variety of programs with the goal of restoring the property to a condition which will permit unrestricted use, such as use for residential development. The agency has established risk-based standards for cleanups of both residential and non-residential properties. Page 6 out of the Risk-Based Standards For Kansas manual is Attachment #2 to this testimony, to illustrate the difference in residential and non-residential cleanup standards. The non-residential standards are adequate for properties whose intended use is for commercial or industrial use and are generally much easier to attain, but are not protective of residential or recreational uses. Cleanup of commercial and industrial properties to residential standards in many cases is cost

Senate Natural Resources Committee
Date: *March 14, 2003*
Attachment 1-1
DIVISION OF ENVIRONMENT
Bureau of Environmental Remediation
CURTIS STATE OFFICE BUILDING, 1000 SW JACKSON ST., STE 410, TOPEKA, KS 66612-1367
Voice 785-296-1660 Fax 785-296-1686 <http://www.kdhe.state.ks.us>

Printed on Recycled Paper

Attachment 1

KDHE/Stakeholder Committee on Environmental Use Controls

Stakeholder Participants:

Kansas Agribusiness Retailers Association

Kansas Association of Counties

Petroleum Marketers Association

Kansas Natural Resource Council

Kansas Agricultural Remediation Board

Kansas Corn Growers/Grain Sorghum Producers

Department of the Army

Westar Energy

City of Wichita

Sierra Club

Kansas Farm Bureau

Kansas Petroleum Council

Kansas Livestock Association

JD Information Services

Kansas Department of Health and Environment

Charles M. Benjamin, Ph.D., J.D.
Attorney at Law
P.O. Box 1642
Lawrence, Kansas 66044-8642
(785) 841-5902; 841-5922 facsimile
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**Testimony on Behalf of the Kansas Sierra Club
Supporting passage of H.B. 2247: Concerning Environmental Use Controls**

Before the Senate Natural Resource Committee
March 14, 2003

Mr. Chairman, members of the Committee, thank you for the opportunity to testify in support of passage of H.B. 2247 concerning environmental use controls. Thanks to the staff at KDHE for putting together a stakeholders group this past summer and fall to discuss this important legislation.

Environmental use controls are simply restrictions on the use of contaminated properties in order to protect human health and welfare. It is also a process of putting prospective buyers of contaminated properties on notice that such restrictions "run with the land."

This bill allows owners of property, with approval by KDHE, to restrict the use of their property by imposing on the property an appropriate level of environmental use control. An environmental use control, or restriction on the use of the property, is only applied by KDHE when there is known contamination that exceeds KDHE's standards for unrestricted use of the property. Upon approval by KDHE, the owner of the property must register the environmental use control with the register of deeds in the county in which the property is located. This requirement is not onerous to the owner of the contaminated property. It puts any prospective purchaser of the property, who has carried out due diligence, to avoid buying contaminated property with restricted uses. It does not prevent any prospective buyer from buying contaminated property. This is very important because there are some prospective buyers of real property with the financial means to acquire and clean up such property. Once the property is cleaned up then the environmental use control can be removed. That is good for the original owner of the contaminated property; the prospective buyer of the contaminated property; for local governments (who can obtain more property tax revenue because non-contaminated property is worth more than contaminated property); and it is good for the community in terms of human health and the environment. In other words it can be a win-win for all concerned.

At a time when the legislature is struggling to finance current state governmental operations without a tax increase, this program does not require you to raise taxes. The program is self-financing through fees.

Thank you for your time and attention. I would be happy to stand for questions.

*Senate Natural Resource Committee
Date: March 14, 2003
Attachment 2*

Chairperson and Members of the
Senate Environmental Committee

Re: House Bill 2247
Environmental Use Controls

Dear Chairperson and Members,

On behalf of Koch Industries, Inc., I would like to express my appreciation for the opportunity to provide testimony regarding House Bill 2247, related to Environmental Use Controls. I am providing this testimony based on my experience as an environmental professional with experience working in Kansas and more than 20 other states. I am currently a Senior Project Manager for ARCADIS, G&M Inc, in Houston, Texas. I am a former employee of Koch Industries, Inc., and a former resident of Wichita, Kansas. I have managed environmental remediation projects in Kansas including agricultural chemical facilities, confined animal feeding operations, and underground hydrocarbon salt cavern storage facilities. In the late 1990s I was privileged to lead an industry-working group that provided input to the KDHE related to environmental regulations for underground hydrocarbon salt cavern storage facilities.

We support the KDHE's efforts to develop Environmental Use Control (EUC) legislation. EUCs can be an extremely useful mechanism to minimize contamination exposure risks. Furthermore EUCs are a valuable tool that can be used to enable limited state and private resources to be focused on actions that create the greatest reduction of risks to human health and the environment.

To understand the value of the proposed EUC legislation, it is helpful to consider EUCs in the context of the history of environmental regulations. When regulatory programs were first developed to regulate the cleanup of contaminated sites, cleanup standards were developed for a variety of chemical contaminants that would be safe for virtually any exposure scenario. Responsible parties were required to cleanup contaminated sites to these "default" cleanup standards, which were generally low enough to ensure that there would be no unacceptable risk of exposure even under the most conservative exposure scenarios. These "default" cleanup standards were applied to all sites without regard to the actual types of exposure that might occur at any particular site. Thus, soil at a chemical plant would have to be clean enough for children to play in it and groundwater beneath a refinery would be clean enough to drink, even if these exposure scenarios were extremely unlikely to ever occur. The cost of cleaning up all contaminated sites to be safe under the most conservative exposure scenarios proved to be very costly and in many cases cleanup to these conservative cleanup concentrations were not technically practical.

In response to these problems, Risk Based Corrective Action (RBCA) programs were developed so that responsible parties could undertake actions that reduce the risk of exposure or to perform cleanup actions to achieve site-specific cleanup concentrations that are calculated based on the specific exposure risks at a site. RBCA assessments include a detailed study of the specific contaminants at a particular site, definition of the site-specific risks for human exposure, and calculation of site-specific cleanup standards that will be protective of the specific

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Tel 281-497-6900
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Environmental Business Unit

March 14, 2003

Contact:

Ray Cheatham

Extension:

281-509-6413

*Senate Natural Resources Committee
Date: March 13, 2003
Attachment 3*

exposure risks at a site. Thus, if a site is being used for industrial purposes, then potential exposure to children might not have to be considered, or if groundwater was not usable as a drinking water source, the groundwater might not have to be clean enough to drink. In other instances, RBCA programs often allow the construction of an engineered control, such as an asphalt surface cap, to reduce the risk of exposure to impacted soils as opposed to excavation and offsite disposal of impacted soils.

RBCA programs solved many of the problems caused by trying to apply a single set of cleanup standards to all sites. However, a new problem was created. If site specific RBCA cleanup standards are developed based on the current use of the land and groundwater at a site, or if closure is based on engineered barriers that are designed to be maintained and left in place, there needs to be some mechanism to ensure that the land and groundwater use will not change and that the engineered barrier will be properly inspected and maintained. Environmental Use Controls, as proposed in HB 2247 are intended to solve this problem.

The KDHE's proposed EUC legislation would enable responsible parties who choose to pursue contaminated site closure based on restricted land use, restricted groundwater use, or based on engineered controls to place a deed restriction on the property. The deed restriction would limit the use of the property so that there would be no unacceptable risks of exposure to contaminants at the site. The most common types of restrictions are restrictions that limit land use to non-residential purposes, or that prevent the groundwater beneath a site to be used as a drinking water source. If a responsible party chooses to employ an engineered control, the deed restriction would require that the control be kept in place and properly inspected and maintained. The EUC would be tied to the property, so that future landowners would be aware of the EUC and would have to comply with the terms of the EUC.

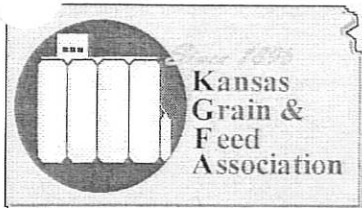
In addition to defining the process through which EUCs can be developed, the KDHE has included provisions for long term monitoring to ensure that landowners comply with the conditions of the EUCs. The KDHE has also included provisions for enforcement in instances where landowners do not comply with the terms of the EUCs. We feel that both monitoring and enforcement are important elements to ensure that the EUCs are properly used.

In summary, we feel that the proposed EUC legislation is a logical next step for environmental regulations in Kansas. The proposed legislation would enable Kansas industry and the KDHE to utilize EUCs to focus their limited resources on activities that create the greatest benefit to the environment. We feel that the proposed EUC legislation will be beneficial to the citizens, the environment, and industry in Kansas. We appreciate your consideration of our perspective and urge you to approve the proposed EUC legislation.

Sincerely,



Ray Cheatham, P.G.
Senior Project Manager



STATEMENT OF THE
KANSAS GRAIN & FEED ASSOCIATION
AND THE
KANSAS AGRIBUSINESS RETAILERS ASSOCIATION
SUBMITTED TO THE
SENATE NATURAL RESOURCES COMMITTEE
REGARDING HOUSE BILL 2247
SENATOR ROBERT TYSON, CHAIRMAN
MARCH 14, 2003

*Senate Natural Resources Committee
Date: March 14, 2003
Attachment 4-1*

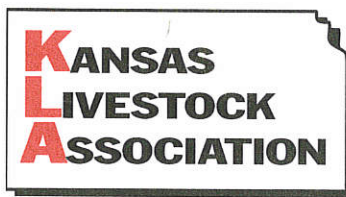
KGFA & KARA MEMBERS ADVOCATE PUBLIC POLICIES THAT ADVANCE A SOUND ECONOMIC CLIMATE FOR AGRIBUSINESS TO GROW AND PROSPER SO THEY MAY CONTINUE THEIR INTEGRAL ROLE IN PROVIDING KANSANS AND THE WORLD THE SAFEST, MOST ABUNDANT FOOD SUPPLY.

Chairman Tyson and Members of the Senate Natural Resources Committee I am Doug Wareham appearing on behalf of the Kansas Grain and Feed Association (KGFA) and the Kansas Agribusiness Retailers Association (KARA). The KGFA is a voluntary state association with a membership encompassing the entire spectrum of the grain receiving, storage, processing and shipping industry in the state of Kansas. KGFA's membership includes over 1,100 Kansas business locations and represents 98% of the commercially licensed grain storage in the state. KARA's membership includes nearly 750 agribusiness firms that are primarily retail facilities that supply fertilizers, crop protection chemicals, seed, petroleum products and agronomic expertise to Kansas farmers. KARA's membership base also includes ag-chemical and equipment manufacturing firms, distribution firms and various other businesses associated with the retail crop production industry. I appear before you in support of HB 2247.

As I have indicated, our member companies are primarily grain elevator firms and agribusiness retail firms, several of which are currently involved in remediation activities under the supervision of the Kansas Department of Health and Environment (KDHE). House Bill 2247 simply codifies the process of enabling contaminated site owners to utilize environmental use controls (EUC) in lieu of cleaning a site to residential standards.

The use of environmental use controls is an important tool for agribusiness, whose business sites are often located in industrial and commercial parks. The fact that their sites are not typically located in residential areas potentially allows the use of environmental use controls, which can mean savings to agribusiness firms. Some of our members have experienced the difficulty and hardship of diligently trying to remediate a site only to find that it will take years and years and extremely large sums of money to attempt to clean up the last 5-10% of the contamination in order to meet residential standards. We believe this bill helps address this situation.

We have appreciated KDHE's willingness to work with our organization and others through stakeholder working group meetings held in the interim and for addressing concerns we raised when this bill was first considered by the House Environment Committee. We believe the voluntary nature of this proposal has been clarified and hope this committee will act favorably on this bill. I would be happy to stand for questions.



Since 1894

TESTIMONY

To: Senate Natural Resources Committee
Senator Robert Tyson, Chairman

From: Todd Johnson, Governmental Affairs Staff

Subject: **HB 2247** – Environmental Use Controls

Date: March 14, 2003

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of livestock production, including cow-calf/stocker enterprises, cattle feeding, seed stock production and diversified farming operations.

Mr. Chairman and committee members, thank you for the opportunity to appear before your committee today. I am Todd Johnson, Governmental Affairs staff for the Kansas Livestock Association.

I appear before your committee today to provide some background on this issue and share KLA's support for the current version of HB 2247. When the original version of this bill was introduced to the House Environment Committee, KLA appeared in opposition to the bill. We felt it was overbroad, placed too much discretionary authority in the Secretary of Health and Environment and was confusing in its application and scope.

Following the hearing we worked with Chairperson Freeborn, representatives from the Department of Health and Environment and other interested parties to address these differences.

We were pleased with the cooperation from all parties as we worked through differences and reached a consensus. Our concerns have been addressed and are reflected in the amendments you see to the current bill. We appreciate the cooperation we received in getting to this point and would caution the committee in making changes that might weaken the clarifications made to the bill or reduce landowner rights.

I appreciate your time to share our input on this issue.

*Senate Natural Resources Committee
Date: March 14, 2003
Attachment 5*



TESTIMONY

City of Wichita
Mike Taylor, Government Relations Director
455 N Main, Wichita, KS. 67202
Wichita Phone: 316.268.4351
Topeka Phone: 316.648.6236
mtaylor@wichita.gov

House Bill 2247 Environmental Use Control Act

Delivered March 14, 2003
Senate Energy and Natural Resources Committee

The City of Wichita supports HB 2247, which establishes a mechanism for environmental use controls at contaminated clean-up sites. These administrative controls, as developed and amended in HB 2247, provide authority and funding for the Kansas Department of Health and Environment to formally approve and monitor controls that are voluntarily put in place by a property owner to contain or reduce the risk where contamination is allowed to remain on the property.

A major benefit of HB 2247 is that KDHE can allow a property to be cleaned up to a lesser extent than it might otherwise require because of the protection of tracking and notice that runs with the property. Of significant importance, is that the bill specifically allows the City and County access to the tracking information about the properties in its jurisdiction. The bill will allow the KDHE-approved administrative action to carry over from one property owner to any future property owner until such time as the property is remediated to a higher cleanup standard or no longer poses an unacceptable risk without the controls in place.

Similar programs have been established in other states. HB 2247 can benefit local governments which are working to turn "Brownfields", or polluted, formerly industrial sites into useful tracts of land.

KDHE has allowed "institutional controls" in the past for such projects as the Gilbert and Mosley remediation site in downtown Wichita, where a lesser clean-up standard was allowed because the polluted groundwater is not be used for drinking purposes. The Environmental Use Controls allowed in HB 2247 could only be used by the City of Wichita for properties owned by the City of Wichita. These controls would not be allowed for landfill sites.

HB 2247 will help to uniformly apply administrative controls and utilize reasonable cleanup standards as approved by KDHE in areas where the City has responsibility. It will also allow the City to take contaminated properties into consideration when making decisions regarding development and use of public property.

HB 2247 is a common-sense approach to allowing polluted land to again be put to a useful purpose. The City of Wichita participated in the development of HB 2247 and supports it's passage.

*Senate Natural Resources Committee
Date: March 14, 2003
Attachment 6*

TOM SLOAN

REPRESENTATIVE, 45TH DISTRICT
DOUGLAS COUNTYSTATE CAPITOL BUILDING
ROOM 446-NTOPEKA, KANSAS 66612-1504
(785) 296-7677
1-800-432-3924772 HWY 40
LAWRENCE, KANSAS 66049-4174
(785) 841-1526
sloan@house.state.ks.us

TOPEKA

HOUSE OF
REPRESENTATIVESCOMMITTEE ASSIGNMENT
CHAIRMAN: HIGHER EDUCATION
MEMBER: UTILITIES
ENVIRONMENT
GENERAL GOVERNMENT &
HUMAN RESOURCES
BUDGET

Testimony on HB 2247 - Senate Natural Resources Committee

Mr. Chairman, Committee Members. I support HB 2247. As a member of the House Environment Committee, I supported the bill in Committee and on Final Action.

I come before you requesting an amendment on behalf of the agriculture community of Douglas County. Under existing state statute, the State Historic Preservation Officer (SHPO) must review and approve all proposed changes to structures within 500 feet of an urban historic site and 1,000 feet of a site in the unincorporated county. The oversight is "triggered" by an application for a construction or demolition permit.

Traditionally, county governments exempt farmers and ranchers from the requirement to obtain such permits. However, urbanizing counties, especially Douglas County, are discussing revoking the agriculture exemption.

I innocently introduced a bill through the House Agriculture Committee to address this situation and became embroiled in an internal fight between the State Historic Preservation Officer and preservationists in local communities. The House Committee rightly tabled HB 2168.

In the intervening weeks, I have continued to meet with my local officials, SHPO, state and local agriculture interests, and local preservationists. We have considered ways to achieve our common objective – protect production agriculture from SHPO oversight.

Attached to my testimony is language agreed to by all principal parties. It exempts production agriculture, as defined in existing statutes, from falling under SHPO jurisdiction if a county requires farmer/ranchers to obtain building and demolition permits.

On behalf of production agriculture interests, and with the acknowledgment of historic preservationists at the state and local levels, I ask you to adopt the proposed amendment to HB 2247 and pass the amended bill.

Senate Natural Resource Committee
Date: March 14, 2003
Attachment 7-1

HOUSE BILL No. 2247

By Committee on Environment

2-7

10 AN ACT concerning ~~environmental contamination of~~ real property; pro-
11 viding for prohibition or restriction of activities on and use of such
12 property.
13

; also concerning state historic property;
amending K.S. A. 2002 Supp. 75-2724 and
repealing the existing section

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

15 **Section 1. The intent of this act is to provide a voluntary mech-**
16 **anism to assist existing state programs to address environmental**
17 **contamination in a cost effective manner that is protective of hu-**
18 **man health and the environment.**

19 ~~Section 1.~~ **Sec. 2.** As used in this act:

20 (a) "Department" means the Kansas department of health and
21 environment.

22 (b) "Environmental use control" means an institutional or adminis-
23 trative control, a restriction, prohibition or control of one or more uses
24 of, or activities on, a specific property, **as requested by the property**
25 **owner at the time of issuance**, to ensure future protection of public
26 health and the environment when environmental contamination which
27 exceeds department standards for unrestricted use remains on the prop-
28 erty following the appropriate assessment and/or remedial activities as
29 directed by the department pursuant to the secretary's authority. **For the**
30 **purposes of this act, "environmental contamination" does not**
31 **mean animal or process waste from a confined feeding facility as**
32 **defined in K.S.A. 65-171d, and amendments thereto, livestock op-**
33 **erations or the application of livestock waste for use as a plant**
34 **nutrient.** Any environmental use control created pursuant to this act runs
35 with the property and is binding on the owner and subsequent owners,
36 lessees and other users of the land.

37 (c) "Owner" means any owner of record of property, and any person
38 or entity **authorized with written authorization from the owner** to
39 make decisions regarding the transfer of the subject property or place-
40 ment of encumbrances on the subject property, other than by the exercise
41 of eminent domain.

42 (d) "Person" means any individual, trust, firm, joint stock company,
43 public or private corporation, limited liability company or partnership;

1 tal use control fund interest earnings based on:
2 (1) The average daily balance of moneys in the environmental use
3 control fund for the preceding month; and
4 (2) the net earnings rate of the pooled money investment portfolio
5 for the preceding month.
6 (d) All expenditures from the environmental use control fund shall
7 be made in accordance with appropriation acts upon warrants of the di-
8 rector of accounts and reports issued pursuant to vouchers approved by
9 the secretary or the secretary's designee for purposes set forth in this
10 section.
11 Sec. ~~11~~ 12. The secretary ~~may~~ shall adopt rules and regulations to
12 implement the provisions of this act.
13 Sec. ~~12~~ 13. The department shall publish annually in the Kansas reg-
14 ister a summary of the number of approved environmental use control
15 agreements pursuant to this act.
16 Sec. ~~13~~ 14. Any person adversely affected by any order or decision
17 of the secretary pursuant to this act, within 15 days after service of the
18 order or decision, may request in writing a hearing. Hearings under this
19 section shall be conducted in accordance with the provisions of the Kansas
20 administrative procedure act. Any action of the secretary pursuant to this
21 section is subject to review in accordance with the act for judicial review
22 and civil enforcement of agency actions.
23 Sec. ~~14~~ 15. If any provision of this act or its application to any person
24 or circumstance is held invalid, the invalidity does not affect other pro-
25 visions or applications of this act which can be given effect without the
26 invalid provision or application. To this end the provisions of this act are
27 severable.
28 Sec. ~~15~~ 16. This act shall take effect and be in force from and after
29 its publication in the statute book.

See attached

K.S.A. 2002 Supp. 75-2724 is hereby amended to read as follows: 75-2724. (a) The state or any political subdivision of the state, or any instrumentality thereof, shall not undertake any project which will encroach upon, damage or destroy any historic property included in the national register of historic places or the state register of historic places or the environs of such property until the state historic preservation officer has been given notice~~7-as-provided-herein7~~ and an opportunity to investigate and comment upon the proposed project. Notice to the state historic preservation officer shall be given by the state or any political subdivision of the state when the proposed project, or any portion thereof, is located within 500 feet of the boundaries of a historic property located within the corporate limits of a city, or within 1,000 feet of the boundaries of a historic property located in the unincorporated portion of a county. Notwithstanding the notice herein required, nothing in this section shall be interpreted as limiting the authority of the state historic preservation officer to investigate, comment and make the determinations otherwise permitted by this section regardless of the proximity of any proposed project to the boundaries of a historic property. The state historic preservation officer may solicit the advice and recommendations of the historic sites board of review with respect to such project and may direct that a public hearing or hearings be held thereon. Any such public hearing or hearings held pursuant to this subsection or held pursuant to authority delegated by the state historical preservation officer under subsection (e) or (f) shall be held within 60 days from the date of receipt of notice by the state historical preservation officer from the state or any political subdivision of the state as provided herein. If the state historic preservation officer determines, with or without having been given notice of the proposed project, that such proposed project will ~~encroach-upon7~~ damage or destroy any historic property included in the national register of historic places or the state register of historic places or the environs of such property, such project shall not

roceed until:

(1) The governor, in the case of a project of the state or an instrumentality thereof, or the governing body of the political subdivision, in the case of a project of a political subdivision or an instrumentality thereof, has made a determination, based on a consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to such historic property resulting from such use; and

(2) five days notice of such determination has been given, by certified mail, to the state historic preservation officer.

(b) Any person aggrieved by the determination of the governor pursuant to this section may seek review of such determination in accordance with the act for judicial review and civil enforcement of agency actions. Any person aggrieved by the determination of a governing body pursuant to this section may seek review of such determination in accordance with K.S.A. 60-2101 and amendments thereto.

(c) The failure of the state historic preservation officer to initiate an investigation of any proposed project within 30 days from the date of receipt of notice thereof shall constitute such officer's approval of such project.

(d) Failure of any person or entity to apply for and obtain the proper or required building or demolition permit before undertaking a project that will encroach upon, damage or destroy any historic property included in the national register of historic places or the state register of historic places, or the environs of such property, except that such environs shall not include land devoted to agricultural use as defined by K.S.A. 12-519, and amendments thereto, and any land subject to the exemptions under K.S.A. 19-2908 and 19-2921, and amendments thereto, shall be subject to a civil penalty not to exceed \$25,000 for each violation. The attorney general may seek such penalties and other relief through actions filed in district court.

(e) (1) The state historic preservation officer may enter into an agreement authorizing a city or county to make

recommendations or to perform any or all responsibilities of the state historic preservation officer under subsections (a), (b) and (c) if the state historic preservation officer determines that the city or county has enacted a comprehensive local historic preservation ordinance, established a local historic preservation board or commission and is actively engaged in a local historic preservation program. The agreement shall specify the authority delegated to the city or county by the state historic preservation officer, the manner in which the city or county shall report its decisions to the state historic preservation officer, the conditions under which the city or county can request assistance from the state historic preservation officer in performing certain project reviews, the length of time the agreement is to be valid and provisions for termination of the agreement. Such agreement shall provide that the state historic preservation officer shall retain final authority to implement the provisions of this act. The state historic preservation officer shall adopt any rules and regulations necessary to implement the provisions of this subsection.

(2) An agreement with a city or county authorized by this subsection shall not be construed as limiting the authority of the state historic preservation officer to investigate, comment and make determinations otherwise permitted by this section.

(f) The state historic preservation officer may enter into agreements with the state board of regents or any state educational institution under the control and supervision of the state board of regents to perform any or all responsibilities of the state historic preservation officer under subsections (a), (b) and (c).

Sec. 17. K.S.A. 2002 Supp. 75-2724 is hereby repealed.

Sec. 18.

From: Rick Kready <rick_kready@juno.com>
To: <Amy_Cole@NTHP.org>, <BrownFound@juno.com>, <CDavis@kshs.org>, <Degginger@att.net>, <denslinger@ci.lawrence.ks.us>, <DGMcMican@worldnet.att.net>, <Foer@Kansas.net>, <jjoslin1@kc.rr.com>, <JKaup@lrck.com>, <joanadam@charter.net>, <klmorgan1@cox.net>, <KBower1@hallmark.com>, <KMorgan@wichita.gov>, <lgillaspie@sbcglobal.net>, <MartiCCB@lvnworth.com>, <MHShaw@ukans.edu>, <MMSwann@ukans.edu>, <Newchanc@alltel.net>, <PWells@keyconstruction.com>, <RBorhani@Dynamac.com>, <RBW@ksu.edu>, <SDHatcher@KC.rr.com>, <spencer@wamego.net>, <TerryT@access-one.com>
Date: Tue, Mar 11, 2003 5:20 PM
Subject: Preservation Environs Amendment -- Friday -- HB 2247

KPA Board, et. al.

I just concluded a meeting with Rep. Tom Sloan, an Assistant Revisor, and a lobbyist for the Kansas Livestock Association to work out final language for an amendment to address a preservation environs exemption for property actively used for agriculture. Rather than staying with the Production Agriculture language Tom and I originally proposed, we agreed to apply the exemption by stating in KSA 75-2724 2(d):

"except that such environs shall not include land devoted to agricultural use as defined by K.S.A. 12-519, and amendments thereto, and any land subject to the exemptions under K.S.A. 19-2908 and 19-2921, and amendments thereto"

Upon further review of our choices, nailing the definition of agriculture in this manner appeared to be the most narrow exemption we could give. You certainly can look up those statutes on the Kansas Legislature website, but in summary that definition includes production of various crops and various livestock, but specifically DOES NOT INCLUDE those portions used for residential purposes, or the land used for farm yards, etc. Clearly, a rural residence on acreage will NOT be exempt.

This will be offered on Friday, and I stated our intent that we will not support, but also will not oppose as long as the exemption remains this narrow.

Rick

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Testimony Regarding An Amendment to HB 2247
Dealing with Environs Review to Historic Properties

Kansas State Historical Society
6425 SW 6th Ave.
Topeka, KS 66615

An amendment to HB 2247 would eliminate environs review for land devoted to agricultural use. The historic preservation statute for the State of Kansas presently has the requirement in unincorporated areas, that any projects within 1000 feet of a property listed on the State or National Register of Historic Places that require a permit must be reviewed by the State Historic Preservation Office. That same law sets the environs distance at 500 feet in incorporated areas.

The Kansas State Historical Society is responsible for conducting these project reviews. During the last twelve years, the Historical Society has conducted reviews, under the state law, on nearly 4000 properties. Of these, none were agricultural or having to do with agricultural use.

The Kansas State Historical Society does not object to the proposed amendment. It will have a negligible effect upon our operations.

Senate Natural Resources Committee
Date: March 14, 2003
Attachment 8