

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on March 11, 2004 in Room 231-N of the Capitol.

All members were present except:

Representative Lee Tafanelli- excused  
Representative Vaughn Flora- excused

Committee staff present:

Emalene Correll Legislative Research Department  
Raney Gilliland Legislative Research Department  
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Senator Phillip B. Journey, 26<sup>th</sup> District  
Susan Erlenwein, Director of Environmental Resources for Sedgwick County, 2625 S. Tyler Road, Wichita, KS 67215  
Bill Bider, Director, Bureau Waste Management, KS Dept. Health and Environment, 1000 SW Jackson St., Ste. 320, Topeka, KS 66612-1366  
Mark Tomb, Intergovernmental Relations Associate, League of Kansas Municipalities, 300 SW 8<sup>th</sup> Avenue, Topeka, KS 66603-3912  
Randal Allen, Executive Director, Kansas Association of Counties, 6206 SW 9<sup>th</sup> Terrace, Topeka, KS 66615  
Ronald Hammerschmidt, Ph.D., Director, Division of Environment, Dept. of Health and Environment, 1000 SW Jackson St., Ste. 400, Topeka, KS 66612-1367

Others attending:

See Attached List.

Chairperson Joann Freeborn called the meeting to order. She reviewed the committee agenda for next week. Tuesday, March 16, a hearing on **HB 2919** - Concerning the beneficial use of groundwater; and a review on Terrestrial Carbon Sequestration by Dr. Charles Rice, Professor of Soil Micro Biology, Kansas State University. On Thursday, March 18, possible action on bills previously heard. She announced that Vice-Chairman Lee Tafanelli will not be present today, he is out of state with the military. Representative Vaughn Flora, Ranking Minority Leader, is absent also, due to an illness. She opened the hearing on **SB 416**.

**SB 416:**        **Allows cities and counties to use certain moneys for programs dealing with recyclables.**

The Chairperson asked Raney Gilliland, Legislative Research, to give a brief review of the bill.

Senator Phillip Journey, was welcomed to the committee. He presented testimony in support of the bill and believes every member of the Kansas House of Representatives as well as every member of this committee are aware of the fact that solid waste management is a serious issue facing all local governmental units in the State of Kansas. In particular, those from Sedgwick County are acutely aware of the issues involved in waste management. Many Kansas communities have embarked upon aggressive recycling programs in an effort to extend the life of the current landfill facilities. He has with him today copies of a small portion of the petitions signed by over 3,000 Sedgwick County residents supporting the proposition. The county officials implement and manage a convenient universal system to recycle and divert refuse that is now going to landfill. (See attachment 1)

Susan Erlenwein, Director of Environmental Resources for Sedgwick County, testified in support of the bill. She believes the purpose of this bill is not to increase the solid waste fee. The board of County Commissioners must establish that fee by July 1 of each year, and in fact the County Commissioners lowered the fee last year by 18% for residential properties and 26% for nonresidential properties. The

## CONTINUATION SHEET

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE at 3:30 p.m. on March 11, 2004 in Room 231-N of the Capitol.

board currently has no intention of raising this fee again to fund recycling programs or projects. But this bill will broaden the scope of implementation of more recycling programs and less solid waste destined for final disposal in a landfill. (See attachment 2)

Bill Bider, Director, Bureau of Waste Management, KS Department of Health and Environment, testified in support of the bill. This bill would amend KSA 65-3410 to give cities and counties authority to assess fees on real property to fund local recycling programs. Few people would disagree that recycling is good for Kansas. Most important is the conservation of valuable landfill space. By minimizing the amount of waste entering existing facilities, landfill lifetimes are lengthened and fewer new facilities need to be sited. This results in less impact to neighbors of new facilities and less environmental risks. Natural resource conservation is also a direct benefit of recycling. (See attachment 3)

Mark Tomb, Intergovernmental Relations Associate, League of Kansas Municipalities, was welcomed. The League is in support of the changes included in this bill. This bill adds language to include recycling programs and recycling fees. Kansas has a number of cities that have embarked on a proactive approach with regard to recycling. When faced with rising costs and limited space for landfills, cities across Kansas have embraced ambitious recycling programs. Recycling has been a powerful solution to reduce the need for landfill space while at the same time preserving resources for future generations. This bill supports those efforts by clarifying current law. (See attachment 4)

Randall Allen, Executive Director, Kansas Association of Counties, testified in support of the bill which adds recycling programs to the list of eligible activities for which county established solid waste fee funds can be used. It is their understanding that the intent of the original legislation was that this would be the case. However, the term "recycling program" was omitted from the list when the statute was last amended. Recycling programs are an integral part of waste management. It is the intent of this legislation to clarify the current statute and thereby allow counties to use their solid waste fees to provide and pay for recycling programs. (See attachment 5)

Written only testimony in support of the bill was submitted by Charles Benjamin, Kansas Chapter of the Sierra Club. The Sierra Club joins with Sedgwick County, the Kansas Association of Counties and the League of Kansas Municipalities in urging passage of this legislation. (See attachment 6) Committee questions and discussion followed.

There were no opponents to the bill. The Chairperson closed the hearing on **SB 416** and announced that the committee may work the bill next Thursday, March 18.

Chairperson Freeborn opened the hearing on **SB 396**.

### **SB 396: Creates the radiation control operations fee fund.**

Ronald Hammerschmidt, Director of the Division of Environment, Kansas Department of Health and Environment, was welcomed to the committee. He testified in support of the bill and believes the intent of this bill is to create a dedicated fee fund for the support of the activities of the Kansas Radiation Control Program. Passage of this bill would create a dedicated fee fund for the Radiation Control Program. This would keep program fee generated funds tied to program activities under the user-pays approach. They have successfully used this approach in a number of programs including air quality and hazardous waste. The former was a requirement of the reauthorized federal Clean Air Act while the latter was an agency initiative to support the hazardous waste regulatory program with federal funds and fees. The fee payers in these programs have accepted this approach as a way to keep their fees tied to an identifiable set of expenditures. Needed improvements to the Kansas Radiation Control Program can be funded by increases in fees charged to the licensees and registrants. These increased fees will be significantly less than those charged if the Nuclear Regulatory Commission operates the licensing program. This bill would create a dedicated fee fund to receive these funds. A letter to Governor Kathleen Sebelius from the United States Nuclear Regulatory Commission is included with the testimony. (See attachment 7) Committee questions and discussion followed.

Tom Conley, Section Chief, Radiation and Asbestos Control, Kansas Department of Health and

CONTINUATION SHEET

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE at 3:30 p.m. on March 11, 2004 in Room 231-N of the Capitol.

Environment was in attendance to answer committee questions.

There were no opponents to the bill. The Chairperson closed the hearing on **SB 396**.

The meeting adjourned at 4:35 p.m. The next meeting is scheduled for Tuesday, March 16, 2004



SENATOR PHILLIP B. JOURNEY

STATE SENATOR, 26TH DISTRICT  
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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS  
MEMBER: ASSESSMENT & TAXATION  
NATURAL RESOURCES  
PUBLIC HEALTH AND WELFARE

**Testimony Regarding Senate Bill 416  
Before the Kansas House of Representatives and Environment Committee  
by State Senator Phillip B. Journey, 26<sup>th</sup> District**

Madam Chairman, members of the committee, I want to thank you for the opportunity to present this testimony on behalf of Senate Bill 416. I am sure every member of the Kansas House of Representatives as well as every member of this committee are aware of the fact that solid waste management is a serious issue facing all local governmental units in the State of Kansas. In particular, those of us from Sedgwick County are acutely aware of the issues involved in waste management. Many Kansas communities have embarked upon aggressive recycling programs in an effort to extend the life of the current landfill facilities. I have with me today copies of a small portion of the petitions signed by over 3,000 Sedgwick County residents supporting the proposition. The county officials implement and manage a convenient universal system to recycle and divert refuse that is now going to landfill.

Senate Bill 416 on our side of the building in the State Senate Natural Resources Committee was supported by the Kansas Association of Counties, the Kansas Department of Health and Environment, the League of Municipalities, and the County of Sedgwick. Senate Bill 416 creates what may have been an oversight in the legislative revision from past sessions. Due to an inconsistency in the various state statutes that resulted from multiple enactments, Sedgwick County among others has been forced to prohibit the use of tipping fees or what is commonly known as solid waste management fees in supporting and economically funding recycling programs. We are all aware that in Sedgwick County the recycling program is less than effective because it uses centralized bins and requires county residents to deliver the products to the bins. The most effective recycling program is one which incorporates curb-side residential-based recycling that is far more convenient for the residents in our county. This modification of state law will help other counties and municipalities across the state more efficiently use their resources in promoting this worthwhile goal. While Senate Bill 416 amends K.S.A. 65-3410, the problem arises when one reviews other statutes in the same chapter. For example, K.S.A. 65-3402 (a) excludes recyclables from the definition of solid waste. While originally I've been informed that the intent of that section excluded recyclables was the need to avoid requiring solid waste permits for recycling facilities. There are currently, according to the Kansas Department of Health and Environment, over 1500 such facilities in Kansas. Every county is required to have a solid waste management plan that addresses recycling and other waste reduction activities in K.S.A. 65-3405 (j). KDHE also informed us that the statewide recycling rate is about 20% and given the rural nature of our state that's probably a pretty good rate. However, I believe that this bill will help us increase that rate substantially.

*House Environment  
3-11-04  
Attachment 1*

In the legislative process on the East side of the Capitol, I moved this bill out of committee and carried Senate Bill 416 on the floor of the Kansas State Senate where it was passed by a wide margin. It is my personal belief that any attempt to amend it significantly and alter the original intent of the bill will doom it to reassignment to the Senate Committees where time will not be available at this late date to rework it and get it passed back through the Senate floor with a majority vote. It's my personal position that any attempt to amend this bill would in effect kill it and foreclose an important opportunity for Sedgwick County residents to deal with their solid waste management issues.

I want to thank all the members of the Committee and the Chair for their patience and ask them to recommend this bill as soon as possible for immediate passage with a favorable recommendation.

Respectfully submitted,



Phillip B. Journey  
State Senator, 26<sup>th</sup> District



*Sedgwick County...  
working for you*

## DEPARTMENT OF ENVIRONMENTAL RESOURCES

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### TESTIMONY ON SB 416 Before The House Committee on Environment March 11, 2004

Chair Freeborn and members of the committee, I appreciate the opportunity to testify in support of this bill that gives local governments increased flexibility in utilizing the existing solid waste fee.

My name is Susan Erlenwein. I am the Director of Environmental Resources for Sedgwick County. I am a Licensed Professional Geologist in the State of Kansas and have been employed by Sedgwick County for over 15 years.

K.S.A. 65-3410 authorizes the board of county commissioners of any county to establish a schedule of fees to be imposed on real property. The revenue from such fees is to be used for certain solid waste-related programs or projects. The problem developed back in 1992 when the Legislature in HB 2801 added definitions for the terms "recyclables" and "scrap material recycling and processing facility." This bill also amended the definition of "solid waste" so that the term did not include recyclables, while also excluding "scrap material recycling and processing facility" from the definition of "solid waste processing facility." Then the Attorney General in Opinion No. 2000-14 opined that due to the change in this statute, a county was not authorized to establish a recycling program with these fees.

Thus, because of the current wording in K.S.A. 65-3410, the solid waste fee cannot be used for projects or programs related to recycling. SB 416 addresses this issue by adding the terms "recycling" and "recyclable" where appropriate to give counties the flexibility needed to develop programs that will reduce the amount of solid waste destined for disposal. In Sedgwick County we currently use the fee for building and operating the household hazardous facility; solid waste-related education; illegal dumping programs; a special waste tire collection program; etc. An important program that we cannot use the fee for is the drop-off recycling program. This program offers 19 drop-off recycling boxes conveniently located throughout Sedgwick County. Eighty-six percent of the residents are located within two miles of one of these locations. This recycling program is costing the taxpayers of Sedgwick County \$162,258 annually, and this money is coming out of the County general fund.

The purpose of this bill is not to increase the solid waste fee. The Board of County Commissioners must establish that fee by July 1 of each year, and in fact the County Commissioners lowered the fee last year by 18% for residential properties and

*House Environment  
3-11-04  
Attachment 2*

26% for nonresidential properties. The board currently has no intention of raising this fee again to fund recycling programs or projects. But this bill will broaden the scope of projects and programs eligible for funding through this fee. This could result in the implementation of more recycling programs and less solid waste destined for final disposal in a landfill.

In summary, SB 416 is a necessary piece of legislation and Sedgwick County urges you to support this bill.





K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

**Testimony on Senate Bill 416**  
**Local Government Funding of Recycling Programs**  
to  
**House Environment Committee**  
by William L. Bider  
Director, Bureau of Waste Management  
March 11, 2004

Thank you for this opportunity to present testimony in support of Senate Bill 416. This bill would amend K.S.A. 65-3410 to give cities and counties authority to assess fees on real property to fund local recycling programs.

This section of law currently authorizes cities or counties to assess fees to fund local government services related to solid waste management, but due to a technicality, those services do not include recycling. The problem is caused by another section of law (K.S.A. 65-3402(a)) that excludes recyclables from the definition of solid waste. This means that solid waste fees collected by a city and county using this authority should not be used to pay for the collection, storage, processing, or transportation of recyclable materials, such as paper, plastic, and aluminum, even though such materials were removed from the solid waste stream.

The reason that "recyclables" are excluded from the definition of "solid waste" is to avoid the need to issue a solid waste permit to every facility which handles such materials. There are presently over 1500 such facilities in Kansas. This exclusion was added to the law years after the funding provision was developed in K.S.A. 65-3410 without understanding the implications related to local funding of programs.

The legislature has passed other solid waste legislation which indicates that "recycling" is part of solid waste management, adding confusion to this situation. Solid waste planning laws provided in K.S.A. 65-3405(j) require every county to have a solid waste management plan which addresses recycling and other waste reduction activities. This implies that some local government expenditures to implement recycling activities are anticipated; thus, a method to raise funds must also be available. This bill would clarify that cities and counties can assess fees to cover the costs of recycling as specified in their required plans.

Few people would disagree that recycling is good for Kansas. Most important is the conservation of valuable landfill space. By minimizing the amount of waste entering existing facilities, landfill lifetimes are lengthened and fewer new facilities need to be sited. This results in less impact to neighbors of new facilities and less environmental risks. Natural resource conservation is also a direct benefit of recycling.

Kansas are doing a good job of recycling. Our statewide recycling rate is about 20 percent which is quite good given our rural nature and lack of statewide mandates and landfill bans. Passage of this bill should result in improved recycling because local governments will have clear authority to raise funds to implement and enhance their programs.

Thank you again for this opportunity to present testimony on this bill. I would be happy to answer any questions of the committee.



League of Kansas Municipalities

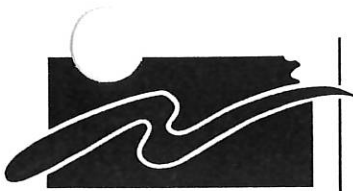
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**To:** House Environment Committee  
**From:** Mark Tomb, Intergovernmental Relations Associate  
**Re:** Support for SB 416  
**Date:** March 11, 2004

Thank you for the opportunity to appear before you today on behalf of the League of Kansas Municipalities and our member cities. The League appears today in support of the changes included in SB 416. This bill adds language to K.S.A. 65-3410 to include recycling programs and recycling fees.

Kansas has a number of cities that have embarked on a proactive approach with regard to recycling. When faced with rising costs and limited space for landfills, cities across Kansas have embraced ambitious recycling programs. Recycling has been a powerful solution to reduce the need for landfill space while at the same time preserving resources for future generations. This bill supports those efforts by clarifying current law.

We fully support the language contained in SB 416 to include recycling programs and recycling fees. Again, thank you for allowing LKM to comment on this proposed legislation. I would be happy to stand for questions.



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

**TESTIMONY**

concerning SB 416

Monies for Recycling Programs

Presented by Randall Allen, Executive Director

House Environment Committee

March 11, 2004

Chairperson Freeborn and members of the committee, thank you for the opportunity to present testimony in support of SB 416. The Association supports this bill, which adds recycling programs to the list of eligible activities for which county-established solid waste fee funds can be used. It is our understanding that the intent of the original legislation was that this would be the case. However, the term "recycling program" was omitted from the list when the statute was last amended.

Then in 2000, the Attorney General offered an opinion (AGO 2000-14) which states that the "Solid and Hazardous Waste Act, K.S.A. 65-3401, does not authorize counties to establish a recycling program and impose a charge for such service."

As you are aware, recycling programs are an integral part of waste management. It is the intent of this legislation to clarify the current statute and thereby allow counties to use their solid waste fees to provide and pay for recycling programs.

This bill passed the Senate on a 40-0 vote. We believe it is good public policy, and we urge the committee to report SB 416 favorably for passage. Thank you for your consideration of our comments.

*The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randall Allen or Judy Moler at (785) 272-2585.*

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*House Environment  
3-11-04  
Attachment 5*

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

Attorney at Law

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**Testimony in Support of S.B. 416**

An Act Concerning solid waste fees and recyclables

**On Behalf of the Kansas Chapter of the Sierra Club**

Before the House Committee on the Environment

March 11, 2004

Madam Chair and members of the House Committee on the Environment, thank you for the opportunity to present this testimony in support of S.B. 416 on behalf of the Kansas Chapter of the Sierra Club.

The Sierra Club is the largest grass roots environmental organization in the world with over 700,000 members, including over 4,000 in Kansas. More information about the Sierra Club can be found at [www.kansas.sierraclub.org](http://www.kansas.sierraclub.org). Sierra Club strongly supports efforts to recycle materials of all sorts rather than see those materials buried in landfills. That is why the Kansas Chapter of the Sierra Club supports S.B. 416.

S.B. 416 amends K.S.A. 65-3410 dealing with solid waste to permit cities and counties to use money raised by solid waste fees to be used for recycling programs. We hope the passage of this legislation will encourage increased voluntary recycling efforts in Kansas, thus extending the life of landfills in the state and conserving natural resources.

The Sierra Club commends the Kansas Department of Health and Environment for initiating this legislation and joins with Sedgwick County, the Kansas Association of Counties and the League of Kansas Municipalities in urging passage of this legislation.

Thank you for your time and attention to this matter.

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3-11-04  
Attachment 6*



# K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

Testimony on Senate Bill 396  
Kansas Radiation Control Program Dedicated Fee Fund

Presented to  
House Environment Committee  
by  
Ronald F. Hammerschmidt, Ph.D.  
Director, Division of Environment  
March 11, 2004

Representative Freeborn and members of the committee, I am Ron Hammerschmidt, Director of the Division of Environment for KDHE. I appreciate this opportunity to appear before the committee to request your support of Senate Bill 396. The intent of this bill is to create a dedicated fee fund for the support of the activities of the Kansas Radiation Control Program.

**Background:**

Under KSA 48-101 and related statutes, the State of Kansas entered into an agreement with the Nuclear Regulatory Commission (NRC) in 1965 to regulate radioactive materials under the provisions of the federal Atomic Energy Act. We have operated as an *agreement state* since that time. The regulated community in Kansas includes 320 facilities licensed to use radioactive materials and 2,447 facilities registered to use x-ray equipment. These facilities include industrial operations, research labs, medical and dental facilities, and security screening operations. In order to assure appropriate protection of the public and operators, radiation exposures must be kept as low as reasonably achievable. The role of the Radiation Control Program is to provide the appropriate oversight and regulation. Planning and response activities related to the Wolf Creek nuclear plant are currently financially supported by the plant operator. These planning and response activities are not included in this proposal. Our inspection activities of mammography facilities under contract with the Food and Drug Administration are also not included in this proposal.

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The Nuclear Regulatory Commission evaluates agreement state radiation control programs -- including Kansas -- every 4 years. In this Integrated Materials Performance Evaluation Program (IMPEP), the NRC using a team of evaluators examines the entire program. In 1998, the IMPEP evaluators identified problems with the program's fundamental operations' including record keeping, inspection tracking, state regulations, and resources. We began to address these problems and I am glad to report we are performing much better on our fundamentals, including record keeping and inspection tracking. We are currently getting very close to completing a comprehensive revision of the regulations to be consistent with the NRC and other states. When completed, the new regulations will give Kansas and members of the regulated community the benefit of the most current approaches developed by the NRC and other groups.

In the April 2002 IMPEP evaluation, the evaluators and the Nuclear Regulatory Commission continued to express concerns about the long-term stability of the Kansas program due to "continuing fiscal restraints" and "lack of adequate resources." In a letter dated January 6, 2004, from Nils J. Diaz, Chairman of the NRC, to Governor Sebelius the commission expressed concern about Kansas' ability to "maintain a properly trained staff consistent with requirement of the State's Agreement with the NRC." The commission has stopped short of threatening to revoke our agreement status, but it continues to express grave concerns for the Kansas program. A copy of Mr. Diaz' recent letter is attached for your reference.

Currently, the Radiation Control Program is funded with State General Revenue funds of approximately \$380,000. The program collects fees in the approximate annual amount of \$240,000 which are deposited in the State General Fund. There are currently 7.3 full time equivalent positions engaged in the activities of the program. Fees have not been increased for some time.

**Proposal:**

In response to recent IMPEP evaluations, we have improved our administrative processes, record keeping, and program operations. In addition, the regulatory concerns will be addressed with the adoption of our current draft regulations. To address the remaining issue of adequate resources, we must increase our inspection activities and develop a program to educate users of radioactive materials and x-ray equipment concerning compliance. While the inspections performed by the Radiation Control Program include the normal regulatory activities such as record checks and procedure review, we also perform measurements to ensure the shields and other protective equipment are functioning to keep radiation exposures at acceptable levels. The Kansas program currently inspects 40% of the materials licensees and 2% of the x-ray registrants each year. We typically find that 15% of the facilities inspected need to perform significant remedial measures to come into compliance with health and safety requirements. With additional resources, we expect these inspection rates will increase to 50% of the materials licensees and 20% of the x-ray registrants and to decrease compliance problems. In the state fiscal year 2006 budget request to the Governor, we will propose staff additions to move the program to a higher level of performance. In addition to inspections, we want to increase the training provided to both current and new staff and create an educational and compliance assistance outreach function. This improvement can be supported with increased user fees under current agency authority. We anticipate the fees would be increased to approximately \$775,000 by fiscal year 2006.

Passage of Senate Bill 396 would create a dedicated fee fund for the Radiation Control Program. This would keep program fee generated funds tied to program activities under the user-pays approach. We have successfully used this approach in a number of programs including air quality and hazardous waste. The former was a requirement of the reauthorized federal Clean Air Act while the latter was an agency initiative to support the hazardous waste regulatory program with federal funds and fees. The fee payers in these programs have accepted this approach as a way to keep their fees tied to an identifiable set of expenditures.

Two obvious questions arise. The first is "Does NRC provide any funding for these activities?" The answer is no. While the Food and Drug Administration provides funding for our program activities in the area of mammography, NRC does not provide funding to agreement states. The second question is "Why not give up the agreement status and let NRC run the program?" The answer is two fold -- financial and program control. In the event NRC ran the radiation control program in Kansas, we anticipate the fees charged would be in the range of \$1.7 million -- based upon the fees charged by NRC in those states where it runs the program, as compared to the approximate \$390,000 Kansas would assess. These NRC fees would only cover the approximately 320 licensees and not the x-ray registrations that would stay with the state. In addition, the state would relinquish control of regulatory activities covered under the agreement. Once relinquished it may be more difficult to obtain agreement status with the NRC in the future. Any budget proposals and regulatory changes would of course be handled through the normal processes as appropriate. The contemplated approach would have increased fees collected during state fiscal year 2005 to build a reserve to spend in 2006.

**Bill Details:**

The fee fund language is contained in New Section 2 starting on line 27 of page 7. Additional language is added in Section 1(c)(8) lines 4 to 6 on page 2.

In SB 396 there are two additional proposed changes. The first is an amendment by the Senate to include a table of maximum fee amounts, line 7 page 2, through line 19 page 7. This amendment provides an adequate and beneficial structure for our fees.

The second is on page 7, lines 23 through 26. This change would eliminate the statutory limit on fees charged for any radioactive waste disposal facility. The proposed language would allow the department to charge actual costs. While we do not anticipate any future application for such a facility, this was included as cleanup language to allow cost recovery in the future.

Several technical amendments have been discussed with staff of the Revisor of Statutes office. These amendments clarify the application of the fee structure.



Testimony on SB 396

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**Conclusion:**

Needed improvements to the Kansas Radiation Control Program can be funded by increases in fees charged to the licensees and registrants. These increased fees will be significantly less than those charged if the Nuclear Regulatory Commission operates the licensing program. Senate Bill 396 would create a dedicated fee fund to receive these funds. We appreciate your consideration of Senate Bill 396 and hope you will support its passage.

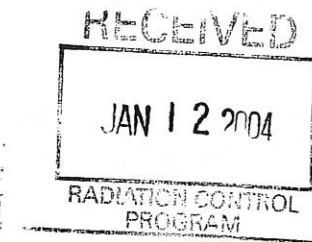
Thank you.



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 6, 2004



The Honorable Kathleen Sebelius  
Governor of Kansas  
Topeka, Kansas 66612

Dear Governor Sebelius:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am writing to seek your support in helping to ensure the continued success of the Kansas Agreement State Program. As you may know, on January 1, 1965, the State of Kansas became party to an Agreement with the NRC. Under this Agreement, the NRC relinquished its authority to regulate certain materials covered by the Atomic Energy Act (AEA), and the State of Kansas assumed that authority as an Agreement State. Under the AEA, the NRC has a responsibility to oversee the adequacy of Agreement State programs. The NRC implements this oversight responsibility through the Integrated Materials Performance Evaluation Program (IMPEP).

The NRC staff conducted the most recent IMPEP review of the Kansas Agreement State Program on April 22-26, 2002. This IMPEP resulted in a finding that the Kansas Agreement State Program was adequate to protect public health and safety, and compatible with the NRC's program. The Program's performance is a credit to the talent, training, determination, and hard work of the Program staff and management. However, we are concerned that the number, level, and complexity of the over 300 licenses currently in force will eventually overwhelm even the most determined staff. At the exit briefing with Kansas management, the IMPEP team expressed concern about the adequacy of staffing, which had been identified in earlier IMPEPs and was again identified in this IMPEP as an area in need of improvement. The specific concerns are discussed in more detail in the enclosed IMPEP Report. Should the Program become unable to maintain a properly trained staff consistent with the requirements of the State's Agreement with the NRC, the Program's overall performance may be affected.

Your continued support of the Kansas Agreement State Program, which is implemented by the Kansas Department of Health and Environment's Radiation Control Program, is critical to the public health and safety of the citizens of your State and the nation as a whole. Although I want to assure you that the Commission supports the objectives of the Kansas Agreement

State Program, the Commission is concerned about the trends identified by recent IMPEP reviews and wants to bring them to your attention. We thank you for your commitment to this effort.

Sincerely,



Nils J. Diaz

Enclosure:  
As stated

cc: Roderick Bremby, Secretary, Kansas Department of Health and Environment  
Ronald Hammerschmidt, Director, Division of Environment  
Clark Duffy, Director, Bureau of Air and Radiation  
Thomas Conley, Chief, Radiation and Asbestos Control Section