

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 p.m. on March 11, 2004 in Room 519-S of the Capitol.

All members were present except:

Representative Jim Yonally- excused

Committee staff present:

Martha Dorsey, Legislative Research Department
Mike Heim Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Maureen Stinson, Committee Secretary

Conferees appearing before the committee:

Joe Palacios, City of Hutchinson
Scott Gates, Department of Administration
Shari Weber, Community Bankers Assoc. Of Kansas
Sen. Goodwin, Kansas Senate
Rep. Judy Showalter, Kansas House
Sen. Pugh, Kansas Senate
Terry Holdren, Kansas Farm Bureau
Allie Devine, Kansas Livestock Association
Ron Pray, Pray Stone Company
Roger Black, Kansas Livestock Association, Save our Industries and Land
Donna Martin, Kansas Livestock Association
Save Our Industries and Land
Charles Benjamin, Kansas Chapter of Sierra Club
Bill House
Sandy Jacquot, League of Kansas Municipalities
Joe Harkins, Kansas Water Office

Others attending:

See Attached List.

The Chairman opened the hearing on:

HB 2914 **investments of public moneys by subdivisions of state;**
time period of investment extended

Rep. Mike O'Neal introduced Joe Palacios, City Manager, City of Hutchinson, who testified in support of the bill (Attachment 1). He explained that the City of Hutchinson recently reached an agreement with three gain elevators to pay the City \$10.5 million in cash to take over their responsibility for clean-up of groundwater contamination. He said in exchange for this cash payment, the City of Hutchinson will construct a reverse osmosis membrane filtration plant. Mr. Palacios said that current state law provides that local units of government may not invest in certificates of deposit or related financial instruments for more than two years. He said that the City of Hutchinson is asking for specific legislation that will allow them to invest in a longer time period as required for such specific purposes.

Scott Gates, Department of Administration, presented testimony on behalf of Derl Treff, Kansas Pooled Money Investment Board (Attachment 2). He said the language of the bill is too broad and open to interpretation. He explained a proposed balloon amendment to the bill.

Written testimony in support of the bill was submitted by:

- Meryl Dye, Special Assistant to the City Manager, City of Hutchinson (Attachment 3)

Shari Weber, Executive Director, Community Bankers Association of Kansas, testified in opposition to

CONTINUATION SHEET

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE at 3:30 p.m. on March 11, 2004 in Room 519-S of the Capitol.

the bill (Attachment 4). She said there are provisions for a public entity to request an extended time frame for investment of public funds from the Pooled Money Investment Board. She stated because of this, there would be no need for this proposed change in the statute.

The Chairman closed the hearing on: **HB 2914**

SB 328 **cities and counties; limitation on lien for unpaid sewer charges**

Rep. Siegfried made a motion to adopt the balloon amendment (Attachment 5) relating to commercial broker lien rights and to also adjust the time limit for foreclosure on the lien from two years to one year. Rep. Lane seconded the motion. The motion carried.

Rep. Siegfried made a motion for the favorable passage of SB 328 as amended. Rep. E. Johnson seconded the motion. The motion carried.

The Chairman opened the hearing on:

SB 461 **limitations on acquisition of land by eminent domain by a port authority and county**

Sen. Goodwin testified in support of the bill (Attachment 6). She said she introduced the bill to clarify that neither the counties, port authorities or any quasi-public body may take land from private citizens through the use of eminent domain powers for recreational purposes only. She stated that the bill also specified that if land is acquired with the use of eminent domain powers by any governmental entities and **recreation** is part of the purpose for the use of eminent domain, then the governmental body may not allow private development upon such acquired land or site for 30 years.

Rep. Showalter testified in support of the bill (Attachment 7). She explained that the bill will amend the law to provide that no port authority shall modify, amend, or extend the port authorities official plan as originally adopted by the port authority to change the purpose for which it was created or alter the character of the work undertaken without the approval of the legislature. She informed that the bill is specific to Cowley County.

Senator Pugh testified in support of the bill (Attachment 8). He said the bill is an effort to prevent the exercise of eminent domain; otherwise known as condemnation from the taking of the private property of many for the benefit of the few.

Terry Holdren, Associate State Director, Governmental Relations, Kansas Farm Bureau, testified in support of the bill (Attachment 9). He said the bill provides much needed protection by:

- Precluding a port authority or county government from acquiring land for recreational purposes by eminent domain;
- Restricting private development on land acquired by the use of eminent domain for 30 years; and
- Requiring a port authority or county government to satisfy all state and federal permitting agencies before the use of eminent domain powers.

Mr. Holdren said that the provisions will ensure that projects are legitimate and in compliance with regulatory agencies before the homes and lands of private citizens are taken from them, jobs are lost, and the vitality of communities in Cowley County threatened.

Allie Devine, Vice President and General Counsel, Kansas Livestock Association (KLA), testified in support of the bill (Attachment 10). She said the bill is important to their members in Cowley County who are facing a proposed development of a nearly 10,000 acre lake to be built on private lands secured through the use of eminent domain. She advised that the Kansas Water Authority through its planning process has begun gathering data on the feasibility of this lake. She said that the residents of Cowley

CONTINUATION SHEET

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE at 3:30 p.m. on March 11, 2004 in Room 519-S of the Capitol.

County have lived under the threat of this lake development long enough. Ms. Devine asked the Committee to give them some legal assurance that their land will not be taken indiscriminately; without regard to state and federal environmental laws; or for the benefit of a few developers.

Ron Pray, Owner, Pray Stone Company, testified in support of the bill ([Attachment 11](#)). He stated that many buildings have been built from Silverdale limestone. He listed the following: Crum Castle, Old Sedgwick County Court House, Old Wichita City Building, Cowley County Courthouse, Ahearn Fieldhouse and Archer Hall at K-State, Lindley Hall at K-U, Union building at Fort Hays, and the Kansas City Scottish Rite Temple. He explained that Silverdale limestone outcrops only on the plateaus overlooking the Grouse Creek and Silver Creek Valleys. Mr. Pray said the stone is in the Barneston Geological formation, which is about 100 feet thick and runs north and south across the state with outcrops occurring in the valley in about a 10-foot thick section. He stated that the stone in this section is unique in the color, quality, and characteristics that only Silverdale stone possesses. He informed that if the lake is built, and land within three miles of the lake is appropriated by eminent domain for development of the lake, all past and present reserves of Silverdale limestone will be affected. Mr. Pray said the loss of the quarry will mean loss of jobs—not just those men and women who work in the quarries themselves, but also the cutters and the equipment operators who prepare and transport the stone, and the architects, masons and builders who use the stone.

Roger Black, Kansas Livestock Association (KLA), Save Our Industry and Land (SOIL), and Grouse-Silver Creek Watershed Board, appeared in support of the bill ([Attachment 12](#)). He stated that the proposed lake development has already impacted their area. He said that because of the uncertainty regarding their property's future, construction of new homes, remodeling and maintenance projects have all been put on hold. He stated this translates into lost economic activity, which impacts providers far beyond the five mile perimeter. He said they need some relief; a way to bring this uncertainty to an end.

Donna Martin, Kansas Livestock Association (KLA) and Save Our Industry and Land (SOIL), appeared in support of the bill ([Attachment 13](#)). She said according to a September 13, 2004 article in the Wichita Business Journal, a Wichita Real Estate developer made public a five year old plan to stir interest in water and build the first preplanned developer's lake in the nation. She stated that the article further noted that the Wichita group planned to pay for the lake by taking enough extra land for resale. Ms. Martin said that the article went on to say that in order to acquire more land than was actually needed for the project, the Wichita group's way of skirting the law was to have a Port Authority named which in turn would enable them to acquire the governmental authority to condemn and take the extra, desired land. Ms. Martin informed that at a public meeting on October 27th, she and others were told by Lieutenant Governor Moore, "If there is no need for water, this is a dead issue." She said his statement appeared to be withdrawn on January 29th, at the Lower Arkansas and Walnut Basin Advisory Committee's meeting by one of the Lieutenant Governor's subordinates who said, "Our goal is economic development through water." Ms. Martin said that the Walnut Basin Advisory Committee was told that the issue would not be handled in the traditional way and that they would not be able to deal with it. She informed that the Kansas Water Office appointed a special group called the TAC.

Charles Benjamin, Attorney, Kansas Chapter of the Sierra Club, testified in support of the bill ([Attachment 14](#)). He said their group supports the bill because it deals directly with a proposal to dam Grouse Creek in southern Cowley County in order to create a Grand Lake/Lake of the Ozarks type of development. He said that the National Park Service has recognized Grouse Creek as an "Outstandingly Remarkable Stream" based on scenic, historical, and ecological attributes. He advised that the state's former Fish and Game Commission listed Grouse Creek as a "Highest-Valued Fishery Resource." Mr. Benjamin informed that recently, the Kansas Magazine reported on the historic limestone bridges over Grouse Creek and its tributaries.

Bill House, local resident, appeared in support of the bill ([Attachment 15](#)). He said he was present at the hearing because of the proposal by a representative of Weigand Realtors of Wichita to build a lake in the Grouse Creek Valley seven miles east of Arkansas City. He explained that the proposal lists water and electricity as possible developments, but also lists retirement homes, tourism, resorts and parks, waterfront second homes, vacation homes, and recreation. He said that K.S.A. 12-1774 "Port Authority" is a

CONTINUATION SHEET

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE at 3:30 p.m. on March 11, 2004 in Room 519-S of the Capitol.

dangerous statute leaning toward letting predators take anything they desire. He warned that if Sedgwick County issued the authority, Cowley County would lose control over the entire entity.

Written testimony in support of the bill was submitted by:

- Robert Voegele, Farmer and Cowley County Farm Bureau President (Attachment 16)

Sandy Jacquot, General Counsel, League of Kansas Municipalities, testified in opposition to the bill (Attachment 17). She said the primary focus of concern for the League is the language in Section 1(a) and in Section 3 that would affect all existing and future port authorities. She stated the proposed language would prohibit all existing and future port authorities from modifying, amending or extending the port authority's original plan unless approved by the Legislature, and would prohibit ever changing the character of the work. She said the bill would not allow the use of eminent domain for a recreational-use purpose or private development. Ms. Jacquot said that currently, existing port authorities may modify, amend or extend the character of the work originally undertaken by holding a public hearing. She advised that if the concern needing to be addressed in the bill encompasses only one area, Sections 1 and 3 could be amended to limit the impact to port authorities created for the purpose of completing a project in Cowley County.

Joe Harkins, Acting Director, Kansas Water Office, appeared in opposition to the bill (Attachment 18). He said the Kansas Water Authority (KWA) has authorized the Kansas Water Office to gather information, seek input from the public, and make a recommendation later in the year to the KWA on what the next step, if any, should be on the part of the state regarding a new lake in this region. He expressed that legislative action intended to prevent the project before the analysis is complete, is premature.

The Chairman closed the hearing on: **SB 461**

Rep. Toelkes made a motion to approve the minutes of the February 17, 2004 meeting. Rep. Kassebaum seconded the motion. The motion carried.

The meeting was adjourned.

The next meeting is scheduled for March 16, 2004.

HOUSE LOCAL GOVERNMENT

DATE 3-11-04

| NAME | REPRESENTING |
|------------------|--|
| Bill House | Cowley Co Landowners |
| Carol House | Cowley Co Landowners |
| Jeff Smith | Cowley Co. Landowners |
| Thompe Young | Cowley County Sovereign Industries & Land |
| Ed Young | Board member Dexter HS SOIL member |
| Jan Nitschke | Cowley County Landowner |
| Bud Nitschke | " " " |
| Larry Reeves | " " " |
| Neil Kadan | " " " |
| Janice Reeves | " " " |
| Shirley Wilson | Cowley County / Dexter |
| Lanita Mattingly | Cowley Co. So. Justice SOIL KLA |
| Joyce Williams | Cowley County Landowner |
| M. L. Guller | " " " |
| Bert Martin | Cowley County Land owner |
| Doc Jolly | " " " " |
| BRAD HARRELSON | KFB |
| TERRY HOLDREN | KFB |
| Kent Badoliff | KLA |
| Melissa Maddin | KRWA |
| Rep JOE SHRIVER | Ks. House |
| Roger Back | KLA Soil |

HOUSE LOCAL GOVERNMENT

DATE 3-11-04

| NAME | REPRESENTING |
|-----------------|---------------------------------------|
| Kelly Williams | KLA / SOIL Cowley County LANDOWNER |
| Ladd Johnson | KLA |
| Danielle Hae | TAMMSON COUNTY |
| Heather Bruce | DANFORD ASSOCIATES |
| David A. Seaton | Winfield Publishing Co. |
| Ed Fink | 1st Senate District |
| Chuck Stones | KS Bankers Assoc. |
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Thursday, March 11, 2004
3:30 p.m. – Room 519-S

TESTIMONY ON H.B. 2914
JOE J. PALACIOZ, CITY MANAGER
HUTCHINSON, KANSAS

620-694-2610
joep@hutchgov.com

The City of Hutchinson just recently reached an agreement with three grain elevators (Garvey, Bunge, and Farmland) to pay the City \$10.5 million in cash to take over their responsibility for clean-up of groundwater contamination on the east side of Hutchinson. In exchange for this cash payment, the City of Hutchinson will construct a 6.0 MGD reverse osmosis membrane filtration plant to remediate chloride contamination and further enhance the quality and quantity of the municipal water supply. The RO process yields the highest level of liquid filtration in the water treatment industry by removing contaminants at the molecular level.

State law provides that local units of government may not invest in certificates of deposit or related financial instruments for more than two years. We, the City of Hutchinson, are asking for specific legislation that will allow us to invest in a longer time period as required for such specific purposes. As you know, \$10.5 million in cash invested over more than two years will increase our investment earnings on this project. These funds are not tax funds; they are funds from private entities for a specific purpose.

I appreciate the time you have given to H.B. 2914 and will be happy to answer any questions you may have.

Joe J. Palacios
City Manager

House Local Government
Date: 3-11-04
Attachment # 1



K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

March 9, 2004

The Honorable Jene Vickrey
Kansas House of Representatives
State Capitol, Room 181-W
Topeka, Kansas 66612

SUBJECT: Support for House Bill 2914 - Investment of Public Funds by Local Governing Bodies

Dear Representative Vickrey:

The Kansas Department of Health and Environment works with local governments that periodically receive settlement monies that must be used to fund long-term remedial projects. For example, the City of Hutchinson has reached settlement agreements with industries that have caused groundwater contamination within the City of Hutchinson. To restore the groundwater, the City has developed a long-range remedial plan that will be funded pursuant to agreements with the polluting industries.

The duration of remedial projects is often difficult to determine. This is common to many remedial projects. In the case of Hutchinson, it will require decades to restore the water quality. House Bill 2914 links the fund investment period to the duration of the project and allows local governments to achieve the maximum yield on the investment.

If you have additional concerns regarding these long-term remedial projects or the position of the agency on this matter, feel free to contact Gary Blackburn (785-296-1660) or me (785-296-1535).

Sincerely,

Ronald F. Hammerschmidt, Ph.D.
Director, Division of Environment

RFH:GDB:cah

1 - 2



KANSAS

POOLED MONEY INVESTMENT BOARD
DERL S. TREFF, DIRECTOR OF INVESTMENTS

KATHLEEN SEBELIUS, GOVERNOR

TESTIMONY ON HOUSE BILL 2914

By
Derl S. Treff
Director of Investments
Pooled Money Investment Board
March 11, 2004

The Honorable Jene Vickery
House Committee on Local Government
Statehouse, Room 519-S
Topeka, KS 66612

Representative Vickery and Members of the Committee:

Subject: Extending maturities on certain investments of public moneys

The proposed amendment language is too broad and open to interpretation. The amendment opens the door to all municipalities (627 cities, 105 counties, 512 school districts not to mention rural water associations, fire districts, community colleges etc. to define "specific purpose" and maturity. (Municipalities could go out 30 years on U.S. Treasury Bonds).

This bill was specifically introduced on behalf of the City of Hutchinson to address a very atypical situation. The city of Hutchinson is receiving approximately \$10 million in a lump sum payment from three corporations to cover the cost of constructing a reverse osmosis plant to remove a fumigant used in grain elevators from the ground water. Most of these funds will be expended in 2007 through 2009.

My proposed balloon amendment addresses the city of Hutchinson's situation without weakening the basic investment statute (K.S.A 12-1675).

House Local Government
Date: 3-11-04
Attachment # 2

HOUSE BILL No. 2914

By Committee on Federal and State Affairs

2-25

9 AN ACT concerning investment of certain public moneys; amending
10 K.S.A. 12-1675 and repealing the existing section.

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. K.S.A. 12-1675 is hereby amended to read as follows: 12-
14 1675. (a) The governing body of any county, city, township, school district,
15 area vocational-technical school, community college, firemen's relief as-
16 sociation, community mental health center, community facility for the
17 mentally retarded or any other governmental entity, unit or subdivision
18 in the state of Kansas having authority to receive, hold and expend public
19 moneys or funds may invest any moneys which are not immediately re-
20 quired for the purposes for which the moneys were collected or received,
21 and the investment of which is not subject to or regulated by any other
22 statute.

23 (b) Such moneys shall be invested only:

24 (1) In temporary notes or no-fund warrants issued by such investing
25 governmental unit;

26 (2) in time deposit, open accounts, certificates of deposit or time cer-
27 tificates of deposit with maturities of not more than two years, ~~Except that~~
28 ~~moneys collected or received for specific purposes may be invested for~~
29 ~~such longer period as required for such purpose~~; (A) In banks, savings
30 and loan associations and savings banks, which have main or branch of-
31 fices located in such investing governmental unit; or (B) if no main or
32 branch office of a bank, savings and loan association or savings bank is
33 located in such investing governmental unit, then in banks, savings and
34 loan associations and savings banks, which have main or branch offices in
35 the county or counties in which all or part of such investing governmental
36 unit is located;

37 (3) in repurchase agreements with: (A) Banks, savings and loan as-
38 sociations and savings banks, which have main or branch offices located
39 in such investing governmental unit, for direct obligations of, or obliga-
40 tions that are insured as to principal and interest by, the United States
41 government or any agency thereof; or (B) (i) if no main or branch office
42 of a bank, savings and loan association or savings bank, is located in such
43 investing governmental unit; or (ii) if no such bank, savings and loan

except that moneys allocated for a specific capital improvement project may be invested for a longer period of time after consultation with the director of investments of the pooled money investment board to evaluate the project's cash flow requirements and the current interest rate environment

Submitted by:
Darl Treff,
Scott Gates,
Dept. of Admin.
Kansas Pooled
Money Investment
Board.

P.F.

1 association or savings bank having a main or branch office located in such
 2 investing governmental unit is willing to enter into such an agreement
 3 with the investing governmental unit at an interest rate equal to or greater
 4 than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a,
 5 and amendments thereto, then such repurchase agreements may be entered
 6 into with banks, savings and loan associations or savings banks which
 7 have main or branch offices in the county or counties in which all or part
 8 of such investing governmental unit is located; or (C) if no bank, savings
 9 and loan association or savings bank, having a main or branch office in
 10 such county or counties is willing to enter into such an agreement with
 11 the investing governmental unit at an interest rate equal to or greater
 12 than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a,
 13 and amendments thereto, then such repurchase agreements may be entered
 14 into with banks, savings and loan associations or savings banks;

15 (4) in United States treasury bills or notes with maturities as the gov-
 16 erning body shall determine, but not exceeding two years, ~~except that~~
 17 ~~moneys collected or received for specific purposes may be invested for~~
 18 ~~such longer period as required for such purposes.~~ Such investment trans-
 19 actions shall only be conducted with banks, savings and loan associations
 20 and savings banks; the federal reserve bank of Kansas City, Missouri; or
 21 with primary government securities dealers which report to the market
 22 report division of the federal reserve bank of New York, or any broker-
 23 dealer engaged in the business of selling government securities which is
 24 registered in compliance with the requirements of section 15 or 15C of
 25 the securities exchange act of 1934 and registered pursuant to K.S.A. 17-
 26 1254, and amendments thereto;

27 (5) in the municipal investment pool fund established in K.S.A. 12-
 28 1677a, and amendments thereto;

29 (6) in the investments authorized and in accordance with the condi-
 30 tions prescribed in K.S.A. 12-1677b, and amendments thereto; or

31 (7) in multiple municipal client investment pools managed by the
 32 trust departments of banks which have main or branch offices located in
 33 the county or counties where such investing governmental unit is located
 34 or with trust companies incorporated under the laws of this state which
 35 have contracted to provide trust services under the provisions of K.S.A.
 36 9-2107, and amendments thereto, with banks which have main or branch
 37 offices located in the county or counties in which such investing govern-
 38 mental unit is located. Public moneys invested under this paragraph shall
 39 be secured in the same manner as provided for under K.S.A. 9-1402, and
 40 amendments thereto. Pooled investments of public moneys made by trust
 41 departments under this paragraph shall be subject to the same terms,
 42 conditions and limitations as are applicable to the municipal investment
 43 pool established by K.S.A. 12-1677a, and amendments thereto.

except that moneys allocated for a specific capital improvement project may be invested for a longer period of time after consultation with the director of investments of the pooled money investment board to evaluate the project's cash flow requirements and the current interest rate environment

1 (c) The investments authorized in paragraphs (4), (5), (6) or (7) of
2 subsection (b) shall be utilized only if the banks, savings and loan asso-
3 ciations and savings banks eligible for investments authorized in para-
4 graph (2) of subsection (b), cannot or will not make the investments au-
5 thorized in paragraph (2) of subsection (b) available to the investing
6 governmental unit at interest rates equal to or greater than the investment
7 rate, as defined in subsection (g) of K.S.A. 12-1675a, *and amendments*
8 *thereto*.

9 (d) In selecting a depository pursuant to paragraph (2) of subsection
10 (b), if a bank, savings and loan association or savings bank eligible for an
11 investment deposit thereunder has an office located in the investing gov-
12 ernmental unit and such financial institution will make such deposits avail-
13 able to the investing governmental unit at interest rates equal to or greater
14 than the investment rate, as defined in subsection (g) of K.S.A. 12-1675a,
15 *and amendments thereto*, and such financial institution otherwise qualifies
16 for such deposit, the investing governmental unit shall select one or more
17 of such eligible financial institutions for deposit of funds pursuant to this
18 section. If no such financial institution qualifies for such deposits, the
19 investing governmental unit shall select for such deposits one or more
20 eligible banks, savings and loan associations or savings banks which have
21 offices in the county or counties in which all or a part of such investing
22 governmental unit is located which will make such deposits available to
23 the investing governmental unit at interest rates equal to or greater than
24 the investment rate, as defined in subsection (g) of K.S.A. 12-1675a, *and*
25 *amendments thereto*, and which otherwise qualify for such deposits.

26 (e) (1) All security purchases and repurchase agreements shall occur
27 on a delivery versus payment basis.

28 (2) All securities, including those acquired by repurchase agreements,
29 shall be perfected in the name of the investing governmental unit and
30 shall be delivered to the purchaser or a third-party custodian which may
31 be the state treasurer.

32 Sec. 2. K.S.A. 12-1675 is hereby repealed.

33 Sec. 3. This act shall take effect and be in force from and after its
34 publication in the Kansas register.

TESTIMONY
HB 2914 - INVESTMENTS OF PUBLIC MONEYS BY SUBDIVISIONS OF STATE;
TIME PERIOD OF INVESTMENT EXTENDED

Pursuing Excellence in Public Service

OFFICE: CITY MANAGER

TELEPHONE: 620.694.2608

March 4, 2004

Representative Jene Vickrey
State Capitol Bldg - Rm 115-S
Topeka KS 66612

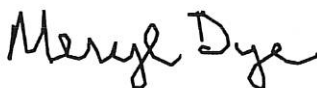
RE: HB 2914 - Investments of Public Moneys

Dear Representative Vickrey:

On behalf of the City of Hutchinson, Kansas, I wish to express our support for HB 2914, regarding the investment of public funds. The ability to extend the time period beyond two years for moneys collected or received for specific purposes is especially important to the City of Hutchinson. We expect to receive funds from various parties in the resolution of groundwater contamination, which will be used to construct a Reverse Osmosis water treatment plant for our community.

We respectfully ask for the support of the Local Government Committee on this bill to extend the period of time allowed for the investment of public funds which are not immediately required for the purposes for which the moneys were collected or received.

Sincerely,



Meryl Dye
Special Assistant to the City Manager
(Registered Lobbyist)
meryld@hutchgov.com

cc Joe J. Palacioz, City Manager
Senate President Dave Kerr
Rep. Mike O'Neal
Rep. Janice Pauls
Rep. Mary Kauffman
Rep. Melvin Minor
League of Kansas Municipalities

House Local Government
Date: 3-11-04
Attachment # 3

Testimony for House Local Government Committee

March 11, 2004

HB 2914 An Act concerning investment of certain public moneys; amending
K.S.A.12-1675 and repealing the existing section.

Thank you Mr. Chairman and members of the committee for the opportunity to appear before you today to oppose the changes to K.S.A. 12-1675 in the form of HB 2914. I am Shari Weber, Director for the Community Bankers Association of Kansas.

The Community Bankers Association of Kansas is a not-for-profit statewide organization of community banks. Organized in 1963 and founded as a trade association in 1978, member banks are locally owned and operated - intent on preserving local credit for local development. Member banks are as diverse as Kansas itself and as varied as the economies and aspirations of the communities they serve. Approximately 1/3 of the chartered banks in Kansas adhere to the community banking philosophy of understanding that Kansans are best served by local dollars being reinvested locally, thereby enriching communities throughout Kansas. They are members of CBA because they believe the best financial decisions are made close to home, backed by all the resources necessary for customers' prosperity and growth. These community banks come in all sizes - from the smallest banks to some of the largest. They are the kind of banks that have helped to build America . . . chartered for the purpose of helping people and communities develop economically.

The membership directs CBA. The association is made of bankers who live and work in the communities where they do business. As strong advocates for the community banking industry, they know how imperative it is to have local money reinvested locally. Community banks are the very fiber that holds the fabric of communities together. This bill has the potential to threaten that fabric.


It is our understanding that the City of Hutchinson approached their legislator, Rep. Mike O'Neal, with a public funds monetary scenario that was troublesome for them with regard to the time frame that the City was able to invest public funds. Therefore, Rep. O'Neal had this legislation drafted and introduced in a deadline exempt committee as to expedite the process which is also noted with its effective time being that of the Kansas Register publication. We believe that there are provisions for a public entity to request an extended time frame for investment of public funds from the Pooled Money Investment Board; therefore, there would be no need for this proposed change in the statute.

The Community Bankers Association of Kansas believes the current law regulating investment of public funds by cities and counties serves citizens well and provides an excellent balance between the goals of maximizing return on idle funds and using such funds to benefit the local community. Under current law, local governments must invest public funds with local financial institutions, so long as those institutions agree to pay at least the interest rate guaranteed local governments by the state through the Municipal Investment Pool (MIP). If local banks will not meet that rate, the local government must invest the funds at the MIP. The Legislature created MIP to guarantee greater return on local idle funds. The state Pooled Money investment Board supervises MIP. Local governments are not required to put public funds out for bid; nor are they required to inform banks, interested in accepting those investments, where or how funds are invested.

Thus, under current law, local governments have maximum flexibility on how they will invest these public funds, with restrictions imposed by the state only to insure they get a better return and that the funds are invested in companies or funds regulated by the state, to assure safety and soundness.

We believe it is neither necessary to change this statute to accommodate one entity with a specific monetary scenario or that is necessary to consider such a change at this time. I thank you for your time and attention and urge you to reject HB 2419.

Thank you,


Shari Weber
Executive Director

House Local Government

Date: 3-11-04

Attachment # 4



Alta Vista State Bank, Alta Vista • Andover State Bank, Andover • First National Bank of Anthony, Anthony • Farmers & Merchants State Bank, Argonia • Union State Bank, Arkansas City • Citizens National Bank, Arlington • First State Bank, Arma • Farmers State Bank, Atwood • State Bank of Axtell, Axtell • Baldwin State Bank, Baldwin City • First National Bank, Beloit • Bendena State Bank, Bendena • State Bank of Bern, Bern • Bison State Bank, Bison • State Bank of Blue Rapids, Blue Rapids • First State Bank, Burlingame • State Bank of Burrton, Burrton • State Bank of Canton, Canton • State Bank of Carbondale, Carbondale • Cottonwood Valley Bank, Cedar Point • Citizens State Bank, Cheney • The Farmers State Bank, Circleville • First National Bank, Clifton • Community State Bank, Coffeyville • Coldwater National Bank, Coldwater • Legacy Bank, Colwich • State Bank of Conway Springs, Conway Springs • Farmers & Drovers Bank, Council Grove • Swedish-American State Bank, Courtland • De Soto State Bank, De Soto • State Bank of Downs, Downs • Farmers State Bank, Dwight • First Community Bank, Emporia • Dickinson County Bank, Enterprise • Union State Bank, Everest • Farmers State Bank, Fairview • Fowler State Bank, Fowler • First National Bank, Frankfort • Garden City State Bank, Garden City • Citizens State Bank, Geneseo • Community Bank of the Midwest, Great Bend • Citizens State Bank, Gridley • The Halstead Bank, Halstead • Freeport State Bank, Harper • BankHaven, Haven • First State Bank, Healy • Farmers State Bank, Highland • Hillsboro State Bank, Hillsboro • First National Bank, Hope • Citizens State Bank, Hugoton • First National Bank of Hutchinson, Hutchinson • Johnson State Bank, Johnson • Kanza Bank, Kingman • Citizens Bank of Kansas, N.A., Kingman • Nekoma State Bank, La Crosse • The State Bank of Leon, Leon • First National Bank, LeRoy • Lorraine State Bank, Lorraine • Lyndon State Bank, Lyndon • The Lyons State Bank, Lyons • State Exchange Bank, Mankato • Stockgrowers State Bank, Maple Hill • Peoples State Bank, McDonald • Farmers State Bank, McPherson • Citizens State Bank, Miltonvale • Montezuma State Bank, Montezuma • Citizens State Bank, Morland • First National Bank of Southern KS, Mount Hope • United National Bank, Natoma • First State Bank, Norton • Farmers State Bank, Oakley • Bank of the Prairie, Olathe • Union State Bank, Olsburg • First Option Bank, Osawatomie • First Security Bank, Overbrook • Kansas State Bank, Overbrook • Bank of Palmer, Palmer • Peabody State Bank, Peabody • First National Bank & Trust, Phillipsburg • Farmers State Bank, Phillipsburg • Plains State Bank, Plains • Plainville State Bank, Plainville • Prescott State Bank, Prescott • The Bank of Protection, Protection • The Riley State Bank, Riley • Valley State Bank, Roeland Park • Scandia State Bank, Scandia • First National Bank, Scott City • Security State Bank, Scott City • First National Bank, Sedan • Alliant Bank, Sedgwick • Baileyville State Bank, Seneca • Community National Bank, Seneca • St Marys State Bank, St. Marys • Tampa State Bank, Tampa • Towanda State Bank, Towanda • Troy State Bank, Troy • 1st Bank of Troy, Troy • Bank of Commerce, Udall • Grant County Bank, Ulysses • Union State Bank, Uniontown • Vermillion State Bank, Vermillion • Farmers & Merchants State Bank, Wakefield • The Walton State Bank, Walton • Kaw Valley State Bank & Trust Co., Wamego • Farmers State Bank, Wathena • Citizens Bank, Weir • Bank of Commerce & Trust Co., Wellington • Wellsville Bank, Wellsville • Garden Plain State Bank, Wichita • The Trust Company of Kansas, Wichita • Bankers' Bank of Kansas, N.A., Wichita • Community Bank of Wichita Inc., Wichita • Citizens State Bank & Trust Co., Woodbine



Community Bankers Association of Kansas History Presentation
House Local Government Committee
March 11, 2004

Mr. Chairman and Members of the Committee,

Thank you for the opportunity to appear before you today. I am appreciative of the time and attention that you give to me to relate the story of community banking in Kansas from the perspective of the Community Bankers Association.

As you may know, I have been with the association office less than one year; however, during that time I have traveled the state and come to know the citizens of our state who are community bankers. It is their story that I share with you briefly today. Much of the information about community banking that I bring to you is recorded in a recent publication entitled, *The History of Community Banking in Kansas*, by Sue Anderson, published by the Donning Company. The association has placed a copy of this resource in the State Library here in the Capitol building as well as providing legislators with a copy for their personal legislative library.

In many states, banking laws were nearly non-existent until the late 1800's. In that regard, Kansas was no exception. The first banking laws for Kansas were enacted in 1891, but the subject of branch banking was not addressed. Branch banking was prohibited on the legal premise that "corporations may exercise only the power which the law expressly confers and do only the things which the law expressly sanctions." Therefore, since the law did not address the issue of bank branches, Kansas was established as a unit banking state. Every bank in business had an individual bank charter. In the early 1900's, branch banking was thought to be contrary to good public policy. It was perceived that the concept violated the basic principles of our government. It could possibly concentrate the credit of the nation and the power of money in the hands of a few. Between 1919 and 1929, more than twelve states passed legislation restricting or forbidding branch banking. In 1929, the Kansas legislature enacted a law prohibiting state-chartered banks from establishing branches. From that base, a unit banking system of independently owned community banks was built throughout Kansas.

Following World War II (1941-1945), Kansas experienced the beginning of what was to be a continuous migration of its citizens from the rural areas to the cities. As the cities grew from this influx of people, there came a perceived need to make it easier for bank customers to get in their cars, get to their banks located in the crowded center of the city, transact their business and return to their jobs. As a convenience to customers, motor bank windows were authorized as long as they were attached to the bank itself and were within nine hundred feet of the bank. In 1957, the legislature approved legislation to permit banks to establish an additional 'drive-in bank' without the requirement of being attached to the bank. It became legal for any bank to establish one auxiliary teller office as long as it was within twenty-six hundred (2,600) feet of the main bank. The name 'detached facilities' was used for these additional teller windows since branch banking was prohibited in Kansas.

Then came the year 1963. Legislation to both expand the geographic boundaries and increase the number of bank facilities was considered by the Legislature in Senate Bill 217. When the hearing was held, there were 45 bankers from fourteen counties present in the room opposing the measure. An Ad Hoc Committee of independent bankers was formed and it was from those roots that the committee evolved into the Community Bankers Association of today. They were small businessmen who believed that defending the cause was worth volunteering their time and efforts. Against these determined independent bankers, it took the proponents thirty-five years to get the legislature to adopt several pieces of major legislation. Multibank holding companies were legalized in 1985 and statewide branch banking in 1987. With the dismantling of federal laws that once limited cartel banking across state lines, interstate branching was legalized in 1997. As a result, that which was predicted has transpired. Many of those power-oriented banks are now owned by out-of-state banks. However, the tenacity and determination of the independent community bankers in Kansas was not unrewarded. In 2004, Kansas still has a solid core of independent banks. Many have had opportunities to sellout at large personal monetary gain but have not. Their commitment to the ideal of independence has prevailed. Local community banks are still prevalent. A new generation of bankers is rewarded with opportunity to serve their communities and keep the flame burning brightly for the future of community banking.

The Community Bankers Association of Kansas is a not-for-profit statewide organization of community banks. Organized in 1963 and founded as a trade association in 1978, member banks are locally owned and operated – intent on preserving local credit for local development. Member banks are as diverse as Kansas itself and as varied as the economies and aspirations of the communities they serve. Approximately 1/3 of the chartered banks in Kansas adhere to the community banking philosophy of understanding that Kansans are best served by local dollars being reinvested locally, thereby enriching communities throughout Kansas. They are members of CBA because they believe the best financial decisions are made close to home, backed by all the resources necessary for customers' prosperity and growth. These community banks come in all sizes – from the smallest banks to some of the largest. They are the kind of banks that have helped to build America . . . chartered for the purpose of helping people and communities develop economically. The membership directs CBA. Each active bank member, regardless of monetary size or number of branches, receives one vote (per bank or holding company) on issues submitted to the association for a vote.

The association is made of bankers who live and work in the communities where they do business. As strong advocates for the community banking industry, the association is directed by the members to provide quality product and service venues to assist members in remaining competitive in business. The association also offers education programs for bank employees and information for the communities they serve. A recent example of this is the Security Awareness Program, which was designed by CBA to help deter the bank robberies of all financial institutions in the state of Kansas. Brightly colored posters and supporting materials respectfully request all patrons entering financial institutions to remove hats, hoods or sunglasses. Mindful of the safety of bank customers and employees in the community, this program was established in cooperation with local law enforcement agencies.

Last, but not least, is a CBA presence before the Kansas Legislature and the banking regulatory agencies of state government. We work exclusively to advocate for community banking issues. We monitor legislative issues that affect communities, bank regulations, public funds, agriculture and a wide variety of economic development interests - all of which impact community banks. The community bankers are concerned with the ever-changing banking industry from which develops ramifications for people in communities across Kansas. Community banks are successful not because they have discovered a new strategy, but because they continue to do the business of banking to individual customers and small businesses in the community setting. On key issues, CBA uses a grass-roots process to connect community bankers with state legislators and regulators in an effort to provide information and educate policy-makers. Communication is imperative.

I am often asked, "What is community banking?". This question brings to mind a variety of different images for people. A community bank is integrally tied to almost everyone and everything in a community. These bankers are the people that have a passion for their communities - who are involved not because they have to be, but because it's part of their character. This association thanks you for your time spent in reviewing banking history and offers itself as a resource to each of you. We look forward to working with you toward good public policy for the citizens of Kansas.

Thank you,



Shari Weber, Executive Director
Community Bankers Association of Kansas

A Profile of 2003-2004 CBA Membership
(as of 03/11/04)

AVERAGE

| | |
|--------------------------|-----------------|
| Average size by Assets | \$46,112,849.00 |
| Average size by Deposits | \$32,088,669.00 |

MEDIAN

| | |
|-------------------------|-----------------|
| Median size by Assets | \$30,245,000.00 |
| Median size by Deposits | \$24,313,000.00 |

Membership as of 10/28/03

| | |
|----------------------------|-----|
| Main Banks: | 114 |
| a. National Charters | 17 |
| b. State Charters | 97 |

SENATE BILL No. 328

By Committee on Elections and Local Government

1-21

AN ACT concerning ~~sanitary sewers~~ relating to liens for water and sewer services amending K.S.A. 12-631k, 12-860, 14-569, 19-2765b and 19-27,170 and repealing the existing sections.

real property; relating to liens

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

Section 1. K.S.A. 12-631k is hereby amended to read as follows: 12-631k. *a* Except as provided in subsection *b*, in the event any person, firm, corporation, political unit except the United States and the state of Kansas or organization living or operating on premises connected to a sanitary sewer, shall neglect, fail or refuse neglects, fails or refuses to pay the service charges fixed by the governing body of ~~said~~ the city or of such township sewer district for the operation of the sewage disposal system, such charges shall constitute a lien upon the real estate served by the connection to the sewer, and shall be certified by the clerk of the city or of the township sewer district to the county clerk of the county in which ~~said~~ the city or township sewer district is located, to be placed on the tax roll for collection, subject to the same penalties and collected in like manner as other taxes are by law collectible, ~~and such~~ the governing body is hereby authorized to refuse the delivery of water through the pipes and mains of a publicly owned waterworks until such time as such charges are fully paid.

b The lien established by subsection *a* shall not apply whenever the use of the sewage disposal system has been contracted for by a tenant and not by the landlord or owner of the property affected.

Sec. 2. K.S.A. 12-860 is hereby amended to read as follows: 12-860. *a* The governing body of the city shall establish such rates and charges for water and for the use of the sewage disposal system as shall be reasonable and sufficient to pay the cost of operation, repairs, maintenance, extension and enlargement of the water and sewage system and improvements thereof and new construction and the payment of any bonds and the interest thereon as may be issued for such water and sewage system: ~~Provided~~. No revenue shall be used for the payment of bonds payable primarily by assessments against property in sewer districts: ~~Provided further~~ That. Such revenue may be used to pay revenue bonds or general obligation bonds payable by the city at large issued for either the water-

Attachment
Submitted by
Theresa Kiernan
Revisor's Office

House Local Government
Date: 3-11-04
Attachment # 5

1 works system or sewage disposal system before the systems were com-
2 bined or for the water and sewage system after they have been combined.
3 The city is authorized to discontinue water service for any failure to pay
4 the rates or charges fixed for either water service or the use of the sewage
5 disposal system or both when due, and, *except as provided in subsection*
6 *b*, if there is sewage disposal system use without water service the charge
7 may be certified as a lien against the property served and assessed as a
8 tax by the county clerk or county assessor.

9 *b* The lien established by subsection *a* shall not apply whenever
10 the water service or the use of the sewage disposal system has been con-
11 tracted for by a tenant and not by the landlord or the owner of the prop-
12 erty affected.

13 Sec. 3. K.S.A. 14-569 is hereby amended to read as follows: 14-569.

14 *a* Except as provided in subsection *b*, in the event any person, firm or
15 corporation using said sewage disposal system neglects, fails or refuses to
16 pay the charges fixed by said governing body, such person, firm or cor-
17 poration shall not be disconnected from said sewage disposal system or
18 refused the use thereof, but said charges due therefor shall be by the city
19 clerk certified to the county clerk of the county in which said city is
20 located, to be placed on the tax roll for collection, subject to the same
21 penalties and collected in like manner as other taxes are by law collectible,
22 and shall become a lien upon the real property so served.

23 *b* The lien established by subsection *a* shall not apply whenever
24 the use of the sewage disposal system has been contracted for by a tenant
25 and not by a landlord or owner of the property affected.

26 Sec. 4. K.S.A. 19-2765b is hereby amended to read as follows: 19-

27 2765b. *a* Except as provided in subsection *b*, in the event any person,
28 firm or corporation using said sewage disposal system neglects, fails or
29 refuses to pay the charges so fixed by the board of directors of said district,
30 such person, firm or corporation shall not be disconnected from said
31 sewage disposal system or refused the use thereof, but said charges due
32 therefor shall be certified by the board of directors of said district to the
33 county clerk of the county in which said improvement district is located
34 to be placed on the tax roll for collection subject to the same penalties
35 and collected in like manner as other taxes are by law collectible, and
36 shall become a lien upon the real property so served.

37 *b* The lien established by subsection *a* shall not apply whenever
38 the use of the sewage disposal system has been contracted for by a tenant
39 and not by the landlord or owner of the property affected.

40 Sec. 5. K.S.A. 19-27.170 is hereby amended to read as follows: 19-

41 27.170. (a) As used in this section and in K.S.A. 19-27.171 and 19-27.172,
42 and amendments thereto, county means Finney county.

43 (b) As a complete alternative to all other methods provided by law,

1 the board of county commissioners of a county which has created or has
 2 received a petition seeking to create main sewer districts, lateral sewer
 3 districts, or joint sewer districts pursuant to the provisions of article 27
 4 of chapter 19 of the Kansas Statutes Annotated, may by resolution de-
 5 termine that all or a portion of the cost of acquiring, constructing, recon-
 6 structing, enlarging or extending the storm or sewage systems and related
 7 disposal works, pumping stations, pumps or other apparatus for handling
 8 and disposing of sewage be borne by the county-at-large and paid out of
 9 the general revenue fund or by the issuance of general obligation im-
 10 provement bonds of the county as the board of county commissioners
 11 may determine, in the manner provided by law. The proportionate share
 12 of the costs of such sewer improvements not borne by the county-at-large
 13 shall be assessed against the property within the sewer district in accord-
 14 ance with the provisions of article 27 of chapter 19 of the Kansas Statutes
 15 Annotated. Where the county shall issue bonds to pay the costs of sewer
 16 improvements in accordance with this act, and all or a portion of such
 17 costs shall be borne by the county-at-large, such bonds shall be general
 18 obligations of the county, shall be issued in accordance with the general
 19 bond law, and shall be in addition to and may exceed the limits of bonded
 20 indebtedness of such county.

21 (c) The board of county commissioners shall have the power to es-
 22 tablish a schedule of charges for the use of such sewer improvements
 23 financed in accordance with this act. Such charges may be based on the
 24 use required and shall include consideration of, but not limited to the
 25 quantity, quality and rate of sewage or waste water contributed to the
 26 system. *Except as provided in subsection (d), any such service charge shall*
 27 *become a lien on the property against which the service charge is made*
 28 *from the date such charge becomes due. Funds generated by such service*
 29 *charges shall be used for the purpose of paying all or any portions of the*
 30 *costs of constructing or reconstructing the sewer improvements, for the*
 31 *costs of operation and maintenance thereof, or for the payment of prin-*
 32 *cipal and interest on general obligation bonds issued in accordance with*
 33 *this act.*

34 (d) *The lien established by subsection (c) shall not apply whenever*
 35 *the use of the sewage disposal system has been contracted for by a tenant*
 36 *and not by the landlord or owner of the property affected.*

37 Sec. 6. K.S.A. 12-631k, 12-560, 14-569, 19-2765b and 19-27,170 are
 38 hereby repealed.

39 Sec. 7. This act shall take effect and be in force from and after its
 40 publication in the statute book.

Insert Attached

Renumber sections

New Sec. 6. Sections 6 through 10, and amendments thereto, shall be known and may be cited as the commercial real estate broker lien act.

- New Sec. 7. As used in sections 6 through 10, and amendments thereto:
- (a) "Commercial real estate" means any real estate for which the present use is other than (1) four or fewer residential units or (2) for agricultural purposes.
 - (b) "Commission" means any and all compensation which may be due a broker for services provided as a licensee.
 - (c) "Licensed services" means services provided to a buyer or tenant as a licensee.
 - (d) "Real estate" and "licensee" have the meanings ascribed thereto in K.S.A. 58-3035, and amendments thereto.

New Sec. 8. (a) Any licensee shall have a lien, upon commercial real estate or any interest in that commercial real estate which is the subject of a purchase, lease or other conveyance to a buyer or tenant of an interest in the commercial real estate, in the amount that the licensee is due for licensed services which shall include without limitation, brokerage fees, consulting fees and management fees:

- (1) Under a written instrument signed either by the owner of an interest in the commercial real estate or by the owner's duly authorized agent; or
- (2) under a written instrument signed by a prospective buyer or prospective tenant or their respective duly authorized agent.

The lien shall be available to the licensee named in the instrument signed by the owner, buyer or tenant or such person's authorized agents, and not to an employee or independent contractor of the licensee.

(b) This lien shall attach to the commercial real estate or any interest in the commercial real estate upon:

- (1) The licensee being otherwise entitled to a fee or commission under a written instrument signed by the owner, buyer, tenant or such person's authorized agent; and
- (2) except as provided in subsection (c), (d), (e) or (f), the licensee recording a notice of lien in the register of deeds office of the county in which the real property or any interest in the real property is located, prior to the actual conveyance or transfer of the commercial real estate against which the licensee is claiming a lien. The lien shall attach as of the date of the recording of the notice of lien and does not and shall not relate back to the date of the written instrument.

(c) Except as provided in subsections (d), (e) or (f), when payment to a licensee is due in installments, a portion of which is due only after the conveyance or transfer of the commercial real estate, any notice of lien for those payments due after the transfer or conveyance may be

recorded at any time which is subsequent to the transfer or conveyance of the commercial real estate and which time is within 90 days of the date on which the payment is due. However, such notice of lien shall only be effective as a lien against the transferor's interest in the commercial real estate to the extent moneys are still owed to the transferor by the transferee; but the lien shall be effective as a lien against the transferee's interest without limitations described above in this section. A single claim for lien recorded prior to transfer or conveyance of the commercial real estate claiming all moneys due under an installment payment agreement shall be valid and enforceable as it pertains to payments due after the transfer or conveyance; provided however, that as payments or partial payments of commission are received, the licensee shall provide partial releases therefor, thereby reducing the amount due the licensee under its notice of lien.

(d) In the case of a lease which shall also include a sublease or assignment of lease, the notice of lien must be recorded not later than 90 days after the tenant takes possession of the leased premises. If the transferor personally serves written notice of the intended execution of the lease on the broker entitled to claim a lien at least 10 days prior to the date of the intended execution of the lease, the notice of lien must be recorded before the date indicated in such notice for the execution of the lease. The lien shall attach as of the recording of the notice of lien and does not and shall not relate back to the date of the written instrument.

(e) If a licensee may be due additional commission either as a result of future actions, including, but not limited to, the exercise of an option to expand the leased premises, to renew or extend a lease, or to purchase the property, or otherwise, pursuant to a written instrument signed by the then owner or tenant, the licensee may record its notice of lien at any time after execution of the lease or other written instrument which contains such option but not later than 90 days after the event or occurrence on which the additional commission is claimed occurs. Notwithstanding subsection (i), an action to foreclose a lien to collect additional commissions must be commenced within two years of the occurrence or transaction on which the additional commission is claimed.

(f) In the event that the property is sold or otherwise conveyed prior to the date on which an additional commission is due, if the broker has filed a valid notice of lien prior to the sale or other conveyance of the property, then the purchaser or transferee shall be deemed to have notice of and shall take title to the property subject to the notice of lien. If a broker claiming an additional commission fails to record its notice of lien for additional commission prior to the recording of a deed conveying legal title to the property to the purchaser or transferee, then such licensee may not claim a lien on the property. The foregoing provisions of this subsection shall not limit or otherwise affect claims or defenses a licensee or owner or any other party may have on any other basis, in law or in

equity.

(g) If a licensee has a written agreement with a prospective buyer or tenant as described in subsection (a) (2), then the lien shall attach upon the prospective buyer purchasing or otherwise accepting a conveyance or transfer of the commercial real estate and the recording of a notice of lien by the broker in the register of deeds office of the county in which the real property, or any interest in the real property is located, within 90 days after the purchase or other conveyance or transfer to the buyer or tenant. The lien shall attach as of the date of the recording of the notice of lien and does not and shall not relate back to the date of the written instrument.

(h) The licensee shall, within 10 days of recording its notice of lien, either mail a copy of the notice of lien to the owner of record on the commercial real estate by registered mail, or the agent of the owner of record at the address of the owner stated in the written instrument on which the claim for lien is based, or if no such address is given, then to the address of the property on which the claim of lien is based. If the notice of lien is recorded within 10 days prior to closing, the broker is not required to mail or personally serve a copy of the notice of lien. Mailing of the copy of the notice of lien is effective when deposited in the United States mail box with postage prepaid. The broker's lien shall be unenforceable if mailing or service of the copy of notice of lien does not occur at the time and in the matter required by this section.

(i) (1) A licensee may bring suit to enforce a lien in the district court in the county where the property is located by filing a complaint and sworn affidavit that the notice of lien has been recorded.

(2) The licensee claiming a lien, within two years after recording the notice of lien, shall commence proceedings, by filing a complaint. Failure to commence proceedings as required herein within two years after recording the notice of lien shall extinguish the lien. No subsequent notice of lien may be given for the same claim nor may that claim be asserted in any proceedings under this act.

(3) A licensee claiming a lien based upon an option or other right to purchase or lease, within two years after the transfer or conveyance of the commercial real state under the exercise of the option to purchase or lease, shall commence proceedings by filing a complaint. Failure to commence proceedings within this time shall extinguish the lien. No subsequent notice of lien may be given for the same claim nor may that claim be asserted in any proceedings under this act.

(4) A complaint under this section shall contain a brief statement of the contract or instrument on which the lien is founded the date when the contract or instrument was made, a description of the services performed, the amount due and unpaid, a description of the property that is subject to the lien, and other facts necessary for a full understanding of the rights of the parties. The plaintiff shall make all interested parties,

of whose interest the plaintiff is notified or has knowledge, defendants to the actions, and shall issue summons and provide service as in other civil actions. When any defendant resides or has gone out of the state, or on inquiry cannot be found, or is concealed within the state so that process cannot be served on that defendant, the plaintiff shall cause a notice to be given to that defendant, or cause a copy of the complaint to be served upon that defendant in the manner and upon the same conditions as in other civil actions. Failure of the plaintiff to provide proper summons or notice shall be grounds for judgment against the plaintiff and in favor of the defendant who is not properly served with summons or notice with prejudice. All liens claimed under this act shall be foreclosed as provided for in article 24 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.

(j) The notice of lien shall state the name of the claimant, the name of the owner, a description of the property upon which the lien is being claimed, the amount for which the lien is claimed, and the licensee's license number. The notice of lien shall recite that the information contained in the notice is true and accurate to the knowledge of the signator. The notice of lien shall be signed by the licensee or the authorized agent of the licensee and shall be verified.

(k) Whenever a notice of lien has been filed with the register of deeds and a condition occurs that would preclude the licensee from receiving compensation under the terms of the written agreement on which the lien is based, the licensee shall provide to the owner of record, within 10 days following written demand by the owner of record, a written release or satisfaction of the lien.

(l) Upon written demand of the owner, licensee or other authorized agent of the owner or licensee, which demand shall be served on the licensee claiming the lien requiring suit to be commenced to enforce the lien or answer to be filed in a pending suit, a suit shall be commenced or answer filed within 30 days thereafter, or the lien shall be extinguished. Service of such written demand may be made by registered mail, return receipt requested, or by personal service.

(m) Whenever a notice of lien has been filed with the register of deeds and such claimed commission has been paid to the licensee claiming the lien, or where there is failure to institute a suit to enforce the lien within the time provided by this act, the licensee shall acknowledge satisfaction or release of the notice of lien in writing, on written demand of the owner within five days after payment or within five days of expiration of the time in which the notice of lien was to be filed.

(n) If the licensee and the party or parties from whom the commission is claimed agree to alternative dispute resolution, the claim shall be heard and resolved in the forum on which these parties have agreed. The court before which the lien foreclosure proceeding is brought shall retain jurisdiction to enter judgment on the award or other result made or

5-7

reached by alternative dispute resolution on all parties to the foreclosure. The licensee's notice of lien shall remain of record and the foreclosure and the proceeding shall be stayed during the pendency of the alternative dispute resolution process.

(o) The cost of proceedings brought under this act including reasonable attorney fees, costs and prejudgment interest due to the prevailing party shall be borne by the non-prevailing party or parties. When more than one party is responsible for costs, fees and prejudgment interest, the costs, fees and prejudgment interest shall be equitably apportioned by the court or mediator among those responsible parties.

(p) Except for a waiver or release of lien provided in consideration of payment of the fee claimed by the licensee, or pursuant to subsections (k) and (m), any waiver of a broker's right to lien commercial property under this statute, any other waiver or release of lien shall be void.

New Sec. 9. Prior valid recorded liens, mortgages and other encumbrances shall have priority over a licensee's lien. Such prior recorded liens, mortgages and encumbrances shall include, without limitation: (a) A valid mechanic's lien claim that is recorded subsequent to the licensee's notice of lien but which relates back to a date prior to the recording date of the licensee's notice of lien; and (b) prior recorded liens securing revolving credit and future advances of construction loans.

New Sec. 10. Except as otherwise provided in this section, whenever a claim for lien has been filed with the register of deeds, and an escrow account is established either from the proceeds from the transaction conveyance or any other source of funds in an amount computed as 125% of the amount of the claim for lien then the lien against the real estate shall be extinguished and becomes a lien on the funds contained in the escrow account. The requirement to establish an escrow account, as provided for in this section, shall not be cause for any party to refuse to close the transaction.

GRETA H. GOODWIN
 SENATOR, 32ND DISTRICT
 COWLEY AND SUMNER COUNTIES

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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
 RANKING MINORITY MEMBER:
 JUDICIARY
 CORRECTIONS/JUVENILE JUSTICE
 STATE BUILDING CONSTRUCTION

MEMBER: ASSESSMENT AND TAXATION
 TRANSPORTATION
 CONFIRMATION OVERSIGHT
 KANSAS SENTENCING COMMISSION
 STATE CAPITOL RESTORATION
 HEALTH CARE STABILIZATION FUND
 LEGISLATIVE OVERSIGHT
 JUDICIAL COUNCIL JUVENILE OFFENDER/
 CHILD IN NEED OF CARE ADVISORY
 JUDICIAL COUNCIL PROBATE LAW
 ADVISORY

TESTIMONY ON SENATE BILL 461
HOUSE OF REPRESENTATIVES
LOCAL GOVERNMENT COMMITTEE
MARCH 11, 2004

Chairman Vickrey and Committee Members, I appreciate the time you are giving us this afternoon to hold a hearing on Senate Bill 461. This bill is very important to me and my constituents, as well as many citizens all across the State of Kansas. I truly believe you will understand why there is a need for this bill after you hear from the people who have come to Topeka to testify today.

I am proud to have served all of the people of Cowley County for the past 11 ½ years. During my service I have learned and understood the love the people of Cowley County have for their families, their land and communities. Being born and raised in rural Cowley County I share that same love.

The bill you have before you today could appropriately be described as not just a Cowley County issue, although I drafted this bill specific to my county. The media has accurately described the Grouse and Silver Creeks proposed Lake Project as a private development project by the taking of private land by eminent domain for the benefit of private developers. I believe you will agree that this is absolutely wrong. I have heard from Kansas landowners from the Nebraska state line, to the Missouri, Oklahoma and Colorado state line. Landowners cannot believe how a proposal such as the one you will hear about this afternoon has gotten this far into the process or why is it even being discussed further. Should this project come to fruition, no ownership of land will be sacred in our state. For many years, a Wichita developer and real estate broker has had an ambition to take up to 10,000 of prime agricultural land in Cowley County to personally profit him and

House Local Government
 Date: 3-11-04
 Attachment # 6

other developers. Not any landowners of the property were ever contacted during this time. No one had ever made the affected Dexter landowners aware of his scheme.

On August 25, 2003, this private profit making announcement was made public by Mr. Mike Loveland and appeared in the headlines of an area newspaper. His venture was called "a viable plan and could be the spearhead of new economic development in the area". The Wichita developer went on to publicly say its use would be governed by a port authority, a quasi-public body. This project was announced at the South Central Kansas Prosperity Summit. Cowley County's affected landowners first heard of the Wichita developer's ambitious proposal for their land in the newspapers. To say this has been a very disruptive issue to Cowley County is an under statement. At that time the statements made to the media was that an "entity" might be formed to involve the Port Authority, which they believe has the right to impose eminent domain on reluctant landowners. The urban developers soon became aware that in rural Kansas agriculture property which has been in the family for 4-5-6 generations is sacred. One family has owned and farmed property in the area where the lake is proposed since before Kansas was a state. The outcry from Cowley County landowners was that money cannot sway them to give up their land and livelihood. Wichita developers continued to forge ahead and continued their media releases.

I began working with the Revisor of Statutes and others to create language to hold the developers accountable if they used as the purpose for their "eminent domain taking" the need for water. I believe all Cowley County residents will join me in support of a much smaller scale lake if water is truly needed for our area of the state recognizing how important clean water is for our area of the state.

Over the ensuing months, I received hundreds of emails, telephone calls and letters opposing the proposed lake in Cowley County. People were scared that private developers would push local governmental officials to support and assist in the use of eminent domain or other similar powers to take their land for the private development of a recreational lake to benefit Wichita.

As a concerned citizen and landowner, I introduced Senate Bill 461 to clarify that neither the counties, port authorities or any quasi-public body may take land

from private citizens through the use of eminent domain powers for recreational purposes only. Further, the bill specifies that if land is acquired with the use of eminent domain powers by any governmental entities and recreation is part of the purpose for the use of eminent domain, then the governmental body may not allow private development upon such acquired land or site for 30 years. It is my hope that when my legislation becomes law, private landowners in Cowley County may rest assured that their property will not be taken indiscriminately for the profit or gain by private developers.

The following are public quotes:

“For years, Wichita developer Mike Loveland has watched friends drive five hours to Grand Lake in Oklahoma and Lake of the Ozarks in Missouri on weekends. He has also complained about the shortage of tourist attractions. Now Mr. Loveland thinks he has the answer to all those problems. Several developers hope to build a reservoir near Wichita that would be Kansas’ answer to Grand Lake, with cabins, resorts and retirement homes lining the bluffs overlooking the water. They have found what they think is the perfect location – Grouse Creek south of Dexter, about an hour’s drive from Wichita”. “His hope is that the lake would be built and owned by a quasi-governmental organization, a port authority of sorts, made up of city and county governments in south-central Kansas”. The Wichita Eagle, August 29, 2003. His thought was that the sale of building sites and perhaps drinking water for Wichita could help offset the costs of building the lake. “Loveland was taken when he made his first trip to Grouse Creek by the high quality clear water, rolling hills and steep bluffs”. (August 30, 2003). The Developers and others called for the state to pay for a \$300,000 feasibility study for the project.

“The Wichita developer and commercial real estate broker, is promoting a proposed up to a \$400 million lake development 50 miles southeast of Wichita, near Dexter. Loveland envisions a resort similar to Grand Lake in Oklahoma – a place where retirees could live, Wichita families could vacation, and tourists would enjoy Kansas’ great outdoors. The development ... would feature marinas, waterfront homes, condominiums, hotels, retail, restaurants, parks, golf resorts and other recreation-related businesses and commercial development” The proposed

ownership would be a port authority authorized by the State of Kansas and made up of cities and counties participating in the project. The project would be funded by the issuance of bonds by the Port Authority, and paid for with the revenue from water sales, land sales, and the increase in tax revenue from development". Wichita Business Journal, September 15, 2003.

During the time from the first announcement in August until the end of October were the landowners ever given a public forum to offer their opinions, ask questions, or speak to the Developers in public. At no time had it ever been reported that anyone in Cowley County, and more particularly landowners in the Dexter area, would ever realize any benefit from this project. On October 28, 2003, a special meeting was held in Arkansas City. The commercial real estate broker Loveland and engineer Tim Austin received a strong message from area landowners "you don't own our land and it is not for sale". Landowners asked "What part of "NO" do you people not understand". December, 2003 a recommendation was made that the Kansas Water Office be asked to study this question through the Water Planning Process. This requested study is in lieu of the approximate \$300,000 feasibility study the developers asked the state to fund.

I call upon my colleagues in the Kansas legislature to join with me to assure that eminent domain powers or other quasi-public body powers are used only for public purposes and not private desires. I look forward to working with supporting organizations like The Kansas Livestock Association, Kansas Farm Bureau, the local organization of SOIL (Save Our Industry and Land), The Kansas Chapter of the Sierra Club and other groups to pass this legislation.

I thank you for allowing me to give you the background information on the reason for introducing this bill and voice my utmost concerns over this proposed private development plan being continued at the expense and trauma of landowners of my district, as well as the feeling of vulnerability of other Kansas landowners.

I ask for your support of SB 461.

IF THE LAKE COMES, THEIR RANCHES DISAPPEAR



Bo Rader/The Wichita Eagle

Four generations of Williamson men overlook their land in Cowley County, which a proposed dam would flood. Forrest Laverne Williamson, 80, seated, raised eight children on the land, including Forrest Dean Williamson, right, and Tony Williamson, left.

City-rural battle on tap



Bo Rader/The Wichita Eagle

Grouse and Silver creeks converge on the Williamson ranch just east of Arkansas City. A proposed dam near this point would flood most of the ranch.

■ Landowners stand firmly against a proposal to build a recreational lake in Cowley County. A bill in the state Senate would block the project.

BY STEVE PAINTER
Eagle Topeka bureau

TOPEKA — Kelly and Tony Williamson feel as if their lives are being held hostage by a project that may never happen.

That project, a proposed recreational lake in eastern Cowley County, has stirred the interest of enough influential parties — including the city of Wichita — that the Williamsons can't ignore the possibility they will be ousted from their land.

"You have to take it seriously," Kelly Williamson said. "It has stopped not just our family but a lot of



EYE ON THE
CAPITOL

More legislative coverage inside, 1B, 3B

Please see LAKE, Page 5A

6-5

FROM PAGE ONE

LAKE

From Page 1A

other families from really being able to go on with our lives."

Democrat Greta Goodwin, the state senator from Cowley County, sided with landowners and introduced a bill that would block the project for 30 years.

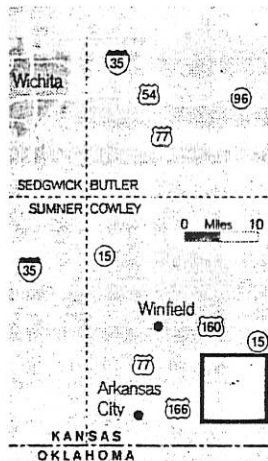
The Senate Judiciary Committee is scheduled to vote on Goodwin's bill today.

A coalition of south-central Kansas governments, including Wichita and Sedgwick County, opposes the bill.

"This proposed legislation is an attempt to pre-empt local control on this issue prior to a feasibility study even being conducted," Mike Pepoon, Sedgwick County's lobbyist, told the committee.

Wichita real estate developer Mike Loveland and civil engineer Tim Austin floated the lake idea at an economic summit last summer. The \$400 million lake, which would be created by damming Grouse Creek near U.S. 166, would displace about 100 families.

Promoters don't want another federal project like Cheney

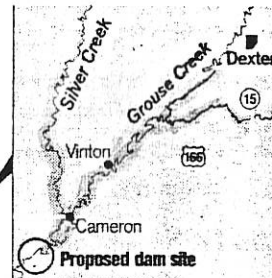


Reservoir or El Dorado Lake, where shoreline development is restricted.

Instead they envision a tourist attraction with the sort of resorts, marinas and vacation homes that Kansans often travel to Missouri, Oklahoma and Arkansas to enjoy. They say the lake would create about \$200 million in private development in the first five years. The lake also could provide

Reservoir proposal

Wichita developers are hoping to build a dam on Grouse Creek south of U.S. 166. The reservoir would extend north along Grouse Creek to near Dexter and along part of Silver Creek. The project would require the state to relocate the highway and displace about 100 families.



The Wichita Eagle

Wichita and other cities with drinking water.

Loveland insists there is no behind-the-scenes scheme.

"There are no developers, and there are no investors," he said.

But there is the government power known as eminent domain, used to take land for public projects, and a seldom-used tool known as a port authority.

Those tools — along with

expressed interest from the Greater Wichita Area Chamber of Commerce, the Wichita Convention and Visitors Bureau and the state's lieutenant governor — spread fear among the ranchers and farmers along Grouse Creek.

The city of Wichita might help pay for a \$400,000 feasibility study, Mayor Carlos Mayans said.

"That is an exciting project, one that could benefit the city of Wichita as we look to develop additional water resources," he said. "Certainly the economic development of that particular site would impact the entire southeast Kansas."

Talk like that prompted about 40 residents of the area to make the three-hour trip to Topeka last week to support the anti-lake bill. It would prohibit a port authority to be used for a private development in Cowley County for 30 years.

For their efforts, a handful of the ranchers each got a minute and a half to address a Senate committee.

Conceivably, a port authority that includes Wichita, Sedgwick County and other local governments could take over the land and finance the lake project by

selling lakeside property to developers and water to nearby cities.

"It's one of the most dangerous attacks on personal and property rights that I have ever read," Cowley County rancher Bill House said of the port authority law.

The residents' complaints drew a sympathetic response from some senators.

Sen. David Haley, a Wyandotte County Democrat, compared it to the forced home buyouts that preceded development of the Kansas Speedway NASCAR track in Kansas City.

"This Legislature disgracefully allowed that to happen," he said.

Loveland said he understands the emotional reaction to the proposal. But without the powers of eminent domain, he said, projects such as Cheney and El Dorado lakes and the Kansas Turnpike never would have been built.

The Regional Economic Area Partnership, a coalition of local governments from south-central Kansas, opposes the bill. The group wants to retain the option of using port authorities for private development and recreational use.

Currently, the Kansas Water Authority is developing an issue paper on the lake proposal. The

paper, due in September, will determine whether there is sufficient state interest to proceed with a feasibility study.

Gov. Kathleen Sebelius says she supports the process but has reached no conclusion on whether a lake should be built.

"There certainly are those who suggest it would be very good for economic development. There are others who live in that area who are vehemently opposed to it," she said.

"I think those issues need to be balanced."

Simply having the discussion, though, is unsettling to those in the valley.

Two sons and a daughter, with their families, live on about 6,000 acres of land where Forrest Williamson, now retired, started his ranch in 1947.

When news of a possible lake first broke, the three families scoured land ads from across the state, looking for adjoining land where they could raise horses and cattle, said Terry Bryant, the daughter.

"There's no other place in Kansas that we can go to replace this," she said.

Contributing: Van Williams of The Eagle

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TOPEKA

HOUSE OF
REPRESENTATIVES
 COMMITTEE ASSIGNMENTS
 HEALTH AND HUMAN SERVICES
 RANKING MEMBER
 AGRICULTURE
 LOCAL GOVERNMENT
 JOINT COMMITTEE ON HEALTH CARE
 REFORM OVERSIGHT

March 11, 2004

I would like to thank you for this opportunity to speak before you today. Many areas would welcome the prospect of having a large recreational facility in their midst if the idea was to benefit that community. This is not the intent of the proposed lake in Cowley County.

This proposal came from a gentleman in Wichita who did not speak to the individuals who would be impacted and his proposal, as it was first presented, would provide an alternate source of water supply for the city of Wichita, 65 miles away.

As the proposed lake project grew it was to provide recreational facilities and large homes at the lakeside.

The people who were to be displaced were not consulted about the prospect and had to learn about it in the newspapers. When addressing a crowd at an informational session the gentleman proposing the project stated the land would be acquired by condemnation and the exercise of eminent domain. This as you can imagine did not sit well with the landowners in the effected land. Many of the families in the area had lived

House Local Government

Date: 3-11-04Attachment # 7

on the land for several generations and had strong ties to their family's heritage.

This bill will amend the law to provide that no port authority shall modify, amend, or extend the port authorities official plan as originally adopted by the port authority to change the purpose for which it was created or alter the character of the work undertaken without the approval of the legislature.

In New Sec. 4 on page 6 line 4 the bill specifies that Cowley County can not exercise the right of eminent domain to appropriate any land or site without obtaining the required state and federal permits to use or develop such land or site in the manner specified by the county.

This bill is specific to Cowley County. It addresses an issue that concerns a large portion of the population in the rural areas of our county.

This bill is Cowley County specific and addresses the issues that concern our county.

I have only been contacted by two local persons who support the construction of the lake. I have heard from many more who do not. This bill would insure that if all the state and federal permits are favorable for construction the lake that would be built would be required to be used only for the purposes stated when applying for the use of eminent domain.

I would respectfully request when you consider this bill you would pass it out favorably for passage.

Quay Shewalter 7-2
Dist 78

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SENATOR, 1ST DISTRICT

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TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

MEMBER: TRANSPORTATION
ASSESSMENT AND TAXATION
REAPPORTIONMENT
JUDICIARY**BEFORE THE HOUSE LOCAL GOVERNMENT COMMITTEE****Testimony in Support of SB 461**

I am very pleased to be allowed to testify as a proponent of SB 461. This bill is an effort to prevent the exercise of eminent domain; otherwise known as condemnation from the taking of the private property of many for the benefit of the few.

As a member of the Senate Judiciary Committee, I was fortunate to hear the proponents of this bill from Cowley County, Kansas. One of them, Mr., Bill House, rancher and lawyer, hit the nail on the head. He addressed what an old district judge friend of mine called the "peanut of the case." He said personal freedom and the right to own private property are the twin pillars on which one nation and a free society are supported.

This country was founded by men who understood that economic freedom and liberty do not flow from the government to the citizens. Those two freedoms are rights which should be inherent to free men. The government should not be in a position of distributing these rights to each of us and calling them privileges.

This United States was the first country built on that theory. Our economic success or failure did not depend on government favor or intrusion. Our personal freedom was not granted to us based upon the pleasure or displeasure of the governed.

This senate bill represents an effort by the influential few to take the property of many persons by use of governed authority and convert the same to their economic advantage and call it economic development. This type of conduct is to be abhorred in a society economically and personally free.

I strongly urge you to pass SB 461. Thank you for the opportunity to appear before your committee in support of this bill.

House Local Government
Date: 3-11-04
Attachment # 8



Kansas Farm Bureau

2627 KFB Plaza, Manhattan, Kansas 66503-8155 • 785.587.6000 • Fax 785.587.6914 • www.kfb.org
800 SW Jackson St., Ste. #1008, Topeka, Kansas 66612 • 785.234.4535 • 785.234.0278

PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Re: SB 461—Concerning the use of eminent domain for the acquisition of land by a port authority or county government.

**March 11, 2004
Topeka, Kansas**

**Presented by:
Terry D. Holdren
Associate State Director—KFB Governmental Relations**

Chairman Vickrey and members of the House Local Government Committee, thank you for the opportunity to share our strong support for SB 461 and the protection it will provide to land owners and the environment in Cowley County.

I am Terry Holdren and I serve as Associate State Director for Governmental Relations at Kansas Farm Bureau (KFB). As you know Kansas Farm Bureau, (KFB) is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

For some time, there have been discussions regarding the establishment of a port authority and the exercise of eminent domain powers by that authority or by county government to establish a 10,000-acre lake in Cowley County. This kind of action would have very serious impacts on the local economy, the tax base, and specifically on production agriculture in the area. The proposal before you today provides much needed protection by:

- Precluding a port authority or county government from acquiring land for recreational purposes by eminent domain;
- Restricting private development on land acquired by the use of eminent domain for 30 years; and
- Requiring a port authority or county government to satisfy all state and federal permitting agencies before the use of eminent domain powers.

Kansas Farm Bureau has been a long-standing and outspoken advocate of the rights of landowners. Our policy developed in a yearlong grassroots process, seeking input from across the state, supports the concept that eminent domain procedures only

House Local Government
Date: 3-11-04
Attachment # 9

be used for legitimate governmental purposes. Further, any use of eminent domain should include the development of a comprehensive impact statement which considers interstate water compacts, water quality standards, water appropriation rights, historic preservation, and endangered species protection. Because the impact of this project would be broad, we would also ask that any impact statement also include analysis of the economics associated with the loss of thousands of acres of farm and ranch lands. KFB policy also opposes the acquisition of privately owned land and, thus the expansion of the total number of acres of land owned by the state or any other governmental entity.

Among the many impacts likely resulting from this project is the reality that development of the lake could result in destruction of important habitat in Grouse Creek. Grouse Creek is designated as special aquatic life use water and classified as Outstanding National Resource Water by the Kansas Department of Health and Environment (KDHE). Surface waters designated as Special Aquatic Life Use are characterized by having unique biota or harboring threatened or endangered species. Outstanding National Resource Waters are those waters contained within State or National Parks, wildlife refuges, or have outstanding fisheries or recreational value. It is unclear what the ramifications of destroying this habitat or the species currently inhabiting the area might be, but the habitat consequences, permitting requirements, and compliance with state and federal laws must be examined prior to any construction in the area.

Owners of land in Cowley—farmers and ranchers, and others—deserve the protections offered by this bill. We strongly support the requirement that state and federal permits be acquired for any project before eminent domain procedures are used. Additionally, we support the restriction of any private development on lands obtained by eminent domain for a period of 30 years. These provisions will ensure that projects are legitimate and in compliance with regulatory agencies before the homes and lands of private citizens are taken from them, jobs are lost, and the vitality of communities in Cowley County threatened.

Ladies and Gentlemen, we are grateful for the opportunity to appear before you today. KFB will continue to vigorously support initiatives that protect private landowners who reside and make their living by farming and ranching in the great state of Kansas. We urge your favorable, action regarding this proposal.

Thank you.



Since 1894

TESTIMONY

To: House Committee on Local Government
Representative Jene Vickrey, Chair

From: Allie Devine, Vice President and General Counsel

Subject: **Support for SB 461**

Date: March 11, 2004

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 the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.

Good morning Mr. Chairman and members of the Committee. My name is Allie Devine and I am here today representing the Kansas Livestock Association and especially our members in Cowley County.

KLA strongly supports the passage of SB 461. KLA has a long history of defending the private property interests of our members. This bill is especially important to our members in Cowley County who are facing a proposed development of a nearly 10,000-acre lake. This lake would be built on private lands secured through the use of eminent domain. There are many physical and environmental reasons why this lake should not be located in Cowley County. Senator Goodwin and local representatives will outline those reasons.

In addition to the presentations you hear this morning, please be advised that the Kansas Water Authority through its planning process has been begun gathering data on the feasibility of this lake. The Walnut Basin Advisory Committee (a local unit of the Kansas Water Authority) held a hearing on the issue on January 19, 2004.

Documentation regarding oil and gas wells, stone quarries, threatened and endangered species, historic sites, and water supply needs (or the lack thereof) was presented. We recently learned that the National Park Service has listed, since 1982, Grouse Creek as a potential Wild and Scenic River. This information has been forwarded to the Technical Advisory Committee (TAC), established by the Kansas Water Authority for review. The TAC is scheduled to report on the general feasibility of the lake by late summer 2004.

House Local Government
Date: 3-11-04
Attachment # 10

KLA supports the review of this proposal by the Kansas Water Authority and has encouraged the Authority to conduct a “comprehensive” review including a review of interstate water compacts; state and federal water quality laws; state water appropriation laws; state and federal endangered species laws; and state and federal historic site preservation laws. We ask that any economic feasibility analysis include a comprehensive review of *all* economic factors including, but not limited to, the loss of prime farmland and ranch land and ranching operations. We are hopeful that the legislature through the budgetary process will assure that if a study is conducted, it is done in a fair and comprehensive manner. We also believe that when a comprehensive study is completed, it will be clear that this is not an appropriate site for a lake.

Today, I would like to address the specifics of the bill. This bill places limitations on two entities that have eminent domain authority and likely would be participants in such a lake project. Those entities are Cowley County and a port authority.

Port authorities, as outlined on page 1, lines 31-37 are created by the legislature and may be restricted by the legislature. Today, we are asking you to place restrictions on port authorities that may be organized and active in Cowley County.

The language on page 1, lines 40-43, page 2 lines 1-8, page 3, lines 13-16 and page 5, lines 37-43, restricts a created port authority to the purpose for which it was created. This language would assure that a port authority, once created could not morph itself into something else. Creation of a port authority requires approval of the Legislature. This language assures that entities approved by the Legislature, local governments, and local citizens for a specific purpose serve that purpose and not another. This language assures no “bait and switch” purposes for creation of port authorities with eminent domain powers.

The language on page 4, lines 26-37 does the following:

- Precludes a port authority in Cowley County from using eminent domain powers to acquire land for recreational purposes;
- Restricts the use of land acquired through the use of eminent domain to public purposes and does not allow private development for 30 years; and
- Sets a condition precedent that a port authority must show that all state and federal permits to use or develop the land as specified in the port authority is obtained prior to use of eminent domain powers.

It is solely within the purview of the legislature to restrict entities that it creates such as a port authority or to place restrictions on the powers of eminent domain. In *Concerned Citizens, United, INC. v. Kansas Power and Light Company*, 215 Kan. 218, 523 P.2d. 755 (1974) the Kansas Supreme Court noted numerous cases when the legislature placed conditions precedent upon the use of eminent domain power. Without the legislature placing these restrictions, there would be no requirement that the port authority conduct this basic environmental and legal review prior to taking the private land of private citizens. We strongly support these restrictions and can think of no greater injustice than

to have someone's land taken for a "public purpose" only to later learn that the project could not be accomplished.

We strongly support the restriction that no private development occur on the property obtained by eminent domain for 30 years. This language assures that this project is not for a private person's financial gain at the expense of other private persons.

The language in new section 4 on page 6 lines 3-11 applies these same restrictions to the county. The language on page 8 lines 24-25 precludes the county from legislating or in any manner exempting itself from this state law.

Mr. Chairman, members of the Committee, Cowley County residents have lived under the threat of this development long enough. Please give them some legal assurance that their land will not be taken indiscriminately; and without regard to state and federal environmental laws; or for the benefit of a few developers. We ask your support for SB 461.

10-3

TESTIMONY BEFORE HOUSE LOCAL GOVERNMENT COMMITTEE

March 11, 2004

Ron Pray, Owner of Pray Stone Company in Winfield

Good afternoon, and thank you for the opportunity to say a few words about the proposed Grouse Creek Lake. My name is Ron Pray, and I'm owner and operator of Pray Stone Company in Winfield.

The name of my company may not be significant to you, but I'm guessing you've seen the stone that we quarry.

Maybe on the way over here today you drove past Crum Castle, or past the Old Sedgwick County Court House, or the Old Wichita City Building. Maybe you came from the south, and passed the Cowley County Courthouse.

Or maybe you've been to Ahearn Fieldhouse or Archer Hall at K-State, or Lindley Hall at the University of Kansas, or the Union Building at Fort Hays. Maybe you've seen the Kansas City Scottish Rite Temple.

These buildings all represent the very best of Kansas—they're solid, and majestic, and built to last hundreds of years. And they all have one thing in common: They're built of Silverdale limestone, one of the most beautiful and useful natural resources on earth.

Silverdale limestone was first quarried in the mid-1800s for local projects in Cowley County, but it was so unusual and special that word of its quality and beauty soon began to spread. By 1870, stone from the Grouse Creek Valley was being shipped as far as Wichita, and as modern methods of transportation were introduced, use of Silverdale stone expanded through the state and country.

Today thousands of people across our nation can point proudly to their churches, their schools, their homes, and say that they were built with Silverdale limestone, knowing that no finer building material exists.

Unfortunately, plans for this lake may mean that future generations don't have the opportunity to use Silverdale limestone.

You see, Silverdale limestone outcrops only on the plateaus overlooking the Grouse Creek and Silver Creek Valleys. This stone is in the Barneston Geological formation, which is about 100 feet thick and runs north and south across the state with outcrops occurring in this valley in about a 10-foot thick section.

The stone in this section is unique in the color, quality, and characteristics that only Silverdale stone possesses.

If the lake is built, and land within 3 miles of the lake is appropriated by eminent domain for development of the lake, all past and present reserves of Silverdale limestone will be affected.

House Local Government
Date: 3-11-04
Attachment # 11

No longer will we be able to see new buildings continuing the Silverdale tradition of excellence and beauty.

And the loss of the quarry will mean loss of jobs—not just those men and women who work in the quarries themselves, but also the cutters and the equipment operators who prepare and transport the stone, and the architects, masons and builders who use the stone.

The idea of abandoning an industry, and a heritage, and destroying this amazing natural resource of Kansas, simply to satisfy the greed and profit motives of a few people, is not only a terrible mistake—

IT'S JUST WRONG!

Ronald Pray
Pray Stone Company, Inc.

TESTIMONY

To: House Committee on Local Government
Representative Jene Vickrey, Chair

From: Roger Black
Kansas Livestock Association (KLA), Save Our Industry and Land (SOIL), and
Grouse-Silver Creek Watershed Board

Date: March 11, 2004

Re: Support for SB 461

Chairman, Members of Senate Judiciary Committee:

Since this economic development initiative known as Grouse Creek Lake project first came to my attention last August, I have experienced about every emotion know to mankind. I believed, however, that what I wanted, probably did not count for much in the final outcome as the facts of the proposal should carry the day. On this basis I have tried to pursue the facts.

My wife and I made a commitment to each other that we would pursue a full understanding of the factors affecting this challenge. If after that, the lake proposal prevailed, we could accept the consequences with our heads held high because we believe the "system can work", that Kansans want the best possible outcome for our state and that we have a basic respect for one another. SB 461 is about basic respect for property. Respect for persons and property, in many ways, are inseparable. SB 461 is a small move toward greater respect for one another.

The proposed lake development has created a class of victims that reaches far beyond the project boundaries. I know of new homes put on hold and remodeling and maintenance projects that will have to wait to see if the property will be lost. These, including fences, corrals, houses, barns, ditches and equipment replacement, will have to wait for less uncertain times. All this translates into lost economic activity, which impacts providers far beyond the five-mile perimeter. There have been at least two real estate transactions that were put on hold pending the outcome of this storm. We need some relief, a way to bring this uncertainty to an end.

I've been told that people incarcerated in our prison systems age at twice the rate of the general population. This may be worse. SB 461 may not be the end all do all for this cloud of despair, but I believe it represents Greta Goodwin's best effort to provide some relief to citizens she represents. The last time I saw her this passionate was when she was trying to protect the best interest of the people who lived in the Winfield State Hospital. I would not say that was solved perfectly, but it was the best we could do. SB 461 represents today's "best we can do" and I hope you will do no less.

Most projects are measured by three standards: Is it legal? Is it moral? Is it ethical?
Legal: The purpose of SB 461 is to assure that the Grouse Lake project follows state and federal laws prior to the use of eminent domain. Moral: It is immoral to ask Kansans to sacrifice so much for a project of such high public and private costs. From our research, lake projects of this type do not have a return for at least 35 years. Ethical: It is unethical to plan a project for at least five years without input from the people most affected and on whom the greatest costs fall

House Local Government
Date: 3-11-04
Attachment # 12

I have come to see this community through new eyes. I have come to believe you cannot own a treasure like our community. You can only take care of it on your watch and then pass it on to the next generation. What we have here is our heritage from the past generations. What we do with it will be our legacy to generations yet unborn. Our challenge is to be good stewards of this resource and make wise decisions about its future.

An attempt to put facts on the table so that good decisions could be made has developed a heightened appreciation for the future possibilities for the Grouse-Silver Watershed. I have heard this legislature discuss agri-tourism. There is one farm that would be flooded which was bought by retired NFL player, Les Miller, an Ark. City native, which is being developed as a sportsmen's destination today. His fields are wildlife food plots, his pastures are managed for habitat. The signs say designated shooting area which allows him to do release and hunt over an extended bird season. Another neighbor has decided to go public with information on a stone building on his property, which is probably a French fur buying outpost. The Kansas Historical Society, based on an early 1990 dig for the US 166 corridor, study, has said the field near this stone cabin may be of national historical significance. The owner of that property is looking to the local museum to handle publicity, public access and protection of this piece of Kansas' past in exchange for protection from liability and cost to him. A team, including the museum, the Sierra Club and WSU personnel, plans an investigational trip to the site next week.

I believe the true leadership of this community, from the town hall to the state house, will be the ones who embrace this renewed appreciation and community involvement that exists today and develop a vision for the future. What we need help with is not to cover the whole community with water in pursuit of economic development, but a home grown, internally developed vision of what we want to leave for future generations. I suggest to you that the Grouse Silver Valley can't go back to pre-August, 2003 any more than the USA can recapture pre-911. Our eyes have been opened. While they are open, join with us in finding a compatible, sustainable, credible, doable roadmap to the future. I believe Cowley County needs help. We have lost proportionally as many manufacturing jobs from Ark City as if Wichita would lose the entire aircraft industry. We have not done an in depth visionary process since 1991. While we are still seeing some initiatives developed from that process, we need help in creating a new vision to design economic development for the next 15 years.

I believe there is a way to share this treasure with developers, tourists, second homes, and traditional values. Only with a cooperative spirit and true leadership can we see that kind of sustainable economic development engine created that can open the door to a future we can proudly nurture into existence.

I challenge you to join hands with those of us in this room, both sides of the room, and support SB 461, put this lake to rest and pursue a future of which we can all be proud.

TESTIMONY

To: House Committee on Local Government
Representative Jene Vickrey, Chair

From: Donna Martin
Save our Industry and Land (SOIL) and Kansas Livestock Association (KLA)

Date: March 11, 2004

Subject: Support SB 461

Chairman Vickrey and Members of the Committee:

On September 13, in the Wichita Business Journal, a Wichita Real Estate developer made public a five-year-old plan to stir interest in water and build the first preplanned developer's lake in the nation. According to the article, this Wichita group planned to pay for the lake by taking enough extra land for resale. In order to acquire more land than was actually needed for the project, their way of skirting the law was to have a Port Authority named. This entity would enable them to acquire the governmental authority to condemn and take the extra, desired land.

At a public meeting on October 27, we were told by the Lieutenant Governor Moore, "If there is no need for water, this is a dead issue." His statement appeared to be withdrawn on January 29, at the Lower Arkansas and Walnut BACs by one of his subordinates when he said, "Our goal is economic development through water." What is the issue here?

The 1971-89 Corps of Engineers Study indicates our area has adequate water through 2080. It indicates a water project of this sort is near the bottom on priorities. At the BACs on January 29, an El Dorado lake official mentioned offering to supply water for Western Butler County. Wichita officials rejected the offer. Our phone survey of all our surrounding towns indicated absolutely no need for additional water. We know that water is not an issue.

The Walnut BAC was told that the issue would not be handled in the traditional way and that they would not be able to deal with it. The Kansas Water Office appointed a special group called the TAC.

This lake project is having a profound effect on the people in our community and everyone connected to them. That is why the 300 seats at the Ark City meeting were full and people lined the walls and filled the hallway. That is why they filled the 80 seats and lined the walls on a snowy day in Wichita at the Walnut BAC meeting. That is also why most of these people left at 4:00 a.m. this morning to come here.

We know that governing bodies such as port authorities can zone three miles around their designated area. Ladies and gentlemen, we are talking about 29,000 acres within this lake in the one-mile range and an additional 30,000 acres within the three-mile range—about 60,000 total acres. We know that simply taking additional land would absorb these costs. In the Cowley County Lake situation, it could mean entire farms or ranches, not just a path through it. They do not make more land like they make street corners. It is irreplaceable. People would be forced to

House Local Government
Date: 3-11-04
Attachment # 13

move away from their community, family and friends in an attempt to replace the jobs or retirements that their land is now providing. (Map Included).

This has taught us we live in an amazing community with many enviable assets and possibilities. These are at risk and we need your help to protect them.

We learned through the Kansas Historical Society and their nineteen listed archeological digs that men have lived in our valley since thousands of years before Christ. They regard our area as extremely significant in explaining our past.

We learned we would lose a portion of the Black Dog Trail. It has major significance for both the Indian culture and the settlement of Kansas. Its proximity to the Indian territories gives us hands-on authenticity to the many legends of the history books. Dozens of 1800s houses and barns are still in use. One 1801 house is particularly fascinating because it would be the earliest known house in Kansas—before the Louisiana Purchase and the Lewis and Clark Expedition.

We learned about the huge typhoid death loss of an Indian tribe in our valley and of the other surrounding burial grounds. We learned about the 1990 Native American Graves Protection and Repatriation Act.

We learned about the two stone companies and that the high-quality stone they quarry is available from this area only. We were disappointed to find we might lose them.

It was surprising to find that our new US Highway 166 would need to be re-routed. Additional land would be necessary.

An oilman described our area as being like “swiss cheese” with the 699 listed oil and gas wells that would have to be purchased and plugged.

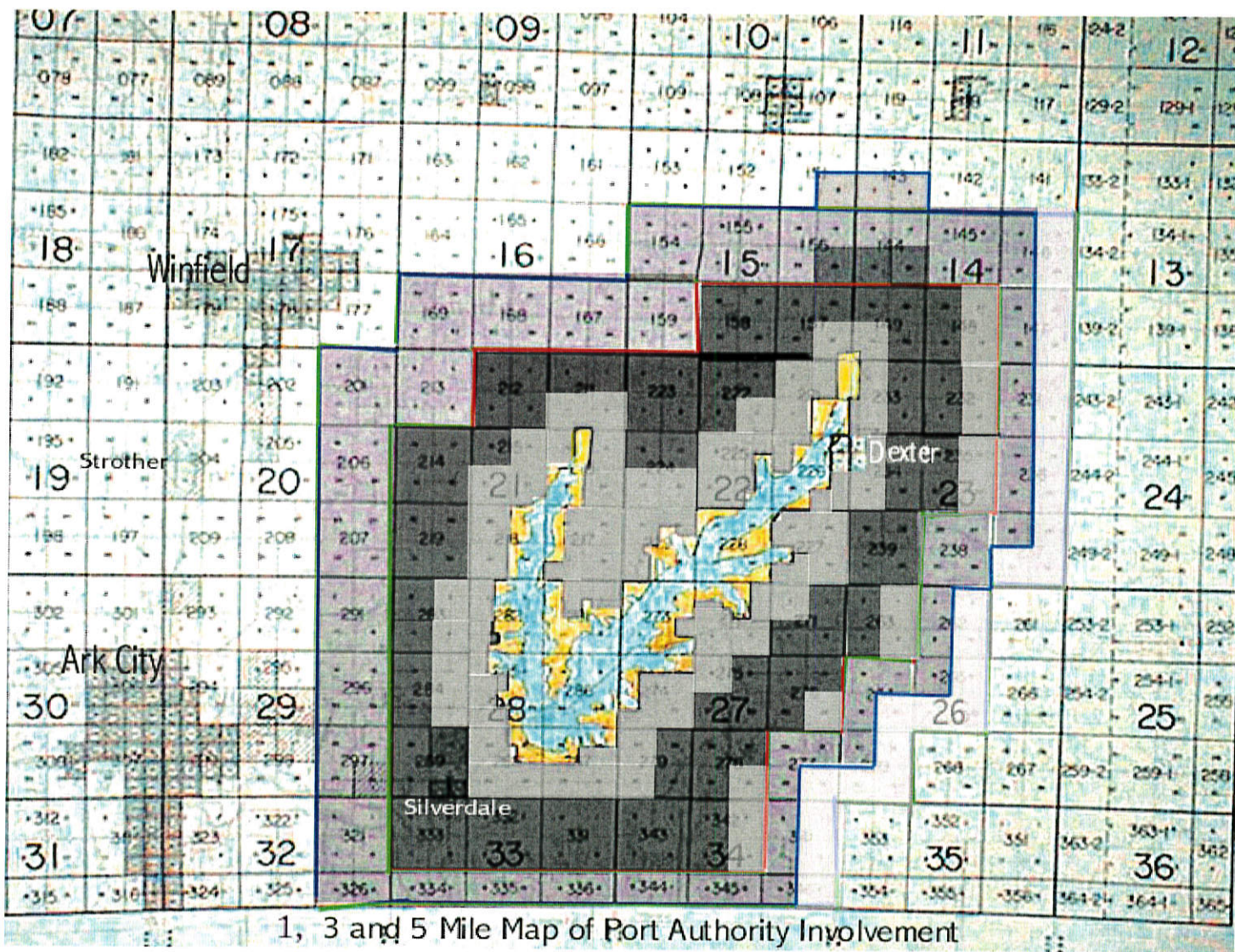
Most of us were surprised to learn that the Humbolt Fault was under our valley.

The saddest thing we learned was that the bill for all of this would be paid for by us. Their plan was simply taking our land by eminent domain and reselling it.

The exploitation of eminent domain has got to end. Please pass Senate Bill 461! We have been taught when something is bad to just say “no”. Ladies and gentlemen, we want you to just say no. Not here! Not now! Never again!

Ladies and Gentlemen, we are thankful that we live in a democracy. We know wars have been fought; blood shed and lives lost for less than what they are trying to do to us! It happened in the 1800s with the “first taking of the land.” The “second taking of the land” will not be allowed. With the passion of the wronged and the perseverance of a mama grizzly, we will follow this to the end!

13-3



1, 3 and 5 Mile Map of Port Authority Involvement

(1)
B



North of Dexter



North of Dexter



West of Dexter East



West of Dexter North



West of Dexter NW



West of Dexter SE

13-6



West of Dexter South



Dexter West

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Testimony in Support of S.B. 461

An act concerning eminent domain, relating to the acquisition of land for certain purposes by a port authority or county

On behalf of the Kansas Chapter of the Sierra Club

Before the House Local Government Committee
March 11, 2004

Mr. Chairman and members of the House Local Government Committee, thank you for the opportunity to testify in support of S.B. 461. I am here representing 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.

Conservation of natural resources is the overriding concern of the members of Sierra Club. The Kansas Sierra Club supports S.B. 461 because it deals directly with a proposal to dam Grouse Creek in southern Cowley County in order to create a Grand Lake/Lake of the Ozarks type of development.

The National Park Service has recognized Grouse Creek as an "Outstandingly Remarkable Stream" based on scenic, historical, and ecological attributes. Moreover, the state's former Fish and Game Commission listed Grouse Creek as a "Highest-Valued Fishery Resource". Recently, Kansas Magazine reported on the historic limestone bridges over Grouse Creek and its tributaries. There appear to be no federal or state listed Threatened and Endangered species in Grouse Creek, which is a testament to the excellent stewardship of the riparian landowners along Grouse Creek. The creek continues to support most of its originally occurring fish and shellfish taxa, including five extant SINC species or "species in need of conservation." The Kansas Department of Wildlife and Parks gives the SINC

House Local Government
Date: 3-11-04
Attachment # 14

designation to certain species pursuant to K.S.A. 32-959 - a statute intended to acknowledge and encourage the protection of declining forms of native wildlife. I have attached to this testimony a list of SINC known or likely to occur in Cowley County and a list of various fish other aquatic species known to occur in Grouse Creek. The conservation status of native Kansas fish was reexamined by a special task force this fall. It is possible that some additional elements of the Grouse Creek assemblage will be designated eventually as SINC species or, in the case of the spotted sucker, elevated in status from SINC to threatened. Sadly, most of the fish and mussel species listed below are dependent on flowing water habitats and would not survive the impoundment of the stream.

The proponents of destroying Grouse Creek have proposed creating a port authority for this purpose. S.B. 461 would amend the port authority statutes in several important ways. First it would prohibit a port authority from using its powers of eminent domain to acquire land a "recreational-use purpose" in Cowley County. Second, if a port authority is created for the purpose of using its powers of eminent domain to acquire land for the public purpose of a water supply for Cowley County, a private development could not occur on that land for at least 30 years. Third, if a port authority were created for a particular purpose by the legislature that purpose cannot change without the legislature having an opportunity to approve or disapprove of that change.

S.B. 461 would also prevent private development for 30 years on any land acquired by the Board of Cowley County Commissioners, using its home rule and eminent domain powers, for the purpose of creating a recreational lake.

We think that the provisions of S.B. 461 would go a long way toward protecting Grouse Creek and its tributaries. We commend Senator Goodwin for her efforts. We especially commend the farmers and ranchers of Cowley County for the outstanding job they have done to preserve this wonderful Kansas resource.

The Kansas Chapter of the Sierra Club urges your support of S.B. 461.



Species In Need of Conservation Known or Likely to Occur in Cowley County, Kansas

- Black Tern - *Chlidonias niger* (Linnaeus)
- Bobolink - *Dolichonyx oryzivorus* (Linnaeus)
- Cerulean Warbler - *Dendroica cerulea* (Wilson)
- Creeper Mussel - *Strophitus undulatus* (Say)
- Curve-Billed Thrasher - *Toxostoma curvirostre* (Swainson)
- Eastern Hognose Snake - *Heterodon platirhinos* (Latreille)
- Fat Mucket Mussel - *Lampsilis radiata luteola* (Gmelin)
- Ferruginous Hawk - *Buteo regalis* (Gray)
- Golden Eagle - *Aquila chrysaetos* (Linnaeus)
- Plains Minnow - *Hybognathus placitus* (Girard)
- Red-Shouldered Hawk - *Buteo lineatus* (Gmelin)
- River Shiner - *Notropis blennioides* (Girard)
- Short-Eared Owl - *Asio flammeus* (Pontoppidan)
- Spotted Sucker - *Minytrema melanops* (Rafinesque)
- Texas Mouse - *Peromyscus attwaterii* (Allen)
- Wabash Pigtoe Mussel - *Fusconaia flava* (Rafinesque)
- Western Hognose Snake - *Heterodon nasicus* (Baird and Girard)

(Continued)

Cowley County, Kansas (cont.)

Whip-Poor-Will - *Caprimulgus vociferus* (Wilson)

Yellow Sandshell Mussel - *Lampsilis teres* (Rafinesque)

Fish species (KDWP):

Bigeye shiner
Blackstripe topminnow
Bluegill
Bluntnose minnow
Brook silverside
Bullhead minnow
Central stoneroller
Channel catfish
Channel darter
Common carp
Emerald shiner
Flathead catfish
Freckled madtom
Freshwater drum
Gizzard shad
Golden redhorse
Green sunfish
Largemouth bass
Logperch
Longear sunfish
Longnose gar
Mimic shiner
Orangespotted sunfish
Orangethroat darter
Red shiner
Redfin shiner
River carpsucker
Rosyface shiner
Shorthead redhorse
Slender madtom
Slenderhead darter
Slim minnow
Smallmouth buffalo
Spotted bass
Spotted sucker (SINC)
Suckermouth minnow
Western mosquitofish
Yellow bullhead

Mussel species (KDHE):

Bleufer
Creeper (SINC)
Fat mucket (SINC)
Fragile papershell
Giant floater
Mapleleaf
Pimpleback
Pink papershell
Pistolgrip
Plain pocketbook
Pondmussel
Threeridge
Wabash pigtoe (SINC)
White heelsplitter
Yellow sandshell (SINC)

Other reported mussel species (Metcalf 1980; KDWP):

Deertoe (SINC, probably extirpated in basin)
Lilliput
Paper pondshell
Pondhorn
Threhorn wartyback (probably extirpated in basin)

TESTIMONY

To: House Committee on Local Government
Representative Jene Vickrey, Chair

From: Bill House

Re: Support for SB 461

Date: March 11, 2004

My name is Bill House. I have a residence at 1006 Cedar, Cedar Vale, Kansas and also keep a residence at Arkansas City.

I am here because of the proposal by a representative of Weigand Realtors of Wichita to build a lake in the Grouse Creek Valley seven miles east of Arkansas City.

I have been in the business of raising cattle continuously since 1939 operating ranches in Chatauqua County, Kansas, Osage County, Oklahoma, and Cowley County, Kansas.

The lake proposal would effectively destroy the Cowley County ranch 15 miles east of Arkansas City and on the north side of Highway 166. This ranch is composed of 4,500 acres, including approximately 400 acres of river bottom land exactly in the middle of the proposed lake. I understand that the proposal would include an area adjoining the lake and that would probably include another 2,100 acres.

To accomplish this proposal the promoters would seek a "port authority" destination with the power of eminent domain to condemn the land necessary for their purposes. The proposal lists water and electricity as possible developments, but also lists retirement homes, tourism, resorts and parks, waterfront second homes, vacation homes, and recreation. 2

The proposal suggests the project would help retention and recruitment of "quality people" and "quality employers." I would assume this would not include present landholders.

K.S.A. 12-1774 "Port Authority" is a dangerous statute leaning toward letting predators take anything they desire. If Sedgwick County issued the authority, Cowley County would lose control over the entire entity.

The Legislature should re-examine this authorization and limit eminent domain to constitutional provisions.

House Local Government
Date: 3-11-04
Attachment # 15

WHY: 1. To provide water for many communities in South Central Kansas. It could be used by the city of Wichita to take some pressure off the equus beds, a major source of water, which has had dropping water levels, salt infiltration and demands of farmers and ranchers to the north. Also Cheney reservoir has algae bloom problems, which possibly could be more fully addressed if a third water source was available.

2. Retirees are leaving the state to surrounding lake communities. Many retirees have to make the decision to leave family and friends for retirement areas. This lake area could be a mini-Branson type area, slightly more than an hour from Wichita.

3. Tourism, resorts, and parks.

4. Waterfront second homes, vacation homes. Most large lakes in Kansas are US Army Corps of Engineers lakes, which do not allow or limit development or private access to the lakes. Our hope would be that this lake would be developed similar to Grand Lake, Lake of the Ozarks, etc. where private home development can take place along with resort development, marinas, restaurants, etc.

5. Recreation- Grouse Creek is the clearest stream in Kansas and in hilly rock territory, an amenity that a lot of lakes in Kansas don't have.

6. Electricity- depth of the lake makes this possible.

7. Flood control- this location will help in regards to past area-flooding problems.

8. Economic Development- having a significant project like this helps in the retention and recruitment of quality people and quality employers in South Central Kansas.

9. An overall improvement in the quality of life.

COST: \$150 to \$400 million dollars depending on many variables and what is included in the project (pipelines, electric generation, etc.) Additionally, there could easily be \$100-\$200

Initial references in paragraphs are to note numbers in original text.

August 1, 1888, authorizing condemnation whenever an officer of the government is authorized to procure property for public uses, the application of this act of Congress not being affected by the act of April 24, 1888, authorizing condemnation proceedings to acquire land, right of way, or material needed for improvement of rivers and harbors. *Hanson Lumber Co. v. United States*, 261 U. S. 581, 43 S. Ct. 442, 67 U. S. (L. ed.) 809.

Right of Emergency Fleet Corporation to Requisition Property.—See UNITED STATES, § 42.

4 (p. 25). **Conflicting Definitions of "Public Use."**—*Smith v. Cameron*, 106 Ore. 1, 210 Pac. 716, 27 A.L.R. 510.

View that Public Must Be Entitled as of Right to Use or Enjoy Property Taken.—*Fountain Park Co. v. Hensler*, — Ind. —, 155 N. E. 465, 50 A.L.R. 1518; *Paine v. Savage*, 126 Me. 121, 136 Atl. 664, 51 A.L.R. 1194; *Richmond v. Carneal*, 129 Va. 388, 106 S. E. 403, 14 A.L.R. 1341.

Quoted in Gravelly Ford Canal Co. v. Pope, etc., Land Co., 36 Cal. App. 556, 178 Pac. 150; *In re Opinion of Justices*, 118 Me. 503, 106 Atl. 865. *Cited in Vetter v. Broadhurst*, 100 Neb. 356, 160 N. W. 109, 9 A.L.R. 578; *Moseley v. Bradford*, — Tex. Civ. App. —, 190 S. W. 824.

To constitute a public use for which the power of eminent domain may be exercised, the general public must have the right to a definite and fixed use of the property appropriated, not as a mere matter of favor or permission of the owner, but as a matter of right, and it is insufficient that the public has a theoretical right to use it, or will receive an incidental or prospective benefit from it. *Fountain Park Co. v. Hensler*, — Ind. —, 155 N. E. 465, 50 A.L.R. 1518.

5 (p. 25). **View that Public Use Means Public Advantage.**—*Quoted in Gravelly Ford Canal Co. v. Pope, etc., Land Co.*, 36 Cal. App. 556, 178 Pac. 150; *Vetter v. Broadhurst*, 100 Neb. 356, 160 N. W. 109.

6 (p. 26). **View that Public Use Is Not Synonymous with Public Benefit.**—*Smith v. Cameron*, 106 Ore. 1, 210 Pac. 716, 27 A.L.R. 510; *Reed v. Seattle*, 124 Wash. 185, 213 Pac. 923, 29 A.L.R. 446; *Richmond v. Carneal*, 129 Va. 388, 106 S. E. 403, 14 A.L.R. 1341.

Private enterprises are not public uses within the law of eminent domain, although they give employment to many people and produce large quantities of commodities of various kinds. *Smith v. Cameron*, 106 Ore. 1, 210 Pac. 716, 27 A.L.R. 510.

That a gasoline filling station is a convenience to the traveling public does not authorize the leasing of land condemned for a highway for such station, where the constitution forbids the taking of private property for private use. *Reed v. Seattle*, 124 Wash. 185, 213 Pac. 923, 29 A.L.R. 446 and note.

Use by the General Public as a Uni-

versal Test Inadequate.—*Mt. Vernon Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U. S. 30, 36 S. Ct. 234, 60 U. S. (L. ed.) 507.

6a (p. 26). **Classes of Takings Included in "Public Use."**—*Pontiac Imp. Co. v. Cleveland Metropolitan Park Dist.*, 104 Ohio St. 447, 135 N. E. 635, 23 A.L.R. 866.

§ 23

Taking by Private Individual Sometimes Regarded as for Public Use.—*Quoted in Gravelly Ford Canal Co. v. Pope, etc., Land Co.*, 36 Cal. App. 556, 178 Pac. 150.

§ 24

7-9 (p. 27). **Taking Must Be Necessary for Public Use.**—To justify a taking of property under the power of eminent domain it must be established that the taking is necessary for a public use. *Piper v. Ekern*, 180 Wis. 586, 194 N. W. 159, 34 A.L.R. 32.

State Cannot Authorize Taking of Property for Private Use.—*Fountain Park Co. v. Hensler*, — Ind. —, 155 N. E. 465, 50 A.L.R. 1518; *Paine v. Savage*, 126 Me. 121, 136 Atl. 664, 51 A.L.R. 1194; *Vetter v. Broadhurst*, 100 Neb. 356, 160 N. W. 109, 9 A.L.R. 578 and note; *Pontiac Imp. Co. v. Cleveland Metropolitan Park Dist.*, 104 Ohio St. 447, 135 N. E. 635, 23 A.L.R. 866; *Smith v. Cameron*, 106 Ore. 1, 210 Pac. 716, 27 A.L.R. 510; *Richmond v. Carneal*, 129 Va. 388, 106 S. E. 403, 14 A.L.R. 1341.

Quoted in Gravelly Ford Canal Co. v. Pope, etc., Land Co., 36 Cal. App. 556, 178 Pac. 150. *Cited in North Carolina Public Service Co. v. Southern Power Co.*, 282 Fed. 837.

"Legislation designed or framed to accomplish the ultimate object of placing property in the hands of one or more private persons, after it has been taken by the superior power of the government from another private person avowedly for a public use, is unconstitutional." *Wright v. Walcott*, 238 Mass. 432, 131 N. E. 291, 18 A.L.R. 1242.

"A few state constitutions contain an express prohibition against taking private property for a private use. But the language of most of the constitutions, including the federal constitution, is either the same as or equivalent to the language appearing in our constitution; and it is uniformly held that such language prohibits the taking of private property for a private use." *Smith v. Cameron*, 106 Ore. 1, 210 Pac. 716, 27 A.L.R. 510.

§ 25

11 (p. 28). **Fourteenth Amendment of Federal Constitution Violated by Taking for Private Use.**—*O'Neill v. Leamer*, 239 U. S. 244, 36 S. Ct. 54, 60 U. S. (L. ed.) 249.

§ 26

14 (p. 29). **Public Use as Dependent on**



**COWLEY COUNTY
FARM BUREAU**

DATE: March 11, 2004
TO: House Local Government Committee
FROM: Robert Voegele, Farmer and Cowley County Farm Bureau President
29414 41st Road
Arkansas City, Kansas 67005
RE: Support of SB 461

Chairman Vickery and members of the committee. Thank you for this opportunity to provide comments on Senate Bill 461. I am Robert Voegele from Arkansas City and I farm in Cowley County. I am writing you today to support SB 461.

SB 461 proposes to limit the abilities of counties or port authorities to use eminent domain power to develop recreational-use facilities or allow private development of land taken through the use of eminent domain in Cowley County. This is an issue specific to Cowley County because of efforts currently underway to develop a 10,000-acre reservoir for recreational uses and high dollar housing areas.

The planned construction of Kanza lake, also known as Grouse Creek reservoir, is an attempt by private developers to acquire land in Cowley County using the excuse that a public water supply is needed or the project will stimulate economic development in Cowley County. However, those of us who reside in Cowley County know this is merely an attempt to hide the real motivation behind the project, personal financial gain by the developers. The proposed area for the project would take prime agricultural land out of production in south-central Cowley County; this area has some of the best agricultural land in the county. The developers and supporters of the lake talk about the need for economic development in the county, but these individuals fail to recognize the immediate loss to Cowley County's economy by taking this land out of production agriculture.

I ask the committee to consider the desires of those of us who live and work in Cowley County and our opposition of this project. We have been living with this threat to our land and our economy long enough. I ask you to vote in favor of Senate Bill 461 and put an end to the debate and discussion surrounding the Kanza lake project. I assure you if you pass this bill the developers will no longer see a profit to be made and will abandon this effort. Thank you for your time.

House Local Government
Date: 3-11-04
Attachment # 16



League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: House Local Government Committee
From: Sandy Jacquot, General Counsel
Date: March 11, 2004
Re: Opposition to SB 461

Thank you for allowing the League of Kansas Municipalities to testify in opposition to SB 461. The primary focus of concern for the League is the language in Section 1(a) and in Section 3 that would affect all existing and future port authorities. Specifically, the proposed language would prohibit all existing and future port authorities from modifying, amending or extending the port authority's original plan unless approved by the Legislature, and would prohibit ever changing the character of work. In addition, Section 3 would not allow the use of eminent domain for a recreational-use purpose or private development. Currently, existing port authorities may modify, amend or extend the character of the work originally undertaken by holding a public hearing.

If the concern needing to be addressed in this bill encompasses only one area, Sections 1 and 3 could be amended to limit the impact to port authorities created for the purpose of completing a project in Cowley County. While the League generally does not support legislation targeting one specific area, the greater concern is limiting all current and future port authorities in Kansas because of one localized situation, especially when, to the best of our knowledge, no port authority has been created or is even being contemplated by the municipalities in the area. In addition, this piece of legislation is not even needed, because before a port authority can be created, the Legislature must specifically approve its creation by concurrent resolution. Therefore, there would be plenty of time to address this situation should the need arise.

For all of the above-cited reasons, the League of Kansas Municipalities respectfully requests that SB 461 not be reported favorably for passage.

House Local Government
Date: 3-11-04
Attachment # 17

**Testimony on acquisition of land for certain purposes
by a port authority or county**

to

The House Committee on Local Government

SB 461

**by Joe Harkins
Acting Director
Kansas Water Office
March 11, 2004**

Mr. Chairman, members of the Committee. I am Joe Harkins, Acting Director of the Kansas Water Office. I am here to express my opposition to SB 461. The bill appears to be an effort to prevent the development of a proposed lake in Cowley County. I am not here to speak on the merits of the project. I am concerned about maintaining the credibility of the State's water planning process.

The Kansas Water Authority (KWA) has authorized the Kansas Water Office to gather information, seek input from the public, and make a recommendation later in the year to the KWA on what the next step, if any, should be on the part of the State regarding a new lake in this region.

Our approach to this study is to assess the need for water supply, flood control, recreation, and other possible benefits. Once these needs are assessed, we will determine all alternatives to meet these needs, one of which will be the proposed lake.

While the creation of a Port Authority is one way to move forward on constructing a lake, a Port Authority has never to my knowledge been created in Kansas for this purpose. Therefore, limiting the role of a Port Authority in the construction of a lake, as this bill appears to do, is as much an expression of legislative sentiment as an actual deterrent to the project.

The proposed lake has both proponents and opponents. The Water Authority and the Water Office are providing a forum and level playing field to determine the feasibility of the proposed project. We think legislative action intended to prevent the project, before that analysis is complete, is premature. We encourage the committee not to act on SB 461.

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

House Local Government
Date: 3-11-04
Attachment # 18