

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on February 23, 2004 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Kathie Sparks, Legislative Research  
Susan Kannarr, Legislative Research  
Helen Pedigo, Revisor of Statutes  
Nikki Kraus, Committee Secretary

Conferees appearing before the committee:

Allen Bell, Economic Development Coordinator, City of Wichita  
Jack Brown, Environmental Health Director, City of Wichita  
Chris Chronis, CFO, Sedgwick County  
Melinda Walker, Purchasing Manager, City of Wichita

Others attending:

See Attached List.

Mr. Brown presented the committee with the TIF (Tax Increment Finance) reports from the city of Wichita. The first was entitled "Status Summary of the North Industrial Corridor Site" ([Attachment 1](#)); the second was entitled "Status Summary of the Gilbert and Mosley Site" ([Attachment 2](#))

Chairperson Brownlee opened the public hearing on:

**SB 405—Cities; environmentally contaminated areas; completion dates**

Ms. Sparks presented the committee with an overview of both bills **SB 405** and **SB 408**. ([Attachment 3](#))

Mr. Bell presented testimony in favor of the bill. ([Attachment 4](#))

Senator Steineger expressed concern about the ability to roll over projects infinitely. Mr. Bell stated that these changes do not apply to economic development TIFs, and that they only allow time to complete the projects. Chairperson Brownlee suggested a possible cap of 30 years or something similar.

Mr. Chronis submitted testimony as an opponent of the bill. ([Attachment 5](#)) He stated that while his organization supported Wichita's projects, they do not support its use of county funds.

Senator Barone asked if the 20 mils on schools was not impacted, if LOBs would not be exempted. Mr. Chronis said no and explained that more specific numbers would have to come from the county clerk.

Mr. Bell stated that the design was appointed in 2000 and in 2001 the remediation phase began. Chairperson Brownlee asked if the NIC started in 1996, because if so, there were still 12 years left. Mr. Bell agreed and stated that the project was still in the design phase. Mr. Brown explained that the investigative phase was done, but the engineering was not. Senator Emler clarified with Mr. Brown that the Corrective Action decision was approved in September 1994, and that the original was in 1991, 1994, and 2000.

Senator Jordan stated that he would like more input from KDHE.

Diane Gjerstad, Wichita schools, stated that there was a negative impact on the city if the area was not cleaned up properly.

Chairperson Brownlee closed the hearing on **SB 405**.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMERCE COMMITTEE at 8:30 a.m. on February 23, 2004 in Room 123-S of the Capitol.

Chairperson Brownlee opened the public hearing on:

**SB 408--Cities; environmentally contaminated areas; completion dates**

Ms. Sparks explained the bill to the committee. (See Attachment 3)

Ms. Walker provided testimony in favor of the bill. (Attachment 6)

Senator Barone asked what would be a limit. He stated that they could do away with bonding requirement without no limit. Ms. Walker replied that Wichita would have a limit. She stated that it would allow municipalities to put a money limit on their economic areas.

Chairperson Brownlee stated that there was typically a limit. Senator Barone asked Ms. Walker what would be a number today that would work for them as a increase from the current limit of \$40,000. Ms. Walker replied that \$100,000 would be a good number.

Senator Emler stated that his concern was that if a contractor did not do his/her job, the city would still have to pay them. Ms. Walker stated that this would ensure that they pay subcontractors. Following additional committee discussion, Chairperson Brownlee closed the hearing on **SB 408**.

Senator Barone moved to amend **SB 408** on line 17, strike \$40,000 and insert \$100,000 in its place, and to change this elsewhere in the bill including new paragraph (d) on p.2, and lines 37, 39, and 40. Senator Emler seconded. The motion passed.

Senator Barone moved to recommend **SB 408** favorable as amended. Senator Emler seconded. The motion passed.

Chairperson Brownlee also formally closed the hearing on **SB 525**.

Senator Bunten asked if the committee planned to hear more detail concerning amendments to **SB 525** that would help companies trying to use winback.

Chairperson Brownlee stated that specifically concerning winback, the issue needs to work its way through the KCC. She stated that the committee had heard testimony from MCI concerning the way the process had been circumvented in Texas. The Chair stated that the KCC had been waiting on information from SBC. She asked the committee what it thought.

Senator Bunten stated that he thought the bill needed further hearings and that he would like to see it stay alive. Chairperson Brownlee stated that she had input from members of the committee who were not interested in seeing the bill continued.

Senator Barone stated that he would like to keep the bill alive and that he was intrigued with the KCC's definition of monopoly power.

Chairperson Brownlee stated that the committee would consider it the following day. She stated that the committee has no business working on the winback issue, however, because of the issue's overwhelming complexity.

Chairperson Brownlee adjourned the meeting at 9:30 a.m. The next meeting will be at 8:30 a.m. on February 23, 2004 in Room 123-S of the Capitol.





Jack Brown

Senate Commerce Committee

House Economic Development Committee

City of Wichita-Status summary of the North Industrial Corridor site February 21, 2004

The North Industrial Corridor Tax Increment Financing (TIF) Redevelopment District was established by the City of Wichita in 1996 as a secondary funding source for the investigation and remediation of the KDHE identified ground water contamination site known as the North Industrial Corridor (NIC). This document is the periodic report to the Kansas Legislature on the status of the investigation and remediation project as required by K.,S.A. 12-1771 a(g).

To address the environmental contamination issue the City of Wichita has established an environmental program similar to that of the Gilbert and Mosley site. The NIC site is located in north central Wichita has many similarities to that of the Gilbert and Mosley site, it is a 5 square mile area that has been impacted by ground water contamination from various industrial solvents and degreasing compounds over the years.

The City is currently completing the investigation of the area to identify the potentially responsible parties (PRPs) who caused the contamination. The City intends to make every effort to see that the PRPs reimburse the City for as much of the clean-up costs incurred by the City and funded by the TIF as possible. The City is currently working with the potentially responsible parties, the Kansas Department of Health & Environment (KDHE) and the Environmental Protection Agency (EPA) to address the investigation and clean-up of the site with minimal legal action.

City staff and the NIC project's primary contractor have conducted the remedial investigation phase of this project following the EPA's procedures and protocols found in the National Contingency Plan. The investigation has determined the extent of the contamination including additional investigations that KDHE has requested to include a preliminary identification of PRPs and contamination source areas. This investigative approach has increased the time and cost involved in this phase of the project.

The remediation investigation phase and the baseline risk assessment, however, are now complete and are currently being reviewed by the KDHE Bureau of Environmental Remediation. Once KDHE has given final approval of the investigation, development of the clean-up plan and a remedial design will be initiated. The currently anticipated date for remedial construction (clean-up) is estimated to be in 2005.

The City's legal staff and outside legal advisors will continue to aggressively pursue the project's goal of holding PRP's financially liable for the investigation and clean-up of the contamination they have caused in the district.

Certificates of release of environmental liability have been issued for many of the properties within the NIC site. These releases of liability promote fairness by ensuring protection to innocent parties who have not contributed to the contamination.

Attachments: North Industrial Corridor Budget

Senate Commerce  
02/23/04  
Attach #1

# CITY OF WICHITA 2004/2005 ANNUAL BUDGET

## MULTI-YEAR FUND OVERVIEW - GILBERT & MOSLEY TIF DISTRICT

FUND: 255 / 1

	2002 ACTUAL	2003 ADOPTED	2003 REVISED	2004 ADOPTED	2005 APPROVED
<b>Budgeted revenues:</b>					
Property tax increment	2,432,977	2,670,040	2,600,000	2,670,040	2,670,040
Contributions from potentially responsible parties	100,000	3,500,000	0	0	0
KDHE reimbursements	260,000	260,000	260,000	130,000	130,000
Interest earnings	65,679	64,190	35,730	5,000	5,000
Bond proceeds	0	0	0	0	0
<b>Total budgeted revenues</b>	<b>2,858,656</b>	<b>6,494,230</b>	<b>2,895,730</b>	<b>2,805,040</b>	<b>2,805,040</b>
<b>Budgeted expenditures:</b>					
Personal services	9,629	108,300	30,390	51,580	56,500
Contractuals	3,114,877	1,332,590	2,289,150	1,024,670	734,670
Commodities	13,169	24,950	24,950	26,120	26,120
Capital outlay	0	0	0	0	0
Debt service	729,330	2,200,690	1,543,560	1,471,310	1,987,480
<b>Subtotal budgeted expenditures</b>	<b>3,867,005</b>	<b>3,666,530</b>	<b>3,888,050</b>	<b>2,573,680</b>	<b>2,804,770</b>
Budgeted income (loss)	(1,008,349)	2,827,700	(992,320)	231,360	270
Unencumbered fund balance January 1	2,096,671	138,551	1,088,322	1,002	227,362
Restricted cash for future debt service December 31	0	5,300,000	95,000	100,000	0
Total fund balance December 31	1,088,322	5,466,251	96,002	327,362	327,632
<b>Unreserved fund balance December 31</b>	<b>1,088,322</b>	<b>166,251</b>	<b>1,002</b>	<b>227,362</b>	<b>327,632</b>



Jack Brown

Senate Commerce Committee  
House Economic Development Committee

February 21, 2004

### City of Wichita - Status Summary of the Gilbert and Mosley site

The Gilbert and Mosley Tax Increment Financing (TIF) Redevelopment District was established by the City of Wichita in 1991 as a secondary funding source for the investigation and remediation of the KDHE identified ground water contamination area known as Gilbert and Mosley. This document is the periodic report to the Kansas Legislature on the status of the investigation project as required by K.S.A. 12-1771 a (g).

The 4 square mile Gilbert and Mosley ground water contamination site located in downtown and south central Wichita was investigated, and developed, as an official contamination site in 1990 by the Kansas Department of Health and Environment. The contamination sources consisted of commercial and industrial solvents used in various metal cleaning and degreasing processes. Through the federally mandated Environmental Protection Agency process of environmental investigation known as the National Contingency Plan a comprehensive environmental site investigation was conducted under an agreement between the City of Wichita and the State of Kansas. This agreement was recognized by the EPA as a "state-lead" site designating the Kansas Department of Health and Environment to provide oversight.

After completion of the initial investigative process a Corrective Action Decision (CAD) was issued by the KDHE in September of 1994. This document outlined the steps necessary to remediate and clean up the site's ground water contamination. Subsequent to the CAD the City developed a number of cleanup technology options. After review of the available cleanup alternatives by the City and the KDHE the method of pumping and air stripping the contaminated water was chosen. KDHE approved the final design of the clean up system in 2001 and the system was installed during 2001 and 2002 with actual cleanup initiated in November of 2002. To date the system has cleaned approximately 500 gallons of contaminated water through a system consisting of 13 groundwater extraction wells and 5.5 miles of piping. To complement the water treatment system an educational building with remediated ground water supporting native Kansas fish in two aquarium displays. The remediated water is also being used to irrigate the park area surrounding the treatment center.

In addition to the construction of the cleanup system the environmental investigative findings were further refined resulting in the identification of 26 parties responsible for the contamination. In 1998, the City of Wichita filed a lawsuit for the recovery of the costs of investigation and remediation. Most of the responsible parties named by the City have settled the claims against them, with payments into the TIF fund. The City has received a preliminary Federal Court ruling finding the parties on three of the remaining properties liable for the contamination.

The next step in the project is to install cleanup systems at various sources throughout the Gilbert and Mosley site to remediate those areas in proximity to and under buildings and structures where contaminants are still present in the soil.

Attachments: Water Center January Monthly Report  
Gilbert and Mosley TIF Budget

Senate Commerce  
02/23/04  
Attach # 2

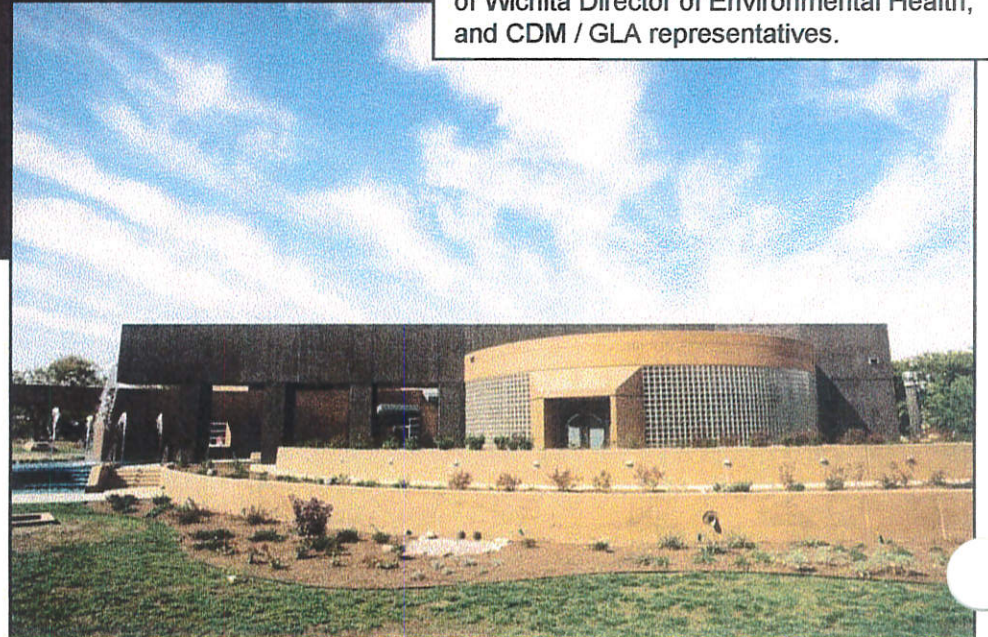
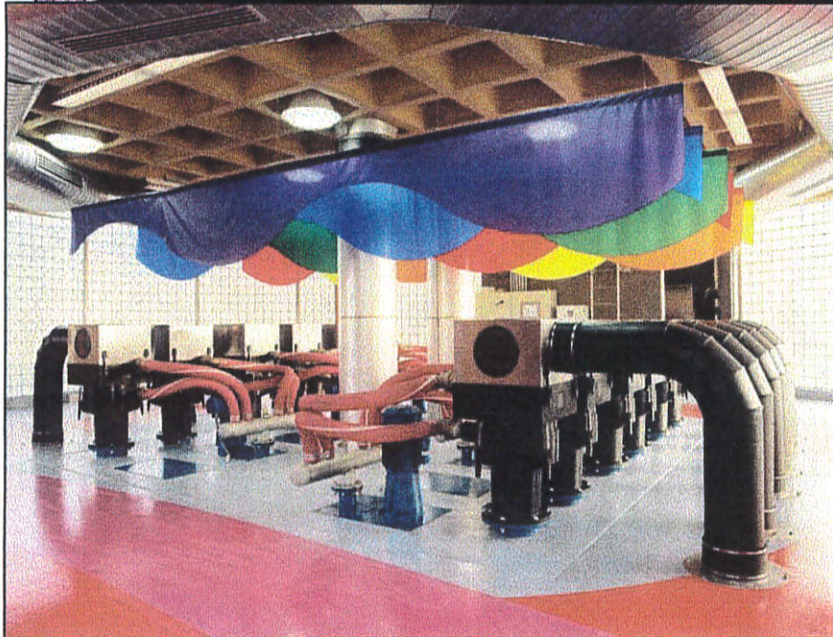


2-2

# WATER Center Gilbert and Mosley Project *Wichita, Kansas*



Grand Opening Ribbon Cutting Ceremony on Oct. 16, 2003 with the City of Wichita Mayor, KDHE Director of Environment, City of Wichita Director of Environmental Health, and CDM / GLA representatives.



2

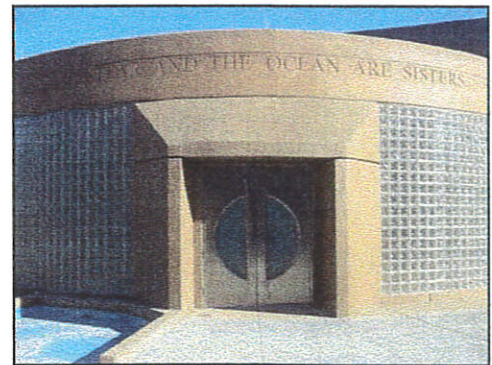


# Monthly Summary Sheet for January 2004

## Gilbert and Mosley Project – Wichita, Kansas

### Plumes ABE Treatment System and WATER Center Construction Activities

CDM continued the few remaining Phase III construction activities in January 2004, and the groundwater treatment system continued to pump and treat large quantities of contaminated groundwater. The construction efforts performed during January included the installation of the water truck fill station components and several additional finishing efforts. The western side of the treatment building is shown to the right, and the environmental education building and the plaza area arc wall are shown below with the fountain areas drained for the winter. CDM and City of Wichita staff jointly operated the Plumes ABE groundwater treatment system through the first full week in January, and City of Wichita staff then began the full time operation and maintenance efforts on January 10, 2004. CDM continued to provide extremely limited assistance



with the operation and maintenance efforts through the end of January. Approximately 39 million gallons of contaminated groundwater were pumped and treated during January 2004 for a total treated volume of approximately 470 million gallons. The treated water is shown below as it enters the Arkansas River at the creek discharge.

#### **Additional anticipated First Quarter 2004 project activities:**

The few remaining construction efforts will be completed as material delivery schedules and weather conditions allow, and the groundwater treatment system will continue to pump and treat over 1.2 million gallons of groundwater a day.



### Monitoring Activities

CDM continued the preparation of the Fourth Quarter 2003 Site Monitoring Network Report and Annual Summary document to present the data from the water level measurements and analytical samples with the corresponding summarization and evaluation information. The City of Wichita continued the Plumes ABE treatment system performance monitoring with the collection of a treatment system effluent sample.

**Additional anticipated First Quarter 2004 project activities:** CDM will complete the preparation of the Fourth Quarter 2003 Site Monitoring Network Report and Annual Summary document for submittal to the City of Wichita in early February. The City of Wichita will continue to perform the Plumes ABE treatment system performance monitoring with the collection of treatment system effluent samples in February and March, and the City of Wichita will also perform the First Quarter 2004 Site Monitoring Network sampling event.

### Source Area Activities

The City of Wichita received comments from the Kansas Department of Health and Environment (KDHE) regarding the HCC / Tri-State Central (HCC/TSC) source area site investigation and source control measures reports, and City of Wichita and CDM staff reviewed these comments.

**Additional anticipated First Quarter 2004 project activities:** The City of Wichita and CDM will respond to the KDHE comments regarding the HCC/TSC source area documents, and the City of Wichita will await KDHE comments regarding the submitted documents for the South Washington and English (SWE) source areas.



# CITY OF WICHITA 2004/2005 ANNUAL BUDGET

## MULTI-YEAR FUND OVERVIEW - NORTH INDUSTRIAL CORRIDOR TIF DISTRICT

FUND: 255 / 2

	2002 ACTUAL	2003 ADOPTED	2003 REVISED	2004 ADOPTED	2005 APPROVED
Budgeted revenues:					
Property tax increment	1,138,032	1,165,300	1,165,300	1,165,300	1,165,300
Contributions from potentially responsible parties	0	2,000,000	0	0	0
Interest earnings	47,407	38,900	65,000	48,000	10,000
Other	191,033	0	0	0	0
<b>Total budgeted revenues</b>	<b>1,376,472</b>	<b>3,204,200</b>	<b>1,230,300</b>	<b>1,213,300</b>	<b>1,175,300</b>
Budgeted expenditures:					
Personal services	0	0	0	0	0
Contractuals	427,242	1,947,970	1,160,720	2,203,160	1,133,410
Commodities	397	3,250	3,250	3,350	3,380
Capital outlay	0	0	0	0	0
Debt Service	0	0	0	0	0
<b>Total budgeted expenditures</b>	<b>427,639</b>	<b>1,951,220</b>	<b>1,163,970</b>	<b>2,206,510</b>	<b>1,136,790</b>
Budgeted income (loss)	948,833	1,252,980	66,330	(993,210)	38,510
Unencumbered fund balance					
January 1	760,719	39,219	1,709,552	750,882	1,782,672
Restricted cash for future debt service December 31	975,000	2,300,000	1,025,000	(1,000,000)	0
Total fund balance December 31	1,709,552	2,367,199	1,775,882	782,672	821,182
<b>Unencumbered fund balance December 31</b>	<b>1,709,552</b>	<b>67,199</b>	<b>750,882</b>	<b>1,782,672</b>	<b>821,182</b>

# KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Rm. 545N-Statehouse, 300 SW 10th Av.  
Topeka, Kansas 66612-1504  
(785) 296-3181 ♦ FAX (785) 296-3824

kslegres@klrd.state.ks.us

<http://www.kslegislature.org/klrd>

February 21, 2004

**To:** Senate Committee on Commerce

**From:** Kathie Sparks, Principal Analyst

**Re:** Briefing on SB 405 and SB 408

**SB 405:** Amends current law to allow a city to undertake separate phases in remediation of environmental contaminated areas. The phases may include the design phase, remediation phase, source-control phase, and monitoring phase and each phase shall be completed within 20 years from the date the Kansas Department of Health and Environment or the U.S. Environmental Protection Agency issues an order or enters into a consent decree with the governing body of the city approving such phase. Under current law, the entire remediation must be completed within 20 years from the date a city enters into a consent decree agreement.

**SB 408:** Would allow a political or taxing subdivision of the state to adopt a resolution declaring that it wishes to be exempt from requiring a bond on bids on contracts that exceed \$40,000 on construction, repairs, or improvement contracts in order to encourage participation in the bidding process by small businesses for whom the procuring of such a bond might be a barrier to submitting bids. In addition, if liens are filed prior to the filing of a bond or certificate of deposit, the liens are discharged once the bond or certificate is filed.

39693(2/21/4{11:51AM})

Senate Commerce  
02/23/04  
Attach #3





## LEGISLATIVE TESTIMONY

**TO:** Chairperson Karin Brownlee and Members of the Senate Commerce Committee

**SUBJECT:** Testimony in Support of Senate Bill 405

**SUBMITTED BY:** Allen Bell, Economic Development Director

**DATE:** February 23, 2004

**Background:** In the late 1980's, it was discovered that the groundwater strata underlying most of the central area of Wichita, including virtually all of the downtown area, is contaminated with chemicals and solvents that have leached through the soil from industrial uses. This area, which covers 4 square miles and runs between the Arkansas River and I-135 from 2nd Street North to 31<sup>st</sup> Street South, was on the verge of being listed by the EPA as a Super Fund site and was known as the Gilbert and Mosley Site. Even before this step could occur, the mere knowledge of the contamination cast a deadly pall over all real estate and economic activity in this crucial area. Property stopped changing hands; banks stopped making loans against real property, real estate investments dried up and redevelopment efforts ground to a halt.

In 1991, the City of Wichita teamed up with the Kansas Legislature and put into place one of the most innovative approaches to financing "brownfields" clean-up ever devised. In Wichita, we call it the Environmental TIF Program. In statutory terms it is known as K.S.A. 12-1771a. This is the legislation that enabled Wichita to establish a new kind of tax increment financing district for the purpose of financing the cost of investigation and remediation of environmental contamination. The Gilbert and Mosley TIF District was established in 1991 and the North Industrial Corridor TIF District was established in 1996.

The use of tax increment financing for the clean-up of environmental contamination is based on the principal that the contamination, if left alone, will severely depress property values in the area, which in turn will sharply reduce property tax revenues paid to the city, county and school district. A conservative estimate, based on bitter experiences in other parts, is a 40% loss in both valuations and tax revenues. By insuring that the contamination will be eliminated and that its economic damage will be avoided, the City will "save" the increment of tax revenue that it would have otherwise lost by doing nothing. The statute allows this tax increment to be diverted into a special fund and used to pay for the investigation and remediation of the contamination. The annual increment is set each year through the statutory budget process and is limited to 20% of the taxes generated in the year the TIF district is established.

The legislation enacted in 1991 sets a 20-year limit on the time that the tax increment can be collected and used to pay for contamination clean-up. The 20-year period starts with the date the City enters into a consent decree agreement with the Kansas Department of Health and Environment. The 20-year timeframe represented the best guestimate, in 1991, of how long it would take. In reality, based on now knowing exactly how the clean-up will be done, we now know that it will take much longer. The bill before you today, Senate Bill 405, will allow cities like Wichita with enough time to complete the clean-up of environmental contamination.

*Senate Commerce  
02/23/04  
Attach # 4*

**Analysis:** The implementation of any environmental contamination clean-up project includes several phases. Senate Bill 405 identifies them as including, without limitation, a design phase, a remediation phase, a source control phase and a monitoring phase. Mr. Jack Brown, the Environmental Health Director for the City of Wichita, is here today and can answer any technical questions on what is accomplished in each phase, if need be.

Suffice it to say that each phase will take many years to carry out and one follows the other for the most part. For example, the design phase includes the investigation of the pollution: what it is, where it is, what and who caused it, and what will it take to remediate? And then the remediation has to be designed and the design approved by KDHE. In Wichita, the final approval of the remedial design for the Gilbert and Mosley Site was in 2000 -- the point at which most expenses begin to occur. So the City did not know potential costs and did not collect the full amount of the TIF funds until then. By this time, much of the 20 years have already expired.

Based on the actual design approved by KDHE for the Gilbert and Mosley Site, we know that each of the subsequent phases will take even longer to complete. Senate Bill 405 follows the approach of limiting each phase to a maximum term of 20 years, starting with the date each phase is approved by KDHE. Each remediation project is unique and implementation time frames will vary, but 20 years for each phase should be sufficient.

Just as time frames vary from project-to-project and phase-to-phase, implementation costs vary as well. The earlier phases of design and remediation are the most capital-intensive and costly. The statute allows these costs to be financed for terms of up to twenty years with TIF bonds. The source control phase and monitoring phase would typically have longer time frames but lower annual costs. These costs are generally operating costs and do not lend themselves to bond financing. Either way, the City is required by law to identify the project costs each year through its regular budget process, on a line item basis, showing capital costs, operating costs and debt service, as well as the sources of revenue to fund the costs, including TIF revenue which cannot exceed 20% of the taxes generated in the district in the year it was established. There is no danger that the tax increment will be collected for longer than it takes to complete the clean-up or in amounts that exceed the actual costs.

We have recently learned that Sedgwick County has concerns about Senate Bill 405. We have already begun working with our counterparts at Sedgwick County to address their concerns and I am confident that we will be able to agree in the very near future to changes that will allow the bill to move forward while still meeting the needs of our environmental program.

**Recommendation:** The ability to complete the clean-up of environmental contamination in Wichita is utterly crucial to the economic health, not to mention the physical health of our community. I urge the Committee to give favorable consideration to Senate Bill 405.





# SEDGWICK COUNTY, KANSAS

## DIVISION OF FINANCE

**Chris Chronis, CFO**

\* 525 N. Main, Suite 823 \* Wichita, Kansas 67203 \* Telephone (316) 383-7591 \* FAX (316) 383-7729 \* cchronis@sedgwick.gov

### TESTIMONY ON SB 405 Before the Senate Commerce Committee February 23, 2004

Chairman Brownlee and members of the Committee, I appreciate this opportunity to testify in opposition to this bill that lengthens the time cities may divert to their own uses property taxes levied by counties and school districts to pay for their operations.

My name is Chris Chronis, and I'm the chief financial officer of Sedgwick County. I am here today at the request of the Board of County Commissioners to let you know of their concerns about the provisions of KSA §12-1771a, which are heightened by the amendments contained in SB 405.

KSA §12-1771a permits a city to establish an environmental increment in certain redevelopment districts, which really means the city can name an amount of tax to be diverted to its project from the county and school district levies. The city is not required to notify either of those bodies of its action, and neither the board of county commissioners nor the school board have any opportunity to challenge the diversion of taxes they've levied for their own operations.

Present law permits cities to do this for 20 years after they enter into a consent decree for environmental remediation. SB 405 alters this by applying a 20-year clock to each phase of a city project. This effectively permits a city to extend the time it may divert county and school district taxes for decades longer than present law. This is true because these projects typically end with a monitoring phase which commences after all remediation work has been completed, and the remediation work itself might be extended for many years.

Wichita has established environmental increments in two districts. Together, they are diverting \$3.8-million of property taxes this year alone, of which \$1-million was levied for county operations and \$1.2-million was levied for school operations. Since their creation they have diverted a total of \$22.1-million. Under present law one of these districts will expire in 7-years; the other in 12-years. Based on the current year, we expect they will divert another \$32.7-million of property taxes in that time, including \$9-million from the county and \$13.6-million from the school district. By lengthening the time environmental increments may be imposed by cities, SB 405 will increase the amount of taxes diverted from county and school operations even more.

You have received a fiscal note suggesting SB 405 would not have a fiscal effect. That may be the case for state government, but I assure you it's not true for counties and school districts.

Please understand that we are not opposed to the remediation of environmental damage, nor are we opposed to Wichita's projects. On the contrary, Wichita's leadership has done an admirable job of addressing serious environmental problems in creative ways that have permitted development to continue in the affected areas.

Our concern has to do with the ability of any city to divert taxes levied by county and school district governing boards without their consent. This is not intergovernmental partnership, and it is not right. SB 405 worsens rather than improves the situation, and makes it even more difficult for county and school district governing boards to effectively plan their financial futures.

Senate Commerce  
02/23/04  
Attach #5

Melinda Walker, Purchasing Manager  
City of Wichita

February 23, 2004

Senator Karin Brownlee, Chairperson  
Senate Commerce Committee  
State Capitol, Rm. 123-S

Dear Chairperson Brownlee:

I am here today to speak in support of Senate Bill 408.

Senate Bill 408 amends K.S.A. 60-1111 by providing an option, which will allow a city to adopt a resolution declaring that it wishes to exempt itself from the requirement that a public works bond be furnished by any contractor who enters into a contract with the city to do work for a cost in excess of \$40,000. It is important to note that Senate Bill 408 will for the first time allow the flexibility of municipalities to exempt from this bonding requirement.

The public works bond, itself, is an exception to the mechanic lien concept. Ordinarily, property upon which work is done or upon which improvements are made utilizing supplies and materials purchased from others is subject to such a lien to the extent that the owner or the owner's contractor fails to pay for such work, supplies or materials. The legislature has determined that public property should not be subject to such a lien. However, in order to provide some alternative protection to those who provide labor, supplies or materials to improve public property, the legislature, in K.S.A. 60-1111, has required that the contractor post a bond guaranteeing payment for such labor, supplies or materials when the improvement will cost more than \$40,000.

In recent years the City of Wichita has identified this required bond as a significant impediment to the ability of small and disadvantaged businesses to compete for the City's public works contracts. Several such business owners have recounted their willingness to bid for such work and their frustration in finding that they could not qualify for bonding by the existing insurance and surety companies that write such bonds. Many times their complaint is that they are not able to compete for contracting work in the private sector because selection is often based on past relationships and less on a strict bid process. While the City offers the opportunity to bid and compete on a much more level playing field, the public works bond requirement of K.S.A. 60-1111, more often than not, prevents the small business or newly formed small and disadvantaged business from having the opportunity to bid.

Senate Commerce  
02/23/04  
Attach #6



3. Taking a payment bond in an amount significantly less than the amount of the contract between the City and the contractor.

The City of Wichita is committed to eliminating barriers to full and fair participation by small and disadvantaged business in the awarding of City contracts. The City of Wichita City Council, staff and small/disadvantaged business community all agree that the public works bond requirements of K.S.A. 60-1111 is such a barrier. The City Council believes that it can administer its bidding contracting and procuring process without requiring a public works bond in the full amount of the public works contract and still adequately protect City owned property from the risk of being liened because a contractor has not paid its bills. Consequently, the benefit to the small and disadvantaged business and the community at large in having the ability to adopt a resolution declaring that it wishes to exempt this bond requirement far outweighs the risk that liens will be filed and the City will have to "pay twice" for public improvements.

The Kansas Minority Business Development Council, an independent organization affiliated with the Wichita Chamber of Commerce, has identified bonding requirements as one of the most significant factors preventing small and disadvantaged businesses from participating fully in the City of Wichita's bid process.

The Wichita City Council has approved the expansion of the SBA Micro Loan Program for Wichita small businesses using local tax funds to increase available loan funds by \$500,000.

The issue of qualifying for bonding is somewhat of a Catch-22 for small and disadvantaged businesses. Most bonding companies evaluate a contractor's "bondability" using traditional indicators such as the record of past work, audited financial statements and financial references. A new, small and disadvantaged business, even those which are adequately capitalized and competently staffed, do not have access to the type of work in the private sector which would give them a "track record" sufficient for a bonding company to consider them a good risk. Public sector work, which is awarded competitively on the basis of the low bid, is often the only opportunity that such a business has to prove itself and to establish the work record it needs to compete across the board. When the inability to obtain a public works bond prevents the business from tapping that opportunity, it is, in the opinion of the governing body of the City of Wichita, time to take a look at the interests that such a bond is designed to protect and to weigh them against the burdens on small and disadvantaged businesses that it represents.

The City of Wichita has done this balancing of competing interests and it believes that if it has the choice of waiving the public works bond it can still provide adequate protection against liens being filed against City property while encouraging participation by small and disadvantaged business in the City's public works bid process. Other cities may not agree or may not have the same concerns that Wichita does and, as a consequence, may never take advantage of the option afforded by Senate Bill 408.

Some of the alternatives to public works bonds that the City can foresee utilizing are:

1. The City acting as a paying agent and taking an active role in seeing that contract payments are disbursed to subcontractors, and suppliers who have provided labor, material and supplies to the improvement.
2. Accepting alternative security for payment such as letters of credit, cashier's checks, cash deposits or certificates of deposit.