

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Robert Tyson at 8:34 a.m. on February 5, 2004 in Room 423-S of the Capitol.

Members present:

Senator Christine Downey
Senator David Corbin
Senator Dwayne Umbarger
Senator Janis Lee
Senator Mark Taddiken
Senator Phil Journey
Senator Robert Tyson
Senator Tim Huelskamp

Committee staff present:

Raney Gilliland, Legislative Research Department
Lisa Montgomery, Office of Revisor of Statutes
Linda Bradley, Committee Secretary

Conferees appearing before the committee:

Susan Erlenwein, Director of Environmental Resources for Sedgwick County
Judy Moler, Legislative Services Director, Kansas Association of Counties
William Bider, Director, Bureau of Waste Management, KDHE
Mark Tomb, Intergovernmental Relations Associate, League of Kansas Municipalities
Ronald Hammerschmidt, Ph. D., Director, Division of Environment, KDHE

Others attending:

See Attached List.

Chairman Tyson called the meeting to order and greeted all conferees and guests.

Review of Minutes

Senator Taddiken moved to approve the minutes of January 29 and 30. Senator Journey seconded the motion and the motion carried.

Hearing on Senate Bill 416

SB 416 is concerning solid waste; relating to fees.

An overview of **SB 416** was given by staff, Raney Gilliland.

Proponents of **SB 416** gave testimony following the overview.

Chairman Tyson introduced Susan Erlenwein, Director of Environmental Resources for Sedgwick County. Director Erlenwein stated she would like to see solid waste fees for recycling. **SB 416** addresses this issue by adding the terms "recycling" and "recyclable" where appropriate to give the counties the flexibility needed to develop programs that will reduce the amount of solid destined for disposal. (Attachment 1)

Chairman Tyson asked the Committee if they had questions. Senators Lee, Umbarger and Tyson had various questions on waste tires, allowing citizens to attend county commissioners meetings and make comments concerning solid waste, relating to fees.

Chairman Tyson introduced Judy Moler, Legislative Services Director, Kansas Association of Counties. Director Moler stated it is the intent of this legislation to clarify the current statute and allow the county to use its solid waste fee to provide and pay for a recycling program. (Attachment 2)

CONTINUATION SHEET

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE at 8:30 a.m. on February 5, 2004 in Room 423-S of the Capitol.

The Committee had no questions for Director Moler.

Chairman Tyson introduced William Bider, Director, Bureau of Waste Management, KDHE. Director Bider informed the Committee the legislature has passed other solid waste legislation which indicates that "recycling" is part of solid waste management, adding confusion to this situation. Solid waste planning laws provided in K.S.A. 65-3405(j) require every county to have a solid waste management plan which addresses recycling and other waste reduction activities. This implies that some local government expenditures to implement recycling activities are anticipated; thus, a method to raise funds must also be available. This bill would clarify that cities and counties can assess fees to cover the costs of recycling as specified in their required plans. (Attachment 3)

Chairman Tyson asked the Committee if they had questions. Senator Huelskamp and Senator Tyson asked question regarding municipal residents waste landfills and a estimate on state wide recycling funds.

Chairman Tyson introduced Mark Tomb, Intergovernmental Relations Associate, League of Kansas Municipalities. Mr. Tomb stated the partnership with the counties and supports efforts and changes included in **SB 416**. (Attachment 4)

Chairman Tyson asked the Committee if they had questions. Senator Hueslkamp asked about cities use of fees for recycling.

Chairman Tyson directed a question to Director Erlenwein regarding cost of recycling collection, request for proposals at Dillon Super Stores. The expense of bins used and emptied once a week.

Chairman Tyson closed hearings on **SB 416**.

Hearing on SB 396.

SB 396 is concerning the nuclear energy development and control act; relating to fees.

Chairman Tyson introduced proponent, Ronald F. Hammerschmidt, Ph.D., Director, Division of Environment, KDHE. Dr. Hammerschmidt stated the intent of this bill is to create a dedicated fee fund for the support of the activities of the Kansas Radiation Control Program. The regulated community in Kansas includes 320 facilities licensed to use radioactive materials and 2,447 facilities registered to use x-ray equipment. These facilities include industrial operations, research labs, medical and dental facilities and security screening operations. Planning and response activities related to the Wolf Creek nuclear plant are currently financially supported by the plant operator. These planning and response activities are not included in this proposal. Our inspection activities of mammography facilities under contract with the Food and Drug Administration are also not included in this proposal. (Attachment 5)

Chairman Tyson asked the Committee if they had questions. Senators Umbarger, Journey, Tyson, Taddiken and Lee asked various questions regarding if anyone is under this act besides hospital staff, Home Land Security alerts done by the federal government, no funding, need fee increase, radiation checks and x-ray machine at a court house is the states responsibility.

Raney Gilliland, staff, questioned Dr. Hammerschmidt regarding page 4 of his testimony about the disposition of funds from civil penalties is a matter for decision also. Dr. Hammerschmidt will send over a balloon on Section 2.

The hearing on **SB 396** was closed by Chairman Tyson.

Adjournment

The meeting adjourned at 9:27 a.m.

The next scheduled meeting will be Thursday, February 12, 2004.

SENATE NATURAL RESOURCES COMMITTEE

GUEST LIST

DATE: 2-05-04

NAME	REPRESENTING
Judy Moler	KAC
Mike Repoon	Sedgwick County
D Sanders	Sedgwick County
Susan Erlenwein	Sedgwick County
Michael Lemons	Health Physicist - KU - Lawrence
Tom Hammerschmidt	KDHE
Tom Conley	KDHE
JOHN C. BOTTENBERG	Westar
Heather Schmitt	KDWP
Kevin Jones	KDWP



*Sedgwick County...
working for you*

DEPARTMENT OF ENVIRONMENTAL RESOURCES

PAWNEE PRAIRIE NATURE CENTER
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TESTIMONY ON SB 416 Before The Senate Committee on Natural Resources February 5, 2004

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

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

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

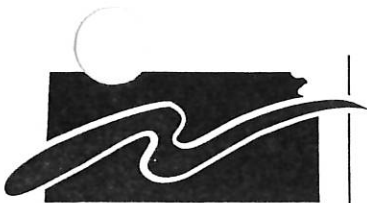
Thus, because of the current wording in K.S.A. 65-3410, the solid waste fee cannot be used for projects or programs related to recycling. SB 416 addresses this issue by adding the terms "recycling" and "recyclable" where appropriate to give counties the flexibility needed to develop programs that will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

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

*Senate Natural Resources Committee
Date: 2-05-04 Attachment 1*

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

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



KANSAS
ASSOCIATION OF
COUNTIES

Testimony on SB 416
Before the Senate Natural Resources Committee
By Judy A. Moler
General Counsel/Legislative Services Director
February 4, 2004

The Kansas Association of Counties supports legislation that would add recycling programs to the list for which the county established solid waste fee may be used. It is the understanding of the KAC that the intent of the original legislation was that this would be the case. However, the term recycling program was left out of the list when the statute was last amended.

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

As you are aware, recycling programs are an integral part of waste management. It is the intent of this legislation to clarify the current statute and allow the county to use its solid waste fee to provide and pay for a recycling program.

The Kansas Association of Counties urges you to act favorably on this bill.

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

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Topeka, KS 66615
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Senate Natural Resources Committee
Date: 2-05-04
Attachment 2



K A N S A S

RODERICK L. BREMBY, SECRETARY

DEPARTMENT OF HEALTH AND ENVIRONMENT

KATHLEEN SEBELIUS, GOVERNOR

Testimony on Senate Bill 416
Local Government Funding of Recycling Programs
to
Senate Natural Resources Committee
by William L. Bider
Director, Bureau of Waste Management
February 5, 2004

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

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

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

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

Senate Natural Resources Committee
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DIVISION OF ENVIRONMENT
Bureau of Waste Management

Attachment 3

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

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

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



League of Kansas Municipalities

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

To: Senate Natural Resources Committee
From: Mark Tomb, Intergovernmental Relations Associate
Re: Support for SB 416
Date: February 5, 2004

Thank you for the opportunity to appear before you today on behalf of the League of Kansas Municipalities and our 556 member cities. The League appears today in support of the changes included in SB 416. This bill adds language to K.S.A. 65-3410 to include recycling programs and recycling fees.

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

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

Senate Natural Resources Committee
Date: 2-05-04

www.lkm.org

Attachment 4



K A N S A S

RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

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

Presented to
Senate Natural Resources
by
Ronald F. Hammerschmidt, Ph.D.
Director, Division of Environment
February 5, 2004

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

Background:

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

DIVISION OF ENVIRONMENT
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Senate Natural Resources Committee
Date: 2-05-04
Attachment 5

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

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

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

Proposal:

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

assistance outreach function. This improvement can be supported with increased user fees under current agency authority. We anticipate the fees would be increased to approximately \$775,000 by fiscal year 2006.

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

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

Bill Details:

The fee fund language is contained in New Section 2 which starts on line 11 of page 2. Additional language is added in Section 1(c)(8) lines 1 to 3 on page 2.

In SB 396 there are two additional proposed changes. The first is on page 2 line 4 through 10. This change would eliminate the statutory limit on fees charged for any radioactive waste disposal facility. The proposed language would allow the department to charge actual costs. While we do not anticipate any future application for such a facility, this was included as a cleanup language to allow cost recovery in the future.

The second proposal is in Section 3(d) on lines 22 and 23 of page 4. The adoption of this language would send all civil penalties to the proposed fee fund to be used in normal operations of the program. This is done in some dedicated fee funds, such as the air quality fee fund as required by the federal

Clean Air Act. We included the language for your consideration. If you choose to leave the current requirement for civil penalties to be deposited in the state general fund in place, the words "civil penalties" should be stricken in line 2 of page 2 also.

Conclusion:

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

Thank you.



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 6, 2004

RECEIVED

JAN 12 2004

RADIATION CONTROL
PROGRAM

The Honorable Kathleen Sebelius
Governor of Kansas
Topeka, Kansas 66612

Dear Governor Sebelius:

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

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

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

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

Sincerely,



Nils J. Diaz

Enclosure:
As stated

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