Approved: 3-24-06
Date

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Mike O'Neal at 3:30 P.M. on March 13, 2006 in Room 313-S of the Capitol.

All members were present except:
Becky Hutchins- excused
Jim Ward- excused
Michael Peterson- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research
Jill Wolters, Office of Revisor of Statutes
Cindy O'Neal, Committee Secretary

Conferees appearing before the committee:
Melissa Wangemann, Office of Secretary of State
Kathy Olsen, Kansas Bankers Association
Tim Madden, Kansas Department of Corrections
Lisa Mendoza, Kansas Juvenile Justice Authority
Mark Rondeau, Sunflower Electric Power Corporation
Charles Benjamin, Sierra Club
Craig Volland, Specrum Technologists
Robert Eye, Attorney at Law
Senator Phil Journey
Kirk Lowry, Disability Rights Center of Kansas
Rick Cagan, National Alliance on Mental Illness
Rekha Sharma-Crawford, Attorney at Law
Kyle Smith, Kansas Bureau of Investigations

Chairman O'Neal opened the hearing on **SB 352 - uniform commercial code; filing of financing statements**.

Melissa Wangemann, Office of Secretary of State, explained that the proposed bill corrects a drafting error between the old Article 9 and the revised Article 9. It would provide that continuation statements must be filed every five years for security interests property and would become effective upon the publication in the Kansas Register. (Attachment 1)

Kathy Olsen, Kansas Bankers Association, appeared in support of the proposed bill and requested an amendment that would strike some language that was not stricken in the original bill. (Attachment 2)

The Kansas Credit Union Association did not appear before the committee but requested their written testimony in support of the bill be included in the minutes. (Attachment 3)

The hearing on **SB 352** was closed.

The hearing on **HB 2819 - time limit for transfers of certain offenders to reception & diagnostic unit, was opened**.

Tim Madden, Kansas Department of Corrections, appeared before the committee in support of the proposed bill which clarifies that the admission of newly sentenced offenders into the Reception and Diagnostic Facility must be done within 3 business days not 3 calendar days. (Attachment 4)

The hearing on **HB 2819** was closed.

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 13, 2006 in Room 313-S of the Capitol.

The hearing on **SB 201 - juvenile allowed to be placed in adult jail if juvenile of the record waived right to a hearing on motion requesting prosecution as an adult,** was opened.

Lisa Mendoza, Kansas Juvenile Justice Authority, stated the bill would make clear that when a juvenile offender has officially waived the right to a hearing on the motion that they be tried as an adult, the juvenile can be confined in an adult jail without violating the federal sight and sound requirements.

The hearing on **SB 201** was closed.

The Chairman opened the hearing on **SB 221 - mentally ill persons subject to involuntary commitment are not allowed to possess a firearm**.

Senator Phil Journey appeared as the sponsor of the bill which would require the courts to report to the Kansas Bureau of Investigation the commitment of an individual determined by the court to be a danger or themselves or others since July 1, 1998. It would also require the KBI to report those names to the Federal Bureau of Investigations so those individuals would not be able to clear the national background check for the purchase of a firearm. (Attachment 5)

Kirk Lowry, Disability Rights Center of Kansas, was concerned with provisions of the bill that would criminalize a person's mental illness regardless of whether or not they are a person who owns or wants to purchase a weapon. It places a persons who has been involuntarily civilly committed for treatment into the National Criminal Information Center database along with people who have committed crimes. (Attachment 6)

Rick Cagan, National Alliance on Mental Illness, did not take a position on gun ownership but was concerned with the lack of understanding mental illness and the requirement of placing those individuals in a national database. He was also concerned with the right to privacy under HIPPA, that is suppose to protect a consumer's medical records. (Attachment 7)

Kyle Smith, Kansas Bureau of Investigation, explained that Federal Law already prohibits those who are mentally ill from possessing a fireman. This bill is really about adding their names to a database to keep track of individuals who should not be allowed to purchase a firearm.

The hearing on **SB 221** was closed.

The hearing on **SB 361 - Kansas air quality act**, was opened.

Mark Rondeau, Sunflower Electric Power Corporation, appeared in support of the bill and explained that it simply eliminates a step in the appeals process by allowing the appeal to go directly from the KDHE Final Agency Action to the Appeals Court with a de novo review on the record. The reason for the request is that the current appeal process takes anywhere from 1 to 4 years before a final order is announced. It costs a tremendous loss of time, money and opportunities. (Attachment 8)

Charles Benjamin, Sierra Club, opposed all coal-fired electric plant because they emit toxic pollutants. He believes that the current judicial process is a good procedure and is not in need of a change.(Attachment 9)

Craig Volland, Specrum Technologists, main concern was the emission of mercury and fine particulate, use of fossil water for cooling and long-term regional impacts of global warming. (Attachment 10)

Robert Eye, Attorney at Law, agreed that the appeals process is a slow process but one that gets the outcome "right". The process allows issues to be defined and was concerned with the bill setting a pattern for others to exempt out of appealing to the district court. (Attachment 11)

The hearing on **SB 361** was closed.

MINUTES OF THE House Judiciary Committee at 3:30 P.M. on March 13, 2006 in Room 313-S of the Capitol.

The hearing on **SB 381 - pleas; court advisory that conviction or guilty plea may have immigration, naturalization consequences**, was opened.

Rekha Sharma-Crawford, Attorney at Law, appeared before the committee as a proponent of the bill. It would add the term "nolo contendere" to the provision requiring the court to inform the defendant , that a conviction or guilty plea could have immigration or naturalization consequences. A benefit of the bill is that it protects those persons appearing in court by ensuring they are aware of all the ramifications of their plea, and protects society by ensuring that the pleas are valid and enforceable. (Attachment 12)

The hearing on **SB 381** was closed.

The committee meeting adjourned at 5:30 p.m. The next meeting was scheduled for 3:30 p.m. on March 14, 2006 in room 313-S.

RON THORNBURGH
Secretary of State

Memorial Hall, 1st Floor
120 S.W. 10th Avenue
Topeka, KS 66612-1594
(785) 296-4564

TESTIMONY OF THE SECRETARY OF STATE
TO THE HOUSE JUDICIARY COMMITTEE
ON SB 352

MARCH 13, 2006

Mr. Chairman and Members of the Committee:

The Secretary of State appreciates the opportunity to appear today to brief the committee and answer questions relating to SB 352, a bill requested by our office and the Kansas Bankers Association.

The purpose of SB 352 is to correct a drafting error in Revised Article Nine of the Uniform Commercial Code. Revised Article Nine (RA9) was drafted by the National Conference of Commissioners on Uniform State Laws, and governs secured transactions. The Act was codified into Kansas law with an effective date of July 1, 2001.

BACKGROUND INFORMATION

Pursuant to Article Nine, a financing statement is filed with the Secretary of State to provide notice to the public of a security interest in collateral. These filings are legally significant because they establish priority among competing claims; first to file wins.

Financing statements filed under both old Article Nine and new Article Nine are effective for five years. Both the old law and the new law allow for a continuation beyond five years, which is effected by filing a continuation statement with the Secretary of State within six months of the lapse date of the financing statement (the lapse date is the date that the five-year time period expires).

PROBLEM UNDER REVISED ARTICLE NINE

Revised Article Nine contains transition rules, which govern the transition from old Article Nine to new Article Nine. One such rule, 9-705, creates a five-year transition period in which filings under old law can become compliant with new law. From July 1, 2001 to July 1, 2006 filers can correct their financing statements (and thus preserve their security interest) by making amendments to comply with new requirements of RA9.

Unfortunately this rule causes unintended consequences to those filings that do not require an amendment in order to comply with the new law. Those filings that were correct under old law and are correct under the new law are unintentionally harmed by 9-705 because the rule reduces

House Judiciary
Date 3-13-06
Attachment # 1

their continuation window. Most are expecting a six-month window, and yet their window may be reduced to as little as one day under 9-705. Thus, some filers may miss the limited window, causing them to lose their security interest.

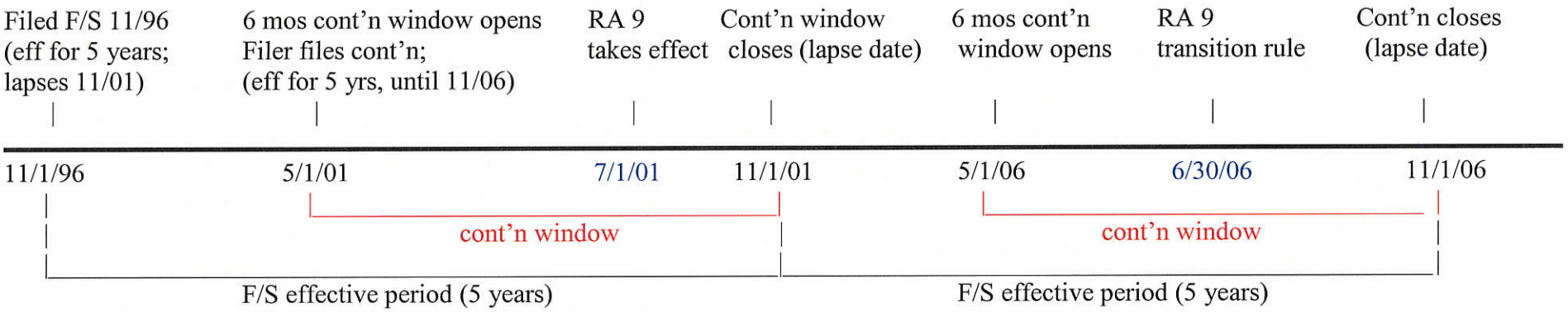
The attached time line illustrates the glitch in the new law:

- A financing statement is filed under old law on November 1, 1996. The financing statement is good for 5 years—until November 1, 2001.
- The financing statement may be continued by filing a continuation statement within 6 months of November 1, 2001; thus, it may be filed from May 1, 2001 to November 1, 2001.
- The filer files the continuation early within the window—before RA9 takes effect on July 1, 2001. Thus, the filing is under the old law.
- Another 5 years passes and another continuation is necessary. RA9 is now in effect, and the transition rule given in 9-705 is in effect. The rule says any pre-RA9 financing statement lapses on the earlier of: 1) its lapse date (which would be November 1, 2006) or 2) June 30, 2006. Thus, the financing statement will lapse on June 30, 2006.
- The filer can file the continuation from May 1, 2006 to June 30, 2006. His usual 6 month window is reduced to 2 months.

The amendment proposed in SB 352 clarifies that 9-705 applies only to those financing statements failing to meet the new requirements of RA9. Any financing statement that is correct under both old and new law retains its full five-year effective period and its full six-month continuation window.

I appreciate the opportunity to appear today and would be happy to answer questions.

Melissa A. Wangemann, Legal Counsel
Deputy Assistant Secretary of State



UCC 9-705 Transition Rule (codified at K.S.A. 84-9-705):
F/S ceases to be effective at the earlier of:
a) time the F/S would have ceased to be effective under law of jurisdiction in which it is filed (lapse date) or
b) June 30, 2006

KBA
Kansas Bankers Association

March 13, 2006

To: House Judiciary Committee

From: Kathleen Taylor Olsen, Kansas Bankers Association

Re: SB 352: Amending Article 9 of the Uniform Commercial Code

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear before you today in support of **SB 352**, which amends K.S.A. 84-9-705, a provision of the Uniform Commercial Code, Article 9. The proposed amendment is the result of a joint effort between the Kansas Bankers Association and the Office of the Secretary of State to address a "glitch" in the transition rule found in this section.

The National Conference on Uniform State Laws (NCUSL) promoted a virtual re-write of Article 9 of the UCC several years ago, and Kansas adopted that recommendation in the 2001 legislative session. As a part of the orderly transition from "old" Article 9 to "revised" Article 9, the law granted the filers of financing statements (a/k/a UCCs) a period of five years within which all UCCs on file must be in compliance with "revised" Article 9 rules. That deadline is now fast approaching – June 30, 2006.

This summer, the Secretary of State's office shared with us, that the drafters of "revised" Article 9 have become concerned that some UCC filers will have a shortened period of time by which to continue their financing statements by the June 30th deadline. We met several times to determine what filings were, in fact, potentially affected, and to discuss the best way in which to handle this problem.

The bill that appears before you today is similar to language that is being proposed in Nebraska. We believe that this language clearly identifies to the practioner, which filings were potentially affected by the "glitch" and more importantly, provides a clear-cut safe harbor for those filings.

In inserting the Nebraska language and deleting the original proposal, we failed to notice that part of the original language did not get stricken on the Senate side. Therefore we have attached a balloon amendment to clean up the leftover language of the original bill.

We have respectfully requested that the bill become effective upon publication in the *Kansas Register*, so as to bring clarification to all lenders as soon as possible. Thank you and we hope that the Committee will act favorably on **SB 352** as amended.

610 S.W. Corporate View 66615 | P.O. Box 4407, Topeka, KS 66604-0407 | 785-232-
kbaoffice@ksbankers.com | www.ksbankers.com

House Judiciary
Date 3-13-06
Attachment # 2

(2) June 30, 2006, ~~unless such amendment is filed on or before June 30, 2006.~~

(d) **Continuation statement.** The filing of a continuation statement after this act takes effect does not continue the effectiveness of the financing statement filed before this act takes effect. However, upon the timely filing of a continuation statement after this act takes effect and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this act takes effect continues for the period provided by the law of that jurisdiction.

(e) **Application of subsection (c)(2) to transmitting utility financing statement.** Subsection (c)(2) applies to a financing statement that, before this act takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in K.S.A. 84-9-103 prior to the effective date of this act only to the extent that part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) Subsection (c)(2) does not apply to a financing statement that was filed in the proper place in the state before July 1, 2001, pursuant to K.S.A. 84-9-401, as such section existed immediately before July 1, 2001, and for which the proper place of filing in the state was not changed pursuant to K.S.A. 84-9-501, as such section existed on July 1, 2001.

~~(f)~~ ***(g)*** **Application of Part 5.** A financing statement that includes a financing statement filed before this act takes effect and a continuation statement filed after this act takes effect is effective only to the extent that it satisfies the requirements of part 5 for an initial financing statement.

Sec. 2. K.S.A. 2005 Supp. 84-9-705 is hereby repealed.

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

Testimony
For The
House Judiciary Committee
March 13, 2006

Mr. Chairman, members of the committee I am Bill Henry and I submit written testimony today on behalf of the Kansas Credit Union Association in support of SB 352.

This bill corrects a glitch in the provisions of the Uniform Commercial Code, Article 9. SB 352 provides that continuation statements that must be filed every five years for security interests would not have to meet a June 30, 2006 deadline for filing but would retain its full five year effective period.

Respectfully Submitted,

Bill Henry, Kansas Credit Union Association

House Judiciary
Date 3-13-06
Attachment # 3

KANSAS

KANSAS DEPARTMENT OF CORRECTIONS
ROGER WERHOLTZ, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

Testimony on HB 2819
to
The House Judiciary Committee

By Roger Werholtz
Secretary
Kansas Department of Corrections

March 13, 2006

The Department of Corrections supports HB 2819. HB 2819 amends K.S.A. 75-5220 to clearly provide that the admission of newly sentenced offenders into the department's Reception and Diagnostic Facility is to be within 3 business days rather than merely 3 calendar days. Historically, the Department of Corrections has admitted newly sentenced offenders into the Reception and Diagnostic Facility Monday through Friday. This practice has worked well since the personnel required for processing a new inmate into the department's custody work on those days. Additionally, admission of newly sentenced offenders during the traditional work week accommodates the staffing needs of sheriffs who transport offenders to the department's facilities.

The "business" day amendment provided in HB 2819 is consistent with the Kansas Code of Civil Procedure, K.S.A. 60-206. K.S.A. 60-206 provides that when computing deadlines, weekends and holidays are not to be counted if the action required is to be performed in less than 11 days.

In litigation brought by the County Commissioners for Shawnee County in Board v. State of Kansas, case no. 05-C-115 (Sn), District Court Judge Bullock presiding, the county sought monetary damages for the cost of confining inmates in the county jail pending their transfer to a KDOC facility for the time accruing after 3 calendar days. Shawnee County sought damages in excess of $120,000. Due to the facts in that case, the claim for monetary damages was dismissed. However, the Court denied the State's motion for summary judgment based upon the State's argument that admission of inmates is to be within 3 business days. Therefore, whether the Court will issue a permanent injunction requiring admission within 3 calendar days is still pending before that Court. If the District Court would impose a permanent injunction directing admission within 3 calendar days, that ruling would serve as the basis for subsequent litigation seeking damages for transfers occurring after 3 calendar days but nonetheless before the expiration of 3 business days. HB 2819 would negate any ruling by the District Court relative to imposing a 3 calendar day deadline.

900 SW Jackson – 4th Floor, Topeka, KS 66612-1284
Voice 785-296-3310 Fax 785-296-0014 http://www.dc.stat

Pursuant to the District Court's interpretation of K.S.A. 75-5220, if the department received notification of the sentencing of a prisoner on a Friday preceding a legal holiday falling on a Monday, the department would be required to admit that prisoner no later than on that Monday despite it being a legal holiday. The scheduling of the admission of that inmate during the weekend or on the holiday would entail overtime costs for both the department and the sheriff's department required to transport the prisoner. HB 2819 would clearly codify the historic practice of the Department of Corrections and sheriff departments in admitting newly committed offenders within three business days.

The department urges favorable consideration of HB 2819.

STATE OF KANSAS

SENATOR PHILLIP B. JOURNEY
STATE SENATOR, 26TH DISTRICT
P.O. BOX 471
HAYSVILLE, KS 67060

STATE CAPITOL—221-E
300 S.W. 10TH AVENUE
TOPEKA, KANSAS 66612-1504
(785) 296-7367
E-mail: journey@senate.state.ks.us

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

MEMBER: SPECIAL CLAIMS AGAINST THE STATE (JOINT), CHAIR .
HEALTH CARE STRATEGIES
JUDICIARY
PUBLIC HEALTH AND WELFARE
TRANSPORTATION

CORRECTIONS AND JUVENILE JUSTICE OVERSIGHT (JOINT)

SOUTH CENTRAL DELEGATION, CHAIR

Testimony in Support of Senate Bill 221
Presented by State Senator Phillip B. Journey, 26th District
On March 13, 2006, for the House Judiciary Committee
The Hon. Michael O'Neal, Chair

First, I would like to thank the committee for allowing me to testify in support of Senate Bill 221. Senate Bill 221 amends K.S.A. 21-4203, 21-4204, 59-2948, 59-2966, and 59-2974. The effect of this legislation would be to have the court report to the Kansas Bureau of Investigation the commitment of an individual found by the court to be a danger to themselves or others since July 1, 1998. Section 1 was amended by the Senate to correct my originally optimistic estimation of enactment from 2005 on lines 15 and 23 to 2006. The Bill also requires the Kansas Bureau of Investigation to notify the Federal Bureau of Investigation of the court's finding so that individual will no longer be able to clear a national instant background check for the purchase of a firearm.

Pursuant to my request, the following amendments were adopted by the Senate Judiciary Committee. That the patient be informed by the court and their care facility of their disability under law and the prohibition from owning a firearm. There is also a three-month window between enactment, notice to the FBI, and hearing process for restoration of the patient's rights and the criminal sanction to give the individual the opportunity to have the due process hearing. Section 2 of the bill provides a due process hearing for the restoration of the right to possess a firearm. Section 3 creates a new crime for knowingly transferring a firearm to a person who has been subject to an involuntary commitment. Violation of the section is a class A misdemeanor. Section 4 also creates the new crime of possession of a firearm after being declared incompetent which like being convicted of possession by a felon is a severity level eight non-person felony.

It is currently a violation of Federal criminal statute for a court declared mentally incompetent individual to possess a firearm and a violation of Federal criminal statute to transfer a firearm in a court declared mentally incompetent individual. Federal penalties for these crimes are

substantially more severe than those proposed in Senate Bill 221. These Federal prohibitions have been the law of the United States of America since enactment of the 1968 Gun Control Act.

Twenty-two states have a database containing prohibitory mental illness records that are submitted by the courts or treatment facilities. Two other states (Alabama, Ohio) are developing a database. The records are maintained by a statewide agency or a mental health department. A variety of dispositions are recorded in these databases, with mental hospital commitments being the most common. The 22 states are: Arizona, California, Connecticut, Delaware, Georgia, Hawaii, Illinois, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Utah, Virginia, Washington, and Wisconsin.

In addition, 23 states report that prohibitory mental illness dispositions may be found within the central repository's criminal history records. Insanity and incompetent to stand trial findings are the most prevalent dispositions in state criminal records. In a few states, an agency conducting a background check may obtain data directly from a local court or mental health facility.

Between July 1, 2003, and June 30, 2004, Alabama and Ohio enacted laws that require courts to transmit involuntary commitment records to a state agency for use in firearm background checks. Virginia began sending mental health records to the NICS on a real-time basis in December 2003. Tennessee's checking agency began receiving court dispositions in June 2004.

Most states prohibit firearms for reason of mental illness. Those that do NOT are Alaska, Colorado, Idaho, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, South Dakota, Tennessee, Texas, Vermont, and Wyoming. Let's take Kansas off that list.

Respectfully submitted

Phillip B. Journey

DISABILITY RIGHTS CENTER of KANSAS
EQUALITY • LAW • JUSTICE

Disability Rights Center of Kansas
635 SW Harrison, Ste 100 • Topeka, KS 66603
785.273.9661 • 877.776.1541 (Voice)
877.335.3725 (TDD) • 785.273.9414 FAX
www.drckansas.org • *info@drckansas.org*

Testimony to the House Judiciary Committee

Testimony Regarding SB 221

March 13, 2006

Chairman O'Neal and the honorable members of the committee, my name is Kirk Lowry. I am the Litigation Director of the Disability Rights Center of Kansas. The Disability Rights Center of Kansas (DRC) is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. As the state designated protection and advocacy system for Kansans with disabilities our task is to advocate for the legal and civil rights of persons with disabilities as promised by federal, state and local laws, including representing persons with mental illness.

DRC's concerns with SB 221 are not related to who should, and should not own, purchase or carry a concealed weapon. DRC is concerned that SB 221 criminalizes a persons mental illness regardless of whether or not they are a person who owns or prefers to own a weapon. More specifically, the Bill causes the following concerns.

- SB 221 does not consider the reasons a person might be involuntarily committed. DRC receives numerous complaints from individuals who have been civilly committed inappropriately. As an example, persons who have experienced traumatic brain injuries are often subject to a 72 hour (or longer) commitment because their disability has been misunderstood.
- SB 221 puts the name of each person who is involuntarily civilly committed for treatment into the National Criminal Information Center (NCIC) database along with people committed of crimes. Mental illness is not a crime.
- SB 221 does not consider the potential for unintended consequences for the person whose name is placed on the NCIC. For example, when a potential employer conducts a criminal background check on an applicant with mental illness does the NCIC report back that the person is on the list? Does it affect the credit of a person when trying to purchase a home, etc.?

House Judiciary
Date 3-13-06
Attachment # 6

- SB 221 puts the burden on the person who was involuntarily civilly committed to go back to the court to have rights restored. Each person released from a treatment facility after involuntary commitment has already been found NOT to be a danger to him or herself or others.
- SB 221 implies that all people who have acute care needs related to a mental illness are dangerous. This stigma significantly impacts the ability of people who have a mental illness to get jobs, obtain integrated housing and to participate fully and freely in their communities.

A person who is involuntarily civilly committed has not committed, nor been convicted of a crime. SB 221 treats them as if a crime was committed and destroys decades of work to eliminate that stigma. DRC cannot support SB 221.

NAMI Kansas
Kansas' Voice on Mental Illness

www.namikansas.org
112 SW 6th Avenue, Suite 505, PO Box 675, Topeka, Kansas 66601
(785) 233-0755

House Judiciary Committee

Testimony on
Senate Bill No. 221
March 13, 2006

Presented by:
Rick Cagan
Executive Director

House Judiciary
Date 3-13-06
Attachment # 7

Mr. Chairman and members of the Committee, my name is Rick Cagan and I am the Executive Director of NAMI Kansas, Kansas' Voice on Mental Illness.

The National Alliance for the Mentally Ill (NAMI) is a grassroots, family and consumer, peer support, education and advocacy organization dedicated to improving the lives of individuals with mental illness, children and adults, and their families. NAMI Kansas has a statewide membership and has been providing advocacy, peer support, and education in Kansas for 26 years.

We ask you to oppose Senate Bill 221. The bill is based on a profound lack of understanding about the nature of mental illness and the hope and expectation for recovery. The bill is prejudicial against persons with mental illness and further stigmatizes this population at a time when they are working hard to educate the public about the true nature of mental illness and to achieve recovery.

Please understand that our position on the bill has nothing to do with our interest in maintaining or promoting gun ownership on the part of persons with mental illness or for that matter any other person in the state of Kansas. In fact, our analysis of the bill has nothing whatsoever to do with any perspective on gun ownership.

We oppose this legislation based on our reading that the bill criminalizes persons who have been involuntarily committed by placing their names in the NCIC database and by equating such persons as felons by the changes to Kansas Statute 21-4204 pertaining to criminal possession of a firearm.

Involuntary commitment is not a crime. This law places the mentally ill in the NCIC database *in anticipation* of a crime that has not been committed. This is a dangerous and prejudicial precedent that represents the proverbial slippery slope.

Should KBI agents sit outside bars and collect the names of patrons in anticipation that later they might drive under the influence?

Should people with other illnesses, who refuse medical treatment that is in their best interest, also be included among those who would be criminalized under this proposed statute simply because in their despair we anticipate that they might harm themselves or another person?

Many people are involuntarily committed because they are unable, in the court's opinion, to care for themselves. This is not behavior worthy of criminalizing. Criminalizing the mentally ill is fundamentally at odds with the caring response such illness demands.

According to a large study cited on NAMI's website (www.nami.org), fewer than 35 percent of those involuntarily committed actually commit violence before being hospitalized – and these numbers are reduced to less than half by eliminating persons who also have alcohol or drug problems. Following treatment during the period of involuntary commitment, the overall numbers of persons engaging in violent behavior are further reduced by another 50 percent. Following these data, a large majority of persons who are involuntarily committed are not a threat to society.

The criminalization of the mentally ill will have the effect of further stigmatizing our members and will serve to deter more individuals with mental illness from seeking help from mental health professionals.

Among the technical issues presented by the bill, we do not see a suitable provision in the proposed law to remove a person from the NCIC database once they have successfully petitioned for restoration of their right to own a gun.

We are concerned about language in the bill which refers to "other appropriate databases." If personal information is being recorded into other government databases, they should be specifically identified.

We are also concerned about the right to privacy under HIPPA that is supposed to protect a consumer's medical records. There appears to be an apparent conflict with this consumer protection.

Having made these observations about the bill, we are not interested in any technical fix. We should not legislate social policy on the backs of those with disabilities. Apart from any attempt to appease the electorate that they should feel safe knowing that some persons with mental illness are precluded from owning a weapon, we must protect the civil rights of all citizens, especially those who may be less able at times to speak up for themselves. The effective solution is to deny passage of this bill.

Senate Bill 221 is fundamentally flawed, and should it pass, it will be challenged in the courts. We are committed to joining with other advocates of the mentally ill to prevent its passage and to ultimately have the law overturned should it be signed into law. We call upon each of you in good conscience to do the right thing by voting against this measure.

Thank you for the opportunity to appear before the Committee to address this important matter.

SUNFLOWER ELECTRIC POWER CORPORATION

A Touchstone Energy® Cooperative

TESTIMONY SUBMITTED TO THE HONARABLE MICHAEL R. O'NEAL AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE IN SUPPORT of SB 361

Presented by Mark Rondeau, Partner, Watkins, Calcara, Chartered for Sunflower Electric Power Corporation

March 13, 2006

Thank you, Mr. Chairman and members of the Committee for providing this opportunity to speak today on Senate Bill 361. My name is Mark Rondeau. I come before you today representing our client, Sunflower Electric Power Corporation. Our firm has served as Sunflower's legal counsel since 1977.

The purpose for this bill is simply to expedite the appellate process for applicants (and opponents) for permits issued under the Clean Air Act.

One of the most important things that must be acquired in the development process of a powerplant is the PSD (Prevention of Significant Deterioration) Construction Air Permit (Permit). The Kansas Department of Health and Environment (KDHE) is charged with issuing this Permit, and they must issue it in full accordance with state and federal environmental laws.

One key aspect of the KDHE application review process is the Best Available Control Technology (BACT) assessment for the plant. The BACT assessment is a two-part technical analysis of the state-of-the-art pollution control technology and the establishment of plant emission limits. Because it is premised on the best available technology currently available, this analysis is generally considered valid for only about 18 months based on the recent permitting activities occurring around the nation.

Following the approval of the Permit by KDHE, if an appeal is filed under the Kansas Act for Judicial Review, history has shown it can often take more than 18 months to navigate first through the district court and then through the Court of Appeals (and potentially, to the Supreme Court) to get a final decision. If this happens, and the BACT analysis must be redone in order to proceed, the process starts all over again with a tremendous loss of time, money and opportunity.

Seventeen of the last twenty one PSD permits issued in the nation have been appealed to the courts. The minimum appeal time has been one year; the longest has been 4 years. Because of this record, we are confident that Sunflower's Permit issuance will be appealed.

House Judiciary
Date 3-13-06
Attachment # 8

Those who may be opposed to our Permit application would be delighted to pursue a continuous cycle of appeals and renewals effectively keeping the project from ever being built without ever prevailing upon the merits. The catch 22 is that Sunflower could continually be granted a permit by KDHE, have that blessed by both the district court and Court of Appeals, but still never be able to build a plant because of the delay inherent in the process.

For these reasons, we bring a proposal to you today that grants the Court of Appeals original jurisdiction for the initial judicial review of an appeal of a final agency action on a PSD Permit issued by the KDHE. Our objective with this bill is to take out the redundant district court "layer" and authorize the parties to the process to go straight to the appellate court.

Why do we think this change is justified?

- The proposal does not deprive any citizen of the opportunity to challenge a decision made by KDHE.

- It does not change the law governing the scope of review or the law governing the review of final administrative actions, the Kansas Judicial Review Act (KSA 77-601 *et seq).*

- The proposal is not at all unprecedented. For example: appeals directly to the Court of Appeals are authorized in utility rate decisions issued by the KCC involving utilities (KSA 66-118a); they are authorized in decisions rendered by the Kansas Racing Commission - in fact those appeals by-pass even the Court of Appeals and go directly to the Supreme Court (KSA 74-8813(v)); similarly, appeals from decisions of the Board of Tax Appeals (BOTA) in matters as to appraisals, assessments, income and other taxes go directly to the Court of Appeals(KSA 74-2426(c)(3); all situations where timely resolution of judicial cases is of the essence.

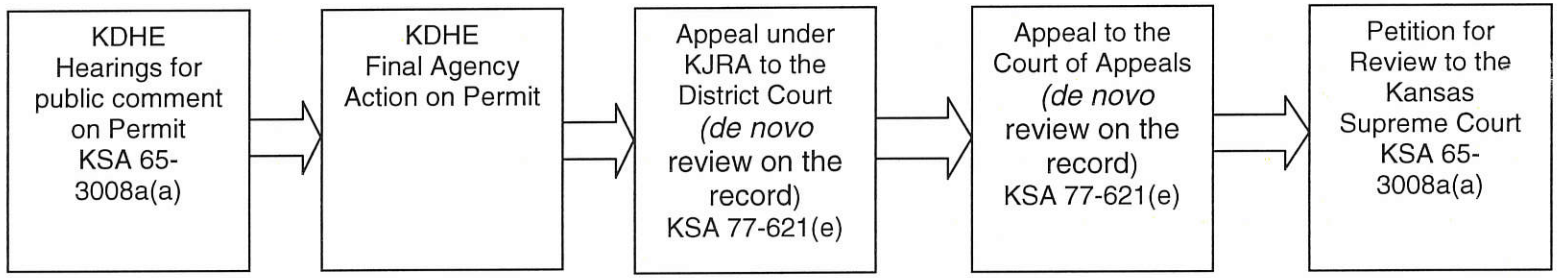
- Indeed, adoption of SB 361 would make the Kansas appellate procedure mirror the federal process relating to the Clean Air Act. If an appeal is brought against an EPA final action under the federal Clean Air Act, federal law provides for judicial review by the United States Court of Appeals and by-passes review by the federal District Court.

I can't adequately convey to you this afternoon how important this change is to our development project. Even if we prevail throughout a lengthy appeal process, the viability of Sunflower's project is clearly at risk if we do not eliminate the unnecessary review at the district court level. We simply seek to shorten the process. It does not represent a burden upon the Court of Appeals. These cases will end up there in any event. It merely changes the timing.

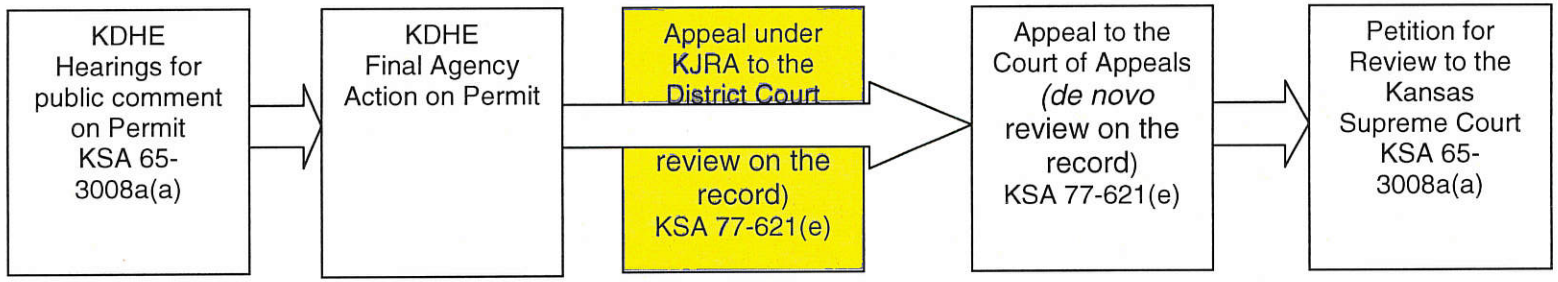
I've included a brief summary of the project I've referred to today, and I have also included a flowchart outlining the current legal process and another that reflects the change we've proposed.

I thank you for the opportunity to testify today. I would be happy to answer any questions you may have at the appropriate time.

EXISTING PROCEDURE FOR APPEALS OF KDHE PSD PERMITS



PROPOSED PROCEDURE FOR APPEALS OF KDHE PSD PERMITS



PROJECT DESCRIPTION

Sunflower has been actively working to expand the generating capacity of its facility at Holcomb, Kansas for several years. Its objective in developing the existing plant site is to maximize the value of those assets for the benefit of the six distribution cooperatives that own Sunflower.

Last August, Sunflower announced an agreement to build two new power plants in conjunction with a Colorado cooperative and they hope to announce a third plant in the near future which will serve loads in Kansas and the region.

The value of this project is approximately $3.6 billion and it will take at least six years to complete construction. The agreements for engineering, construction, and project management services are nearly complete and work is already underway on the transmission and landfill permitting processes.

A recently completed economic impact study projects the following impacts:

- Western Kansas will see the creation of 2,641 temporary and permanent jobs with payroll earnings during construction and the first 35 years of operation of $1.15 billion.
- Statewide, 4,158 temporary and permanent jobs will be created with payroll earnings during construction and the first 35 years of operation of $1.54 billion.
- Permanent jobs created in western Kansas are 408; statewide, the total will be 489.

A more specific breakdown of these impacts is shown in the table below.

TOTAL ANNUAL PROJECT IMPACTS, THREE UNITS			
	Jobs	**Earnings**	**Local & State Sales Taxes**
Construction Period (2007- 2013)			
Western Kansas	2,233	$63,007,706	$1,727,789
Eastern Kansas	1,439	$53,488,106	$675,164
Kansas	3,669	$116,495,812	$12,180,348
Out-of-State	17,641	$478,932,091	NA
Ongoing Operations (2011-2046)			
Western Kansas	408	$22,053,702	$438,782
Eastern Kansas	79	$2,027,756	$80,804
Kansas	489	$24,039,133	$1,017,615
Out-of-State	417	$11,005,065	NA

Charles M. Benjamin, Ph.D., J.D.
Attorney at Law
P.O. Box 1642
Lawrence, Kansas 66044-8642
(785) 841-5902
(785) 841-5922 facsimile
chasbenjamin@sbcglobal.net

Testimony in Opposition to SB 361
Amending the Kansas air quality act
On behalf of the Kansas Chapter of Sierra Club
Before the Kansas House Judiciary Committee
March 13, 2006

Mr. Chairman, members of the Committee, thank you for the opportunity to testify in opposition to SB 361 on behalf of the Sierra Club – the oldest and largest grass roots environmental organization in the world with over 750,000 members including over 4,000 in Kansas.

Sierra Club concerns about toxic emissions from coal-fired electric plants

Sierra Club members in Kansas and elsewhere are very concerned about the impacts of air pollutants from coal-fired electric power plants. Burning coal produces Nitrogen Oxide (NOx) that reacts with volatile organic compounds (VOCs) to produce smog. Burning coal also produces fine particles that are strongly implicated in cardiopulmonary mortality and chronic lung diseases, like asthma.

One of the most dangerous toxins emitted from coal powered power plants is mercury. Mercury is a serious toxin that primarily affects fetal development. In unborn children it can influence the development of the brain and nervous system. When babies are exposed to toxic mercury by their breast feeding mothers, the result can be extremely dangerous and can cause delays in walking, talking and fine motor skills. The primary exposure pathway of mercury poisoning for most Americans is through consumption of fish with high levels of methyl mercury, the toxic form of mercury that accumulates in fish and in the animals that eat those fish, including humans. More than 70% of the fish advisories issued in 2002 were for mercury contamination.

Coal fired electric generating plants last can last for 60 to 70 years emitting the toxic pollutants described above. It is because of these toxic pollutants from coal fired electric generating plants that Sierra Club believes that air pollution control permits issued to such plants by the Kansas Department of Health and Environment should be subject to full administrative and judicial scrutiny.

The Clean Air Act requires State Judicial Review of Air Pollution Control Permits

Title V of the Clean Air Act (CAA) § 502, 42 U.S.C. §7661a, prohibits major stationary sources of air pollution from operating either without a valid permit or in violation of the terms of a permit. The permit is crucial to the implementation of the CAA because it contains in a single comprehensive set of documents all the CAA requirements relevant to the particular polluting source.

Title V of the CAA contemplates that states will administer and enforce the permitting program. States are directed to submit for approval from the Environmental Protection Agency (EPA) their own programs for issuing CAA permits. EPA may not approve a proposed permit program unless it meets certain minimum criteria set out in the CAA. If a state fails to submit a permit program, or submits a permit program that EPA disapproves for failure to comply with CAA at §502(b), the state becomes subject to sanctions designed to encourage compliance under § 502(d) of the CAA.

The CAA at § 502(b)(6), 42 U.S.A. §7661a(b)(6), provides that a state permit program must contain: "Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including *an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.*" (emphasis in italics added)

A state permit program will be disapproved unless the state submits a legal opinion stating that the proposed Title V program allows state court review of permitting decision upon the request of "the [permit] applicant, any person who participated in the public participation process...and any other person who could obtain judicial review of such actions under State laws." 40 C.F.R. § 70.4(b)(3)(x). EPA interprets the statute and regulation to require, at a minimum, that states provide judicial review of permitting decisions to any person who would have standing under Article III of the U.S. Constitution. *Notice of Proposal Disapproval*, 59 Fed. Reg. 31183, 31184 (June 17, 1994) cited in *Virginia v. Browner*, 80 F.3d 869 (1996).

Senate Bill 361

Under current Kansas law, any court challenge to a pollution control permit issued by KDHE to control water pollution, landfill pollution or air pollution must start in state district court. State district court plays a vital role as the court of original jurisdiction in reviews of KDHE decisions about pollution control permits. That is because state district court judges deal with arguments over factual questions and issues pertaining to whether or not KDHE was arbitrary and capricious in its decisions to issue or not issue permits. SB 361 would make a special exception for all air pollution control permits and make the Kansas Court of Appeals the court for original jurisdiction.

Why should the legislature single out air pollution control permits for special judicial treatment?

We urge the Judiciary Committee to look carefully at the motives of Sunflower Electric in asking the legislature to make a change in law that only applies to judicial review of KDHE issued air pollution control permits.

Why should the legislature change current law to make the court of appeals the court of original jurisdiction for air pollution control permits while leaving the district court the

court of original jurisdiction for all other pollution control permits issued or not issued by KDHE?

This bill appears to be aimed at smoothing the way for the expeditious approval of what will be one of the largest sources of air pollution in the nation. If Sunflower has made adequate provisions for the control of mercury and other toxic pollutants from their proposed new facility, why would they fear normal judicial review under current law?

This proposed change in judicial review procedures will affect not only Sunflower's proposed coal plant but all industrial facilities that require air pollution control permits from KDHE. This includes other coal fired electric generating facilities now operating, that require updated air pollution control permits, and new coal plants in the planning stages.

We urge this Committee to reject this request for special treatment by one industry in Kansas that seeks to deprive the citizens of Kansas of the right to seek judicial review of air permits in state district court.

Thank you for your time and attention. I will stand for questions when appropriate.

Craig Volland

SPECTRUM *Technologists*

P.O. Box 12863
Kansas City, KS 66112
(913) 334-0556

Testimony before the House Judiciary Committee of the Kansas State Legislature on Monday, March 13, 2006 by Craig Volland, *QEP,* President fo Spectrum Technologists

Subject: **SB 361 & proposed construction of coal-fired power plants in Kansas**

The purpose of my testimony is to describe the major environmental issues surrounding several large new coal-fired power plants proposed for construction in Kansas. These are likely the most important permit proceedings that will be affected by SB 361 in the near future. These issues are the emission of mercury and fine particulate, the use of fossil water for cooling, and potential long term regional impacts of global warming.

I am President of Spectrum Technologists of Kansas City, Ks. and a consultant in environmental research. I am certified as a Qualified Environmental Professional (QEP) by the Institute for Professional Environmental Practice. Since 1989 I have been involved on behalf of the public interest in the evaluation of permits issued pursuant to the US Clean Air Act and Clean Water Act.

In the early 1990's I testified before the Air Quality Commissions of Florida and Minnesota who subsequently promulgated the nation's first air emission standards for mercury from trash incinerators. The USEPA followed a few years later with national standards that substantially reduced overall mercury emissions from that source as well as from medical waste incinerators which, at the time were the largest sources of mercury emissions to the atmosphere in the United States. Declines in fish mercury contamination attributed to these actions have been documented in the Great Lakes and the Florida Everglades. In recent years I have served as a technical advisor to the Kansas Chapter of the Sierra Club on a variety of air and water pollution issues.

Proposed new coal fired power plants in Kansas. Electric utility companies are planning to install some 3000 megawatts new capacity of coal-fired power plants in Kansas over the next 6 or 7 years. The largest of these will be three new boilers totaling 1950 MW proposed by Sunflower Electric, through their Sand Sage Subsidiary, at their Holcomb, Kansas site. Another is a 650-800 MW plant proposed but not yet sited by Westar and 250 - 300 MW planned by the BPU in Kansas City, Ks. Utilities typically sell a portion of their production to other utilities. In the case of Sunflower the majority of the new capacity will be owned by Tri-State Generation and Transmission Assn. of Westminster, Colorado who will transmit and sell the power in Colorado.

In addition KCP&L received in January a permit to increase coal-fired capacity by 1050 MW at their Iatan site just north of Weston, Mo. and across the Missouri River from Atchison. To put all this in perspective, Westar's existing coal-fired generating capacity is 2638 MW and their total capacity, including nuclear, oil and natural gas is about 5800 MW.

House Judiciary
Date 3-13-06
Attachment # 10

Mercury emissions from coal fired power plants. Coal fired power plants are currently the largest single source of airborne mercury emissions in the United States. Airborne mercury emissions from power plants travel tens to hundreds of miles before depositing, primarily in rainfall, into lakes and streams where it accumulates in fish that may be eaten by people. This adds to uptake via seafood consumption. The EPA recently announced that 1 in 6 women of child bearing age in the US have blood mercury levels that could be harmful to a fetus. Fish mercury levels in Kansas lakes have been increasing. See the attached articles from the New York Times and the Lawrence Journal-World

The USEPA recently promulgated a new Mercury Rule for power plants that calls for reduction of mercury emissions in two stages. The first stage calls for about a 25% reduction by 2010 as a co-benefit of already scheduled installation of new equipment designed to reduce acid rain and fine particulate precursors (NOX & SO2). Under the interim rule, for example, Sunflower would be required to remove only about 25% of the mercury coming out of their proposed new units. Additional reductions are not required until 2018 and USEPA, under a "cap and trade program," will allow utilities to avoid installing state of the art mercury removal equipment by buying credits from other utilities.

Sunflower has conducted mercury removal tests, co-sponsored by Westar and BPU, at their existing 360 MW Holcomb coal plant. In testimony earlier this year, Sunflower stated they could remove 80% of the mercury. However they have not yet committed to do so and could, instead, choose to wait many years and buy pollution credits. If such a commitment is not made in the form of an enforceable emission limit, then it does not exist. Westar and BPU have not announced what they intend to do about mercury.

The KDHE is currently considering how to set up this cap and trade program and what emission allowances to set aside for new sources. This will affect the level of emission allowances Sunflower Electric and other Kansas utilities would need to buy if they take that option instead of installing state-of-the art mercury removal equipment. Thus the potential exists under the new Mercury rule, and with 3000 MW in new capacity, for Kansas to become a mercury "hot spot" where mercury contamination in lakes and streams continues to increase. Due to higher rainfall, this will occur mainly in eastern Kansas and points north and east.

Fine Particulate. The principal local impact from Sunflower's new Holcomb units would result from increased emissions of fine particulate. Fine particulate has been strongly implicated in lung and heart disease and has caused increased mortality in urban areas studied over the past two decades. Though the company will be required to install bag houses to remove the vast majority of new particle emissions, the scale of the facility is still cause for concern and merits close scrutiny. At 2310 MW, total, for Holcomb 1- 4, this coal burning complex will be the largest in Kansas and among the largest in the United States.

The USEPA promulgated a new fine particulate standard in 1997 but court challenges have delayed its implementation. However EPA is under a court order to complete this process in the near future and new regulations have been proposed for comment. How this plays out also requires close scrutiny.

Water Usage. Westar and BPU have not announced the location of their new facilities. However, Sunflower will be building their three, new 650 MW boilers near their existing Holcomb 1 unit near Garden City. Like Holcomb 1, Holcomb 2-4 will employ water cooling towers. These operate by deliberate evaporation of water. Since there is little or no water in the Arkansas River at this point, Holcomb 1 relies on the withdrawal of groundwater from the Ogallala aquifer.

I reviewed the records of the six wells supporting the operation of Holcomb 1 and determined that recent withdrawals of water have been about 3900 acre-feet per year. This is a yearly average and instantaneous demand would be greater. This usage is supported by authorized water rights to about 4900 acre-feet per year. When scaled up to account for the proposed additions at the site, this coal burning complex will require a total of some 30,000 acre-feet of water rights. The water table in this area is already in general decline. To protect their $3 billion investment Sunflower will have to withdraw water at the design rate each year for 50 years or more. This project needs to be closely scrutinized from this perspective as well.

Global Warming. The new Holcomb units will burn some 9 million tons of coal and emit about 13 million tons per year of carbon dioxide, a greenhouse gas. Climate models show the potential for global warming to intensify conditions of drought in Kansas. This would result more from higher temperatures that dry out the soil and increase evapotranspiration of crops than from reduced precipitation. I have attached a color graphic that shows the results from two such models used by federally sponsored researchers. If this scenario proves true, it would, of course, further intensify the decline of the aquifer in western Kansas.

Permit Appeals. It is my understanding that Sunflower Electric arranged for SB 361 to be introduced in the legislature for fear that an appeal of their air permit for the Holcomb additions would delay the project and require a new analysis of pollution controls.

Sunflower's concerns would seem to be contradicted by their own recent experience in the permitting of their proposed 650 MW Holcomb 2 boiler. The permit for Holcomb 2 was issued on October 8, 2002 and was not appealed. Sunflower did not start construction and, instead, applied for an extension of this permit. KDHE readily approved the extension after confirming the original pollution control determination. Sunflower still did not proceed to build Holcomb 2 and allowed the permit to expire in October of 2005. They have now submitted a new permit application that also includes the two new boilers to be owned by Tri-State. This delay is entirely of their own making and did not result in additional expense due to regulations or court proceedings.

With respect to the air permit, Sunflower Electric would need be concerned about an extended appeal only if they do not address appropriately the serious concerns that have been expressed about mercury and fine particulate. If they do not, then the health of the people of Kansas would necessarily rely on the avenues of scrutiny that have heretofore been traditionally available for air quality permits. After all, this would be one of the largest such projects in the history of the state and will be immediately followed by similar projects.

H-01

New York Times 2/10/04

E.P.A. Raises Estimate of Babies Affected by Mercury Exposure

By JENNIFER 8. LEE

WASHINGTON, Feb. 9 — More than one child in six born in the United States could be at risk for developmental disorders because of mercury exposure in the mother's womb, according to revised estimates released last week by Environmental Protection Agency scientists.

The agency doubled its estimate, equivalent to 630,000 of the 4 million babies born each year, because recent research has shown that mercury tends to concentrate in the blood in the umbilical cord of pregnant women.

The Centers for Disease Control and Prevention estimates that one woman in 12 of childbearing age has a mercury level in the blood that poses a concern. But recent research has shown that the umbilical cord can have an average mercury concentration 1.7 times as great as the concentration in the mother's blood.

The senior mercury researcher at the E.P.A., Dr. Kathryn Mahaffey, said a newborn could exceed the safety concentration level of 5.8 parts per billion in a mother whose mercury concentration was just 3.5 parts per billion. Exceeding the safety level does not necessarily mean that a baby will have impaired development, because researchers build in a cushion between a defined safety level and the level known to show harm.

Blood in the umbilical cord can be a mercury magnet.

Moreover, the mercury level in umbilical cord blood does not necessarily match the level in the fetus.

Researchers say the estimates, presented last month at the National Forum on Contaminants in Fish in San Diego, could change as federal scientists reassess risks. Nonetheless, the new estimates fuel a continuing debate on the hazards of methylmercury, an organic mercury compound that concentrates in large marine animals and humans.

The Food and Drug Administration and the E.P.A. issued a more conservative advisory that cautioned pregnant women and young children to limit fish and shellfish to two to three meals a week.

Mercury pollution has become a contentious environmental issue with the Bush administration's proposal to create a market-based trading-pollution system. Advocates have been pushing for stricter limits on mercury emissions from power plants, which emit almost 50 tons of mercury annually. But the direct chemistry of how and whether power plant emissions end up in human beings is still being cleared up.

"I think between these new calculations and research findings, it is now abundantly clear for this government to get serious about mercury polluters," Linda Greer, a scientist with the Natural Resources Defense Council, said. "We just can't watch these numbers go up in the bloodstream of American women."

Lawrence Journal World August 6, 2004

Mercury levels raise alarm

State's fish may be too tainted to eat

By Joel Mathis

Friday, August 6, 2004

Fish at Lone Star Lake exceed federal standards for safe consumption by young children and mothers, reflecting a trend of rising contamination levels in lakes across Kansas, home to one of the biggest mercury polluters in the nation.

The trend is alarming enough that the Kansas Department of Health and Environment may soon create a system to post mercury warnings, cautioning fishermen against eating their catches from the state's lakes.

"We are seeing higher levels as time goes on, which is making us revisit the issue of fish advisories and what may be needed for Kansas," said Sharon Watson, the KDHE representative.

The disclosure came after a national environmental coalition, Clean the Air, released a report this week examining federal Environmental Protection Agency data showing increasing levels of mercury contamination in lakes across the nation.

Kansas lakes

Though 290 lakes were tested, only one in Kansas -- Tuttle Creek Lake, five miles north of Manhattan -- was included in the report's sample.

"It seems like the data at this point are pretty sparse for Kansas, in particular," Emily Figdor, author of the report, said in an interview.

But Kansas officials have been monitoring the lakes for mercury pollution for more than 20 years, and said this week they had seen more contamination over time.

"One of the reasons is that mercury is a natural part of the environment," Watson said. "But the increasing levels indicate there are other contributing factors."

Figdor's report showed that Kansas was home to the fifth-biggest producer of mercury pollution among coal-fired power plants in the United States -- Jeffrey Energy Center at Saint Marys, which emitted 1,215 pounds of mercury in 2002. Coal-fired plants create 41 percent of all mercury pollution nationwide, Figdor's report said.

Lawrence Energy Center, north of Lawrence, was ranked 115th among 485 coal-fired plants for mercury emissions. Overall, Kansas was ranked 18th in the nation for mercury pollution from power plants.

'Disconcerting'

"The fact that the emissions at both of these coal-fired plants are delivering large amounts of mercury to surface waters is disconcerting," said Donald Huggins, senior scientist at the Kansas Biological Survey.

Utility officials, though, said they're moving to address the issue.

"Certainly we take this very seriously from a company standpoint," said Karla Olsen of Westar Energy, which operates both the Jeffrey and Lawrence plants. "We certainly are environmentally aware."

She said Westar was participating in a project at Sunflower Electric's power plant in Holcomb to develop technology to remove mercury from the coal.

Olsen added, however, that Jeffrey was seen as such a large polluter simply because it generated so much power, more than three times the capacity of the Wolf Creek nuclear power plant at Burlington, for example.

"It's really a function of size," Olsen said. "It's quite a large facility."

Distributed in emissions

Mercury is a neurotoxin that can damage developing brains in fetuses and youngsters. It can harm the nervous system, heart and immune system in adults. When burned in coal at power plants, it is released into the air and can settle onto land and water as far as 500 miles away.

"Mercury is an element," Huggins said. "Once you've got it, you've got it."

Watson said the EPA guideline for mercury concentrations was 0.3 parts per million in fish eaten by children under 12 and pregnant or lactating mothers. For other adults, the guideline is 1 part per million.

Clear the Air set the bar lower, saying that if people followed federal dietary guidelines -- two meals of fish per week -- a typical woman should be exposed to concentrations of no more than 0.13 parts per million.

By either standard, state samples of fish from Lone Star Lake fail the test.

KDHE's tests found mercury concentrations between 0.35 and 0.39 parts per million in bass taken from the lake. Watson, however, said the information was incomplete.

"They really need to do more sampling, and more sampling is planned for that lake," she said.

'Lost my appetite'

Fishermen at Lone Star had mixed reactions to the news of mercury in their catch Thursday evening.

"Mercury don't bother me a bit," said 67-year-old Oskaloosa resident John Hatfield, pulling a six-pound bass from a bank line. "We'd play with it and rub it on our hands when we were kids. If it hasn't bothered me now at 67 years old, I'm not going to worry about a little old fish."

On the other side of the lake, Lawrence residents Bill Collins and Byron James changed their minds about eating their catch after learning about increased mercury levels.

"Well, I've lost my appetite for fish out of Lone Star Lake," Collins said.

The problem isn't limited to Lone Star. Watson told the Journal-World that during the past 20 years, mercury concentrations across the state in the kind of fish people generally eat have risen from less than 0.1 parts per million to nearly 0.25 parts per million.

"It is concerning," Watson said, "that there are increasing levels of mercury."

Samples from Clinton and Perry lakes, however, have generally shown levels of mercury concentration below levels of concern.

Tough to solve

Clean the Air said its report showed the federal government should make stronger efforts to reduce mercury emissions from coal-fired plants, but EPA officials told The Associated Press that the Bush Administration already had taken a big step forward in deciding to regulate the emissions at all.

Even environmentalists concede the issue will be tough to solve.

"It's very expensive to remove mercury from the coal," said Charles Benjamin, the Lawrence-based attorney for the Kansas Sierra Club. "And there's been a push to build more coal-fired plants because the price of natural gas has gone up."

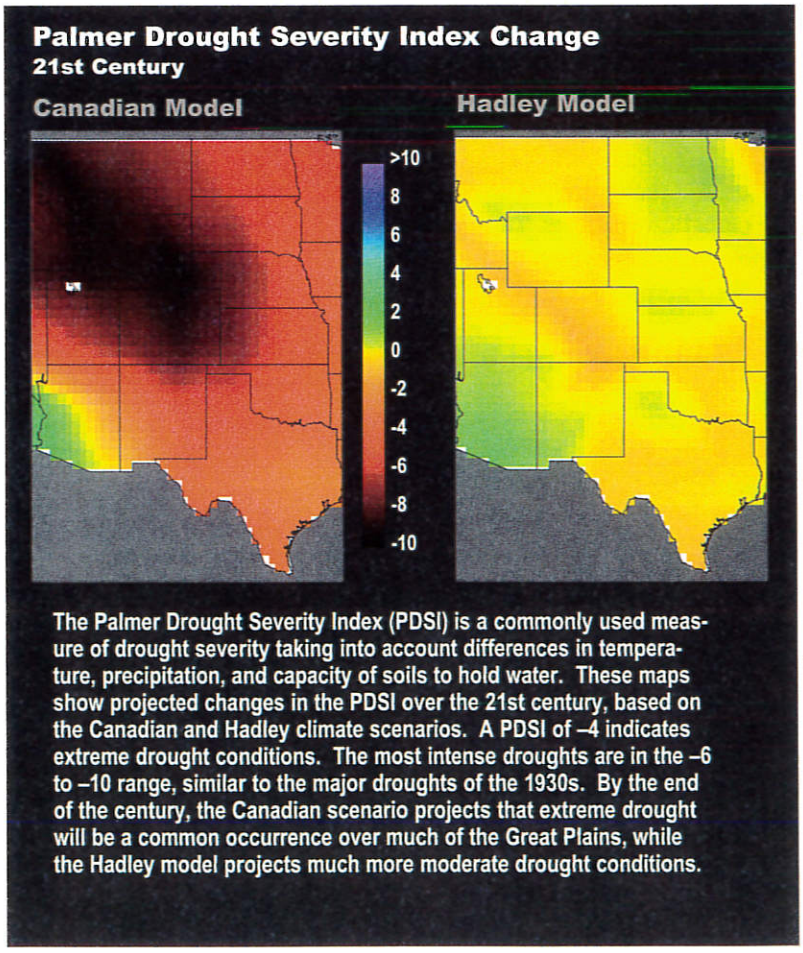
SOURCE: National Assessment Synthesis Team, Climate Change Impacts on the United States: The potential Consequences of Climate Variability and Change, US Global Change Research Program, Washington DC, 2000.

Changes in Climate Extremes

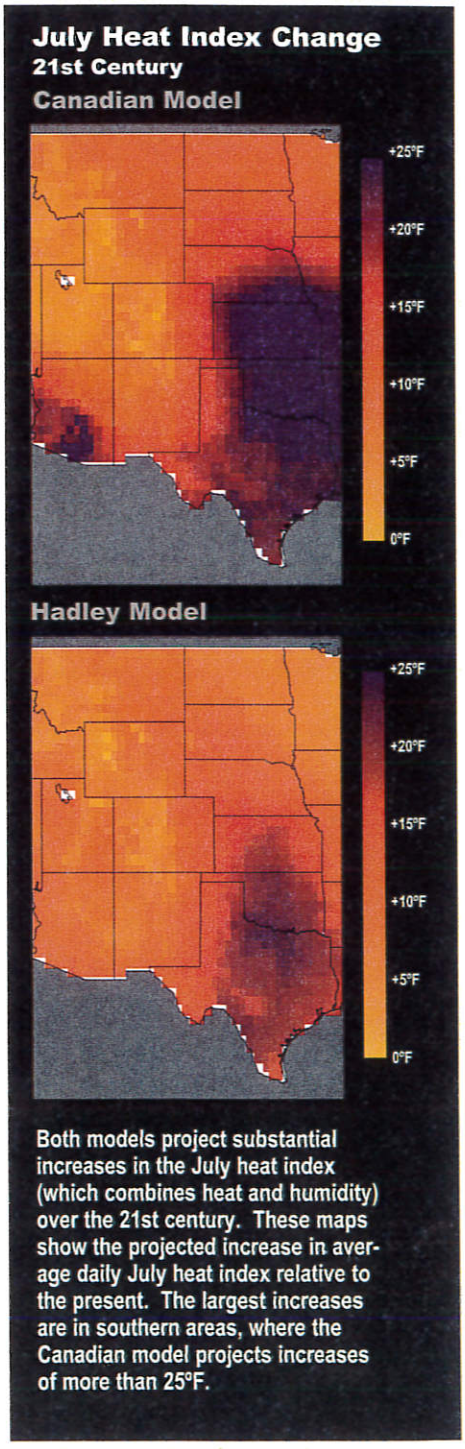
The potential for new patterns in climate extremes raises questions about the ability of current coping strategies to deal with future impacts.

Extreme climate and weather events have major effects on urban and rural lives. The April 1997 flood put approximately 90% of Grand Forks, North Dakota under water and caused over $1 billion in damages. A short-term heat wave in July 1995 caused the deaths of over 4,000 feedlot cattle in Missouri. The severe drought from Fall 1995 through Summer 1996 in the agricultural regions of the southern Great Plains resulted in about $5 billion in damages. There is some chance that the projected increase in drought tendency in the Sand Hills of the Great Plains will result in expansion or shifting of sand dunes if vegetation cover is not maintained. The potential for new patterns in climate extremes raises questions about the ability of current coping strategies to deal with future impacts.

Adaptations: Better access to more accurate and timely information about near-term weather including extreme events, and longer-term forecasts could help reduce risk and uncertainty in decision making. For example, heat stress events are projected to occur more often in the central and southern Great Plains in the future. This information can help intensive-livestock operators weigh strategic decisions about investments in cooling systems. Real-time weather information can prepare them to implement an immediate response to cool their animals.



The Palmer Drought Severity Index (PDSI) is a commonly used measure of drought severity taking into account differences in temperature, precipitation, and capacity of soils to hold water. These maps show projected changes in the PDSI over the 21st century, based on the Canadian and Hadley climate scenarios. A PDSI of –4 indicates extreme drought conditions. The most intense droughts are in the –6 to –10 range, similar to the major droughts of the 1930s. By the end of the century, the Canadian scenario projects that extreme drought will be a common occurrence over much of the Great Plains, while the Hadley model projects much more moderate drought conditions.



Both models project substantial increases in the July heat index (which combines heat and humidity) over the 21st century. These maps show the projected increase in average daily July heat index relative to the present. The largest increases are in southern areas, where the Canadian model projects increases of more than 25°F.

10-7

March 13, 2006

My name is Bob Eye. Thank you for the opportunity to testify about SB 361.

I am a lawyer and have been interested and involved in energy and environmental issues for more than twenty-five years. My experience includes representing clients in electric and natural gas rate cases and nuclear power plant/nuclear fuel cycle issues. As a matter of full disclosure, I am an antinuclear activist and an advocate for a transition to renewable fuel sources to generate electricity and meet other energy demands.

I oppose the provisions in this bill that limit judicial review but support the provision to expand the scope of what is considered the agency record for purposes of judicial review.

SB 361 is a subsidy for the vast coal industry consortium and, in particular, its coal-fired generating plant clients. It sends a signal that Kansas is a pushover when it comes to special interest politics that compromise public health and environmental quality.

This proposal is a subsidy because it will lower coal plant development costs by limiting judicial review otherwise required by current law. Under SB 361, review by district courts of agency air pollution permits is eliminated and fast-tracked directly to the appellate court. District court review is an important step in refining issues and testing legal theories. It should not be sacrificed to expedite the coal consortium's agenda.

According to media coverage, SB 361 is being supported by the coal consortium that wants to build large coal-fired generating plants in Kansas. This misguided proposal, if carried through, would be very bad for our state.

First, the toxic releases from these plants range from mercury to fine particulates that end up in humans and the food chain. Perhaps, this unfortunate reality is something the coal consortium would like to limit judicial review of under SB 361. From its perspective, the less attention to this aspect of burning coal, the better.

Second, the proposed coal-fired plants would be significant sources of greenhouse gases and thereby contribute to global warming and climate change. The coal consortium wants as little attention as possible to this well-known consequence of burning coal.

Third, full judicial review might bring unwanted attention to the financial trends for coal costs. Though coal reserves appear relatively plentiful, there is no getting around the fact that it is a nonrenewable fuel. Accordingly, based on supply and demand models, costs will inevitably increase, particularly as demand increases. The U.S Department of Energy reports that for 2004 coal prices increased nationally over 11%. (U.S. D.O.E., Energy Information Administration, Annual Coal Report.) Further, given the increasing costs of diesel, costs to transport coal by rail will increase. Such long-term increased costs likely offset any short-term gains from plant construction related employment. And these costs do not account for increased health care costs and environmental degradation that come with burning coal.

The coal consortium would prefer to return to the good old days when government took a hands-off approach to air pollution. This nineteenth century attitude befits a nineteenth century technology--burning coal to boil water.

It is time to invest in renewable fuels and this should be done as soon as possible. For example, as this testimony is prepared, California is converting rooftops to solar panels with the goal of installing 3,000 megawatts of generating capacity in the next eleven years. This will be the approximate net energy production equivalent of three Wolf Creek sized nuclear plants. According to a February 1, 2006 A.P. article, California is offering rebates to home and businesses owners, farmers, schools and public buildings to install solar panels under a plan proposed by Governor Schwarzenegger and approved by the California Public Utility Commission.

This is sound policy and something similar to it should be adopted by Kansas. Otherwise, we will be captives of ever increasing fuel costs and pollution that will curtail economic activity and diminish our quality of life. Our state should adopt policies that create the conditions for the robust development of wind power and solar power to satisfy our energy needs. This transition should commence as soon as possible.

Kansas, like California, can get its energy house in order and enjoy the resulting environmental, public health and economic benefits. We can begin this task by saying "no" to the coal consortium on SB361.

One discreet part of SB 361 does need to be passed. The proposed amendments to K.S.A. 65-3008a(b) and K.S.A. 65-3013(e) that would require the agency record to include responses by applicants or permit holders to written comments or testimony related to air pollution permits is needed to make certain that

all pertinent information is presented for judicial review. This is in the public's interest.

But what must be avoided is the attenuated judicial review that is proposed in the balance of SB 361. This is no time to compromise judicial review, public health and environmental quality.

Thank you.

Yours truly,

IRIGONEGARAY & ASSOCIATES

Robert V. Eye

RVE:MSW

SHARMA-CRAWFORD
Attorneys at Law, LLC

7208 W. 80th • Ste. 202 • Overland Park, KS 66204 • 913-385-9821(phone) • 913-385-9964(fax)

Rekha Sharma-Crawford
8535 Metcalf
Overland Park, KS 66212

3/13/2006

Written Testimony in Support of Senate Bill 381: Pleas; court advisory that conviction or guilty plea may have immigration, naturalization consequences.

I have been an attorney for the past 12 years. I have worked both as an Assistant District Attorney as well as in the private sector. Advising a Defendant about the immigration consequences of a plea is a common practice among the Federal Courts of Kansas and the United States. Furthermore, at least, one County in the State has made such an advisory a standard part of the plea advisory form.

The benefit of this Bill is that it protects those persons appearing in court by ensuring they are aware of all the ramifications of their plea. This legislation would also protect society by ensuring that the pleas are valid and enforceable. Individuals who are waiving their rights to judicial process would now make a fully informed decision.

It is essential that those facing criminal charges, and possibly immigration consequences, be aware of the natural consequences of their plea. There is often little relevance whether the individual pled to a felony or a misdemeanor, as the immigration consequences may be exactly the same. Unfortunately, many times no one has advised these individuals that any kind of a consequence is likely, thus, such an admonition will at least put the individual on notice to examine all relevant issues prior to entering their plea. In many cases, these ill informed pleas, created to obtain probation, ultimately result in the unnecessary destruction of American families. By placing the responsibility on the Courts to ensure that simple notification is provided to Defendants, the dignity of the system is preserved and the integrity of the process is maintained.

At least 22 other States, recognizing the importance of informed pleas, have already enacted such provisions of law to protect the rights of all. Thus, this legislation would not only place Kansas in line with those sister States, but also in line with the federal justice system.

Respectfully submitted:

Rekha Sharma-Crawford
Attorney

House Judiciary
Date 3-13-06
Attachment # 12