

MINUTES OF THE HOUSE ENVIRONMENT COMMITTEE

The meeting was called to order by Chairperson Joann Freeborn at 3:30 P.M. on January 19, 2006 in Room 231-N of the Capitol.

All members were present except:

Representative Rob Olson- excused

Committee staff present:

Raney Gilliland, Legislative Research Department

Lisa Montgomery, Revisor of Statutes Office

Pam Shaffer, Committee Secretary

Conferees appearing before the committee:

Representative Tom Sloan, Representative, District 45 Lawrence

Woody Moses, Managing Director, Kansas Aggregate Producers Association

Stanley Rasmussen, Regional Counsel, Department of the Army, Central Regional Environmental Office

Terry Holdren, Local Policy Director, Kansas Farm Bureau Governmental Relations

Bren Haden, Assistant Counsel, Kansas Livestock Association

Others attending:

See attached list.

Chairperson Freeborn requested all guests sign the guest list. She announced that the agenda for Tuesday, January 24 had been incorrectly posted and that there would be bill requests and that Rod Bremby, Secretary Kansas Department of Health and Environment would give an agency briefing. The agenda for next Thursday, January 26, committee will possibly work **HB2558 - An act concerning Conservation and environmental protection or encroachment restriction districts** depending on what testimony brings forth today.

Chairperson Freeborn opened the hearing for **HB 2558** and asked Raney Gilliland, Legislative Research Department, to do a review of the bill. Raney gave a brief review of the bill. Raney did remind the Committee members that last year there was a similar bill, **HB2019 - Encroachment restriction districts** it did not make it out of the Governmental Organization/Elections Committee. Questions and discussion followed the review.

Chairperson Freeborn introduced the first proponent to testify, Representative Tom Sloan, District 45, questions to be held until the end of all testimony. Representative Sloan thanked Chairperson Freeborn. (See attachment 1) is a written copy of Representative Sloan's testimony.

Chairperson Freeborn introduced Woody Moses, Managing Director of Kansas Aggregate Producers Association, proponent. Mr. Moses thanked Chairperson Freeborn. (See attachment 2) is a written copy of Mr. Moses' testimony.

Chairperson Freeborn introduced Stanley Rasmussen, Regional Counsel, Department of the Army, Central Regional Environmental Office, proponent. Mr. Rasmussen thanked Chairperson Freeborn, (See attachment 3) is a written copy of Mr. Rasmussen's testimony.

Chairperson Freeborn introduced Terry Holdren, Local Policy Director, Kansas Farm Bureau Governmental Relations, opponent. Mr. Holdren thanked Chairperson Freeborn, (See attachment 4) is a written copy of Mr. Holdren's testimony. Mr. Holdren requested consideration of 4 amendments which will limit the scope of the bill to our military installations and provide protection to farm and ranch owners as they employ normally accepted agricultural practices on their property. If these amendments were adopted, Kansas Farm Bureau would not be an opponent of the bill.

CONTINUATION SHEET

MINUTES OF THE House Environment Committee at 3:30 P.M. on January 19, 2006 in Room 231-N of the Capitol.

Chairperson Freeborn introduced Brent Haden, Assistant Counsel, Kansas Livestock Association, opponent. Mr. Haden thanked Chairperson Freeborn, (See attachment 5) is a written copy of Mr. Haden's testimony. Mr. Haden requested consideration of the same 4 amendments as Mr. Holdren, Kansas Farm Bureau, and if these amendments are adopted would not be an opponent of the bill.

Discussions and questions followed the testimony.

Chairperson Freeborn closed the hearing.

Chairperson Freeborn announced that **HB 2558** will possibly be worked next Thursday, January 26, 2005.

Chairperson Freeborn adjourned the meeting at 4:34. The next meeting is scheduled for Tuesday, January 24.

HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: 01/19/06

NAME	REPRESENTING
Lindsay Douglas	Hein Law Firm
Mary Jane Stankiewicz	KGFA/KARA
Woody Moses	Aggregate Producers
Carol McDowell	Tallgrass Ranchers
Amber Kollman	Rep. Johnson
Stanley Rasmussen	U.S. Dept. of Defense
CV Cotsovadis	KDA
GREG A. FOLEY	SCC
Brent Anden	KLA
Scott Heidner	ACEC Kansas
TERRY HOLDREW	KFB
BRAD HARRELSON	KFB
Andy Shaw	Kearney & Associates
DAVE HOTHHAUS	KEC
Kim Winn	LKM
JOHN C. BOTTENBERG	BOTTENBERG & Assoc
DINA FISK	VZW
Pat Lehman	KFSA

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HOUSE ENVIRONMENT COMMITTEE GUEST LIST

DATE: 01/19/06

NAME	REPRESENTING
Mark Schwerber	Westar Energy
Sean Miller	KS Dairy Assn
Elizabeth Illmer	
ANNIE KIPP	
Cara Krapp	

STATE OF KANSAS

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TOPEKA

HOUSE OF  
REPRESENTATIVES

COMMITTEE ASSIGNMENTS  
CHAIRMAN: HIGHER EDUCATION  
MEMBER: UTILITIES  
ENVIRONMENT  
AGRICULTURAL & NATURAL  
RESOURCES BUDGET  
KANSAS WATER AUTHORITY

Testimony on HB 2558 - Conservation and Environmental or Encroachment Restriction Districts  
January 19, 2006 House Environment Committee

Madam Chairman, Members of the Committee: For the past six years the House Speakers have appointed me to the Council of State Governments' Environment Task Force and the Renewable Energy Working Group. I currently serve as Co-Chairman of both committees.

During the past several years, Department of Defense representatives have presented information regarding the harmful affect that unregulated civilian growth around military facilities has on base operations and the long term sustainability of the military base. For example, the City of Anchorage proposed a bridge near the end of the main Air Force base's runway. Lights from the bridge would have created severe flight hazards for pilots — and risks to the city's residents. While ultimately the city did not construct the bridge, it points out that two organizations making appropriate decisions for themselves, may inadvertently cause trouble for the other.

HB 2558 is introduced in an effort to accomplish three objectives: 1) provide a mechanism by which local governments and military installation leaders can address urban growth and protecting the base's long term viability; 2) providing a similar means by which urban growth and Dept. of Wildlife and Parks' wildlife areas can be successfully managed; and 3) recognize that endangered and threatened species, in addition to other wildlife, inhabit both the military's and Dept. of Wildlife and Parks' facilities and through partnerships with local governments these populations can be managed for the benefit of private landowners and community interests.

HB 2558 permits, but does not require, the military and the Department to apply to the local city or county government to create a conservation and environmental protection district or an encroachment restriction district in close proximity to the border of the base/park to help protect unique flora and fauna, and/or to protect the facility's long term viability.

The request for such a designation must provide an explanation of the type of restrictions requested (e.g., height of structure, lights), the proposed distance from the applicant's property such restrictions are desired, and justification for each factor (e.g., continuous lights will adversely affect bird nesting activities or prevent training of troops using night vision goggles). The application also must include a description of the applicant's operation that may impact persons seeking to develop within the proposed district (e.g., late night artillery fire or large flocks of geese "grazing" across lawns).

The local government shall hold public hearings on the application and shall take into account the impact of approving or disapproving the creation of the District o

development of the community, as well as the sustainability of the applicant's facility and the facility's contribution to the community.

In developing this bill, I have worked with representatives of the U.S. Army, Wildlife and Parks, and local governments to provide a fair process through which local governments can balance the interests of ensuring the long term viability of existing facilities and community growth. My objective is that a formal process exist to balance the interests of all parties, rather than haphazard growth that results in unhappy citizens and risks adversely impacting the long term viability of existing facilities.

In closing, it is important to note that local governments are not required to grant an application, the bill clearly states that this procedure does not impact a community's zoning regulations nor restrict utilities from fulfilling their responsibilities.

This bill is designed to ensure that the military and civilian leaders talk about their respective needs, that Dept. of Wildlife and Parks and civic leaders talk about their requirements, and that consensus and cooperation protect all parties' interests. Presently, to my knowledge, conversations between the parties can and do occur, however, there is no formal process by which local government decision-makers are made aware of the consequences of actions they may make on the long term viability of facilities. This bill provides for that formal collaboration. While Kansas fared very well during the most recent BRAC proceedings, there will be more rounds in the future. It is in our economic interest as a state to ensure that our military and civilian leaders are working together to protect the viability of those bases.

Farm Bureau and Kansas Livestock Association representatives spoke with me about clarifying that agriculture interests are not adversely impacted by this bill. My intention is to preserve both agriculture and military facilities and I therefore conceptionally support their amendments.

Thank you for your attention and consideration. I will be pleased to respond to questions at the appropriate time.

# KAPA

Kansas Aggregate  
Producers' Association

Edward R. Moses  
Managing Director

## TESTIMONY

By the  
Kansas Aggregate Producers Association

Before the  
House Environment Committee

Regarding HB 2558  
Encroachment Districts

January 19, 2006

Madame Chair and members of the committee, my name is Woody Moses, Managing Director of the Kansas Aggregate Producers' Association, and the Kansas Ready Mixed Concrete Association. Thank you for the opportunity to provide testimony on behalf of HB 2558 along with a proposed amendment. The Kansas Aggregate Producers' Association (KAPA) and The Kansas Ready Mixed Concrete Association (KRMCA) is a statewide trade association comprised of over 250 members and one of the few industries to be represented in every county of this state.

The purpose of HB 2558, if passed as amended, is to provide a clearer definition regarding access to and development of natural resources within our state. As a result of ever increasing urbanization we believe it is time to consider the concepts embodied in HB 2558. This is required in order to achieve three important policy goals:

1. Provide a frame work whereby all citizens are informed of proposed natural resource developments.
2. Promote reasonable limits for operation including safety, environment and noise.
3. Provide for the complete development, once approved, of natural resource deposits.

While aggregate resources, like air and water, appear to be plentiful the simple truth is they are not. Once again just like air quality and water quality are often important; so too is rock or sand & gravel quality. **Quality** deposits, meeting required absorption and

hardness standards; are only found in those rare places where nature put them and must be protected. If we are to fully develop these limited resources for the future of our state and its citizens we must be allowed the ability to develop them. Adoption of such as measure will also be consistent with the recommendations contained in the Kansas Natural Resources Alliance report presented to the Legislature in January 2004, specifically that the State adopt measures to preserve access to limited natural resources for their future utilization. In our opinion HB 2558, if amended and passed; while limited in scope is a step in the right direction.

Please join us in supporting this proposal.

Thank you for receiving our comments on HB 2558, I will be happy to respond to any questions you may have at this time.

**HOUSE BILL No. 2558**

By Representative Sloan

12-28

9 AN ACT concerning conservation and environmental protection or en-  
10 croachment restriction districts; providing for the creation, enlarge-  
11 ment and dissolution thereof.

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

14 Section 1. (a) As used in this section:

15 (1) "District" means a conservation and environmental protection or  
16 encroachment restriction district created pursuant to this section.

17 (2) "Governing body" means the governing body of the board of  
18 county commissioners of the county where the property is located.

19 (3) "Military reservation" means a military installation or facility un-  
20 der the supervision of the United States secretary of the army or the  
21 United States secretary of the air force or a military installation or facility  
22 under the supervision of the Kansas national guard.

23 (4) "Person" means any individual, sole proprietorship, partnership,  
24 joint venture, association, trust, estate, business trust, corporation, limited  
25 liability company or not-for-profit corporation; any federal, state or local  
26 governmental or quasi-governmental unit or agency, or any instrumen-  
27 tality or political subdivision thereof; or any similar entity or organization.

28 (5) "Property" means real property used as or contiguous to a military  
29 reservation, or to a state park, state lake, recreational area, wildlife area  
30 and sanctuary, fish hatchery, natural area or other lands, waters or facil-  
31 ities under the jurisdiction of the secretary of wildlife and parks.

, a mine as defined in K.S.A.  
49-603

32 (b) A governing body may create, modify or dissolve conservation and  
33 environmental protection or encroachment restriction districts in the  
34 manner provided by this section for the purpose of protecting the long-  
35 term sustainability and economic contribution of the property.

36 (c) Any person who owns or possesses any property may submit an  
37 application for the creation, modification or dissolution of a district to the  
38 appropriate governing body. Such application shall be on a form provided  
39 by the governing body. The application shall be accompanied by any in-  
40 formation deemed necessary by the governing body including, but not  
41 limited to, specific conservation, environmental protection, growth man-  
42 agement or encroachment restrictions addressing requirements such as  
43 light, noise, height and distance restrictions and the reasons such restric-

# Quarry creating rocky relations

Neighboring family says county should regulate operations

By [Alicia Henrikson](#), Journal-World

Wednesday, December 1, 2004

The Coffman family is used to being near a rock quarry.

advertisement Their farming operation has been near what is now the Hunt Midwest Globe Quarry, which is on County Road 1029 south of U.S. Highway 56, for decades.

**"We understand the need for the quarry and the need for the production of rocks for highways and roadways," said Gerry Coffman, who has been living on the farm for two years.**

But lately, Gerry Coffman and her siblings -- Hurst and Martha -- have become disenchanted with the Globe Quarry, which is across the street from their family farm.

As a result, the Coffman family is asking Douglas County commissioners to regulate all quarries in the county through a home-rule resolution. The proposed regulations deal with public health and safety and address issues like air quality, fencing, operation times and blasting.

Commissioners will consider the matter at 6:35 p.m. tonight when they meet at the Douglas County Courthouse, 1100 Mass.

The issue came as a surprise to Tim Spears, a senior superintendent for Hunt Midwest. Spears said he had no knowledge about the proposed regulations or that there were any problems.

"We receive some complaints, but we try to remedy the problem immediately," Spears said.

Located near the Douglas County and Franklin County line, the Hunt Midwest Globe Quarry produces limestone used for concrete rock, county road rock and asphalt stone.

**County zoning regulations don't apply to the Globe Quarry because it was in operation before the county commission adopted zoning regulations in the late 1960s.**

Hurst and Gerry Coffman said they had found large rocks on their family farm that they believed shot over the road onto their property from the quarry. They have concerns that this could happen while a person is driving on roads surrounding the quarry.

Spears said he was not aware of that type of situation happening when they were blasting at the quarry.

Commissioner Jere McElhane said he was reviewing material regarding the proposed regulations. He said he understood the Coffman family's concern but said that there were guidelines in place for quarry operations.

"They do play an important role in our communities, but, like anything else, we need to keep an eye on it," he said.

Commission Chairman Charles Jones said the commission periodically dealt with complaints regarding quarries.

"You'd always rather see a cooperative nonregulatory fix to problems," he said. "There are two truths here -- the area is becoming more urbanized and if things don't get worked out between neighbors they will come to us. This may be a situation where they may have exhausted all their possibilities."



DEPARTMENT OF THE ARMY  
U.S. ARMY ENVIRONMENTAL CENTER  
CENTRAL REGIONAL ENVIRONMENTAL OFFICE  
647 FEDERAL BUILDING  
KANSAS CITY, MISSOURI 64106-2896

January 19, 2006

Army Central Region Environmental Office

Re: House Bill 2558

Honorable Joann Freeborn  
Chairperson, Environment Committee  
State Capitol Building  
Topeka, KS 66612

Dear Representative Freeborn:

I am writing to you concerning the proposed legislation contained in House Bill 2558, which is currently before your committee. As the Department of Defense, Regional Environmental Coordinator for Standard Federal Region VII, which includes the State of Kansas, I appreciate the opportunity to provide comments to this important legislation. Enclosed for your review, is a copy of our testimony and attachments concerning House Bill 2558. This testimony will be presented at your committee hearing by Mr. Stanley Rasmussen, Regional Counsel for my office.

I welcome the opportunity to work with you and your committee on any matter that may affect Defense installations and agencies in the state of Kansas. If you have any questions, please feel free to contact me by telephone at (816) 983-3548, or e-mail at [barton.ives@us.army.mil](mailto:barton.ives@us.army.mil). I thank you for the opportunity to comment on H.B. 2558 and would appreciate it if you would share this letter with members of your committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Barton O. Ives", is positioned below the word "Sincerely,".

Barton O. Ives  
DoD Regional Environmental Coordinator  
Region VII

Copies Furnished:

Deputy Assistant Secretary of the Army, (Environment, Safety, and Occupational Health)

House Environment Committee  
1-19-2006  
Attachment 3

Commander, U.S. Army Combined Arms Center and Fort Leavenworth  
Commander, 24<sup>th</sup> Infantry Division (Mech) and Fort Riley  
The Adjutant General of Kansas  
Commander, 89<sup>th</sup> Regional Readiness Command, U.S. Army Reserve  
Army Installation Management Agency (Northwest Region)  
U.S. Army Environmental Center  
Commander, Kansas City District, U.S. Army Corps of Engineers  
Commander, 22nd Air Refueling Wing, McConnell Air Force Base  
Commander, 184th Refueling Wing, McConnell AFB & Smoky Hill ANG Range  
Commander, 190<sup>th</sup> Air Refueling Wing, Kansas Air National Guard, Forbes Field  
Commander's Representative, Kansas Army Ammunition Plant  
Commander's Representative, Sunflower Army Ammunition Plant  
Air Force Regional Environmental Coordinator  
Navy Regional Environmental Coordinator

Department of Defense  
Regional Environmental Coordinator, Region VII Testimony  
House Bill 2558  
An Act to Establish Encroachment Restriction Districts

Madam Chairman and members of the committee, I am very pleased to have this opportunity to speak to you in support of House Bill 2558. This bill addresses an issue that is critical to the military, and its passage is supported by the Department of Defense and its installations in Kansas, including Ft. Riley and McConnell Air Force Base.

Increasing incompatible land use around military installations is impeding the way the military can train its Soldiers, Airmen and Sailors. The Department of Defense refers to this issue as encroachment. Encroachment is becoming, and in some places has already become, a significant national security problem affecting the long-term viability of U.S. military installations. Although most military installations were intentionally sited in remote, sparsely populated areas, population growth, demographic shifts and urban sprawl have gradually brought incompatible development to the doorstep of our facilities. Many installations are no longer insulated from the effects of sprawl. For example:

- Encroachment stops night training when light from nearby shopping centers or other development interferes with Soldiers' night vision equipment.
- Encroachment stops parachute training when new housing developments are built near drop zones.
- Encroachment stops artillery and flight training due to noise complaints from nearby residences.
- Encroachment shrinks training areas when endangered species are forced to migrate inside military installation fence lines to the only natural habitat remaining for them.

The convergence of these encroachment trends occurs in an unplanned and often unanticipated way. This creates a problem for the U.S. military that manifests itself at the local level, but is national in scope and consequences. Mitigation of these impacts takes cooperation and teamwork between the military, state and local governments, and the local community.

As the military transforms its forces for the 21<sup>st</sup> century, it is likely that the mission of a given installation will also evolve to accommodate modern tactics, weapons and support systems. As you may already be aware, the Department of Defense is planning to relocate the Army's First Infantry Division back to Ft. Riley. We do not want to see serious encroachment issues arise for our Kansas installations. However, Fort Riley has already had to respond to noise complaints from nearby residences, and on January 27, Ft. Riley will be announcing formal plans for helping to avoid potential encroachment issues in the future. Because HB 2558 will provide direct assistance to

Ft. Riley and our other Kansas military installations with addressing potential encroachment issues, we support this legislation. In addition, because HB 2558 formalizes a process of cooperation between the local community, local government, and an installation, and because it is flexible enough to accommodate changes in the military's future needs, we reiterate our support for this legislation.

In the past few years, more than 20 states have passed legislation addressing encroachment around military installations. To date, HB 2558 is the most innovative, because it not only provides a formalized process for cooperation between military installations and the local community and government, but also makes participation voluntary rather than placing an extra burden upon a military installation.

The Department of Defense is continually seeking to address potentially adverse mission impacts before a problem arises. Because encroachment is threatening the military's ability to effectively train our Soldiers, Airmen and Sailors, it must be addressed. Accordingly, the Department of Defense is actively partnering with the Council of State Governments, the National Association of Counties, the Environmental Council of States, the National Council States Legislators, the National Governors Association, and other organizations to find solutions that work for all parties. By supporting HB 2558, you can help to promote the long-term viability of our Kansas Military installations.

I thank you for taking the time to consider our comments on this bill. For your reference, I have enclosed a number of informative attachments concerning encroachment at military installations in my written testimony for the record. I thank you again, and I am pleased to respond to your questions.

Attachments:

1. Press Release of the National Governors Association entitled "Civilian Encroachment at Military Bases Threatens State and Local Economies."
2. Article from the *Environmental Communique of the States* by Mr. Alex Beehler, Assistant Deputy Under Secretary of Defense for Environment, Safety and Occupational Health entitled "Compatible Use: Striking a Balance Between Community Growth and the Military Mission."
3. Map of States with enacted Land Use/Encroachment Related Legislation.
4. Department of Defense Economic Contribution to the State of Kansas in Fiscal Year 2004.



*Press Release*

## **Civilian Encroachment At Military Bases Threatens State And Local Economies**

Installations Could Close If Encroachment Restricts Training and Operational Missions

**WASHINGTON** - With military-related issues continuing to dominate the national and international landscape, the National Governors Association Center for Best Practices released its "State Strategies to Address Encroachment At Military Installations" *Issue Brief*. The report presents major policy options states can use to address the threat of incompatible land development near military installations, known as "encroachment." The issue is critical to national security because 80 percent of the nation's military installations are confronting urban growth at a rate higher than the national average.

Governors across the nation continue to focus on encroachment because of the importance of military bases to state economies, national security, and public safety concerns. In the report, NGA identifies five strategies states can use to manage encroachment and related issues:

- **Craft legislation that requires compatible land use.** A handful of states, including Arizona, California, and Oklahoma, are experiencing rapid development of land near military installations and have passed specific legislation to protect their military installations from encroachment.
- **Pass zoning, planning, and noise requirements.** States can promote compatible land use around military installations by encouraging local governments to anticipate future urban growth patterns. A strategic land-use plan can help prevent encroachment if it establishes and requires disclosure of high- noise and accident-potential zones near military bases, and develops zoning codes that support compatible development of land located within these zones.
- **Use statutory language to designate military installations as areas of critical state concern.** While several states have existing statutory language that protects these areas, to date, no state has used such language to protect military installations, but NGA considers it a substantive option.
- **Acquire property surrounding military installations.** Arizona, Florida, Oklahoma, and Nevada have purchased - or are in the process of purchasing - land around some bases. State government can purchase land, partner with conservation groups, and exchange or trade land.
- **Create state military advisory bodies.** States, including Arizona, California, Florida, Georgia, North Carolina, and Texas have established military advisory groups. These commissions aim to protect state military installations from closure, most immediately under the next round of federal Base Realignment and Closure (BRAC) Commission recommendations, scheduled for 2005. Encroachment is considered in base closure decisions.

"As this report makes clear, North Carolina has taken significant strides in addressing the issue of encroachment at military installations, but there is more to do," said North Carolina Gov. Michael Easley. "I look forward to working with our military partners - and with NGA's Center for Best Practices - as I strive to make our state the most military-friendly state in the nation."

By threatening base operations, encroachment also jeopardizes jobs and tax revenue. The military plays a significant economic role at the state and local level. Military installations are often critical to state

mies, account for thousands of jobs and for generating billions of dollars in economic activity and tax revenue. They can be even more critical to local economies.

"For decades, the State of Georgia has been privileged to serve as home for important elements of our armed forces from all military services," said Georgia Gov. Sonny Perdue. "As active partners with each entity, we are committed to do whatever is necessary to sustain and improve their ability to accomplish their mission. Encroachment limits that ability, and we are focused on steps to mitigate that problem."

At their recent Winter Meeting, the nation's governors specifically addressed encroachment in their adoption of NGA's Principles for Better Land Use Policy:

The Governors also believe that the federal government should work together with the states and local governments to reduce potential conflict between expanding development near federal military installations and the activities on the base. Incompatible development, often called encroachment, may threaten public safety as well as the ability of the base to carry out its mission. Governors support states, the Department of Defense, and the military services in taking actions to assist local governments to develop and implement better long-term planning for compatible land uses near military bases, particularly air fields, training facilities, routes, and ranges. The aim is not to prevent growth or limit any state or local authority but to encourage land uses that avoid encroachment and are consistent with both the scope of military activities at a particular base and the needs and safety of the neighboring community.

"The continued expansion of sprawl impacting military bases proves that encroachment needs more attention than ever," said Joel Hirschhorn, Director of NGA's Natural Resources Policy Studies Division. "Although NGA has outlined strategies states can use to address the encroachment issue, there is unfortunately no 'one-size-fits-all' solution."

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*Printed from the NGA web site.*



the environmental communiqué of the states

## Compatible Use: Striking a Balance Between Community Growth and the Military Mission

by Alex Beehler

**E**ncroachment on U.S. military installations and training ranges is a serious and growing problem for the Department of Defense. It stops night training when light from nearby shopping centers interferes with soldiers' night vision. It stops parachute training when new housing developments are built near drop zones. And it shrinks

training and testing areas when it forces endangered species to migrate inside military installation fence lines to the only natural habitat remaining for them.

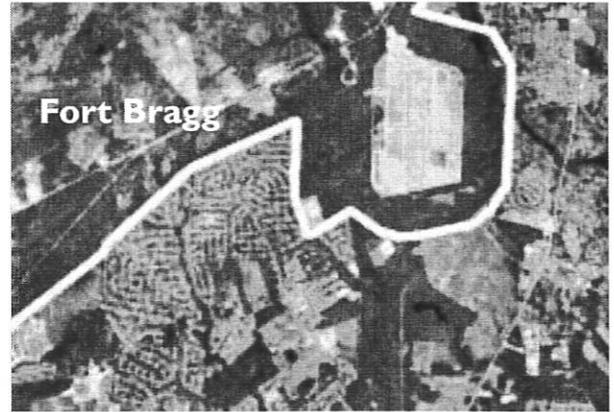
Encroachment—a term used by the Department of Defense to refer to incompatible uses of land, air, water and other resources near military installations—is the cumulative impact of uncontrolled urban development that disrupts military training or testing on military installations. Unchecked growth and restrictions represent a progressive loss of training capability and now jeopardize the ability of many U.S. military installations to perform their principal missions.

### Growth of training needs

DoD is a major user of land, sea and air space. The Army, Navy, Air Force and Marine Corps together manage nearly 30 million acres of land on more than 425 major military installations. DoD requires unfettered access to the lands it manages to train and test its soldiers, sailors, airmen and marines, and to maintain mission readiness.

Readiness is perishable. Skills must be maintained through regular training that simulates actual combat conditions as closely as possible. Further, the ability to test and field advanced military technology is fundamental to warfare. And modern weapons and their accompanying tactics require increasingly large battle spaces.

Most military installations in the United States were established before World War II and were located far from urban areas; however, this is no longer the case. In 2002,



Residential development surrounding Fort Bragg, NC not only threatens to limit military training opportunities, but also diminishes habitat for wildlife, including the endangered Red-cockaded Woodpecker: (Photo: Department of the Army)

the General Accounting Office reported that nearly 80 percent of the nation's military bases were witnessing growth around their fence lines at a rate higher than the national average. At the same time, the activity level of the 21<sup>st</sup> century military has expanded. While the demands of modern military training call for heavily used training spaces, incompatible resource uses and uncoordinated development near military bases are reducing available military testing and training spaces. The military's increased activity also exposes installation neighbors to more aircraft over-flights, artillery fire, dust and noise.

Real estate developers and local communities generally do not encroach upon their neighboring military bases by design, nor do most regulators aim to curb military operations by promulgating punitive regulations. Most commercial and residential development around bases occurs with little or no coordination with the military base commander—and it may occur one house or building at a time, without the knowledge that a fence-line development might impact a parachute drop zone or that high-impact lighting of a shopping center might affect nighttime training at the base. Encroachment most frequently occurs as local and state communities and the military go about

*continued on page 2*

Attachment 2

3-7

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The Council  
of State Governments



Volume 11, No. 4

The purpose of *Ecology* is to present new ideas in state environmental management—including planning, budgeting and legislation—and to serve as a forum for ideas about the roles of states in protecting the environment.

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*Preparing states for tomorrow, today...*

The Council of State Governments (CSG), the multibranch organization of the states and U.S. territories, prepares states for tomorrow, today, by working with state leaders across the nation and through its regions to put the best ideas and solutions into practice. To this end, CSG:

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- Builds leadership skills to improve decision-making.
- Promotes the sovereignty of the states and their role in the American federal system.

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## Compatible Use: Striking a Balance...

*continued from page 1*

their business independently, without regular communication or coordination.

### Partnerships, laws and sustainability programs

To counter the effects of encroachment and establish compatible uses of military lands, the military has begun developing partnerships with state and local governments and nonprofit conservation organi-

zations. Partners work to acquire “buffer zones” around installations that allow the military to continue its training mission, allow plant and animal species to maintain their habitats, and allow growing communities access to open space.

These partnerships range from the Northwest Florida Greenway initiative near Eglin Air Force Base, to the Prairie to Pines Part-

*continued on page 7*

## State Councils to Study Impact of Possible Base Closures

Anticipating the next round of base closures, legislators across the country are organizing military planning councils to measure just how big an impact their military installations have on local economies. Among them is the Maryland Military Installation Strategic Planning Council, established by legislation signed by Governor Robert Ehrlich in June 2003. Maryland Delegate John Bohanan co-sponsored the legislation, basing it on similar bills in other states. “Maryland needs a focused, coordinated federal military installation retention effort within the state in order to protect existing defense installations and facilities within the state,” reads the legislation.

Maryland has 12 major military installations with a combined civilian and military payroll of about \$5 billion, according to the Maryland Department of Business and Economic Development (DBED). The state’s installations also generate about \$15 billion in contracts to Maryland businesses, making them a strong economic engine that state officials don’t want to lose when the Department of Defense recommends base closures in 2005.

“If we didn’t do this, we’d just be more vulnerable,” said Maryland Delegate Mary Dulany James, who co-sponsored the bill and now serves on the council. “I do believe that if the Assembly is vocal and the community is vocal, it will have an impact. We may not save everything we need to save, but it will have impact.”

The Maryland council consists of the presidents of all the state organizations that support military installations in Maryland, including the Army Alliance (representing Aberdeen Proving Ground) and the Southern Maryland Navy Alliance (representing Patuxent River Naval Air Station). Also on the council are community members selected by the governor, and the Maryland secretaries of transportation, business and economic development, and environment. The DBED secretary chairs the council. Members meet monthly before submitting a final report to Governor Ehrlich in December 2004.

“It’s too early to tell how effective it will be,” said James. The president and ultimately Congress determine which installations will close. “But it had to be done. The General Assembly has to have a voice.”

nership at the Army's Camp Ripley in Minnesota, to the Sandhills Partnership at Fort Bragg, North Carolina. Other state-local-DoD partnerships exist, from the Marine Corps' Camp Pendleton, California to the Army's Fort A.P. Hill, Virginia.

In recent years, states also have begun to pass legislation that aims to minimize encroachment and build compatible uses of air, land and water resources around military installations. In 2004 alone, 11 state legislatures introduced 32 bills relating to compatible land use near military facilities. Each state's unique legislative efforts reflect that state's culture, but the efforts all share common themes: ensure compatible land uses for the military and community, and increase coordination and communication between local governments and military bases.

The most commonly introduced and enacted approaches include variations on the following:

- Acquiring protected conservation areas around military installations through third-party state or local property easements.

- Requirements that communities and local and state governments coordinate with installation commanders on resource uses and commercial or residential development around military installations.
- Requirements that communities ensure that resource use plans and commercial development and zoning requirements are compatible with the operations and missions of neighboring military installations.
- Requirements that implementation of zoning, land use, noise and nuisance regulations is consistent with the operations and missions of neighboring installations.
- Requirements that local communities perform an impact assessment of land or resource use activities and commercial and residential development on military installations before development proceeds.
- Designating military installations as "areas of critical concern" to raise awareness about installation sustainability challenges.

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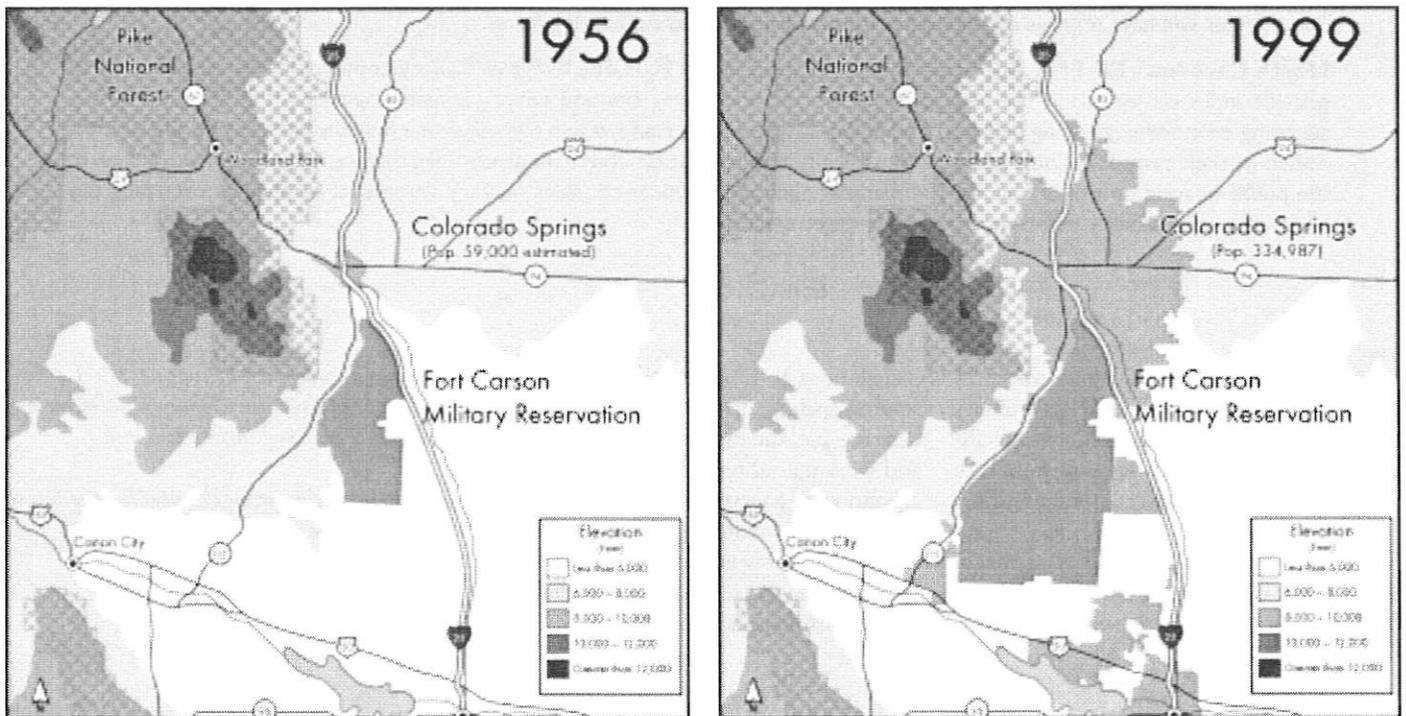
In 2002, the General Accounting Office reported that nearly 80 percent of the nation's military bases were witnessing growth around their fence lines at a rate higher than the national average.

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continued on page 8

**W**ith six times as many residents as it had four decades ago, Colorado Springs has expanded to the boundary of the once-remote Fort Carson. Rapid residential and commercial development adjacent to military installations is of increasing concern to the military and state government officials alike.

(Maps courtesy: Department of the Army)



## New Laws Seek to Increase Notification about Land Use Plans

Several states have enacted legislation designed to minimize the effects of incompatible land and resource use. Among them are Arizona, California, Florida, Georgia, Illinois, Kentucky, North Carolina, Oklahoma, Texas, Virginia and Washington.

**Virginia's HB 714**, signed by the governor in April 2004, is one of the simplest new compatible-use laws. It requires a planning commission to give at least ten days advance notice to a military installation commander and an invitation to provide comments or recommendations before any hearing on a proposed change to a comprehensive land use plan, a proposed zoning change, or an application for a special exception for a change in use involving a parcel of land within 3,000 feet of the installation. The law also requires that comprehensive plans and accompanying maps include the location of military bases and military airports and their adjacent safety areas.

**Kentucky's HB 357**, signed by the governor in March 2003, amends Kentucky's existing law concerning minimum requirements for comprehensive plans. The amended law adds a requirement for accommodation of all military installations greater than or equal to 300 acres that are within or adjacent to the planning unit's boundaries. The goal is to minimize conflicts between the installation and the planning unit's residential population. The provisions are to be made in consultation with command authorities at the installation to determine the installation needs.

**Georgia's SB 26**, signed by the governor in June 2003, requires that when a zoning proposal or zoning decision involves land near a military base, the appropriate planning department or other agency charged with reviewing zoning proposals and the commander of the affected military installation make recommendations with regard to compatible use. The bill requires that the commander's investigation and recommendations be provided to the planning agency and the governor.

**Florida's SB 1604**, signed by the governor in May 2004, provides for the exchange of information relating to proposed land use decisions between county and local governments and military installations. It also provides for consideration by the county or local planners of comments by the commanding officer on local land use decisions affecting the installation. In addition, the bill provides for a representative of a military installation to serve as an ex-officio, non-voting member of the county or local government's land planning or zoning boards and encourages the commanding officer to provide information on community planning assistance grants. Finally, SB 1604 requires the future land use plan element of comprehensive plans to include compatibility with military installations.

**Washington's SB 6401**, signed by the governor in March 2004, makes protecting land around Washington military installations from incompatible development a state priority. The bill provides that comprehensive plans, development regulations and their amendments should not allow incompatible development in the vicinity of a military installation; that the commander of a federal military installation of 100 or more personnel shall be notified by a city or county of its intent to amend its comprehensive plan or development regulations to address lands adjacent to the installation; and that the installation commander will have 60 days to provide written comments and supporting facts.

**North Carolina's SB 1161** was signed by the governor in July 2004. The law gives military commanders an opportunity to provide input on local land use and zoning decisions. It requires city and county planning agencies that are considering adopting or modifying zoning ordinances that would affect use of land within five miles of a military base to provide written notice of their proposal. Local agencies must notify the installation commander not less than ten days before the date of the public hearing on the ordinance. The planning agency then must consider military comments or analysis regarding the proposal's compatibility before making a final determination.

- Creating military advisory boards composed of state and local officials, military liaisons and other stakeholders to facilitate discussion and develop policy to minimize encroachment around military installations.

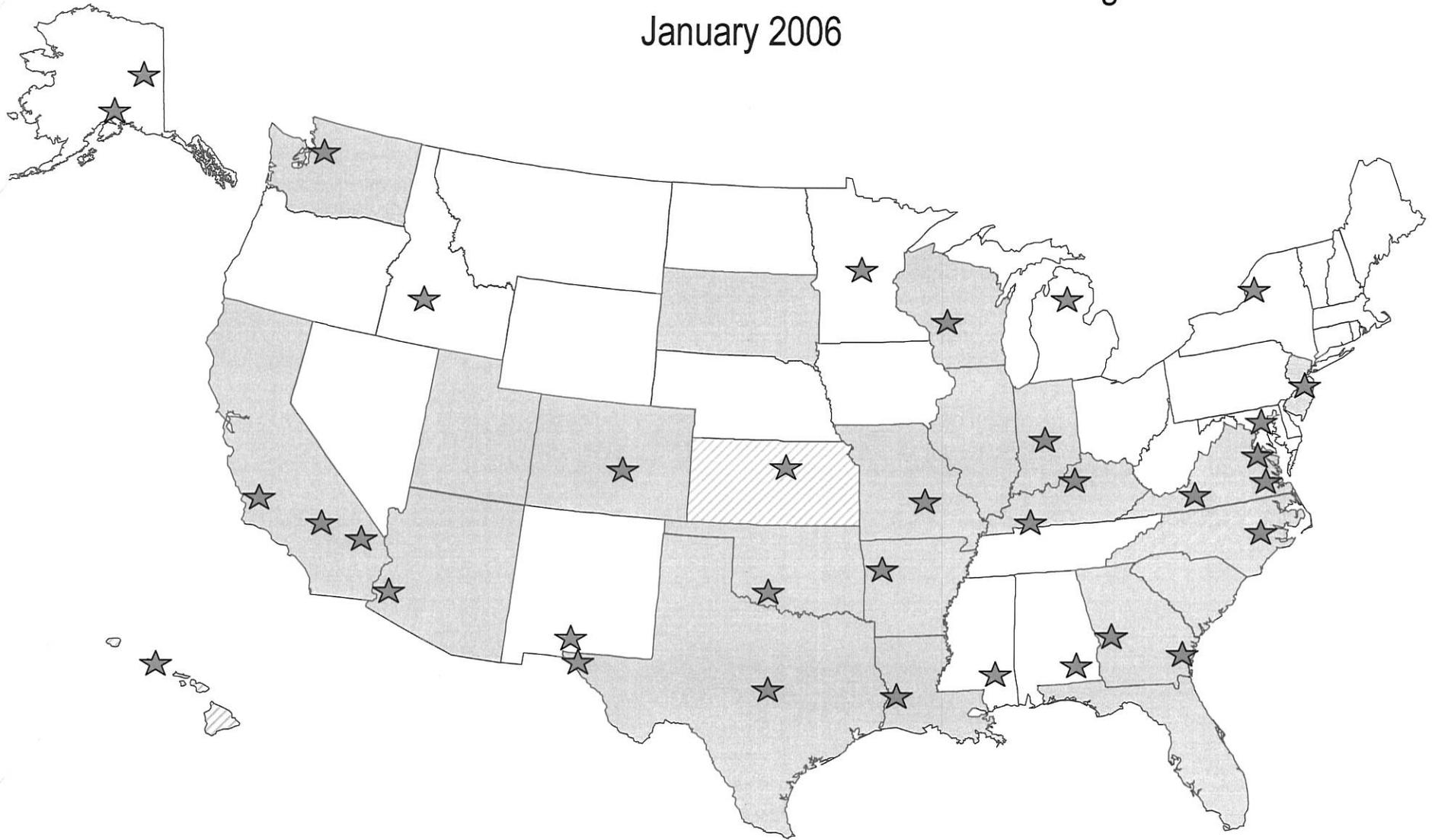
Success on the battlefield is critically linked to realistic, live training on military installations. A nation at war requires its

installations to provide trained and tested soldiers, sailors, airmen and marines. By increasing coordination and communication and working out compatible use issues, local and state governments and the military can—and do—work together to sustain installation training and testing missions over the long run and to improve the quality of life for surrounding communities.

*For more information, contact Jan Larkin, Office of the Assistant Deputy Undersecretary of Defense at [Janice.larkin@osd.mil](mailto:Janice.larkin@osd.mil).*

*Alex Beehler is Assistant Deputy Undersecretary of Defense for Environment, Safety and Occupational Health.*

# States with Enacted Land Use/Encroachment Related Legislation January 2006



■ Legislation Enacted

▨ Legislation Introduced/Pending

★ Major training installations with strategic or significant training value to the Army - Tier 1 & 2 installations.



# U.S. Army Environmental Center Central Regional Environmental Office

601 E. 12th Street, Suite 647  
Kansas City, MO 64106-2896

Contact: Larry Becker  
Regional Environmental Coordinator  
(816) 983 3447

<http://www.denix.osd.mil/denix/State/Partnering/REC/rec.html>



## DoD Installation Sustainability in the State of Kansas



### Key Military Facilities

- Fort Leavenworth
- Fort Riley
- McConnell Air Force Base
- US Army Reserve, 89th Regional Support Command
- Kansas Army Ammunition Plant
- 73 National Guard Facilities and 37 Reserve Training Centers



- Personnel (Military and Civilian): 37,043\*
- DoD Expenditures: \$2,966,580\*
- Kansas is home to:
  - Fort Leavenworth, the primary school for training military officers who will lead the Army in the future and the location of the only disciplinary barracks for the Department of Defense .
  - Fort Riley, the Headquarters for the 24th Infantry Division (Mechanized); host to the 1st Brigade Combat Team, 1st Infantry Division, 3rd Brigade Combat Team, 1st Armored Division and the 937th Engineer Group (Combat); headquarters for the 6th Brigade, 25th Infantry Division (to be established in FY2006); and host to a "Top of the Line" Battle Simulation Center that utilizes "State of the Art" equipment used to conduct Brigade/Battalion Battle Simulation exercises.
  - McConnell Air Force Base, the home to one of only three supertanker wings that provide global reach to the Air Force.
- Highlights
  - Federal facilities are subject to all applicable federal and state environmental laws and regulations.
  - DoD is implementing Environmental Management Systems at all appropriate installations.
  - The Army has mandated that all new construction will be to the "gold" criterion for green construction.
  - DoD has been reducing waste streams for approximately 10 years and is continuing to do so.
- Issues
  - Sustainability of installations.
  - Land use and local planning

\* Data are for 2004. For more details see the back of this page.

## DoD Economic Contribution to Kansas and Population Growth

<b>Personnel/Expenditures (\$000) Fiscal Year: 2004</b>		Total	Army	Navy & Marine Corps	Air Force	Other Defense Activities	
I. Personnel		37,043	28,210	1,421	7,058	354	
Active Duty Military		16,294	13,041	156	3,097	0	
Civilian		6,048	4,570	1	1,123	354	
Reserve and National Guard		14,701	10,599	1,264	2,838	0	
II. Expenditures in Thousands of Dollars		\$2,966,580	\$1,639,480	\$110,670	\$1,114,031	\$102,398	
A. Payroll Outlays - Total		\$1,528,992	\$1,062,776	\$83,050	\$368,804	\$14,362	
Active Duty Military Pay		675,828	521,640	6,673	147,515	0	
Civilian Pay		274,001	205,562	30	54,047	14,362	
Reserve & National Guard Pay		152,876	131,115	1,967	19,794	0	
Retired Military Pay		426,287	204,459	74,380	147,448	0	
B. Contracts – Total		1,411,862	552,175	26,859	744,805	88,023	
Supply/Equipment Contracts		712,611	111,125	13,412	515,130	72,944	
RDT&E Contracts		150,331	46,567	2,496	94,968	6,300	
Service Contracts		420,021	267,646	10,951	132,645	8,779	
Construction Contracts		109,600	107,538	0	2,062	0	
Civil Function Contracts		19,299	19,299	0	0	0	
C. Grants		25,726	24,529	761	422	13	
<b>Expenditures (\$000) Major Locations</b>	Total	Payroll Outlays	Grants/Contracts	Military & Civilian Personnel Major Locations	Total	Active Duty Military	Civilian
Wichita	\$890,560	\$73,435	\$817,125	Fort Riley	12,922	10,730	2,192
Fort Riley	657,723	517,355	140,368	Fort Leavenworth	4,295	2,582	1,713
Fort Leavenworth	348,714	204,421	144,293	McConnell AFB	3,739	2,835	904
McConnell AFB	202,232	181,623	20,609	Forbes Field	306	0	306
Leavenworth	86,540	43,129	43,411	Wichita	306	49	257
Topeka	80,521	40,293	40,228	Topeka	301	25	276
Arkansas City	65,137	1,825	63,312	Lawrence	70	42	28
Manhattan	41,514	30,111	11,403	Olathe	59	1	58
Olathe	38,742	15,643	23,099	Salina	44	3	41
Forbes	37,982	28,446	9,536	Manhattan	36	10	26
<b>Prime Contract Awards (\$000) (Prior 7 Fiscal Years)</b>	Total	Army	Navy & Marine Corps	Air Force	Other Defense Activities		
2003	\$1,222,006	\$459,095	\$61,671	\$632,270	\$68,971		
2002	1,222,936	448,721	31,402	684,209	58,604		
2001	930,042	324,832	27,889	515,396	61,926		
2000	890,728	291,884	21,894	466,961	109,989		
1999	887,380	266,966	6,627	528,875	84,912		
1998	1,007,244	342,877	43,209	542,191	78,967		
1997	688,413	251,228	7,768	367,464	61,953		
<b>Projected Population by County Years, 2005 to 2027</b>	2005	2010	2015	2020	2025	2027	
Johnson	486,585	548,580	584,983	616,379	644,803	656,166	
<b>Sedgewick</b>	464,612	481,730	497,988	515,403	531,939	538,659	
Shawnee	170,875	171,346	170,949	170,080	169,154	168,806	
Wyandotte	156,724	148,421	150,525	156,366	163,312	165,853	
<b>Douglas</b>	103,025	107,967	110,970	113,533	115,568	116,394	
<b>Riley</b>	61,999	63,210	62,992	62,608	62,076	61,870	
Reno	62,832	57,877	55,877	54,982	54,455	54,276	
Butler	62,403	74,565	79,925	83,312	86,046	87,132	
<b>Saline</b>	54,381	55,027	54,923	54,648	54,206	54,028	
Montgomery	35,221	32,780	31,686	31,124	30,796	30,694	

Source for Economic Data: Department of Defense, Directorate for Information Operations and Reports (DIOR), Statistical Information Analysis Division (SIAD), [http://web1.whs.osd.mil/MMID/L03/fy04/ATLAS\\_2004.pdf](http://web1.whs.osd.mil/MMID/L03/fy04/ATLAS_2004.pdf).

Source for Population Data: Kansas Division of the Budget, Kansas Population Data: <http://da.state.ks.us/budget/ecodemo.htm>. Bold type for certain counties denotes that the county is the location of a key DoD facility or training location.

*PUBLIC POLICY STATEMENT*

House Committee on Environment

RE: HB 2558, Encroachment Restriction Districts

**January 19, 2006**  
**Topeka, Kansas**

**Testimony Provided by:**  
**Terry D. Holdren**  
**Local Policy Director—KFB Governmental Relations**

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Chairperson Freeborn and members of the House Committee on Environment, thank you for the opportunity to appear before you today to discuss the potential impacts of HB 2558 on property owners across the state.

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

As it is currently drafted we find it difficult to offer our support for HB 2558. It would allow local units of government to place restrictions or conditions on privately held property near a military reservation or property managed by the Kansas Department of Wildlife and Parks through the establishment of an encroachment restriction district. The bill lists restrictions on light, noise, height and distance as potential targets for regulation, in addition to the protection of conservation and environmental interests. Restrictions such as these could allow one landowner to control the practices and potentially limit the opportunities of his or her neighbors.

We understand the unique and specific needs of our military installations to notify their neighbors of the potential for disruptions in their property due to training and other exercises, and to protect flight patterns of aircraft departing or arriving at those bases.

Additionally, we see this bill as a valuable tool for Kansas instillations, especially in light of a second round of BRAC by the Pentagon in the near future.

Given our concerns, we would respectfully request your consideration of the following amendments which will limit the scope of the bill to our military instillations and provide protection to farm and ranch owners as they employ normally accepted agricultural practices on their property.

On P 1, Line 32, Insert:

(6) "Land used for agricultural purposes" shall have the meaning ascribed to it by KSA 75-2716 and amendments thereto.

On P 1, Line 28, after "(5) 'Property' means real property used as or contiguous to a military reservation," strike the remainder of the sentence.

On P 3, Line 23, Insert and renumber:

(i) A governing body creating or modifying a district shall not impose conditions or restrictions on any property located more than one mile away from the boundary of the property.

On P 3, Line 27, Insert and renumber:

(k) No provision of this act shall prohibit, hinder, or otherwise restrict the use of any land used for agricultural purposes, or require any change or modification in the use of such land as long as normally accepted agricultural practices are employed.

In conclusion, Kansas Farm Bureau respectfully urges your adoption of the suggested amendments preceding your favorable recommendation of HB 2558. Thank you, once again, for the opportunity to appear before you and share the policy of our members. KFB stands ready to assist you as you consider this important measure. Thank you.

**Kansas Legislature**

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**75-2716****Chapter 75.--STATE DEPARTMENTS; PUBLIC OFFICERS AND EMPLOYEES****Article 27.--STATE HISTORICAL SOCIETY**

**75-2716. Historic preservation; definitions.** As used in this act, unless the context otherwise requires:

(a) "Land used for agricultural purposes":

(1) Means land which is devoted to the production of plants, animals or horticultural products, including but not limited to forages; grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; or nursery, sod, floral, ornamental and greenhouse products;

(2) includes any road, water, watercourse and private way located upon or within the boundaries of such land and buildings, structures and machinery or equipment when attached to such land; and

(3) includes any farm home, including any associated farmyard, whenever any portion of such property is used for:

(A) Any of the activities listed in paragraph (1) of this subsection; or

(B) an agriculturally related business;

(4) includes any agricultural land used incidentally for recreational purposes; and

(5) includes any land used for agricultural purposes within the meaning of K.S.A. 12-758, 19-2908, 19-2921 and 19-2960 and amendments thereto.

Except as provided in paragraph (4), land used for agricultural purposes shall not include land which is used for recreational purposes, suburban residential acreages, rural homes, including any associated farmyards, whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing definition.

Land used for agricultural purposes which is located within 500 feet of a historic property shall be deemed to be located within the environs of such historic property.

(b) "Historic preservation" means the study, identification, protection, restoration and rehabilitation of buildings, structures, objects, districts, areas and sites significant in the history, architecture, archeology or culture of the state of Kansas, its communities or the nation.

(c) "Historic property" means any building, structure, object, district, area or site that is significant in the history, architecture, archeology or culture of the state of Kansas, its communities or the nation.

(d) "Person" means any individual, firm, association, organization, partnership, business, trust, corporation or company.

(e) "Project" includes: (1) Activities directly undertaken by the state or any political subdivision of the state, or any instrumentality thereof;

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(2) activities undertaken by a person which are supported in whole or in part through grants, subsidies, loans or other forms of financial assistance from the state or any political subdivision of the state, or any instrumentality thereof; and

(3) activities involving the issuance of a lease, permit, license, certificate or other entitlement for use, to any person by the state or any political subdivision of the state, or any instrumentality thereof.

(f) "Recreational purpose" shall have the meaning ascribed to it in K.S.A. 58-3202, and amendments thereto;

(g) "state or any political subdivision of the state" means the state of Kansas, any office, department, agency, authority, bureau, commission, board, institution, hospital, college or university of the state, or any county, township, city, school district, special district, regional agency, redevelopment agency or any other political subdivision of the state.

**History:** L. 1977, ch. 284, § 2; L. 1981, ch. 332, § 1; L. 1988, ch. 336, § 1; L. 2004, ch. 74, § 5; July 1.



Since 1894

To: House Committee on Environment  
Representative Joann Freeborn, Chair

From: Brent Haden, Assistant Counsel

Date: January 19, 2006

Re: Opposition to HB 2558

*The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.*

Good afternoon, Madame Chair and members of the House Committee on Environment. My name is Brent Haden, and I am the Assistant Counsel for the Kansas Livestock Association. KLA appreciates the opportunity to testify today regarding HB 2558, and its impact on landowners in Kansas.

KLA staff has examined the provisions of HB 2558, and cannot support HB 2558 in its current form. KLA understands that military operations located within the state have important and unique needs, and KLA is not opposed to providing land use protection to our military bases for the vital missions performed there. However, KLA is concerned that including state parks and lakes in this bill will allow some landowners and interests to unduly restrict the use of property by other landowners, and we would respectfully echo Farm Bureau's suggestions for amendments to this bill for the protection of agricultural practices. Those amendments are specifically as follows:

**On P 1, Line 32, Insert:**

**(6) "Land used for agricultural purposes" shall have the meaning ascribed to it by KSA 75-2716 and amendments thereto.**

**On P 1, Line 28, after "(5) 'Property' means real property used as or contiguous to a military reservation," strike the remainder of the sentence.**

**On P 3, Line 23, Insert and renumber:**

**(i) A governing body creating or modifying a district shall not impose conditions or restrictions on any property located more than one mile away from the boundary of the property.**

**On P 3, Line 27, Insert and renumber:**

**(k) No provision of this act shall prohibit, hinder, or otherwise restrict the use of any land used for agricultural purposes, or require any change or modification in the use of such land as long as normally accepted agricultural practices are employed.**

In conclusion, KLA respectfully asks for your support of the suggested amendments prior to your recommendation of HB 2558. KLA looks forward to working with each of you on this statute, and thanks you for the opportunity to appear before you this afternoon to discuss the concerns of our members.