

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Representative David J. Heinemann at
Chairperson

3:30 ~~xx~~ m./p.m. on February 28, 1983 in room 519-S of the Capitol.

All members were present except:

Representative Kent Ott (excused)

Committee staff present:

Ramon Powers, Research Department
Theresa Kiernan, Revisor of Statutes' Office
La Nelle Frey, Secretary to the Committee

Conferees appearing before the committee:

FINAL ACTION ON HB 2208

Chairman David Heinemann asked for discussion and action on HB 2208.

Representative Keith Farrar said he thought HB 2208 was a good bill as it is drafted. He noted that there had been concern about the bill, and that proposed amendments had been offered during the hearing. He said there was a concern about the terms "preponderance of evidence" and "clear and convincing". In that regard, Representative Farrar made a motion that HB 2208 be amended by striking the words "clear and convincing" and inserting "a preponderance of the" (see attachment 1). Representative Ron Fox seconded the motion.

Chairman Heinemann noted that these terms relate to the various degrees of proof required in trials regarding the burden that you have; clear and convincing is a greater burden to bear than merely a preponderance of.

Chairman Heinemann asked for discussion on the proposed amendment. There being none, the Chairman asked for a vote on the adoption of the amendment. The motion passed.

Representative Farrar made a motion that the Committee recommend HB 2208 be passed as amended. Representative Edgar Moore seconded the motion.

Representative Ben Foster noted that this legislation had been around a long time and was a bad piece of legislation. He said he did not think the Committee should pass HB 2208.

After brief discussion by several Committee members regarding clarification of parts of the bill, Chairman Heinemann asked for a vote on the motion. The motion passed. Representative Foster voted no.

FINAL ACTION ON SB 61

Chairman Heinemann reminded Committee members that at the February 23 committee meeting, the Committee had adopted two amendments to SB 61: one amendment clarifying language in the bill so the contracts would flow more easily between the Water Authority and the Director of the Water Office; and, one amendment to clarify the formula for calculation of components of price in SB 61 (see attachments 2 & 3). Noting that this is the current status of the bill in the Committee, the Chairman asked for discussion and action on SB 61.

Representative Ron Fox asked Committee members to refer to his handout relative to the major policy questions relating to SB 61 (see attachment 4). He noted it is important to realize that more than just the rates are being addressed in SB 61, policy questions are also being addressed. Representative Fox asked Ramon Powers, Committee staff member from the Research Department, to review these policy questions with the Committee.

Following Mr. Powers' review of the policy questions, Representative Fox made a motion to amend SB 61 by changing language to make sure that benefits as well as adverse impacts are treated equally with consideration of

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources,
room 519-S, Statehouse, at 3:30 ~~am~~/p.m. on February 28, 1983

the contracts, and by adding a new section which would clarify that any expenditure out of the State Conservation Fund will be subject to the appropriation acts (see attachment 5). Representative Foster seconded the motion. The motion was unanimously passed.

Representative Anita Niles noted that she liked SB 61 for the most part, but felt that if it was passed it would end up in the courts. She thought that cities which currently have water supply contracts with the state would have a grievance if the bill passed. Representative Niles made a motion to amend SB 61 by inserting a new subsection relating to contracts entered into prior to the effective date of SB 61 (see attachment 6). Representative Fred Rosenau seconded the motion.

Representative Keith Roe asked what affect this amendment would have on the bill.

Chairman Heinemann said SB 61 could not affect water purchase contracts heretofore made, and referred to Attorney General Opinion No. 83-13 (see attachment 7).

The Chairman asked for further discussion on the proposed amendment. There being none, Chairman Heinemann asked for a vote on the adoption of the amendment. The motion failed.

Representative Fox made a motion to amend SB 61 by making a technical clean-up in language in the bill (see attachment 8). Representative Foster seconded the motion. The motion passed.

After a brief discussion on the importance of this legislation, Representative Fox made a motion that the Committee recommend SB 61 be passed as amended. Representative Thomas Walker seconded the motion. The motion passed.

There being no further business to come before the Committee, the meeting adjourned at 4:20 p.m.

The next meeting of the Committee will be held March 3, 1983.

Rep. David J. Heinemann, Chairman

Date Feb 28 83

GUESTS

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

NAME	ADDRESS	ORGANIZATION
Ed Reinert		KS League Women Voters KS Sierra Club
Richard Wicks		KMRC
Jammy Johnson		Intern
BARRY GENTRY	TOPEKA	KS. ENGINEERS SOC.
John Henderson	"	K.S. Water Office
Dennis F. Schwartz	Topelka	Tri District Facility
LOWELL CASE	DENVER	MORIC
TIM HAGEMANN	LARKIN	L.P.G.
LON STANTON	TOPEKA	KPL
Joe HARKINS	TOPEKA	KWD

PROPOSED AMENDMENTS TO H.B. 2208

On page 1, in line 43, by striking "clear and convincing" and inserting "a preponderance of the";

Attachment 1
2-28-83

STATE OF KANSAS

SENATE CHAMBER

MR. PRESIDENT:

I move to amend Senate Bill No. 61 (As Amended by Senate Committee) as follows:

On page 6, in line 207, by striking "authority" and inserting "director"; in line 212, by striking "authority" and inserting "director";

On page 7, in line 249, by striking "authority" and inserting "director"; in line 254, by striking "authority" and inserting "director";

On page 8, in line 270, by striking "authority" and inserting "director"

Senator _____

Attachment 2
2-28-83

2-28-83

Ja Yelle

PASS1b1

Proposed amendment to SB 61 as amended by Senate Committee

On page 9, in line 324, before the semicolon by inserting "divided by the greater of: (A) Fifty percent of the total amount of water under contract from the state's conservation storage water supply capacity in the preceding year; or (B) the total amount of water withdrawn from the state's conservation storage water supply capacity in the preceding year"; in line 326, by striking all after "act"; in line 328, before the semicolon by inserting "divided by the greater of: (A) Fifty percent of the total amount of water under contract from the state's conservation storage water supply capacity in the preceding year; or (B) the total amount of water withdrawn from the state's conservation storage water supply capacity in the preceding year"; in line 331, by striking ". Such amount shall be"; in line 333, before the semicolon by inserting "divided by the greater of: (A) Fifty percent of the total amount of water under contract from the state's conservation storage water supply capacity in the preceding year; or (B) the total amount of water withdrawn from the state's conservation storage water supply capacity in the preceding year"

*Attachment 3
2-28-83*



MAJOR POLICY QUESTIONS RELATING TO SB 61

<u>ISSUE</u>	<u>PRESENT LAW</u>	<u>S.B. NO. 61</u>
1. Term of Contract	Not less than 10 yrs. nor more than 40 yrs.	Not less than 10 yrs. unless applicant desires
2. Price Range	Not less than 5¢ per 1,000 gal., nor more than 10¢	No limit
3. Minimum Payment	Minimum charge is 50% of total contracted for	50% of total contracted for and penalty on unused portion.
4. Price Adjustment	Rate adjusted on every 10th anniversary (or sooner)	The rate is adjusted annually
5. Contract Amount Adjust	—	Amount adjusted on sixth anniversary and annually thereafter. If contractor does not begin full payment and another user is willing to contract for the water.
6. Deferred Payment	Term may begin 2 yrs. after execution of contract if parties agree	Payment could be deferred for 3 yrs. or when use begins if use of water involves issuance of bonds, if parties agree
7. Development surcharge or depreciation reserve cost	—	2.5¢ per 1,000 gallons
8. Priority in sale of water	First in application, first in opportunity	Public interest determination by water authority
9. Who negotiates for the state?	Water Resources Board	Ks. Water Office with the approval of authority
10. Leg. Review of Contracts	Contracts submitted on first day of session - Leg. has 60 days to disapprove	Contracts submitted in first 30 days, next 60 days for legislative disapproval
11. Charges for Surplus Water		
12. Out of State Purchase and Sale		

PROPOSED AMENDMENT TO S.B. 61
As Amended by Senate Committee

On page 11, by striking all in line 394;

And by redesignating subsections (5) to (10), inclusive, as subsections (4) to (9), inclusive, respectively;

Also on page 11, in line 396, following "benefits" by inserting "or adverse impacts";

On page 13, in line 462, by striking "Expenditures"; by striking all in lines 463 and 464 and inserting the following:
"All expenditures from the state conservation storage water supply fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of the Kansas water office or by a person or persons designated by the director.";

see attachment 5
2-28-83

PROPOSED AMENDMENTS TO H.B. 61
2208.
(As Amended by Senate Committee)

On page 10, following line 346, by inserting a new subsection to read as follows:

"(c) This section shall not apply to any contract entered into prior to the effective date of this act.";

not adopted

attachment 6
2-28-83



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 1, 1983

MAIN PHONE 1-913-236-2215
CONSUMER PROTECTION 236-3751

Southard - 3751

ATTORNEY GENERAL OPINION NO. 83- 13

The Honorable Charlie L. Angell
Vice-President of the Senate
Senate Chamber, State Capitol
Topeka, Kansas 66612

Re: Waters and Watercourses -- Water Plan Storage --
Contracts for Withdrawal and Use of Water Held by
State; Adjustment of Terms

Synopsis: Pursuant to the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., the Kansas Water Resources Board and its successor, the Kansas Water Office, are empowered to enter into contracts for the withdrawal and use of waters held in storage by the state. Waters so withdrawn and used by a purchaser are subject to a charge fixed by the respective state agency not less than 5 cents nor more than 10 cents per one thousand gallons of water. Such contracts, which may have a term of up to 40 years, must contain a provision by which such charges are reviewed at least every ten years, although the parties to the contract can agree to a more frequent review. Although the Water Office may establish on an annual basis the rate used for all contracts entered into during that year (K.S.A. 82a-1308), such rate may not be altered thereafter, except as provided by the contract. Accordingly, the provisions of 1983 Senate Bill No. 61 which provide for annual adjustments of the water charge may not be applied to contracts entered into and approved by the legislature prior to the effective date of the bill. Cited herein: K.S.A. 1982 Supp. 74-2615, K.S.A. 82a-1305, 82a-1306, 82a-1308, 82a-1316, 1983 Senate Bill No. 61.

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attachment 7
2-28-83

Charlie L. Angell
Page Two

Dear Senator Angell:

As Vice-President of the Kansas Senate, you request our opinion as to the effect of 1983 Senate Bill No. 61 upon water purchase contracts now in effect. Specifically, you inquire whether certain provisions of the bill, which call for annual adjustment of the charges paid by purchasers of water from the state, are effective as to contracts entered into under existing statutes. At issue is the price to be paid by municipal and industrial users of water that is stored by the state in reservoirs constructed by the U.S. Corps of Engineers.

The authority to make such contracts is currently vested in the Kansas Water Office, the successor agency to the Kansas Water Resources Board (K.S.A. 1982 Supp. 74-2615), and is derived from the State Water Plan Storage Act, K.S.A. 82a-1301 et seq. At K.S.A. 82a-1305, it is provided:

"Whenever the board [water office] finds that a proposed withdrawal and use of water will advance the purposes set forth in article 9 of chapter 82a of Kansas Statutes Annotated, it may enter into written contracts with any persons for withdrawal and use of waters from conservation water supply capacity committed to the state."

Required provisions of such contracts are set forth by the succeeding section, K.S.A. 82a-1306, and concern such items as the rate charged per one thousand gallons, minimum charges, periodic adjusting of rates and provisions for the apportionment of water if total demand exceeds the available supply in a particular year. In particular, subsection (a) of the statute allows the water office to set the charge per one thousand gallons at a level between 5 and 10 cents, while subsection (c) provides for adjustments in price at intervals of every 10 years during the life of the contract. However, this latter language is directory rather than mandatory, and has been construed by this office to allow for more frequent adjustments if the parties so contract. Attorney General Opinion No. 82-34. For example, several contracts presented to the 1982 Legislature provided for review and possible adjustment at five year intervals. These contracts were not disapproved by the legislature pursuant to K.S.A. 82a-1307, and therefore are in effect at this time.

Each of these contracts, as well as numerous others made in preceding years, was made subject to the Water Plan Storage Act, K.S.A. 82a-1301 et seq. In addition to K.S.A. 82a-1305 and 82a-1306, another provision so included in the contracts by reference is K.S.A. 82a-1308, which states in pertinent part:

"For each calendar year, the board shall fix the rate provided for in paragraph (a) of K.S.A. 82a-1306 within the limits there provided. The rate so fixed for each year shall be the same for each contract under K.S.A. 82a-1305 for withdrawal from every reservoir. The rate so fixed for each year shall be the same for every contract under K.S.A. 82a-1305 executed in that calendar year. The rate in effect at the time of execution of any contract under K.S.A. 82a-1305, as adjusted under paragraph (c) of K.S.A. 82a-1306, shall be the rate applicable for such contract during the entire term thereof." (Emphasis added.)

Further, while the terms of these contracts can, if desired, be amended by the parties, no such amendment can change the rate per thousand gallons set by the original contract or as subsequently amended. (K.S.A. 82a-1316.) Provisions to this effect are specifically set forth in the contracts which have previously been agreed to by the Water Office (and the Water Resources Board), and reviewed by the legislature.

In light of the above, it would be our opinion that any changes made in the provisions of the Water Plan Storage Act by 1983 Senate Bill No. 61 could not affect water purchase contracts heretofore made. Specifically, the language contained therein in Sections 5, 6 and 7 would be of no effect on water rates set by contracts made prior to the measure's effective date which were not disapproved by the legislature. In limiting the power of either party to make unilateral amendments, these contracts accurately reflect the statutes in existence at the time of their inception. As was recognized in Newlon v. Allen, 106 Kan. 526, 527 (1920):

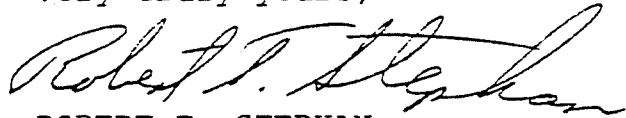
"As already seen, a state may, in the absence of constitutional restrictions, dispose of its property like any other owner, and when acting not in its capacity as a sovereign, but in its proprietary capacity as the owner of the lands, it is bound by the same rules as those which it applies to its citizens.

"A state entering into contracts lays aside its attributes of sovereignty, and binds itself substantially as one of its citizens does when he enters into a contract, and, in general, its contracts are interpreted as the contracts of individuals are, and controlled by the same laws."

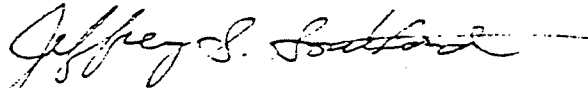
Charlie L. Angell
Page Four

In conclusion, pursuant to the State Water Plan Storage Act, K.S.A. 82a-1301 et seq., the Kansas Water Resources Board and its successor, the Kansas Water Office, are empowered to enter into contracts for the withdrawal and use of waters held in storage by the state. Waters so withdrawn and used by a purchaser are subject to a charge fixed by the respective state agency not less than 5 cents nor more than 10 cents per one thousand gallons of water. Such contracts, which may have a term of up to 40 years, must contain a provision by which such charges are reviewed at least every ten years, although the parties to the contract can agree to a more frequent review. Although the Water Office may establish on an annual basis the rate used for all contracts entered into during that year (K.S.A. 82a-1308), such rate may not be altered thereafter, except as provided by the contract. Accordingly, the provisions of 1983 Senate Bill No. 61 which provide for annual adjustments of the water charge may not be applied to contracts entered into and approved by the legislature prior to the effective date of the bill.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle

PROPOSED AMENDMENT TO S.B. 61
As Amended by Senate Committee

On page 11, in line 390, following "the" by inserting
"noncontracted";

On page 10, in line 357, delete the word "executive";

attachment 8
2-28-83