

Approved April 20, 1983
Date

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 ~~a.m.~~/p.m. on March 24, 1983 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Ramon Powers, Research Department
Theresa Kiernan, Revisor of Statutes' Office

Conferees appearing before the committee:

Representative Sandy Duncan

SCR 1609 - A concurrent resolution concerning underground injection control rejecting Kansas administrative regulation 28-46-10, as adopted by the secretary of health and environment and filed with the revisor of statutes on December 15, 1982.

Representative Sandy Duncan said that in a committee review of these regulations on underground injection control, it was found that one regulation had been changed--it was a policy change. He said the rest of the changes simply update the correct adoption by reference. He noted that in this particular case, they found that the old language said they could issue a permit, but to not exceed ten years. Under the new language it said the permit had to be ten years, and it was asked why do you have to do that? He noted that in testimony from the agency in front of their committee, it was pointed out that you could not be more restrictive in state regulations than federal law. I questioned that and so did other committee members. Independent investigation by the committee, supported by staff, found that we could in fact be more restrictive. The committee felt the original way the regulation was written was the best way.

He said, if you have a person who has abused their permit and done a bad job, the only way under this law if you have done a bad job, if you qualified for a permit, you just barely get another permit for another full ten years. He said this resolution would allow the state to say if you have a problem with permittee, you could issue a permit for one year, two years, or whatever, so you can check up on it more frequently. We think we have demonstrated that you can be more restrictive than the federal regulations and what we are doing is returning it to the language originally written by the agency. This makes our regulations more stringent and a little better control over the wells.

FINAL ACTION ON SCR 1609

Representative Ron Fox made a motion that the Committee recommend SCR 1609 be adopted. Representative Betty Jo Charlton seconded the motion. The motion was unanimously passed.

FINAL ACTION ON SB 62

Chairman Heinemann noted that the Subcommittee on Natural Resources had been working the past week on a House Substitute for SB 62. He asked Ramon Powers, Committee staff from the Research Department, to provide explanation of the substitute draft for Committee members. (see attachment 1).

Mr. Powers said that for comparison purposes, and to understand what changes were made, Committee members might want to follow along on SB 62 in its present printed form, in addition to the substitute draft. He noted that he would make note of all of the changes as he explained the substitute, section-by-section.

Throughout explanation of the two versions of the bill, Committee members

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources,
room 519-S, Statehouse, at 3:30 ~~xx~~ p.m. on March 24, 1983.

and staff discussed the proposed changes and sought clarity on specific issues.

Representative Ken Grotewiel made a motion that House Substitute for SB 62 be amended by striking "3,000" on page 1, line 6, and inserting "1,000". Representative Ginger Barr seconded the motion. On a show-of-hand vote, the motion passed.

Representative Fred Rosenau made a motion that the Committee recommend House Substitute for SB 62 be passed as amended. Representative Ron Fox seconded the motion. The motion was unanimously passed.

There being no further business to come before the Committee, the meeting adjourned at 5:00 p.m.

The next meeting of the Committee will be held March 28, 1983

Rep. David J. Heinemann, Chairman

Date 3-24-83

GUESTS

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

NAME

ADDRESS

ORGANIZATION

NAME	ADDRESS	ORGANIZATION
JOE HARKINS	TOPEKA	KWO
Chris McKenzie	TOPEKA	League of Ks. Municipal
Selen Stephens	Prairie Village	League Women Voters
Myrna Stanger	Shawnee	SWV
Kathy Wedel	Topeka	Ks. Natural Resource Council
Ed Reupert		Ks League women voters
JERRY COVARD	TOPEKA	KGE
LON STANTON	TOPEKA	KPL
Guaco Scherer	Lawrence	AP
Rosemary O'Leary	TOPEKA	Ks. Corporation Commission

PROPOSED HOUSE Substitute for SENATE BILL NO. 62

1 AN ACT concerning water; relating to the approval of certain
2 water transfers.

3 Be it enacted by the Legislature of the State of Kansas:

4 Section 1. As used in this act:

5 (a) "Water transfer" means the diversion and transportation
6 of water in a quantity of 3,000 acre feet or more per year for
7 beneficial use outside a ten-mile radius from the point of
8 diversion of such water.

9 (b) "Point of diversion" means:

10 (1) The point where the longitudinal axis of the dam
11 crosses the center line of the stream in the case of a reservoir;

12 (2) the location of the headgate or intake in the case of a
13 direct diversion from a river, stream or other watercourse;

14 (3) the location of a well in the case of groundwater
15 diversion;

16 (4) the geographical center of the points of diversion in
17 the case of multiple diversion points.

18 (c) "Chief engineer" means the chief engineer of the
19 division of water resources of the state board of agriculture.

20 (d) "Secretary" means the secretary of the department of
21 health and environment.

22 (e) "Director" means the director of the Kansas water
23 office.

24 (f) "Authority" means the Kansas water authority.

25 (g) "Panel" means the water transfer hearing panel.

26 (h) "Party" means any person who intervened at the public
27 hearing held pursuant to section 3, and who presented testimony
28 of witnesses under oath, conducted cross examination, presented
29 oral arguments and filed written briefs. "Party" does not mean a
30 person who made a limited appearance for the purpose of

Attachment 1
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1 presenting a statement for or against the water transfer.

2 (i) "District court" means the district court of Shawnee
3 county.

4 Sec. 2. (a) No person shall make a water transfer in this
5 state unless and until the transfer is approved pursuant to the
6 provisions of this act. No water transfer shall be approved
7 which would reduce the amount of water required to meet the
8 present or any reasonably foreseeable future beneficial use of
9 water by present or future users in the area from which the water
10 is to be taken for transfer, unless (1) the panel determines that
11 the benefits to the state for approving the transfer outweigh the
12 benefits to the state for not approving the transfer; (2) the
13 chief engineer recommends to the authority and the authority
14 concurs that an emergency exists which affects the public health,
15 safety or welfare; or (3) the governor has declared that an
16 emergency exists which affects the public health, safety or
17 welfare. Whenever an emergency exists, a water transfer may be
18 approved on a temporary basis for a period of time not to exceed
19 one year under rules and regulations adopted by the chief
20 engineer. The emergency approval shall be subject to the terms,
21 conditions and limitations specified by the chief engineer.

22 (b) No water transfer shall be approved under the
23 provisions of this act if such transfer would impair water
24 reservation rights, vested rights, appropriation rights or prior
25 applications for permit to appropriate water.

26 Sec. 3. (a) Any person desiring to make a water transfer
27 shall file, with the chief engineer, an application in the form
28 required by rules and regulations adopted by the chief engineer.
29 If the application is found to be insufficient to enable the
30 panel to determine the source, nature and amount of the proposed
31 transfer, it shall be returned for correction or completion or
32 for any other necessary information. This act shall not be
33 construed as to exempt the applicant from complying with the
34 provisions of the Kansas water appropriation act or the state

1 water plan storage act, whichever is applicable.

2 (b) Within 60 days of receipt of a sufficient application
3 for a water transfer pursuant to this act, the chief engineer
4 shall convene and conduct a hearing thereon. At such hearing, the
5 panel shall consider the application and shall take testimony,
6 hear oral arguments and accept all other evidence offered to
7 determine whether to approve the proposed water transfer.

8 If it is determined to be in the best interest of the state,
9 the chief engineer may convene and conduct such a hearing within
10 60 days of receipt of (1) an application to appropriate water
11 pursuant to the Kansas water appropriation act or (2) a proposed
12 contract for the sale of water from the state's conservation
13 storage water supply capacity even though such diversion and
14 transportation of water is not a water transfer as defined by
15 section 1.

16 (c) The panel shall consist of the chief engineer, the
17 director and the secretary or the director of the division of
18 environment of the department of health and environment if
19 designated by the secretary. The chief engineer shall serve as
20 the chairperson of the panel. All actions of the panel shall be
21 taken by a majority of the members thereof. The panel shall have
22 all powers necessary to conduct the hearings, make its findings
23 and effectuate the provisions of this act. The hearing shall be
24 conducted in a prudent and timely manner.

25 (d) To determine whether the benefits to the state for
26 approving the transfer outweigh the benefits to the state for not
27 approving the transfer, the panel shall consider all matters
28 pertaining thereto, including specifically:

29 (1) Any current beneficial use being made of the water
30 proposed to be diverted, including minimum desirable streamflow
31 requirements;

32 (2) any reasonably foreseeable future beneficial use of the
33 water;

34 (3) the economic, environmental, public health and welfare
35 and other impacts of approving or denying the transfer of the

1 water;

2 (4) alternative sources of water available to the applicant
3 and present or future users for any beneficial use;

4 (5) the proposed plan of design, construction and operation
5 of any works or facilities used in conjunction with carrying the
6 water from the point of diversion. The plan shall be in
7 sufficient detail to enable all parties to understand the impacts
8 of the proposed water transfer; and

9 (6) conservation practice implementation plans for the use
10 of water currently available to and being used by the applicant
11 and for the use of the water proposed to be transferred; and

12 (7) conservation plans and practices or the need for such
13 plans and practices of persons protesting or potentially affected
14 by the proposed transfer.

15 (e) Any person shall be permitted to appear and testify at
16 any such hearing upon the terms and conditions determined by the
17 chief engineer.

18 (f) Notice of any such hearing shall be published in the
19 Kansas register. Such notice shall be published at least 15 days
20 prior to the date of the hearing.

21 (g) The record of the hearing and findings of fact shall be
22 public records and open for inspection at the office of the chief
23 engineer. The panel shall assess to the applicant all costs of
24 obtaining a court reporter for the hearing and transcribing the
25 transcript of the hearing. Certified transcripts of the hearing
26 shall be provided at the expense of those requesting same. A
27 transcript shall be provided to the chairperson of the authority.

28 Sec. 4. (a) Within 90 days following the conclusion of the
29 hearing, the panel shall approve or disapprove the proposed water
30 transfer and shall send a copy of its decision and any dissent
31 thereto to the authority. The panel's decision shall specify the
32 reasons for such decision, including findings of fact relating to
33 each of the factors set forth in subsection (d) of section 3.
34 The findings shall be documented by reference to specific
35 portions of the hearing record and to any other sources used in

1 making the decision. The panel may approve a transfer of a
2 smaller amount of water than requested and may approve the
3 application upon such terms, conditions and limitations as it
4 deems necessary for the protection of the public interest of the
5 state as a whole.

6 (b) The chief engineer shall send the panel's decision to
7 the authority. Within 90 days of receipt of the panel's
8 decision, the authority shall review the transcript of the
9 hearing and the panel's findings and determine whether to concur
10 or nonconcur in the panel's decision and shall send written
11 notice of its concurring or nonconcurring opinion to the chief
12 engineer and to all other parties. If the authority does not
13 concur in the panel's decision, it shall include in its
14 nonconcurring opinion the specific reasons therefor.

15 (c) If the panel approves the water transfer and if there
16 is no appeal pending therefrom, the chief engineer shall submit
17 the panel's decision and a copy of the authority's concurring or
18 nonconcurring opinion to the legislature for review as provided
19 for in K.S.A. 82a-1301 et seq., and amendments thereto. Absent
20 legislative disapproval, the chief engineer shall issue the order
21 approving the transfer.

22 (d) Any party aggrieved by the panel's decision to approve
23 or disapprove the proposed water transfer may appeal the decision
24 in the manner provided by section 5.

25 Sec. 5. (a) From and after the effective date of this act,
26 the provisions of this section shall govern exclusively the
27 manner in which any appeal from the panel's decision is made.

28 (b) All appeals from the panel's decision shall be filed
29 with the district court. The attorney general of the state of
30 Kansas shall represent the panel in any appellate procedure.

31 (c) Not later than 30 days after the date of the panel's
32 decision, any party may apply to the district court for a review
33 thereof. The application for review shall state the specific
34 facts upon which the appeal for review is based. Upon application
35 for review, the clerk of the district court shall serve a copy of
36 such application upon the chief engineer. The chief engineer

1 shall notify, by prepaid first class mail, all parties that an
2 application for review has been filed. The chief engineer shall
3 transmit to the clerk a certified transcript of the proceedings
4 before the panel, the panel's findings of fact and the
5 authority's concurring or nonconcurring opinion.

6 (d) The district court shall review the certified
7 transcript of the hearing and the panel's findings for the sole
8 purpose of determining whether:

9 (1) The panel's decision was based upon sufficient
10 evidence, or

11 (2) the panel's decision was arbitrary or capricious or
12 fraudulent.

13 (e) The review proceedings shall have precedence in the
14 district court and shall be heard by the court without a jury.
15 Except as provided by this section, the procedure for review
16 shall be the same as in other civil actions.

17 (f) The decision of the district court may be appealed in
18 the same manner as other civil actions. Appellate proceedings
19 shall have precedence in the court of appeals and in the state
20 supreme court. Except as provided by this section, the procedure
21 upon appeal shall be the same as in other civil actions.

22 (g) Any findings of fact made by the panel shall be deemed
23 conclusive unless it is clearly shown to the court that the
24 findings are not supported by substantial evidence.

25 Sec. 6. The chief engineer shall adopt all rules and
26 regulations necessary to effectuate and administer the provisions
27 of this act.

28 Sec. 7. This act shall take effect and be in force from and
29 after its publication in the Kansas register.