Approved March 18, 1986
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Representative Ron Fox at
Chairperson

3:30 ~~a.m.~~/p.m. on March 4, 1986 in room 526-S of the Capitol.

All members were present except:

Representative Barr (excused)

Committee staff present:

Ramon Powers, Legislative Research Department
Theresa Kiernan, Revisor of Statutes' Office
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

No conferees.

The meeting was called to order by Chairman Fox. On taking up the minutes of February 24, Representative Grotewiel asked that Representative Helgerson's remarks be corrected. Otherwise, the minutes were considered adopted.

The Chairman made several announcements relative to committee and subcommittee meetings for the rest of the week. He mentioned several documents which had been passed out for the committee's information: a memorandum dated February 25, 1986, dealing with the Joint Oil and Gas Program, (See Attachment 1) an Annual Report of the Kansas Commission on Applied Remote Sensing, (See Attachment 2) and a Memorandum on the Municipal Electric Utilities and State Corporation Commission Jurisdiction, dated February 21, 1986. (See Attachment 3)

Turning to House Bill 2738--Municipal energy agency act, the Chairman called attention to a letter from Gaar & Bell, Attorneys at Law (See Attachment 4) and a letter from Louis Stroup, Jr., Executive Director of Kansas Municipal Utilities, Inc. relative to proposed amendments in the bill. (See Attachment 5)

Representative Foster moved, seconded by Representative Sutter, to reinsert the language that had been struck in lines 42 and 43 of the Act. The motion carried.

Representative Patrick made a conceptual motion to amend House Bill 2738 to place municipal utilities under the Power Plant Siting Act and the Transmission Line Siting Act. Representative Guldner seconded the motion.

Representative Ott offered a substitute motion, proposing that if we put municipal utilities under the Power Plant Siting Act, it would only apply to electrical generating facilities over 25 megawatt capacity and it would not apply to an existing facility if they remodel, recondition, or retrofit an existing physical plant. There was no second.

Representative Foster made a substitute motion to recommend House Bill 2738 favorably as amended. Representative Sutter seconded. Discussion followed. A vote was taken and the motion failed.

Discussion on Representative Patrick's original motion to amend followed. Representative Ott said that he still would like to see his amendment on the bill, so that a municipality which had a small system would not be subject to KCC control. One of the things that Representative Foster alluded to was the cost of hearings; the hearing cost presents a greater burden to them than for one of the major utilities, such as KG&E. With such an amendment, Representative Ott said that he would be willing to accept this bill, but without the amendment, he would have to oppose it.

There was further discussion in which Representative Guldner spoke in favor of the bill and Representative Ott opposed it.

A vote was taken on Representative Patrick's motion to amend to place municipals under the Power Plant Siting Act and Transmission Line Siting Act. Division was called for. By show of hands, a majority of 12 were in favor. The motion passed.

Representative Spaniol moved to report House Bill 2738 favorably for passage as amended. Representative Acheson seconded. The motion carried. Representative Ott voted no.

The meeting was adjourned at 4:10 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held on March 5, 1986 at 3:30 p.m. in Room 526-S.

Date: March 4, 1986

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Lean Giese	Panhandle Eastern	K.C., MO	
Mike Peters	Wash. Law School	Topeka KS	
TREVA POTTER	NORTHERN NAT. GAS	TOPEKA	
Gil Hanson	KMEA	Mission	
JOE L. NORTON	KMEA	WICHITA	
Louie Stroup	KMU	McPherson	
Rick Kready	KPL Gas Service	Topeka	296-6474
Randy Rodgers	Empire District Electric	Columbus	
Jerry Coonrod	KGE	Topeka	
Denny Burgess	KEC	Topeka	
Rich McKee	KLA	Topeka	

MEMORANDUM

February 25, 1986

TO: House Energy and Natural Resources Committee

FROM: Kansas Legislative Research Department

RE: The Joint Program to Protect Groundwater from Oil and Gas Activities

Pre-Twentieth Century Regulations

The origins of the petroleum industry in Kansas date from the last half of the nineteenth century. In Miami County, oil flowed from the rocks and soil in abundance, according to accounts published in 1865 and 1866. Later in the 1860s, there were discoveries of natural gas around Fort Scott and the gas was used by the city's public utility. Wells for oil were drilled around Paola in the 1880s and for gas around Iola in the 1870s. One of the most important oil finds in the 19th century in Kansas was a well drilled at Neodesha in 1893; the well produced 20 barrels of oil a day. Chanute became the state's first oil city, to be replaced by Augusta after 1903 and El Dorado after 1914. In the 20th century, oil exploration fanned out across the state with the major discoveries in west-central Kansas around Russell in the 1920s. The major gas discovery in the state was the Hugoton field in southwest Kansas where drilling began in the 1930s. The exploration for oil and natural gas continue to the present day with oil production expanding into northeast and northwest Kansas in the past decade.

The first legislation regulating the oil and gas industry in Kansas was passed in 1889 which required inspection by state officials of any "petroleum, oil, or oil fluid" before being offered for sale for illuminating purposes. In that same year, the city of Paola was authorized by the Legislature to drill and operate wells for a municipal gas supply.

Conservation legislation soon followed when the 1891 Legislature passed a law to require the casing of oil and natural gas wells. Also passed in that same session was a requirement that wells be filled and plugged before pulling the casing. The penalty for violating either of the two statutes was a misdemeanor fine of $500 that would go to the school fund in the county where the well was situated.

Early Twentieth Century Regulations

The 1919 Legislature passed a law placing the burden to properly case or plug a well on the owner or the operator of the well. In addition, the 1919 Act required the person casing or plugging a well "to exclude all salt water or water containing minerals in appreciable quantities from both upper and lower

veins or strata holding water suitable for domestic purposes." This statute appears to be the first enactment specifically designed to protect fresh water from salt water in the drilling of oil or gas wells.*

The 1891 plugging statute was amended in 1931 to expand the responsibility of plugging a well to other individuals than the owner or operator of the well.

The 1931 Session also produced the first oil statutes concerning the regulation of production to prevent waste and to protect correlative rights. In defining waste of oil the predecessor agency to the State Corporation Commission, the Public Service Commission, was authorized to adopt regulations to prevent waste and protect all fresh-water strata, and oil-and-gas bearing strata encountered in any well drilled for or producing oil."

State Corporation Commission and Board of Health -- Involvement in Surface and Groundwater Protection

The 1935 Legislature replaced the Public Service Commission with the presently constituted State Corporation Commission with authority over the production of oil. In addition, the Legislature gave the new Commission authority to regulate the production of natural gas including the drilling of gas wells. In a separate enactment, the Legislature required the owner or operator of any well drilled for oil or gas, before abandoning the well to give written notice to the State Corporation Commission of the intention to abandon a well and to plug the well in accordance with the rules and regulations of the Commission. Within 15 days of the plugging, a report was required to be filed "setting forth in detail the method ... used in plugging the well." It should be noted that the 1891 plugging statute was not repealed until 1937.

The 1935 Legislature also authorized the owner or operator of any oil or gas well that produced saltwater to "return said waters to any horizon from which such salt water may have been produced, or to any other horizon which contains or had previously contained salt water ...." Approval of the State Corporation Commission was required for the operation of such disposal wells.

In 1933, the State Board of Health was directed to prevent stream pollution from domestic and industrial sewage wastes; however, in drafting regulations to enforce the Act, the Board was not to "prohibit the storage of salt water, oil or refuse in tanks, pipe lines, or ponds." An Oil Field Section in the Board of Health was established in 1934.

---

* Raymond Moore, State Geologist during the early years of this century, described in a State Geological Survey publication in 1917 the casing of an oil or gas well. He noted that casing was to protect the hole from caving in and keeping out water and in sandy soil a conductor box or large iron pipe is sunk to bed rock.

During the 1930s and into the 1940s, there was increasing concern about the effect of salt water ponds on water quality, particularly the quality of surface waters in the state. Finally, in 1945, the Legislature amended the 1933 Board of Health statute (K.S.A. 65-171d) to prohibit the storage of salt water or mineral brines in ponds whenever it was found that such ponds were likely to cause pollution. An extensive procedure was required of the Board of Health before making the determination that a salt water pond would likely cause pollution.*

Section 2 of the 1945 legislation permitting the Board of Health to regulate salt water ponds contained a provision for joint State Corporation Commission and State Board of Health approval of the "plans and specifications" for the disposal of oil and gas field brines and mineralized waters. The Commission was authorized to determine that the methods of disposal would not result in "the loss or waste of gas or petroleum resources." The Board was authorized to determine that the proposed method of disposal would protect the water resources of the state from preventable pollution. This 1945 enactment was the first formal authorization for joint agency jurisdiction involving oil and gas activities and the protection of the waters of the state. Joint jurisdiction over disposal and injection wells has continued to the present.

The joint agency responsibility for protecting fresh water strata from pollution was enhanced by the passage of S.B. 168 in 1949. This bill authorized anyone who suspected that an abandoned well was likely to cause pollution to file a complaint with either the State Corporation Commission or the State Board of Health. The Board of Health was to promptly forward to the Commission any complaints received. The Commission was given power to investigate the complaint to determine whether the abandoned well was polluting or was likely to pollute any fresh water supply. In 1953, the Legislature deleted reference to the Board of Health in this statute. In 1971, the Legislature expanded the authority of the Commission in initiating investigations of pollution caused by abandoned wells, including defining who would be legally responsible for plugging such abandoned wells. Authority was given the Commission to assess a tax to pay for plugging certain abandoned wells.

---

* In a study entitled Kansas River Basin Water Pollution Investigation by the U.S. Public Health Service, issued in 1949, the authors note that the large oil fields in the basin, around Russell County, developed before the State Board of Health's oil field waste disposal program was organized. The report notes that the State Health Department had developed an active and successful brine disposal program. According to the report, "Gradual improvement in water quality may result in future years as the older wells are abandoned and as progress continues in the State brine disposal program." (p. 196.)

Refined Regulations Governing Protection of Groundwater

In 1953, the Legislature required anyone drilling seismic, core, or exploratory holes penetrating any salt water formation to notify the Commission within 60 days of the commencement of drilling. Such holes had to be plugged in accordance with Commission standards. Such persons were required to be licensed by the Commission.

Perhaps the most important addition to the statutes in 1953 was a provision that the Commission could conduct a hearing if it found reasonable cause to believe, or received a filed complaint charging that a licensee had (1) failed to plug a seismic or core hold so as to not properly protect all fresh water-bearing formations, or (2) failed to plug an abandoned oil or gas well or exploratory hole, thus allowing water to enter any oil or gas bearing formation or any underground or surface water suitable for domestic or irrigation purposes. If a hearing disclosed evidence of violation, an individual's license could be revoked.

A 1957 Act required that an individual file an intent to drill after July 1, 1957, before drilling any well for the exploration, discovery, and production of oil, gas, or other minerals. This requirement of prior approval for the drilling of oil and gas wells allowed the Commission to set standards for the casing and plugging of wells before drilling actually commenced. A 1971 amendment required at least five days advance filing of an intent to drill before drilling commenced. The 1957 Act also gave the Commission authority to promulgate rules and regulations setting standards for the cementing of surface pipe to protect fresh water and for additional pipe to protect usable water. In addition, the statute defined the composition of fresh water.

In 1957, the Legislature amended K.S.A. 65-171d, the Board of Health's basic statute for protecting the state's water, authorizing the State Board of Health to issue rules and regulations "necessary to protect surface and subsurface water from pollution by oil, gas, salt water injection well, or underground storage reservoirs." In addition, the storage or disposal of salt water, oil, or refuse in surface ponds was prohibited unless a permit was acquired from the State Board of Health. Surface ponds in use on April 7, 1957 could continue without a permit until January 1, 1958. In the 1950s, the use of unlined surface ponds for brine disposal was prohibited.

Also, in 1957, the Board of Health was authorized to prescribe the minimum depth at which salt water could be disposed. The Commission enforced these standards in its permitting of salt water disposal and injection wells. It should be noted that both the Commission and the Board had responsibility to control, abate, and clean up surface pollution resulting from oil and gas activities (K.S.A. 55-140a, 55-121, and 65-171d).

Changes in the 1970s

In the 1970s, there appears to have been few legislative changes in the oil and gas statutes relating to the protection of groundwater. Organizationally, the newly-created Department of Health and Environment (1975) through

the Bureau of Oil Field and Environmental Geology administered regulations pertaining to the protection of groundwater. The Governor's Task Force on Water, created in 1976-77 proposed that since the plugging of shallow seismic holes affects the quality of groundwater, the plugging procedures adopted by the Department of Health and Environment should be used instead of the Commission's procedures.

The 208 Water Quality Plan developed by the Department of Health and Environment and adopted by the Legislature in 1979 contained three recommendations concerning petroleum activities which included:

1. continuation of the existing system of permits issued by the Kansas Division of Environment for oil and gas operations and for water well contractors;

2. implementation of additional controls, as required by the Underground Injection Control provisions of the Clean Drinking Water Act; and

3. expansion of statutory authority to require individuals responsible for oil or hazardous materials spillage to assume financial responsibility for cleanup.

State Groundwater Quality Management Plan

With the adoption of the State Water Quality Management Plan in 1979, the Legislature authorized the development of a State Groundwater Quality Management Plan. The Department initiated work on that Plan in 1979, and in January of 1982, the Plan was submitted to the Legislature. The Plan included several legislative policy recommendations:

-- Usable waters should be afforded the same protection as fresh waters.

-- Penalties for polluting groundwater should be based on felony or civil statutes.

-- Oil field history and geologic studies should be required before allowing repressuring of an oil or gas field.

-- The penalties should be consistent in order to deter groundwater pollution.

-- Procedures, techniques, and materials used to set and cement surface casing and plugging should be based on current best practical technology and not on regulations which are infrequently reviewed.

-- The Legislature should "sunset" the rules and regulations to force technical review.

-- The improved supervision of drillers and service companies is necessary to ensure an effective groundwater protection program.

-- Stringent rules governing the use of emergency brine ponds should be enforced.

-- It is impractical to provide technical supervision at "the time of" plugging.

-- The state should drill wells on a selective basis to determine the integrity of the plugs. The question is who should pay?

-- A driller and the service company should be required to verify the plugging of a well.

-- The intent to drill and production fees should be increased substantially with the funds set aside to operate the existing and proposed regulatory programs.

Kansas Bureau of Investigation
Report on Well Plugging

During the period when the Groundwater Management Plan was being developed, the Legislature was becoming concerned with the issue of protecting groundwater from oil and gas activities. In April, 1981, the Kansas Bureau of Investigation (KBI) released a report entitled "Investigation of State Supervision of Regulations Concerning Well Plugging Methods and Procedures," as part of the Bureau's testimony before the Senate Energy and Natural Resources Committee. The investigation had been initiated in response to information that certain state employees failed to properly inspect the plugging of oil and gas wells and that bribery may have occurred in this connection. Although the KBI investigation disclosed several violations of regulations, the allegations of bribery were not confirmed. The primary problem in plugging operations, according to the KBI report, concerned the lack of training of plugging personnel and the absence of standard operating procedure for such personnel.

1981 Interim Committee Report

In the 1981 interim, the Special Committee on Energy and Natural Resources was directed to investigate problems resulting from the improper plugging of oil, gas, and water wells and review the statutes and rules and regulations governing that activity along with the capability of the state to protect the fresh groundwater and surface waters. The Committee was also directed to review the problems of land subsidence resulting from improperly plugged wells and certain types of mining processes and the use of salt formations to store propane gas which have led to environmental contamination.

During the interim, the Chairman of the Commission and the Secretary of the Department proposed legislation for formalizing a joint program with joint legislative authority to manage a program for the protection of groundwater. The Chairman and the Secretary noted that the same protection should be provided for usable waters that is now afforded fresh waters. In addition,

regulatory requirements for drilling practices were articulated, as well as responsibilities of drilling and service companies and penalties for noncompliance. This legislation also defines the procedures to be adopted by the State Corporation Commission and the Department of Health and Environment in investigating and enforcing the integrity of plugs and possible violations for groundwater contamination.

To implement the agency's recommendations, the Committee introduced 1982 S.B. 498 which set forth the licensing and bonding requirements for drilling and service companies and other provisions for the protection of groundwater from oil and gas activities.

Substitute S.B. 498 -- Creation of Joint Program

After lengthy hearings, the 1982 Kansas Legislature enacted Sub. S.B. 498, which provided for the formalized joint Commission-Department regulatory program. The Act provides that all operators and contractors be licensed annually with the Commission and identification tags be affixed on rigs. In addition, the intention to drill filed with the Commission would be jointly reviewed by the Commission and the Department of Health and Environment and approved prior to the commencement of drilling operations. An operator would have to notify the Commission prior to setting surface casing or plugging any well; before washing down or reentering any abandoned well, the operator would have to notify the Commission 48 hours in advance. Either the Commission or Department can conduct on-site inspections of such drilling or plugging operations. Under the 1982 Act, the Department and Commission have joint authority to investigate abandoned wells believed to be causing or likely to cause pollution or loss of any fresh or usable water strata or supply, an authority previously exercised solely by the Commission.

Sub. S.B. 498 established the Advisory Committee on Regulation of Oil and Gas Activities composed of ten members from various oil and gas-related organizations and state agencies. This committee, which must meet at least four times each year, is required to review and make recommendations on oil and gas activities, including current drilling methods, geological formation standards, plugging techniques, casing and cementing standards and materials, and all matters pertaining to the protection of waters of the state from pollution caused by oil and gas activity.

Sub. S.B. 498 also provides that when either the Commission or the Department, after investigation or upon written complaint filed with either agency, finds reasonable cause to believe that a person violated any provision of the bill or rules and regulations, the Commission must hold a hearing as prescribed by K.S.A. 55-605. The bill also specifies actions that can be prescribed pursuant to a determination that violations occurred.

Sub. S.B. 498 required the Department and the Commission to enter into a comprehensive interagency agreement providing for a management plan for the purpose of integrating field operations for the regulation of oil and gas activities. The agreement was submitted to the Governor for approval and was

approved by the 1983 Legislature. Sub. S.B. 498 also provides for penalties to be exacted by either agency against operators or contractors who have violated the law.

In 1983, 1984, and 1985, reports on the joint program were submitted to the Legislature. During 1982 through 1984, the joint program was administered by two individuals -- the head of the Conservation Division of the Commission and the head of the Bureau of Oil Field and Environmental Geology of the Department. In February 1985, the Chairman of the Commission and the Secretary of the Department appointed Bill Bryson to head the joint program as the head of the Conservation Division.

The Blue Ribbon Joint Oil and Gas Program Review Committee

At the same time, the Chairman and the Secretary created a Blue Ribbon Review Committee to evaluate ongoing implementation of the joint program. The Review Committee consisted of 14 members, including four legislators.

The Blue Ribbon Joint Oil and Gas Program Review Committee's recommendations included both long and short range goals for the operation of the S.B. 498 Regulatory Program. The Joint Committee agreed that as a long range goal, the S.B. 498 Regulatory Program should be placed under the control of one single agency.

There were many different views expressed by committee members as to what form that single agency should take; it was recommended that the Program be consolidated with an existing agency or that a new agency be established which would deal with the administration of environmental and resource programs. Short range objectives were primarily directed to the improvement of operations within the existing program framework.

An organizational subcommittee was directed to study the organizational efficiency of the Joint 498 Program, and an environmental subcommittee was charged with defining environmental issues as they related to the effectiveness of protecting groundwater from oil field pollution.

The organizational subcommittee report detailed two alternatives:

> In the first alternative, it was recommended by a majority of the organizational subcommittee members that all activities and practices related to oil and gas production should be regulated by the Conservation Division under the supervision and control of the State Corporation Commission. In the second alternative, the Subcommittee recommended that all program activities of the KDHE Office of Environmental Geology related to regulation of the oil and gas industry be consolidated under the regulatory authority of the Kansas Corporation Commission through the Conservation Division.

Another long range goal recommended for further study by the organizational subcommittee and the Blue Ribbon Task Force was the proposal for a separate Oil and Gas Commission.

The final proposal of the organizational subcommittee was to create a single agency to regulate all of the environmental programs of the state of Kansas, including groundwater.

The environmental subcommittee made several recommendations to improve the response of the joint program in the handling of complaints. The subcommittee recommended increasing the staffing of the Joint Program and supported the adoption of the joint program's "Field Operations Policy Manual," and the cross-training of personnel.

The subcommittee also recommended enforcement and administration of current statutes, rules and regulations, and policies of the joint program to ensure compliance and administrative accountability. The joint program's Dakota Aquifer Protection Plan should be continued; wells should have surface casing set below the Cedar Hills sandstone, and disposal of saltwater should be prohibited adjacent to disposal zone subcrop areas if a study warrants it. Finally, the subcommittee recommended improved hearing and appeals procedures of the two agencies and more extensive research to promote better plugging well completion.

1985 Interim Committee Report

In the 1985 interim, the Special Committee on Energy and Natural Resources was directed to study Proposal No. 23 — Protection of Groundwater in Kansas. The Committee's charge was to evaluate legislation for the protection of the state's groundwater resources, including the Dakota Aquifer, and review the role of the state agencies responsible for groundwater protection.

The Committee recommended H.B. 2650, which would create an Oil, Gas, and Minerals Commission consisting of three members appointed for staggered four-year terms. The new Commission would be given jurisdiction over the statutes that provide for the protection of surface and groundwater (K.S.A. 55-150 et seq.), over other statutes presently administered by the State Corporation Commission that provide for the protection of groundwater from oil and gas activities, and over activities of the Oil Field and Environmental Geology Bureau of KDHE that pertain to the protection of groundwater from oil and gas activities. In addition, H.B. 2650 would bring the Mined-Land Conservation Reclamation Act (K.S.A. 49-491 et seq.) under the jurisdiction of the new Commission.

Underground Injection Control Program

In 1974, Congress adopted the Safe Drinking Water Act (SDWA) which directed the Environmental Protection Agency (EPA) to develop minimum requirements for state programs to protect underground sources of drinking water from pollution caused by the injection of fluids into the subsurface. Under federal

law, underground injection endangers drinking water sources if the injection can reasonably be expected to contaminate a public water system or otherwise adversely affect the health of the public.

The SDWA divides the various types of injection wells into five categories: industry; oil and gas; solution mining; hazardous waste; and other. All states were required to develop an underground injection control (UIC) program for approval by the EPA. EPA approval was contingent upon a determination that a state had adequate laws and regulations governing injection wells, had adopted and was implementing adequate enforcement procedures, and kept records and made reports to the EPA showing compliance with such laws, regulations, and procedures.

Kansas has received EPA approval in 1983 for state regulation of oil and gas wells with administration of those wells under jurisdiction of the joint program. The UIC program contains some requirements that are not part of the state statutory requirements including monitoring and reporting on 20 percent of all oil and gas injection wells for mechanical integrity annually. In addition, one-fourth of the monitored wells must be witnessed by a representative of the Commission or the Department.

To conclude, joint program responsibility exists in the following areas: oil and gas well completions, Class II (oil and gas) injection wells, the plugging of abandoned oil or gas wells, the investigation of pollution caused by or likely to be caused by abandoned oil or gas wells, and oil spills and containment. The Bureau of Oil Field and Environmental Geology in KDHE has independent responsibility for the following programs: hazardous materials spill prevention and containment; all classes of injection wells (except Class II), the licensing of water well contractors, the permitting of surface ponds and emergency pits, salt solution mining operations, LPG storage, and underground petroleum storage tanks. The Conservation Division of the State Corporation Commission is solely responsible for the licensing of oil and gas well operators and contractors, implementing the Natural Gas Policy Act of 1978, hearing and determining new pool applications pursuant to the Kansas Mineral Tax Act, and preventing waste of hydrocarbons and protecting the correlative rights of producers of natural gas and oil. This last responsibility includes, among other activities, the setting of oil and gas allowables, determining well locations and exceptions, controlling the venting of natural gas produced in conjunction with crude oil, determining applications for unitization and special field rules, and gas and oil well capability testing.

B86-12.rp

ANNUAL REPORT

of the

KANSAS COMMISSION ON APPLIED REMOTE SENSING

Submitted to
The Governor
and
Kansas Legislature

February 1986

Kansas Commission on Applied Remote Sensing
Space Technology Center
2291 Irving Hill Drive
Lawrence, Kansas 66045-2969

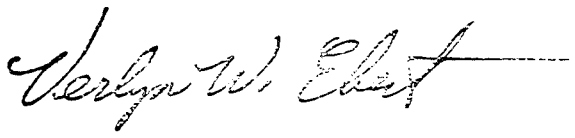
Table of Contents

List of Appendices

Preface

The Kansas Commission on Applied Remote Sensing was established in 1984 by the Kansas Legislature to enhance, promote and coordinate the utilization of remote sensing/geographic information systems technologies in Kansas. This report summarizes the issues considered by, and the accomplishments and recommendations of, the Commission during 1985. Included is a recommendation to the Governor and the Legislature to increase the funding level for the Kansas Applied Remote Sensing (KARS) Program by an additional $98,000 in FY87. For details of the Commission's activities during its inaugural year, 1984, refer to the 1984 Annual Report ("Annual Report of the Kansas Commission on Applied Remote Sensing," February 1985).

Many people have contributed to the work of the Commission and to the preparation of this report. Staff of the Kansas Applied Remote Sensing Program have provided technical assistance and all support services required by the Commission since its inception. Principal authors of the final report are Loyola M. Caron, Remote Sensing Specialist, and Dr. James W. Merchant, Senior Remote Sensing Applications Specialist, KARS Program, and Executive Director, Kansas Commission on Applied Remote Sensing. Each and every participant in meetings of the Kansas Commission on Applied Remote Sensing has made unique and substantive contributions to its deliberations, accomplishments and recommendations.



Verlyn W. Ebert
Chairperson, Kansas Commission
on Applied Remote Sensing

Executive Summary

I. INTRODUCTION

The Kansas Commission on Applied Remote Sensing was founded to assist Kansas agencies in using the powerful high technologies of remote sensing and automated geographic data analysis to deal with pressing issues such as water management, reappraisal of property, soils conservation and environmental pollution. The work of the Commission is conducted through the Kansas Applied Remote Sensing (KARS) Program of the University of Kansas. This report summarizes the actions of the Commission during 1985.

The term **remote sensing** refers to a family of techniques which are used to collect valuable, often unique, information about the Earth's land and water resources. Remote sensing instruments, such as cameras, scanners and radars, are frequently mounted aboard aircraft or orbiting satellites and spacecraft. Borne in such vehicles, these systems can provide rapid, repetitive coverage of large areas (e.g., counties, entire states) at relatively low cost. Information collected via remote sensing can be used in almost unlimited ways. Counties may employ it for planning or for tax appraisal, state and federal agencies for water resources assessment, wildlife habitat evaluation, management of soil erosion or cropland inventories. Computer-based **geographic information systems** (GIS) are powerful tools for integrating and analyzing data obtained from such disparate sources as remote sensing, soils surveys, county land ownership maps, and water quality records.

The Kansas Applied Remote Sensing (KARS) Program was established in 1972 by the National Aeronautics and Space Administration to assist Kansas agencies and private industry to better utilize satellite and airborne remote sensing systems. The Program has been actively engaged in training and technology transfer activities focused on dissemination of information regarding the potential for utilization of remote sensing/geographic information systems technologies. During the period 1972-1984, the KARS Program carried out over 40 cooperative remote sensing projects with Kansas agencies. More than 2,500 Kansans participated in technology transfer activities.

In July 1982 the Kansas Legislature established the Kansas Interagency Task Force on Applied Remote Sensing. Major objectives of that Task Force were to provide policy direction for the KARS Program, to enhance interagency communication, and to assess alternatives for greater and more operational utilization of remote sensing/geographic information systems technologies on a statewide basis. The Task Force presented a Final Report on its accomplishments, studies and deliberations to the Governor and the Kansas Legislature in December 1983. A major recommendation of the Task Force was that a permanent Commission on Applied Remote Sensing be formed to foster the use of remote sensing and related geographic information systems technologies. House Bill 2670 (now KSA 74-7701) establishing the Kansas

Commission on Applied Remote Sensing was signed into law by Governor John Carlin in April 1984. The duties of the Commission are to:

- Assist users in assessing the capabilities, costs, and alternatives for employing remote sensing or related geographic information systems technologies;
- Serve as a forum and mechanism for interagency communication, coordination and cooperation for the use of remote sensing and geographic information systems technologies;
- Advise the KARS Program regarding the data and informational needs of Commission members, and aid the KARS Program in identifying and prioritizing projects which are of greatest import to the State;
- Disseminate information regarding new developments and capabilities pertaining to remote sensing and geographic information systems;
- Prepare and present to the Governor and Legislature on or before May 31, 1986, a report and any recommendations regarding the need for an integrated, comprehensive Kansas resources information center; and
- Prepare and present annual reports to the Governor and Legislature, and recommend funding levels for the KARS Program and the Commission in the subsequent fiscal year; and make recommendations to each regular session of the Legislature and to the Governor concerning necessary or advisable legislation relating to issues of statewide importance concerning remote sensing or geographic information systems technologies.

Twelve state agencies, the Governor's Office, both houses of the Legislature, county governments, and the groundwater management districts are represented on the Commission. Federal and local agencies and private firms are invited and encouraged to participate in Commission activities.

II. REVIEW OF 1984 ACTIONS AND ACCOMPLISHMENTS

Major issues discussed and actions taken during its inaugural year are summarized below.

Consideration of Fiscal Needs and Proposed FY86 Budget

The work of the Kansas Commission on Applied Remote Sensing is supported by a modest state allocation to the KARS Program of approximately $50,000 annually. The National Aeronautics and Space Administration (NASA) had, in previous years, contributed funds which helped subsidize these activities; NASA funds are no longer available. The Commission believed it important that the KARS Program be provided adequate funds to enable the Commission to fulfill its mission. Furthermore, the Commission wished to improve the ability of the KARS Program to provide services to Kansans. The Commission,

therefore, requested funding for FY86 in the amount of $98,000 (in addition to KARS' $50,000 allocation) to support three major programs. These were:

1. Staff and material support for the Kansas Commission on Applied Remote Sensing;

2. Services to Kansas agencies and Kansans at large; and

3. Initiation of a statewide computer-based land use/land cover information system.

Although efforts were made to secure this funding during the 1985 Legislative Session, it was not allocated.

Establishment of State Map Coordinating Committee

The Commission established a State Mapping Advisory Committee. This committee provides a mechanism for Kansas to coordinate and define specific mapping needs and, annually, convey these needs in an organized fashion to the U.S. Geological Survey (USGS), the nation's principal mapping agency.

Consideration of a Statewide Land Use/Land Cover Inventory

The Commission reviewed several alternative techniques for conducting a statewide land use/land cover inventory. Funds were included in the FY86 budget proposal for both developing the methodology to conduct the inventory and for preparation of initial products for high priority areas of the State. As noted above, these funds were requested but were not allocated.

Consideration of KARS Program Activities

The Commission reviewed the services offered by the KARS Program and endorsed a proposal in support of the following activities:

1. Staff support for the Kansas Commission on Applied Remote Sensing and administrative support for the Kansas Map Coordinating Committee;

2. Information services for Kansas state and local agencies, the Legislature and Governor's Office - The Commission proposed to establish, through KARS, an affiliation with the U.S. Geological Survey's National Cartographic Information Center (NCIC). NCIC is a program designed to improve access to all types of maps, aerial photography, space images, and related materials.

3. Training, briefings and presentations for public agencies and professional groups, the Legislature and the Commission on Applied Remote Sensing.

III. SYNOPSES OF 1985 ACTIONS AND ACCOMPLISHMENTS

Major issues considered and actions taken by the Commission during its second year are summarized below.

Election of New Officers

Verlyn Ebert, Kansas Fish and Game Commission and Vice Chairperson of the Kansas Commission on Applied Remote Sensing, was elected Chairperson. Thomas Lowe, Kansas Water Office, was elected Vice Chairperson.

Consideration of Fiscal Needs and Proposed FY87 Budget

The work of the Kansas Commission on Applied Remote Sensing continues to be supported by a modest state allocation to the KARS Program of approximately $50,000 annually. The Commission believes it important that the KARS Program be provided adequate funds to enable the Commission to fulfill its mission. Furthermore, the Commission wishes to again support KARS Program activities regarding the provision of services to Kansans. The Commission respectfully requests that the current KARS funding level be supplemented with an additional $98,000 in FY87. This funding would support three major programs:

1. Support for the Kansas Commission on Applied Remote Sensing. Funds would provide support for quarterly meetings of the Commission.

2. Services to Kansas. Funds would cover consultations with Kansas agencies, Kansas firms and individuals requesting information; proposal preparation for agencies; training, workshops, short courses for agencies; affiliation with the U.S. Geological Survey National Cartographic Information Center to foster the availability of data on maps and remote sensing data needed by Kansas agencies; and maintenance of KARS image collections, maps and digital data for use by Kansas agencies.

3. Initiation of a Land Information System. A land information system would contain information regarding vegetation, agricultural land use, and urbanization.

State Mapping Priorities

The Kansas Map Coordinating Committee, a committee of the Kansas Commission on Applied Remote Sensing, identified map priorities for the State of Kansas, and submitted those priorities to the U.S. Geological Survey's National Mapping Division. Priorities included:

- The continued revision of USGS 7 1/2' topographic quadrangles;
- The continuation of county topographic mapping;
- Growing season coverage of Kansas with National High Altitude Photography; and
- Other image acquisition, including Landsat and side-looking airborne radar (SLAR).

A Study of the Need for a Kansas Geographic Information Center

The Commission is charged, under KSA 74-7701, to prepare and present to the Governor and Legislature on or before May 31, 1986, recommendations regarding the need for an integrated, comprehensive Kansas Geographic Information Center. In 1985 the Commission adopted a formal plan of work to assist in the evaluation.

The Kansas Interagency Task Force on Applied Remote Sensing had considered, in a preliminary fashion, the need for a broadly focused state information center. Such a center would retain and expand all of the current capabilities of the KARS Program. In addition, it could be charged with inventorying, cataloging and coordinating data about Kansas maintained by state, local and regional agencies, federal agencies, some private firms and institutions of higher education. The center could provide clearinghouse and referral services; spatial data analysis capabilities; geographic data base development for state users; remote sensing data/imagery interpretation; training and briefings; and development and/or implementation of new high technologies. A geographic information center could facilitate enormous tasks such as the statewide reappraisal, water resources planning, soil erosion assessment, and monitoring of prime agricultural land use change.

During 1985, a Subcommittee on Center Alternatives was created and charged to:

- Define the need for and role of an information center,
- Recommend the scope and services of an information center,
- Evaluate other states having information centers,
- Design and propose services, organization and institutionalization, funding and legislation for such a center, and
- Summarize its findings for submission to the Legislature.

The Subcommittee developed a plan of study to identify the need for data and services which a Kansas geographic information center might provide, and to evaluate alternatives for creating a center. To assist in their review, the Subcommittee developed a survey designed to gather information on the level of need for services, capabilities and data which a center might provide. The objective of the survey was to gather information regarding priorities placed on a broad range of capabilities, services and geographic data needs, including:

- Mapping/geographic analysis,
- Training (including briefings, short courses and workshops),
- Consultation and data analysis services,
- Locating/accessing information,
- Access to analytical capabilities,
- Coordination of mapping/geographic data analysis activities, and
- Requirements for geographic data, including land use, land ownership, natural vegetation, soils data, surface water, and other natural resources and related data.

The survey was administered to more than 600 Kansans, including state and federal agencies, state legislators, the Governor's Office, local governments, institutions of higher education, public environmental groups and private firms. One hundred and forty-seven individuals completed the survey. These included representatives of state agencies (32), Kansas Legislature (11), local governments (38), federal agencies (6), regional governments (6), private companies (10), institutions of higher education (17), utilities (17), and societies/public environmental groups (10).

Although the analysis of surveys received has not yet been completed, some preliminary findings can be reported. A more thorough analysis of the survey responses will be completed in 1986.

More than 50% of the respondents rated the following capabilities and services as having a medium to high priority in their job functions:

- Mapping/Geographic Analysis Capabilities

  - Need to measure area (e.g., acreage) on maps or aerial photographs
  - Need to produce a given map at more than one scale
  - Need to extract one of several types of information on one map to display as a separate map
  - Need to combine information from two or more maps into a single map
  - Need to interrelate and evaluate data from several different maps having different scales
  - Need to have professional color maps for use at public meetings or for other purposes
  - Need to prepare maps from aerial photography or other remote sensing data (beyond current in-house capabilities)

- Consultation and Data Analysis Services

  - Need to be able to consult with experts on developing proposals involving the use of geographic information systems or remote sensing data (for in-house use)
  - Need to be able to consult with experts about computer hardware and software
  - Need to be able to consult with experts about developing cooperative projects with a state agency; or a local level of government
  - Need access to a referral service to identify experts on my topic of interest

- Locating/Accessing Information

  - Need assistance in locating and acquiring aerial photography
  - Need access to an archive of aerial photography and other remote sensing data for Kansas
  - Need assistance in locating maps required for a given need
  - Need access to an archive of maps of Kansas
  - Need assistance in locating and accessing existing data on agriculture, demographic data, geology, rangeland, soils, topography, water resources

- Coordination of Mapping/Geographic Data Analysis Activities

  - Need a mechanism for coordinating and interfacing with state agencies, regional planning groups, private companies and others on projects requiring geographic analysis and/or mapping
  - Need to be kept informed of new developments in remote sensing/geographic information systems/mapping technologies that may be relevant to my job functions

One hundred and forty individuals responded to Part II of the survey regarding geographic data needs. Data were specifically gathered for requirements for land use, land ownership, natural vegetation, soils, and surface water data. The analysis of this portion of the survey is not yet complete. However, a preliminary review of the data indicates that, of those who responded, more than half (54%) ranked land use as a "high" (21 responses) to "very high" (55 responses) priority. An additional 54 (39%) respondents ranked land use as a medium to low priority, or indicated that they required the data but did not rank its importance for their job functions.

IV. SUMMARY RECOMMENDATIONS

The Commission recommends that **the current KARS funding level of $57,661 be supplemented with an additional $98,000 in FY87.** The Commission recommends that this augmentation support three major areas:

1. Support for the Kansas Commission on Applied Remote Sensing. Funds would provide administrative and technical support for quarterly meetings of the Commission. This support would include both staff and material expenses, as well as support for the Kansas Map Coordinating Committee established in 1984 by the Commission.

2. Services to Kansas. Funds are recommended to enable the KARS Program to better serve individuals, public agencies, the Legislature, and firms needing information and assistance. The Commission proposes to:

   (a) Establish an affiliation with the U.S. Geological Survey National Cartographic Information Center (NCIC) to facilitate efforts to provide information to agencies, legislators and others in a timely, cost-effective manner;

   (b) Provide enhanced outreach, training and educational opportunities so that all potential users of remote sensing/geographic information systems technologies may have an opportunity to know of their value and availability;

   (c) Enhance the KARS Newsletter so that it may be a more effective means of providing information on remote sensing/geographic information systems technologies to all Kansans.

3. Initiation of a land information system. A land information system would contain information regarding vegetation, agricultural land use, and urbanization. Such data is needed for water resources management, environmental pollution assessment, conservation needs evaluation, wildlife management and other purposes. The Commission requests funds for KARS to initiate production of such a data base. Data could be merged with existing data on water, air quality, agriculture, revenue and other phenomena already held by other agencies. KARS would assist agencies in using these data to make management and policy decisions more effectively and at lower overall cost. The Commission recommends a phased approach to the inventory. Funds to complete Phase 1 are requested in the FY87 budget proposal. Phase 1 would be accomplished during the period July 1986 - June 1987. Completion of the statewide inventory would take approximately 1-2 additional years of effort. It is projected that total funding required to prepare a baseline comprehensive statewide digital data base for Kansas would be approximately $300,000 over the project duration. The Commission would be prepared to make a more precise estimate of costs upon completion of Phase 1 and evaluation of its results.

MEMORANDUM

February 21, 1986

FROM: Kansas Legislative Research Department

RE: Municipal Electric Utilities and State Corporation Commission Jurisdiction

The Regulation of Utilities in the United States

Utilities developed historically as natural monopolies because the economics of scale allowed for the efficient provision of utility service by a single firm. Since the rules of the market place did not protect the utility consumer, the government had to intervene and assure that the monopoly business did not take advantage of its position to earn more than a reasonable rate of return on its investment. Consequently, utilities became businesses "affected with the public interest." A legal framework for state regulation of electric utilities developed with regulatory authority usually granted to state regulatory commissions. Often, these commissions regulated transportation services prior to assuming jurisdiction over electric and gas utilities. In 1886, in Wabash, etc. RR v. Illinois, the United States Supreme Court confined the state's rate-setting jurisdiction to intrastate transactions, confirming that the commerce clause of the Constitution delegated jurisdiction over interstate commerce to the federal government.

State Corporation Commission Excluded From Jurisdiction over Municipal Utilities

At the present time in Kansas, the State Corporation Commission regulates the rates charged for electricity by investor-owned utilities, utility cooperatives (primarily rural electric associations), municipal energy agencies, and municipal utilities services beyond the three-mile radius of the city. Language in the State Corporation Commission statute which defines public utilities subject to Commission jurisdiction, states that nothing in the statute shall apply to a municipally-owned or operated utility, except that any extension of municipal facilities beyond a three-mile radius of the municipality's corporate limits are subject to Commission jurisdiction (K.S.A. 66-104 and 66-131). K.S.A. 66-131 specifically limits the authority of the Commission over municipal utilities. K.S.A. 12-808 authorizes any city to operate waterworks, fuel, power, or lighting plant and sell and distribute water, fuel, power, or light to any person "within or without said city," subject to the provision of K.S.A. 66-104 and 66-131. Consequently, municipally-owned utilities set their own rates under the authority of or subject to appeal to the governing body of the municipality. K.S.A. 12-808a also provides that when a municipally-owned utility services an area outside of its city limits, the governing body of the city may fix the rates in a zone extending three miles from the municipal boundaries. Utility services provided by a municipally-owned utility beyond the three-mile boundary are regulated by the State Corporation Commission. Special legislation enacted in

1929 K.S.A. 13-1220 et seq. regulates the Board of Public Utilities of Kansas City, Kansas, which provides water and electric service to that municipality. The State Corporation Commission has no direct jurisdiction over the Board.

Indirect Commission Jurisdiction Over Municipal Utilities

The Commission can exercise, under certain circumstances, indirect jurisdiction over a public utility situated and operated wholly or principally within any city or principally operated for the benefit of the city or its people. K.S.A. 66-133 authorizes a public utility or ten or more taxpayers of a municipality to submit a complaint to the Commission (accompanied by a bond to pay the costs of the hearing) concerning any ordinance or resolution adopted by a municipal council or commission that relates to the quality and character of service provided by the public utility, including maximum rates and charges to be paid to the public utility providing service within the municipality and any additions or extensions to the physical plant of the public utility authorized by ordinance or resolution.

The complaint to the Commission would have to show that the right, privilege, or franchise granted, or the ordinance or resolution adopted by the municipal council or commission "is unreasonable, or against public policy, or detrimental to the best interests of the city, or contrary to any provisions of the law." The Commission would set a hearing date on the complaint not less than ten days after the filing of the complaint. The complainant would file evidence with the Commission and the Commission could subpoena witnesses and take testimony to determine the truth of the allegations in the complaint. If the Commission found that the provision of any ordinance or resolution was unreasonable or against public welfare or public interest, the Commission would "advise and recommend such changes necessary to meet the objections set forth in the complaint." If the municipal council or commission did not amend its ordinance or resolution to conform to the recommendations of the Commission, the Commission could commence proceedings against the municipal council or commission or the public utility governed by the provisions of the act in any court of competent jurisdiction. Because of the cumbersome and indirect nature of this appeal process, it is infrequently used by municipal utility customers.

As a general rule, however, when a city provides utility services to its citizens, the rates for those services are controlled by the elected representatives of the rate payers. Historically, Kansans have accepted this argument as a reason for excluding municipal utilities from the jurisdiction of the State Corporation Commission, since regulatory oversight is exercised by city officials.

Municipal Utilities in Kansas

There are 408 municipal utilities in Kansas. Approximately 128 municipal electric systems (only 59 are electric generating systems), 75 municipal and private one-town natural gas systems, and 179 municipal water systems are exempt from Commission's jurisdiction. The Commission exercises regulatory authority over 14 municipal electric systems and 18 municipal gas

systems beyond the three mile limit that each of the municipal jurisdictions serves. The vast majority of municipal electric generating systems are supplied electricity by investor-owned utilities under contracts entered into by the municipal utilities. Some of those systems maintain peaking units for use during summer peak demand. In some cases, a municipal utility generates additional revenue for municipal services through utility rates.

Municipal Utilities and the Regulation of Power Plant Construction

The Legislature in 1976 enacted a law providing that no electric utility (municipal utilities excluded) could begin site preparation for, construction of, or addition to an electric generation facility without first applying for and acquiring a construction permit from the State Corporation Commission. The Commission was authorized to determine the necessity for, and the reasonableness of, the location and size of the proposed electric generation facility.

The 1976 Power Plant Siting statutes and the 1979 amendments to those statutes, which substantially increased the power of the Commission in approving any proposed generation facility, do not apply to municipal utilities. However, construction of a generation facility by a municipality beyond the three-mile radius of the municipality would be subject to Commission approval. The 1979 amendments to the Power Plant Siting statutes were titled the "Kansas Electric Generation Facility Siting Act." In directing the Commission to compile and maintain a comprehensive statewide electric generation capacity forecast, the 1979 Legislature directed every municipally-owned or operated electric utility and every electric utility operating wholly within any municipality to furnish the Commission with information on electric generation capacity (K.S.A. 66-1,169a).

In the statutes authorizing municipalities to issue revenue bonds, there is provision (K.S.A. 10-1203) that no municipality can issue revenue bonds to acquire, construct, reconstruct, alter, repair, improve, extend, or enlarge any plant or facilities for the furnishing of any utility service where service is being furnished by a private utility, except upon approval by the State Corporation Commission. Commission approval can be granted only after a finding is made based on substantial evidence that the acquisition, construction, reconstruction, alteration, repair, improvement, extension, or enlargement of such plant or facilities is necessary or appropriate for the municipality and its consumers, and for the protection of investors "and will not result in the duplication of existing utility services in the area served or to be served by the municipality." This legislation was enacted in 1947.

The Commission's authority to implement this statute was challenged by the city of Wichita, however, the Kansas Supreme Court upheld the Commission's jurisdiction over the issuance of revenue bonds by a city when the conditions set forth in the statute apply. (The City of Wichita, Kansas, a Municipal Corporation, Appellee v. The State Corporation Commission of the State of Kansas, 225 Kan. 524-533.)

Municipal Utilities and Electric Service Territories

Legislation authorized the State Corporation Commission to create and certify exclusive electric service territories throughout the state was enacted in 1976. Municipal utilities are part of the electric service territories legislation. A municipal retail electric supplier providing the only service in a given territory is granted a single certified territory; however, a municipal territory cannot extend more than one-half mile in any direction from its distribution lines or beyond the original service territory boundary.

Commission certification of an area adjacent to a city to a particular utility is subject to annexation by the city which can result in the termination of services by the existing utility. A section in the electric service territories statutes, K.S.A. 66-1,176, provides that all rights of a retail electric supplier to provide electric service to an area annexed by a city terminate 180 days after the date of annexation, unless the electric supplier holds a valid franchise granted by the annexing city. If service rights of a particular utility are terminated, the State Corporation Commission must certify the annexed area to the electric supplier holding a franchise and already providing electric service to the city.

Municipal Energy Agencies

In 1977, the Kansas Legislature authorized two or more cities operating electrical generating systems to join together to form a municipal energy agency. The legislation specified the procedure for organizing such an agency, its powers and authority, and its authority to issue revenue bonds and set rates and charges for electric power. Municipal energy agencies are under the full jurisdiction of the State Corporation Commission.

Municipal Utilities and Energy Conservation Requirements

In 1978, the Kansas Legislature enacted a statute, K.S.A. 66-131a, that brought every municipally-owned or operated electric or gas utility, and every electric or gas utility operating within the legal boundaries of a municipality and within three miles of its boundaries, under State Corporation Commission jurisdiction for energy conservation purposes. These utilities are required to file tariffs and rules and regulations which prohibit the connection of residential, commercial, or industrial structures failing to meet heat loss standards or energy efficiency ratios for air conditioners and heat pumps set by the Commission.

Municipal Utilities and Electric Transmission Line Regulation

The construction of electric transmission lines over five miles in length used to transfer more than 230 kilovolts of electricity were brought under the regulation of the State Corporation Commission in 1979. That 1979 enactment provides that no electric utility, which is defined as a public utility thereby excluding municipal utilities, can begin site preparation for a construction of an electric transmission line, or exercise the right of eminent domain to acquire land in connection with the construction of a line, without first acquiring a permit from the Commission. Although municipal utilities are not under the electric transmission line statutes, lines outside the three-mile radius from a city, which are over five miles long and carry more than 230 kilovolts of electricity, are under the Commission's jurisdiction.

Municipal Franchise Fees

On July 24, 1982, the State Corporation Commission initiated an investigation of the municipal franchise fees (i.e., taxes) imposed on utilities, including electric utilities, serving cities. The Commission investigated four specific issues:

1. whether franchise tax rates and structure are reasonably related to the original purpose of franchise taxes;

2. whether the franchise tax revenues collected reasonably reflect costs imposed by the utility providing service under the franchise;

3. whether existing franchise rates and structures unfairly or unduly discriminate against any class or classes or ratepayers; and

4. whether modification is necessary or desirable for the practice and procedures of negotiation, assessment, collection, and payment of franchise taxes, and, if so, whether the Commission should establish guidelines for the same.

After receiving testimony on these issues, the Commission concluded that "where franchise agreements substantially affect rates of a jurisdictional utility, the franchise agreement is a proper subject for . . . [the] Commission to consider." The Commission expressed concern over the discrepancy in franchise fees paid by various rate classes in a municipality and the disparity between franchise fees among the various cities.

The Commission staff had recommended a limit of 3 percent on franchise fees; however, the Commission did not establish a limit on such fees. The Commission stated in its order that the amount in franchise fees imposed upon customers should bear a relationship to the cost of providing services to them. All jurisdictional utilities were required to notify affected customers whenever negotiations or renegotiations of franchise fees occur. In addition, the Commission declared that clauses in franchise contracts that allow municipal utilities to automatically raise franchise fees whenever fees in another municipality are raised (i.e., most favored nation clauses) are not in the public interest. It was ordered that such an automatic increase be disallowed. The Commission's order on franchise fees was appealed by various cities and the League of Kansas Municipalities. Judge James MacNish, Jr., District Judge of Shawnee County, Kansas, ruled that the Commission was within its statutory authority in reviewing franchise agreements and requiring utilities to notify consumers of franchise negotiations. However, Judge MacNish overturned that part of the Commission's order which negated future rate increases resulting from most favored nation clauses. The decision was not appealed.

Legislative Study of Municipal Utilities

The issue of State Corporation Commission jurisdiction over municipal utilities was studied by special interim legislative committees in 1973 and 1977. See "Proposal No. 108 -- Electric Utilities Territories," Report on Kansas Legislative Interim Studies to the 1974 Legislature, pp. 109-111, and "Proposal No. 23 -- Municipal Utility Rates and State Jurisdiction," Report on Kansas Legislative Interim Studies to the 1978 Legislature, pp. 47-51). Over the years there have been several legislative proposals designed to bring municipal utilities under full Commission jurisdiction. None of those bills has been reported favorably out of committee.

1985 H.B. 2450 -- Municipal Utilities Under Power Plant Siting Statutes

In the 1985 Session, H.B. 2450, introduced by the House Energy and Natural Resources Committee, proposed to place municipal utilities under the provisions of the Kansas Electric Generation Facility Siting Act. Members of the Committee who supported the bill agreed that the state should regulate any new generation, whether it is installed by investor-owned, rural cooperative, or municipal utilities, because there is at present excess generating capacity in the state. It was asserted that the construction of generating capacity by a municipal utility, presently purchasing electricity from an investor-owned utility or a rural electric generating utility, would be a wasteful use of resources and would exacerbate the problem of excess generating capacity in the state.

In testimony on H.B. 2450, the Kansas Municipal Utilities, Inc. (KMU), argued that Kansas municipal electric generating systems are not adding to the surplus capacity problem, and they did not create the existing problem.

With recent purchases of power from existing facilities, municipal electric generating systems are helping to solve the surplus problem, the KMU representatives told the Committee. Existing franchise agreements and exclusive contracts limit what cities can do to alter their supply source.

The KMU representative opposed H.B. 2450 because it would take away local control of municipal utilities and goes against the home rule authority given to cities by the Constitution; in addition, it would force municipal utilities to purchase higher cost power thus penalizing municipal systems for having made prudent and wise decisions in the past.

1986 S.B. 428 -- Require Cities to Grant Franchise to Utility Serving Annexed Area

In the 1985 interim study on Proposal No. 45 -- Annexation Law Review, the Special Committee on Local Government heard testimony from the rural electric cooperatives urging that cities be required to grant franchises to utilities whose territory is annexed or, in the alternative, require municipally-owned utilities to be subject to the jurisdiction of the State Corporation Commission. (There was also concern expressed by rural water districts over the compensation of districts for facilities annexed by a city.) The Committee recommended 1986 S.B. 428 that would require cities to grant franchises after annexation to those entities furnishing water, gas, electric power, telephone service, and other utilities listed in K.S.A. 12-12001 to an area prior to annexation. S.B. 428 presently is in the Senate Local Government Committee.

1986 H.B. 2738 -- Amendments to Municipal Energy Agency Statutes

A bill, H.B. 2738, amending sections of the municipal energy agencies law was introduced by the House Energy and Natural Resources Committee in the 1986 Session. The bill would add to the purposes for which a municipal energy agency is authorized to form the roles of planning, studying, and developing of supply, transmission, and distribution facilities and programs. Member cities are authorized to enter into contracts for planning or study of any project (plan, system, facilities, etc.), and the provision of services relating to the energy system of the city in addition to existing authority to purchase electricity. In the purchase of electricity, an existing municipal energy agency would be allowed to require payment whether power is received or not and require the contracting city to pay a proportionate amount of deficits with respect to a particular project.

In addition, H.B. 2738 would delete the requirement that a city had to be operating an electrical generating system during the calendar year 1976 to participate in forming a municipal-energy agency. A provision that two-thirds of the members of a municipal energy agency had to approve of the withdrawal of a city from membership in a municipal energy agency is deleted.

Amendments to K.S.A. 12-891, in Section 3 of the bill, delete certain restrictions on membership on the board of directors of a municipal energy agency. Finally, the bill includes municipal energy agencies under the Kansas Tort Claims Act which would limit the liability exposure of such an agency as if it were a political subdivision of the state.

H.B. 2738 was introduced at the request of the Kansas Municipal Energy Agency.

A86-9

COMPARISON OF REGULATORY OVERSIGHT

Electric Utilities	Rate Regulation	Kansas Electric Generation Facility Siting Act	Electric* Territories Act	Transmission Line Siting	Franchise Fees	Energy Conserv.
Investor-Owned Utilities	SCC	Yes	Yes	SCC	Limited by Commission order	SCC
Rural Electric Cooperatives	SCC	Yes	Yes	SCC	Limited by Commission order	SCC
Municipal Energy Agencies	SCC	Yes	Yes	SCC	Limited by Commission order	SCC
Municipal Electric Utilities	City governing body, SCC beyond 3-mile radius	No, but must report capacity	Yes	Only beyond 3-mile radius	City governing body	SCC
Board of Public Utilities of Kansas City, Kansas	Elected six-member board; SCC beyond 3-mile radius	No, but must report capacity	Yes	Only beyond 3-mile radius	Kansas City, KS City Council	SCC

* Cities have authority to annex territory of a certified utility and replace the utility serving the area with another utility.

Kansas Legislative Research Department
February 21, 1986

A86-9.a

GAAR & BELL

ATTORNEYS AT LAW
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS
SUITE 800
ONE MAIN PLACE
WICHITA, KANSAS 67202
316-267-2091

NORMAN E. GAAR†
DONALD A. BELL
JOHN E. CATON
JOE L. NORTON
MARTHA E. SCHACH†
LILLIAN G. APODACA
DAVID G. TITTSWORTH
KANSAS BAR

OF COUNSEL
BYRON BRAINERD

†ALSO ADMITTED IN MISSOURI

JUDSON L. PALMER, JR.
WEBB R. GILMORE
KIM B. WELLS
ROBERT P. BALLSRUD
CHRISTOPHER D. AHRENS
DOROTHEA K. RILEY
DAVID W. QUEEN*
RONALD L. BLUNT
KIMBERLEY S. SPIES
MICHAEL D. McROBBIE
REBECCA A. KELLER
KAREN A. HOSACK*
MISSOURI BAR

OF COUNSEL
D. W. GILMORE

*ALSO ADMITTED IN KANSAS

OVERLAND PARK OFFICE
14 CORPORATE WOODS, SUITE 640
8717 WEST 110TH
OVERLAND PARK, KANSAS 66210
913-661-0001

ST. LOUIS OFFICE
1100 LASALLE BUILDING
509 OLIVE STREET
ST. LOUIS, MISSOURI 63101
314-436-1000

KANSAS CITY OFFICE
1620 CITY CENTER SQUARE
1100 MAIN STREET
KANSAS CITY, MISSOURI 64105
816-221-1000

February 28, 1986

Representative Ron Fox, Chairman
Energy and Natural Resources
Committee
Room 523-S
State Capitol Building
Topeka, Kansas 66612

Re: House Bill No. 2738

Dear Chairman Fox:

This correspondence will confirm our previous conversation concerning the above-captioned bill. Subsequent to the hearing on the bill on February 12, 1986, you instructed the undersigned and Mr. Brian Moline of the Kansas Corporation Commission to meet and discuss various concerns that the Commission had with respect to the bill. As a result of these discussions, the Agency and the Kansas Corporation Commission have agreed to request a modification to House Bill No. 2738 by the inclusion of the words "and operating an electric generating system during the calendar year 1976" to Lines 42 and 43 of the bill. This would result in the bill conforming to the existing provisions of K.S.A. 12-886. If this amendment is approved, the proposed amendment to Section 5 (Line 228) presented at the prior Committee hearing would be unnecessary.

I would appreciate the Committee considering this proposed amendment. Should you have additional questions, please contact the undersigned.

Very truly yours,

GAAR & BELL

Joe L. Norton

JLN/lr

cc Brian Moline - Kansas Corporation Commission
Gil Hanson - Kansas Municipal Energy Agency

Attachment 4
House Energy and Natural Resources 3/4/86

KMU

Kansas Municipal Utilities, Inc.
P. O. Box 1225
McPherson, Kansas 67460
316-241-1423

March 2, 1986

Rep. Ron Fox
Chairman
House Energy & Natural Resources Committee
State Capitol
Topeka, Kansas

Dear Ron:

As you know, some concerns have been expressed about our proposal to change the languate on lines 42 and 43 of HB 2738 -- the cleanup measure for the Kansas Municipal Energy Agency.

Therefore, so there is no confusion and because our original intent was not to enlarge the powers of an agency, we request that your committee return to the original language of the Act as shown on the attached sheet. This will prevent any mis-understanding.

Joe Norton of Gaar & Bell, Wichita, KMEA general counsel, met with Brian Moline, KCC general counsel, on this matter and both agreed with the suggested amendment. It is my understanding that if the committee were to add this language as in the original act, then the KCC would sign off on the bill.

Thank you for your consideration of our request.

Cordially,

Louis Stroup, Jr.
Executive Director

cc: House Energy & Natural Resource Committee members
Gil Hanson - KMEA

Attachment 5

House Energy and Natural Resources 3/4/86

Session of 1986

HOUSE BILL No. 2738

By Committee on Energy and Natural Resources

1-24

AN ACT concerning municipalities; relating to municipal energy agencies; amending K.S.A. 12-885, 12-886, 12-891, 12-895, 12-897, 12-8,108 and 12-8,109 and repealing the existing sections.

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

Section 1. K.S.A. 12-885 is hereby amended to read as follows: 12-885. Subject to the provisions of ~~this act~~ *K.S.A. 12-885 to 12-8,111, inclusive, and amendments thereto*, any two ~~(2)~~ or more cities may create a municipal energy agency for the purpose of *planning, studying and developing supply, transmission and distribution facilities and programs and for the purpose of* securing an adequate, economical and reliable supply of electricity and other energy and transmitting the same for distribution through the distribution systems of such cities. Any municipal energy agency created under the provisions of this act shall be a quasi-municipal corporation~~, except that nothing herein shall be construed as relieving any municipal energy agency created under the provisions of this act from liability for tortious acts~~.

Sec. 2. K.S.A. 12-886 is hereby amended to read as follows: 12-886. As used in this act, unless the context otherwise requires:

(a) "Agency agreement" means the written agreement between or among two ~~(2)~~ or more cities establishing a municipal energy agency.

(b) "City" means a city organized and existing under the laws of Kansas and authorized by such laws to engage in the local distribution and sale of electrical energy ~~and operating an electric generating system during the calendar year 1976~~. and operating an electric generating system during the calendar year 1976.

(c) "Governing body," with respect to a city, means the

Session of 1986

HOUSE BILL No. 2738

By Committee on Energy and Natural Resources

1-24

AN ACT concerning municipalities; relating to municipal energy agencies; amending K.S.A. 12-885, 12-886, 12-891, 12-895, 12-897, 12-8,108 and 12-8,109 and repealing the existing sections.

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

Section 1. K.S.A. 12-885 is hereby amended to read as follows: 12-885. Subject to the provisions of ~~this act~~ *K.S.A. 12-885 to 12-8,111, inclusive, and amendments thereto*, any two ~~(2)~~ or more cities may create a municipal energy agency for the purpose of *planning, studying and developing supply, transmission and distribution facilities and programs and for the purpose of* securing an adequate, economical and reliable supply of electricity and other energy and transmitting the same for distribution through the distribution systems of such cities. Any municipal energy agency created under the provisions of this act shall be a quasi-municipal corporation~~, except that nothing herein shall be construed as relieving any municipal energy agency created under the provisions of this act from liability for tortious acts~~.

Sec. 2. K.S.A. 12-886 is hereby amended to read as follows: 12-886. As used in this act, unless the context otherwise requires:

(a) "Agency agreement" means the written agreement between or among two ~~(2)~~ or more cities establishing a municipal energy agency.

(b) "City" means a city organized and existing under the laws of Kansas and authorized by such laws to engage in the local distribution and sale of electrical energy ~~and operating an electric generating system during the calendar year 1976~~.

(c) "Governing body," with respect to a city, means the

NOTIFICATION OF COMMITTEE ACTION

DATE: March 4, 1986

COMMITTEE: HOUSE ENERGY AND NATURAL RESOURCES

BILL NUMBER: House Bill 2738

COMMITTEE RECOMMENDATION:

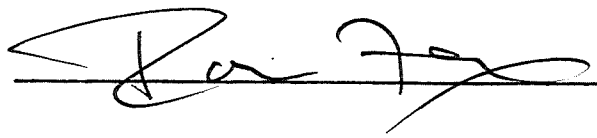
____ Be Passed

__X__ Be Passed As Amended

____ Be Not Passed

____ _____

BILL WILL BE CARRIED BY: Chairman Ron Fox

CHAIRMAN: 

COMMENTS:

* WHEN COMPLETED PLEASE SEND THIS FORM TO THE MAJORITY LEADER'S OFFICE - 381-W.

Bill #. HB 2738

BILL ANALYSIS

Date of Final Committee Action March 4, 1986

Sponsor Committee on Energy & N.R. Committee Energy & Nat. Res.

Brief Explanation HB 2738 was requested by KMEA and municipal utilities. It was requested (1) to expand the powers of KMEA to provide for planning, etc. for its' members; (2) give KMEA power to have greater self-determination over its' board's membership and regulations; (3) to place KMEA under provisions of Kansas Tort Claims Act.

Proponents Gilbert Hanson(KMEA) Opponents Brian Moline, KCC

Joe Norton, Counsel to KMEA

If close vote explain Voice vote.

Explain Important Committee Amendments (if any)(1)Reinstate language on page one to clear up the question related to who the bill applies to. (2) Places municipals under Power Plant Siting Act and Transmission Line Siting Act.

Fiscal Note (if any)

Other Comments Although opposed by major I.O.U.'s and REC's in the original form, after amendments, the I.O.U.'s and REC's can support the bill, as amended.

Signed

Chairman or Designee

Notes for Individual Legislators use:

When completed return to Helen Adams, Room 382