

Approved 2-10-87
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Senator Merrill Werts at
Chairperson

8:00 ~~am~~/p.m. on February 5, 1987 in room 123-S of the Capitol.

All members were present except:

Committee staff present:

Ramon Powers - Research
Don Hayward - Revisor
Nancy Jones - Secretary

Conferees appearing before the committee:

Discussion and action to be taken on bills in Committee.

SB 60 - Authorizing fee-free fishing periods

Chairman Werts ask committee members to note a proposed amendment which would provide authority for the Park & Resources Authority to offer two park-free days a year in coordination with those set by the Fish & Game Commission. (Attachment A).

Motion was made by Senator Feleciano, seconded by Senator Hayden to adopt the proposed amendment. Motion carried.

A motion was made to recommend favorably SB 60 as amended by Senator Feleciano, seconded by Senator Vidricksen. Motion carried.

SB 59 - Concerning hunting, fishing and furharvesting licenses & fees.

A motion to amend SB 59 by lowering fees in line 44 to \$500, line 58 to \$500 and line 73 to \$300 was made by Senator Gordon, seconded by Senator Hayden. Motion carried with vote by show of hands.

Discussion by members concernd the fee structure base, effects of possible agency reorganization and merits of an interim study.

Motion was made to recommend SB 59 favorably as amended by Senator Langworthy, seconded by Senator Kerr. Motion carried with vote by show of hands.
Senator Feleciano requested his no vote be recorded.

SB 94 - Concerning the Kansas Recreational River Act

Liability of the landowner was discussed and Don Hayward read the statute in effect since 1965 which addresses the issue. Concerns were expressed by Committee members regarding public access to private property, disregard for private property, and negotiations and regulations needed to acquire and maintain access areas to a river reach. There is a general consensus among members to promote programs, in place, for recreational activities on the three navigable rivers as funds are included in the Fish & Game budget.

Senators Daniels, Kerr and Hayden expressed strong opposition to the proposed legislation.

Motion was made to recommend SB 94 adversely by Senator Daniels, seconded by Senator Thiessen. Motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES,
room 123-S, Statehouse, at 8.00 a.m./~~PM~~ on February 5, 1987

Written testimony in support of SB 94 by the Sierra Club was noted by the Committee members. (Attachment B).

SB 42 - Concerning conservation easements

Don Hayward related results of a comparison study made of conservation easement laws of the state of Washington and Kansas. SB 42 as written makes the conservation easement junior to the right of a public utility which addressed a concern expressed during previous testimony. Colorado law is the basis of SB 42 as written and language has been incorporated into the bill addressing this concern. The language was read and clarified by Mr. Hayward. A summary of SB 42 prepared by Ramon Powers was given to Committee members. (Attachment C).

Motion was made to amend SB 42 by adopting language of the Colorado law addressing utility rights in conservation easements by Senator Kerr, seconded by Senator Martin. Motion carried.

Meeting adjourned. The next meeting will be February 10, 1987.

Quest List

2-5-87

Ed Reinert		Ks L WUs
Bill Hanzlid	Pratt	Ks Fish & Game
Stephen A. Hurst	Topeka	Ks. Water Office
Cathy M. Couch	Emporia	Sen. Daniels
Kerry L. Wedel	Topeka	Kansas Water Office
Martha Hagedorn	Topeka	Ks. ST. HISTORICAL Society
Paul Wilkin	Topeka	Wild Bird Council
Rh Hodges	Topeka	KCEI

Proposed Amendment to Senate Bill 60

Amend K.S.A. 1986 Supp. 74-4509b by adding the following subsection:

(i) Notwithstanding any provision of this section to the contrary, the state park and resources authority may designate, by resolution, two days per calendar year during which residents or nonresidents may enter and use any state park, or portion thereof, on a daily basis without first purchasing a permit therefor. In any year, such two day period shall coincide with the two day fee-free fishing period designated by the Kansas fish and game commission pursuant to K.S.A. 32-104, and amendments thereto. Nothing in this subsection shall be deemed to affect the applicability of any other law or rule and regulation which affects a person's use of a state park.

(A)
2-5-87
WJW



SIERRA CLUB

Kansas Chapter

February 4, 1987

To: Senate Energy and Natural Resources Committee
From: Shaun McGrath

re: SB94 enacting the Kansas Recreational River Act

The Kansas Chapter of the Sierra Club, with membership of over 1500, is a group of persons who greatly enjoy the outdoors. We support the concept behind SB94, allowing public access to rivers for recreational use, as it opens up new avenues into the natural beauty of the state.

We recognize a need to protect the rights of farmers whose land lies adjacent to the river, and hope that their interests, as well as the interests of persons seeking the pleasures of the outdoors, can be served.

(B)

2-5-87
SMC

SUMMARY OF S.B. 42

S.B. 42 would provide for the statutory authority for creating conservation easements which could be enforced beyond the life of the original parties to such an agreement. A conservation easement is a property right which a landowner can sell or grant to a governmental body or nonprofit organization; that would prevent certain uses of the land or require use of the land for specified purposes without conveying the title or right of possession of the land. The landowner retains all of the rights and privileges of ownership not transferred by the easement.

Under common law conservation easements can be created and enforced upon the parties agreeing to such an easement. However, it appears that in Kansas enforcement of negative easements in gross e.g., conservation easements, beyond the life of the parties to such easement is questionable.

- Section 1(a) -- Defines conservation easement.
- Section 1(b) -- Defines such an easement as an interest in real property which is transferable.
 - sub. (c) -- Defines such an easement as negative in character and an easement in gross rather than appurtenant.
 - sub. (d) -- States that such an easement could be perpetual unless otherwise stated in the instrument.
 - sub. (e) -- States that the particular characteristics will be those specified in the instrument creating the easement.
- Section 2(a) -- Provides that an easement may be created only by the record owner of the surface of the land through a deed or other instrument of conveyance stating the intention of the grantor.
 - sub. (b) -- Provides that such easements could only be created through a grant to a governmental entity or to an organization exempt under section 510 (c) (3) of the Internal Revenue Code.
- Section 3(a) -- States that all interests not conveyed in the instrument creating the easement will remain to the grantor of the easement "including the right to engage in all uses of the land affected by the easement which are not inconsistent with the easement or prohibited by the easement or by law."
 - sub. (b) -- Provides that such easement in gross must be recorded upon the public records affecting the ownership of real property and subject to all laws relating to recordation.

- sub. (c) -- Provides for the release, termination, extinguishment, or abandonment of conservation easements.
- Section 4(a) -- States that no conservation easement will be unenforceable by reason of lack of privity of contract or lack of benefit to particular land or because not expressed as running with the land.
- sub. (b) -- Provides for injunctive relief for the actual or threatened injury to or impairment of a conservation easement.
- sub. (c) -- Provides for recovery of money damages for the cost of restoration, the loss of scenic, aesthetic, and environmental values.
- Section 5 -- Provides that the value of the conservation easement will be subject to assessment, taxation, or exemption from taxation in accordance with the laws on assessment and taxation of real property interests.
- Section 6 -- Provides that this statute does not affect any interest in real property recognized under statutes, common law, or custom in effect in Kansas prior to July 1, 1987.

No provision of the act would be construed to mean that conservation easements were not lawful estates in land prior to July 1, 1987.