

Approved March 17, 1988
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Dennis Spaniol at
Chairperson

3:30 ~~xxx~~ p.m. on March 3, 19 88 in room 526-S of the Capitol.

All members were present except:

Representative Sifers (excused)

Committee staff present:

Raney Gilliland, Legislative Research Department
Laura Howard, Legislative Research Department
Arden Ensley, Revisor
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Chairman Dennis Spaniol called the meeting to order, noting that eight bills were before the committee to consider action on.

House Bill 2863--Board of public utilities; rate increases; appeals.

The Chair noted that this was a Wyandotte County bill that allowed the public utilities to collect a fee increase. If there should be a dispute and the fee overturned in court, they would be obligated to return the increased fee to the consumer.

Representative Rosenau made a motion to report House Bill 2863 favorably for passage. Representative Sallee seconded and the motion carried.

House Bill 2981--Franchise fees; differential allowed.

The revisor distributed balloons with an insertion on page 3 which says that the franchise agreement shall not exceed 5% of the gross receipts. (Attachment 1) This was requested by the Kansas Corporation Commission. Representative Webb, seconded by Representative Shore, moved to incorporate the amendment into the bill. During discussion, Representative Grotewiel commented that he didn't think the cap was necessary if the 2% difference limitation between classes was established; therefore, he could not support the amendment. A vote was taken, followed by division. The motion failed.

Representative Freeman made a motion to grandfather amendments in as follows:

After line 116, the provisions of this subdivision apply to initial franchise negotiations and to franchise agreements that have expired and if a renewed franchise agreement contains the same terms, conditions, and franchise

tax amounts, then the percentage restrictions in this subdivision do not apply.

Representative Acheson seconded the motion.

During discussion, the revisor noted that the state cannot force renegotiations of contracts except as they come due. A vote was taken and the motion passed.

Representative Roe, seconded by Representative Patrick, moved to include a 5¼% cap. A vote was taken, division was called for, and the motion failed.

CONTINUATION SHEET

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Representative Guldner, seconded by Representative Sutter, made a motion to grandfather in a 4% cap with the exception of existing contracts. During discussion, it was noted that existing contracts could be renewed at the same term, but if any changes or additions were made, the 4% cap would apply. A vote was taken and the motion carried.

An amendment relative to the 2% difference limitation between classes was distributed by Representative Grotewiel. (Attachment 2) He noted that these were only changes in language; there was no difference in intent from the original bill. Representative Grotewiel, seconded by Representative Sughrue, moved that these amendments be incorporated in the bill. The motion passed.

Representative Roe, seconded by Representative Grotewiel, moved to pass House Bill 2981 as amended. The motion carried.

House Bill 3007--An act relating to applications to appropriate water.

Representative Holmes explained that under current law, the filing of an annual water use report can be requested by the Chief Engineer, but it is not required. Substitute for House Bill 3007 would require the filing of an annual use report to the Chief Engineer on or before March 1 following the year of the water use. Section (b) provides a civil penalty not to exceed \$500 for failure to file a water use report. The penalty for filing a document containing false information would be a class C misdemeanor (three--six months). (Attachment 3)

During discussion, David Pope, Chief Engineer, told the committee that normally the reports are mailed out just after the first of the year, hoping to get them back in 30 days. The due date of March 1 gives 30-60 days for them to be returned. He also said that in this version of a substitute bill, the modifications would be fairly minor and the effective date would not be a problem. Representative Holmes, seconded by Representative Patrick, moved that Substitute for House Bill 3007 be adopted. The motion passed. Representative Holmes, seconded by Representative Shore, moved to pass Substitute for House Bill 3007 favorably. The motion carried.

House Bill 3022--Chemigation; registration and permitting; training requirements; penalties.

Representative Freeman proposed an amendment on line 40 after "each" to add "additional". Representative Freeman, seconded by Representative Guldner, moved to adopt this amendment. The motion passed.

Representative Freeman, seconded by Representative Sutter, made a conceptual motion on line 131 to change the \$10,000 fine to: "not to exceed \$5,000 for those with chemical application" and "not to exceed \$2,500 for those with fertilizer application." The motion passed.

Representative Freeman commented to the Water Office that he was concerned relative to rules and regulations on 420-6. Some of the people who do chemigation were concerned that no anticycling devices were required under those rules and regulations. He requested the Water Office to rectify that.

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Representative Holmes expressed concern regarding some technical changes which were in the statutes. The Chairman suggested that this be worked on and if there should be a necessary floor amendment, it could be cleaned up there.

Representative Grotewiel noted that the Board of Agriculture had suggested some amendments in their testimony. He agreed to discuss these with the Department before the bill should reach the House floor.

Representative Freeman, seconded by Representative Sutter, moved to pass House Bill 3022 as amended favorably.

Representative Shore, seconded by Representative Sallee, made a substitute motion to table House Bill 3022. A vote was taken and division called for. The Chair voted no and the motion failed.

A vote was taken on Representative Freeman's motion to pass House Bill 3022 as amended favorably and the motion carried.

House Bill 3026--Low-level radioactive waste; fees imposed against major generators.

Representative Grotewiel made a motion to report House Bill 3026 favorably for passage. Representative Freeman seconded. The motion carried.

House Bill 2891--Pesticide application by registered pest control technicians.

Staff distributed copies of amendments to the bill. (Attachment 4) The revisor explained the amendments to the committee. During discussion, Dale Lambley of the Board of Agriculture said that this would conform with the EPA civil penalty law. He also noted that if the person applying the chemicals is a registered technician, he is not required to take the formal state examination.

Representative Fry, seconded by Representative Holmes, made a motion to adopt the amendments. The motion passed.

Representative Holmes, seconded by Representative Acheson, moved to report House Bill 2891 as amended favorably for passage. The motion carried.

House Bill 2870--Establishing household hazardous waste collection programs.

Chairman Spaniol noted that the funding for this program comes directly from the state superfund money. This year \$300,000 has been appropriated for this fund, and the estimates on this program were \$50,000-\$75,000 of that \$300,000 total. The committee needed to establish whether the priority should be here or in remediation and clean-up of the 332 sites that had been identified by the Department of Health and Environment. Representative Shore commented that 50 percent would come from the superfund and 50 percent locally. He was not sure that the local people would want to pay 50 percent.

Representative Patrick made a motion to table the bill. There was no second.

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Representative Holmes felt that the 50/50 match should be left in the bill--then only communities willing to pay their share would make requests.

Representative Barr wanted to see the bill kept alive in order to give communities the option to participate if they wanted to. She suggested that the bill be passed out with the understanding that the Chairman would suggest to the Speaker that it be rereferred.

Responding to a question, Representative Patrick said that the Department of Health and Environment was still working on a priority list to determine how their money could best be spent. He felt it might be best to wait until that has been decided.

Representative Charlton wanted to give the whole House a chance to vote on the bill.

Representative Sughrue supported the bill, noting importance of the educational aspect.

Representative Webb supported the bill, commenting that it would keep the program alive and priorities and appropriations could come later.

The Chair felt there was enough committee interest to discuss amendments to House Bill 2870.

Representative Holmes, seconded by Representative Freeman, moved to include "households, farmers and small businesses." Discussion followed. A vote was taken and the motion passed.

Representative Patrick offered an amendment to add language conceptually that preference be given to those cities, counties or communities who have not previously participated in the program. Representative Guldner seconded. Following brief discussion, question was called for. Division was requested. The motion passed.

Representative Holmes, seconded by Representative Sughrue, moved that House Bill 2870 as as amended be passed favorably. The motion carried.

House Bill 2944--Establishing the Kansas commission on private household water quality.

Representative Sutter made a motion to pass the bill favorably. Representative Lacey seconded.

During discussion, Representative Shore felt that this bill duplicated the efforts of a lot of water agencies already established. He opposed the motion.

Representative Charlton commented that the Secretary of Agriculture and others had indicated that this would simply create a body to coordinate the efforts of all the agencies, rather than a duplication of effort.

Representative Grotewiel noted that this commission would be for only one year, not an on-going effort.

A vote was taken and the motion carried.

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Representative Fry requested that House Bill 2929, which deals with incineration, be referred for interim study. The Chair noted that the decision depended on the EPA regulations that were due to come out sometime in the spring.

There were no objections to the minutes of February 23, 24 and 25, and they were approved.

The meeting was adjourned at 4:50 p.m.

Date: March 3, 1988

GUEST REGISTER

HOUSE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
Hugh Taylor	BOARD OF PUBLIC UTILITIES KANSAS CITY	7TH & MINNESOTA K.C. MO 64101	913 573-9145
Dennis Murphy	KDHE	Topeka	913 273-2517
Marylan Bradford	League of Women Voters	"	913 354-1646
Del Lambley	K S B A	"	296-2263
Maureen P. Anderson	K S B A	Scott City	316- 872-7372
Ed M. Bohl	KSBA - DWR	Topeka	296-5717
David Murphy	PROFESSIONAL LAWYER CARE ASSOCIATION OF AID AMERICA	MEERMAN KS	1-362-9800
Love Corbiss	LKM	Topeka	
Kathy Burdison	Empire Electric	Columbus	316 429-3747
Jerry Coover	KGE	Topeka	357-1741 357-4822
Tom Taylor	APL Gas Service	Topeka	096-1927
Shelley Sutton	KES	TOPEKA	233-1867
TREVA POTTER	PEOPLES NAT. GAS	TOPEKA	235-5996
DENNY S KOCH	SW BELL TEL. CO.	"	276-5656
Jim Gartner	" " " "	"	276-5606
Ed Reinert	KS League Women Water	Topeka	
Ray Petty	Intern - Rep. Holmes	Topeka	234-1520
Marty Robinson	Admin. Aide		1752
James Rooper	KDHE	Topeka	1535
Jim Kauf	League of Municipalities	Topeka	
Chipp Wilson	KFCA	Topeka	234- 0461
Bill Chubb	KFB	Manhattan	537 2261

HOUSE BILL No. 2981

By Committee on Energy and Natural Resources

2-17

0017 AN ACT concerning municipalities; relating to franchises;
0018 amending K.S.A. 1987 Supp. 12-2001 and repealing the exist-
0019 ing section.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. K.S.A. 1987 Supp. 12-2001 is hereby amended to
0022 read as follows: 12-2001. (a) The governing body of any city may
0023 permit any person, firm or corporation to:

0024 (1) Manufacture, sell and furnish artificial or natural gas light
0025 and heat; electric light, water, power or heat; or steam heat to the
0026 inhabitants;

0027 (2) build street railways, to be operated over and along or
0028 under the streets and public grounds of such city;

0029 (3) construct and operate telegraph and telephone lines;

0030 (4) lay pipes, conduits, cables and all appliances necessary
0031 for the construction, operation of gas and electric-light or steam-
0032 heat plants;

0033 (5) lay pipes, conduits, cables and all appliances necessary
0034 for the construction and operation of electric railways or bus
0035 companies;

0036 (6) lay pipes for the operation of a water plant for the dis-
0037 tribution or furnishing of water over, under and along the streets
0038 and alleys of such city; or

0039 (7) use the streets in the carrying on of any business which is
0040 not prohibited by law.

0041 (b) If the governing body of a city permits any activity speci-
0042 fied in subsection (a), the granting of permission to engage in the
0043 activity shall be subject to the following:

0044 (1) All contracts granting or giving any such original fran-
0045 chise, right or privilege, or extending or renewing or amending

0046 any existing grant, right, privilege or franchise, to engage in such
0047 an activity shall be made by ordinance, and not otherwise.

0048 (2) No contract, grant, right, privilege or franchise to engage
0049 in such an activity, now existing or hereafter granted, shall be
0050 extended for any longer period of time than 20 years from the
0051 date of such grant or extension.

0052 (3) No person, firm or corporation shall be granted any ex-
0053 clusive franchise, right or privilege whatever.

0054 (4) The governing body of any city, at all times during the
0055 existence of any contract, grant, privilege or franchise to engage
0056 in such an activity, shall have the right by ordinance to fix a
0057 reasonable schedule of maximum rates to be charged such city
0058 and the inhabitants thereof for gas; light and heat, electric light,
0059 power or heat, steam heat or water; the rates of fare on any street
0060 railway or bus company; the rates of any telephone company; or
0061 the rates charged any such city, or the inhabitants thereof, by any
0062 person, firm or corporation operating under any other franchise
0063 under this act. The governing body at no time shall fix a rate
0064 which prohibits such person, firm or corporation from earning a
0065 reasonable rate upon the fair value of the property used and
0066 useful in such public service. In fixing and establishing such fair
0067 value, the value of such franchise, contract and privilege given
0068 and granted by the city to such person, firm or corporation shall
0069 not be taken into consideration in ascertaining the reasonable-
0070 ness of the rates to be charged to the inhabitants of such city.

0071 (5) No such grant, right, privilege or franchise shall be made
0072 to any person, firm, corporation or association unless it provides
0073 for adequate compensation or consideration therefor to be paid
0074 to such city; and, regardless of whether or not other or additional
0075 compensation is provided for, such grantee shall pay annually
0076 such fixed charge as may be prescribed in the franchise ordi-
0077 nance. Such fixed charge may consist of a percentage of the gross
0078 receipts derived from the service permitted by the grant, right,
0079 privilege or franchise from consumers or recipients of such
0080 service located within the corporate boundaries of such city, and,
0081 in the case of public utilities or common carriers situated and
0082 operated wholly or principally within such city, or principally

0083 operated for the benefit of such city or its people, from con-
0084 sumers or recipients located in territory immediately adjoining
0085 such city and not within the boundaries of any other incor-
0086 porated city; and in such case such city shall make and report to
0087 the governing body all such gross receipts once each month, or at
0088 such other intervals as stipulated in the franchise ordinance and
0089 pay into the treasury the amount due such city at the time the
0090 report is made. The governing body shall also shall have access
0091 to and the right to examine, at all reasonable times, all books,
0092 receipts, files, records and documents of any such grantee nec-
0093 essary to verify the correctness of such statement and to correct
0094 the same, if found to be erroneous. If such statement of gross
0095 receipts is incorrect, then such payment shall be made upon such
0096 corrected statement.

0097 On and after the effective date of the act, any provision for
0098 compensation or consideration, included in a franchise granted
0099 pursuant to this section which is established on the basis of
0100 compensation or consideration paid by the utility under another
0101 franchise, is hereby declared to be contrary to the public policy
0102 of this state and shall be void and unenforceable. Any such
0103 provision, included in a franchise granted pursuant to this sec-
0104 tion and in force on the effective date of this act which requires
0105 payments to the city by a utility to increase by virtue of the
0106 compensation or consideration required to be paid under a
0107 franchise granted by another city to the utility's predecessor in
0108 interest, is hereby declared to be contrary to the public policy of
0109 this state and shall be void and unenforceable.

0110 (6) *When establishing the formula to determine the amount*
0111 *of compensation or consideration under paragraph (5), if the*
0112 *city creates more than one class of consumers, the difference in*
0113 *the rate each such class is assessed shall not exceed 2%. If a flat*
0114 *fee is imposed, the amount of such fee assessed against each*
0115 *class of consumers shall not result in one class paying an*
0116 *amount which is 2% greater than any other class.*

0117 *The provisions of this paragraph shall be subject to K.S.A.*
0118 *66-101, and amendments thereto.*

0119 (6)(7) No such right, privilege or franchise shall be granted

"In establishing adequate compensation under this paragraph, no charge or fee under any new or renegotiated agreement for any grant, right, privilege or franchise shall exceed 5% of gross receipts derived from the service permitted under the agreement.";

0120 until the ordinance granting the same has been read in full at
0121 three regular meetings of the governing body. Immediately after
0122 the final passage, the ordinance shall be published in the official
0123 city paper once a week for two consecutive weeks. Such ordi-
0124 nance shall not take effect and be in force until after the expira-
0125 tion of 60 days from the date of its final passage. If, pending the
0126 passage of any such ordinance or during the time between its
0127 final passage and the expiration of 60 days before such ordinance
0128 takes effect, 20% of the qualified voters of such city voting for
0129 mayor, or in case no mayor is elected then the commissioner or
0130 council member receiving the highest number of votes, at the
0131 last preceding city election present a petition to the governing
0132 body asking that the franchise ordinance be submitted for adop-
0133 tion to popular vote, the mayor of the city shall issue a procla-
0134 mation calling a special election for that purpose. The procla-
0135 mation calling such special election shall specifically state that
0136 such election is called for the adoption of the ordinance granting
0137 such franchise, and the ordinance shall be set out in full in the
0138 proclamation. The proclamation shall be published once each
0139 week for two consecutive weeks in the official city newspaper,
0140 and the last publication shall not be less than 30 days before the
0141 day upon which the special election is held. If, at the special
0142 election, the majority of votes cast shall be for the ordinance and
0143 the making of the grant, the ordinance shall thereupon become
0144 effective. If a majority of the votes cast at the special election are
0145 against the ordinance and the making of the grant, the ordinance
0146 shall not confer any rights, powers or privileges of any kind
0147 whatsoever upon the applicants therefor and shall be void.

0148 All expense of publishing any ordinance adopted pursuant to
0149 this section shall be paid by the proposed grantee. If a sufficient
0150 petition is filed and an election is called for the adoption of any
0151 such ordinance, the applicants for the grant, right, privilege or
0152 franchise, upon receipt by the applicants of written notice that
0153 such petition has been filed and found sufficient and stating the
0154 amount necessary for the purpose, shall immediately deposit
0155 with the city treasurer in cash an amount sufficient to cover the
0156 entire expense of such election. The mayor shall not issue a

0157 proclamation calling such election until such money is deposited
0158 with the treasurer. Upon such failure to so deposit such money
0159 the ordinance shall be void.

0160 (7)(8) All contracts, grants, rights, privileges or franchises for
0161 the use of the streets and alleys of such city, not herein men-
0162 tioned, shall be governed by all the provisions of this act, and all
0163 amendments, extensions or enlargements of any contract, right,
0164 privilege or franchise previously granted to any person, firm or
0165 corporation for the use of the streets and alleys of such city shall
0166 be subject to all the conditions provided for in this act for the
0167 making of original grants and franchises. The provisions of this
0168 section shall not apply to railway companies for the purpose of
0169 reaching and affording railway connections and switch privi-
0170 leges to the owners or users of any industrial plants, or for the
0171 purpose of reaching and affording railway connections and
0172 switch privileges to any agency or institution of the state of
0173 Kansas.

0174 Sec. 2. K.S.A. 1987 Supp. 12-2001 is hereby repealed.

0175 Sec. 3. This act shall take effect and be in force from and
0176 after its publication in the statute book.

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Energy and Natural Resources

Recommends that House Bill No. 2981

"AN ACT concerning municipalities; relating to franchises; amending K.S.A. 1987 Supp. 12-2001 and repealing the existing section."

Be amended:

On page 3, by striking all of lines 110 to 118, inclusive; and inserting in lieu thereof the following:

"(6) In establishing adequate compensation under paragraph (5) no new or renegotiated agreement for any grant, right, privilege or franchise shall provide for a charge at a rate to a member of one class of customers which is in excess of the equivalent of two percentage points greater than the charge made to any member of any other class of customers. If any customer or class of customers is exempt from the payment of any such charge, no charge made to any other customer shall exceed an amount equal to 2% of the gross receipts derived from the services provided to such customer.

The state corporation commission shall have authority, upon complaint or on its motion, to determine whether compensation or consideration meets the requirements of this subsection.";

And the bill be passed as amended.

Chairperson

Substitute for HOUSE BILL NO. 3007

By Committee on Energy and Natural Resources

AN ACT relating to water; concerning the use thereof; concerning annual water use reports.

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

New Section 1. (a) The owner of a water right or permit to appropriate water for beneficial use, except for domestic vested use, shall file an annual water use report on a form prescribed by the chief engineer of the division of water resources of the state board of agriculture on or before March 1 following the calendar year of the water use. The report shall set forth such water use information as requested by the chief engineer.

(b) Any person failing to file a water use report or other documents required under the provisions of subsection (a) shall be subject to a civil penalty in an amount not to exceed \$500. The chief engineer upon a finding that the owner of a water right or permit to appropriate water for beneficial use has failed to file such a report may impose a civil penalty as provided in this section. Any person filing a document knowing it to contain any false information as to a material matter shall be guilty of a class C misdemeanor.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

Your Committee on Energy and Natural Resources

Recommends that House Bill No. 2891

"AN ACT concerning the Kansas pesticide law; relating to the application of pesticides; providing civil penalties for certain violations; amending K.S.A. 1987 Supp. 2-2438a, 2-2440a, 2-2440b and 2-2440c and repealing the existing sections."

Be amended:

On page 3, following line 99, by inserting:

"(p) "Pesticide business licensee" shall mean an individual, business, association of persons, corporation or governmental agency who is licensed or would be required to be licensed under the provisions of K.S.A. 1987 Supp. 2-2440 et seq.";

Also on page 3, in line 100, by striking "(p)" and inserting "(q)"; in line 102, by striking "(q)" and inserting "(r)"; in line 114, by striking "(r)" and inserting "(s)"; in line 117, by striking "(s)" and inserting "(t)"; in line 119, by striking "(t)" and inserting "(u)";

On page 4, in line 122, by striking "(u)" and inserting "(v)"; in line 127, by striking "(v)" and inserting "(w)";

On page 5, in line 187, after the period, by inserting "Training materials submitted to the secretary shall be approved or disapproved within 60 days of the date of submission to the secretary. All training materials disapproved by the secretary shall be returned to the pesticide business licensee within 60 days of receipt by the secretary together with a written explanation of the reason for such disapproval.";

On page 6, in line 205, by striking all after the word "of" where it first appears in the line; in line 206, by striking "2-2440b" and inserting in lieu thereof "K.S.A. 2-2453 or

2-2454"; in line 208, by striking " of \$500" and inserting in lieu thereof "fixed by rules and regulations of the secretary in an amount not less than \$100 nor more than \$5,000"; in line 211, by striking the word "board" and inserting "secretary"; in line 212, after the word "licensee" by inserting "or any employee or agent thereof or any person or entity required to be licensed as a pesticide business licensee"; in line 218, by striking "board" and inserting "secretary"; in line 220, by striking "board" and inserting "secretary"; in line 221, by striking "board" and inserting "secretary"; in line 222, after the word "hearing" by inserting "or informal conference hearing"; in line 223, after the period, by inserting "If such licensee requests an informal conference hearing but wishes to appeal the decision of the secretary affirming, reversing or modifying the written order such licensee may within 20 days request a formal hearing in accordance with the provisions of the Kansas administrative procedure act."

Also in line 223, by striking "board" and inserting "secretary"; in line 225, by striking "board" and inserting "secretary";

And the bill be passed as amended.

Chairperson