

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Sen. Bill Morris at
Chairperson

9:00 a.m./~~p.m.~~ on February 2, 1988 in room 254-E of the Capitol.

All members were present except:

Sen. Vidricksen was excused.

Committee staff present:

Hank Avila, Legislative Research Department
Ben Barrett, Legislative Research Department
Bruce Kinzie, Revisor of Statutes
Louise Cunningham, Committee Secretary

Conferees appearing before the committee:

Ed DeSoignie, Policy Coordinator, KDOT
Connie McGinness, Director of Legislative Relations for Kansas
Electric Cooperatives
Wilbur Leonard, Legislative Agent, Committee of Kansas Farm
Organizations.

Copies of the annual report by KCC to the Kansas Legislature were distributed to members. This is pursuant to KSA 66-117b.

Ed DeSoignie, Policy Coordinator, KDOT, requested the introduction of legislation concerning exemption of relocation assistance payments from debt setoff provisions and fee title acquisition of rights of way. A copy of his statement is attached. (Attachment 1).

A motion was made by Sen. Doyen and was seconded by Sen. Francisco to introduce these two bills as committee bills. Motion carried.

Hearing on S.B. 503 - Electric cooperatives; concerning organization thereof.

Conni McGinness, Director of Legislative Relations for Kansas Electric Cooperatives, Inc., spoke in favor of S.B. 503. She said the bill was asking for limited personal immunity to any trustee or officer of the cooperative, would allow the cooperative to pay capital credits to former members and would allow proxy and mail ballot with regards to cooperative mergers and consolidations. She said the officers donate their time and cannot be paid a salary. They may get per diem. A copy of her statement is attached. (Attachment 2).

Wilbur Leonard, Legislative Agent, Committee of Kansas Farm Organizations, spoke in favor of S.B. 503. He said trustees are selected from their membership to manage the business affairs of the cooperatives. They would like to insulate their board members from personal liability just as corporations do for their officers.

There was concern expressed about the immunity provisions of the bill. The committee discussed S.B. 26 and S.B. 28 enacted in 1987 and staff was directed to get an interpretation of the bill as it relates to this committee. A copy of Mr. Leonard's statement is attached. (Attachment 3).

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES,
room 254-E, Statehouse, at 9:00 a.m./~~p.m.~~ on February 2, 1988.

Louis Stroup, Jr., Executive Director, Kansas Municipal Utilities, Inc., was unable to attend the hearing but had comments distributed informing the committee that they had no objections to S.B. 503 and said it was mostly cleanup in nature. A copy of his comments are attached. (Attachment 4).

On a motion from Sen. Francisco and a second from Sen. Doyen the Minutes of January 26, 27 and 29 were approved.
Motion carried.

Meeting was adjourned at 9:40 a.m.

DATE: 2-2-88

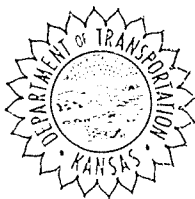
ROOM: 254-E

GUEST REGISTER
SENATE

TRANSPORTATION AND UTILITIES COMMITTEE

NAME	ORGANIZATION	ADDRESS
BILL OHLEMEIER	KANSAS ELECTRIC COOPERATIVES (KEC)	TOPEKA
Mike Peters	KEC	Topeka
DEBBIE PRYER	KEC	TOPEKA
LESTER MURPHY	KEC	TOPEKA
Tom Taylor	KPL Gas Service	Topeka
Wilbur Leonard	Comm. Ks Farm Org	Topeka
Janette Freeman	Kansas Corporation Commission	Topeka

STATE OF KANSAS



KANSAS DEPARTMENT OF TRANSPORTATION

Docking State Office Building

Topeka 66612-1568

(913) 296-3566

Horace B. Edwards
Secretary of Transportation

Mike Hayden
Governor of Kansas

February 2, 1988

MEMORANDUM TO: THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE

FROM: EDWARD R. DESOIGNIE, POLICY COORDINATOR

REGARDING: AGENCY BILL REQUESTS

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THIS COMMITTEE. I AM BEFORE YOU TODAY TO PRESENT THE LEGISLATIVE REQUESTS OF THE DEPARTMENT. THE DEPARTMENT REQUESTS THE INTRODUCTION OF LEGISLATION IN THE FOLLOWING AREAS:

- + EXEMPTION OF RELOCATION ASSISTANCE PAYMENTS FROM DEBT SETOFF PROVISIONS.

- + FEE TITLE ACQUISITION OF RIGHTS OF WAY.

I WOULD LIKE TO DISCUSS EACH OF THESE BRIEFLY WITH YOU.

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EXEMPT RELOCATION PAYMENTS FROM DEBT SETOFF

HIGHWAY RIGHTS OF WAY ACQUISITIONS INVOLVING USE OF FEDERAL-AID ARE GOVERNED BY THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970 (42 U.S.C. 4601 et. seq.), AND BY REGULATIONS PROMULGATED BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION (FEDERAL REGISTER, VOL. 51, NO. 39, PART IV). FEDERAL REGULATIONS ALLOW DEDUCTIONS FROM RELOCATION PAYMENTS TO AN INDIVIDUAL OF ANY ADVANCE RELOCATION PAYMENTS MADE TO SUCH INDIVIDUAL. THE WITHHOLDING OF ANY PART OF A RELOCATION PAYMENT TO SATISFY AN OBLIGATION TO ANY OTHER CREDITOR, INCLUDING THE STATE, IS PROHIBITED. THE THRUST OF FEDERAL POLICIES IS TO ENSURE THAT DISPLACED OWNERS OF REAL PROPERTY ARE TREATED FAIRLY AND CONSISTENTLY TO ENCOURAGE AND EXPEDITE ACQUISITION, TO MINIMIZE LITIGATION, AND TO PROMOTE PUBLIC CONFIDENCE. THE DEPARTMENT HAS BEEN ADVISED BY THE FEDERAL HIGHWAY ADMINISTRATION THAT A CONFLICT EXISTS BETWEEN THE KANSAS DEBT SETOFF LAW (K.S.A. 75-6201 ET. SEQ.) AND FEDERAL LAW.

FEE TITLE ACQUISITION OF RIGHTS OF WAY

AUTHORIZES THE SECRETARY OF TRANSPORTATION TO ACQUIRE PROPERTY FOR HIGHWAY RIGHTS OF WAY IN FEE SIMPLE TITLE BY GRANT, TRADE, OR EMINENT DOMAIN. FEE SIMPLE ACQUISITION IS PRESENTLY LIMITED TO SITES FOR BUILDINGS AND TRACTS PURCHASED OUTRIGHT. THE REQUESTED AUTHORITY WOULD PROVIDE THE STATE WHAT THEY ARE PAYING FOR AND WOULD PERMIT THE STATE TO RECOVER THE INVESTMENTS OF PUBLIC FUNDS. EXCLUDES MINERAL RIGHTS FROM SUCH ACQUISITIONS.

Mr. Chairman and Members of the Committee, my name is Conni McGinness and I am Director of Legislative Relations for Kansas Electric Cooperatives, Inc. KEC is the statewide service organization representing 35 rural electric distribution cooperatives and two generation and transmission cooperatives in the State. I am speaking here today on behalf of KEC and its member systems in support of Senate Bill No. 503 amending the Rural Electric Cooperative Act (K.S.A. 17-4601 et seq.).

The Rural Electric Cooperative Act was originally passed in 1941, and since then has been amended only twice. The amendments proposed in S.B. 503 are threefold: first, the changes would allow proxy and mail ballot with regards to cooperative mergers and consolidations; second, they would allow the cooperative to pay capital credits to former members; and, finally, the changes would grant limited personal immunity to any trustee or officer of the cooperative.

The cooperatives are governed by a board of trustees. However, numerous important issues directly affecting the members of the cooperative, such as a decision to merge or consolidate the system, must be decided on by a vote of the membership. Presently, our act is unclear on whether a consolidating or merging cooperative could allow their membership to vote on these important issues by proxy or mail ballot.

Unfortunately, many of the members who would like to vote are, for whatever reason, unable to attend the meeting at which these issues are addressed. Allowing the membership to vote by proxy or mail ballot will insure greater participation in directing the cooperative system.

The amendments to K.S.A. 17-4623(e) (p.5, line 0189-90) is to correct a technical problem encountered by a number of cooperatives when paying capital credit refunds to former members. The act presently allows the cooperative to refund capital credits only to members, and other persons when they become members. However, a member which ceases to use electric energy furnished by the cooperative ceases to be a member after six months of nonuse. Presently, the cooperative technically can not pay capital credits to former members when they become due until the person becomes a member again. The proposed amendments to this provision will correct this catch-22 and allow the cooperative to pay capital credits due to former members who no longer receive electric energy from the cooperative.

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The final amendment to the act is found at lines 078-82. This provision provides that

(g) Any trustee or officer of a cooperative shall be immune from personal liability for any civil damages arising from acts or omissions occurring or performed in such person's official capacity. A trustee or officer shall not be immune for intentional or wanton misconduct, or gross negligence.

It must be emphasized that this provision renders the trustee or officer immune only from personal liability and only for negligent acts or omissions. This provision does not take away an injured plaintiff's cause of action against the cooperative acting through its trustees and officers. Nor does this provision protect the trustee or officer from fraud, intentional misconduct or gross negligence. What the provision does do is allow the cooperative to get and retain competent board members who do not have to fear that their personal assets such as a family farm or business will be lost as a result of a lawsuit arising out of a minor mistake in conducting cooperative business.

The electric utility business is becoming more and more complex with each passing day. In a system where trustees and officers are voluntary and are paid a minimal per diem covering their time and expenses of conducting cooperative business, limited personal immunity for these key leaders is essential to the continued success of the cooperative.

Finally, I would like to request that line 0222 on page 6 be amended to require only a majority vote by the membership of the cooperative to sell, mortgage or lease all or substantially all of its property. This change back to the original voting requirement imposed by the act reflects the wishes of the members of KEC.

I thank the Committee for the opportunity to testify in support of S.B. 503 and would welcome your questions.

Committee of . . .

Kansas Farm Organizations

Wilbur G. Leonard
Legislative Agent
109 West 9th Street
Suite 304
Topeka, Kansas 66612
(913) 234-9010

TESTIMONY IN SUPPORT OF SENATE BILL NO. 503

BEFORE THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

February 2, 1988

Mr. Chairman and Members of the Committee:

I am Wilbur Leonard, appearing on behalf of the Committee of Kansas Farm Organizations. We appreciate this opportunity to present our views in support of Senate Bill No. 503.

We have here very substantial business entities which, by law, cannot intentionally earn profits, cannot build reserves from earnings, and are regulated by both federal and state agencies as to their rates and the salary structure of their officers.

Trustees are selected from their membership to manage the business affairs of the cooperatives. The only remuneration permitted these persons is a fixed fee and actual expenses for attending meetings of the board of trustees.

Corporations for profit may completely insulate their board members from the element of personal liability for their official actions in good faith. This is all we hope to accomplish by this bill.

It is equally important for what it doesn't cover. A trustee is given no protection for intentional or wanton misconduct, or gross negligence.

While the wording of the acts are not the same, I submit that SB 503 accomplishes for the electric cooperatives what SB 26 of the 1987 session did for corporations for profit, and the vote on that bill was 37 to 1 in the Senate and 121 to 2 in the House.

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We believe that another benefit from passage of this bill would be in encourage more persons with managerial capabilities to serve on the boards of trustees if the concern of being sued personally is minimized.

The provision with respect to authorizing proxy voting in cases of merger or consolidation is consistent with the existing statute pertaining to meetings of the membership.

The proposed change concerning the distribution of capital credits to former members as well as to existing members is a reasonable and equitable change. A person should not be barred from receiving a proportionate part of funds to which he had contributed merely because he moves from the area served by the electric cooperative.

A roster of the organizations which make up this committee is attached and, for your information, we appear on only those legislative matters where there is no dissent in our ranks.

We thank each of you for this privilege.

- Wilbur Leonard

MEMBERS OF THE COMMITTEE OF KANSAS FARM ORGANIZATIONS

ASSOCIATED MILK PRODUCERS

KANSAS AGRI-WOMEN

KANSAS ASSOCIATION OF SOIL CONSERVATION DISTRICTS

KANSAS ASSOCIATION OF WHEAT GROWERS

KANSAS COOPERATIVE COUNCIL

KANSAS CORN GROWERS ASSOCIATION

KANSAS ELECTRIC COOPERATIVES

KANSAS ETHANOL ASSOCIATION

KANSAS FARM BUREAU

KANSAS FERTILIZER & CHEMICAL INSTITUTE, INC.

KANSAS GRAIN & FEED DEALERS ASSOCIATION

KANSAS LIVESTOCK ASSOCIATION

KANSAS MEAT PROCESSORS ASSOCIATION

KANSAS PORK PRODUCERS COUNCIL

KANSAS RURAL WATER DISTRICT ASSOCIATION

KANSAS SEED DEALERS ASSOCIATION

KANSAS SOYBEAN ASSOCIATION

KANSAS STATE GRANGE

MID-AMERICA DAIRYMEN

KANSAS VETERINARY MEDICAL ASSOCIATION

KANSAS WATER WELL ASSOCIATION

Comments of Kansas Municipal Utilities, Inc.
on Senate Bill 503
Before Senate Transportation & Utilities Committee
February 2, 1988
By Louis Stroup, Jr., Executive Director

Mr. Chairman, members of the committee. KMU is submitting written testimony on Senate Bill 503 because I will be out-of-town on this date and unable to be present at the hearing.

I would like to inform the committee that KMU has no objections to SB 503 -- a measure that is mostly clean-up in nature.

The only non-housekeeping issue appears on lines 0078-0082 which deals with liability.

KMU is supportive of legislation that would place reasonable limits on personal liability of trustees and officers of rural electric cooperatives.

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