

Approved 2/22/89
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Ross Doyen at
Chairperson

8:00 a.m./~~p.m.~~ on February 15, 1989 in room 423-S of the Capitol.

All members were present except: quorum was present.

Committee staff present:

Don Hayward, Revisor
Raney Gilliland, Research
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:

Senator Phil Martin
David Pope, Chief Engineer-Director, Division of Water Resources,
Kansas State Board of Agriculture
Pat Casey, Council, Kansas Department of Health and Environment

List of others present is on file.

Chairman Doyen opened the hearing on S.B. 133 - concerning fees for the appropriation of water for certain purposes. He called on Senator Martin.

Senator Martin gave background information explaining why he had requested the bill.

David Pope presented testimony supporting S.B. 133 (Attachment I). He responded to questions.

A motion was made by Senator Martin to report S. B. 133 favorable for passage. Senator Hayden seconded the motion, and the motion carried.

Chairman Doyen stated because S.B. 84 was noncontroversial in nature and if the committee had no objections, he would like to request that it be placed on the consent calendar.

A motion was made by Senator Sallee to place S.B. 84 on the consent calendar. Senator Lee seconded the motion, and the motion carried.

Chairman Doyen referred to S.B. 121. Two amendments that were proposed were distributed to the members of the committee (Attachment II & III).

A motion was made by Senator Hayden to adopt the purposed amendments. Senator Sallee seconded the motion, and the motion carried.

A motion was made by Senator Daniels to amend the bill in line 34, by striking "corrective" and inserting "remedial and preventive". The motion was seconded by Senator Martin, and the motion carried.

A motion was made by Senator Sallee to pass the bill as amended. The motion was seconded by Senator Hayden, and the motion carried.

Chairman Doyen referred to S.B. 120.

A motion was made by Senator Hayden to report S.B. 120 favorable for passage. Senator Sallee seconded the motion. Discussion followed. Pat Casey was called on to make some remarks. It was agreed that the bill could use further consideration. The motion and the second were withdrawn.

The minutes of the meeting of February 8, 1989 were adopted. The meeting adjourned at 8:25. The next meeting will be February 16, 1989.

Date February 15, 1989

GUEST LIST

<u>NAME</u>	<u>REPRESENTING</u>
ED SCHAUB Woody Woodman	COSTAL CORP KCPL
JAMES POWER	KDHE
TERRY LEATHERMAN	KCCI
DARRELL MONTEI	Dept. Wild. & Fks
David L. Pope	KSBA DWR
Kathleen Warren	DOB
Richard E. Pelf	DWR-KSBA
Jim Ludwig	KPL

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Energy and Natural Resources

Recommends that Senate Bill No. 121

"AN ACT supplementing the Kansas groundwater exploration and protection act; providing authority for the department of health and environment to issue corrective orders and civil penalties for violations of such act."

Be amended:

On page 1, in line 21, by striking "water well contractor or landowner" and inserting "person"; in line 30, by striking "water well contractor or landowner" and inserting "person"; in line 34, by striking "corrective" and inserting "remedial or preventive"; in line 42, by striking "water well contractor or landowner" and inserting "person";

On page 2, in line 50, by striking "water well contractor or landowner" and inserting "person"; after line 60, by inserting a new subsection to read as follows:

"(g) As used in this section, "person" means any individual, firm, partnership, corporation or other association of persons.";

Also, on page 2, in line 65, by striking "water well contractor or landowner" and inserting "person"; in line 71, by striking all after "shall"; by striking all in lines 72 to 77, inclusive, and inserting "be sufficient to show that a violation of the provisions of this act or the rules and regulations adopted thereunder has occurred or is imminent. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate.";

Also, on page 2, after line 77, by inserting a new subsection to read as follows:

"(c) As used in this section, "person" means any individual, firm, partnership, corporation or other association

of persons.";

And the bill be passed as amended.

_____Chairperson

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Energy and Natural Resources

Recommends that Senate Bill No. 84

"AN ACT relating to conservation districts; concerning the program for protection of riparian and wetland areas; amending K.S.A. 1988 Supp. 2-1915 and repealing the existing section."

Be passed and, because the committee is of the opinion that the bill is of a noncontroversial nature, be placed on the consent calendar.

Chairperson

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

Your Committee on Energy and Natural Resources

Recommends that Senate Bill No. 133

"AN ACT relating to water; concerning fees for the appropriation of water for certain purposes; amending K.S.A. 1988 Supp. 82a-708a and repealing the existing section."

Be passed.

Chairperson

Sen Bill 84
1989 Session
February 2, 1989

The Honorable Ross Doyen, Chairperson
Senate Committee on Energy and Natural Resources
Senate Chamber
Third Floor, Statehouse


Dear Senator Doyen:

SUBJECT: Fiscal Note for SB 84 by Committee on Energy and Natural Resources

In accordance with KSA 75-3715a, the following fiscal note concerning SB 84 is respectfully submitted to your committee.

Subject act, as introduced, would establish a program for protection of riparian and wetlands areas. The program would be developed by the State Conservation Commission and implemented by conservation districts. The program would be a part of annual and long range plans of conservation districts which are prepared with the assistance of state and federal water resource management agencies.

This bill, as introduced, reinstates a program authorized by the 1987 Legislature and, due to a technical error, deleted by the 1988 Legislature. The State Conservation Commission has completed planning, coordination and development of program rules and regulations. The added administrative responsibilities may justify an undeterminable increase in staff and travel.


Michael F. O'Keefe
Director of the Budget

MFO:KW:dlf

cc: State Conservation Commission

4930

The Honorable Ross Doyen, Chairperson
Committee on Energy and Natural Resources
Senate Chambers
Third Floor, Statehouse


Dear Senator Doyen:

SUBJECT: Fiscal Note for SB 121 by Committee on Energy and Natural Resources

In accordance with KSA 75-3715a, the following fiscal note concerning SB 121 is respectfully submitted to your committee.

SB 121, as introduced, provides the authority to the Secretary of the Department of Health and Environment to issue an administrative order or civil penalty to a water well contractor or landowner who violates any provision of the Kansas groundwater exploration and protection act or regulation. The maximum civil penalty that may be assessed per violation is \$5,000 per day for each day an order is violated. These orders will be in accordance with the Kansas Administrative Procedures Act (KSA 77-501).

This bill is not a part of the FY 1990 Governor's Report on the Budget. The Department of Health and Environment indicates that an amount of \$6,600 would be needed to cover the cost of additional administrative hearings. The Department estimates that 12 hearings would be held at a cost of \$550 per hearing. This amount can be absorbed within the Governor's Budget and no new funds will be necessary. Any fines collected as a result of violations of the act would be deposited in the State General Fund and any expenditures necessitated by the act would be from the State General Fund.


Michael F. O'Keefe
Director of the Budget

MFO:KW:meh

5851

The Honorable Ross Doyen, Chairperson
Senate Committee on Energy and Natural Resources
Senate Chamber
Third Floor, Statehouse


Dear Senator Doyen:

SUBJECT: Fiscal Note for SB 133 by Committee on Energy and Natural Resources

In accordance with KSA 75-3715a, the following fiscal note concerning SB 133 is respectfully submitted to your committee.

SB 133 would amend KSA 1988 Supp. 82a-708a to modify the current fee structure for applications to appropriate water for water power use. The bill would base the application fee upon the flow rate in cubic feet per second. Each application fee would be \$100 plus \$200 for each 100 cubic feet per second of water proposed to be diverted. Under current law, the fee is based upon the annual volume of water proposed to be diverted.

The fiscal impact cannot be determined. The change proposed by SB 133 would greatly reduce the application fees for water power projects. Any application fees for water power projects are credited to the Board of Agriculture's Water Appropriation Certificate Fee Fund. Such applications, however, are very rare. Since the institution of the current fee structure in 1985, there have been no applications for water power projects. Prior to that, there had been only three such applications.


Michael F. O'Keefe
Director of the Budget

MFO:MB:sm

cc: Board of Agriculture
Kansas Water Office

5509

STATEMENT OF DAVID L. POPE
CHIEF ENGINEER-DIRECTOR
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE
BEFORE THE
SENATE ENERGY AND NATURAL RESOURCES COMMITTEE
ON
SENATE BILL 133

February 14, 1989

Chairman Doyen and members of the Committee, thank you for this opportunity to appear on Senate Bill 133 concerning the application fees to be charged for water to be used for water power purposes. This use is also commonly referred to as hydropower.

The filing fees for all new applications to appropriate water for any beneficial use, except domestic use, are set by K.S.A. 1988 Supp. 82a-708a. These fees, which are based on the proposed annual quantity to be appropriated in acre feet, range from a minimum of \$100 on up depending on the amount of water requested. The fee schedule has generally worked very well and is appropriate for most applications for permit to appropriate water. However, it has recently been called to our attention that a proposed hydropower facility is being considered for installation at the existing Empire Lake by JDD Energy Company in extreme southeast Kansas near Riverton on the Spring River.

Water power is a beneficial use of water recognized and defined by Division of Water Resources Administrative Regulations. Hydropower facilities are somewhat unique in that they do not consume water, but merely use it to generate electricity by letting it flow through their turbines. Because even a relatively small hydropower facility needs to pass large quantities through its turbines, the annual amount of water which they must appropriate is quite large.

SE&NR
2/15/89
Attachment I

JDJ Enterprises would need to apply for somewhere in the vicinity of 750,000 acre feet per year, even though very little, if any, of the water would be consumed.

The use of water for water power purposes, could, in some cases, affect other water users on the river. Consequently, I feel it is appropriate for this type of use to be required to file an application and receive a permit that can be conditioned as necessary to protect other water users and the public interest. In this case, no adverse effects are contemplated because of the way they propose to operate the facility. JDJ's filing fee could range from \$75,000 to \$125,000 depending on the details of the operation. In contrast, a typical application fee for most proposed appropriations ranges from several hundred dollars to a few thousand, even for relatively large uses of water. The fee proposed in Senate Bill 133 of \$100 plus \$200 for each 100 cubic feet per second, or portion thereof, of water to be diverted through turbines, would appear to be reasonable. This would result in a fee for the facility discussed above of \$4,000 as compared to the fee required by statute of nearly \$75,000.

To our knowledge, there are only five water power facilities in Kansas and only one of them is in operation. This is the first hydropower application to come before us since the law was amended in 1982 to impose a graduated fee schedule, instead of a flat filing fee.

In summary, I am in support of Senate Bill 133, because of the apparent inequity in fees required for water power purposes, in comparison to other uses of water. We may or may not receive other water power applications in the future, but it would appear that the proposed fee schedule would also be

reasonable for any other facility that might be proposed in Kansas.

I would be happy to answer any questions you might have. Thank you very much for your time.

court for enforcement. These measures are slow and, in many cases, too severe for the violation. As a result, the Kansas Ground Water Exploration and Protection Act is not easily enforced, so most violators go unpunished. This puts those of us who follow the state regulations at a price disadvantage due to the cost of the materials required to meet current regulations.

A Second, more serious, problem caused by the lack of enforcement of the act is ground water pollution. Water well owners and contractors alike, are interested in saving money and often times that savings comes at the expense of our states clean ground water. It is always cheaper, in the short run, to leave out the 20' surface seal when a contractor is completing a well, or to just throw a board and a cement block over an abandoned water well and walk away.

At times these violations are not committed by water well contractors or land owners but by pump installers or plumbers who are installing pumping equipment after the licensed contractor has properly completed the well according regulations. Therefore, we would like to request Senate Bill 121 be amended to include the definition for "person" to mean any individual, firm, partnership, corporation, or other association of individuals and that "Water well contractor or landowner" be struck in lines 21, 30, 50, and 65 and add "person" after "any" in lines 21, 30, 50, and 65.

I see our clean ground water being threatened across the state and it greatly concerns me. I have a son who is interested in the water well drilling business and I hope there will be clean ground water for his use and livelihood when he comes of age.

I thank you for your consideration and I would be happy to answer any questions.

KANSAS WELL WATER ASSOCIATIONS - AMENDMENT

SEAN R
2/15/89
attachment II

45 or violators of the date, place and time of the hearing.

46 (c) No civil penalty shall be imposed under this section except
47 after notification by issuance and service of the written order and
48 hearing, if a hearing is requested, in accordance with the provision
49 of the Kansas administrative procedure act.

50 (d) Any water well contractor or landowner aggrieved by an order
51 of the secretary made under this section may appeal such order to
52 the district court in the manner provided by the act for judicial
53 review and civil enforcement of agency actions.

54 (e) Any penalty recovered pursuant to the provisions of this section
55 shall be remitted to the state treasurer, deposited in the state
56 treasury and credited to the state general fund.

57 (f) Nothing in this act shall be construed to abridge, limit or
58 otherwise impair the right of any person to damages or other relief
59 on account of injury to persons or property and to maintain any
60 action or other appropriate proceeding therefor.

61 Sec. 2. (a) Notwithstanding the existence or pursuit of any other
62 remedy, the secretary may maintain, in the manner provided by the
63 act for judicial review and civil enforcement of agency actions, an
64 action in the name of the state of Kansas for injunction or other
65 process against any water well contractor or landowner to restrain
66 or prevent any violation of the provisions of the Kansas groundwater
67 exploration and protection act or of any rules and regulations adopted
68 thereunder.

69 ~~√ (b) In any civil action brought pursuant to this section in which
70 a temporary restraining order, preliminary injunction or permanent
71 injunction is sought, it shall not be necessary to allege or prove at
72 any stage of the proceeding that irreparable damage will occur should
73 the temporary restraining order, preliminary injunction or permanent
74 injunction not be issued or that the remedy at law is inadequate,
75 and the temporary restraining order, preliminary injunction or per-
76 manent injunction shall issue without such allegations and without
77 such proof.~~

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

80

SENATE BILL NO. 121

The following amendment has been agreed to
by the Secretary of Health and Environment,
the Committee of Kansas Farm Organizations
and the Kansas Water Well Association.

(b) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought it shall be sufficient to show that a violation of the provisions of this act or the rules and regulations adopted thereunder has occurred or is imminent. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate.

SENR
2/15/89
Attachment III