

Approved

Ken Grotewiel  
Date 2/19/91

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Representative Ken Grotewiel at  
Chairperson

3:30 ~~xxx~~ p.m. on February 14, 19<sup>91</sup> in room 526-S of the Capitol.

All members were present except:  
Representative Patrick, excused  
Representative Webb, excused

Committee staff present:

Raney Gilliland, Principal Analyst, Legislative Research  
Mary Torrence, Revisor of Statutes' Office  
Pat Mah, Legislative Research  
Lenore Olson, Committee Secretary

Conferees appearing before the committee:  
None

Chairperson Grotewiel called the meeting to order and announced that the Committee would take action on several bills.

HB 2021

A motion was made by Representative McClure, seconded by Representative McKechnie, to make clarifying amendments to HB 2021 as shown on (Attachment 1). The motion carried.

A motion was made by Representative Gatlin, seconded by Representative Lloyd, to amend HB 2021 to remove the language on page 8, lines 42 and 43, and on page 9, lines 1, 2 and 3, which would remove cement kilns from the fee structure. The motion carried.

A motion was made by Representative Gatlin, seconded by Representative Holmes, to amend HB 2021 in line 12 on page 8 to remove the \$400,000 maximum fee to \$200,000 maximum. Also, to strike on page 8, lines 19 through 22 the words "until \$150,000 has been credited to the hazardous waste collection fund during a fiscal year and thereafter 100% of any such deposit shall be credited to the environmental permit fund during such fiscal year." The motion carried.

A motion was made by Representative Gatlin, seconded by Representative Holmes, to amend HB 2021 as requested by APTUS regarding the time period and extensions of permit applications. (Attachment 2). The motion failed.

A motion was made by Representative Holmes, seconded by Representative Gatlin, to pass as amended HB 2021. The motion carried.

HB 2035

A motion was made by Representative Freeman, seconded by Representative McKechnie, to recommend HB 2035 favorable for passage. The motion carried.

HB 2037

A motion was made by Representative McClure, seconded by Representative McKechnie, to amend HB 2037 as shown on the attached balloon. (Attachment 3) The motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES,  
room 526-S, Statehouse, at 3:30 ~~xx~~/p.m. on February 14, 1991.

A motion was made by Representative Thompson, seconded by Representative McKechnie, to amend HB 2037 on page 4, line 15 after the word "practices.", to insert the sentence "The chief engineer shall not mandate the adoption and implementation of conservation plans and practices except pursuant to a finding that such plans and practices will assure public benefit and promotion of public interest." The motion carried.

A motion was made by Representative McKechnie, seconded by Representative McClure, to pass HB 2037 favorable as amended. The motion carried.

A motion was made by Representative Stephens, seconded by Representative McKechnie, to approve the minutes of February 12, 1991. The motion carried.

A motion was made by Representative Holmes, seconded by Representative Freeman, to introduce two Committee bills: an interim rate schedule for utilities (Attachment 4), and changes in rates based on changes in measurable utility cost and expenses (Attachment 5). The motion carried.

The meeting adjourned.

COMMITTEE: E & NR

DATE: 2/14/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
David C Pope	Topeka	DWR, KSBA
Allen Pichert	Lawrence	: Rep. Hobbes
STEVE KEARNEY	TOPEKA	PETEMARK + ASSOC.
John Peterson	Tyng	BFI
Michelle Guster	Topeka	John Peterson + Assoc.
Jim Byers	Topeka	KSBA
Julie Hein	Topeka	APHC
Ron Hein	Topeka	APTUS
FRANCES KASTNER	Topeka	Ks Food Dealers
Lis Gottschalk	Lawrence	Intern - Sen. Parrish
Wayne ProBaseo	Topeka	Ks Soft Drink Assoc
Chiquita Cornelius	Topeka	Ks. BIRP
TREVA POTTER	"	PEOPLES NAT. GAS
Joyce A. Wolf	LAWRENCE	Ks. Audubon Council
Shaun McGrath	Topeka	Ks. Nat. Res. Council
Don Schuck	Topeka	Ks. Ind. O & G. Assoc
Clark Duffey	"	Kansas Water Office
Jerry Conrad	LAWRENCE	KG & E
Dan Haas	Overland Park	KCPK
Jim Ludwig	Topeka	KPL
Wayland Anderson	Topeka	DWR/KSBA
Stephen Hurst	Topeka	KWO
David M. Foster	Topeka	KDITA
Robert Lee Jones	Topeka	KW

## ATTACHMENT I

## Recommended Amendments to H.B. 2021

1. Subsection (w)(1) should be amended to clearly indicate that the permit application fees are to be used by the Secretary for permit-related activities. Recommend adding the following sentence at the end of subsection (w)(1).

"Fees collected under this subsection shall be used by the Secretary to recover the costs associated with the review and processing of the permit application for which the fee was paid."

2. Subsection (w)(2) should be amended to clarify that the monies in the environmental permit fund can be used for waste minimization activities related to hazardous waste generators as well as applicants for permits. Recommend deleting the term "to applicants" from line 9 on page 7.
3. Subsection (bb) should be amended to clarify that the fee exemption for energy recovery facilities was intended to apply only to the fees in subsection (x) and not the entirety of Section 1. Recommend the following change in line 3 on page 9.

"is exempt from all fees established under subsection (x) of this section."

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*2/14/91*  
*Attachment 1*

1 comply with any provision of any law referred to in this subsection  
2 or any rule or regulation or order or permit issued pursuant to any  
3 such law as indicated by past or continuing violations.

4 In case of a corporate applicant, the secretary may deny the is-  
5 suance of a permit if the secretary finds that the applicant or any  
6 person who holds an interest in, or exercises total or partial control  
7 of or does business with the applicant or a principal of the corporation  
8 was a principal of another corporation which would not be eligible  
9 to receive a permit because of the provisions of this act.

10 (d) Upon receipt of a permit application meeting the require-  
11 ments of this section, the secretary or an authorized representative  
12 of the secretary shall inspect the location of the proposed facility  
13 and determine if the same complies with this act and the rules and  
14 regulations promulgated under this act. An inspection report shall  
15 be filed in writing by the secretary before issuing a permit and shall  
16 be made available for public review.

17 ~~Sec. 3. K.S.A. 65-3437 and K.S.A. 1990 Supp. 65-3431 are~~ 4  
18 ~~hereby repealed.~~ 5

19 Sec. 4. This act shall take effect and be in force from and after  
20 its publication in the statute book.

, K.S.A. 65-3438

**New Section 3.**

**65-3438.** Same; secretary's decision on permit application; time period, extensions. The secretary shall make a final decision on a permit application which does not require approval of the board within 240 days of the receipt of the application unless the time for such decision has been extended by the applicant in writing ~~and by rules and regulations adopted by the secretary for the issuance of permits under this act.~~ In the issuance of such permits, the secretary may include conditions specifically applicable to the operation of the facility. No local ordinance, permit or other requirements may prohibit operation of a facility having a permit under this act.

original application for permit filed by the applicant at the secretary's office unless 1) the secretary finds in writing that the application is too complex to review within 240 days, in which case the period provided herein shall be 480 days; 2) ; or 3) the period for review has been extended.

In promulgating such regulations, the secretary may exclude from the total days time waiting for a response from the applicant.

History: L. 1981, ch. 251, § 10; July 1.

For purposes of this act, "receipt of the application" shall mean the initial receipt of the application for permit, whether or not such application subsequently is modified.

*ENR*  
*2/14/91*  
*Attachment 2*

1 of the general public and, unless the circumstances attendant upon  
2 the disaster prevent the same, each such proclamation shall be filed  
3 promptly with the division of emergency preparedness, the office of  
4 the secretary of state and each city clerk or county clerk, as the  
5 case may be, in the area to which such proclamation applies.

6 (c) In the event of the absence of the governor from the state  
7 or the existence of any constitutional disability of the governor, the  
8 lieutenant governor may issue a proclamation declaring a state of  
9 disaster emergency in the manner provided in and subject to the  
10 provisions of subsection (a). During a state of disaster emergency  
11 declared pursuant to this subsection, the lieutenant governor may  
12 exercise the powers conferred upon the governor by K.S.A. 48-925  
13 and amendments thereto. Upon the return of the governor to the  
14 state or the removal of any constitutional disability of the governor,  
15 the authority of the lieutenant governor to exercise such powers shall  
16 terminate immediately and the governor shall resume the full powers  
17 of such office. Any state of disaster emergency and any actions taken  
18 by the lieutenant governor under this subsection shall continue and  
19 shall have full force and effect as authorized by law unless modified  
20 or terminated by the governor in the manner prescribed by law.

21 (d) A proclamation declaring a state of disaster emergency shall  
22 activate the disaster response and recovery aspects of the state dis-  
23 aster emergency plan and of any local and interjurisdictional disaster  
24 plans applicable to the political subdivisions or areas affected by the  
25 proclamation. Such proclamation shall be authority for the deploy-  
26 ment and use of any forces to which the plan or plans apply and  
27 for use or distribution of any supplies, equipment, materials or fa-  
28 cilities assembled, stockpiled or arranged to be made available pur-  
29 suant to this act during a disaster.

30 (e) ~~The governor, when conditions indicative of drought exist,~~  
31 ~~shall be authorized to declare by proclamation that a state of drought~~  
32 ~~exists. This declaration of a state of drought can be for specific areas~~  
33 ~~or communities, can be statewide or for specific water sources and~~  
34 ~~shall effect immediate implementation of drought contingency plans~~  
35 ~~contained in state approved conservation plans, including those for~~  
36 ~~state facilities.~~

37 Sec. 2. K.S.A. 1990 Supp. 74-2608 is hereby amended to read  
38 as follows: 74-2608. The Kansas water office shall:

39 (a) Collect and compile information pertaining to climate, water  
40 and soil as related to the usage of water for agricultural, industrial  
41 and municipal purposes and the availability of water supplies in the  
42 several watersheds of the state, and, in so doing, the office shall  
43 collect and compile the information obtainable from other agencies,

advised pursuant to K.S.A. 74-2608 and amendments  
thereto that

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1 formation as requested by the chief engineer.

2 (b) Any person failing to file a water use report or other docu-

3 ments required under the provisions of subsection (a) shall be subject

4 to a civil penalty in an amount not to exceed \$250. The chief engineer

5 upon a finding that the owner of a water right or permit to appro-

6 priate water for beneficial use has failed to file such a report may

7 impose a civil penalty as provided in this section. Any person filing

8 a document knowing it to contain any false information as to a

9 material matter shall be guilty of a class C misdemeanor. (e) All

10 fines collected by the chief engineer pursuant to this section sub-

11 section shall be remitted to the state treasurer as provided in K.S.A.

12 82a-731, and amendments thereto.

13 New Sec. 4. (a) The chief engineer may require the owner of a

14 water right or permit to appropriate water for beneficial use to adopt

15 and implement conservation plans and practices. In selecting the

16 water rights or permits for which conservation plans and practices

17 are required to be adopted and implemented, the chief engineer

18 shall give priority to: (1) Water users that share a common source

19 of supply that could be insufficient during times of drought; (2) water

20 users in water short areas, including fully appropriated areas or

21 within the boundaries of an intensive groundwater use control area;

22 (3) water users whose use is significantly higher than their peers;

23 and (4) water users who apply for any state administered grant, loan

24 or cost-share moneys for water-related projects. Prior to requiring

25 the adoption and implementation of conservation plans and practices,

26 the chief engineer shall assess the availability of technical assistance

27 and inform the owner of a water right or permit who is required to

28 adopt and implement a conservation plan and practices of the avail-

29 able sources of technical assistance to prepare the conservation plan.

← strike bracketed language

, as described in the annual water use reports of the  
 Kansas water office and division of water resources;  
 and (3)

30 (b) The chief engineer shall allow the owner of a water right or

31 permit a minimum of 60 days to prepare a required conservation

32 plan. The time allowed to prepare the required conservation plan

33 may be extended by the chief engineer for good cause shown by

34 the applicant. The chief engineer shall provide the owner of the

35 water right or permit a reasonable time to implement the conser-

36 vation plan and, for good cause shown, such as the need to apply

37 extensive land treatment practices, the chief engineer may extend

38 the time for implementation for a period of up to five years.

39 (c) Plans and practices required pursuant to this section shall be

40 consistent with the guidelines for conservation plans and practices

41 developed and maintained by the Kansas water office pursuant to

42 subsection (c) of K.S.A. 74-2608 and amendments thereto. If re-

43 quested by the owner of the water right or permit, the chief en-

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1 engineer, in consultation with the director of the Kansas water office,  
2 shall determine whether such plans and practices are consistent with  
3 the guidelines adopted by the Kansas water office. The Kansas water  
4 office shall provide, or arrange to provide, technical assistance for  
5 water users required to adopt and implement conservation plans and  
6 practices pursuant to this section.

7 (d) The chief engineer may require domestic users of water to  
8 adopt and implement conservation plans and practices, and delegate  
9 this authority to municipalities that have conservation plans meeting  
10 state guidelines, so that they can require compliance from private  
11 well owners within the city limits.

12 (e) ~~No state agency shall lend, grant or cost-share funds~~ for any  
13 water-related projects to any person or entity ~~without first deter-~~  
14 ~~mining that the person or entity has submitted to~~ the chief engineer  
15 a water conservation plan consistent with the guidelines for conser-  
16 vation plans and practices developed and maintained by the Kansas  
17 water office pursuant to subsection (c) of K.S.A. 1990 Supp. 74-2608  
18 and amendments thereto ~~and that the chief engineer has approved~~  
19 ~~the plan~~

Before any state agency makes any loan or grant, or provides any cost-share funds,

, the state agency may require the person or entity to submit to, and have approved by,

20 (f) As used in this section, "water-related projects" shall include,  
21 but not be limited to, the following: Interconnections between water  
22 supply systems; development of new water supply and delivery sys-  
23 tems; improvements or repairs to an existing water supply, ~~cove-~~  
24 ~~or water treatment system; land treatment on irrigated land;~~ small  
25 lakes development, improvement or repair; and development of other  
26 small impoundments for ~~water supply or irrigation.~~

system, sanitary sewer system or water treatment system which would significantly increase the amount of water used

27 (g) This section shall be part of and supplemental to the Kansas  
28 water appropriation act.

public

29 Sec. 5. K.S.A. 48-924 and 82a-732 and K.S.A. 1990 Supp. 74-  
30 2608 are hereby repealed.

31 Sec. 6. This act shall take effect and be in force from and after  
32 its publication in the ~~Kansas register.~~

statute book

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PROPOSED BILL NO. \_\_\_\_\_

By \_\_\_\_\_

AN ACT

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

Section 1. (a) Whenever a public utility files with the state corporation commission any proposed change in rates, or whenever a change in rates of a public utility is proposed by complaint or on initiative of the commission, the commission shall order ex parte an interim rate schedule to take effect not later than 60 days after the schedule is filed with the commission, unless within that time the commission has approved or issued a final order on the proposed changes. No interim rate schedule ordered by the commission under this section shall be subject to an application for a rehearing or an appeal to a court until the commission has rendered its final order on the proposed changes. The interim rate schedule shall be calculated using the proposed test year cost of capital, rate base and expenses, except that it shall include: (1) A rate of return on common equity for the utility equal to that authorized by the commission in the utility's most recent rate proceeding; (2) rate base or expense items the same in nature and kind as those allowed by a currently effective order of the commission in the utility's most recent rate proceeding; and (3) no change in the existing rate design. If the utility has not been subject to a prior commission determination, the commission shall base the interim rate schedule on its most recent determination concerning a similar utility.

(b) If, at the time of its final order on proposed changes in rates of a public utility, the state corporation commission finds that the interim rates ordered under this section are in excess of the rates provided in the commission's final order, the

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commission shall order the utility to refund the excess amount collected under the interim rate schedule, including interest on the excess amount at the rate of interest determined by the commission. The utility shall commence distribution of the refund to its customers within 120 days after the commission's final order which is not subject to rehearing or appeal. If, at the time of its final order, the commission finds that the interim rates are less than the rates provided in the commission's final order, the commission shall prescribe a method by which the utility will recover the difference in revenues from the date of the commission's final order to the date the new rate schedules become effective.

(c) If a public utility fails to make refunds ordered by the state corporation commission under subsection (b), the commission shall bring an action on behalf of all persons entitled to a refund to recover the refund and interest due. In addition, the commission shall be entitled to recover reasonable attorney fees, court costs and estimated cost of administering the distribution of the refund and interest to persons entitled to them. No action under this subsection shall be brought more than two years after the end of the period of time prescribed by the commission for making refunds.

(d) The state corporation commission shall not order an interim rate schedule to take effect as provided by this section less than four months after the commission has entered a final order on any proposed change of rates previously filed by the utility unless the commission finds that a four-month delay would unreasonably burden the utility, its customers or its shareholders and that an earlier imposition of interim rates is therefore necessary.

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

PROPOSED BILL NO. \_\_\_\_\_

By .

AN ACT

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

Section 1. The state corporation commission shall adopt rules and regulations prescribing procedures to allow a public utility to implement changes in rates based on known and measurable changes in costs and expenses incurred since the utility's most recent rate determination. Such known and measurable changes shall be subject to audit by the commission. The utility's new rates shall be calculated using the same rate of return on common equity and same rate design as previously approved in the utility's most recent rate proceeding before the commission. The commission may suspend the proposed rate change for a period not to exceed 90 days to conduct its audit. If the commission finds after notice and hearing that the proposed rate reflects only those changes in costs and expenses which are both known and measurable, the commission shall order the changed rates to be implemented. If the commission determines that any proposed rate increase under this section is attributable to cost and expense increases which are not known and measurable, the commission may disallow that portion of the increase and order an adjustment to the new rate to reflect the disallowance.

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

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*2/14/91*  
*Attachment 5*