Approved 5-2-91
Date

MINUTES OF THE House COMMITTEE ON Judiciary.

The meeting was called to order by Representative John M. Solbach
Chairperson at

3:30 xx.m./p.m. on March 8, , 1991 in room 313-S of the Capitol.

All members were present except:

Representatives Douville, Vancrum and Carmody

Committee staff present:

Jerry Donaldson, Legislative Research
Jill Wolters, Office of Revisor of Statutes
Gloria Leonhard, Secretary to the Committee

Conferees appearing before the committee:

Donald W. Vasos, Attorney, Kansas City, Ks.
Mark A. Vining, Attorney for Kansas Gas and Electric Company
Jim Ludwig, representing KPL Gas Service
Robert Gingrich, Deputy General Counsel, Kansas City Power and Light Co.
Emil Lutz, Director of Administrative Services
Fred Johnson, Troop Commander, Capitol Area Security Patrol/ Ks. Highway Patrol
Carla Dugger, Associate Director of American Civil Liberties Union of Kansas
Jamie Corkhill, representing Child Support Enforcement, SRS
Kay Farley, Child Support Coordinator, Office of Judicial Administration

The Chairman called for hearing on HB 2470, written contact with court evoking soldiers' and sailors' civil relief act not deemed as entry of appearance.

Bob Coldsnow, Revisor's Staff, reviewed HB 2470 and discussed amendments proposed in balloon bill. (See Attachment #1).

The Chairman called for action on HB 2470.

Representative Snowbarger requested that no action be taken on bills at this meeting as notice had not specifically been given for discussion and possible action on the agenda for 3:30 P.M. on 3/8/91. The Chairman noted Representative Snowbarger's objection and ruled that since notice had been specifically given for discussion and possible action for the 12:30 P.M. meeting on 3/8/91, the 3:30 meeting was a continuation of the 12:30 P.M. meeting and action would be appropriate.

Representatives Lawrence, Scott, Allen, and O'Neal requested to be noted as objecting to action on bills.

The Chairman said this objection would be duly noted and the objection would be considered as continuing.

Representative Sebelius made a motion that HB 2470 be amended as per staff's balloon. Representative Rock seconded the motion. The motion to amend HB 2470 carried.

Representative Sebelius made a motion that HB 2470 be passed as amended. Representative Rock seconded the motion. The motion carried.

The Chairman called for hearing on HB 2411, amendment to the overhead power line accident prevention act.

Donald W. Vasos, Attorney, Kansas City, Kansas, appeared to give background for HB 2411 and urge the committee to support the bill (See Attachment # 2).

Committee questions followed.

Mark A. Vining, Attorney for Kansas Gas and Electric Company, appeared in opposition to the amendment proposed by HB 2411. (See Attachment # 3).

Committee questions followed.

Jim Ludwig, representing KPL Gas Service, appeared in opposition to HB 2411. (See Attachment # 4).

Committee questions followed.

Robert Gingrich, Deputy General Counsel, Kansas City Power and Light Company appeared to testify in opposition to HB 2411. (See Attachment # 5).

Committee questions followed.

There being no further conferees, the hearing on HB 2411 was closed.

The Chairman called for hearing on HB 2424, defining and classifying the crimes of interference with the legislative process and possession of a loaded firearm within the state capitol building.

Emil Lutz, Director of Legislative Administrative Services, appeared to testify in support of HB 2425, on behalf of the Legislative Coordinating Council. Mr. Lutz said the bill was requested and recommended by the LCC in connection with a plan for improved security for the capitol; that extensive hearings were conducted. The KBI, the Director of the Highway Patrol, the head of the Capitol Area Security Division and Mr. Lutz all testified to the sub-committee and made recommendations; HB 2425 is designed to protect workers in the building and the general public when they come in and to prevent disruption to performance of business; to prevent interruption of legislative process; it is not designed to inhibit, prohibit or obstruct the public in the performance of their visits or conduct in the building; that at the present time no law for protection is in effect; that the bill goes one step further and provides for protection of legislators in their homes.

Committee questions followed.

Fred Johnson, Troop Commander, Capitol Area Security Patrol, appeared on behalf of the Kansas Highway Patrol and Capitol Area Security Patrol in support of HB 2425. (See Attachment # 6).

Committee questions followed.

Carla Dugger, Associate Director of the American Civil Liberties Union of Kansas and Western Missouri, appeared in opposition to HB 2425. (See Attachment # 7).

Committee questions followed.

Ms. Dugger also submitted written testimony for HB's 2537, 2500 and 2532. (See Attachment # 8, # 9 and # 10.

There being no further conferees, the hearing on HB 2425 was closed.

The Chairman called for action on HB 2468, sodomy gender neutral; and HB 2231, redefining sodomy.

Committee discussion followed.

Representative Gomez made a motion that HB 2468 be merged into HB 2231. Representative Smith seconded the motion. The motion carried.

Representative Gomez made a motion that HB 2231 be passed as amended. Representative Smith seconded the motion. The motion carried.

Representative Sebelius made a motion that HB 2468 be not passed. Representative Gomez seconded the motion. The motion carried.

The Chairman called for action on HB 2466, allowing Indian nations to petition the federal government to retrocede from the federal jurisdiction concerning criminal jurisdiction to the State of Kansas.

Representative Rock made a motion that HB 2466 be passed. Representative Garner seconded the motion. The motion carried.

The Chairman called for hearing on HB 2446, noncustodial parents in emergency military service who are subject to court orders for child support and visitation.

Jamie L. Corkhill, representing Child Support Enforcement for SRS, appeared to oppose passage of HB 2446 in its present form. (See Attachment # 11).

Committee questions followed.

Kay Farley, Child Support Coordinator, Office of Judicial Administration, appeared to note several issues for the committee's consideration. (See Attachment # 12).

There were no committee questions.

There being no further conferees, the hearing on HB 2446 was closed.

Due to the lack of a quorum, no further action was taken on bills.

Written testimony was submitted by Marshall Clark, Director, Governmental Relations, on behalf of Kansas Electric Cooperatives, Inc. (KEC), requesting amendments to HB 2411. (See Attachment # 13.)

Written testimony in opposition to HB 2411 was submitted by Louis Stroup, Jr., Executive Director, Kansas Municipal Utilities, Inc., McPherson, Kansas, 67460. (See Attachment # 14).

The meeting adjourned at 5:50 P.M. The next scheduled meeting will be March 11, 1991, at 1:00 P.M. in room 529-S.

GUEST LIST

COMMITTEE: HOUSE JUDICIARY DATE: 3/8/91

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATIO
TOM DAY	TOPEKA	KCC
Dan Haas	Overland Park	KCPL
ROBERT GINGRICH	LEAWood	KCPL
MARK VINING	Wichita	KG&E
[illegible]	LAWRENCE	KG&E
JIM LUMMING	Topeka	KPL GAS SERVICE
T.L. Green	Topeka	KPL Gas Servi
LOU JEAN SCHNEIDER	TOPEKA	STC/HIAA
JOHN C. BOTTENBERG	TOPEKA	KPL GAS SERVICE

Handout from Bob Colds, Assistant Atty Gen

Session of 1991

HOUSE BILL No. 2470

By Committee on Judiciary

2-26

AN ACT concerning civil procedure; relating to an entry of appearance; amending K.S.A. 1990 Supp. 60-203 and repealing the existing section.

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

Section 1. K.S.A. 1990 Supp. 60-203 is hereby amended to read as follows: 60-203. (a) A civil action is commenced at the time of: (1) Filing a petition with the clerk of the court, if service of process is obtained or the first publication is made for service by publication within 90 days after the petition is filed, except that the court may extend that time an additional 30 days upon a showing of good cause by the plaintiff; or (2) service of process or first publication, if service of process or first publication is not made within the time specified by provision (1).

(b) If service of process or first publication purports to have been made but is later adjudicated to have been invalid due to any irregularity in form or procedure or any defect in making service, the action shall nevertheless be deemed to have been commenced at the applicable time under subsection (a) if valid service is obtained or first publication is made within 90 days after that adjudication, except that the court may extend that time an additional 30 days upon a showing of good cause by the plaintiff.

(c) The filing of an entry of appearance shall have the same effect as service. *Written contact with the court by* ~~*the*~~ A DEFENDANT OR *an attorney for* ~~*the*~~ A *defendant evoking the protection for such defendant under the soldiers' and sailors' civil relief act shall not be deemed an entry of appearance by the court.*

Sec. 2. K.S.A. 1990 Supp. 60-203 is hereby repealed.

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

SSCRA
50 U.S.C. App. §§ 501-548, 560-591

H JUD
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STATEMENT OF

DONALD W. VASOS
Ten Cambridge Circle, Suite 200
10 East Cambridge Circle Drive
Kansas City, Kansas 66103
(913) 342-3100

Before The House Committee on Judiciary

on

HOUSE BILL NO. 2411

March 8, 1991

H.JUD
Attachment #2
3-8-91

I. THE HAZARDS OF HIGH VOLTAGE ELECTRICITY.

Electric utilities distribute electricity in populated urban areas over bare metal conductors at voltages of 7,620 volts. Electricity travels over these metal conductors at the approximate speed of light, certainly faster than the ability of any human being to react before injury. One cannot use his or her sense of sight, smell or hearing to determine whether an overhead wire is energized, and even if known to be energized, there is no way for the lay person to know the voltage of the energized wire.

The slightest, unintended brush contact with an energized overhead wire is virtually certain to result in instantaneous serious injury or death. There is no second chance - no ability to react. Because of this, courts of virtually all states, including Kansas, have recognized that electricity is one of the most dangerous instrumentalities known to man, which requires the electric utility to exercise the highest degree of care to protect the public from danger.

II. RIGHTS AND DUTIES OF AN ELECTRIC UTILITY.

The utility has sole control over the design, construction and maintenance of its overhead system. The lay public has no realistic control over such decisions, for only the utility has the training, personnel and equipment required to build and maintain overhead wires. In that regard, only the utility (to the exclusion of all other persons), has the right to:

(a) select the point of service to the customer's premises;

(b) repair or maintain its lines;

(c) relocate, bury, isolate, or barricade its lines; and

(d) energize or de-energize its lines.

Because of the hazardous conditions involved in cases of electrical injury, courts through the United States have uniformly held that the utility's duty to exercise the highest degree of care includes the duty to:

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(a) anticipate reasonable uses or activity around its lines;
(b) insulate or isolate lines;
(c) inspect;
(d) warn; and
(e) de-energize if conditions are hazardous.

III. PROPOSED AMENDMENTS RELATING TO ACCIDENT RECORDS.

Safety experts have long recognized that preparation and analysis of accident reports is fundamental to development of an effective safety program. Utility management has stressed that proper completion of an accident report may "prevent the next accident." Virtually all utilities maintain reports and analysis for each employee accident, and provide standard forms, publish periodic summaries, and require their safety departments to maintain the reports indefinitely. However, public accident records are generally treated differently. In many cases, responsibility for maintenance and handling of public accident reports is not assigned to the safety department, but to the law department. In virtually every instance the records or reports, if prepared, are routinely destroyed without preparing any statistical summary or facsimile copy.

A. § 1. Submission of Accident Reports.

K.S.A. 66-132 requires a public utility to submit an accident report to the KCC anytime serious personal injury or death occurs "on its premises." At least one Kansas utility strictly interprets the statute and foregoes submission of a report to the KCC when the accident does not strictly occur on its "premises." The amendment to K.S.A. 66-132 makes it clear that an accident report must be prepared and submitted to the KCC anytime serious personal injury or death occurs on its premises "or involves its equipment." This is apparently consistent with the interpretation of the statute by the KCC, which recommends that the utility liberally interpret the statute, and if in doubt, file a report.

B. §2. Preservation Of Accident Records.

Records of employee and public accidents are maintained and analyzed to "combat further recurrence of like accidents." Selective destruction of public accident reports thwarts this important public safety purpose. The records also serve an important function in judicial proceedings. Persons injured or killed by the negligence of a utility do not recover compensation by simply showing that an accident occurred. They bear a formidable burden, to prove that the utility was negligent. When the utility denies that it could have reasonably anticipated the accident, plaintiff has the burden to prove that the injury or death was foreseeable. This element is capable of proof by introducing evidence that the utility experienced a history of accidents occurring under similar circumstances. Destruction of this potentially crucial evidence is contrary to the interests of justice. The amendment of 66-137 simply requires that accident records be accorded the special treatment that important documents are entitled to, and requires that they be preserved.

IV. OVERHEAD POWER LINE ACT

A. Legislative History.

1989 Session

SB 155, "Overhead Power Line Safety Act," was introduced by Senate Transportation and Utilities Committee at the request of KPL Gas Service Company. The Bill passed the Senate, but was killed in the House.

1990 Session

HB 2673 was introduced by Committee on Judiciary, renamed the "Overhead Power Line Accident Prevention Act." The bill was amended in committee, and then tabled. On March 7, 1990, the bill was stricken from the Calendar.

On March 15, 1990, HB 3086, "The Overhead Power Line Accident Prevention Act" was introduced by Committee On Appropriations, and referred to Committee of the Whole. A motion to refer the bill to Committee on Judiciary failed. The bill passed the House and

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Senate, and was signed by the Governor April 12, 1990, to be effective July 1, 1990.

B. Deficiencies of the Act.

The act purports to reduce utility accidents and lawsuits by the indirect method of declaring that lay contractors who do not contact the utility before working within ten feet of power lines, commit a new form of statutory negligence called a rebuttable presumption. The concept of a rebuttable presumption is not found in the acts of other states and is unique to Kansas.

As a practical matter, the act does little to advance public safety with respect to energized overhead power lines. The act operates to transfer to an uninformed public, duties currently imposed upon utilities, which alone is expert in matters regarding safe distribution of electricity. It alone has the personnel, equipment and training, as well as the legal right to make its energized overhead wires safe. Moreover, the ordinary layman does not have the training or experience to properly assess the risk and hazard associated with overhead power lines. For example, the Consumer Product Safety Commission performed a study when it was drafting safety standards for metal antennas, and learned that a significant percentage of the public was not aware that high voltage electricity was distributed on uninsulated bare wire.

In reality, overhead power line acts are neither safety or accident prevention acts, but are rather intended to provide the utility with yet another defense in lawsuits. The real purpose is to permit defense counsel to tell the trier of fact that it must presume that the death or injury was due to the fault of the employer. This transfer of risk from a utility having the highest and best knowledge of the hazards of electrical energy, to a lay contractor, is neither just nor realistic.

V. PROPOSED AMENDMENTS TO THE OVERHEAD POWER LINE ACT.

A. NEW §3(e), K.S.A. 66-1704.

This is a substantive safety amendment intended to inform the lay contractor <u>at the point of operation</u> of the requirements of the

act. OSHA already imposes a ten foot rule on the employer, and does so without a rebuttable presumption or a 3 day waiting period. If employees are being injured or killed because the employer is not aware of the ten foot rule, then re-enacting it in a statute will not improve safety. If contractors lack the knowledge that it is improper to work within 10 feet of the energized line, then they can't be expected to know that the utility will protect the line (in 3 days) upon request. If the margin of safety is to be improved, the utility should provide contractor's with actual notice of the act's provisions by posting a legible sign or decal on utility equipment. When regulating traffic on public highways, we insist that users be informed of speed limits, required stops, and special hazards by the use of posted signs. The same should apply to an electric utility and is already being done by the telephone company, gas company, and underground pipelines.

If the act is to be effective it should provide some method of notifying a contractor of the utility's obligation to relocate, guard or temporarily insulate a line upon request. This amendment seeks to accomplish that end.

B. § 4.; K.S.A. 66-1705.

This is a safety amendment intended to correct an oversight in the act. The act requires that employers post durable warning signs when mobile equipment is working within 10 feet of an overhead power line. If a lay contractor is unaware of the ten foot rule and the requirement for posting a warning sign, then obviously the sign will not be posted. The amendment provides that the public utility will furnish durable warning signs to the contractor without cost. This will not only promote safety, but correct an oversight in the act. KPL Gas Service requested the provision, stating that it would promote work safety and would not cost equipment owners anything because the utility " will furnish such decals free."

C. § 5(b); K.S.A. 66-1706.

This amendment is intended to provide some balance to the act. The act invokes the rebuttable presumption of negligence only

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against the contractor. However, the negligence of a public utility must be proven by evidence - evidence that in many cases is under the control of the utility. Moreover, in many cases the utility will claim that it maintained its equipment in compliance with the National Electrical Safety Code. This code, by definition, establishes minimum standards. Thus, by doing the minimum, it has a powerful argument that it should be found free of fault. The secretariat that drafts the Code is the Institute of Electrical and Electronic Engineers. Utilities governed by the NESC are substantial contributors to the standards making organization. That is, they assist in making the rules by which they are governed.

The amendment provides balance to the act, and applies the rebuttable presumption of negligence to a utility in those instances where it violates either the act or the minimum standards of the NESC.

D. § 6(f); K.S.A. 66-1707.

This provision simply clarifies that the act does not apply when a utility's overhead power lines are not constructed, operated or maintained in compliance with the National Electrical Safety Code. It was apparently not contemplated that the act would be operative in those situation when the utility's lines were not constructed or maintained in compliance with the NESC. KPL Gas Service stated for example:

> Let me be very clear. If KPL is negligent - if we have a line in the wrong place or if we don't respond when someone call to change a line - then we should be responsible and liable for any damage.

E. NEW § 6(g).

This amendment makes it clear that the act applies only to the contractor, and not to his employees. The definition of "person" indicates an intent that the act is operative only as to contractors. This amendment clarifies that intent.

TESTIMONY BEFORE THE
HOUSE JUDICIARY COMMITTEE
HOUSE BILL 2411
BY MARK A. VINING
KANSAS GAS AND ELECTRIC COMPANY
MARCH 8, 1991

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to comment on this bill. Our Company actively supported the enactment of the Overhead Power Line Accident Prevention Act last year. We agree with KPL Gas Service that it promotes important public safety purposes. However, the amendments being proposed in House Bill 2411 are, in KG&E's opinion, ill-advised and ultimately could harm the safety effort which led to the adoption of the Overhead Power Line Safety Act. We echo the comments presented by KPL Gas Service before this Committee and join with them in opposing the amendments proposed in House Bill 2411.

Utilities have the duty to exercise the highest degree of care to avoid injury to the public when maintaining their electric lines. The Overhead Power Line Accident Prevention Act did not, in any way, dilute or lessen that burden. The law in Kansas is also quite clear that distributors of

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electricity are neither liable for occurrences which cannot be reasonably anticipated, nor insurers against accidents and injuries. The proposed amendments to the Overhead Power Line Safety Act would have the effect of increasing the burden electric utilities have in their Kansas operations.

For instance, the amendments appearing on page 3, lines 22 through 31, place the burden on the public utility to post notice information about its high voltage lines. It seems absurd to think that a notice provision is required to alert anyone to an obvious and patent condition such as the existence of overhead power lines. One of the purposes of the Overhead Power Line Safety Act was to attempt to prevent accidents, injuries and death by providing a means for protection from energized lines. Any person working near overhead power lines has a duty to use reasonable care. If the operations being contemplated will bring the individual within 10 feet of the overhead line, then additional precautions are prudent in order to avoid injury. Overhead lines are obvious and anyone can easily contact the utility for protective measures.

Additionally, the proposal does not identify, or in any way assist the utility in knowing how compliance is to be made. Does a notice go on one pole, or on each? Must the

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line, itself, be marked in some fashion? Does a notice go between poles in the easement? What size of notice is required? Should the notice be in color, or on a particular type of sign? The proposed amendment does nothing more than attempt to shift the burden of reasonable care from a person contracting to perform work around electric power lines to the utility. The effect of such a shift would be to make utilities bear a higher standard of care than is presently required under state law.

The amendment proposed in lines 39 and 40 on page 3 is another attempt to shift the burden of notice and reasonable care from an employer or contractor to a utility. The same arguments which were made concerning the notice signs discussed above are applicable here. A person contracting to work near overhead power lines has a duty to protect himself and any other person placed in a position to come in contact with those lines. That duty includes warning that equipment being used may come in contact with those lines. The duty to warn is not the utility's, as it is not undertaking any operations. The duty and cost associated herewith belongs to those persons who are performing the work.

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KG&E has no major problem with the inclusion of the amendment on lines 14 and 15 on page 4 of the bill. The National Electric Safety Code is a compilation of minimum safety precautions which an electric utility must be aware of. However, in light of my earlier comments, if an electric utility is held to have been negligent because of failure to post a warning or provide a warning sign without cost to the contractor, then the bill's ultimate purpose has been diluted. It would effectively allow a contractor to act negligently in failing to notify the electric utility and provide for worker safety, but shield itself from ultimate liability by raising the utility's failure to follow notice provisions or posting requirements. The absurdity of this result is clear because a reasonable person should not need these warnings due to the patent and obvious nature of overhead lines.

The amendment on lines 39 through 41 of page 4 of the bill is unnecessary. Initially, it should be pointed out that there are no functions or activities defined in subsection (d) of K.S.A. 1990 Supp. 16-1702. That portion of the current law defines the word "person." The definition currently restricts persons to entities which contract to perform functions or

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activities in proximity to overhead lines. If the attempted amendment is proposed in order to address concerns about private citizens performing work on their homes, or individuals flying kites with their children, it is unnecessary as these are already excluded by the definition of "person" in the present law. By its own provisions, the reach of the Overhead Power Line Safety Act extends only to those persons contracting to perform work near overhead lines and, hence, no amendments as proposed in subsection (g) are necessary.

My final comments concern the amendment proposed to K.S.A. 66-137 found on page 2, lines 12 through 16 of the bill. This section would require utilities to keep **permanent public records** of accidents which result in serious injury or death. The bill is not in any way limited or focused on those accidents which involve contact with high power lines. KG&E is painfully aware that foreseeability and prior occurrences can affect its ultimate liability in any subsequent case. Taking steps to prevent recurrence of accidents is an ongoing process at our Company. Accidents which do occur are investigated and evaluated to determine if additional preventative measures can be taken to avoid recurrence. These self-critical safety evaluations and investigations by a

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utility may be hampered, slowed, or, in some cases, not undertaken for fear that any written information that is produced as a result of that operation will become a permanent and public document. The broad reach of the provision would also violate certain attorney-client privileges which the utility may have in seeking advice from its lawyers and acting on that advice. As KPL Gas Service pointed out in its testimony, it is unparalleled with any other business. It is overbroad and unnecessary in terms of proving liability, allocating fault, or protecting the public from danger. It also unfairly subjects one business to onerous record keeping not required by any other business.

As I told you in the beginning of my comments, KG&E recognizes that it must exercise the highest degree of care in protecting the public from danger due to the operation of its high power lines. Protection of the public safety and welfare is not solely the responsibility of the utility. Every person who contracts to perform work which will require operations near an overhead power line must act reasonably and with caution to prevent injury to themselves or their employees. The Overhead Power Line Safety Act provides a reasonable and cost-effective means of dealing with these types of occurrences. It balances the cost of doing business and the

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care required between the person performing work near overhead lines and the utility. It also acts as a valuable method of preventing unwanted accidents and damage to property which result when contact with high power lines is made. The amendments do not enhance the current law and should not be adopted. For these reasons, we urge you to oppose House Bill 2411.

Thank you again for the opportunity to comment on this bill, and your kind attention during my comments. I will be happy to answer any questions that any of the members may have.

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TESTIMONY BEFORE THE

HOUSE JUDICIARY COMMITTEE

by Jim Ludwig

KPL GAS SERVICE

March 8, 1991

Mr. Chairman and Members of the Committee:

We appear in opposition to HB 2411.

The 1990 Kansas Legislature enacted the Overhead Power Line Accident Prevention Act. KPL asked for its introduction last year and was a proponent of the bill. We believed then, as we do now, that the bill promotes two public purposes:

- It helps prevent accidents, injuries, and deaths resulting from contacting high power overhead electric lines;
- and, it thereby prevents subsequent lawsuits.

What the current law does is require a contractor or worker to tell us when they will work around a high voltage line. They must tell us, otherwise, we do not know they are around our line. Once we are properly notified, we must make the line safe for the workers to be around. The law simply makes people -- whether they are the workers or the utility company -- responsible for their own actions. The law protects lives and property. Similar laws serve the same purposes in 21 other states. Several other states, including Missouri, are considering similar legislation.

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As drafted, HB 2411 subverts the purposes of The Overhead Power Line Accident Prevention Act. We oppose HB 2411.

Section 3(e) imposes a new burden on utilities that is costly, dangerous, and unreasonable. Utilities would be required to identify by sign all lines around which it is unlawful to work within 10 feet. If KPL posted such signs on all our poles, total first year costs would be between $4.4 million and $5.5 million. Maintenance thereafter would cost about $400,000 a year. Signs affixed with nails pose a hazard to utility workers who must climb poles. One slip, one misplaced cleat, and a line worker may suffer lacerations or puncture injuries. Signs affixed to metal or wood stakes at the base of poles or below lines would be even more hazardous: a worker who fell from a pole or a lift might be impaled. Adhesive signs would not be reliable. Finally, posting and maintaining some 433,000 signs stretches the resources of the Company and is an unreasonable burden for customers to pay through necessarily higher rates.

Changes in Section 4 would put a burden on utilities to provide warning signs to contractors. As a practical matter, KPL already provides contractors signs cost free. But under the proposed language, to the extent we are unaware of some contractors, and thereby fail to provide them signs, there can be no violation of the act on the part of those contractors. The utility potentially becomes liable, although it has no way of knowing every contractor who might work near its lines. This is clearly contrary to the intent of the act, which is to place responsibility on contractors to notify the utility before work beings, and thereby, ensuring employee safety. Utilities do not have foreknowledge

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about who might someday work within 10 feet their lines. Although electric utilities maybe held to an extraordinary standard, is it reasonable that the standard be impossible? A reasonable requirement for utilities to meet is to make work areas near lines safe after contractors notify them, which is exactly what the current law does.

New Section 2(c) would require utilities to keep records of accidents resulting in serious injury or death as public records forever. This would have the practical effect of opening a litigation resource center, which is directly contrary to the present intent of the act. A requirement to preserve such records of legal interest forever for public scrutiny, to our knowledge, is unparalleled.

Changes in Section 5(b) interject a new standard of liability into the act. It establishes a rebuttable presumption of negligence if the National Electric Safety Code is not followed by a utility. It does not, however, establish the Code as the standard of care, so that utilities could claim any protection should they comply with the Code's provisions. Yet subsection (f) would allow the entire act to be inapplicable should one of our lines fail to meet the Code, even if only by an inch.

New subsection 5(g) would make the act applicable to contractors alone. Although the law may apply most often to contractors, it seems reasonable to extend its public safety provisions to any worker, contracted or not.

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The Overhead Power Line Accident Prevention Act is based on two very clear and simple premises: 1) anyone planning to work within 10 feet of an overhead power line must contact the utility; and 2) once notified, the utility must make the line safe to work around.

The Overhead Power Line Accident Prevention Act stands on its own merits. HB 2411 subverts the public policy that underpins the act by assuming no one but the utility is responsible for workers safety. This is illogical at best and jeopardizes worker safety at worst. We urge the members to oppose HB 2411.

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Testimony of Robert Gingrich on Kansas HB 2411

March 8, 1991

My name is Robert Gingrich and I am Deputy General Counsel for Kansas City Power & Light Company. KCPL serves approximately 170,000 customers in 11 eastern Kansas counties.

I am here today to testify in opposition to House Bill 2411. As one of the Kansas utilities which would be affected by this legislation, we are concerned that Section 2's new subparagraph (c) requires public utilities to maintain any records required to be created "as a permanent public record, and shall not be destroyed, altered, mutilated or falsified." No other person is required by Kansas law to maintain accident records as "public records", nor is any other person required to maintain such public records in perpetuity.

Section 3 (e), which is also new, requires public utilities to "identify the owner or operator of the high voltage line, provide notice of this act, and list a toll free telephone number that will enable members of the public to request protection from contact danger." This provision will impose substantial additional costs on utility ratepayers, and these provisions are of doubtful benefit unless one assumes the public presently genuinely lacks the information provided by the notice. This provision is also extremely vague as it gives no standards with regard to where or how public utilities will give this notice, e.g. if this is a sign, how big must the sign be, how many signs are to be erected in relation to the number of poles, et cetera.

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3-8-91

Section 4, as amended, will provide that the sign previously required to be erected in the sight of equipment operators will now have to be "provided without cost by the public utility." Why public utility company ratepayers, instead of the affected private industry, should be compelled to pay the costs of free signs for private industry usage is not self-evident and should be rejected as unwarrented. And at the same time, what does "provide" mean. Does that mean utility companies will have to take signs out to unlimited numbers of construction sites upon demand by anyone asking for same?

Section 6 (f) provides the provisions of this act do not apply to any overhead line not in compliance with the National Electrical Safety Code. Why should construction site safety precautions be made to pivot on whether or not the overhead line complies with the NESC. In practice, this provision will actually be perverse. Should it be the law that the lower and more dangerous the line is, the less the legislature will require in the way of safety warnings and precautions?

Section 6 (g) provides that none of the provisions of the act apply to "any individual not contracting to perform any function or activity as defined in subsection (d) of K.S.A. 1990 Supp. 66-1702, and amendments thereto." This provision is really unnecessary because existing subsection (d) already presently defines "persons" as being only those who contract to perform work on premises in proximity to an overhead line.

Thank you Mr. Chairman. I would now like to take any questions the committee may have.

SUMMARY OF TESTIMONY

Before the House Judiciary Committee

Presented by Fred Johnson

==========

Good afternoon Mr. Chairman and members of this committee. My name is Fred Johnson. I am the Troop Commander of the Capitol Area Security Patrol and I appear before you today on behalf of the Superintendent of the Kansas Highway Patrol and the members of the Capitol Area Security Patrol who support House Bill 2425.

As written, HB 2425 addresses two very important issues, 1). The unlawful interference with the legislative process and 2). The unlawful possession of a loaded firearm within the state capitol building.

All persons have the constitutional right to be heard. To voice their concerns and express their opinion to those whom they are governed by. There are legal and proper ways to exercise that right. Nothing in this bill would take away any of these rights.

HB 2425 addresses only those acts one would take who is intent upon causing disruption or disorder within the legislative chambers, galleries or offices, or to possess a loaded firearm in the state capitol building by making such acts a crime.

Hopefully, HB 2425 provides the authority for police and security officers of the Capitol Area Security Patrol to deal appropriately with any attempts to commit such unlawful acts. At present, the security officers of the Capitol Area Security Patrol have no authority to intervene in any attempts to disrupt or interfere with the legislative process and it would also appear the Sergeants-at-arms of the House and Senate have no clearly defined authority in addressing these issues.

H JUD
Attachment # 6
3-8-91

Summary of Testimony
House Bill 2425

The safety and welfare of all who visit or work in the capitol building is of primary importance to the Capitol Area Security Patrol. We are constantly striving for new and innovative methods that will enhance our ability to provide the highest quality protection that can be rendered and yet will not unduly impede the freedom and accessibility of those who wish to see the legislative process at work.

We believe House Bill 2425 will provide the ability to those who are charged with the responsibility for the safety and welfare of the capitol building and for all of those within, a means to exclude any who would intend to disrupt the legislative process, or to possess a loaded firearm within the state house.

We therefore, urge the members of the committee to implement the provisions of House Bill 2425.

H JUD
ATTACH # 6-2
3-8-91

Testimony by American Civil Liberties Union of Kansas
House Bill No. 2425
House Judiciary Committee
Submitted on March 8, 1991

Good afternoon. My name is Carla Dugger, and I am the associate director of the American Civil Liberties Union of Kansas and Western Missouri.

I am speaking today in opposition to Section 1.(1)(d) of House Bill 2425. We have no comments to offer regarding other portions of the bill.

Our objections may be summarized by making two points. First, the term "picketing" is not defined and is overbroad. Does the term refer to the bearing of any form of sign by a citizen of Kansas in the statehouse? What about a lapel button? If a button is OK, what about a postcard with the words "no war" safety-pinned to a jacket? If that is OK, then what about a posterboard saying "support our troops" taped to the back of someone's coat?

Second, the result of this section would be to limit constitutional free speech. Picketing is an expression of the rights of free speech and assembly protected by the First Amendment. The ACLU supports the right to picket in any circumstances, by any method, in any numbers, with the limitations only that picketing shall not be accompanied by violence by those demonstrating, or obstruction of the place being picketed.

If "picketers" are disrupting the legislative process by blocking hallways, refusing to move, etc., the other portions of the bill would be sufficient to provide for their removal and/or arrest. However, the legislature should in our opinion lead the state by its example of tolerance for the differing opinions of Kansans. Certainly, the stifling of constitutional protest would set a poor example this year during the bicentennial of the Bill of Rights.

Thank you for considering these objections to HB 2425.

H JUD
Attachment # 7
3-8-91

Testimony by American Civil Liberties Union of Kansas
House Bill 2537
House Judiciary Committee
Submitted March 8, 1991

The ACLU of Kansas is in opposition to the portions of this bill found at lines 1-2, on page 2, and lines 34-43 on page 4, and 1-17 on page 5.

Our objection surrounds basic due process issues, derived from the Fourteenth Amendment to the United States Constitution. A juvenile offender who has been placed in the custody of SRS for the purposes of disposition is being treated as a juvenile, with juvenile-oriented treatment. Due process concerns are raised if the juvenile offender has potential for being passed into an adult system, with adult sentences which are often longer than the juvenile offender ones, without due process protections.

Another objection is based on the differing treatment focus of the adult system. It is possible, due to immaturity, that a juvenile may not respond to SRS programs. But that does not mean the juvenile isn't still a juvenile, with juvenile needs and ways of thinking. To hold adult corrections over the head of a juvenile as the ultimate "punishment" will in the long run backfire. He or she will learn adult criminal behavior, and end up costing the citizens of Kansas more for prisons.

The ACLU is, however, in support of the options for Juvenile Offenders listed at lines 41-43 on page 1, and lines 6-9 and 28-31 on page 2. Options that would keep appropriate juveniles out of lockup facilities and with a home-base orientation are good public policy which the ACLU supports.

Thank for your consideration of these points.

H JUD
ATTACH # 8
3-8-91

Testimony by American Civil Liberties Union of Kansas
House Bills 2500 and 2532
House Judiciary Committee
Submitted March 8, 1991

The American Civil Liberties Union of Kansas wishes to express its opposition to specific sections in House Bills 2500 and 2532. These bills expand the definition oof juvenile felons to include juveniles adjudicated of lesser included offenses, thus subject to adult criminal sentences. Our objections are based on constitutional due process concerns and on a premise that juveniles should not be treated primarily as criminals in a criminal system.

First, if a juvenile felon charge is reduced to a lesser included offense, the accused is deprived of basic due process. They are held criminally responsible in the adult system for which the constitutional due process guarantees fairness. They are deprived of a trial, to have legal counsel at that hearing, and to have the matter proved beyond a reasonable doubt. They in essence are being shunted into the adult system by the backdoor approach, in complete disregard for their constitutional rights.

Second, this bill will result in an increase in the number of juveniles to be herded into the adult correctional system, with hardened adult criminals. Juvenile felons as young as 14 years of age will be placed in such an environment. It has been long established that a person is more likely to change when they are in an environment where involved, caring persons are around rather than just prison guards. While adult corrections do have rehabilitative programs, they have a different emphasis than juvenile programs.

Thank you for considering these points.

Rec'd. 3/8/91
Written testimony
on HB's 2500 and
HB's 2532 heard 3/5/91
and 3/7/91.

HJUD
ATTACH # 9 & 10
3-8-91

Department of Social and Rehabilitation Services
Robert C. Harder, Acting Secretary

House Bill 2446

Before the House Judiciary Committee
March 8, 1991

The primary responsibility of the SRS Child Support Enforcement Program is to help children by establishing regular and adequate support payments and by enforcing past due support obligations. From that perspective, SRS has two major concerns about House Bill 2446.

The goal of HB 2446, to provide speedy relief for parents in National Guard and reserve units on extended active duty, is a commendable one. It is fundamental law that child support should reflect the parent's ability to provide, as well as the child's needs.

In the desire to insure fair treatment of a parent in the military, however, it is important not to lose sight of the constitutional rights of others who would be affected by passage of House Bill 2446. In its present form, this bill seems to deny all notice and opportunity for hearing for the other parent. SRS encourages consideration of alternatives that would provide both prompt relief and due process of law.

SRS' second concern involves the automatic, pro rata reduction in support based only on the military parent's income information. This type of modification conflicts with the Kansas Support Guidelines (Supreme Court Administrative Order No. 75) and is likely to violate federal requirements under Title IV-D of the social security act. Under those state plan requirements, all Kansas orders must be established and modified by applying the guidelines.

If a IV-D state plan is declared out of compliance, the declaration triggers immediate termination of all federal IV-D funding. Because HB 2446 would be effective upon publication in the Kansas Register, such termination could conceivably occur during FY91. SRS and the CSE contractors, both county and state level, presently rely upon $11,000,000 per year in federal IV-D funding. Sudden termination of funds would be disastrous.

Fiscal Impact: If the IV-D state plan were declared out of compliance, termination of federal IV-D funds would cost $11,000,000 per year. In addition, penalties against AFDC funding could range from $670,000 to $3,350,000 per year. Ultimately, all AFDC funding could be terminated.

This legislation would be likely to reduce support collections and incentive payments somewhat, with a total estimated loss of $50,238 per year.

Conclusion: SRS does not oppose the concept embodied in HB 2446 but, in light of its potentially devastating fiscal impact and unresolved constitutional questions, SRS must oppose passage of the bill in its present form.

Jamie L. Corkhill
Child Support Enforcement
296-3237

HJUD
ATTACH # 11
3-8-91

House Bill No. 2446
House Judiciary Subcommittee
March 8, 1991

Testimony of Kay Farley
Child Support Coordinator
Office of Judicial Administration

Thank you for allowing me to testify on HB 2446. Under this bill receipt of a letter from the commanding officer of a non-custodial parent stating the date the parent went on emergency military service and the parent's pay for that service requires a judge to modify support and visitation orders.

We support the concept of this bill that would establish a speedy process for modifying support and visitation orders for persons called up for emergency military service. We do, however, have several issues that we would like to raise for your consideration.

First, the bill does not allow the court to hold a hearing or consider any evidence except the commanding officer's letter when modifying the support and visitation orders. Orders involving the best interest of the child, some of the most complicated decisions that a judge ever makes, should not depend on one piece of paper. In addition, there are issues of due process that need to be considered. If you have a concern about the timely scheduling of a hearing, you may want to consider a requirement that the hearing be scheduled within 14 days of the receipt of the letter from the parent's commanding order. This timeframe would be consistent with the expedited processes for enforcement of visitation rights and contesting income withholding orders.

Second, the bill requires the judge to reduce the support "proportionately." Public Law 98-378 and federal regulations require that all child support orders that are established or modified must be in accordance with the state's child support guidelines. In response to the federal mandate, KSA 20-165 required the Kansas Supreme Court to establish child support guidelines for support orders established or modified under KSA 38-1121, KSA 39-755, and KSA 60-1610. The Kansas Supreme Court issued Administrative Order 59 effective October 1987. The Kansas Supreme Court modified the child support guidelines effective April 1, 1990 with Administrative Order 75. Administrative Order 75 requires that all support obligations be established and modified in accordance with the child support guidelines. This bill should also require that the adjustment of the support order be based on the guidelines.

HJUD
ATTACH #12
3-8-91

Lastly, you may want to consider deletion of the word "non-custodial" throughout the bill. It has been the experience of the District Court Trustees that some of the individuals that have been called up for emergency military service are custodial parents. These parents should also have access to a speedy process for modifying the support and visitation orders.

Thank you for your consideration of my testimony.

HJUD
ATTACH #12-2
3-8-91

Kansas Electric Cooperatives, Inc.

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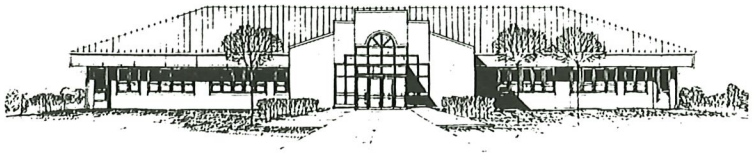
C & W REC, Clay Center
Caney Valley REC, Cedar Vale
CMS REC, Meade
Doniphan REC, Troy
D. S. & O. REC, Solomon
Flint Hills REC, Council Grove
Jewell-Mitchell REC, Mankato
Kaw Valley REC, Topeka
KEPCo, Topeka
Lane-Scott REC, Dighton
Leavenworth-Jefferson REC, McLouth
Lyon-Coffey REC, Burlington
Midwest Energy, Hays
NCK REC, Belleville
Nemaha-Marshall REC, Axtell
Ninnescah REC, Pratt
Norton-Decatur REC, Norton
Pioneer REC, Ulysses
P. R. & W. REC, Wamego
Radiant REC, Fredonia
Sedgwick County REC, Cheney
Sekan REC, Girard
Smoky Hill REC, Ellsworth
Sumner-Cowley REC, Wellington
Sunflower, Hays
Twin Valley REC, Altamont
United REC, Iola
Victory REC, Dodge City
Western REC, WaKeeney
Wheatland REC, Scott City

ENERGY PLUS



Statewide Office at 7332 SW 21st Street, Topeka, Kansas 66615

March 8, 1991

Rep. John Solbach III, Chairperson
House Judiciary Committee

Dear Members of the Committee:

I am writing on behalf of Kansas Electric Cooperatives Inc. (KEC), and our thirty-four member rural electric cooperatives serving in the state of Kansas regarding H.B. 2411 amending the Overhead Power Line Accident Prevention Act and the reporting of accidents.

With regard to the reporting of accidents, I would first like to call the Committee's attention to S.B. 263 which is currently pending before the Senate Committee on Transportation & Utilities. This bill amends K.S.A. 66-132 to provide for notification by telegraph, telephone or telecopy. These more modern forms of communications allow the utilities to use current technology to notify the Commission which is faster and more efficient. I would encourage the Committee to adopt the same amendments as S.B. 263 with regards to K.S.A. 66-132 so as to modernize the methods of communication between the public utility and the State Corporation Commission in the event of an accident.

I would also request that the Committee consider amending paragraph (e) under Section 3 of H.B. 2411. As currently written, this provision requires that all utilities which own or operate a high-voltage line obtain a toll-free, 1-800 telephone number to allow members of the general public to request protection from contact danger. Our association represents many small rural electric cooperatives which do not have toll-free, 1-800 telephone numbers. We would therefore request the Committee to amend Section (e) to also permit the utilities to accept collect calls in lieu of providing the toll-free, 1-800 telephone number.

HJUD
ATTACH # 13
3-8-91

I thank you for this opportunity to submit comments regarding H.B. 2411, and I thank you for your consideration.

Respectfully submitted,

Marshall Clark

Marshall Clark
Director, Governmental Relations
Kansas Electric Cooperatives, Inc.

jh

KANSAS
Municipal
Utilities, Inc.

March 6, 1991

Representative John Solbach
Chairman
House Judiciary Committee
State Capitol
Topeka, Kansas 66612

Dear John:

I will be unable to attend the hearing on HB 2411 that you have secduled for March 8 -- I will be on my way for a week of meetings in Washington, D.C. and meetings with the Kansas Congressional delegation.

I would, however, like for you to pass out my comments on the bill to the full committee. Thank you for your cooperation.

Cordially,

Louis Stroup, Jr.
Executive Director

TO IMPROVE
AND PROTECT
SINCE 1928

P.O. BOX 1225
McPherson, KS
67460
316-241-1423

HJUD
ATTACH # 14
3-8-91

COMMENTS ON HB 2411
For House Judiciary Committee
March 8, 1991

Mr. Chairman, members of the Committee, I am Louis Stroup, Jr., executive director of Kansas Municipal Utilities, Inc., a statewide association of municipal electric, gas and water cities which was founded in 1928.

Although I am unable to attend the hearing scheduled for today, I would like to present our coments on the measure to the full committee.

We are opposed to HB 2411 for a number of reasons -- some of which are listed below:

(1) Sec. 3(e) would require all public utilities owning overhead power lines to provide a toll free telephone number so that members of the public may request protection from contact danager. There are 122 municipally-owned and operated electric systems in Kansas. The bill would mandate these cities provide a toll free number which we feel would be an unnecessary added cost to the ratepayers of these systems, especially since most municipal overhead lines are within either the city boundaries or at least within the area pre-fix telephone number that serves each community. The exact cost of this requirement might vary depending on the system, but one representative of the telephone industry said the cost could run as high as $100 per month or $1,200 per year for each city. Thus, it is possible the annual cost to the municipal electric systems could reach as high as $146,400. The impact of this cost might not be much on large utilities, but it certainly would have a harsh impact on many of our smaller systems. For example, the city of Vermillion has 99 electric meters of which 94 are within the city limits and the remaining 5 meters are across the street from the city limits. If the toll free service cost is a maximum of $1,200 per year, the added cost to each of those ratepayers would be $12. Another example is the city of DeSoto which has approximately 800 electric meters -- all of which are inside the city limits. The added cost here to each ratepayer would be $1.50 per year.

(2) Sec. 4 imposes the cost of notices on equipment to utilities or the cities in our case -- rather than to contractors. This isn't equitable and raises the question of how a city is to determine which contractor's equipment has or doesn't have notices posted on the equipment. This notice provision (and the cost) should be the contractor's or equipment owner's responsibility. The bill also opens up the question of additional liability to a city should it fail to provide notices for all equipment working within its jursidiction or on its lines.

(3) Sec. 3(e) also mandates the public utility to post a notice identifying the owner or operator of the high voltage line. I assume this means placing such a notice on every pole with the system. This could be very costly and, of course, the costs would simply be added to ratepayer bills. Without surveying the actual number of poles owned

by the 122 municipal electric systems, and without knowing the actual cost of the signs, it is impossible to determine the economic impact of this requirement, but it would be significant. The city of Iola, for example, has 3,000 poles within the city limits. Our largest municipal electric system, the Kansas City Board of Public Utilities, has approximately 51,850 poles (and structures).

(4) We strongly oppose public utilities being added under the catagory of rebuttable presumption in Sec. 5(b).