

Approved: Carl Dean Holmes
Date 3-8-95

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes on February 7, 1995 in Room 526-S of the Capitol.

All members were present except: Representative Phill Kline - Excused

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Mary Torrence, Revisor of Statutes
Shirley Wilds, Committee Secretary

Conferees appearing before the committee: Ed Schaub - Western Resources
Bill Craven - Sierra Club

Others attending: See attached list

Chairperson Holmes inquired if there were any Committee bill requests.

Representative Lawrence made a motion to move the specific language out of **HB 2067** relating to a transfer of jurisdiction from KDHE to the Corporation Commission, inserting into a separate bill. Representative Sloan seconded. Motion carried.

Chairperson Holmes announced that there are ten Committee days remaining prior to turn around time, and the week of February 20 the Committee will be working bills on the same day of hearing.

Upon conclusion today's hearing, the Chair announced the Committee will take action on the Weather Modification bill and Environmental Impact bill.

The Chair also announced that Representative Freeborn's Subcommittee on solid waste will meet tomorrow upon adjournment of the Committee meeting, and Chairperson Holmes said the bill can then be worked on Thursday.

Hearing on HB 2226:

Ed Schaub. (See Attachment #1) Speaking from a neutral position, Mr. Schaub commented to the Committee that this bill exempts the construction of electric generating plants utilizing renewable resources from the requirements of the electric generation facility siting act. It is presumed that this exemption applies to both traditional utilities and independent power producers. By not requiring renewable resource facilities to be subject to the siting act, the policy is apparently intended to encourage those facilities (instead of electric generation facilities) that use non-renewable resources.

Mr. Schaub said that by exempting such plants from the siting act, the state would not have a hearing to determine whether the electricity to be generated by the facility is needed, whether the facility builder has adequate financing, or whether the facility would be reliable. He concluded by stating it would be detrimental to their customers and shareholders if they were ever required by state or federal law to purchase electricity from the generating facilities regardless of price.

William Craven. This being the first of three renewable energy bills to come before the Committee this year, Mr. Craven said all of them have been designed not to impose a mandate on any company to provide renewable energy. He reminded the Committee that was the approach developed (by several entities) last year, to get away from the mandate. Regarding the issue of the quality of electricity generated by renewable sources within the state, one method of support is the exemption from the siting act. Mr. Craven said he has talked with two wind companies and they said they are confident that they can meet the utility grade requirements. They are concerned about mandating price and are convinced their product can be competitive.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on February 7, 1995.

Mr. Craven respectfully requested that the Committee await the review of the two bills he asked for before reaching any conclusions.

In the course of questions and discussion, guest Mr. Don Low also responded to Committee inquiries.

Chairperson Holmes appointed a subcommittee comprised of Representative Lawrence as Chairperson, and Representative Aurand and McClure, to review **House Bills 2226; 2101; and 2099**. Chairperson Holmes has asked for a report to the full Committee next Wednesday, February 15.

The Chair announced the background briefing scheduled for Monday, February 13 by Karl Mueldener of the Water Section of the Kansas Department of Environment. On Tuesday, February 14 a hearing will be held on **HB 2159** and **HB 2160**.

Action on HB 2040:

Chairperson Empson reported to the Committee on the work done by the Subcommittee on this measure, providing a copy of the statute and description of the mandate. (See Attachment #2.)

Representative Lawrence moved to amend **HB 2040**, Page 3, line 41, and Page 4, line 4, strike the word "years," and insert *seasons*. Representative Empson seconded. Motion carried.

Representative Empson moved to pass **HB 2040** favorably as amended. Representative Freeborn seconded. Motion carried.

Action on: HB 2120:

Representative McClure moved to amend **HB 2120**, on Page 5, line 8, after the word health, , *children, elderly or other vulnerable populations and environment*. Representative Alldritt seconded. Representative McClure withdrew the motion.

Representative McClure moved to amend **HB 2120**, on Page 5, line 8, after the word health, *children, elderly or other vulnerable populations*. Representative Alldritt seconded. Motion failed.

Representative McClure moved to amend **HB 2120**, on Page 5, line 8, after the word health, include *or the environment*.. Representative Sloan seconded. Motion carried.

Representative Sloan made a conceptual motion on Page 2, line 40, that staff verify acceptable language referring to "adopted by reference." Representative Sloan withdrew his conceptual motion.

Representative McKinney moved to amend **HB 2120** on Page 4, line 11 by striking *The state agency shall consult with other state agencies when preparing the economic impact statement.* and on Page 5, line 13, *The state agency shall consult with other state agencies when preparing the environmental benefit statement.* Representative McClure seconded the motion. Representative McKinney withdrew his motion.

Representative McKinney moved to amend **HB 2120** on Page 4, line 11 and Page 5, line 13, by striking the word *shall* and inserting "may." Representative McClure seconded the motion. Motion carried.

Representative McKinney moved to pass **HB 2120** favorably as amended. Representative Lawrence seconded the motion. Motion carried.

Upon completion of its business, the meeting adjourned at 4:45 p.m.

The next meeting is scheduled for February 8, 1995.

ENERGY AND NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: February 7, 1995

NAME	REPRESENTING
TREVA POTTER	MIDWEST ENERGY
June Ludwig	Western Resources
TOM DAY	KCC
ED SCHAUB	WESTERN RESOURCES
BRUCE GRAHAM	KEPCO
J.C. Long	UtiliCorp United
Bill Weaver	KNRC / Sierra
Larry Holloway	KCC
Don Low	KCC
MARK WOLF	AIR PRODUCTS + CHEMICALS
Tom Latimer	" " "
Julio Hunt	Hein, Ebert & Weir
Michelle Peterson	KCC Governmental Consulting
Kathy Peterson	Defendants Industries
Alan Holmes	Division of Budget
Matt Holt	KCC / Student

**TESTIMONY BEFORE THE
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE**

by Ed Schaub

Western Resources

February 7, 1995

Mr. Chairman and Members of the Committee:

Western Resources does not take a position on HB 2226, but offers some comments to assist you in making decisions. This bill exempts the construction of electric generating plants utilizing renewable resources from the requirements of the electric generation facility siting act. Presumably, this exemption will apply to traditional utilities and independent power producers alike, thereby providing a level playing field for potential competitors. By not requiring renewable resource facilities to be subject to the siting act, the policy is apparently intended to encourage these facilities instead of electric generation facilities that use non-renewable resources.

We would point out that by exempting such plants from the siting act, the extensive review that is detailed in KSA 66-1,162 would not be done. The state would not have a hearing to determine whether the electricity to be generated by the facility is needed, whether the facility builder has adequate financing, or whether the facility would be reliable. How important the loss of this hearing is depends on the size and number of generating units that will be built. Western Resources would be concerned about the economics of exempt facilities if we were ever required by state or federal law to purchase electricity from them regardless their price. This would be detrimental to our customers and shareholders.

2/7/95
Energy & Natural Resources
Attachment #1

In addition to ouster, failure to comply with a state mandate could subject an elected city governing body member or member of a board of county commissioners to recall. Article 4, section 3, of the Kansas Constitution provides that all elected public officials, except for judicial officers, shall be subject to recall by the voters. Further, state statutes implementing this constitutional provision make "failure to perform duties prescribed by law" grounds for recall (see K.S.A. 25-4302).

For purposes of compiling this inventory, a state mandate on cities and counties includes any state constitutional provision or statutory enactment that:

- requires city or county expenditures; or
- constrains city or county actions;

This definition excludes judicial actions, federal mandates not replicated in state law, state grants with conditions, and administrative rules and regulations. Also specifically excluded for purposes of this inventory are state statutes that specify grounds for civil or criminal prosecution by prosecuting attorneys at the city or county level.

Included as mandates are those that affect most general offices or officers of cities and counties. For example, in cities these offices would include the city governing body, city manager, city clerk, and city treasurer. For counties these offices would include the board of county commissioners, county clerk, county treasurer, and sheriff. Specifically excluded are mandates directed at various instrumentalities that may be created by city or county governing bodies, such as library boards, irrigation districts, planning commissions, and other similar local entities.

Methodology

The inventory of state mandates on cities and counties was compiled using a methodology derived from the experience of other states that have completed such inventories. This methodology generally follows the guidelines developed by Janet M. Kelly (1993) for the National League of Cities. Kelly recommends a comprehensive approach that assists state policy makers in understanding the cumulative impact of state mandates and in identifying archaic and conflicting mandates. Specifically, Kelly suggests that mandates be identified through computerized key-word search of state statutes—when such capability is available.

A computerized database of state statutes has recently become available in Kansas through the Information Network of Kansas (INK). The INK database of current Kansas Statutes Annotated (K.S.A.), as well as K.S.A. supplements, is available through the Wichita State University library and has the capacity for rapid key-word search.

The key-word search function in INK is used by simply indicating a key word or string of key words. INK then scans the entire K.S.A. database and identifies those statutory provisions that include the key word or words. INK was instructed to conduct such a search using the key words, "cities or counties or municipalities or local governments shall or must."

has complied with all requirements established pursuant to this act, shall not be a defense in actions for damages or injunctive relief brought against him or her.

History: L. 1974, ch. 321, § 22; July 1.

82a-1423. Same; violations of act; misdemeanor. Any person conducting a weather modification activity without first having procured a required license and permit, or who shall knowingly make a false statement in an application for a license or permit, or who shall fail to file any report or reports as required by this act, or who shall conduct any weather modification activity after a revocation of his or her license or the denial, revocation, modification, or temporary suspension of his or her weather modification permit therefor, or who shall violate any other provisions of this act, shall be guilty of a class B misdemeanor. Each day that any such unauthorized weather modification activity is conducted shall constitute a separate offense.

History: L. 1974, ch. 321, § 23; July 1.

82a-1424. Severability of act. If any word, phrase, sentence, or provision of this act is determined to be invalid, such invalidity shall not affect the other provisions of this act and they shall be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable.

History: L. 1974, ch. 321, § 24; July 1.

82a-1425. Weather modification programs; tax levy, use of proceeds; protest petition and election. The board of county commissioners of any county may establish or participate in weather modification programs and, for the purpose of paying the costs thereof and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774 and amendments thereto by cities located in the county, may levy a tax of not to exceed two mills upon the assessed tangible valuation of property in the county and expend the revenues for weather modification purposes except that counties having a population of more than 180,000 and not more than 220,000 and an assessed tangible valuation of more than \$350,000,000 and not more than \$365,000,000 shall be excluded. No such levy shall be made until a resolution authorizing the levy is adopted by the board of county commissioners and stating the specific purpose for which such levy is made, the amount of the proposed levy and the number of years that

the levy will be made. Such resolution shall be published once each week for two consecutive weeks in the official county newspaper. After publication of the resolution, the levy may be made unless a petition requesting an election upon the proposition of whether to make the levy is filed in accordance with this section. Such petition shall be signed by electors equal in number to not less than 5% of the qualified electors of the county and shall be filed in the office of the county election officer within 60 days following the last publication of the resolution. If a valid petition is filed, no levy shall be made until the levy is approved by a majority of the electors of the county voting at an election called and held thereon within 90 days after the last publication of the resolution or at the next general election, if held within 90 days. Notice of the election shall be given and the election shall be called and held in the manner provided for by the provisions of K.S.A. 10-120 and amendments thereto. Such tax levy shall be in addition to all other tax levies authorized or limited by law and shall not be subject to nor within the limitations upon the levy of taxes imposed by K.S.A. 79-5001 to 79-5016, inclusive, and amendments thereto.

The board of county commissioners may expend any other funds of the county available for any such purpose and, in addition, receive and expend any and all funds which may be offered or become available for any such purpose.

History: L. 1976, ch. 114, § 1; L. 1979, ch. 52, § 200; L. 1981, ch. 173, § 84; July 1.

Article 15.—WATER TRANSFERS

Law Review and Bar Journal References:

"Legal Aspects of Water Storage in Federal Reservoirs in Kansas," John C. Peck, 32 K.L.R. 785 (1954).

"Kansas Water Rights: Changes and Transfers," John C. Peck, Leland E. Rolfs, Michael K. Ramsey and Donald L. Pitts, 57 J.K.B.A. No. 6, 21, 26, 28 (1988).

82a-1501. Water transfers; definitions.

As used in this act:

(a) "Water transfer" means the diversion and transportation of water in a quantity of 1,000 acre feet or more per year for beneficial use outside a ten-mile radius from the point of diversion of such water.

(b) "Point of diversion" means:

(1) The point where the longitudinal axis of the dam crosses the center line of the stream in the case of a reservoir;

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Mandate: Tax levy for weather modification subject to protest petition

Description: The board of county commissioners may by resolution levy a property tax not to exceed two mills in the county for weather modification purposes subject to protest petition and possible referendum (see Glossary). Specifically, such resolution shall state the specific purpose for the levy, the amount of the proposed levy, and the number of years that the levy will be made. Further, the resolution shall be published once each week for two consecutive weeks in the official county newspaper and shall be subject to a protest petition.

Applies To: All counties

Legal Basis: K.S.A. 82a-1425

Year of Enactment; Year of Last Amendment: 1976; 1990

Supervising State Agency: None

Penalty for Noncompliance: Subject to ouster or recall (see K.S.A. 60-1205 and 25-4302); for members of the board of county commissioners, misdemeanor with fine of \$50 to \$1,000 and imprisonment of thirty days to one year (see K.S.A. 19-233)

Mandate Type: Citizen preemption; finance

Subject Area: Finance; natural resources

Office/Official Affected: Board of county commissioners