

Approved: Carl Dean Holmes
Date 4-29-95

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 11:00 a.m. on March 17, 1995 in Room 522-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: Jan Kruh - KS AARP
Gerald Reser - Silver Haired Legislature
Nicole Bryant -
Sue Johnson-Giles - Citizens' Utility Ratepayers Board

Others attending: See attached list

Chairperson Holmes opened the Committee meeting, announcing the bills for action at the conclusion of today's hearing.

Hearing on HB 2550 and HB 2563:

The Chair referred to written testimony before the Committee members:

Margaret Bangs. (See Attachment #1.) The Chair advised the Committee he had received a note of correction from Ms. Bangs regarding her testimony. She inadvertently reported her support for **HB 2550**, and her intent was to refer to **HB 2563**.

Margaret J. Miller. (See Attachment #2.)

Janet Kruh. (See Attachment #3.) Ms. Kruh spoke on behalf of AARP, reporting they are strongly opposed to abolishing The Citizens' Utility Ratepayers Board (CURB). She reasoned that CURB provides a balance for small businesses and residential ratepayers when corporate legal staffs present their utility rate petitions before the Kansas Corporation Commission.

Gerald Reser. (See Attachment #4.) Representing the Silver Haired Legislature, Mr. Reser said that the duty of the KCC is the interest of the consumers, but they are often subjected to powerful utility-sponsored lobbies and political pressure, in addition to a multitude of other things.

Mr. Reser reported no objection to abolishing CURB in its present form, if it can be replaced with a more productive and efficient measure. He said it appears that CURB has saved ratepayers \$8-9 million each year they have been in operation, and surmised that many small consumers appreciate that savings.

Debra Lieb. (See Attachment #5.) Ms. Nicole Bryant presented Debra Lieb's testimony in her absence. Excerpts of Ms. Lieb's testimony: Since its inception, CURB has effectively represented the state's residential and small business ratepayers in hundreds of utility rate cases. As a spokesman for Common Cause, she said that representation for the average ratepayers, regardless of any resulting cost savings, must be protected.

Nicole Bryant. (See Attachment #6.) An attorney representing CURB, Ms. Bryant testified as an opponent to **HB 2550**, stating that the residential, agricultural, and small commercial ratepayers will end up suffering if CURB is abolished. However, she said those involved in CURB are willing to compromise with **HB 2563** so that ratepayers in Kansans will have the effective representation they deserve. She added that a reorganized advocate on their behalf is better than no advocate at all.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 522-S Statehouse, at 11:00 a.m. on March 17, 1995.

Sue Johnson-Giles. (See Attachment #7.) Ms. Johnson-Giles is chairperson of CURB and she contends that the Kansas ratepayers' work, health and life depend on the services supplied by utilities, and cited several associated rights. She urged the Committee to oppose **HB 2550** and pass **HB 2563** so that the ratepayers' voices remain heard in Kansas utility matters.

The Chair referred the Committee to a subcommittee summary from staff regarding the Citizen's Utility Ratepayers Board (See Attachment #8.).

At the close of hearing on the two CURB bills, the Chair gave a brief review of the status of the bills that remain in the Energy Committee. The Committee recessed for lunch at 11:45 a.m..

Meeting resumed 12:30 p.m.

Action on HB 2563:

Representative Sloan made a motion to amend **HB 2563** to change the citizen advocacy panel to *citizen utility advocacy panel* in all appropriate areas within the bill. Representative McClure seconded. Motion carried.

Representative McClure made a motion to pass **HB 2563** favorably as amended. Representative Sloan seconded. Motion carried.

Action on HB 2550:

Representative Lawrence moved to table **HB 2550**. Representative Sloan seconded. Motion carried.

Action on SB 113:

Chairperson Holmes explained a balloon amendment to **SB 113**, and staff reviewed technical changes. (See Attachment #9.)

Representative McKinney moved to adopt the balloon to **SB 113**. Representative Lloyd seconded. Motion carried.

Representative McKinney made a motion to strike the word "promptly" in the first line of the balloon. Representative Lloyd seconded. Motion carried.

Representative Krehbiel made a motion to amend **SB 113** on Page 2, line 8, striking "financing." and inserting *carrying*. Representative Sloan seconded. Motion carried.

Representative Lawrence made a motion to pass **SB 113** favorably as amended. Representative Hutchins seconded. Motion carried.

Action on SB 76:

Representative Sloan moved to amend **SB 76** on Page 2, line 17, Sec. 2. (a) *An audit report shall be privileged and shall not be subject to any discovery procedure or subject to discovery procedures but shall not be . . .* Representative Alldritt seconded. Motion carried.

Representative Sloan made a motion to amend **HB 2033** into **SB 76**. Representative Alldritt seconded. Motion carried.

Representative Sloan moved to adopt the balloon and amend into **SB 76**. Representative Flora seconded. Motion failed. (See Attachment #10.)

Representative McKinney made a motion to adopt the same balloon amendment, deleting Section 21 and Section 22. Representative Alldritt seconded. Motion carried.

Representative Lawrence made a conceptual motion to **SB 76** to provide an exception to the language in the original bill, in the case that it would cause the state to lose primacy over any issue. Representative McKinney seconded. Motion carried.

Representative Lawrence made a motion to amend **SB 76** on Page 5, line 28, re-insert the word "one." Representative Hutchins seconded. Motion carried.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 522-S Statehouse, at 11:00 a.m. on March 17, 1995.

Representative McKinney made a motion to report **SB 76** favorable for passage as amended. Representative McClure seconded. Motion carried.

Action on SB 211:

Representative Lloyd moved to amend **SB 211** on Page 3, line 5, by inserting: *New Section 2. The board of county commissioners of any county may impose by resolution a tax of not more than \$.10 per ton on all sand, gravel or rock extracted from a location within the county. All moneys collected from such tax shall be deposited in the county road and bridge fund.; and by renumbering remaining sections accordingly;*

In the title, line 10, by striking *streams and rivers*, and inserting *sand, gravel and rock*; in line 11, before *sand*, by inserting *certain*; also in line 11, before *amending*, by inserting *authorizing counties to impose certain taxes and providing for disposition of revenues*;

Representative Freeborn seconded. Motion withdrawn.

Representative Lloyd made a conceptual motion to amend **SB 211** to include the aforementioned amendment in its entirety, and also state that it is from commercial quarry or pit operation, and change the word "a" to "all locations within the county." Representative Alldritt seconded. Motion failed.

Representative McKinney moved to adopt the balloon to **SB 211**. Representative Sloan seconded. Motion carried. (See Attachment #11.)

The Chair recognized Dennis Hall from the Tri-County Drainage District who reported a copy of **SB 211** was forwarded to the Attorney General's office and the subsequent response.

Representative Lawrence made a motion for a conceptual amendment to **SB 211** to allow the distribution of monies currently held in the state general fund and place them in the state water plan fund. Representative Flora seconded. Motion carried.

Representative Lawrence made a motion to pass **SB 211** favorably as amended. Representative Hutchins seconded. Motion carried.

At the conclusion of bill action, Chairperson Holmes announced their business is concluded for the session. He advised the Committee he plans to have a meeting before Session's end to discuss probable issues for consideration at the 1996 Legislative Session.

The Committee united in expressing accolades to Chairperson Holmes for his cooperation and fairness in working with Committee members this session.

There being no further business to come before the Committee, the meeting adjourned at 2:30 p.m.

The next meeting is scheduled on Call of the Chair.

ENERGY AND NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: March 17

| NAME | REPRESENTING |
|-------------------|------------------------------|
| Jim McCann | AARP |
| Jan Kruh | AARP-5LC |
| Gerald A. Reser | Silver Hair Legislators |
| Tom Day | KCC |
| Stacey Boyles | KCC |
| Beth Runnbaum | CLRB |
| Bobber Seger | CLRB |
| John Kuechenberg | CLRB |
| Lee Johnson Giles | CLRB |
| Nicole Bowman | CLRB |
| John Smith | CLRB |
| Anne Kimmel | CLRB AARP |
| Ray Menendez | Aquino |
| Jacki Graves | Opdy, P-H & K N |
| Bill Waver | Sigma / NERC |
| Dennis M. Hall | Tri County Drainage |
| HOWARD F. PARR | TRI COUNTY DRAINAGE DISTRICT |
| David G. Siedler | Tri-County Drainage District |
| Glenn D. Cogswell | NORTH TANEKA DRAINAGE DIST |

ENERGY AND NATURAL RESOURCES COMMITTEE GUEST LIST

DATE: March 17

| NAME | REPRESENTING |
|----------------|------------------------|
| Patrick Henley | KOPR |
| Whitney Cannon | Pete McGill Associates |
| Mr. Langha | Huntwinstern-Bell |
| Bridget | KNRC / Sierra |
| Jack Graves | Oxy P-7A & KN |
| ✍️ | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

. CHAIRMAN CARL HOLMES & MEMBERS
HOUSE ENERGY AND NATURAL RESOURCES
MARCH 17, 1995

FROM: MARGARET W. BANGS
944 ST. JAMES
WICHITA, KS 67206

RE: BILL 2550: A STRONG AND APPROPRIATE SUCCESSOR TO CURB

I am grateful that the House is studying an appropriate successor to CURB, because small ratepayers--residential and small business--deserve and need strong representation in the utility regulatory process before the KCC.

The KCC is definitely not a consumer protection agency. Some have even chosen to describe it as "not user friendly." While the KCC Staff represents the general public, it does not represent any specific class of customers, such as small ratepayers--residential and commercial. By law the KCC is mandated to balance the needs of the utilities and the interests of their customers. This is not always easy to do; and when the KCC has to make difficult and hard decisions, small ratepayers must be heard, thus achieving a more level playing field. In 1989 KCC Commissioners Margalee Wright and Richard Kowalewski also voiced their support for small ratepayer representation, saying that they believed it would enhance their decision-making process and increase consumer confidence in the process of government regulation. The more information, the better, they said when they had to make million dollar, even billion dollar decisions.

Between utilities and their customers there has always been an imbalance both of financial power and political power. Small ratepayers have lacked the clout that the utilities and their large industrial customers possess. Some 100 utilities come under KCC jurisdiction, and the majority have at least one lobbyist who roams the corridors of the Capitol. They can have, therefore, a nearly one-on-one relationship with the 165 members of the Legislature. Not very many small ratepayers are able to personally petition their legislators and be heard in this manner, nor do they often have an opportunity to take a legislator to lunch.

Thirty-eight other states have recognized the need for small ratepayers to have specific representation in the utility regulatory process. Many of these state utility consumer boards were established at least ten and fifteen years ago. The state of Missouri has long had a consumer utility board, with a much larger staff than CURB has had. The state of Colorado which has a population roughly similar to Kansas, for a number of years has had a strong and large consumer utility board with a staff of about twelve including two or three lawyers. The state of Kansas was a latecomer in establishing a consumer utility board.

The funding for a Citizens Adocacy Panel (CAP) which would replace CURB should be established by statute, should be funded in the same manner as CURB was funded which enabled CURB to be a self-funding agency, requiring no state budget or general fund money. In fact, this excellent representation before the KCC cost each household, each small business only 38 cents a year! Governor Graves has included funding for CURB in his budget at \$360,000; and we would assume that this level of funding would also apply to CAP, the Citizens Advocacy Panel.

I deeply appreciate the plan to continue the functions of CURB, but under a different name and with other minor changes. I do deeply regret that a previous medical appointment prevents me from coming to Topeka on March, 1995.

THANK YOU!

Margaret W. Bangs

*Energy & Natural Resources
Attachment #1
3/17/95*

**TESTIMONY
BEFORE
THE HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE
March 17, 1995**

Supporting HB 2563

I am Margaret Miller of Wichita, writing in support of the successor to CURB. I am sorry I cannot appear in person, but I am having cataract surgery this week and cannot travel. I did come a month ago to the hearing then. A consumer advocacy office is extremely important to the hundreds of thousands of residential and small business utility customers in Kansas.

Before CURB was established, small ratepayers were not able to take part in utility regulatory cases because the Kansas Corporation Commission requires that testimony in these cases be presented by an attorney. And unorganized small customers had no way to pay an attorney.

The Kansas Corporation Commission (KCC) does not represent small utility customers in regulatory cases. The KCC acts as a quasi-judicial body, hearing evidence from those able to hire lawyers. They make their decisions on this evidence. Without CURB, small utility customers would not necessarily be represented.

CURB has not been funded by our state general funds. CURB has been funded by assessment on ratepayers—the way the utility expenses and the way the KCC expenses are funded. For most of its life, CURB has had one attorney and a 2-person office staff. There are 9 to a dozen cases on the agenda at all times. Thus, CURB's miniscule staff has done the work of at least a dozen—probably many more—utility lawyers and KCC lawyers.

In spite of the inequity of size and resources, CURB has saved small customers at least \$31 for every dollar spent. CURB does not have the resources to lobby or practice public relations. That is why I am submitting my testimony today—to explain what an advocacy office means to utility customers—who are also the voters.

It would be unfair if only utilities and large industries were able to be represented in utility regulation cases. The millions of individuals and thousands of small businesses need to be represented also, especially since they are helping to pay for the whole process

I believe the new formulation for a consumer advocacy office will be fair to all. There are many cases in which residential and small business utility customers need to be represented. It is only fair that they should be since they are helping pay for utility lawyers and for the Kansas Corporation.

Margaret J. Miller, 6807 E. Bayley, Wichita KS 67207-2613 -- (316) 686-2555

Margaret J. Miller

Attachment #2

AMERICAN ASSOCIATION OF RETIRED PERSONS
STATEMENT ON HB2550

to
HOUSE ENERGY AND NATURAL RESOURCE COMMITTEE

by
Jan Kruh
March 17, 1995

My name is Jan Kruh, and I am the team leader for utility issues in the Kansas AARP State Legislative Committee.

I would like to thank the Committee for this opportunity to comment on House Bill 2550, abolishing the Citizens' Utility Ratepayer Board.

My statement is brief: AARP is strongly opposed to abolishing CURB. We believe it is essential to have the legal services provided by CURB for the small business and residential ratepayer. CURB provides for a more nearly level playing field when corporate legal staffs present their utility rate petitions before the KCC.

We urge the Committee to defeat HB2550 and to support the continuation of a consumer advocacy group for the small ratepayers of our State.

Thank you.

MR. CHAIRMAN; LADIES and GENTLEMEN:

My name is GERALD RESER of ROSSVILLE. I appreciate the opportunity to speak in favor of H.B. 2563.

I have been authorized by FLOYD COEN, the Silver Hair Legislature Speaker of the House, to represent the SILVER HAIR LEGISLATURE and to speak in favor of H.B. 2563. There are approximately a half million of my grey haired brethern in Kansas. I think records would show that a large percentage of them are registered voters and that a large percentage of them take the time to go to the polls and cast their votes. Many are living on a small pension or a small Social Security check each month. Raises in utility rates for electricity, gas or telephone could do serious harm to these elderly citizens. I read that the yearly income of many families is in the range of \$40,000 to \$75,000 and a monthly increase of \$4 or \$5 per month would not be a big deal. Many of our elderly citizens probably never made that much money in their entire lifetime. A \$4 or \$5 per month increase on the light bill of a widow barely skimping by on a small Social Security check would certainly be a big deal.

The theory has been advanced that competition between utility companies would cause them to keep rates low or even cause them to lower their rates. BALONEY!!!!!! I believe that theory is flawed. All utility companies are in business to make a buck and that's as it should be. BUT they should not be allowed free rein. People say the KCC has the duty to look out for the consumers and that is correct but they are often subjected to powerful utility sponsored lobbys and political pressure. They are often burdened with a multitude of other things. I feel we need a watch-dog group to oversee the interests of the elderly, the poor and the little business people who will be hurt if noone is making an effort to keep consumer costs to a minimum.

Attachment #4

I understand there efforts underway to either kill or seriously hamper C.U.R.B. and to form a CONSUMERS ADVOCACY PANEL. I have no objections to such a move if it is for the better. I do have objections to killing C.U.R.B. without replacing it with something with the same objectives but that will be more productive and efficient. From statistics I have seen it looks like C.U.R.B. has saved ratepayers 8 or 9 million dollars each year they have been in operation. While that isn't great on the scale of figures bandied about in governmental circles, it looks pretty good to me and I'm sure many small consumers appreciate the savings.

I am in favor of H.B. 2563 and I'm sure that a half million poor, elderly, small ratepayers are also in favor.

Thank you for allowing me to present my views.

House Committee on Energy and Natural Resources

Testimony on H.B. 2563 and H.B. 2550

Debra R. Leib, Executive Director
Kansas Common Cause

March 17, 1995

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of House Bill 2563 which would create a Citizen Advocacy Panel to represent residential, agricultural and small commercial ratepayers in Kansas.

Common Cause has long advocated the importance of citizen participation and representation in the decision-making process. The Citizens' Utility Ratepayer Board was created by the Legislature six years ago making Kansas one of 38 states to affirm the need for, and value of, consumer advocacy in public utility matters.

Since its inception, CURB has effectively represented the state's residential and small business ratepayers in hundreds of utility rate cases. House Bill 2563, and the creation of the Citizen Advocacy Panel to replace CURB, would continue to ensure that average Kansans have adequate legal representation in the regulatory process. It is this representation of the average ratepayer, regardless of any resulting cost savings, that must be protected in the rate-setting process.

Common Cause encourages this Committee to act on behalf of the majority of the utility consumers of Kansas -- the residential, agricultural and small business ratepayers -- and enable the Citizen Advocacy Panel to provide the needed voice on utility issues to ensure fair and equitable treatment for all utility customers. Accordingly, we register strong opposition to House Bill 2550 and the irresponsible and unjustified elimination of this representation.

Attachment # 5

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

Testimony In Opposition to

House Bill 2550 and

In Support of House Bill 2563

Nicole Bryant

Attorney for the Citizens' Utility Ratepayer Board

March 17, 1995

Good morning, Mr. Chairman and members of the Committee. I am Nicole Bryant, attorney for the Citizens' Utility Ratepayer Board (CURB). I am testifying here today in opposition to House Bill No. 2550 and in support of House Bill 2563. As you already know, CURB intervenes in pending utility cases before the Kansas Corporation Commission to "speak on behalf" of residential and small commercial ratepayers as directed by K.S.A. 66-1223. One of the many purposes behind CURB is to gauge the ultimate impact of utility company requests for rate increases on small business and residential ratepayers.

That is why I am here today -- CURB is concerned that if House Bill 2550 is enacted instead of House Bill 2563, there would be no way for the majority of Kansas ratepayers to receive cost-effective legal

attachment #6

representation in complex, technical utility proceedings before the Kansas Corporation Commission (KCC).

You already know all the facts about CURB and what we do so I won't waste your time giving you the same information over and over again. According to comments I've heard in Committee, you are not happy with the present make up of CURB. That is why House Bill 2563 was introduced: You know that your constituents and the ratepayers of Kansas need effective representation before the KCC; however, you don't feel that CURB in its present form is doing the job. If this is the case, then don't take it out on the ratepayers of Kansas -- look to us. After all, the bottom line is that it is the residential, agricultural, and small commercial ratepayers who will end up suffering if CURB is abolished.

You want to give us a new name, establish a new CAP board, add agricultural users to our list of ratepayers we represent, give the KCC language which is more permissive than mandatory regarding the services they provide to us, and to take away CURB's ability to initiate actions. Okay -- we are willing to compromise if that is what it takes to provide the ratepayers of Kansas the effective representation they deserve. Your constituents won't care what we are called or who is on our board as long as they continue to receive high quality utility services at the lowest

reasonable rates. However, if House Bill 2550 is enacted, they will care when they have no representation in the rate proceedings that certainly will follow and then their utility rates go up.

I am here today testifying solely on behalf of the residential, agricultural and small commercial ratepayers in the state of Kansas, and not on behalf of CURB or its board. The bottom line is that it is those ratepayers who will be most affected by the passage of House Bill 2550 - - and also House Bill 2563. House Bill 2550 will take away their voice in the complex, technical utility proceedings before the KCC, whereas House Bill 2563 would enable them to retain the protection they deserve and have a right to. It will be the only way your constituents may appeal a KCC decision. After all, a reorganized advocate on their behalf is better than no advocate at all. That is why I am here today asking that you say no to House Bill 2550 and yes to House Bill 2563.

Thank you for your attention and support.

TESTIMONY BEFORE THE HOUSE
ENERGY AND NATURAL RESOURCES COMMITTEE
REPRESENTATIVE CARL DEAN HOLMES, CHAIRPERSON

IN OPPOSITION TO HOUSE BILL 2550
AND IN FAVOR OF HOUSE BILL 2563

THE CITIZENS' UTILITY RATEPAYERS BOARD (CURB)

Sue Johnson Giles, Chairperson

March 17, 1995

Good afternoon, Mr. Chairman, and members of the Committee. Thank you for this opportunity to appear before you in opposition to House Bill 2550 and in favor of House Bill 2563, a bill that creates the Citizens' Advocacy Panel. I am Sue Johnson Giles, the CURB Chairperson, and a residential utility consumer from Pittsburg.

The Kansas ratepayers' work, health and life depend on the services supplied by utilities, as do mine. By virtue of this fact, we have the right:

- To receive adequate utility services;
- To pay no more than a reasonable price for the utility service we use;
- To not have our utility services arbitrarily terminated;
- To have qualified representation in all proceedings affecting our supply and cost of utility services;
- To receive all existing information concerning the supply and cost of utility services;
- To question improper management of public utilities;

Attachment # 7

- To demand conservation of utility resources; to participate in making decisions affecting future utility resources for ourself and our children;
- To have our wishes and needs concerning our utility services considered by those elected or appointed to represent us; and
- To have these rights enforced by binding laws enacted by our elected representatives and by binding rules and regulations declared by those appointed by our government.

Thus, we urge the members of this Committee to oppose House Bill 2550 and to pass House Bill 2563 so that our voices will remain heard in Kansas utility matters.

Thank you.

8

SUBCOMMITTEE REPORT

Agency: Citizens' Utility Ratepayer Board

Bill No. --

Bill Sec. --

Analyst: Rampey

Analysis Pg. No. 795

Budget Page No. 104

| <u>Expenditure Summary</u> | <u>Agency Estimate FY 95</u> | <u>Governor's Recommendation FY 95</u> | <u>House Subcommittee Adjustments</u> |
|------------------------------|----------------------------------|--|---------------------------------------|
| State Operations: | | | |
| Special Revenue Fund | \$ 363,361 | \$ 362,259 | \$ 0 |
| FTE Positions | 3.0 | 3.0 | 0.0 |
| Special Projects Appointment | 1.0 | 1.0 | 0.0 |
| TOTAL | <u>4.0</u> | <u>4.0</u> | <u>0.0</u> |

Agency Mission

The mission of the Citizens' Utility Ratepayer Board (CURB) is "to protect the interests of residential and small commercial utility ratepayers of the State of Kansas." To do this, CURB "strive[s] to ensure that any rates, orders or rules issued by the Kansas Corporation Commission (KCC) are reasonable and fair to residential and small commercial ratepayers." CURB participates in electric, gas, telephone, and water-related cases before the KCC that involve residential and small commercial ratepayers. (CURB does not participate in cases involving electric and telephone cooperatives that have a membership of fewer than 15,000.) The Board estimates that it has saved Kansas consumers approximately \$60 million in energy, commodity, usage, and customer service charges. (According to the Board, the savings are based on adjustments made by the KCC that are attributable solely to evidence submitted by CURB.)

To fulfill its mission, the Board has resolved to participate in those electric, gas, telephone, and water utility proceedings before the KCC that have the most significant impact on residential and small commercial utility ratepayers in Kansas; to assess and analyze the resource planning done by electric utilities; and to educate the residential and small commercial ratepayers on the importance of their participation in the ratemaking process.

Agency Overview

CURB began in 1988 as a creation of the KCC. At that time, it was not statutory. Legislation creating CURB as a statutory entity attached to the KCC for administrative purposes was enacted in 1989. The legislation created a five-member board appointed by the Governor that had the authority to employ a consumer counsel who could intervene on behalf of consumers in hearings before the KCC. The statutes provide that CURB's financing comes from assessments levied against certain public utility companies. The 1991 Legislature enacted legislation separating CURB from the KCC for budgeting, purchasing, and related management purposes, effective in FY 1993. However, the KCC continues to do the actual calculations that determine how much each utility will be assessed to finance CURB.

The Board is authorized 3.0 FTE positions: an attorney who serves as the consumer counsel (unclassified), an office specialist, and a secretary (both classified). Since FY 1994, the Board also has had

Attachment #8.

a special projects position filled by an attorney. In order to augment the expertise of its staff, the Board contracts with economists, accountants, engineers, and other professionals when it is involved in rate cases.

Agency Estimate/Governor's Recommendation

The Board estimates expenditures of \$363,361, which is the amount approved by the 1994 Legislature, as adjusted by State Finance Council action. At the end of December, 1994, the consumer counsel announced his resignation, effective January 17, 1995. The individual holding the position had worked for the Board since March, 1994. Prior to that time, the position had been vacant for several months.

House Subcommittee Recommendations

The House Subcommittee concurs with the recommendations of the Governor.

House Committee Recommendation

The House Committee concurs with the recommendations of the Subcommittee.

House Committee of the Whole Recommendation

The House Committee of the Whole concurs with the recommendations of the Committee.

| <u>Expenditure Summary</u> | <u>House Adj. FY 95</u> | <u>House Rec. FY 95</u> | <u>Senate Subcommittee Adj.</u> |
|-------------------------------|-----------------------------|-----------------------------|-------------------------------------|
| State Operations: | | | |
| Special Revenue Fund | \$ 0 | \$ 362,259 | \$ (110,000) |
| FTE Positions | 0.0 | 3.0 | 0.0 |
| Special Projects Appointments | 0.0 | 1.0 | 0.0 |

Senate Subcommittee Recommendations

The Senate Subcommittee concurs with the recommendations of the House, with the following exception:

1. Delete \$110,000, which is the amount of savings identified by the Board, primarily as a consequence of the position of Consumer Counsel being vacant. (A second position will become vacant March 17.) Because of the resignation of the Consumer Counsel in January and the likelihood that the position will not be filled this fiscal year, activities of the Board have been sharply curtailed. The main area of savings is in fees for consultants.

SUBCOMMITTEE REPORT

Agency: Citizens' Utility Ratepayer Board **Bill No.** 2264 **Bill Sec.** 6

Analyst: Rampey **Analysis Pg. No.** 795 **Budget Page No.** 104

| <u>Expenditure Summary</u> | <u>Agency Request FY 96</u> | <u>Governor's Recommendation FY 96</u> | <u>House Subcommittee Adjustments</u> |
|-------------------------------|-------------------------------------|--|---|
| State Operations: | | | |
| Special Revenue Fund | \$ 389,654 | \$ 368,576 | \$ (368,576) |
| FTE Positions | 4.0 | 4.0 | (4.0) |
| Special Projects Appointments | 0.0 | 0.0 | 0.0 |

Agency Request/Governor's Recommendation

The Board estimates expenditures of \$389,654 in FY 1996, an increase of \$26,293 (7.2 percent) over its estimate for the current year. The change is primarily accounted for by a \$20,000 increase in fees for consultants (from \$150,000 in FY 1995 to \$170,000 in FY 1996). No new staff positions are requested, but the Board requests that the special projects position be made permanent.

The Governor recommends expenditures of \$368,576 in FY 1996, a reduction of \$21,078 from the Board's request. The reduction consists largely of fees for consultants. The Governor concurs with the Board's request to shift the special projects position to a permanent position.

House Subcommittee Recommendations

The House Subcommittee recommends that all funding for the Citizens' Utility Ratepayer Board be eliminated for FY 1996 and that legislation be introduced to abolish the Board, effective July 1, 1995. The Subcommittee makes its recommendation for the following reasons:

1. CURB's mission, which is "to protect the interests of residential and small commercial utility ratepayers of the State of Kansas" is superfluous given the mission of the Kansas Corporation Commission, which is to "protect the public interest through impartial and efficient resolution of all jurisdictional issues." No effective case was made before the Subcommittee that the Corporation Commission fails to consider the interests of residential and small commercial utility ratepayers in its deliberations. Therefore, the Subcommittee concludes that CURB is unnecessary.

2. An increasing trend toward deregulation will mean more competition among utilities, which will benefit all utility consumers. The idea that any group of ratepayers is in need of an advocate will become increasingly outdated as competition among utilities grows.

3. Assuming for the sake of argument that residential and small commercial utility ratepayers are in need of an advocate, the recent history of CURB casts doubt as to its effectiveness. In a case before the Corporation Commission involving a request by Kansas Pipeline Partnership and Kansas Natural Partnership for a \$67 million rate increase, CURB was the only party that intervened on behalf of the rate increase.

The Subcommittee encourages the Division of Personnel Services to make every effort to assist the Board's three employees in securing other employment in the state system, if they choose. In particular, the Subcommittee notes that CURB once was a part of the Kansas Corporation Commission and that the CURB staff may be qualified to perform duties performed by the Commission, if appropriate openings are available.

House Committee Recommendation

The House Committee concurs with the recommendations of the Subcommittee, with the following exception:

1. Reword the last sentence in item 3 above so that it reads: In a case before the Corporation Commission involving a request by Kansas Pipeline Partnership and Kansas Natural Partnership, CURB was the only party that intervened on behalf of a rate increase.

House Committee of the Whole Recommendation

The House Committee of the Whole concurs with the recommendations of the Committee.

| <u>Expenditure Summary</u> | <u>House Adjustment FY 96</u> | <u>House Recommendation FY 96</u> | <u>Senate Subcommittee Adjustments</u> |
|-------------------------------|---------------------------------------|---|--|
| State Operations: | | | |
| Special Revenue Fund | \$ (368,576) | \$ 0 | \$ 319,299 |
| FTE Positions | (4.0) | 0.0 | 2.0 |
| Special Projects Appointments | 0.0 | 0.0 | 1.0 |

Senate Subcommittee Recommendations

The Senate Subcommittee does not concur with the House's action to delete all funding for CURB in FY 1996. If the Legislature wants to terminate CURB, it should repeal the legislation that creates the Board. At least two bills that would abolish CURB have been introduced in the House, but neither has passed. It is the responsibility of the Legislature to fund CURB unless it is repealed.

The Subcommittee has concerns about recent actions on the part of CURB with regard to the recent case involving the Kansas Pipeline Partnership (KPP) and the Kansas Natural Partnership (KNP). CURB was the only entity that was consistent in its support of a rate increase. The increase advocated by CURB (\$6.5 million) fell short of the amount requested (either a one-time direct bill of \$55.6 million and an annual rate increase of approximately \$11.0 million or an annual rate increase of \$25.0 million). However, it is markedly different from the recommendation of the staff of the Kansas Corporation Commission. The Commission's staff recommended a revenue decrease of approximately \$4.0 million. (The Commission has given preliminary approval to a direct bill of \$2.9 million and an annual rate increase of \$6.0 million.) According to CURB, the rationale for its position is that competition among utilities ultimately benefits ratepayers and if a rate increase keeps a competitor in business it is good for ratepayers in the long run. The Subcommittee concedes there may be merit in this principle, but expresses some concern about whether CURB's recommendation was consistent with its mission.

The Subcommittee recommends funding totaling \$319,299 for FY 1996, all of which is an addition to the House's recommendation. Compared to the Governor's recommendations, the Subcommittee differs in the following respects:

1. Delete \$5,143 based on the recommendation to delete funding for a 3.5 percent unclassified merit pool (\$3,250); classified step movement (\$287); a one percent base adjustment for classified employees (\$521); and the longevity bonus (\$1,085) from individual agency budgets.
2. Delete \$24,134 in salary and benefits for a Secretary II position and reduce the number of authorized positions from 3.0 FTE to 2.0. The position being deleted will become vacant March 17. The effect of the Subcommittee's recommendation would be to authorize 1.0 FTE Consumer Counsel, 1.0 FTE Office Specialist, and 1.0 special projects position.
3. Delete \$20,000 from fees for consultants, for a total of \$130,000.

1 charged to such owner, or to the interest of such owner, may be sold and
2 the proceeds applied to the payment of such costs;

3 (f) a provision whereby a nonoperating working interest owner, upon
4 request, but not more often than once a month, shall be furnished rea-
5 sonably detailed information regarding the nature and amount of the var-
6 ious items of costs and expenses, including capital investments, charge-
7 able against the interest of the nonoperating working interest owners;

8 (g) a provision for ~~carrying financing~~ any nonoperating working in-
9 terest owner on a limited, carried or net-profits basis, payable out of
10 production, upon terms and conditions determined by the commission to
11 be just and reasonable, or otherwise financing any nonoperating working
12 interest owner who elects to be carried or otherwise financed; ~~and allow-~~
13 ~~ing a reasonable interest charge for such service payable out of such ow-~~
14 ~~ner's share of the production, or who is unable to promptly meet their~~
15 ~~financial obligations with the unit by establishing a reasonable rate of~~
16 ~~interest and a penalty provision regarding all unpaid expenses, as follows:.~~
17 ~~The penalty and interest provisions shall be fixed by rules and reg-~~
18 ~~ulations adopted by the state corporation commission. Rules and reg-~~
19 ~~ulations adopted by the commission shall apply to that portion~~
20 ~~of:~~

21 ~~(1) One hundred percent of that portion of the cost of above ground~~
22 ~~The cost of aboveground surface equipment beyond the wellhead con-~~
23 ~~nection including, but not limited to, stock tanks, separators, treaters,~~
24 ~~pumping equipment and piping, plus 100% of the a share of the cost of~~
25 ~~operation of the unit, all subject to the rate of interest established;~~

26 (2) ~~three hundred percent of that portion of the costs and expenses of~~
27 ~~drilling wells in the unitized area including staking, well site preparation,~~
28 ~~rigging up, or drilling, and reworking, deepening or plugging back, testing~~
29 ~~and completing wells; and~~

30 (3) ~~three hundred percent of that portion of the costs and expenses of~~
31 ~~underground pipeline systems, expenses for injected substances and any~~
32 ~~other nonrecoupable expenses incurred.~~

33 All interest and penalties prescribed under this ~~section~~ shall be paid from
34 the nonpaying interest owner's share of production;

35 (h) a provision for the supervision and conduct of the unit operations,
36 including the selection, removal, or substitution of an operator from
37 among the working interest owners to conduct the unit operations;

38 (i) a provision for a voting procedure for the decision of matters to
39 be decided by the working interest owners in respect to which each work-
40 ing interest owner shall have a vote with a value corresponding to the
41 percentage of the costs of unit operations chargeable against the interest
42 of such owner. However, in no event shall the vote of a single working
43 interest owner control unless a single working interest owner is liable for

or who does not promptly meet the owner's financial obligations with the unit and a provision for establishing a reasonable rate of interest and a penalty on all unpaid expenses, in amounts established by rules and regulations adopted by the commission, not to exceed:

(1) One hundred percent of the unpaid portion of the owner's share of the

100% of the unpaid portion of the owner's

three hundred percent of the unpaid portion of the owner's share of

three hundred percent of the unpaid portion of the owner's share of

subsection

Attachment # 9

67

1 (3) an implementation plan that addresses correcting past noncom-
2 pliance, improving current compliance and preventing future noncom-
3 pliance.

4 (c) "Facility" means all contiguous land, structures and other
5 appurtenances and improvements on the land.

6 (d) "Qualified auditor" means a person or organization with
7 education, training and experience in preparing studies and assess-
8 ments.

9 (e) "Environmental law" means any requirement contained in
10 state environmental statutes and in rules and regulations promul-
11 gated under such statutes.

12 (e) "Environmental laws" means state environmental statutes and
13 rules and regulations administered by the state corporation commission
14 or the division of environment of the department of health and environ-
15 ment, and the federal and local counterparts or extensions of such statutes
16 and rules and regulations.

17 Sec. 2. (a) An audit report shall be ~~privileged and shall not be subject~~
18 ~~to any discovery procedure or~~ admissible as evidence in any legal action ~~subject to discovery procedures but shall not be~~
19 in any civil, criminal or administrative proceeding, except as specifically
20 provided by this act.

21 (b) If an audit report, or any part thereof, is subject to the privilege
22 recognized in this section, neither any person who conducted the audit
23 nor anyone to whom the audit results are disclosed, unless such disclosure
24 constitutes a waiver of the privilege under section 3, can be compelled to
25 testify regarding any matter which was the subject of the audit and which
26 is addressed in a privileged part of the audit report.

27 Sec. 3. (a) The privilege recognized in section 2 does not apply to
28 the extent that the privilege is waived by the person who owns or operates
29 the facility ~~or operation~~ at which the audit was conducted and who pre-
30 pared or caused to be prepared the audit report. ~~The privilege cannot be~~
31 ~~waived except by or with the concurrence of the owner or operator of the~~
32 ~~audited facility or operation or as provided by subsection (b) of section~~
33 4.

34 (b) The audit report and information generated by the audit may be
35 disclosed to any person employed by the owner or operator of the audited
36 facility ~~or operation~~, any legal representative of the owner or operator or
37 any independent contractor retained by the owner or operator to address
38 an issue or issues raised by the audit, without waiving the privilege rec-
39 ognized in section 2.

40 (c) Disclosure of the audit report or any information generated by
41 the audit under the following circumstances shall not waive the privilege
42 recognized in section 2:

43 (1) Disclosure under the terms of an agreement which expressly pro-

Attachment #10

#10

SENATE BILL No. 211

By Senator Petty

2-6

10 AN ACT concerning streams and rivers; relating to the distribution of the products taken from certain river beds; amending
11 proceeds from the sale of sand products, amending K.S.A. 1994 Supp. K.S.A. 70a-105 and
12 82a-309 and repealing the existing section; also repealing K.S.A. 82a-
13 310. sections

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 1994 Supp. 82a-309 is hereby amended to read as
17 follows: 82a-309. (a) One-half of the net proceeds from the sale of sand
18 products, and no other, taken from the bed of any river which is the
19 property of the state of Kansas, shall be returned as follows: Where such
20 river extends into or through any drainage district in this state, organized
21 under any of the drainage district laws thereof, the board of directors of
22 the district from which the sand products were taken shall be entitled to
23 receive two-thirds of the amount returned and the remaining one-third
24 shall be divided among the remaining drainage districts in the county, in
25 proportion to the frontage on such river. Where such river does not extend
26 into or through any drainage district in this state, the proceeds to
27 be returned shall be returned to such counties as have adopted this act
28 and have, prior to July 1 following the adoption of this act, notified the
29 director of taxation of such adoption, and through which such river flows,
30 in proportion to the mileage of such river bank in such county, and: *Except*
31 *as provided by subsection (b), the proceeds in this fund shall be used by*
32 *the board of county commissioners of such county or counties only for*
33 *the actual cleaning and maintenance of such state streams as is provided*
34 *for in this act except that: (1) Before the expenditure of any such funds,*
35 *the board of county commissioners shall submit all contracts, plans, and*
36 *specifications for the proposed improvements to, and receive the approval*
37 *of, the chief engineer of the division of water resources; and (2) in coun-*
38 *ties having a population of not less than 25,000 nor more than 20,000 and*
39 *an assessed tangible valuation of over \$46,500,000, the entire amount*
40 *allotted to the county shall be paid into the bridge fund of such county.*

41 (b) *The board of county commissioners may pay the proceeds in such*
42 *fund to drainage districts located in the county to be used by such districts*
43 *for: (1) Cleaning, maintaining and repairing of state streams and tribu-*

Attached # 11

1 taries thereof; (2) maintaining, repairing or reconstructing levees; and (3)
 2 payment of debt or obligation incurred by such district in the cleaning,
 3 maintaining or repairing of state streams or tributaries thereof which
 4 were damaged prior to July 1, 1995.

5 ~~Section 1.~~ K.S.A. 1994 Supp. 82a-309 is hereby amended to
 6 read as follows: 82a-309. One-half of the net proceeds from the sale
 7 of sand products, and no other, taken from the bed of any river
 8 which is the property of the state of Kansas, shall be returned as
 9 follows:

10 (a) Where such river extends into or through any drainage district in
 11 this state, organized under any of the drainage district laws thereof, if the
 12 sand products are taken from the bed of the river at a location which is
 13 within the boundaries of a drainage district, the board of directors of
 14 the district from which the sand products were taken shall be en-
 15 titled to receive two-thirds $\frac{2}{3}$ of the amount returned and the re-
 16 maining one-third $\frac{1}{3}$ shall be divided among the remaining drainage
 17 districts in the county, in proportion to the frontage on such river.
 18 Where such river does not extend into or through any drainage district
 19 in this state

20 (b) If the sand products are taken from the bed of the river at a
 21 location which is not within the boundaries of a drainage district, the
 22 proceeds to be returned attributable to such sand products shall be
 23 returned to such counties as the counties which have adopted this act
 24 and have notified, prior to July 1 following the adoption of this act,
 25 notified the director of taxation of such adoption, and through which
 26 such river flows, in proportion to the mileage of such the river bank
 27 in such county; and this fund shall be used by the board of county
 28 commissioners of such county or counties only for the actual cleaning and
 29 maintenance of such state streams as is provided for in this act except
 30 that: (1) Before the expenditure of any such funds, the board of county
 31 commissioners shall submit all contracts, plans, and specifications for the
 32 proposed improvements to; and receive the approval of; the chief engi-
 33 neer of the division of water resources; and (2) in counties having a pop-
 34 ulation of not less than 25,000 nor more than 20,000 and an assessed
 35 tangible valuation of over \$46,500,000, the entire amount allotted to the
 36 county shall be paid into the bridge fund of such county. Moneys paid to
 37 a county pursuant to this paragraph shall be disbursed or used as follows:

38 (1) If there are one or more drainage districts organized under the
 39 laws of this state which are located in such county along a river that is
 40 the property of the state of Kansas and which operate and maintain river
 41 flood control improvements in or along such river, the county shall dis-
 42 burse such moneys to each such drainage district, to be used for any lawful
 43 purpose, in proportion to each district's frontage on such a river.

Section 1. K.S.A. 70a-105 is hereby amend o
 read as follows: 70a-105. The proceeds derived m
 the sale of any state property under the provisions
 of article 1 of chapter 70a of Kansas Statutes
 Annotated, shall be paid to the state treasurer by
 the director of taxation, and. The state treasurer
 shall deposit the same entire amount in the state
 treasury and credit the same it to the sand royalty
 fund which is hereby created, ~~except that moneys~~
~~which are derived from the sale of property taken~~
~~from school land islands shall be credited to the~~
~~state general fund.~~ The amounts payable to the
 drainage districts and counties from the proceeds
 derived from sand taken from the bed of any
 navigable stream shall be paid to drainage districts
 and counties as provided by K.S.A. 82a-309 and
amendments thereto.

All necessary and reasonable expenses incurred
by the director of taxation in carrying out the
provisions of this act shall be paid from the sand
royalty fund. At the end of each fiscal year, any
unencumbered and unexpended balance remaining in the
sand royalty fund shall be transferred to the state
general fund. On or before the 15th day of each
month, the director of accounts and reports shall
transfer moneys in the sand royalty fund to the
state water plan fund created by K.S.A. 82a-951 and
amendments thereto in an amount certified monthly by
the director of taxation as equal to the moneys in
the sand royalty fund in excess of those needed for
payment of such expenses.

Sec. 2.

7-11

1 (2) *If there is no drainage district organized under the laws of this*
2 *state which is located in such county along a river that is the property of*
3 *the state of Kansas, the county may use the moneys for construction,*
4 *operation and maintenance of public improvements located along, in or*
5 *over such a river.*

6 Sec. ~~2.~~ ~~K.S.A. 82a-310 and K.S.A. 1994 Supp. 82a-309~~ are hereby **3. K.S.A. 70a-105 and**
7 repealed.

8 Sec. ~~3.~~ This act shall take effect and be in force from and after its **4**
9 publication in the statute book.

11-3