

Approved: Carl Dean Holmes  
Date 3/14/96

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 3:35 p.m. on February 13, 1996, in Room 526-S of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Chris McKenzie, League of Kansas Municipalities  
Bill Craven, Kansas Resource Council & Kansas Sierra Club  
Ron Hammerschmidt, Ks. Department of Health & Environment

Others attending: See attached list

Representative Richard Alldritt moved to accept the Minutes of January 22, 23, 24, 25, 29, 30, 31, and February 1, 1996. Representative Rich Becker seconded the motion. The motion carried.

Chairperson Holmes announced he plans to work on HB 2600, HB 2623, and HB 2707 on Thursday, February 15th. He reminded the members that tomorrow the committee will meet in Room 313-S.

**Hearing on HB 2955: Publication of policies, guidelines and standards of the division of environment**

**Chris McKenzie.** Mr. McKenzie recommended the enactment of HB 2955. (Attachment #1)

**Bill Craven.** Mr. Craven supported HB 2955. (Attachment #2)

**Ron Hammerschmidt.** Mr. Hammerschmidt appeared in opposition to HB 2955. (Attachment #3)

Questions followed after which the hearing was closed.

**Hearing on HB 2962: Regulatory standards and guidelines for environmental programs of department of health and environment required to be adopted by rules and regulations**

**Ron Hammerschmidt.** Mr. Hammerschmidt testified in opposition to HB 2962. (Attachment #4)

**Bill Craven.** Mr. Craven felt HB 2962 to be too harsh and inflexible. (See Attachment #2)

There being no questions for the conferees, the hearing was closed.

**Action on HB 2617: Counties authorized to impose fees on disposal of solid waste**

The Revisor distributed copies of a Substitute for HB 2617 and explained the language.

Representative Dennis McKinney moved we adopt the Substitute for HB 2617. Representative Vaughn Flora seconded the motion. Discussion followed. The motion carried.

Representative Vaughn Flora moved to amend the Substitute for HB 2617 by adding a new section to read as follows: "Sec 2. Notwithstanding any other law to the contrary, any solid waste tonnage fee imposed by a county on or after May 5, 1994, and before the effective date of this act for purposes other than the purpose

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m.. on February 13, 1996.

specified by K.S.A. 65-3415f and amendments thereto is hereby ratified and declared to have been legal at the time of imposition of such fee.” Representative Steve Lloyd seconded the motion. Discussion followed. The motion failed.

Representative Richard Alldritt moved the Substitute Bill for **HB 2617** be passed out favorably. Representative Don Myers seconded the motion. Discussion followed. The motion failed.

Representative Clay Aurand moved to amend the Substitute Bill for **HB 2617** by adding a \$.50 cap on fees. Representative Terry Presta seconded the motion. Discussion followed. The motion failed.

Representative Steve Lloyd moved that the Substitute Bill for **HB 2617** be not passed. Representative Terry Presta seconded the motion. The motion carried.

The meeting adjourned at 5:05 p.m.

The next meeting is scheduled for February 14, 1996.

ENERGY AND NATURAL RESOURCES COMMITTEE  
COMMITTEE GUEST LIST

DATE: February 13, 1996

NAME	REPRESENTING
Ron Hammerlund	KDHE
Theresa Hedges	KDHE
Anne Spiess	Ks. Assoc. of Counties
Larry Knoche	KDHE
Terry Leatherman	KCCI
Dean Corwood	N. Portland Assn.
Hal Hudson	Ks Pest Control Assoc.
Dale Lambly	KDA
Jack Glantz	PH & KNE
DAVID B. SCHLOSSER	PETE McFILL & Assoc
Tom Bruno	Allen & Assoc.
Mike Jensen	Ko Park Council
Jamie Clover Adams	KS Fert. & Chemical Assn
Janet Stubbins	Ks. Bldg. IND. ASSN.
Rich McKee	KLA
J.C. LONG	UtiliCorp United, Inc.
JOHN C. BOTTENBERG	BOTTENBERG & Assoc
Ed Schaub	WESTERN RESOURCES
Don Moletz	League of KS Municipalities





**League  
of Kansas  
Municipalities**

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL 300 S.W. 8TH TOPEKA, KS 66603-3896 (913) 354-9565 FAX (913) 354-4186

**TO:** House Energy and Natural Resources Committee  
**FROM:** Chris McKenzie, Executive Director  
**DATE:** February 13, 1996  
**RE:** HB 2955

Thank you for the opportunity to appear today in support of HB 2955. This legislation contains provisions recommended by the 1995 Environmental Law Task Force. The Task Force Report explains the need for this legislation as follows:

The work of each of the subcommittees of the Environmental Law Task Force frequently overlapped, but no more significant common ground was found than the recommendations of each subcommittee concerning the role of administrative policy documents that do not get adopted as rules and regulations in shaping regulatory decisions. Members of the Task Force expressed frustration with the existence of general policies, guidance documents, standards and other documents that did not have official status but which nonetheless guided Division of Environment administrators in the interpretation of the statutes and rules and regulations enforced by the Division.

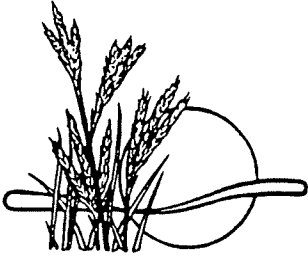
There was a consensus that these "nonregulatory" documents have a profound effect on applicants, but there is little uniformity in the availability of these documents. They are not published in a single source, do not follow a uniform format, and are not always known to applicants. As a result, those applicants that develop long term relationships with Division staff may have the information, and new applicants may not.

The Task Force would take notice of the fact that the Bureau of Air and Radiation has indicated its intent to make such documents available in written form (and electronic form in the near future). We recommend that other bureaus follow this excellent example. In the meantime, however, the Task Force recommends the enactment of legislation that will require the publication of all such policy documents by a reasonable date.

The members of the Task Force believe it is essential for the legislature to address this pressing issue in order to level the playing field for all applicants and to bring about greater uniformity in regulatory decision making by the Division of Environment.

**RECOMMENDATION:** For the foregoing reasons, we recommend the enactment of HB 2955.

House E+NR  
2-13-96  
Attachment 1



# Kansas Natural Resource Council

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Topeka, KS 66601-2635

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Bill Ward, Lawrence

Vice President

Joan Vibert, Ottawa

Secretary

Ann Fell, Winfield

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Testimony of Bill Craven  
Kansas Natural Resource Council and  
Kansas Sierra Club  
February 13, 1996  
H.B. 2962 and H.B. 2955

These two bills, although quite different, seek to accomplish basically the same goal. The problem is that the public and the regulated community is often unaware of the various guidance documents (materials neither in statute nor in rule and regulation) which KDHE uses in making regulatory decisions. These decisions affect those who apply for permits as well as those who wish to check on a permit or comment on a pending permit application. 2955 attempts to address the problem by requiring the department to publish these guidance documents and sell that publication to any interested party or make it available on INK. It provides that these documents must be made available to the public before the beginning of next year or else any regulatory decision which relies on publications not available to the public is invalid. I thought that was a pretty big stick until I saw 2962.

The idea for this bill came from the League of Kansas Municipalities Task Force Special Issues Subcommittee on which I served. It turned out to be one of the issues raised by other subcommittees of that task force, and it turns out to be one of the issues on which the regulated community and the public interest community agrees: It is fundamental that documents used to make regulatory decisions be publicly available and not just upon request or in some haphazard fashion depending on whom one asks for assistance.

2955 allows the division to incorporate by reference lengthy volumes which in its discretion shouldn't be included in any new publication of guidance documents. However, pursuant to the Kansas Open Records Act, those volumes must also be made available to the public pursuant to KORA.

I am willing to support amendments to the price of this publication and/or the supplements. Those interested in this document would probably be willing to pay more than \$50.

2962, on the other hand, requires all department--not just division of environment--regulatory materials to be reflected in rules and regulations, or else they are void after July 1, 1997. I have mixed feelings about this approach. First, I am not as familiar with the health side of the department and am unaware of a problem. That's why it was left out of 2955. I think it is useful to have these documents be in rule and regs. I can conceive of problems if existing standards aren't approved through the rule and regulation adoption process. What then happens to the conditions which govern a permit? I consider that to be a major problem.

The differences between the two bills are thus as follows: 2955 only applies to the division of environment and gives the division until January 1, 1997, to publish all non-statutory or non-rule and regulation guidance documents. It voids only those guidance documents which affect permits granted in the future. 2962 gives the department until July 1, 1997 to get all such materials into rule and reg or else it voids them. 2962 is, in my opinion, too harsh and inflexible.

House E+NR  
2-13-96  
Attachment 2



State of Kansas

Bill Graves



Governor

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Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

House Energy and Natural Resources

by

The Kansas Department of Health and Environment

House Bill 2955

Good afternoon Mr. Chairman and members of the committee. I am here today to appear in opposition to House Bill 2955. HB 2955 creates a statutory requirement for publication of all Division of Environment written materials as listed in the bill. The requirement on the surface seems relatively benign. However, I would like to review the provisions of this very short bill. First, the division must publish "...all general policies, guidelines, standards, and other documents that are used by the division of environment as part of the division's regulatory functions." In a brief review, staff of the division identified multiple bookshelves of guidance documents and other materials published by US Environmental Protection Agency (USEPA), Association of Standards, Testing, and Materials (ASTM) and other groups, as well as KDHE.

Many of the materials used for technical guidance are copyrighted. Original publications or a license to copy would be required to provide these materials. The bill does not differentiate between KDHE materials and those published by others. Is it anticipated that the State of Kansas will provide a large subsidy for environmental attorneys and consultants in the form of free copying? We do not currently provide copies of these outside documents but rather refer inquiries to the appropriate source. In addition, we could not target responses to specific questions. Rather broad information would be provided to meet the requirements of this bill.

The second concern is the cost. Even with the exclusion of documents produced by other organizations, a request for material may still require the production of a large document. The quality assurance plan for the division is approximately 1,500 pages. It includes standard operating procedures, sampling protocols and other materials used by the division staff. Since the sampling results might be used in a regulatory program, are we to produce copies for all requestors at a loss? Even at six cents per page charged by commercial vendors, the cost of printing copies for the quality assurance plan alone is \$90.

House E+NR

2-13-96

Attachment 3





State of Kansas

Bill Graves



Governor

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Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

House Energy and Natural Resources

by

The Kansas Department of Health and Environment

House Bill 2962

Good afternoon, I am here to testify in opposition to House Bill 2962. In contrast to House Bill 2955, this bill is lengthy. Forty pages versus one. The Secretary and staff of the Division of Environment are working on a daily basis to make information available to all interested parties. We are making progress in reducing the volume of material used in our regulatory programs that is not contained in rules and regulations.

The department has several strong objections to the provisions of House Bill 2962. The bill limits the use of new and innovative technology and information in our regulatory programs. Under the provisions of this bill, every possible situation must be addressed in rule and regulation. In reality not every specific situation can be anticipated. The provisions of this bill would require new or existing industry wishing to use innovative technology to experience delay pending development of rules and regulations.

The provision that requires all conversions to be completed by July 1, 1997 is not workable. In particular the use of advisory groups for development of rules and regulations would require a massive commitment of time by agency staff, industry and interest group representatives. With the volume of changes anticipated, and the changes in rule and regulation process adopted last year, we cannot complete this conversion in a short period of time.

When all details in guidelines and standards are required to be in rules and regulations, they become enforceable by lawsuits filed under the federal Clean Water, Clean Air, Safe Drinking Water, Resource Conservation Recovery Acts, and other statutes. This presents the very real possibility of unwarranted delay in enforcement, permitting, and other activities -- including interference with desirable projects or new technology -- on the basis of technical details rather than substantive issues.

Again, the department opposes passage of House Bill 2962.

Thank you for your attention.

Testimony presented by: Ronald F. Hammerschmidt, Ph.D.  
Director  
Division of Environment  
February 13, 1996

House E+NR  
2-13-96

Attachment 4