

Approved: 3-18-96
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on March 13, 1996 in Room 254-E- of the Capitol.

All members were present :

Committee staff present: Raney Gilliland, Legislative Research Department
Ardan Ensley, Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Darrel Montei, Kansas Department of Wildlife and Parks
Ron Hammerschmidt, Director of Environment, KDHE
Chris McKenzie, League of Kansas Municipalities
William Craven, Sierra Club, KNCR

Others attending: See attached list

HB 2158--Concerning certain contracts with the federal government, requiring legislative approval

Darrel Montei, Kansas Department of Wildlife and Parks stated their original testimony acknowledged some problems and had requested better definition. Mr. Montei presented a bill balloon for **HB 2158** requesting the bill be amended in order to better define what the department should bring to the Legislature (Attachment 1). Mr. Montei stated the whole bill had emanated from discussions the department had with the Corps of Engineers on several occasions over a number of years concerned with taking over several parks. He noted that in coming years lease renewals will come into this equation and suggested that the bill changes allow the leases coming due to be presented to the committees providing for a disapproval should there be concerns for a certain area.

Discussion between Mr. Montei and the Chairperson questioned the feelings of the House Chairperson concerning this bill. Mr. Montei stated the House Chair felt the bill might need refinement but appeared to be of the opinion it could be done in conjunction with the conference committee.

Further discussion touched on the easements taken by the federal government on lands involved with the FMHA and which the Department of Wildlife and Parks assist in managing and protecting. It was stated these lands were so restricted that they cannot be used for crops, cattle or any useful purpose making the land almost useless for producing income although the owner still has to pay taxes on such properties. A member expressed the understanding that such actions were from Wildlife and Parks with Mr. Montei stating the actions come from the federal government and the department is sometimes asked to oversee the easement. Mr. Montei commented that the arguments he has seen go back to the concept that there were public funds used in loan situations, defaults occurred, therefore these easements were seen as a way to implement public benefits from the use of public funds. An opinion was expressed that the easements do not convey a public use.

A member stated they would not attempt to amend the bill since it was needed but did hope that future committees will be aware of the scope of problems across the state that have been generated by the federal government.

Senator Emert moved to amend **HB 2158** by striking "federal government" and inserting "corps of engineers or the bureau of reclamation" and list exceptions and report the bill favorable for passage as amended. Senator Wisdom seconded the motion.

A brief discussion suggested the amendment would read better to have the exceptions listed separately.

The motion carried.

HB 2955--Concerning the secretary of health and environment; requiring publication of certain information and documents of the division of environment

Ron Hammerschmidt, Director of Environment, appeared and presented testimony in qualified support of **HB**

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, ROOM 254-E-Statehouse, at 8:00 a.m. on March 13, 1996.

2955 stating he was commenting to provide information (Attachment 2). Mr. Hammerschmidt stated amendments were made in the House clarifying most concerns. However, cost recovery language still is needed for two reasons: (1) to assess a fee that at a minimum would cover the cost of printing; (2) request establishment of a dedicated fee fund.

Discussion touched on the issue that printed documents were needed because people in the field were not able to answer questions concerning compliance.

Chris McKenzie, Executive Director, League of Kansas Municipalities, speaking in support of **HB 2955** told the Committee that the Report from the 1995 Environmental Law Task Force established at the request of Representative Carl D. Holmes, Chairman of the House Energy and Natural Resources, lead to the introduction of a number of bills which included **HB 2955** (Attachment 3). Mr. McKenzie stated there was a concensus of 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 which have a profound effect on applicants but there is little uniformity in the availability of these documents. This lack of uniformity therefore does not provide all applicants with the same information.

Discussion touched on having such information put on the internet and not publishing it in written form. However it was decided that at this point in time it not all people have access to the internet, therefore it still needed to be in published form.

William Craven, Sierra Club, Kansas Natural Resources Council, presented testimony in support of **HB 2955** noting that documents used to make regulatory decisions be publicly available and not just upon request or an incomplete reply (Attachment 4).

HB 2718--Concerning hunting and fishing by certain persons

Darrel Montei, Department of Wildlife and Parks appeared in opposition to **HB 2718** stating that this exemption from purchasing resident hunting or fishing licenses for members of the armed forces on current leave or furlough from active duty would have considerable impact on the department (Attachment 5). The Department of Wildlife and Parks' position is against granting exceptions. Under current law such individuals could purchase resident hunting and fishing licenses.

SUB HB 2613--concerning disposition of moneys recovered by the state in certain litigation, establishing the interstate water litigation fund and the water conservation projects fund

Discussion continued on **SUB HB 2613** with a member suggesting that on page 3, lines 28-30, that 100 percent shall be credited to the state water litigation fund. This would not affect the repayment of those from the Association of Ditches who provided funds early in the litigation. Staff stated that repayment is a separate issue. Another suggestion was to use a 75 / 25 percent figure rather than 50/ 50 percent as all of the damage took place in that part of the state. The idea was expressed about the appearance to the court that funds received would go to repayment of money put forth originally in the litigation decision with a reply noting that it could possibly be some years before any actual funds were forthcoming and a change could be made if it appeared to be necessary.

Senator Vancrum moved to amend page 3, lines 28-30 that the balance of funds remaining after mandated reimbursements are made go entirely to the state water litigation fund. Senator Emert seconded the motion.

Discussion touched on returning the money to the State General Fund with comments being made that if this is done there will not be funds to pursue litigation with Nebraska if this proves necessary.

Due to a lack of time work on **SUB HB 2613** will continue at 7:30 a.m. March 14, 1996.

The next meeting is scheduled for March 14, 1996.

HOUSE BILL No. 2158

By Committee on Energy and Natural Resources

1-24

10 AN ACT concerning certain contracts with the federal government; re-
11 quiring legislative approval.

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

13 Section 1. (a) ~~No agency, officer or employee of the state~~ Neither
14 ~~the department of wildlife and parks, nor any officer or employee~~
15 ~~of the state on behalf of the department, shall enter into any contract~~
16 ~~for the acquisition or lease of real estate with any agency, officer or~~
17 ~~employee of the federal government~~ which will require appropriation of
18 ~~moneys from the state treasury for any fiscal year commencing more than~~
19 ~~one year after the date the contract is entered into unless any future~~
20 ~~appropriation unless the contract is first approved by the legislature~~
21 ~~as provided by subsection (b).~~

22 (b) A contract subject to the provisions of subsection (a) shall be
23 approved by the legislature by:

24 (1) ~~Adoption by the legislature of a concurrent resolution approving~~
25 ~~the contract~~ Law or concurrent resolution; or

26 (2) approval of the contract by the legislative coordinating council.

27 (c) Any contract entered into without approval of the legislature when
28 required by this section is null and void.

29 (d) The provisions of this section shall not apply to contracts
30 requiring future appropriations of only: (1) ~~Moneys that are re-~~
31 ~~ceived from the federal government or from a private source; or~~
32 (2) moneys to be expended in response to a major disaster declared
33 by the president of the United States: ←

34 (e) As used in this section, "future appropriation" means an
35 appropriation for a fiscal year commencing more than one year
36 after the date the contract is entered.

37 Sec. 2. This act shall take effect and be in force from and after its
38 publication in the statute book.
39

Senate Energy + Natural Res.
March 13 1996
Attachment 1

Corps of Engineers or the Bureau of Reclamation

Corps of Engineers or the Bureau of Reclamation

*; or (3) lease renewals with the Corps of Engineers
or Bureau of Reclamation, except the
department shall notify the Chairperson,
Vice-chairperson and Ranking Minority
Member of both the House and Senate
Energy and Natural Resources Committees
on or before the first day of a legislative
session of any such lease renewals
pending for that calendar year.*

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

Senate Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

House Bill 2955

Good morning Mr. Chairman and members of the committee. I am here today to appear in qualified support of House Bill 2955. This bill requires the Secretary of the Kansas Department of Health and Environment to publish policies, guidelines, and standards. The documents are limited to those not covered by copyright or available through standard sources. The documents covered by this bill are now limited to KDHE internal documents. Secretary O'Connell and I are committed to providing information to interested parties. In this sense, the department is in general support of House Bill 2955 as amended by the House. Amendments made by the House committee clarified many of our concerns.

The single remaining concern is the cost recovery language. Under the current proposal, the maximum charge for the initial publication could not exceed \$50.00 and updates could not exceed \$10.00. We estimate the cost of producing a copy to be \$75.00 to \$150.00 or more. At a cost of \$75.00 per copy, the total cost of 600 copies would be \$45,000.00. The \$50.00 per copy cap would produce \$30,000.00 in revenue. The net loss would be \$15,000.00. The higher cost estimate would produce a \$40,000.00 deficit. These costs are not included in our amended 1997 budget and could not be paid with federal funds.

The House committee was very receptive to our technical comments in working this bill. That committee, however, did not agree to our proposed language allowing a reasonable fee to cover costs. Rather the House left the original cap in the bill. We request this committee consider language to allow the assessment of a fee that -- at a minimum -- would cover the cost of printing and the establishment of a dedicated fee fund.

That concludes my testimony. I am open to questions.

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

Senate Energy & Natural Res.
March 13, 1996
Attachment 2



**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: Senate Energy and Natural Resources Committee
FROM: Chris McKenzie, Executive Director
DATE: March 13, 1996
RE: HB 2955

Thank you for the opportunity to appear today in support of HB 2955 on behalf of both the League of Kansas Municipalities and the 1995 Environmental Law Task Force, which was established at the request of Representative Carl D. Holmes, Chairman of the House Energy and Natural Resources. The Task Force was chaired by the League and consisted of public and private sector representatives of the regulated community. 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.

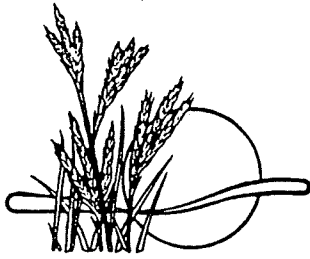
There was a consensus that these "nonregulatory" documents have a profound effect on applicants, but there is little uniformity in the availability of these documents. They are not published in a single source, do not follow a uniform format, and are not always known to applicants. As a result, those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

Senate Energy & Natural Res.
March 13, 1996
Attachment 3



Testimony of Bill Craven
Kansas Natural Resource Council and
Kansas Sierra Club
March 12, 1996
H.B. 2955

Senate Energy and Natural Resources Committee

Kansas Natural Resource Council

P.O. Box 2635
Topeka, KS 66601-2635

Officers
President
Bill Ward, Lawrence

Vice President
Joan Vibert, Ottawa

Secretary
Ann Fell, Winfield

Treasurer
Art Thompson, Topeka

William J. Craven,
Legislative Coordinator
935 S. Kansas Ave.
Suite 200
Topeka, KS 66612
913-232-1555
Fax: 913-232-2232

This bill attempts to address the problem 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 which to check on a permit or comment on a pending permit application. H.B. 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.

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.

The bill allows the division to incorporate by reference lengthy volumes which in its discretion shouldn't be included in any new publication of guidance documents. The amendment protects copyrighted materials by providing that these materials, if used as guidance documents, must be included within a bibliographic directory. However, pursuant to the Kansas Open Records Act, those volumes must also be made available to the public pursuant to KORA.

Senate Energy & Natural Res.
March 13 1996
Attachment 4





STATE OF KANSAS
DEPARTMENT OF WILDLIFE & PARKS

Office of the Secretary
900 SW Jackson, Suite 502
Topeka, KS 66612
913/296-2281 FAX 913/296-6953



H.B. 2718

Testimony Provided To: Senate Energy & Natural Resources Committee

Presented By: Kansas Department of Wildlife & Parks

March 13, 1996

H.B. 2718 establishes that any individual who was a resident of Kansas upon entry into the armed forces and who is on current leave or furlough from active duty would be exempt from the requirements to purchase a Kansas hunting or fishing license. The individual would be required to carry current military leave or furlough papers while hunting or fishing.

It is estimated that there are approximately 4,500 Kansas residents on active duty in the armed forces. License surveys estimate that 11% of the state's general population hunt and 17% fish. Utilizing this percentage on the resident Kansas military population results in a maximum number of 1,260 potential license buyers. The value of a hunting or fishing license is \$15 for a total licensing impact of \$18,900. Kansas additionally receives \$6.5 million annually in federal aid dollars which is apportioned back to Kansas using a formula based on the number of hunting or fishing licenses sold. With approximately 500,000 fishing and hunting licenses sold annually, this yields federal aid revenue of \$13 per license or a total license income of \$28. If the assumption is made that the total of 1,260 individuals will take advantage of the exemption for both hunting and fishing licenses, the total financial impact on the Department is a \$35,280 revenue loss.

Senate Energy & Natural Res
March 13, 1996
Attachment 5

The Department anticipates difficulty in establishing proof of residency for issuance of licenses and in enforcement efforts. Funding for the Department's fish and wildlife management efforts are generated through a system based on user fees. Exemptions serve to erode that revenue base and places more financial responsibility on fewer people. The Department opposes the creation of additional exemptions and respectfully requests that H.B. 2718 not be passed.