

Approved: 2-13-97
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Chairperson David Corbin at 8:09 a.m. on February 11, 1997 in Room -254-E of the Capitol.

All members were present except: Quorum was present.

Committee staff present: Raney Gilliland, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Lila McClafin, Committee Secretary

Conferees appearing before the committee:

Jan Sides, Chief, Air Technical Services Bureau of Air and Radiation, Department of Health and Environment
Charles Benjamin, Kansas Chapter Sierra Club and Kansas Natural Resources Council

Others attending: See attached list

SB 75: Possession use, manufacture, purchase, transportation and sale of chlorofluorocarbons permitted.

Vice Chairperson Morris opened the hearing on **SB 75**. He said the bill had been requested by Senator Don Sallee when he served as chairperson of the committee. No proponents were present. He called on Jan Sides for his testimony.

Jan Sides, Director, Chief, Air Technical Services Bureau of Air and Radiation, KDHE, opposed the bill as it could create numerous implementation problems for both KDHE and the hundreds of affected emission sources statewide (Attachment 1)

Charles Benjamin, Kansas Chapter Sierra Club and Kansas Natural Resources Council opposed the bill as it is a violation of federal law and would put Kansas out of compliance with the federal Clean Air Act (Attachment 2).

The hearing was closed.

Vice Chairperson Morris opened committee discussion on the bill. Senator Biggs moved to report the bill adversely. Motion was seconded by Senator Goodwin. Committee discussion followed. Staff was asked to address the issue of why the bill had been requested. On a show of hands vote the motion was defeated.

A motion was made by Senator Tyson to adopt the minutes of February 7. The motion was seconded by Senator Schraad. Motion carried.

The meeting adjourned at 8:22 a.m.

The next meeting is scheduled for February 12, 1997.

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

Senate Bill 75

On behalf of the Kansas Department of Health and Environment (KDHE), I would like to comment in opposition to the enactment of SB 75 into law. These comments are similar to those presented last year in opposition to SB 518 which was identical to SB 75.

Under the authority of Title VI of the federal Clean Air Act Amendments of 1990 (CAA), the U.S. Environmental Protection Agency (EPA) has created a regulatory program to protect the ozone layer. Chlorofluorocarbons (CFCs) controlled by these regulations including the manufacture, purchase, and use is entirely a federal EPA program.

Because of federal authority, such a state law is almost certainly preempted completely. Under this concept there is a risk that the passage of this bill will cause Kansans to reach the conclusion that they have the right to acquire and use CFC's, when in fact to do so would be illegal under federal law.

In Kansas, the direct implementation of Title VI of the federal CAA is the responsibility of the U.S. Environmental Protection Agency. Kansas is, however, indirectly involved in Title VI as a result of the responsibilities assigned to the states under Title V of the CAA related to the implementation of a new operating permit program. The new Title V permit program in Kansas requires that operating permits issued to major sources of air emissions contain provisions for assuring that any provisions of the federal Title VI program are made a state-enforceable element of the Title V permits issued by KDHE. Notice of final approval of the Kansas program was published in the *Federal Register* January 30, 1996. SB 75 is read to prevent any such provisions from being enforced by KDHE in Kansas.

This problem renders the Title V program in Kansas vulnerable to disapproval by the federal EPA. After four years of intense effort by numerous parties across Kansas developing the program required to obtain federal approval, the threat of federal sanctions could create numerous implementation problems for both KDHE and the hundreds of affected emission sources statewide. For this reason, KDHE strongly recommends SB 75 not be enacted.

Thank you for the opportunity to appear today.

Testimony presented by: Jan Sides
Chief, Air Technical Services
Bureau of Air and Radiation
February 11, 1997

Sen Energy & Nat Res
Attachment 1
2-11-97

Testimony of
Charles M. Benjamin, Ph.D., J.D.
Legislative Coordinator
Kansas Natural Resource Council
Kansas Chapter of Sierra Club
935 S. Kansas Ave., Suite 200
Topeka, KS 66612

Before the Kansas State Senate
Committee on Energy and Natural Resources
Senate Bill 75

Possession, use, manufacture, purchase, transportation and sale of chlorofluorocarbons permitted

February 10, 1997

Thank you for the opportunity to testify in opposition to this bill. This bill seeks to lift the ban on chloroflourocarbons (CFCs) in the state of Kansas. It is based on bad science and violates both federal and international law.

The majority of scientists not loyal to special interest groups acknowledge that there is a problem with ozone depletion and that CFCs play a major, but reversible, role in it. There are still some people, among them scientists, who disagree with this conclusion. I'm sure that ten years, or fifty years, after Galileo there were many "scientists" who could prove the earth was flat.

Bad science says that the ban is unnecessary because there is no conclusive proof that CFCs contribute to ozone depletion, or alternatively, that there is no conclusive proof that ozone depletion is harmful. They say that the hole in the ozone and the part that CFCs play in it are just theories. Of course, gravity is just a theory. But we all know it is real. We also know some things about the stratospheric ozone layer that protect the earth from certain harmful ultraviolet rays.

We know, for instance, that the chemical reaction that causes the breakdown of ozone utilizes chlorine molecules that reach the stratosphere. We know that both nature and humans contribute to the amount of chlorine existing in the environment. We know that CFCs are a more stable carrier of chlorine than most natural carriers so the chlorine contained in CFCs is more likely to reach the stratosphere than natural chlorine. We know that it takes between forty and sixty years for the chlorine released today to reach the stratosphere and expend its reactive potential.

We know that there is a hole in the ozone layer, and that it is growing, every year exposing more of the earth to harmful ultraviolet radiation. Finally, studies show that one of the very real effects of the increase in solar radiation is interference with the photosynthesis process plants rely on to utilize sunlight. No one knows what the effects might be on Kansas wheat and other crops, but this bill would commit us to find out.

I am a proponent of the right of Kansas to be free from federal interference. This bill, however, may have the opposite effect. This bill is a violation of federal law and, if passed, would put

*Sen Energy & Natural Resc
Attachment 2
2-11-97*

Kansas out of compliance with the federal Clean Air Act. One of the provisions of the Act is that a state's noncompliance gives the federal Environmental Protection Agency (EPA) the authority to take over administration of the Act. Enacting this bill is an invitation to the EPA to take over the administration of the Clean Air Act from KDHE.

This bill is also a violation of international law. It violates the provisions of the Montreal Protocol, a treaty entered into by the United States of America and therefore binding on all states of the United States. This bill, if enacted, would be rendered void, in federal court, under Article VI of the Constitution of the United States.

If you are determined to ignore good science, invite federal intervention into Kansas' administration of environmental laws, and a court battle over the constitutionality of the right of a state to pass a laws in contravention of international treaty obligations, then pass this bill.

Thank you for your time and attention.