

Approved: April 5, 2002
Date

Carl Dean Holmes

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:10 a.m. on February 25, 2002 in Room 526-S of the Capitol.

All members were present except: Representative Mary Compton

Committee staff present: Robert Chapman, Legislative Research
Dennis Hodgins, Legislative Research
Mary Torrence, Revisor of Statutes
Jo Cook, Administrative Assistant

Conferees appearing before the committee: Martha Neu Smith, Kansas Manufactured Housing
Christ Curtin, Curtin Properties
Sam Alpert, Heartland Apartment Association
Karl Zobrist, Blackwell Sanders Law Firm
Clark Lindstru, Peterson Properties
Rich Oddo, Oddo Development

Others attending: See Attached List

HB 2999 - Public utilities, excluding certain landlords from definition

Chairman Holmes opened the hearing on **HB 2999**.

Martha Neu Smith, Executive Director for Kansas Manufactured Housing Association, presented testimony in support of **HB 2999 (Attachment 1)**. Ms. Smith requested an amendment to include manufactured home communities (mobile home parks).

Chris Curtin, President of Curtin Property Company, appeared in support of **HB 2999 (Attachment 2)**. Mr. Curtin stated this legislation was necessary to clarify that landlords are not mandated to become a public utility if they submeter and collect and remit water bills to the providing water utility.

Sam Alpert, Executive Director of Heartland Apartment Association, spoke in support of **HB 2999 (Attachment 3)**. Mr. Alpert explained that passing this bill would benefit renters, multifamily property owner as well as the state in a number of ways. It provides a common sense approach to a rare opportunity for multifamily owners to bring rising expenses into a more manageable realm.

Karl Zobrist, Blackwell & Sanders Law Firm, testified in support of **HB 2999 (Attachment 4)**. Mr. Zobrist said the legislation should be enacted to help clarify who is and isn't a public utility.

Clark Lindstrum, Peterson Properties, also appeared in support of **HB 2999**. Mr. Lindstrum echoed the concerns of the previous conferees and asked that the bill be passed out favorably.

Rick Oddo, Oddo Developments, testified in favor of **HB 2999 (Attachment 5)**. Mr. Oddo detailed the possible savings they would have if this legislation was passed.

The conferees responded to questions from the committee. Additionally, Anne Tymeson, Assistant General Counsel, responded to questions from the committee.

Chairman Holmes closed the hearing on **HB 2999**.

HB 2959 - Open Records Act exception for records related to security of utilities

Chairman Holmes opened the debate on **HB 2959**. Representative Krehbiel moved to recommend HB 2959 favorable for passage. Representative Dahl seconded the motion. The motion carried. Representative Krehbiel will carry the bill.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 526-S Statehouse, at 9:10 a.m. on February 25, 2002.

HB 2644 - Automatic pass through to customers of certain electric and natural gas utility costs for security measures

Chairman Holmes opened the debate on **HB 2644**. A proposed substitute was distributed to the committee (Attachment 6). Representative Dillmore moved to adopt the proposed substitute minus section 2 (b). Representative McClure seconded the motion. During discussion, Chairman Holmes allowed industry representatives to comment. Cynthia Smith, Kansas City Power & Light; Mark Schreiber, Westar Energy; and Steve Johnson, Kansas Gas Service provided statements of support. Anne Tymeson, Assistant General Counsel for the Kansas Corporation Commission, stated they had no objection to the new language. Motion carried. Representative Dillmore moved to recommend Substitute for **HB 2644** favorable for passage. Representative Kuether seconded the motion. Motion carried. Representative Dillmore will carry the bill.

HB 2712 - KDFa authorized to issue bonds to finance regional broadband technology facilities

Representative Krehbiel moved to remove **HB 2712** from the table. Representative Sloan seconded the motion. Motion failed.

HB 2999 - Public utilities, excluding certain landlords from definition

Chairman Holmes opened discussion on **HB 2999**. A member of the committee expressed concerns about the bill's effect on K.S.A.65-162a.

The meeting adjourned at 10:47 a.m.

Next meeting will be February 26, 2002.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 25, 2002

NAME	REPRESENTING
Nancy Hubbard	Heria Law
Cynthia Smith	KCP/L/6MP
Ron Appletoft	Water Dist. No 1 of Jo Co.
Martha Jean Smith	KMHA
MARK SCHREIBER	Westar Energy
Chris Curtin	Curtin Property Co.
Anne Tymeson	KCC
SAM ADPERT	HEARTLAND APT. ASSOC.
Karl Zobrist	Blackwell Sanders lawfirm for Heartland Apartment Assoc.
Steve Johnson	Kansas Gas Service
Whitney Damon	KS Gas Service
CLARK LINDSTROM	THE PETERSON COMPANIES <small>APT ASSOC, OF GREATER WICHITA</small>
TOM DAY	KCC
Chris Wilson	KGC
John Dr. Pinegar	State Independent Telephone Assn.
Tom Gleason	Independent Telecom Group



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TESTIMONY BEFORE THE
HOUSE COMMITTEE ON
UTILITIES

TO: Representative Carl Holmes, Chairman
And Members of the Committee

FROM: Martha Neu Smith, Executive Director
Kansas Manufactured Housing Association

DATE: February 25, 2002

RE: HB 2999 – Definition of Public Utilities

Chairman Holmes and Members of the Committee, my name is Martha Neu Smith and I am the Executive Director of the Kansas Manufactured Housing Association (KMHA) and I appreciate the opportunity to comment. KMHA represents all facets of the manufactured housing industry in Kansas (i.e., manufacturers, retailers, community owners and operators, finance and insurance companies, suppliers and transporters).

KMHA would like to express our support for HB 2999. In fact we would like to request that the bill be amended to include manufactured home communities (mobile home parks) on Line 16. KMHA members that own manufactured home communities contact the Kansas Corporation Commission on a regular bases requesting clarifying of whether or not they are considered a "public utility" under current law. The association feels that HB 2999 with the proposed amendment would help clarify that definition.

Thank you for the opportunity to comment and I would respectfully ask for your support of our proposed amendment and subsequent passage of HB 2999.

Proposed amendment attached

HOUSE UTILITIES
DATE: 2-25-02
ATTACHMENT 1

HOUSE BILL No. 2999

By Committee on Appropriations

2-20

AN ACT concerning public utilities; relating to the definition thereof.

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

Section 1. The term "public utility" within the meaning of K.S.A. 66-104, and amendments thereto, shall not include any person or entity in the business of being a landlord who is supplied water by a city or water district and who furnishes such water to its tenants pursuant to subsection (a)(5) of K.S.A. 58-2553, and amendments thereto, with or without the use of a separate meter to measure the water furnished to the tenant, so long as the landlord charges the tenant at the same rate charged by the city or water district to the landlord, plus the reasonable cost of the billing and collection of such charge.

or subsection (a)(6) of K.S.A. 58-25,111, and amendments thereto,

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

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To: Kansas House Utilities Committee
From: Chris Curtin-President Curtin Property Company
Subject: Water Sub-metering

Curtin Property Company manages apartments in Johnson County and Riley County and its senior management team has 65 years experience in the apartment industry. Its President is a fourth generation Kansan with 25 years experience in development and management of real estate.

Water is a precious commodity, especially in its refined and purified state. Legislation is necessary to clarify that landlords, who for accounting purposes sub-meter water already provided by a public utility, are not mandated to become a public utility themselves to responsibly fulfill the needs of their residents. This legislation is in the public interest because of the link of actual consumption and cost must exist to enhance conservation of water. Much the same as electricity was once master metered to each apartment building and included in the rent and resulted in high energy consumption, individual meters provide tenants with an economic reason to conserve water. This in turn limits consumption. Our company has seen a difference in higher maintenance requests of buildings with individual meters when dripping faucets and running toilets exist. This would indicate residents paying for their own water care more if water is being wasted because of their economic interest.

Three primary methods exist for billing water: (1) Inclusion in the rent (2) Simply dividing a water bill to an entire building by the number of apartments so every 1-2-3 bedroom apartment pays the same amount regardless of use (3) Sub-metering and charging tenants for actual use of water plus cost of billing. It is our firms belief that only the third option saves water or charges the tenant for their actual use of water. Many large operations (100 plus units) use third party companies who handle all billing from computerized billing of individual water use. This provides very reliable billing and the ability to be alerted if unusually high flows of water occur.

We would request your support for HB2999 including the right of landlords to sub-meter and charge for water and actual costs of billing. Thank you for your time.

Chris Curtin
President
Curtin Property Company
Overland Park, Kansas

HOUSE UTILITIES
DATE: 2-25-02
ATTACHMENT 2



Samuel V. Alpert
Executive Director

February 25, 2002

Kansas House Committee on Utilities

RE: HB 2999- Excluding certain landlords from "Public Utility" definition

Mr. Chairman and Members of the Committee:

My name is Sam Alpert and I am here today to speak on behalf of the Heartland Apartment Association, which currently represents the owners of over 20,000 Kansas multifamily rental units.

Passage of this measure will benefit our renters, multifamily property owners, as well as the state of Kansas in a number of ways.

First, through the facility of water sub-metering, renters are given an opportunity to exercise control over a living expense that would otherwise be calculated and factored into their rent by simply dividing an annualized "master-metered" water bill by the number of units being served. This would occur without regard to actual consumption, and in many cases a renter's water expense allocation could result in his/her paying the same proportionate amount (as a part of his rent) as someone utilizing three to five times as much water. Sub-metering enables the renter to pay only for what he consumes, and eliminates the need for the landlord to increase that portion of the rent attributable to increased water rates.

Multifamily property owners benefit as the result of reducing a variable operating expense to the point where only water consumed on the common grounds (lawn sprinklers and grounds clean-up) remains a far more manageable annual expense consideration. Further, it is well documented that when the resident is paying for actual water consumption, he/she is far more likely to report plumbing leaks and inefficiencies in a timely manner. This has the effect of further reducing operating expenses as problems are identified and addressed before they become more extensive.

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HOUSE UTILITIES

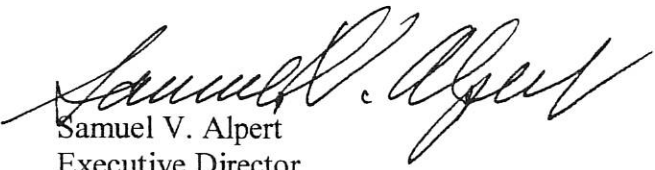
Finally, the state of Kansas, as well as local jurisdictions benefit from the adoption of **HB 2999** . The recent power outages in Eastern Kansas serve as a somber reminder that so much of what we take for granted is subject to strengths and vulnerabilities of utility delivery systems, the soundness of our basic infrastructure, and, as is certainly the case with potable water, a finite supply. The value of water conservation by renters can not be overstated. This is especially true in light of evidence that indicates that once actual water consumption becomes the individual's financial prerogative, there is an incentive to conserve, which can result in 20-35% greater efficiency.

In addition to the conservation of a valuable natural resource resulting from water sub-metering, there is an undeniable benefit to state and local taxing jurisdictions. As revenue producing real estate carries a property tax valuation based on the ability to generate net operating income, every reduction in operating expense has a positive effect on the property's respective value. It is important to understand that Kansas properties, especially in Johnson County, are currently under extreme operating expense pressures. With the onset of the economic downturn, many properties have been unable to achieve the rents that were originally projected. Revenue shortfalls created by the soft rental market have been exacerbated through increased vacancy rates, sharply increased insurance costs (50-80%), as well as the resulting "trickle-down" increased costs for various goods and services. **HB 2999** provides what is today proving to be a rare opportunity for multifamily owners to bring rising expenses into a more manageable realm.

HB 2999 provides a common sense approach to all of the foregoing and far reaching considerations, and we respectfully request that you advance this bill out of committee as soon as possible.

Your attention to this important issue is greatly appreciated.

Thank you,
HEARTLAND APARTMENT ASSOCIATION


Samuel V. Alpert
Executive Director

SVA/sva

Cc: file

3-2

Testimony of Karl Zobrist

Before the House Utilities Committee of the Kansas House of Representatives

(February 25, 2002)

- Legislation should be enacted to clarify that an apartment owner who installs submeters for each apartment and bills the tenants for their pro-rata consumption of water supplied by the local water utility or water district, without profit, should not be considered a public utility under K.S.A. § 66-104 or other relevant statutes.
- Where an apartment owner has contracted with a professional submetering and billing company to install and monitor the water submeters, and provides billing services to each apartment, there is no public interest served by declaring the apartment owner a public utility.
- The degree of operational, financial and transactional oversight exercised by the Kansas Corporation Commission over traditional public utilities is not needed under these circumstances where the apartment owner seeks no gain from the submetering process.
- The technological advance of water submetering, which promotes economical and environmentally sound water consumption, should not be used to place the requirements of public utility regulation upon apartment building owners.
- The State of Missouri has avoided these issues in the area of water submetering by defining a regulated “water corporation” as one which “includes every corporation, company, association ... distributing or selling for distribution, or selling or supplying **for gain** any water.” See Section 386.020(58), Mo. Rev. Stat. (2000) (emphasis added).

HOUSE UTILITIES

DATE: 2-25-02

ATTACHMENT 4

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Hunter's Pointe Apartments Water Sub-metering

Approximately two years ago Hunter's Pointe Apartments, a 280 unit apartment community located at 119th and Farley in Overland Park, began sub-metering its water and back billing the tenant for their personal usage.

The water bills for the tenants' usage was approximately \$2900 per month. Within a few billing cycles the water usage dropped to approximately \$2700 per month. I attributed these savings, to the tenants being more aware of their water usage and calling us to fix water leaks. Within the first week of people receiving their bills for water we got eight to ten calls to repair leaking faucets and toilets compared to our normal three to four a month for the same problems. These calls continued into the second week then again when the tenants received their second monthly bill for water.

HOUSE UTILITIES

DATE: 2-25-02

ATTACHMENT 5

PROPOSED SUBSTITUTE for HOUSE BILL No. 2644

By Committee on Utilities

AN ACT concerning certain public utilities; providing for recovery of certain costs of uncollectible customer accounts and certain costs of security measures.

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

Section 1. (a) As used in this section:

(1) "Electric public utility" means any electric public utility, as defined in K.S.A. 66-101a, and amendments thereto.

(2) "Natural gas public utility" means any natural gas public utility, as defined in K.S.A. 66-1,200, and amendments thereto.

(b) The state corporation commission, upon application and request, may authorize electric public utilities and natural gas public utilities to recover 50% of the amount by which the utility's actual bad debt write-off for customer debt exceeds the amount authorized to be recovered through rates if the commission determines that the amount exceeding that authorized to be recovered through rates is due to extraordinary circumstances beyond the control of the utility. Such recovery shall be by an adjustment to the utility's customers' bills, determined in a manner similar to the purchased gas adjustment used to recover utilities' costs of natural gas, and shall be subject to such procedures and conditions as the commission deems appropriate.

(c) The state corporation commission, upon application and request, shall authorize electric public utilities and natural gas public utilities to recover the utility's prudent expenditures for security measures reasonably required to protect the utility's electric generation and transmission assets or natural gas production and transportation assets by an adjustment to the utility's customers' bills. The application and request shall be subject to such procedures and conditions, including review, in an expedited manner, of the prudence of the expenditures and the reasonableness of the measures, as the commission deems appropriate. Such application and request shall be confidential and subject to protective order of the commission.

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

HOUSE UTILITIES

DATE: 2-25-02

ATTACHMENT 6