

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairman Senator Stan Clark at 9:30 a.m. on March 14, 2002 in Room 231-N of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research
Bruce Kinzie, Revisor of Statutes

Conferees appearing before the committee:

Mark Schreiber, Westar Energy
Martha Smith, Kansas Manufactured Housing Association
Chris Curtin, Curtin Property Company, Overland Park
Karl Zobrist, Blackwell Sanders
Sam Alpert, Heartland Apartment Association
Clark Lindstrom, The Peterson Companies, Wichita

Others attending: See attached list

Chair opened the hearing on:

HB 2792 - Approval of Highway or bridge lighting plans by corporation commission

The committee discussed the current laws on lighting of roads, highways and bridges. (Attachment 1)

Proponents

Mark Schreiber, Westar Energy, spoke in support of **HB 2792**. (Attachment 2)

Chair closed the hearing on **HB 2792**.

Moved by Senator Barone, seconded by Senator Emler, **HB 2792** be moved out favorably and placed on the consent calendar. Motion carried.

Chair opened the hearing on:

HB 2999 - Public utilities, excluding certain landlords from definition.

Proponents

Martha Neu Smith, Kansas Manufactured Housing, urged support of **HB 2999**. (Attachment 3)

Chris Curtin, Curtin Property Company, Overland Park, felt **HB 2999** was in the public interest because the link of actual consumption and cost must exist to enhance conservation of water. (Attachment 4)

Karl Zobrist, Blackwell Sanders, testified that this legislation should be enacted to clarify that an apartment owner who installs submeters and bills the tenants, without profit, should not be considered a public utility under K.S.A. 66-104 or other relevant statutes. (Attachment 5)

Sam Alpert, Heartland Apartment Association, went on record in support of **HB 2999**. (Attachment 6)

Carl Lindstrom, CPM, The Peterson Companies, urged passage of **HB 2999**. (Attachment 7)

Written testimony was received from the Kansas Association of Realtors. (Attachment 8)

Chair closed hearing on **HB 2999**.

The next meeting of the committee will be on March 18, 2002. Adjournment.

Respectfully submitted,
Ann McMorris, Secretary
Attachments - 8

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: MARCH 14, 2002

Name	Representing
- CLARKE LINDSTROM	THE PETERSON COMPANIES
Anno Tymeson	KCC
PETER ENGELMAN	Nolan Real Estate
NICHOLAS J. MOOS	PRICE BROU. Real Estate
BILL YANEK	Kansas Assn. of REALTORS
KARL ZOBRIST	Blackwell Sanders law firm representing Heartland Realtors Apt. Assoc.
Chris Curtin	
SAM ALBERT	HEARTLAND APARTMENT ASSOC.
Joe Dyck	KCK BPU
Cynthia Jean Smith	KMHA
Jo Long	UCU
Mark Schreiber	Westar Energy
Anne Spiess	KCRAR - K.C. Realtors
VICKI ANGIANO	FLEMING COURT APTS.
TODD WOLFERT	" " "
Rob Jennisi	Westar

LIGHTING OF ROADS, HIGHWAYS
AND BRIDGES

68-161. Authority of county commissioners. The board of county commissioners of any county may provide for the electrical lighting of any county, township, state or federal road or highway or any bridge on such road or highway in the manner provided by this act.

History: L. 1947, ch. 349, § 1; June 30.

Cross References to Related Sections:

Lights outside cities, see 19-2716 to 19-2730.

68-162. Same; contracts. In order to provide for such lighting of any such road, highway or bridge, the board of county commissioners of any county:

(1) May contract for a period covering not more than fifteen years with any privately or municipally owned utility or electric cooperative corporation to provide the necessary poles, wire, fixtures and appurtenances at the expense of said utility or cooperative corporation and to furnish the electrical energy and lamps necessary to operate and maintain the lighting

system, such contract to be upon such terms as said board shall deem to be reasonable and just;

(2) may purchase the necessary materials and equipment and employ any person, firm or corporation to install any such lighting system or may contract with any person, firm or corporation to provide the necessary materials and equipment for the lighting system and to install the same;

(3) may enter into contracts with any electrical utility to furnish electrical energy to maintain the lighting system and lamps to operate the same.

History: L. 1947, ch. 349, § 2; June 30.

Research and Practice Aids:

Counties ⇐ 113(1).

C.J.S. Counties §§ 175, 177.

68-163. Same; approval of plans and specifications by corporation commission. No such lighting system or lighting service shall be commenced, contracted for or installed on any road or highway or any bridge thereon until all plans and specifications therefor have been submitted to and approved by the state corporation commission.

History: L. 1947, ch. 349, § 3; June 30.

68-164. Same; approval of certain plans and specifications by secretary of transportation. No such lighting system or lighting service shall be commenced, contracted for or installed on any state or federal highway or any bridge thereon until all plans and specifications therefor have been submitted to and approved by the secretary of transportation.

History: L. 1947, ch. 349, § 4; L. 1975, ch. 427, § 74; Aug. 15.

68-165. Same; secretary of transportation not liable. No liability shall accrue to the secretary of transportation upon any claim whatsoever arising out of the construction or operation of any lighting system or service established, constructed or operated under the authority conferred by this act.

History: L. 1947, ch. 349, § 5; L. 1975, ch. 427, § 75; Aug. 15.

68-166. Lighting system; tax levies, use of proceeds. The board of county commissioners shall pay any expense incurred under the authority conferred by this act from the general fund, road fund, bridge fund or road and bridge fund of the county. If such board shall deem it necessary, in order to provide sufficient revenue for the purpose of installing, maintaining and operating any such lighting system, it is hereby authorized to levy an annual tax in an amount not to exceed the limitation prescribed by K.S.A. 79-1947, on all the taxable tangible property in such county for the purpose of providing revenue for such purposes and to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. Such tax levy shall be in addition to all other tax levies authorized or limited by law and shall not be subject to or within the aggregate tax levy limitation prescribed by K.S.A. 79-1947 or acts amendatory thereof. All moneys derived from such tax levy except an amount to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county shall be placed in a special fund by the county treasurer and shall only be used for the purposes for which the tax was levied.

History: L. 1947, ch. 349, § 6; L. 1970, ch. 100, § 42; L. 1979, ch. 52, § 163; July 1.



**Testimony before the
Senate Utilities Committee**

By

**Mark Schreiber, Senior Manager, Government Affairs
Westar Energy
March 14, 2002**

Chairman Clark and members of the committee, I am Mark Schreiber, senior manager, government affairs for Westar Energy.

Westar Energy supports House Bill 2792, which repeals KSA 68-163, the state statute requiring utilities to file and receive approval from the Kansas Corporation Commission before implementing plans for lighting to be installed on any road, highway or bridge.

It has been our experience that only one county in Kansas requires compliance with KSA 68-163. The law creates unnecessary paperwork and possible delays in street-lighting projects. Under current practice, approval is tied to compliance with the associated tariff and doesn't involve an actual review of the plans. All tariffs have been approved by the KCC, and compliance can be verified through periodic reviews.

Thank you for consideration of this measure. Westar Energy would like to see HB 2792 approved.

Senate Utilities Committee
March 14, 2002
Attachment 2-1



214 SW 6th St., Suite 206
Topeka, KS 66603-3719
785-357-5256
785-357-5257 fax
kmha1@mindspring.com

TESTIMONY BEFORE THE
SENATE COMMITTEE ON
UTILITIES

TO: Senator Stan Clark, Chairman
And Members of the Committee

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

DATE: March 14, 2002

RE: HB 2999 – Definition of Public Utilities

Chairman Clark 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. KMHA has several members that are currently regulated by the Kansas Corporation Commission for sub-metering water to their residents. The association feels that HB 2999 clarifies that if a landlord meets the definition of subsection (a)(6) of K.S.A. 58-25,111 he would no longer be considered a "public utility". We feel this is a reasonable approach to allowing sub-metering which in turn encourages water conservation.

Thank you for the opportunity to comment and I would respectfully ask for your support of HB 2999.

Senate Utilities Committee
March 14, 2002
Attachment 3-1

Date: March 14, 2002
From: Chris Curtin – President, Curtin Property Company, Overland Park, KS
To: Kansas Senate Utilities Committee
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. The Kansas Corporation Commission believes that may be necessary under their interpretation of existing law. The Kansas Attorney General has not supported that position, however suggested the legislature may be the correct body to deal with this issue. Such a mandate would require a dramatic increase in state Kansas Corporation Commission personnel (and budget) to administer, and serve no clear purpose, most of all conservation of water.

This legislation is in the public interest because the link of actual consumption and cost must exist to enhance conservation of water. Simply put, if a user does not directly pay for a utility they have no benefit to conserve. 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. Our firm has been prevented from converting apartments to sub-metering and saving water due to different local opinions and varying awareness of this potential problem.

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 firm's belief that only the third option materially saves water or fairly 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.

CMC:sp

Senate Utilities Committee
March 14, 2002
Attachment 4-1

Testimony of Karl Zobrist

Before the Senate Utilities Committee of the Kansas Senate State Capitol, Topeka, Kansas (March 14, 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).

Senate Utilities Committee
March 14, 2002
Attachment 5-1



Samuel V. Alpert
Executive Director

March 14, 2002

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The Peterson Companies
Director

Kansas Senate 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. We wish to go on record in support of **HB 2999**.

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

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 or she consumes, and eliminates the need for the landlord to increase that incremental portion of the rent attributable to delivery of domestic water .

In addition, 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 other related inefficiencies in a timely manner. This has the beneficial effect of enabling owners and managers to identify and address problems early, before they develop into something far more extensive.

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 easily result in 20-35% consumption economies. The result is that Kansas will conserve valuable water resources amounting to hundreds of millions of gallons each year.

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

TESTIMONY BY

Clark Lindstrom, CPM [Certified Property Manager]
Regional Property Manager, The Peterson Companies
Legislative Chairperson for the Wichita Chapter #65 of the National Association of Realtors Institute of
Real Estate Management and the Apartment Association of Greater Wichita

BEFORE THE KANSAS SENATE COMMITTEE on UTILITIES

March 14, 2002

Chairperson Clark and Members of the Senate Committee on Utilities, my name is Clark Lindstrom. I live at 138 N. Prescott Court, Wichita, Kansas. I am here today to speak in favor and support of House Bill No. 2999.

I am here also representing The Peterson Companies, a Kansas Company, based in Shawnee Mission, Ks., which owns, and manages 17 Communities, consisting of 3,560 apartment homes. These are located throughout the State, in the Kansas City, Kansas metro area, Wichita, Topeka, Lawrence, and Emporia. I also represent the Apartment Association of Greater Wichita; whose members manage at least one third of the over 35,000 rental units in the City, as well as the Certified Property Manager Members of the National Association of Realtors Institute of Real Estate Management, Wichita Chapter #65.

This simple, *but important* piece of legislation will conserve water, a precious State commodity, by allowing the charge back of actual water costs to apartment residents. We, as professional property owners and managers, believe that a property owner has the right to maintain control over property utility use issues. We support measures to conserve water for all Kansas citizens.

“Tenants who pay for their water, use less. Water consumption is generally lower in buildings where tenants pay for their own water than in buildings where costs are indirectly recovered through rents.” This was just one of the main points of a study dated June, 1999, which was prepared for the National Apartment Association and the National Multi Housing Council by Doug Koplow and Alexi Lownie of Industrial Economics, Incorporated. I will be glad to provide a copy of this study, if you would desire. In the study, 32 properties across three states were used to determine the effectiveness of submetered properties; i.e. properties with installed water use devices in each unit and properties utilizing the RUBS (Ratio Utility Billing Systems). “Submetered properties, which have the most direct link between consumption within a single apartment and the monthly bills, used 18-39 percent less water than did in-rent properties. RUBS properties used 6-27 percent less water than the in-rent sample.” This study reports that the median submetered property used 33 percent less water per resident and 22 percent less per occupied square foot than the median property with water costs included in the rent. The median property employing RUBS used 6 percent less water per person and 22 percent less per square foot. It also indicated that billing method, whether residents paid directly or indirectly for water, had a greater affect on consumption patterns than either the cost of the water/sewer utilities or the age of the building. This is an important point because we estimate that at least 90 percent of the existing apartment unit inventory in Kansas cannot be economically retrofitted with submetering devices. Therefore, the RUBS form of billing must remain an option for property owners and landlords. The RUBS approach to allocating the water/sewer cost is where a portion of the utility billing is deducted to account for common area usage and the remainder is charged to the resident based on a mix of unit size and number of occupants in the apartment.

Another study by Jack Goodman, a Vice President of Research and Chief Economist for the National Multi Housing Council, found that in 1999, the typical apartment household will eventually reduce its water consumption 52% if there is a shift from not paying directly for water to paying the national average marginal price. They also quickly report leaking faucets and fixtures to property owners and landlords. Based on these savings estimates and an estimated number of apartment households not currently paying separately for water, monthly water savings could total approximately 70 billion gallons per month nation wide. Using the average per unit water utility costs from the National Apartment Association's 2001 survey of Income and Expenses in Rental Apartment Communities, it is estimated the Peterson Companies might potentially save 24 million gallons of Kansas water usage in one year and reduce the wastewater by an equal amount. Savings and reduction in water usage correspondingly reduces wastewater production and reduces sewage costs. If water consumption at multi family properties is reduced, there is also high potential to lighten the load on local wastewater infrastructure and treatment plants so they are not overtaxed.

It was not long ago that property owners faced this same crossroads with billing for electric utility usage. Now, separate meters and the expectation that a tenant should pay reasonable electric or gas usage costs are universally accepted. The same should be true for water costs.

I and the real estate professionals I represent urge you to consider and vote favorably for the passage of House Bill 2999. Thank you for the opportunity to express our views and position on this legislation. I am available for questions or I can be contacted at (316) 682-4903 during the day.

—
Senate Utilities Committee
March 14, 2002
Attachment 7-1



TO: SENATE UTILITIES COMMITTEE
FROM: BILL YANEK, KAR DIRECTOR OF GOVERNMENTAL RELATIONS
DATE: March 14, 2002
SUBJECT: House Bill 2999 – Direct Water Billing of Tenants by Landlords

Thank you for the opportunity to present written testimony regarding House Bill 2999. The Kansas Association of REALTORS® supports the concepts proposed in HB 2999.

House Bill 2999 allows landlords to directly bill their tenants for water tenants use. Direct billing of water use supports the private property rights of landlords and encourages conservation of water.

The Kansas Association of REALTORS® represents over 7,000 members across the State of Kansas. A significant number of our members act as landlords and we believe in advocating for public policies that support the private property rights of landlords. By allowing landlords to directly control their water operating costs, HB 2999 enhances landlord private property rights.

In addition to protecting private property rights, HB 2999 will encourage water conservation by holding individual tenants responsible for their water use. Direct responsibility for water use will discourage tenants from wasting water and encourage the quick reporting of leaks and the malfunctioning of pipes and fixtures.

The Kansas Association of REALTORS® respectfully requests your favorable consideration of House Bill 2999.

Senate Utilities Committee
March 14, 2002
Attachment 8-1



785.267.3610
VOICE

800.366.0069
TOLL FREE

785.267.1867
FAX

3644 SW Burlingame Rd
Topeka, Kansas 66611
www.kansasrealtor.com