

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Stan Clark at 5:30 p.m. on February 24, 2004 in Room 241-N of the Capitol.

All members were present except:
Senator Karin Brownlee- excused

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

Conferees appearing before the committee:

Others attending:
See Attached List.

Chair opened discussion on
SB 455 - Industrial Wind Turbine Development

A map of the Ecoregions of Kansas and Nebraska with the proposed Flint Hills boundary outlined and proposed list of counties for the moratorium were provided for study by the committee. (Attachment 1)

Language for a proposed **Substitute for SB 455** and a document of explanation on the changes proposed were discussed. (Attachment 2)

Moved by Senator Wagle, seconded by Senator Tyson, substitute language be introduced for SB 455 to include list of counties within the confines of the Flint Hills, definition of wind turbine and a two year moratorium. Motion failed.

Moved by Senator Tyson, seconded by Senator Wagle, amend SB 455 from two year to one year moratorium. Motion failed.

Moved by Senator Wagle, seconded by Senator Tyson, amend SB 455 to exclude Marion County from the list of counties in the Flint Hills. Motion failed.

Chair announced no further action would be taken on **SB 455**.

A request was made by Senator Lee to reconsider the action taken on **SB 310** at an earlier meeting of the Senate Utilities Committee on February 24, 2004.

Request was granted and the Chairman opened for further discussion on **SB 310**.

Moved by Senator Emler, seconded by Senator Tyson, amend SB 310 as proposed in the enclosed attachment. (Attachment 3). Motion carried.

Moved by Senator Barone, seconded by Senator Emler, SB 310 be passed out favorably as amended. Motion carried.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 3

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: February 24, 2004
2nd meeting after adjournment

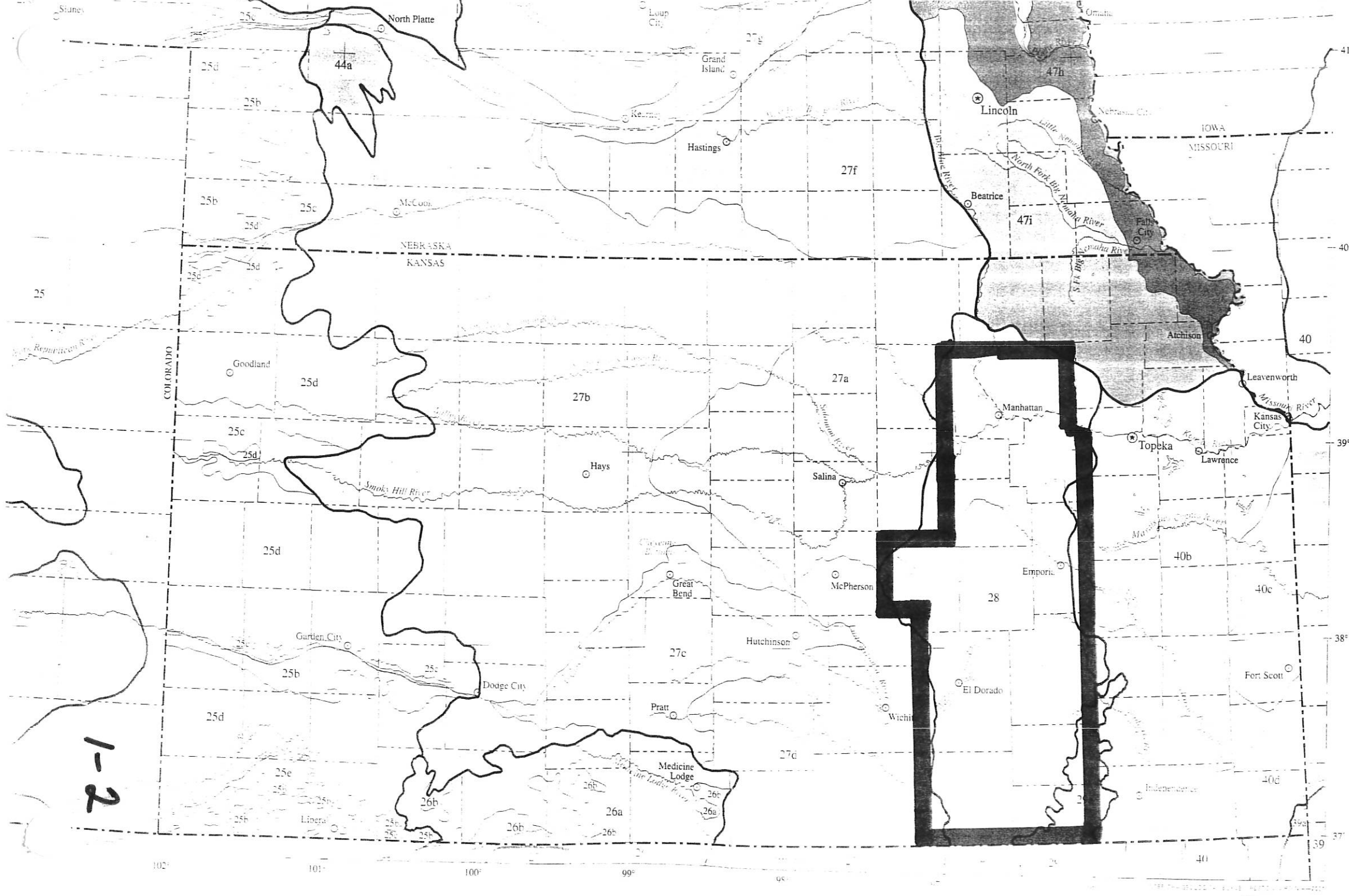
Name	Representing
Michael Stubbs TERRY HOLDREN	Tallgrass Ranchers KS Farm Bureau
J.C. Long SCOTT SCHNEIDER	AQUILA, INC. KSWIND COALITION
Ariana Erwinson Patrick Hughes	Tallgrass Ranchers Tallgrass Ranchers
John Piegler	State Independent Telephone Assn.
Todd Johnson	KLA
Mary Jo Huseman Virgil Huseman	Friends of the Smoky Hills Friends of the Smoky Hills
Kent Baron Joe Z Baron	Tall Grass Ranchers Tall Grass Ranchers
Hon Klutwie	Tallgrass Ranchers

MAP OF ECOREGIONS OF KANSAS AND NEBRASKA

Jointly Authored with Collaboration and Contribution from the Following Governmental Agencies:

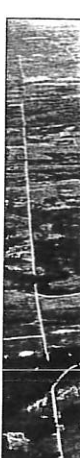
- US Environmental Protection Agency
- US Forest Service
- USDA/Natural Resources Conservation Service
- US Geological Society
- Kansas Biological Survey
- Kansas Geological Survey
- Kansas Department of Health and Environment
- Kansas Department of Wildlife and Parks
- Nebraska Department of Environmental Quality
- Nebraska Game & Parks Commission

Proposed Flint Hills boundary is outlined in Red



A mix of

1-2



A combination of the Central

Proposed list of counties for the moritorium:

Riley
Pottawatomie
Geary
Wabaunsee
Lyon
Morris
Marion
Chase
Greenwood
Butler
Elk
Chautauqua
Cowley

By

AN ACT imposing a moratorium on Flint Hills region wind turbine development; amending K.S.A. 2003 Supp. 19-101a and repealing the existing section.

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

New Section 1. (a) As used in this act:

(1) "Industrial wind turbine: means any device for the conversion of wind energy to electrical energy for the purpose of sale of such electric energy, but shall not include any such device which produces electrical energy which is primarily consumed by the owner of such device.

(2) "Flint Hills" means Butler, Chase, Chatautauqua, Cowley, Elk, Geary, Greenwood, Lyon, Marion, Morris, Pottawatomie, Riley and Wabaunsee counties.

(b) On and after the effective date of this act until July 1, 2006:

(1) No county may take any action to permit or allow the change of land use restrictions with respect to any parcel within the Flint Hills such that the construction of an industrial wind turbine would be a lawful land use nor issue any building permit or other approval for the construction of any industrial wind turbine development or facility designed to support any industrial wind turbine development.

(2) Within the Flint Hills no person or entity shall construct any industrial wind turbine or any structure designed or intended primarily to support any industrial wind turbine.

(c) Any activity in violation of subsection (b)(1) or (2) shall be deemed to be a public and private nuisance which may be enjoined by any land owner within the county in which the violation takes place or by the county attorney of such county in an action brought for such relief. The right to seek such relief from a violation occurring prior to July 12, 2005, may be brought at any time within two years of the violation and abatement shall be the appropriate remedy. Any landowner who prevails in an action authorized by this act shall be entitled to recover

attorney fees and costs for such action.

Sec. 2. K.S.A. 2003 Supp. 19-101a is hereby amended to read as follows: 19-101a. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

(1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not consolidate or alter county boundaries.

(3) Counties may not affect the courts located therein.

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271--74th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any

redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(12) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

(13) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.

(14) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto.

(15) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

(16) (A) Counties may not exempt from or effect changes in K.S.A. 13-13a26, and amendments thereto.

(B) This provision shall expire on June 30, 2005.

(17) (A) Counties may not exempt from or effect changes in K.S.A. 71-301a, and amendments thereto.

(B) This provision shall expire on June 30, 2005.

(18) Counties may not exempt from or effect changes in K.S.A. 19-15,139, 19-15,140 and 19-15,141, and amendments thereto.

(19) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provisions of K.S.A. 12-1260 through 12-1270 and 12-1276, and amendments thereto.

(20) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-211, and amendments thereto.

(21) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto.

(22) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.

(23) Counties may not exempt from or effect changes in K.S.A. 79-41a04, and amendments thereto.

(24) Counties may not exempt from or effect changes in K.S.A. 79-1611, and amendments thereto.

(25) Counties may not exempt from or effect changes in K.S.A. 79-1494, and amendments thereto.

(26) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-202, and amendments thereto.

(27) Counties may not exempt from or effect changes in subsection (b) of K.S.A. 19-204, and amendments thereto.

(28) Counties may not levy or impose an excise, severance or any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water.

(29) Counties may not exempt from or effect changes in K.S.A. 79-2017 or 79-2101, and amendments thereto.

(30) Counties may not exempt from or effect changes in K.S.A. 2-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, 65-1,178 through 65-1,199 or K.S.A. 2003 Supp. 17-5909, and amendments thereto.

(31) Counties may not exempt from or effect changes in K.S.A. 2003 Supp. 80-121, and amendments thereto.

(32) Counties may not exempt from or effect changes in K.S.A. 19-228, and amendments thereto.

(33) Counties may not exempt from or effect changes in section 1, and amendments thereto.

(b) Counties shall apply the powers of local legislation granted in subsection (a) by resolution of the board of county commissioners. If no statutory authority exists for such local legislation other than that set forth in subsection (a) and the local legislation proposed under the authority of such subsection is not contrary to any act of the legislature, such local legislation shall become effective upon passage of a resolution of the board and publication in the official county newspaper. If the legislation proposed by the board under authority of subsection (a) is contrary to an act of the legislature which is applicable to the particular county but not uniformly applicable to all counties, such legislation shall become effective by passage of a charter resolution in the manner provided in K.S.A. 19-101b, and amendments thereto.

(c) Any resolution adopted by a county which conflicts with the restrictions in subsection (a) is null and void.

Sec. 3. K.S.A. 19-101a is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.

An Act imposing a 2- year Moratorium on Flint Hills Region Wind Turbine Construction

Section 1.

(a) Definitions. As used in this act the following terms shall have the meanings indicated below:

(f) "Industrial wind turbine" means any device for the conversion of wind energy to electrical energy with a total height from ground to the highest point of the device in excess of 90 feet.

(d) "Flint Hills and protected regions" means the eco-region identified as the Flint Hills in the Kansas Nebraska Eco-Region Map prepared by EPA, US Forest Service, the United States Geological Survey, et al. together with Lincoln and Ellsworth Counties.

(b) From the effective date of this act until July 1, 2006:

(i) No County may take any action to permit or allow the change of land use restrictions with respect to any parcel within the Flint Hills and protected regions such that the construction of an industrial wind turbine would be a lawful land use nor issue any building permit or other approval for the construction of any industrial wind turbine development or facility designed to support any industrial wind turbine development.

(ii) Within the Flint Hills and protected regions no person or entity shall construct any industrial wind turbine or any structure designed or intended primarily to support any industrial wind turbine.

(c) Any activity in violation of section (b)(i) or (ii) shall be deemed to be a public and private nuisance which may be enjoined by any land owner within the county in which the violation takes place or by the county attorney of such county in an

action brought for such relief. The right to seek such relief from a violation occurring prior to July 1, 2005 may be brought at any time within two years of the violation and abatement shall be the appropriate remedy. Any landowner who prevails in an action authorized by this act shall be entitled to recover attorney fees and costs for such action.

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(2) Counties may not consolidate or alter county boundaries.

(3) Counties may not affect the courts located therein.

(4) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(5) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(6) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271-74th congress, or amendments thereof.

(7) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(8) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 to 12-195, inclusive, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(9) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(10) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area

established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

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(c) Any resolution adopted by a county which conflicts with the restrictions in subsection (a) is null and void.

SB 310 amendments

The second sentence of the KCC's amendment is all new language. Although it appears to exempt telephone utilities, the first part of the sentence is a broad EXCEPTION to the EXEMPTION.

The types of cases in which the KCC could still use the bill's power would include virtually every kind of proceeding affecting telephone companies. In other words the sentence provides no effective exemption at all.

If the KCC really seeks authority over large gas and electric utilities, and seeks no new authority over rural telephone companies, the following should be acceptable:

Section 1. (a) The state corporation commission shall ensure that a public utility, as defined in K.S.A. 66-104, and amendments thereto, does not use regulated operations to subsidize nonregulated activities of such utility or to subsidize activities of an affiliated entity. ~~Except in rate making, revenue requirements, cost of service or similar proceedings, this paragraph and any rules and regulations of the commission adopted pursuant to this paragraph shall not apply to any member or consumer owned public utility or to a telecommunications public utility.~~ **Nothing in this act shall affect any authority of the state corporation commission with regard to any member or consumer owned public utility or to a telecommunications public utility.**