

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Stan Clark at 9:30 a.m. on March 8, 2004 in Room 526-S of the Capitol.

All members were present except:
Senator Janis Lee- excused

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

Conferees appearing before the committee:
Johnni Vosseller, Landlord, LaHarpe, Ks.
Ed Jaskinia, Associated Landlords of Kansas

Others attending:
See Attached List.

Chairman opened the hearing on:
HB 2772 - Public utilities, excluding certain landlords from definitions

Proponents:

Johnni Vosseller, landlord, LaHarpe, KS (Attachment 1)
Ed Jaskinia, Associated Landlords of Kansas (Attachment 2)

Written testimony by
National Submetering & Utility Allocation Association, Highland Park, IL (Attachment 3)
Martha Smith, Kansas Manufactured Housing Association (Attachment 4)

The Chairman opened for questions. There was discussion of landlord liability, installation of sub-meters and cost for collection, utility company responsibility, rules and regs of metering, contamination, possible amendments, KCC and tax credits from the federal level.

Closed hearing on **HB 2772**.

On March 3, 2004 a hearing was held on **HB 2756**-Public Safety Communication system; purchase of equipment to lease to public safety agencies; issuance of revenue bonds. The committee requested of KDOT a copy of the consultant contract. KDOT provided that information and the committee briefly scanned through the document but due to its volume, postponed further discussion until they could study the contract.

The next meeting of the Senate Utilities Committee is scheduled for March 9, 2004.

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 4

Senate Utility Committee Hearing

Hi, my name is Johnni Vosseller. I live at 510 South Monroe, La Harpe, Ks. My husband and I are full time landlords. We support this bill and think it will make a big difference in the conservation of water. The EPA has published 2 articles on the importance of landlords metering water usage. These articles state that tenants will use less water if they are paying for the water bill than if the landlord is paying it.

Example: I drove by one of our duplexes that we paid the water bill on, and discovered that the tenants had gone into business for themselves. They were having a car wash. I am all for free enterprise but not at my expense. Needless to say the outside faucet was disconnected the next day.

I would like you to pass HB 2772. This would help encourage tenants to be more conservative of our natural resources.

Thank you very much for your time. Are there any questions?

Senate Utilities Committee
March 8, 2004
Attachment 1-1

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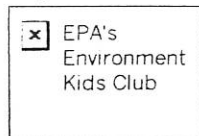
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EPA to promote water efficiency by encouraging landlords to bill apartment dwellers only for actual water usage

September 8, 2003

As part of the celebration of the 30th anniversary of the passage of the Clean Water Act, EPA has taken several steps to promote water efficiency, an important part of drinking water protection, particularly in dry and drought-stricken areas. To help apartment dwellers save water, EPA is proposing to change the regulatory policy on apartment buildings in order to encourage property owners to bill residents only for their actual water usage.

“Water efficiency is one of the four pillars of our strategy to make the nation’s water infrastructure sustainable,” said G. Tracy Mehan III, EPA’s Assistant Administrator for Water. “We have seen that consumers use less water if they are billed not on just a flat rate but on what they actually use. Americans can save substantial amounts of water through water efficiency programs -- helping to make them aware of how much water they are using and the cost is one of the steps to produce environmental benefits.”

Water meters, used to measure consumption, are necessary to conduct this usage billing, and “submeters” may be needed for the 15 percent of Americans who live in apartments. One way to encourage more residential submetering is to remove the potential regulatory burden currently faced by apartment building owners who install submeters and bill tenants separately for water.

EPA is proposing to revise its current policy regarding submetering of residential properties. Under the Safe Drinking Water Act, the national primary drinking water regulations apply to public water systems (PWS) that have its own water source, treat or sell water.

EPA has previously issued guidance stating that any building or property owner who meets the definition of a PWS and receives water from a regulated public water system, but bills tenants separately for this water, is selling the water and is independently subject to safe drinking water requirements. As a way to promote full cost and conservation pricing to achieve water conservation, the Agency now proposes to change the policy as it applies to a limited aspect of submetering and direct billing of residential tenants.

The 60-day comment period on this proposed policy change began when it was published in the Federal Register on August 28, 2003. For more information on water efficiency, go to: <http://www.epa.gov/owm/water-efficiency>.

Senate Utilities Committee

This page originally created: Monday March 8, 2004

Attachment 2-1



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March 5, 2004

The Honorable Senator Stan Clark
300 S.W. 10th Street
Topeka, KS 66612-1504

Re: Comments to H.B. 2772-Landlords as Subject to State Corporation Commission Jurisdiction

Dear Senator Clark:

I am writing on behalf of the National Submetering and Utility Allocation Association (NSUAA), National Water & Power (NW&P) and Viterra Energy Services (VES), collectively referred to herein as NSUAA. The NSUAA is a trade association comprised of manufacturers of submetering equipment, providers of utility billing services and owners and managers of multi-unit properties. Our membership currently generates over 25,000,000 utility bills to residents annually in the United States and operates in 25 countries worldwide. The NSUAA appreciates the opportunity to provide comments on this important issue.

Conservation

BY REQUIRING THE USE OF A METER AS THE SOLE MEANS OF REMOVING LANDLORDS FROM STATE CORPORATION COMMISSION JURISDICTION, KANSAS' FUTURE ABILITY TO SAVE WATER THROUGH CONSERVATION WILL BE GREATLY REDUCED.

Senate Utilities Committee
March 8, 2004
Attachment 3-1

According to the Kansas Water Office, the drought alert level was recently raised to emergency status in a 17-county area of northwest and west central Kansas. Northwest Kansas counties covered include Cheyenne, Decatur, Graham, Norton, Rawlins, Sheridan, Sherman and Thomas. Counties covered in west central Kansas include Gove, Greeley, Lane, Logan, Ness, Scott, Trego, Wallace and Wichita. ¹ Presumably conservation of water, a precious natural resource continues to be of great importance to the State. If H.B. 2772 passes, it would eliminate the ability to save up to 1.3 billion gallons of water per year in the State. (See analysis below). While some people will argue that billing without the use of a meter (called allocation based billing or billing using a Ratio Utility Billing System (“RUBS”)) does not result in conservation, **we disagree with those statements.**

RUBS billing has been demonstrated to save a significant amount water in apartment properties. Let’s look at two studies that, because they included a large database, are considered statistically valid (rather than anecdotal).

1. In 1999, Indecon performed a study of RUBS and submetered billing at three dozen properties in Florida, Texas and California. Water use at apartment properties that used billing systems was compared with water use properties that did not have billing systems. RUBS properties used 6% to 27% less water than properties that employed no billing system. Submetered properties used 18% to 39% less water than properties that employed no billing system.
2. In 2002, in support of an inquiry of RUBS billing in Howard County, MD NW&P analyzed all of the 17 properties that were being billed in Howard County by NW&P. NW&P compared water use during the initial month of billing with water use one year later, two years later and three years later. The average property reduced water use by 12% after adopting a RUBS billing system, which is right in line with the Indecon survey discussed above.

There is also considerable anecdotal evidence that RUBS billing results in water conservation. Here are a few examples.

1. Equity Residential (EQR) is a property owner that is probably the largest user of RUBS billing in the country. They have seen RUBS programs reduce water use in their communities by 13%.
2. NW&P reviewed the water use patterns of a property that it is billing in Costa Mesa, CA. After two years on a RUBS program, water use had dropped by 27 percent, and use was trending further downward in the third year of the program.

*Note that all of the conservation numbers above fall into the 6 – 27% range. This indicates that all observations are in general agreement, and RUBS billing does conserve water. Now let’s consider the important implications of this.

Applying these results in Kansas, it is interesting to estimate the conservation benefits that could be achieved if H.B. 2772 is passed with the language recommended at the end of this letter, and RUBS billing continues to be adopted on a widespread basis. There are approximately 188,000 multi-family dwelling unit located in Kansas. Nationwide, for apartment properties that have no billing program in place, the average dwelling unit uses about 150 gallons per day of water. Using the conservation results in the Indecon study, the NW&P study and as witnessed through the anecdotal evidence discussed above, estimates can be developed for the conservation levels that are achievable in Kansas.

Let’s assume that Kansas follows the national pattern where half of all apartments are billed via RUBS methods, and half are billed via submetered methods. That means there could potentially be 94,000 apartments billed via RUBS methods and 94,000 units billed via submetered methods. The units billed via RUBS methods would save up to 1.3 billion gallons per year. How did we arrive at these numbers?

- If a dwelling unit were subject to a RUBS billing program, the residents of that unit would save 9 to 40 gallons of water per day. (150 gallons per day x 6% or 27%).

¹ From the Kansas Water Office Website: <http://www.kwo.org/>

- During the course of a year, the residents of that dwelling unit would save 3,285 to 14,600 gallons of water. (9 x 365 or 40x 365)
- During the course of a year, the residents of a typical apartment property of 250 dwelling units would save 821,250 to 3.6 million gallons of water (250 x 3,285 or 250 x 14,600).
- If all 94,000 apartment units in Kansas used RUBS methods of billing, this would save 308 million to 1.3 billion gallons of water per year. (94,000 x 3,285 or 94,000 x 14,600).
- The flow of wastewater would similarly be reduced in the millions to billions of gallons.

Now let's consider the probable result if H.B. 2772 were passed as is.

- All RUBS billing would be prohibited.
- All hot or cold water ratio submetering appears to be prohibited as well because of the requirement that the resident be billed at the same rate charged by the city or water district (hot or cold water ratio submetering is a method that utilizes a submeter, but which measures only the hot or cold usage, which is then used to derive a charge for the quantity of water not measured). Since the majority of properties in all states including Kansas (approximately 80%) are plumbed in such a way that require hot or cold water ratio submetering or use of RUBS methods (or a fairly cost prohibitive point of use metering alternative), eliminating hot or cold water allocation would then act to prohibit use of most of the submeters that have already been installed (creating a stranded investment to property owners). It would also eliminate the principal method used to retrofit submeters in existing properties.
- Taken together, these prohibitions would result in the industry losing 80 percent of the billing business in Kansas
- With 80 percent of properties no longer using a billing system (or prohibited from implementing a billing system in the future without fear of regulation from the Corporation Commission) for water and sewer services, the annual potential conservation achievable would drop dramatically.
- Many of the properties currently using RUBS, or hot or cold water ratio billing would simply increase rents in order to recover their water and sewer costs.

RUBS Billing Reduces the Flow of Wastewater

Often not discussed in detail, but still very important nonetheless, is the potential conservation impact on wastewater treatment. When a resident draws less water from the tap, they also send less water down the drain. In most instances, for every one-gallon reduction in the amount of water used, there is a corresponding one-gallon reduction in the flow of wastewater. Moreover, because the use of RUBS billing has the capability to reduce water consumption, it also has the capability to reduce the flow of wastewater.

- When the flow of wastewater is reduced, there are many benefits.
- Residents benefit from lower sewer bills.
- The local sewage treatment plant has less stress on it, thus there is less likelihood of a plant breakdown that could impact the quality of receiving water.
- Because less wastewater flows to sewage treatment plants, plant operating costs are lower. Meanwhile, there is less pressure to expand treatment plants, and this reduces the need to invest capital cost in new plants.
- **All these factors result in lower taxes.**

Business Considerations

Property owners across the country use RUBS methods of billing on a significant percentage of their portfolios. Several Real Estate Investment Trusts (REITs) currently use RUBS methods in virtually all of their properties nationwide. If Kansas did not provide a property owner with the freedom or opportunity to bill for resident utility use, this may cause a REIT or other property owner to avoid investing additional funds in Kansas, thereby potentially reducing Kansas's tax base.

Apartment Resident Remedies

Any payments to the landlord by its resident, whether for rental or other services, are governed by the rental agreement. Whether the resident or the landlord has breached that agreement is a matter for the civil courts to

determine. These civil courts provide the resident with adequate remedies in cases where the landlord uses RUBS methods to bill a property. Complaints regarding submetering are similar in nature to complaints involving improper rent increases, uninhabitable premises, failure to make necessary repairs and other historically landlord-tenant issues.

Existing Properties

The vast majority of multi-family units are served by a few master meters. Many of these properties are plumbed in such a way that exorbitant amounts of money would need to be spent re-plumbing the entire property or installing a point of use type of system. RUBS programs (and hot/cold water ratio metering) on the other hand, can be instituted quickly without substantial cost to the owner, which can immediately begin to drive conservation.

Environmental Benefits

RUBS billing also benefits the environment. In many areas, including Kansas, we have seen severe drought conditions. Some states have forced property owners to adhere to mandatory conservation plans. Proactive conservation through billing programs that allow both submetering and RUBS methods of billing will help to avoid situations such as these.

Recommendation

The NSUAA supports passage of H.B. with the following recommended changes:

1. In line 18 the words "or without" were stricken from the original bill as introduced. We respectfully urge that these words be added back in to allow for other types of billing such as RUBS.
2. In lines 19-21 we recommend a change that would accommodate the hot or cold water ratio billing scenario. Accordingly, the following is a redline of the language as it now appears in the bill, detailing our recommended changes: "...so long as the landlord charges all the tenants on the property for no more than what the landlord is billed at the same rate charged by the city or the water district plus the actual cost of billing and collection of such charge to the landlord."

The NSUAA greatly appreciates that opportunity to comment on H.B. 2772. Please feel free to contact either of us directly with any questions that you have on these comments or if you require additional information.

Sincerely,

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WRITTEN
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 8, 2004

RE: HB 2772 – 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). 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). I appreciate the opportunity to provide written comments in support of HB 2772.

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 2772 clarifies that if a landlord meets the definition of subsection (a)(6) of K.S.A. 58-25, 111 and follows the requirements of HB 2772 they (landlord) would no longer be considered a “public utility”. We feel this is a reasonable approach to sub-metering, which in turn encourages water conservation.

Thank you for the opportunity to provide written support of HB 2772 as amended.

Senate Utilities Committee
March 8, 2004
Attachment 4-1