

Approved: April 29, 2005

Date

Carl Dean Holmes

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Vice-Chairman Carl Krehbiel at 9:10 a.m. on February 8, 2005 in Room 231-N of the Capitol.

All members were present except: Representative Eric Carter - Unexcused
Representative Carl Holmes - Excused
Representative Annie Kuether - Excused
Representative Judy Showalter - Excused

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

Conferees appearing before the committee:
Representative Tom Sloan, Lawrence, KS
Kim Gulley, League of Kansas Municipalities, Topeka, KS
Mike Murray, Sprint, Topeka, KS
Mike Santos, City of Overland Park, Overland Park, KS

Others attending: See Attached List

Vice-Chairman Krehbiel directed the committee's attention to the minutes of the January 11, January 12, and January 13 meetings. Representative Sloan moved to approve the minutes. Representative Olson seconded the motion. The motion carried.

HB 2181 - Addition of utility services under existing franchise or easement; effect

Vice-Chairman Krehbiel opened the hearing on **HB 2181**.

Representative Tom Sloan appeared in support of **HB 2181 (Attachment 1)**. Representative Sloan stated that the bill does not solve problems of today, but may prevent them in the future. The bill provides that the renegotiation of franchise agreements will not stand in the way of innovation and investment.

Kim Gulley, Director of Policy Development & Communications for the League of Kansas Municipalities, appeared before the committee in opposition to **HB 2181 (Attachment 2)**. Ms. Gulley told the committee that the bill, as it is currently written, would statutorily authorize a utility to unilaterally alter its city franchise agreements.

Mike Murray, Director of Governmental Affairs for Sprint, testified in opposition to **HB 2181 (Attachment 3)**. Mr. Murray stated that the provisions in this bill were contrary to legislation enacted in 2000 that had been worked out between the local exchange carriers and the local government organizations.

Mike Santos, Senior Assistant City Attorney for the City of Overland Park, shared testimony as an opponent to **HB 2181 (Attachment 4)**. Mr. Santos told the committee that the bill creates numerous obstacles to the effective and safe management of the rights-of-way, including: conflict with federal and state law; inconsistent franchise fees; and public safety issues.

Written testimony in opposition to **HB 2181** was submitted by Michael Boehm, City of Lenexa (**Attachment 5**) and John Federico, Kansas Cable Telecommunications Association (**Attachment 6**).

The conferees responded to questions from the committee.

Vice-Chairman Krehbiel closed the hearing on **HB 2181**.

The meeting adjourned at 10:34 a.m.

The next meeting is Wednesday, February 9, 2005 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 8, 2005

NAME	REPRESENTING
Michael Santos	City of Overland Park
Kim Gullett	LIRM
Jim Gackner	SBC
Shirley Allen	KS Rural Ind Tel Co.
Paul Snider	SBC
Wileen Mull	COX
Steve Johnson	Kansas Gas Service
LARRY BERG	MIDWEST ENERGY
JOHN C. BOTTEBERG	WESTAR
Debbie Vignatelli	SBC
Chris Wilson	KS Governmental Consulting
Mike Murray	Sprint Teleco
JEANNE GOODWIN	City of Wichita
Tom Day	KCC
John Federico	KCTA
JIM BARTLING	ATMOS ENERGY
Mike Reasat	Great Plains Energy
Zach Cobb	Intern Rep Showalter
BRUCE GRAHAM	ICEPTO

M SLOAN
 REP. ATIVE, 45TH DISTRICT
 DOUGLAS COUNTY

 STATE CAPITOL BUILDING
 ROOM 446-N
 TOPEKA, KANSAS 66612-1504
 (785) 296-7677
 1-800-432-3924

 772 HWY 40
 LAWRENCE, KANSAS 66049-4174
 (785) 841-1526
 sloan@house.state.ks.us



TOPEKA

HOUSE OF
 REPRESENTATIVES

COMMITTEE ASSIGNMENTS
 CHAIRMAN: HIGHER EDUCATION
 MEMBER: UTILITIES
 ENVIRONMENT
 AGRICULTURAL & NATURAL
 RESOURCES BUDGET

 KANSAS WATER AUTHORITY

Testimony on HB 2181
 Utilities Committee
 February 8, 2005

Mr. Chairman, Members of the Committee: HB 2181 is a simple bill that solves no problem today, but may prevent one tomorrow. Cities negotiate franchise agreements with utilities that place their electric, natural gas, cable, or other lines in the city's rights-of-way. The agreements generally require payment by the utility of 3-5 percent of the revenues generated from customers living within the city.

HB 2181 provides that if a utility determines that their business and service to customers warrants providing new services using existing "lines," the utility may do so without voiding the existing franchise agreement --- so long as they pay the city the franchise required fees generated by the new technology/service. For example, if an electric utility decided to develop broadband over power lines (BPL) as the Federal Communication Commission (FCC) is endorsing and encouraging, no new franchise agreement would be necessary so long as the utility paid the same 4 percent of revenues for the BPL service as the company does for the electricity provided customers.

As technologies change, natural gas and telecommunications companies may also have opportunities to provide new services over or through their existing infrastructure. HB 2181 simply provides that the need to renegotiate a franchise agreement will not stand in the way of innovation, customer service, and investment. HB 2181 also states that the cities will continue to receive the same percentage of revenue in the form of franchise fee payments for the new service(s) as for the "traditional" one(s).

Mr. Chairman, Thank you and I will be pleased to respond to questions at the appropriate time.

HOUSE UTILITIES
 DATE: 2-8-05
 ATTACHMENT 1



League of Kansas Municipalities

To: House Utilities Committee
From: Kim Gulley, Director of Policy Development & Communications
Date: February 8, 2005
Re: HB 2181

I appear today on behalf of the 565 member cities of the League of Kansas Municipalities (LKM) and the membership of Kansas Municipal Utilities (KMU) as well. We appear in opposition to HB 2181.

As this bill is currently written, it would statutorily authorize any utility to unilaterally alter its city franchise agreements. Specifically, we have the following concerns:

- **Franchises are Ordinances.** Pursuant to K.S.A. 12-2001 *et seq.*, franchise agreements are adopted in ordinances passed by city councils. City ordinances are laws which may only be altered by the adoption of a subsequent ordinance to amend or repeal the previous ordinance. HB 2181 would authorize a utility to unilaterally amend the franchise without going through the appropriate process.
- **HB 2181 is Not Necessary.** I believe that the intent of this legislation is to make certain that appropriate compensation is paid whenever a utility begins to provide additional services. However, K.S.A. 12-2001 requires a company to get a franchise whenever the public rights-of-way are utilized "in the carrying on of any business...." We believe that this language requires utilities to get a new franchise whenever they provide a new service and we support this requirement.
- **All Services Are Not the Same.** HB 2181 authorizes any utility to provide any additional services under the terms of a previous franchise agreement. In this day and age of complex state and federal laws dealing with various utilities, it would be nearly impossible to make sure that the treatment of the new service does not run afoul of state or federal law. For example, if a cable company were to decide to start providing telecommunications services, allowing them to do so under a cable franchise would create serious legal issues. The cable franchise is regulated by both the federal and state cable acts. Telecommunications services are regulated under entirely different federal and state acts. Most importantly, the federal Telecommunications Act requires that all telecommunications providers be treated the same within each city. Allowing a cable company to proceed with telecommunications services under a franchise reached for cable purposes would certainly mean that they were being treated differently than other telecommunications providers in the city and this would be a violation of federal law.

In conclusion, we believe that K.S.A. 12-2001 is complete and give cities the authority they need to regulate the private use of the public rights-of-way. For the reasons listed above, we respectfully request that you do not report HB 2181 favorably for passage.

HOUSE UTILITIES

DATE: 2-8-05

ATTACHMENT 2



Michael R. Murray
Director
Governmental and Public Affairs

Midwest Operations
800 Southwest Jackson, Suite 1108
Topeka, KS 66612-1242
Voice 785 232 3826
Fax 785 234 6420

Outline of Testimony Before the House Utilities Committee
February 8, 2005
HB 2181

Michael R. Murray, Sprint, Director of Governmental Affairs
Topeka, Kansas

1. During the interim of the year 2000, the telecommunications industry and the local government organizations reached a compromise in SB 397 was passed by the 2001 Legislature and which amended the franchise and rights-of-way statutes, KSA 12-2001, and KSA 17-1902, specifying what revenues from telecommunications local exchange carriers are subject to a gross receipts franchise fee.
2. HB 2181 is contrary to the provisions enacted in SB 397 as it relates to telecommunications local exchange carriers.

HOUSE UTILITIES

DATE: 2-8-05

ATTACHMENT 3

Before the House Utilities Committee
February 8, 2005
HB 2181
Michael R. Murray, Sprint, Director of Governmental Affairs
Topeka, Kansas

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to comment on the provisions of HB 2181.

We think we understand that the intent of this bill is to streamline the process for negotiating franchise and easement agreements between public utilities and municipalities. HB 2181 would make it unnecessary to negotiate a new franchise agreement in the event a telecommunications local exchange carrier provides additional services within a municipality. Instead of negotiating a new agreement, the telecommunications company would apply the franchise fee in an existing agreement to the additional revenue generated by these services.

However, the proposal is contrary to existing law, at least as it pertains to telecommunications local exchange carriers.

During the interim of the year 2000, the industry and the local government organizations agreed on SB 397 which rewrote KSA 12-2001 and KSA 17-1902. The 2001 Kansas Legislature enacted SB 397. These laws govern franchise agreements and the city management of the public rights-of-way.

KSA 12-2001 explicitly defines the services offered by a telecommunications local exchange carrier upon which a gross receipts tax could be applied. Let me read that section:

“Gross receipts means only those receipts collected from within the corporate boundaries of the city enacting the franchise and which are derived from the following: (A) recurring local exchange service for business and residence which includes basic exchange service, touch tone, optional calling features and measured local calls; (B) recurring local exchange access line services for pay phone lines provided by a telecommunications local exchange service provider to all pay phone service providers; (C) local directory assistance revenue; (D) line status verification/busy interrupt revenue; (E) local operator assistance revenue; and (F) non-recurring local exchange service

3-2

revenue which shall include customer service for installation of lines, reconnection of service and charge for duplicate bills. All other revenues, including but not limited to, revenues for extended area service, the sale or lease of unbundled network elements, non-regulated services, carrier and end-user access, long distance, wireless telecommunications services, lines providing only data service without voice services processed by a telecommunications local exchange service provider, private line service arrangements, internet, broadband and all other service not wholly local in nature are excluded from gross receipts. Gross receipts shall be reduced by bad debt expenses. Uncollectible and late charges shall not be included within gross receipts. If a telecommunications local exchange service provider offers additional services of a wholly local nature which if in existence on or before July 1, 2002, would have been included with the definition of gross receipts, such services shall be included from the date of the offering of such services in the city.”

The law also permits a municipality to assess a per-access line fee instead of a gross receipts percentage. The law sets strict upper limits on the per-line fee, which allows only modest growth in the amount that can be collected.

I think it’s important to note, too, that the law requires these fees to be collected from end-user customers. In this way, an established company with substantial revenue cannot absorb these costs to the disadvantage a start-up competitor which might not have the financial capacity to do so.

We therefore respectfully ask that you oppose HB 2181.



City Hall•8500 Santa Fe Drive
Overland Park, Kansas 66212-2899
TEL 913.895.6080/6084•FAX 913.895.5095
E-MAIL mrsantos@opkansas.org

Monday, February 07, 2005

TO: Chairman Carl Holmes and Members of the House Utilities Committee

FROM: Michael Santos, Senior Assistant City Attorney

RE: House Bill 2181

Thank you for the opportunity to share the City of Overland Park's comments concerning House Bill 2181.

Cities have long had the responsibility for managing the orderly, efficient and safe use of the public rights-of-way. Effective right-of-way management has historically preserved for all Kansans the finite resources of this public asset and protected the health, safety and welfare of our citizens. An essential component of effective right-of-way management is the ability of local governments to require a franchise prior to service providers entering the right-of-way. This fundamental concept is articulated and discussed in the Kansas statutes at K.S.A. 12-2001 et seq.

House Bill 2181 creates numerous obstacles to the effective and safe management of the rights-of-way. A few of the legal, practical and safety problems created by this bill include the following:

- 1. Conflict with federal and state law.** The Federal Telecommunications Act, Section 253 provides that nothing in that section affects "the authority of a state or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis..." Similarly, K.S.A. 12-2001 requires that franchises issued by local authorities must be competitively neutral and may not be unreasonable or discriminatory. The provisions of HB 2181 would effectively defeat these clearly stated statutory non-discrimination requirements by permitting a utility that has a franchise to provide electrical or other service to provide additional services, such as local telephone exchange service, without first applying for and receiving a telecommunications franchise. Telecommunications providers that were not already delivering a service pursuant to an existing franchise would first have to apply for a franchise to provide the same telecommunications services. This would put the non-incumbent service provider at a disadvantage.

HOUSE UTILITIES

DATE: 2-8-05

ATTACHMENT 4

2. **Inconsistent Franchise Fees.** If enacted into law, the provisions of HB 2181 would create an inconsistent and unfair application of franchise fees assessed for similar services. In most Kansas cities, the franchise fee rates are assigned based on the service provided. For example, in the City of Overland Park the franchise fee on telecommunications services is 3% of gross receipts. The franchise fee for gas service is 2.5% of gross receipts. HB 2181 would permit a gas service provider to begin offering telecommunications service without a separate franchise and at a rate below that of other telecommunications providers in the City.
3. **Public Safety Issues.** Currently, applicants for utility franchises in Kansas fill out a basic application form stating the nature of the service, where the service will be provided, the engineering diagrams for use of the rights-of-way and other information critical to a local government's effective regulation of the rights-of-way. The provisions of HB 2181 would negate this application process and deny local government access to the critical information. Without this information local governments and their respective citizens would have no idea what use the provider was making of the rights-of-way or whether the provider was capable of providing the service in a safe and reliable fashion. This effective flow of information to the community is one of the reasons that K.S.A. 12-2001 currently requires that franchises to use the public rights-of-way be granted only by ordinance of the elected governing bodies.

For the above reasons the City of Overland Park opposes HB 2181.

TESTIMONY IN OPPOSITION TO HOUSE BILL 2181

To: The Honorable Carl Holmes, Chair
Members of the House Utilities Committee

From: Michael A. Boehm, Mayor, City of Lenexa, Kansas

Date: February 8, 2005

Thank you for the opportunity to provide written testimony in opposition to House Bill 2181. The bill, as written, would allow any utility with an existing franchise with a city to provide additional services under the terms of the existing franchise without obtaining another franchise for the additional services or renegotiating the existing agreement to provide for the same.

A city's ability to manage the public rights-of-way is central to its responsibility to protect the public health, safety, and welfare through the provision of adequate public facilities and public infrastructure. It is well established that the authority of utilities to use and occupy the public rights-of-way is subject to and subordinate to reasonable public health, safety and welfare requirements and regulations of cities. K.S.A. 17-1902 (d). HB 2181 seriously undermines the ability of cities to manage the public rights-of-way by allowing utility companies utilizing those rights-of-way to expand their use of the same without even contacting the city first. It would be virtually impossible for cities to manage this limited public resource effectively if they are unaware of what utility facilities are occupying the rights-of-way.

Further, defining the scope of services that a utility company will provide within a city is central to the entire franchise negotiation process. Enabling utility companies to unilaterally change that scope calls the entire negotiation process and cities' legislative authority to adopt franchises into question.

While I am unaware of the impetus behind HB 2181, it would appear that is an attempt to ensure that utility companies are not wrongfully denied the opportunity to deploy additional services to the citizens of this state. Current state law provides adequate safeguards which prohibit cities from treating utility companies discriminatorily or from wrongfully denying said companies access to the public rights-of-way. See, e.g., K.S.A. 12-2001 et seq. and K.S.A. 17-1901 et seq. As such, the City of Lenexa believes that HB 2181 is both unnecessary and overreaching.

For these reasons, the City of Lenexa is opposed to HB 2181 and any other statewide legislation expanding the rights of utility companies under existing franchise agreements. I urge you to vote against this damaging legislation. Please do not hesitate to contact me should you have any further questions or if the City of Lenexa can provide you with any additional information. You should also feel free to contact Senior Assistant City Attorney Beccy Yocham at 913/477-7628 or byocham@ci.lenexa.ks.us, as she is the City staff member responsible for franchise agreements. Thank you for your consideration.

HOUSE UTILITIES

DATE: 2-8-05

ATTACHMENT 5

KCTA

Kansas Cable Telecommunications Association

815 SW Topeka Blvd.
Second Floor
Topeka, Kansas 66612 • (785) 290-0018

Kansas Cable Telecommunications Association

HB 2181

House Utilities Committee

February 8, 2005

The KCTA, due to the sensitive nature of current negotiations with certain municipalities, is not in a position to take an official position in favor or opposition to HB 2181. We do have concerns though, that the bill as drafted, does not address all problems associated with right-of-way usage and/or fees.

Given the nature of the myriad of complicated telecommunication legislation the Legislature will be considering this year, **we urge you to consider an in-depth interim study** of right-of-way usage, current telecommunication fee/tax structure, and the status of the competitive market for telecommunication services (broadband, telephony, etc.)

The KCTA looks forward to the opportunity to work with you and other interested parties to create a regulatory environment in Kansas that is; consistent with federal regulation, takes into account the best available data to create a competitive marketplace, and one that is fair to all telecommunication providers.



John J. Federico, JD
Executive Director: KCTA
815 SW Topeka Blvd
Topeka, KS 66612
(785)290-0018

HOUSE UTILITIES

DATE: 2-8-05

ATTACHMENT 6