

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES.

The meeting was called to order by Chairman Carl D. Holmes at 9:08 a.m. on February 18, 2005 in Room 231-N of the Capitol.

All members were present except: 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: John McQueeney, Kelly Company, Lenexa, KS
Don Moler, League of Kansas Municipalities, Topeka, KS

Others attending: See Attached List

HB 2349 - Annexation; mineral leaseholders

Chairman Holmes opened the hearing on **HB 2349**.

John McQueeney, on behalf of Kelly Company, addressed the committee in support of **HB 2349** (Attachment 1). Mr. Kelly explained that when land that has an oil or gas lease on it is annexed into a city, no insurance company will write coverage on the lease. This ultimately cancels the lease and results in loss of funds for the lease holder.

Don Moler, Executive Director of the League of Kansas Municipalities, spoke in opposition to **HB 2349** (Attachment 2). Mr. Moler stated the League did not believe the legislation is necessary and that the issues should be addressed at the local level with the cities.

Mr. McQueeney and Mr. Moler responded to questions from the committee.

Chairman Holmes closed the hearing on **HB 2349**.

HB 2407 - Kansas representatives to regional transmission organization authorized to participate fully

Chairman Holmes opened the debate on **HB 2407**. Representative Sloan distributed a balloon amendment (Attachment 3) and moved adoption of the balloon. Representative Olson seconded the motion. Motion carried. Representative Sloan moved to recommend HB 2407, as amended, favorable for passage. Representative Olson seconded the motion. The motion carried. Representative Miller will carry the bill.

HB 2263 - Kansas electric transmission authority

Chairman Holmes opened the debate on **HB 2263**. Representative Sloan distributed a balloon for the committee's consideration (Attachment 4). Representative Sloan moved adoption of the balloon. Representative Oharah seconded the motion. The motion carried. Representative Sloan moved to recommend HB 2263, as amended, favorable for passage. Representative Kuether seconded the motion. The motion carried.

HB 2461 - Exemption of utility service trucks from hours of service limits in times of disaster emergencies

Chairman Holmes opened the debate on **HB 2461**. Representative Kuether moved to amend lines 9, 16, and 22 by removing the word 'disaster.' Representative Watkins seconded the motion. The motion carried. Representative Knox moved to amend line 16 by changing 'may' to 'shall.' Representative Flora seconded the motion. The motion failed. Representative Mast moved to recommend HB 2461, as amended, favorable for passage. Representative Huy seconded the motion. The motion carried. Representative Mast will carry the bill.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON UTILITIES, Room 231-N, Statehouse, at 9:08 a.m. on February 18, 2005

HB 2050 -VoIP enhanced 911 act; application of KUSF to VoIP providers

Representative Sloan moved to remove HB 2050 from the table. Representative Kuether seconded the motion. The motion failed.

HB 2046 - Regulation of local exchange carriers; broadband deployment

Chairman Holmes resumed the debate on **HB 2046**. Representative Sloan distributed a balloon for the committee consideration (Attachment 5). Representative Sloan moved to adopt the balloon. Representative Svaty seconded the motion. The motion failed. Representative Sloan moved to adopt a subsequent balloon, as the first minus the first page, adding language that would provide a tax credit to all providers and are technology neutral. Representative Svaty seconded the motion. The motion failed. Representative Sloan moved to remove the language on lines 13 through 20 and replace it with, conceptually, language that grants the corporation commission special authority to consider broadband as a 'quality of service' issues and to pen a new docket. Representative Svaty seconded the motion. The motion failed. Debate was suspended

The committee was as recess from 10:56 to 11:54 a.m.

HB 2349 - Annexation; mineral leaseholders

Chairman Holmes opened the debate on **HB 2349**. Representative Kuether moved to recommend HB 2349 favorable for passage and, because it is non-controversial, be placed upon the Consent Calendar. Representative Mast seconded the motion. The motion carried.

HB 2146 - Information required with payment to oil and gas royalty interest or working interest owners

Chairman Holmes opened the debate on **HB 2146**. Representative Krehbiel distributed a balloon for consideration by the committee (Attachment 6). Representative Krehbiel moved to adopt the balloon. Representative Svaty seconded the motion. The motion failed. Representative Myers moved to table HB 2146. Representative Sloan seconded the motion. The motion carried.

HB 2463 - Cost recovery for local exchange carriers whose facilities are used to terminate calls delivered by other service providers

Chairman Holmes opened the debate on **HB 2463**. Representative Svaty distributed a balloon for the committee's consideration (Attachment 7). Representative Svaty moved the adoption of the balloon. Representative Kuether seconded the motion. The motion carried. Debate was suspended on **HB 2463**.

The meeting adjourned at 12:58 p.m.

The next meeting is Monday, February 21, 2005 at 9:00 a.m.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 18, 2005

NAME	REPRESENTING
Dave Holtzhaus	KFC
Kimberly Jencur	Aquila
Nelson Brueger	Western Wireless
LARRY BERG	MIDWEST ENERGY
Burt Hubbell	Avonco
Tom Whitaker	Ks MOTOR CARRIERS Assn
STEVE JOHNSON	Kansas Gas Service
TOM DAY	KCC
John Aderina	KCTA
Don Mober	LKM
John M. O'Leary	KELLY Co LLC
J.P. SMALL	EXXONMOBIL
Bruce Graham	KEPCo
Wleen Jennison	Car
Kristin Schmitt	Sprint
Mike Murray	Sprint
Debbie Vignatelli	SBC
Paul Snider	SBC
Tom Bruno	EKO GA
Ed Cross	KIOGA

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: February 18, 2005

NAME	REPRESENTING
Julie Horn	Horn Law Firm
Lucas Bell	Kearney and Associates
Dan Springs	Curb
Dan Murray	Federico Consulting
Charles Benjamin	KS Sierra Club
Sandy Braden	Great Plains / Angular Wireless
Dina Fust	Verizon Wireless
Jim Gackwer	Angular Wireless
Ken Peterson	KS Petroleum Council
Mark Schreiber	Westar Energy
Doug Smith	Pinegar, Smith & Assoc.
Sheryl Allen	Allen Consulting

HOUSE BILL NO. 2349

Written Testimony of John J. McQueeney

February 18, 2005

My name is John J. McQueeney and am associated with Kelly Co. L.C., an oil production company located in Lenexa, Ks.

Thank you for the opportunity of giving me a chance to appear before you to discuss House Bill No. 2349. By way of background, my hometown is Paola, Ks. and currently live in Lawrence, Ks. My family was in the oil and gas production business in Pennsylvania and my father moved to Kansas shortly after World War II to work for an oil company. My entire life has been involved in the oil business.

In 1992, Kelly Co. was able to purchase five oil leases in Johnson County, Ks. These leases were very familiar to me, as I had delivered supplies to them when I worked for an oilfield supply company during high school and stayed in contact with the owners until they were ready to sell them.

Since acquiring the leases, I have devoted my time to cleaning up some problems that the former owners left and making them more productive. Business continued as usual until the early spring of 2003 when I learned the City of Gardner had annexed all of one lease and part of another. I did not receive any notice whatsoever of the pending annexation.

By the time I discovered the leases had been annexed, the City and the landowners were well on their way to rezoning the property.

Some time in the early 1980's, the City of Gardner adopted two ordinances that make it very difficult for anyone to conduct oil and gas operations inside the city limits. One of these ordinances gives the landowner the absolute say over where and whether any additional wells are to be drilled. In addition, this ordinance places the control of the lease among the City, the landowner, and the lessee, rather than on the lessee alone as the oil lease does. This ordinance completely changes the terms of my written lease.


The second ordinance requires the lessee to carry liability insurance on his operation. I do not have any quarrel with this and, in fact, carry insurance on all of my lease operations. However, there is a problem in there are only three companies that write insurance of this type in Kansas, and none of them will write coverage on a lease inside the city's limits. Therefore, I was unable to comply with the City's law as soon as the leases were taken into the city, and the only way to avoid being in violation of the law would be to abandon the leases. Annexation effectively shut down my operations, and no one wanted to pay Kelly Co. for this.

Oil leases require a significant investment of capital, and they require continued drilling and development in order to realize their full potential. An oil lease does not fit in with a residential development of a city and I believe I should have some input into whether a lease I own will be taken into a city. As the law stands now, it is not clear whether the

owner of an oil and gas lease has the right to object to his or her lease being taken into the city limits of any city. In my case, a judge in Johnson County ruled that the law (K.S.A. 12-519) gave me no standing to object to annexation of my leases into the city limits. I do not believe this is fair and am requesting the statutes to be amended to allow anyone who has a leasehold interest in property that provides for a lease term of 10 years or more to be able to object to having their property brought into the city limits of any city.

In my case, the two leases in question have been in continuous operation for over 40 years. In both cases, the surface owners believed by bringing the lease property into the city limits they would be able to eliminate my leases without having to pay me for them. I did not get notice this was happening nor a chance to object until it was done. This state of affairs is something the Legislature can and should correct. It will only be a matter of time before a similar situation occurs somewhere else with another's leases.

Thank you very much for your consideration and attention to this matter.


John J. McQueeney



League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: House Utilities Committee
From: Don Moler, Executive Director
Re: Opposition to HB 2349
Date: February 18, 2005

First, I would like to thank the Committee for allowing the League to testify today in opposition to HB 2349. The League has several concerns about this legislation which we would like to discuss with the Committee today.

- First and foremost is the fact that we do not believe this is necessarily an issue which would require opening up the Kansas annexation laws to amendment. As Committee members are well aware, annexation continues to be one of the more controversial issues at the local level and to put even a seemingly minor amendment into K.S.A. 12-519 could open up the entire debate once again.
- Secondly, we believe that this bill may well be a solution in search of a problem. While there may have been one issue in one place concerning mineral leases and annexation, we suspect that it is not a systemic problem which extends across the State of Kansas.
- Third, we would suggest that if there are issues about the use of mineral leases within cities, which this legislation would seem to indicate, that a more appropriate approach would be to look at zoning and planning statutes as opposed to annexation statutes. Quite simply, annexation merely brings the land within the boundaries of the city while land use regulations often control the actual use therein.
- Fourth, the League would also like to note that in many jurisdictions across the state, cities zone within the three mile area around the incorporated city. As a result, it can be expected that mineral leases within that three mile area would already be subject to the zoning restrictions of the City. As a result, being notified of a proposed annexation would not be very helpful in those jurisdictions.

I will be happy to answer any questions the Committee may have concerning the opposition of the League to HB 2349.

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Session of 2005

HOUSE BILL No. 2407

By Committee on Utilities

2-9

9 AN ACT concerning the state corporation commission; authorizing par- organizations
10 ticipation in ~~a certain~~ regional transmission organization.

(a) The state corporation commission representative to any

11
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. ~~The Kansas~~ representatives, as designated by the gover-
14 ~~nor, to the~~ regional transmission organization recognized by the federal
15 energy regulatory commission ~~are~~ hereby authorized to participate fully
16 in all decision-making bodies of such regional transmission organization,
17 whether the decision of such bodies are advisory to or binding on the
18 ~~state~~.

of which one or more Kansas electric public utilities is a member is

19 Sec. 2. This act shall take effect and be in force from and after its
20 publication in the Kansas register.

regional transmission organization.
(b) Nothing in this section shall limit the state corporation commission's regulatory jurisdiction or authority to appeal to the federal energy regulatory commission any decision by a regional transmission organization or relieves the commission of its obligation and authority to ensure electric public utilities provide efficient and sufficient service.

HOUSE UTILITIES
DATE: 2-18-05
ATTACHMENT 3

HOUSE BILL No. 2263

By Committee on Utilities

2-2

Shaw
2/18/05

HOUSE UTILITIES
DATE: 2-18-05
ATTACHMENT 4

9 AN ACT concerning transmission of electricity; enacting the Kansas elec-
10 tric transmission authority act, amending K.S.A. 2004 Supp. 66-1237
11 and repealing the existing section.
12

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

14 New Section 1. (a) Sections 1 through 13, and amendments thereto,
15 may be cited as the Kansas electric transmission authority act.

16 (b) The purpose for which the Kansas electric transmission authority
17 is created is to further ~~ensure~~ ensure reliable operation of the integrated
18 electrical transmission system, diversify and expand the Kansas economy
19 and facilitate the consumption of Kansas energy through improvements
20 in the state's electric transmission infrastructure.

21 New Sec. 2. As used in the Kansas electric transmission authority
22 act:

23 (a) "Authority" means the Kansas electric transmission authority cre-
24 ated by this act.

25 (b) "Board" means the board of directors of the authority.

26 (c) "Transmission facilities" means electric transmission facilities or
27 related supporting infrastructure, including any interests therein, or both.

28 New Sec. 3. (a) There is hereby created a body politic and corporate
29 to be known as the Kansas electric transmission authority. The authority
30 is hereby constituted a public instrumentality and the exercise by the
31 authority of the powers conferred by this act in the construction, opera-
32 tion and maintenance of electric transmission projects shall be deemed
33 and held to be the performance of an essential governmental function.

34 (b) (1) The authority shall be governed by a board of directors con-
35 sisting of seven members.

36 (2) Five members shall be appointed by the governor, subject to con-
37 firmation by the senate as provided by K.S.A. 75-4315b and amendments
38 thereto. Except as provided by K.S.A. 46-2601, and amendments thereto,
39 no person appointed to the board shall exercise any power, duty or func-
40 tion as a member of the board until confirmed by the senate. The terms
41 of members first appointed to the board shall be as follows: Two shall be
42 appointed for terms expiring the second March 15 following appointment,
43 one for a term expiring the third March 15 following appointment and

27

1 therein; and purchasing, leasing, trading, exchanging or otherwise ac-
2 quiring real property or any interest therein, and maintaining, holding,
3 improving, mortgaging, leasing and otherwise transferring such real prop-
4 erty, so long as such transactions do not conflict with the mission of the
5 authority as specified in this act;

6 ~~(13) incurring or assuming indebtedness and entering into contracts
7 with the Kansas development finance authority, which is authorized to
8 borrow money, issue bonds and provide financing for the Kansas electric
9 transmission authority as provided by section 9, and amendments thereto,
10 and any such bonds shall be payable from and be secured by the pledge
11 of revenues derived from the operation of the electric transmission facil-
12 ities of the Kansas electric transmission authority;~~

13 (14) make loans to finance the construction, upgrading or repair of
14 transmission facilities not owned by the Kansas electric transmission au-
15 thority, upon such terms and conditions as required by the authority,
16 including a requirement that any entity receiving a loan under this act
17 shall maintain records and accounts relating to receipt and disbursements
18 of loan proceeds, transportation costs and information on energy sales
19 and deliveries and make the records available to the authority for
20 inspection;

21 (15) depositing any moneys of the authority in any banking institution
22 within or without the state or in any depository authorized to receive such
23 deposits, one or more persons to act as custodians of the moneys of the
24 authority, to give surety bonds in such amounts in form and for such
25 purposes as the board requires;

26 (16) recovering its costs through tariffs of the southwest power pool
27 regional transmission organization, or its successor, and, if all costs are
28 not recovered through such tariffs, through assessments against ~~Kansas
29 wholesale transmission customers in a manner reasonably consistent with
30 the method used by other transmission providers for similar transmission
31 services. Each Kansas wholesale customer paying any such assessment
32 shall recover it through the wholesale customer's retail rates, in a manner
33 approved by the state corporation commission, for rates which are subject
34 to regulation by the commission, or in a manner approved by the utility's
35 governing body, for rates which are not subject to regulation by the
36 commission;~~

37 (17) participating in partnerships or joint ventures with individuals,
38 corporations, governmental bodies or agencies, partnerships, associations
39 or other entities to facilitate any activities or programs consistent with the
40 public purpose and intent of this act, including partnerships or joint ven-
41 tures for the purpose of financing all or any portion of a project pursuant
to subsection (a)(2) of section 9, and amendments thereto;

(18) participating in and coordinating with the planning activities of

(13) as provided by section 9, and amendments thereto, incurring or assuming indebtedness and entering into contracts with the Kansas development finance authority, which is authorized to borrow money, issue bonds and provide financing for: (1) The construction, upgrading or repair of transmission facilities of the Kansas electric transmission authority or the acquisition of right-of-way for such facilities, or both, and any such bonds shall be payable from and be secured by the pledge of revenues derived from the operation of such electric transmission facilities; or (2) making loans to finance the construction, upgrading or repair of transmission facilities not owned by the Kansas electric transmission authority or the acquisition of right-of-way for such facilities, or both, upon such terms and conditions as required by the authority, including a requirement that any entity receiving a loan under this act shall maintain records and accounts relating to receipt and disbursements of loan proceeds, transportation costs and information on energy sales and deliveries and make the records available to the authority for inspection, and any such bonds shall be payable from and be secured by the pledge of revenues derived from the operation of such electric transmission facilities

[renumber subsections (15) through (19) as (14) through (18)]

all electric public utilities, electric municipal utilities and electric cooperative utilities receiving benefits of the construction or upgrade and having retail customers in this state. Each such utility's assessment shall be based on the benefits the utility receives from the construction or upgrade, as determined by the state corporation commission upon application by the authority. In determining allocation of benefits and costs to utilities, the commission may take into account funding and cost recovery mechanisms developed by regional transmission organizations and shall take into account financial payments by transmission users and approved by the federal energy regulatory commission or regional transmission organization. Each electric public utility shall recover any such assessed costs from the utility's retail customers in a manner approved by the commission and each electric municipal or cooperative utility shall recover such assessed costs from the utility's retail customers in a manner approved by the utility's governing body

22

1 moneys for the operation of the Kansas electric transmission authority
2 and other expenses incurred pursuant to this act shall be considered a
3 loan and shall be repaid with interest to the state general fund in one
4 payment not later than 60 months from the effective date of the appro-
5 priation or transfer of such general fund moneys. Such loan shall not be
6 considered an indebtedness or debt of the state within the meaning of
7 section 6 of article 11 of the constitution of the state of Kansas. Such loan
8 shall bear interest at a rate equal to the rate prescribed by K.S.A. 75-
9 4210, and amendments thereto, for inactive accounts of the state effective
10 on the first day of the month during which the appropriation or transfer
11 takes effect.

12 (b) At the time of repayment of a loan pursuant to subsection (a), the
13 chairman of the board shall certify to the director of accounts and reports
14 the amount to be repaid and any interest due thereon. Upon receipt of
15 such certification, the director of accounts and reports shall promptly
16 credit or transfer the amount certified from accounts of the authority to
17 the state general fund.

18 ~~Sec. 14. K.S.A. 2004 Supp. 66-1237 is hereby amended to read as~~
19 ~~follows: 66-1237. (a) Any electric utility subject to the regulation of the~~
20 ~~state corporation commission pursuant to K.S.A. 66-101, and amend-~~
21 ~~ments thereto, may seek to recover costs associated with transmission of~~
22 ~~electric power in a manner consistent with the determination of transmis-~~
23 ~~sion related costs, resulting from an order of a regulatory authority~~
24 ~~having legal jurisdiction over transmission matters or from assessments of~~
25 ~~the Kansas electric transmission authority, through a separate transmis-~~
26 ~~sion delivery charge included in customers' bills. The electric utility's~~
27 ~~initial transmission delivery charge resulting from this section shall be~~
28 ~~determined by the commission from transmission-related costs approved~~
29 ~~in the electric utility's most recent retail rate filing. If an electric utility~~
30 ~~elects to recover its transmission-related costs through a transmission de-~~
31 ~~livery charge, the commission shall, effective the same date as the effec-~~
32 ~~tive date of the initial transmission delivery charge, reduce the electric~~
33 ~~utility's retail rates to such a level that the sum of the revenue recovered~~
34 ~~from such retail rates and the initial transmission delivery charge is equal~~
35 ~~to the revenue recovered from the retail rates in effect immediately prior~~
36 ~~to the effective date of the initial transmission delivery charge.~~

37 ~~(b) All transmission-related costs incurred by an electric utility and~~
38 ~~resulting from an order of a regulatory authority having legal jurisdiction~~
39 ~~over transmission matters or from assessments of the Kansas electric~~
40 ~~transmission authority shall be conclusively presumed prudent for pur-~~
41 ~~poses of the transmission delivery charge and an electric utility may~~
42 ~~change its transmission delivery charge whenever there is a change in~~
43 ~~transmission-related costs resulting from such an order or assessment. An~~

h-f

1 ~~electric utility shall submit a report to the commission at least 30 business~~
2 ~~days before changing the utility's transmission delivery charge. If the com-~~
3 ~~mission subsequently determines that all or part of such charge did not~~
4 ~~result from an order or assessment described by this subsection, the com-~~
5 ~~mission may require changes in the transmission delivery charge and im-~~
6 ~~pose appropriate remedies. The retail rates in effect at the time an electric~~
7 ~~utility changes its transmission delivery charge shall not be subject to~~
8 ~~review or change as a result of a change in the transmission delivery~~
9 ~~charge.~~

10 ~~Sec. 15. K.S.A. 2004 Supp. 66-1237 is hereby repealed.~~

11 Sec. ~~15~~. This act shall take effect and be in force from and after its
12 publication in the statute book.

14

Stoan
2/18/05

not adopted

Session of 2005

HOUSE BILL No. 2046

By Committee on Utilities

1-12

9 AN ACT concerning telecommunications; relating to regulation of local
10 exchange carriers; concerning broadband deployment

amending K.S.A. 2004
Supp. 79-32,154 and
repealing the existing section

New

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

13 Section 1. Notwithstanding the provisions of K.S.A. 66-2005, and
14 amendments thereto, the state corporation commission, on its own mo-
15 tion or upon petition, may initiate a proceeding to determine whether an
16 order requiring a local exchange carrier to return to traditional rate of
17 return regulation on an exchange by exchange basis in order to achieve
18 ubiquitous broadband deployment. The commission shall take into con-
19 sideration the availability of other broadband service providers providing
20 service.

pursuant to its authority to
regulate quality of service,

insert sections 2 & 3,
attached

4

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

require the local exchange
carrier to provide internet
service to all customers at
speeds of 256 kilobits per
second by July 1, 2008. A
local exchange carrier may
use its own technology to
meet the internet service
requirements of this section
or may partner with other
entities or may use other
technologies, or both.

not

HOUSE UTILITIES

DATE: 2-18-05

ATTACHMENT 5

Sec. 2. K.S.A. 2004 Supp. 79-32,154 is hereby amended to read as follows: 79-32,154. As used in this act, the following words and phrases shall have the meanings respectively ascribed to them herein:

(a) "Facility" shall mean any factory, mill, plant, refinery, warehouse, feedlot, building or complex of buildings located within the state, including the land on which such facility is located and all machinery, equipment and other real and tangible personal property located at or within such facility used in connection with the operation of such facility. The word "building" shall include only structures within which individuals are customarily employed or which are customarily used to house machinery, equipment or other property.

(b) "Qualified business facility" shall mean a facility which satisfies the requirements of paragraphs (1) and (2) of this subsection.

(1) Such facility is employed by the taxpayer in the operation of a revenue producing enterprise, as defined in subsection (c). Such facility shall not be considered a qualified business facility in the hands of the taxpayer if the taxpayer's only activity with respect to such facility is to lease it to another person or persons. If the taxpayer employs only a portion of such facility in the operation of a revenue producing enterprise, and leases another portion of such facility to another person or persons or does not otherwise use such other portions in the operation of a revenue producing enterprise, the portion employed by the taxpayer in the operation of a revenue producing enterprise shall be considered a qualified business facility, if the requirements of paragraph (2) of this subsection are satisfied.

(2) If such facility was acquired by the taxpayer from another person or persons, such facility was not employed, immediately prior to the transfer of title to such facility to the taxpayer, or to the commencement of the term of the lease of such facility to the taxpayer, by any other person or persons in the operation of a revenue producing enterprise and the taxpayer continues the operation of the same or substantially identical revenue producing enterprise, as defined in subsection (i), at such facility.

(c) "Revenue producing enterprise" shall mean:

(1) The assembly, fabrication, manufacture or processing of any agricultural, mineral or manufactured product;

(2) the storage, warehousing, distribution or sale of any products of agriculture, aquaculture, mining or manufacturing;

(3) the feeding of livestock at a feedlot;

(4) the operation of laboratories or other facilities for scientific, agricultural, aquacultural, animal husbandry or industrial research, development or testing;

(5) the performance of services of any type, including broadband service in telephone exchanges which are unserved, other than by satellite, and in which less than 30% of existing access lines have access to broadband service at 256 or more kilobits per second;

(6) the feeding of aquatic plants and animals at an aquaculture operation;

(7) the administrative management of any of the foregoing activities; or

(8) any combination of any of the foregoing activities.

"Revenue producing enterprise" shall not mean a swine production facility as defined in K.S.A. 17-5903, and amendments thereto.

(d) "Qualified business facility employee" shall mean a person employed by the taxpayer in the operation of a qualified business facility during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed:

(1) A person shall be deemed to be so engaged if such person performs duties in connection

*Substantive
regarding
broadband
service*

5-2

with the operation of the qualified business facility on: (A) A regular, full-time basis; (B) a part-time basis, provided such person is customarily performing such duties at least 20 hours per week throughout the taxable year; or (C) a seasonal basis, provided such person performs such duties for substantially all of the season customary for the position in which such person is employed. The number of qualified business facility employees during any taxable year shall be determined by dividing by 12 the sum of the number of qualified business facility employees on the last business day of each month of such taxable year. If the qualified business facility is in operation for less than the entire taxable year, the number of qualified business facility employees shall be determined by dividing the sum of the number of qualified business facility employees on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment, the number of qualified business facility employees employed in the operation of such facility shall be reduced by the average number, computed as provided in this subsection, of individuals employed in the operation of the facility during the taxable year preceding the taxable year in which the qualified business facility investment was made at the facility.

(2) For taxable years commencing after December 31, 1997, in the case of a taxpayer claiming a credit against the premium tax and privilege fees imposed pursuant to K.S.A. 40-252, and amendments thereto or the privilege tax as measured by net income of financial institutions imposed pursuant to chapter 79 article 11 of the Kansas Statutes Annotated, "qualified business employee" shall not mean any person who is employed in the operation of a qualified business facility in the state due to the merger, acquisition or other reconfiguration of the taxpayer unless such employee's position represents a net gain of total positions created by the taxpayer and the employee's position was not in existence at the time of the merger acquisition or other reconfiguration of the taxpayer.

(e) "Qualified business facility investment" shall mean the value of the real and tangible personal property, except inventory or property held for sale to customers in the ordinary course of the taxpayer's business, which constitutes the qualified business facility, or which is used by the taxpayer in the operation of the qualified business facility, during the taxable year for which the credit allowed by K.S.A. 79-32,153, and amendments thereto, is claimed. The value of such property during such taxable year shall be: (1) Its original cost if owned by the taxpayer; or (2) eight times the net annual rental rate, if leased by the taxpayer. The net annual rental rate shall be the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals. The qualified business facility investment shall be determined by dividing by 12 the sum of the total value of such property on the last business day of each calendar month of the taxable year. If the qualified business facility is in operation for less than an entire taxable year, the qualified business facility investment shall be determined by dividing the sum of the total value of such property on the last business day of each full calendar month during the portion of such taxable year during which the qualified business facility was in operation by the number of full calendar months during such period. Notwithstanding the provisions of this subsection, for the purpose of computing the credit allowed by K.S.A. 79-32,153, and amendments thereto, in the case of an investment in a qualified business facility, which facility existed and was operated by the taxpayer or related taxpayer prior to such investment the amount of the taxpayer's qualified business facility investment in such facility shall be reduced by the average amount, computed as provided in this subsection, of the investment of the taxpayer or a related taxpayer in the facility for the taxable year preceding the taxable year in

which the qualified business facility investment was made at the facility.

(f) "Commencement of commercial operations" shall be deemed to occur during the first taxable year for which the qualified business facility is first available for use by the taxpayer, or first capable of being used by the taxpayer, in the revenue producing enterprise in which the taxpayer intends to use the qualified business facility.

(g) "Qualified business facility income" shall mean the Kansas taxable income derived by the taxpayer from the operation of the qualified business facility. If a taxpayer has income derived from the operation of a qualified business facility as well as from other activities conducted within this state, the Kansas taxable income derived by the taxpayer from the operation of the qualified business facility shall be determined by multiplying the taxpayer's Kansas taxable income by a fraction, the numerator of which is the property factor, as defined in paragraph (1), plus the payroll factor, as defined in paragraph (2), and the denominator of which is two. In the case of financial institutions, the property and payroll factors shall be computed utilizing the specific provisions of the apportionment method applicable to financial institutions, if enacted, and the qualified business facility income shall be based upon net income.

(1) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in connection with the operation of the qualified business facility during the tax period, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period. The average value of all such property shall be determined as provided in K.S. A. 79-3281 and 79-3282, and amendments thereto.

(2) The payroll factor is a fraction, the numerator of which is the total amount paid during the tax period by the taxpayer for compensation to persons qualifying as qualified business facility employees, as determined under subsection (d), at the qualified business facility, and the denominator of which is the total amount paid in this state during the tax period by the taxpayer for compensation. The compensation paid in this state shall be determined as provided in K.S.A. 79-3283, and amendments thereto.

The formula set forth in this subsection (g) shall not be used for any purpose other than determining the qualified business facility income attributable to a qualified business facility.

(h) "Related taxpayer" shall mean (1) a corporation, partnership, trust or association controlled by the taxpayer; (2) an individual, corporation, partnership, trust or association in control of the taxpayer; or (3) a corporation, partnership, trust or association controlled by an individual, corporation, partnership, trust or association in control of the taxpayer. For the purposes of this act, "control of a corporation" shall mean ownership, directly or indirectly, of stock possessing at least 80% of the total combined voting power of all classes of stock entitled to vote and at least 80% of all other classes of stock of the corporation; "control of a partnership or association" shall mean ownership of at least 80% of the capital or profits interest in such partnership or association; and "control of a trust" shall mean ownership, directly or indirectly, of at least 80% of the beneficial interest in the principal or income of such trust.

(i) "Same or substantially identical revenue producing enterprise" shall mean a revenue producing enterprise in which the products produced or sold, services performed or activities conducted are the same in character and use, are produced, sold, performed or conducted in the same manner and to or for the same type of customers as the products, services or activities produced, sold, performed or conducted in another revenue producing enterprise.

Sec. 3. K.S.A. 2004 Supp. 79-32,154 is hereby repealed.

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Krehbiel
2/18/05

Session of 2005

HOUSE BILL No. 2146

By Committee on Utilities

1-25

9 AN ACT relating to oil and gas; concerning information to be included
10 with payments to interest owners from sales of oil and gas; amending
11 K.S.A. 2004 Supp. 55-1620 and 55-1622 and repealing the existing
12 sections.
13

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

Sec. 2.

15 ~~Section 1,~~ K.S.A. 2004 Supp. 55-1620 is hereby amended to read as
16 follows: 55-1620. When a payment is made for proceeds attributable to
17 oil or gas production, the payment shall be accompanied by the following
18 information, or the following information shall be calculable from the
19 information provided with the payment:

20 ~~—(a) The lease, property, or well name or any lease, property, or well~~
21 ~~identification number used to identify the lease, or well;~~

22 ~~—(b) the month and year during which the sale occurred for which~~
23 ~~payment is being made;~~

24 ~~—(c) the total volume of oil, attributable to such payment, measured in~~
25 ~~barrels and the total volume of either wet or dry gas, attributable to such~~
26 ~~payment, measured in thousand cubic feet;~~

27 ~~—(d) the price per barrel of oil or thousand cubic feet of gas sold;~~

28 ~~—(e) total amount of state severance and production taxes;~~

29 ~~—(f) payee's interest in the sale expressed as a decimal;~~

30 ~~—(g) payee's share of the sale before any deductions or adjustments;~~

31 ~~—(h) payee's share of the sale after deductions or adjustments;~~

32 ~~—(i) an address and telephone number from which additional infor-~~
33 ~~mation may be obtained and any questions answered. (a) As used in this~~
34 ~~section:~~

35 (1) "Affiliated party" means any entity which, directly or indirectly,
36 controls or is controlled by, or is under common control with, the payor.

37 (2) "Associated products" means all constituent elements, including,
38 but not limited to, liquid hydrocarbons and helium, in solution in the gas
39 ~~or oil~~ production stream, which may be separated by a reduction in pres-
40 sure at the wellhead or in a separator, absorption or processing plant or
41 by other manufacturing process.

42 (3) "Check stub" means the financial record attached to a check, in-
43 cluded with a check or mailed separately at or near the time the check is

New Section 1. It is the public policy of this state that royalty owners shall receive prompt and proper payment from oil, gas and associated products. This act is intended to aid in implementation of that public policy, reduce disputes and litigation in the area of royalty payments and encourage trust and respect between royalty owners, lessees and operators through transparency and proper reporting and payment of oil and gas proceeds.

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1 mailed.

2 (4) "Interest owner" means any person or persons owning a royalty
3 interest or working interest in an oil or gas well or unit.

4 (5) "Payee" means any person or persons legally entitled to payment
5 from the proceeds derived from the sale of oil or gas, or from the sale of
6 any associated products, from an oil or gas well located in this state.

7 (6) "Payor" means the party who undertakes to distribute oil and gas
8 proceeds to the payee, whether as the purchaser of the production of oil
9 or gas generating such proceeds or as operator of the well from which
10 such production was obtained or as lessee under the lease on which roy-
11 alty is due.

12 (b) Whenever a payment is made to an interest owner for proceeds
13 attributable to the sale of oil production, or for the sale of associated
14 products, if any, the following information, at a minimum, shall be in-
15 cluded and labeled on the check stub:

16 (1) The lease, property or well name, or any lease, property or well
17 identification number used to identify the lease or well, and the county
18 and state in which each producing well is located;

19 (2) the month and year during which the sale occurred for which
20 payment is being made;

21 (3) the total volume of oil attributable to such payment, measured in
22 barrels;

23 (4) the price per barrel of oil;

24 (5) the total amount of state severance and production taxes;

25 (6) the owner's interest in the sale expressed as a decimal;

26 (7) the owner's share of the sale before any deductions or adjustments;

27 and

28 (8) the owner's share of the sale after deductions or adjustments.

29 (c) Whenever a payment is made to an interest owner for proceeds
30 attributable to the sale of gas production, or for the sale of associated
31 products, if any, the following information, at a minimum, shall be in-
32 cluded and labeled on the check stub:

33 (1) The lease, property or well name, or any lease, property or well
34 number used to identify the lease or well, and the county and state in
35 which the lease, property or well is located;

36 (2) the month and year during which the sale occurred for which
37 payment is being made;

38 (3) the total volume attributable to such payment, measured in thou-
39 sand cubic feet (MCF) or in million British thermal units (MMBTU), and
40 the total volume of any associated products attributable to such payment,
41 including the units of measurement for the sale thereof;

42 (4) the price received per unit of measurement, prior to any deduc-
43 tions or adjustments, which shall be the price per MCF or MMBTU, in

6-2

1 the case of gas, or the appropriate unit of measurement for associated
2 products sold;

3 (5) the conversion factor between MCF and MMBTU for the volume
4 attributable to such payment;

5 (6) the total amount of state severance and any other production taxes
6 or levies applied to the sale;

7 (7) the owner's interest in oil and gas production from such lease or
8 property, expressed as a decimal and calculated to at least the sixth dec-
9 imal place;

10 (8) an itemized list of any other deductions or adjustments, including
11 any volume or value deductions or adjustments from the produced
12 volume;

13 (9) the total value attributed to the owner's interest in the sale of the
14 production from the gas well, lease or property, or associated products,
15 before and after any deductions or adjustments;

16 (10) an advice or alert to the owner if such payment includes pro-
17 duction from more than one well;

18 (11) an advice or alert to the owner if such payment is for less than
19 the total production from the lease, property or well during which the
20 sale occurred for which payment is being made; and

21 (12) an advice or alert to the owner if the price reported under sub-
22 section (c)(4) is for a sale between payor and an affiliated party.

23 (d) With respect to all payments for the sale of gas or oil, or associated
24 products, the check stub shall include a name, address and telephone
25 number, and an email address if available, where the interest owner may
26 receive clarification or supplementation of the information reported pur-
27 suant to this act.

3

28 Sec. ~~2~~ K.S.A. 2004 Supp. 55-1622 is hereby amended to read as
29 follows: 55-1622. Upon written request by the payee, submitted to the
30 payor by certified mail, the payor shall provide to the payee in writing a
31 specific listing of the amount and purpose of any other deductions or
32 adjustments, including volumetric deductions, with explanation of such
33 treatment. A written response shall be provided within 60 days of the
34 receipt of such certified mail request. (a) An interest owner who has
35 received a payment from a payor may request in writing, by certified
36 mail, additional information from the payor, such as:

37 (1) Each lease, property or well identification number used by the
38 payor for royalty payment purposes and a corresponding lease, property
39 or well identification number for identification by the payor used by the
40 state corporation commission and/or the A.P.I. number;

41 (2) each lease, property or well name;

42 (3) each well which may have contributed to production and sale of
43 gas or oil, when the royalty payment may have only identified the sale in

(e) If payments to an interest owner for proceeds attributable to sale of gas production do not exceed \$500 for a calendar year, the payor shall not be required to provide the information specified in subsection (c)(5), (10), (11) or (12) on the check stub for such interest owner, beginning with the first payment to such interest owner after March 1 of the year following such calendar year. The payor may continue to omit such information on the check stub of such interest owner until payment to such interest owner exceeds \$500 for a calendar year. An interest owner shall be entitled to make a written request under the provisions of K.S.A. 2004 Supp. 55-1622, and amendments thereto, for information omitted from a check stub pursuant to this subsection.

1 relation to the lease, property or unit description;
2 (4) the field name;
3 (5) for a given month of production for which payment has been re-
4 ceived or is due the owner, the total produced volume of oil, measured in
5 barrels, and/or total produced volume, measured in MCF, as reported for
6 each well, lease or unit to the state corporation commission, the depart-
7 ment of revenue and/or the Kansas geological survey;
8 (6) details on the conversion from a fractional interest to a decimal
9 interest, used by payor to calculate owner's interest in production from
10 each lease, property or well;
11 (7) the reason for any deductions from or adjustments to any pay-
12 ment; and
13 (8) information concerning transactions, such as, but not limited to,
14 sales or services to produce, gather, compress, treat or process gas, be-
15 tween the payor and an affiliated party.
16 (b) A payor who receives a request for information under subsection
17 (a) and has not otherwise provided such information shall provide a full
18 explanation of the requested information to the interest owner by certified
19 mail not later than the 30th day after the date the payor receives the
20 request.
21 (c) Within six months after the effective date of this act, and at least
22 once every 12 months thereafter, the payor shall provide the following
23 statement to each interest owner to whom the payor makes a payment:
24 "K.S.A. 55-1620 et seq., and amendments thereto, gives an owner of an
25 interest in oil or gas produced in Kansas the right to request from us infor-
26 mation about itemized deductions and about transactions between us and
27 any affiliated company. The request must be in writing and must be made
28 to us by certified mail at the following address: (supply address) .
29 We must respond to a request for such information by certified mail not
30 later than the 30th day after the date the request is received."
31 (d) If the information required by K.S.A. 55-1620, and amendments
32 thereto, is provided in some other manner on a monthly basis, in writing,
33 the payor is not required to include such information on the check stub.

34 ~~New Sec. 3. Any district court within this state shall have jurisdiction~~ 4
35 ~~to enforce the provisions of this act. The court may award court costs,~~
36 ~~reasonable attorney fees and other allowable litigation expenses incurred~~
37 ~~by a party in an action to enforce this act.~~ 5
38 Sec. 4. K.S.A. 2004 Supp. 55-1620 and 55-1622 are hereby repealed.
39 Sec. 5. This act shall take effect and be in force from and after its
40 publication in the statute book. 6

6-4

Svaty
2/18/05

Session of 2005

HOUSE BILL No. 2463

By Committee on Utilities

2-11

9 AN ACT concerning telecommunications; requiring compensation of
10 certain local exchange carriers for certain use of their facilities.

11

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

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

14 (1) Terms have the meanings provided in K.S.A. 66-1,187, and
15 amendments thereto.

16 (2) "Intermediary provider" means a service provider, other than the
17 originating provider or terminating local exchange carrier, which carries
18 a two-way voice grade communication, regardless of technology used.

19 (3) "Originating provider" means a service provider, other than the
20 terminating local exchange carrier, which originates a two-way voice grade
21 communication, regardless of technology used.

22 (4) "Terminating local exchange carrier" means a local exchange car-
23 rier the facilities of which are used to terminate a two-way voice grade
24 communication, regardless of technology used.

25 (b) The terminating local exchange carrier shall receive compensation
26 from the ~~originating or intermediary provider delivering~~ a two-way voice
27 grade communication to such carrier. Unless otherwise provided pursuant
28 to an agreement between the originating provider and terminating pro-
29 vider, such compensation shall be at the same rate as determined pur-
30 suant to subsection (c) of K.S.A. 66-2005, and amendments thereto, for
31 intrastate switched access.

provider originating

32 ~~(c) An intermediary provider may recover from the originating pro-~~
33 ~~vider or other provider delivering a two way voice grade communication~~
34 ~~to the intermediary provider the amount of compensation paid by the~~
35 ~~intermediary provider to the terminating local exchange carrier or another~~
36 ~~provider pursuant to this section.~~

(c)

37 ~~(d)~~ Upon application, the state corporation commission shall author-
38 ize a terminating local exchange carrier ~~and~~ intermediary providers to
39 block two-way voice grade communication from being delivered to an
40 end user from an originating provider if the commission finds the origi-
41 nating provider has failed to pay adequate compensation as required by
42 this section.

or

(d)

43 ~~(e)~~ The provisions of this section shall not apply to communications

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