Approved: February 1, 2005
Date

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Scott Emler at 9:30 A.M. on January 31, 2005 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Athena Andaya, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Bruce Kinzie, Revisor of Statutes Office
Diana Lee, Revisor of Statutes Office
Ann McMorris, Committee Secretary

Conferees appearing before the committee: Ed Jaskinia, Associated Landlords of Kansas
Martha Neu Smith, Kansas Manufactured Housing Association

Others in attendance: See attached sheet

Introduction of Bills

Dr. Lee Allison, Chair, Kansas Energy Council, reported on the action taken on the Council recommendations to the Legislature. Two legislative recommendations have been introduced as bills and he asked for committee approval to introduce three additional bills. (Attachment 1)

(1) Adopt a $.005/k2h production tax credit for new renewable energy facilities or expansions of existing facilities, including wind, hydro, solar and biomass. This credit should be for the first 10 years of the facilities' operation, be tradable to allow benefit to non-taxable entities, and designed in such a way that it is transparent who claims these and how much they claim.

(2) Authorize the Kansas Development Finance Authority (KDFA) to offer revenue bonds to finance Kansas energy projects.

(3) Adopt language clarifying that negotiations and discussions between wind-energy developers and local governments regarding voluntary payments for wind projects are legal.

Moved by Senator Reitz, seconded by Senator Lee, introduction of three committee bills as set forth above by the Kansas Energy Council with the bill draft language to be prepared in conjunction with the Revisors office. Motion carried.

Chair opened the hearing on:

SB 63 - Public Utilities, excluding certain landlords from definition

Proponents:
Ed Jaskinia, Associated Landlords of Kansas (Attachment 2)
Martha Neu Smith, Kansas Manufactured Housing Association (Attachment 3)

After considerable discussion and numerous questions from the committee on the various aspects of the proposed bill, Chairman Emler summarized the issues of concern to the committee that required further consideration before action would be taken: (l) landlords must install meters at their own expense; (2) Utilities should not be able to surcharge submeters; (3) accountability of landlord; and (4) grievance procedure.

Chair closed hearing on **S.B. 63**

Chair announced the Committee and staff were invited to tour the Sprint Campus in Overland Park on February 11, 2005. The group would leave following adjournment of the Senate and return between 3 and 4 p.m. Members are to contact the secretary regarding their attendance.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

MINUTES OF THE Senate Utilities Committee at 9:30 A.M. on January 31, 2005 in Room 526-S of the Capitol.

Approval of Minutes

Moved by Senator Pyle, seconded by Senator Reitz, to approve the minutes of the meetings of the Senate Utilities Committee held on January 25, 2005, January 26, 2005 and January 27, 2005. Motion carried.

A color map of Kansas setting out the Kansas Telephone Exchange Areas was distributed to the committee by KCC. Map size was approximately 24" x 36".

Adjournment

Respectfully submitted,

Ann McMorris, Secretary

Attachments - 3

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

SENATE UTILITIES COMMITTEE GUEST LIST

DATE: **JANUARY 31, 2005**

Name	Representing
Tom Bruno	EKOGA
Martha Jo Smith	KMHA
Susan Kluffer	KCC
Mark Schreiber	Western Energy
Ken Seeber	Hein Law Firm
Lee Allison	Ks Energy Council
Mark Tomb	LKM
Sean Miller	KS Building Industry Assn
Ed Jaskinia	The Associated Landowners of Kansas
Tom Day	KCC

Request for Bill Introductions
to the
Senate Utilities Committee
January 31, 2005

Lee Allison, PhD
Chair
Kansas Energy Council

The Kansas Energy Council was established in 2002 by Executive Order and reconstituted in 2004. The Council is tasked to develop a comprehensive energy plan to help ensure that Kansans have low-cost, reliable, and secure energy supplies. The Council is required to submit an annual energy report by the start of the legislative session. We delivered this year's report on December 21, 2004.

As part of the report, the Council made recommendations to the Legislature, to the Governor, and for the Council itself to undertake. This morning I want to report briefly that two legislative recommendations have been introduced as bills and ask for your approval to introduce up to three additional bills.

Bills introduced:

- Amend Article 9 of the Uniform Commercial Code to restore a priority creditor status for sellers of oil and gas production when a purchaser is in bankruptcy. Such an amendment would follow the language of the former K.S.A. 84-9-319, which was repealed in 2000. **HB2104**

- Remove mandatory labeling for 10% ethanol mixtures at the gas pump. Rescind Subsection b of Kansas Statute No. 79-3408, which currently requires that retail gasoline pumps with ethanol blends be labeled. **SB56**

Additional Kansas Energy Council Legislative Recommendations

- Adopt a $0.005/kwh production tax credit for new renewable energy facilities or expansions of existing facilities, including wind, hydro, solar and biomass. This credit should be for the first 10 years of the facilities' operation, be tradable to allow benefit to non-taxable entities, and designed in such a way that it is transparent who claims these and how much they claim.

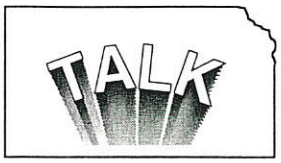
- Authorize the Kansas Development Finance Authority (KDFA) to offer bonds to finance Kansas energy projects.

- Adopt language clarifying that negotiations and discussions between wind-energy developers and local governments regarding voluntary payments for wind projects are legal.

Ed Jaskinia
President
(913) 207-0567

James Dunn
Vice President (Zone 1)
(785) 843-5272

The Associated Landlords of Kansas



Dr. Alex [illegible]
Vice President (Zone 2)
(785) 238-3760

Gary Hefley
Vice President (Zone 3)
(316) 722-7107

P.O. Box 4221 • Topeka, Kansas 66604-0221

The Associated Landlords of Kansas (TALK) was created in 1981 by a group of people from across Kansas to "Promote a strong voice in the legislature, a high standard of ethics, and provide educational opportunities for landlords." Some of our members helped create The Residential Landlord-Tenant Act of 1975, a model of fair law for both landlords and tenants. Our organization consists of members in 19 chapters across the state, and new chapters are in the process of being formed.

In this 2005 legislative session, we continue to work for fair and decent housing for all. We have listed below some of the issues that are of interest to us in this legislative session.

S.B. 63 SUB-METERING OF WATER UTILITIES

Many buildings have only one (1) water meter, with multiple users of the water. Each tenant pays an equal amount of that bill. Fairness requires that those who use less should pay less. This bill allows landlords (at their own expense) to put separate meters between the master meter and the tenant. The bill can then be divided fairly by the landlord. The landlord is not allowed to make a profit on this arrangement.

The EPA has written articles supporting this, and believes that it is a water conservation tool.

H.B. 2151 ADMINISTRATIVE SEARCH WARRANTS

In Kansas, no uniform rules currently exist for a municipality to acquire an Administrative Search Warrant. This bill will set the minimum standards, allowing cities to use this tool in a fair and consistent way. Citizen rights are also protected, creating a bill that should make everyone happy.

GARNISHMENT

We would like to work with the Banking industry to find a mutually acceptable way to allow banks to hold garnishment orders for more than one (1) day.

We understand that this will create a problem for the banks. However, we believe that the hardships of people who have a legal judgement against a debtor should require that additional time be given for holding the garnishment.

If we can be of help to you in these or any other areas concerning property, tenants, or landlords, please feel free to contact us.

Ed Jaskinia, President

ZONE 1
Landlords of Lawrence Inc.
Landlords of Johnson County, KS Inc.
K.C.KS. Landlords Inc., serving Wyandotte Co.
Eastern Kansas Landlords Assc., serving Miami Co.
Franklin Co. Landlords Assc.

ZONE 2
Landlords of Manhattan Inc.
Geary County Landlords Inc.
Jackson County Landlords Assc.
Shawnee County Landlords Assc.
Salina Rental Property Providers Inc.
South Central Kansas Landlord Assc.
Serving Sumner County

ZONE 3
[illegible] sc.
[illegible] sc.
[illegible] sc.
[illegible] sc.
[illegible] sc.
[illegible] sc.
[illegible] County
Labette County Landlords Assc.

Senate Utilities Committee
January 31, 2005
Attachment 2-1

2-2

Apartment meters cut water use 15%: Study

WASHINGTON — A two-year study of water billing practices in the multi-family residential sector has found that the practice of installing individual water meters on multi-family apartment units and billing based on actual consumption results in water savings of 15% or 8,000 gallons per unit per year.

The study discovered that billing apartment dwellers based on allocation methods (commonly known as "RUBS" or Ratio Utility Billing Systems) did not result in any water savings.

The National Multiple Family Submetering and Allocation Billing Program Study reports on water savings and administrative issues associated with submetering and allocation billing programs in multi-family dwellings. The study was motivated by the water industry's interest in capturing potential water savings by multi-family residents where there is currently no pricing signal to encourage efficient use.

The study's sponsors noted that previously only a few studies on the subject with relatively small sample sizes had been conducted. Project funding partners included the U.S. Environmental Protection Agency, two national apartment associations and 10 water utilities.

The study found that the significant water savings resulting from submetering means that submetering should be fostered by public water conservation policies, together with appropriate measures to protect the consumer.

No water savings were found through allocated billing programs. In allocation programs water fees are based upon such parameters as the number of people, the number of bedrooms, or unit area.

Installation of water-efficient fixtures will save approximately 11,000 gallons per year per dwelling unit, according to the study. The sponsors recommended that initiation of any separate billing system should be coupled with complete plumbing fixture upgrades within a specified time.

The study's five main objectives included: 1) determining the water savings potential in the multi-family sector resulting from both direct metering and allocation programs, 2) understanding the current regulatory framework governing billing conversion programs across the U.S., 3) accessing the current business practices in the billing conversion industry, 4) drawing conclusions from the findings, and 5) making recommendations that offer consumer protection and capture cost-effective water savings.

There is little or no regulatory oversight governing third-party billing practices, the study noted.

Among the study recommendations were the adoption of policies targeted at the mostly unregulated third-party billing industry to protect multi-family residents, including recommending:

- The property owner should pay for billing service charges.
- Water conserving fixtures should be installed and leaky toilet tanks repaired before billing conversion programs are implemented.
- Improved billing format should be used that provides tenants with itemized breakdown of charges and a comparison to the water (and sewer) rates of the local utility.

It is estimated that 60 million people or about a quarter of the population in the U.S. live in multi-family dwellings. In the past 10 years, the billing of the water and sewer directly to tenants by billing entities has increased at the rate of about 25% per year. In 1988, there were only two companies involved in third party billing. Today there are around 50 to 60 billing companies nationwide billing around 15% of all multi-family dwelling units directly for water and sewer.

The study was conducted by Aquacraft Inc. of Boulder, Colo., the National Research Center, and Potomac Resources.

An electronic version of the final report is available for free download from Aquacraft at: http://www.aquacraft.com.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 16 2003

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Applicability of the Safe Drinking Water Act to Submetered Properties

FROM: G. Tracy Mehan III,
Assistant Administrator

TO: Regional Administrators, Regions I-X

The purpose of this memorandum is to announce EPA's revised policy concerning the applicability of the Safe Drinking Water Act (SDWA) to submetered properties. Submetering, as applied in this policy, means a billing process by which a property owner (or association of property owners, in the case of co-ops or condominiums) bills tenants based on metered total water use; the property owner is then responsible for payment of a water bill from a public water system. Under the revised policy, a property owner who installs submeters to track usage of water by tenants on his or her property will not be subject to SDWA regulations solely as a result of taking the administrative act of submetering and billing. Property owners must receive all of their water from a regulated public water system to qualify under the terms of this policy revision for submetered properties.

EPA proposed the revised policy in the *Federal Register* on August 28, 2003 (68 FR 51777) and requested public comment. In response, the Agency received strong support for the revised policy on submetering from a variety of stakeholders. In light of this response, and because a key objective of the Agency is to promote water efficiency and conservation, EPA has decided to change the policy for submetering.

Throughout the country, submetering of apartment buildings has been found to be an effective but little-used tool to support water conservation. Water conservation is an integral part of watershed protection, particularly in arid and drought-stricken areas. In addition to helping reduce the risk of water shortages, water conservation also provides other important benefits. Water conservation helps ensure in-stream flows, thereby providing protection for ecosystems, which can become out of balance when demands stress water resources. Water conservation also helps reduce stress on water supply and wastewater infrastructure

making them less prone to failure. Further, the use of submeters to measure water consumption is a necessary pre-requisite to achieving full-cost and conservation pricing.

Background

Section 1401 of SDWA defines a public water system (PWS) as a system that provides water through pipes or other constructed conveyances to the public for human consumption, if the system has at least 15 service connections or regularly serves at least 25 people. Under SDWA Section 1411, the SDWA national primary drinking water regulations apply to PWSs that have their own water source, treat, or "sell" water. EPA staff and program managers had issued several memoranda stating that any building or property owner who met the definition of a PWS and received water from a regulated public water system without adding further treatment, but billed tenants separately for this water, would be considered to be "selling" the water and, therefore, would be independently subject to SDWA's drinking water requirements. Today's memorandum reflects a change in EPA's interpretation of Section 1411 as it applies in the specific context of submetering.

The EPA memoranda referenced above were based on a single statement in the 1974 legislative history for the SDWA in which Congress explained its intent in enacting Section 1411. In that legislative history, the Committee report stated that it "intends to exempt businesses which merely store and distribute water provided by others, unless that business sells water as a separate item or bills separately for water it provides."[1] Under EPA's previous interpretation, an owner of an apartment building or similar property who is exempt under Section 1411 but merely installed a submeter and billed the tenants for the water, or simply began billing tenants (even without a submeter), would then be considered to be operating a fully regulated public water system, even though there had been no other change relevant to the delivery or potential health concerns associated with the water. This application of the legislative history has been cited as a discouragement to submetering and, as a result, to water conservation measures.

After further review, we no longer believe that Congress originally intended the statute to be applied in this manner, or that it should continue to be the Agency's interpretation for the following reasons:

- The legislative history from 1974 does not specifically address the submetering of apartment buildings or similar properties for water conservation purposes. Rather, the legislative history was one Committee's attempt to explain broadly what the term "selling" water in Section 1411 might mean. The statute itself does not define the term "selling" or suggest an interpretation that any billing of water would automatically trigger

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[1] H. Rep. 93-1185 (93rd Cong., 2nd Session), reprinted in A Legislative History of the Safe Drinking Water Act, Committee Print Serial 97-9 (1982) at 549.

full SDWA regulation.

- Some owners of apartment buildings and other multifamily housing expressed concern that, under EPA's previous policy, the installation of submeters subjected them to the full regulatory requirements of the Safe Drinking Water Act (SDWA), comparable to the requirements imposed on water utilities.
- In 1996, a Congressional committee expressed its concern that this application of SDWA might discourage the practice of submetering, as owners of a multifamily housing property (e.g., apartment buildings and/or complexes) would become subject to national primary drinking water regulations if they billed separately for water. Congress asked that EPA review its guidance on this matter to prevent unnecessary requirements that do not further public health protection and that might inhibit water conservation efforts.[2] In response, EPA agreed to reconsider the matter and issue further guidance.[3]
- EPA's approach in previous memoranda may have created a disincentive to water conservation, which can undermine water quality over the long term.
- Simply applying the concept of "sell" to every billing transaction is not appropriate.

Revised Policy

Consistent with Congressional requests to reconsider this matter, the Agency now believes that certain property owners, who had not previously been (or would not be) subject to SDWA's national primary drinking water regulations, and who install submeters to accurately track usage of water by tenants on his or her property, should not be subject to regulations solely as a result of taking the action to submeter and bill.

The addition of a submeter should not in any way change the quality of water provided to customers on the property. A PWS that provides water to a property maintains responsibility for providing public notification under 40 CFR 141.201(c) (or approved State equivalent) to consumers. In addition, the PWS must make "good faith" efforts to provide the tenants with the annual Consumer Confidence Reports under 40 CFR 141.155(b). A submetered property would still be considered a PWS under SDWA Section 1401, hence States and EPA would retain the ability to take corrective action under SDWA's emergency powers authority (Section 1431) if public health risks arise.

Scope of Revised Policy

EPA received numerous comments asking that the revised policy be expanded beyond apartment buildings. EPA agrees that submetering to achieve water conservation may be appropriate for other property types, which share similar characteristics to an apartment building, and likewise should not be considered as "selling"under SDWA Section 1411, simply because a

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[2] H . Rep. 104-632 at 55 (1996)

[3] H. Rep. 104-632 (104th Cong., 2d Sess.) at 55 and 134 (1996).

2.5

submeter is installed and the property owner begins direct billing for the water. This description is the basis for the definition of submetering. Determinations of whether billing for water is a "sale" for purposes of Section 1411, and whether systems are " submetering" as that term is used in this policy, should be made by the Primacy Agency.

In making a determination, the Primacy Agency should consider if the property has certain characteristics, such as a limited distribution system with no known backflow or cross connection issues; the majority of its plumbing is within a structure instead of underground; and property ownership is a single/individual (or association of property owners, in the case of co-ops or condominiums). Of course, for any system to be excluded under Section 1411, it must receive all of its water from a regulated public water system.

In general, the scope of this policy is not intended to extend where the property in question has a large distribution system, serves a large population or serves a mixed (commercial/residential) population (e.g., many military installations/facilities or large mobile home parks).

Although EPA is not requiring that submetered systems be regulated, each State has the flexibility to determine whether, and how, to best track properties that submeter. For example, in Alabama, the State defines a submetered property as a "segmented public water system" and requires that it have access to a certified operator. Texas requires that submetered properties allow access to the property by the public water system that provides it with water, register with the Texas Commission on Environmental Quality, and follow regulations for submetering.

While submetering and billing for water usage may positively induce water conservation actions, States may still want to take other steps to ensure that property owners and others convert to water efficient fixtures and appliances. For example, Texas requires that apartment buildings have water-efficient plumbing fixtures and appliances as a condition of approval of a submetered billing system.

Ratio Utility Billing Systems (RUBS) and Hybrid Billing Systems (HWH)

Several commenters raised the issue of ratio utility billing systems (RUBS) [4] and other allocation billing systems. Some commenters suggested that EPA should include this type of

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[4] A ratio utility billing system (RUBS) or an allocation formula, divides a property's water bill among its residents based on a ratio of floor space, number of occupants, or some other quantitative measure. With RUBS, a price signal based on actual use is not sent to the tenant as with submetering, and the amount of water saved by these systems is unclear. A hot water hybrid (HWH) billing system is a combination of submetering and allocation where hot water is submetered and a formula is applied to estimate the resident's total water use based on the volume of hot water metered. HWH systems provide more of a price signal than RUBS but less than that for submetering.

billing in the revised policy because it would have no negative effect on water quality. Other commenters encouraged EPA to exclude RUBS, stating that RUBS may not result in water conservation, and may, in fact, reduce incentives to install submeters and charge on the basis of actual water usage. Water savings, if any, from RUBS and hot water hybrid billing systems (HWH) are uncertain. At this time, EPA believes that RUBS or other allocation billing systems do not meet the definition of submetering, as used in this policy, and do not encourage water conservation. Therefore, a property using these billing systems is not addressed by this policy. Primacy Agencies will need to determine whether such properties are "selling" water within the meaning of SDWA Section 1411.

This memorandum clarifies EPA's policy change and reconfirms our strong interest in advocating water conservation. Any previous EPA statements or policy memoranda on this issue are superceded by this memorandum. I appreciate your efforts in working with States to foster water conservation while ensuring protection of public health. If you have further questions about this issue, please contact Cynthia C. Dougherty, Director of the Office of Ground Water and Drinking Water, at (202) 564-3750.

cc: EPA Regional Water Division Directors
State Drinking Water Administrators

KANSAS MANUFACTURED HOUSING ASSOCIATION

TESTIMONY

BEFORE THE
SENATE COMMITTEE
ON UTILITIES

TO: Senator Jay Emler, Chairman
And Members of the Committee

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

DATE: January 31, 2005

RE: SB 63 – Public Utilities, excluding certain landlords from definition

Chairman Emler 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 is a statewide trade association, which represents all facets of the manufactured housing industry (i.e. manufacturers, retailers, community owners and operators, finance and insurance companies, service and suppliers and transport companies). I would like to thank you for the opportunity to comment on SB 63.

The industry does have several members that are currently regulated by the Kansas Corporation Commission (KCC) as a Public Utility because they sub-meter water to their residents. Needless to say we would appreciate the passage of SB 63 so that they would no longer be considered a Public Utility.

In getting ready for this hearing I did contact Tom Day of the KCC to find out what was involved or required in being a Public Utility. As I understand it to be a Public Utility you must comply with the KCC reporting requirements; and I assume that there are also EPA reporting and testing requirements; property is

taxed at 33% of fmv; and as a public utility, the entity must be willing and able to serve all persons who apply, without discrimination. This last requirement raises the question, what happens if we are not capable of serving all who apply? Are we still considered a public utility?

Some of the other questions we have are: what enables us (manufactured home communities) to meter individual lots for gas and electric and not be considered a public utility?

Does this definition also apply to commercial property such as office complexes and shopping malls that sub-meter water?

Are other states in the same situation as Kansas?

In closing, I would like to mention that Tom Day did note that the KCC does have an open docket #04-DCAG-1097-COM which is a gas complaint that may have some impact on this issue. I am hopeful that he will be able to perhaps provide some insight into the complaint and when the ruling might be forthcoming.

Again, thank you for the opportunity to comment.