

MINUTES OF THE HOUSE UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:00 A.M. on January 27, 2006 in Room 231-N of the Capitol.

All members were present except:
Don Myers- excused

Committee staff present:
Mary Galligan, Kansas Legislative Research
Mary Torrence, Revisor's Office
Rena Hansen, Committee Secretary

Conferees appearing before the committee:
Janet Bathurst, S & A Telephone Co.
Janet Buchanan, KCC

Others attending:
See attached list.

Representative Tom Hawk moved to have a bill drafted that concerns energy efficiency and conservation. Seconded by Representative Annie Kuether. Motion Passed.

Hearing on:
SB 349 **Telecommunications, Kansas universal service fund.**

Janet Bathurst, S & A Telephone Co., Allen, Kansas on behalf of The Kansas Rural Independent Telephone Companies, presented testimony (Attachment 1), on SB 349 as a proponent to the bill.

Appearing before the committee as neutral on SB 349 was Janet Buchanan, KCC (Attachment 2).

Questions were asked and comments made by Representatives: Jason Watkins, Melody Miller, and Annie Kuether.

Hearing on **SB 349** was closed.

Representative Tom Sloan presented a summary (Attachment 3), of the Special Joint Committee on Energy Actions. His comments included ideas from the five areas of recommendations that were made from the committee: Developing Energy Strategies, Increasing Energy Production in Kansas from Existing Hydrocarbon Fields, Increasing Production of Bio-Fuels and Renewable Energy, Increasing Investments in Energy Conservation and Efficiency, and Increasing Consumption of Bio-Fuels and Renewable Energy in Kansas and the United States.

KEPCo presented supplemental testimony to its' presentation on yesterdays **HB 2636**, (Attachment 4).

Questions were asked by Representative Forrest Knox.

Action on:

HB 2588 **Regulation of electric utilities to support generation and transmission facilities having lowest cost over life of facilities.**

Representative Tom Sloan offered an amendment (Attachment 5).

Representative Tom Sloan moved to add the amendments offered to **HB 2588**. Seconded by Representative Joshua Svaty.

Discussion followed by Representatives: Forrest Knox, Peggy Mast, Annie Kuether, Lynne Oharah, Josh Svaty, Tom Sloan, and Melody Miller.

CONTINUATION SHEET

MINUTES OF THE House Utilities Committee at 9:00 A.M. on January 27, 2006 in Room 231-N of the Capitol.

Representative Tom Sloan closed on the motion.

Motion passed.

Comments by Representative Knox were made on the amendment.

Representative Tom Sloan moved to pass HB 2588 as amended to the house floor. Seconded by Representative Josh Svaty.

Representative Sloan made comment explaining the bill and what it does with the amendments added and then closed on the motion.

Motion failed 8-11.

No further action was taken on **HB 2588**.

HR 6005 **Southwest Power Pool urged to recognize reliability component and value of economic transmission projects.**

Chairman Holmes announced that Representative Mitch Holmes would carry **HR 6005** on the House floor.

Action on:

HB 2589 **Requirements for state agency use of electricity generated from renewable resources; treatment of certain public utility revenues from wholesale off-system sales.**

Representative Tom Sloan offered a balloon for **HB 2589** (Attachment 6).

Representative Tom Sloan moved to adopt the balloon offered. Seconded by Representative Josh Svaty.

Comments and discussion were offered by Representatives: Annie Kuether, Lynne Oharah, Josh Svaty, Forrest Knox, Tom Hawk, Jason Watkins and Vaughn Flora.

Representative Sloan closed on **HB 2589** with comments why our state needs to move forward with legislation that would help promote wind and clean energy.

The question was called. Motion failed 7-12.

No further action was taken on **HB 2589**.

HB 2599 **Unsolicited consumer faxes; no-fax list.**

It was decided to wait to work **HB 2599** until Tuesday. The committee will work three bills on Tuesday.

Action on:

HB 2636 **Educational entity and municipal renewable energy cooperatives.**

Representative Tom Sloan offered amendments to **HB 2636**, (Attachment 7).

Representative Tom Sloan moved to adopt the balloon for HB 2636. Seconded by Representative Josh Svaty.

Discussion followed by Representatives: Robert Olson, Mitch Holmes, Jim Morrison, Forrest Knox, Vaughn

CONTINUATION SHEET

MINUTES OF THE House Utilities Committee at 9:00 A.M. on January 27, 2006 in Room 231-N of the Capitol.

Flora, Lynne Oharah, Jason Watkins, Peggy Mast, Melody Miller, Oletha Faust-Goudeau, and Annie Kuether.

Representative Sloan Closed on the motion.

Motion failed 7-12.

No further action was taken on **HB 2636**.

Action on:

HB 2656 **Criminal justice agency distance learning on KAN-ED.**

Representative Forrest Knox presented a balloon amendment (Attachment 8).

Representative Forrest Knox moved to pass the amendments presented. Seconded by Representative Tom Sloan.

Discussion and comments to the amendment were made by Representatives: Jason Watkins, Melody Miller, Tom Sloan, Carl Krehbiel, and Lynn Oharah.

Representative Knox closed on the motion.

Motion to amend failed 6-9.

Representative Carl Krehbiel moved to table HB 2656. Seconded by Representative Jason Watkins.

Comments were made by Representative Tom Sloan.

Motion to table passed 11-3.

Chairman Carl Holmes reminded committee members to have amendments for bills ready before we are scheduled to work the bill.

The next meeting will be January 30, 2006.

Meeting Adjourned.

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 27, 2006

NAME	REPRESENTING
DAVE HORTHAUS	KFC
PHIL WAGNER	KEPCO
MERT BISH	MWR
LINDA YORRER	RURAL Telephone
Anne Spiess	KTIA
Janet Bathurst	KANSAS RURAL TELCOS
TOM DAY	KCC
David Springle	Curb
ROGER RANDALL	KCPD
Steve Miller	Sunflower Electric
MARK CADLINER	State Independent tel. assocn.
Ron Seiber	Keir Law Firm
Kimberly Shaver	Aquila
Steve Johnson	Kansas Gas Service/ONEOK
Mark Schreiber	Westar Energy
Chris Wilson	KBIA
BILL ASHBURN	ALLTEL
John D. Pinegar	State Independent Telephone Co.
Heather Morgan	JJA
Doug Saiter	St. Independent Telephone Association
Susan Kay	KDTE

HOUSE UTILITIES COMMITTEE GUEST LIST

DATE: January 27, 2006

NAME	REPRESENTING
Whitney Jamran	FS Gas Service

Blue Valley Telephone Corp
Home

Bluestem Telephone Company
Dodge City

Columbus Telephone Company

Council Grove Telephone Company

Craw-Kan Telephone Coop., Inc.
Girard

Cunningham Telephone Company, Inc.
Glen Elder

Elkhart Telephone Company, Inc.

Golden Belt Telephone Assn., Inc.
Rush Center

Gorham Telephone Company

H&B Communications, Inc.
Holyoak

Haviland Telephone Company, Inc.

Home Telephone Company, Inc.
Galva

JBN Telephone Company, Inc.
Wetmore

KanOkla Telephone Assn., Inc.
Caldwell

LaHarpe Telephone Company, Inc.

Madison Telephone Company, Inc.

MoKan Dial, Inc.
Louisburg

Moundridge Telephone Company, Inc.

Mutual Telephone Company
Little River

Peoples Mutual Telephone Company
LaCygne

Pioneer Telephone Assn., Inc.
Ulysses

Rainbow Telephone Coop. Assn., Inc.
Everest

Rural Telephone Service Company, Inc.
Lenora

S & A Telephone Company, Inc.
Allen

S & T Telephone Coop. Assn.
Brewster

South Central Telephone Assn., Inc.
Medicine Lodge

Southern Kansas Telephone Co., Inc.
Clearwater

Sunflower Telephone Company, Inc.
Dodge City

Totah Telephone Company, Inc.
Ochelata, OK

Tri-County Telephone Assn., Inc.
Council Grove

Twin Valley Telephone., Inc.
Miltonvale

United Telephone Association, Inc.
Dodge City

Wamego Telephone Company, Inc.

The Wheat State Telephone Co., Inc.
Udall

Wilson Telephone Company, Inc.

Zenda Telephone Company, Inc.



KANSAS
RURAL INDEPENDENT
Telephone Companies

Investment that works for all Kansans

**Before the House Utilities Committee
Testimony of Janet Bathurst, General Manager
S&A Telephone Company, Allen, Kansas**

on behalf of

The Kansas Rural Independent Telephone Companies

January 27, 2006

Mr. Chairman and members of the Committee:

My name is Janet Bathurst. Thank you for the opportunity to appear on behalf of thirty-six Kansas rural independent telephone companies serving about 120,000 Kansas families, businesses, and individuals. I appear in strong support of Senate Bill 349, as approved unanimously by the Senate Utilities Committee and the full Senate; this bill will continue the use of regulatory standards already in effect that have allowed rural companies to invest in improved service for Kansas consumers.

S.B. 349 applies only to rural telephone companies and does only one thing: it deletes an expiration date for use of one particular regulatory standard. By statute, we operate under an embedded cost standard, which means our opportunity for cost and investment recovery is based on what we actually spend to serve Kansans. If you allow this current law to expire this June, we will have the sort of regulatory uncertainty that can thwart vitally needed investment in advanced services.

Kansas rural telephone companies have invested millions to deliver advanced services demanded by consumers and required for rural economic development. Our company, S&A Telephone, serves the rural communities of Scranton, Allen, and Admire. We have invested to bring advanced services to every single customer in our exchanges. In doing so, we enable families to live in rural communities while enjoying the same communications benefits and resources as their urban counterparts. We can't continue to make that kind of commitment if we face unknown rules limiting our recovery opportunities. Even the possibility of a KCC proceeding to consider a different rule would require us to wait and see, and to pull resources out of service investments, in the meantime, in anticipation of increased expenses of state regulation.

The current embedded cost standard is fair and reasonable. It allows us the fair chance to recover what we actually spend, without undeserved windfalls or unreasonable shortfalls. The alternative, a hypothetical cost model, would be uncertain, contentious, and expensive to develop, and without any assurance of a net public benefit. Only one thing would be sure: the substantial costs of the process would all wind up being paid by the consumers. So far, it appears the FCC hasn't seen a workable hypothetical cost model for rural companies; we understand they see no pressing need, and they have no particular plans to move forward on the issue in the foreseeable future.

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ATTACHMENT 1

Before the House Utilities Committee Testimony of Janet Bathurst, General Manager

Hypothetical models may work for large companies, with large customer bases to even out the variations up and down from an average, but smaller companies and their customers are best served by using real instead of imaginary cost figures. Under hypothetical models, some rural companies could receive increased support without any increased investment; others would lose the opportunity to recover investments made in good faith to serve Kansas consumers. Neither result would be in the public interest.

We can't continue to move ahead in support of our communities under the cloud of an unknown change in cost recovery standards. We urge you to act promptly and favorably on S.B. 349 to maintain a regulatory principle that serves our state well.



KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR
BRIAN J. MOLINE, CHAIR
ROBERT E. KREHBIEL, COMMISSIONER
MICHAEL C. MOFFET, COMMISSIONER

Testimony of
Janet Buchanan, Chief of Telecommunications
Kansas Corporation Commission

Before the House Utilities Committee
Regarding SB 349
January 27, 2006

Chairperson Holmes and Committee Members:

Thank you for allowing me to appear before you this morning on behalf of the Kansas Corporation Commission to express the Commission's views regarding SB 349. My name is Janet Buchanan. I am the Commission's Chief of Telecommunications.

The Commission is taking a neutral position on this bill but would like to provide the Committee with background information and point out two implications of the bill.

The existing language at K.S.A. 66-2008(e) was proposed to codify an order of the Commission in Docket Number 02-GIMT-068-KSF. In that order, the Commission approved a Stipulation and Agreement submitted by the parties, which established that the transition to a cost-based Kansas Universal Service Fund ("KUSF") support level for rural incumbent local exchange carriers ("ILECs") would be accomplished through use of an audit of embedded costs rather than through use of a hypothetical efficient firm cost model. The parties agreed that this issue would not be revisited until 2006.

The Stipulation and Agreement contained the provision to base support on embedded costs because the FCC had decided to use embedded costs to determine federal support for rural carriers while using a model to establish hypothetical costs for other ILECS and the Commission had, pursuant to Section 254(f) of the Federal Act, attempted to adopt rules regarding the KUSF that are "not inconsistent" with the FCC's rules to advance and preserve universal service. The June 30, 2006, date was contained in the Stipulation and Agreement because it was believed the FCC would re-examine whether a hypothetical model should be used to determine federal USF support for rural carriers in 2006; however, it does not appear to be on the FCC's agenda in the near future.

In distributing KUSF support for both carriers whose support is determined through a cost model and those whose support is determined through an audit of embedded cost, the Commission has calculated those costs and then distributed the necessary support using a "per line" method of

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distribution. The total KUSF support received by a carrier was then adjusted on an annual basis as a carrier either served more or fewer access lines (support increased as access lines increased and support decreased if access lines decreased). That same level of support per access line was also made available to qualifying competitive carriers. Again, this is consistent with the manner in which the FCC determined distribution of federal USF should occur. Additionally, the Commission believed that this distribution, on a "per line" basis was competitively neutral as required by subsection b.

The rural ILECs appealed orders of the Commission which implemented the per access line method of distributing support. The carriers cited the language in K.S.A. 66-2008(e) which states that any adjustment to KUSF support would be based on a carrier's embedded costs. The Court of Appeals agreed that the statute now requires KUSF support for rate of return carriers only be adjusted if there is a showing that a carrier's embedded costs have changed, regardless of changes in the number of access lines or customers the carrier actually serves. While K.S.A 66-2008(d) permits carriers to receive increases in KUSF support based on an increase in access lines, the Court's interpretation of K.S.A. 66-2008(e) will no longer allow these "per line" adjustments to KUSF support for rate of return regulated carriers.

In short, an audit must be performed before any adjustment in KUSF support -- up or down -- can be made. Absent such an audit, the rural ILEC will receive the same total amount of KUSF support even if losing a significant number of customers to competitors, competitors who may also be receiving per line support for serving those customers, which has the effect of providing duplicative support. Because the Court found that subsection (e) did not allow support adjustments without an audit, the Court also required the Commission to determine whether the resulting disparate treatment of ILECs and competitive carriers is competitively neutral, as required by subsection b.

As a result of the decision by the Court, the Commission's staff has estimated that KUSF support will increase, as of March 2006, by at least \$1.7 million.¹ Additionally, one time payments will be made from the KUSF to carriers whose past support amount was reduced as they experienced reductions in access lines. That amount is estimated to be approximately \$3 million.² In the past, if a customer disconnected service with the ILEC in favor of service provided by a competitor, only the competitor received support. Now, the total amount of KUSF support will increase as both the competitor and the ILEC will receive support for that customer. These increases in support come at time when the assessable revenues are declining. Some consumers are dropping second lines in favor of broadband services which are not a source of assessable revenues. Some consumers have subscribed to VoIP services and it is unclear whether those revenues may be assessed for KUSF purposes. Additionally, some consumers make use of email and instant messaging rather than making voice calls that would be assessed.

¹ This is the net increase to the KUSF annually. However, if the Commission determines that carriers that received increases in support in conjunction with access line increases should be allowed to keep that support, then the KUSF support would need to be increased further by approximately \$210,000.

² This is the net amount of the onetime payment from the KUSF. However, if the Commission determines that carriers that received increases in support in conjunction with access line increases should be allowed to keep that support, then the one time payment from the KUSF would need to be increased to approximately \$3,530,000.

In conclusion, there are two implications of this bill. First, removal of the June 30, 2006, date from subsection (e) will require use of embedded costs for determining KUSF support for rural ILECs indefinitely and without regard for any changes made by the FCC or Congress concerning federal USF support. This could create an inconsistency with Federal policy and violate Section 254(f) of the Federal Act. Second, leaving (e) otherwise unmodified means legislative acceptance of the Court's statutory interpretation which may require the Commission to make new findings regarding competitive neutrality and require increases in the size of the KUSF and the assessments to fund those increases.

TOM SLOAN

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TOPEKA

HOUSE OF
REPRESENTATIVESCOMMITTEE ASSIGNMENTS
CHAIRMAN: HIGHER EDUCATION
MEMBER: UTILITIES
ENVIRONMENT
AGRICULTURAL & NATURAL
RESOURCES BUDGET
KANSAS WATER AUTHORITY

Summary of Special Joint Committee on Energy Actions

The committee recommended 16 bills and 3 resolutions be introduced. The Committee made recommendations in five areas: Developing Energy Strategies, Increasing Energy Production in Kansas from Existing Hydrocarbon Fields, Increasing Production of Bio-Fuels and Renewable Energy, Increasing Investments in Energy Conservation and Efficiency, and Increasing Consumption of Bio-Fuels and Renewable Energy in Kansas and the U.S.

- 1) **Developing Energy Strategies:** Governors Graves and Sebelius have created the Kansas Energy Council by Executive Order. This group of stakeholders has essentially been charged with creating a state energy plan, but provided woefully inadequate resources. The Energy Committee recognized that developing a comprehensive energy plan is an unrealistic objective and therefore recommends statutorily creating an energy research group housed at, but independent of, the KCC and a stakeholder advisory group. The goal is to identify strategies to better accomplish progress in the areas listed above.
- 2) **Increase Production from Existing Oil and Gas Fields:** The Committee recommends that one percent of the severance tax (approximately \$1.2 million per year) be invested in research and pilot projects to increase production from and extend the lives of existing fields.
- 3) **Increase Production of Bio-Fuels and Renewable Energy:** Several bills have been introduced to provide tax incentives for ethanol and bio-diesel production, installation of facilities to handle such products, and incentives to promote consumption of such products. The Committee's objective is to expand the state's role in helping the private sector develop our natural and agricultural resources, thereby improving rural economic opportunities.
- 4) **Increasing Energy Conservation and Efficiency Investments:** The Committee recognized that increasing the availability of all types of energy is a benefit to the state and affected stakeholders, but that individual Kansans will benefit from programs that facilitate investments in energy conservation technologies. As energy prices continue to rise over time, the incentives proposed, especially to assist landlords to make investments on behalf of their tenants, can greatly benefit thousands of Kansas families.
- 5) **Increasing Consumption of Bio-Fuels and Renewable Energy:** Committee members recognized that two markets exist for energy produced in Kansas — a domestic market comprised of approximately 2.7 million Kansans and a U.S. market comprised of more than 320 million Americans. The Committee recommended measures that can increase the Kansas market to stimulate development of bio-fuel and renewable energy investments (with corresponding tax

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3

and employment benefits), and measures to facilitate Kansans' ability to penetrate regional and national markets. To that end, extensive work has been done previously on developing a more robust electric transmission system and Committee recommendations address facilitating access by bio-fuel and renewable energy producers to national markets.



Kansas Electric Power Cooperative, Inc.

SUPPLEMENTAL TESTIMONY OF KANSAS ELECTRIC POWER COOPERATIVES, INC.

House Utilities Committee
January 26, 2006

House Bill 2636

In testimony provided to the committee yesterday, KEPCo raised the concern with the language in HB 2636, Section 8(b)—page 4, lines 29-30. The portion of the bill states that "the purchase of ...renewable energy shall not be construed to be a breach of an existing full service power supply agreement." The concern raised by KEPCo was that the language constituted an unlawful impairment of contract under the U.S. Constitution.

Kansas Attorney General Opinion 97-47 addressed the all requirements contract of another generation and transmission cooperative, Sunflower Electric, and the ability of the legislature to abrogate that agreement through legislative action. In the opinion, the Attorney General stated in part:

The contracts in question are all-requirements, wholesale electric power contracts, but they do not involve facts which the court used to determine the constitutional issue in Energy Reserves. In short, it is our opinion that the Supreme Court case cannot be used as conclusive authority for legislative intervention into the utility contracts in question because they do not involve the same circumstances. However, Energy Reserves is important because it provides the criteria which must be met if legislation which affects private contracts is to withstand a challenge based on the constitutional prohibition against state impairment of contract obligations, U.S. Const. Art. 1, Sec. 10. The test for determining whether a state law violates the contract clause of the United States Constitution is whether: (1) The State law has substantially impaired a contractual relationship; (2) there is a significant and legitimate public purpose behind the legislation; and (3) the adjustment of the contracting parties' rights and responsibilities is based upon reasonable conditions and is appropriate to the public purpose justifying the legislation's adoption. Energy Reserves citing Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 98 S.Ct. 2716, 57 L.Ed. 2d 727 (1978); Home Bldg. & L. Ass'n v. Blaisdell, 290 U.S. 398, 54 S.Ct. 231, 78 L.Ed.413 (1934). See: Federal Land Bank of Wichita v. Bott, 240 Kan. 624 (1987) (for a historical review of the test). Given that your question does not involve the constitutionality of specific state legislation, we are unable to apply the criteria. In short, whether there is a constitutionally challengeable consequence created by legislative intervention is a factual question, dependent on the facts in each particular case. 64 Am.Jur.2d Public Utilities § 191 (1972).

Applying the balancing tests of the *Energy Reserves* case to the provisions of H.B. 2636, convinces KEPCo that a reasonably expected result of this legislation would be significant and a constitutionally prohibited impairment of KEPCo's contract rights, as well as the contract rights of its mortgagee, the Rural Utilities Service.

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Topeka, KS 66604-0877

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HOUSE BILL No. 2588

By Committee on Utilities

1-11

9 AN ACT concerning electric public utilities; amending K.S.A. 66-128g section
10 and ~~66-1223~~ and repealing the existing ~~sections~~.

11

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

13 Section 1. K.S.A. 66-128g is hereby amended to read as follows: 66-
14 128g. (a) The factors which shall be considered by the commission in
15 making the determination of "prudence" or lack thereof in determining
16 the reasonable value of electric generating property, as contemplated by
17 this act shall include without limitation the following:

18 (1) A comparison of the existing rates of the utility with rates that
19 would result if the entire cost of the facility were included in the rate
20 base for that facility;

21 (2) a comparison of the rates of any other utility in the state which
22 has no ownership interest in the facility under consideration with the rates
23 that would result if the entire cost of the facility were included in the rate
24 base;

25 (3) a comparison of the final cost of the facility under consideration
26 to the final cost of other facilities constructed within a reasonable time
27 before or after construction of the facility under consideration;

28 (4) a comparison of the original cost estimates made by the owners
29 of the facility under consideration with the final cost of such facility;

30 (5) the ability of the owners of the facility under consideration to sell
31 on the competitive wholesale or other market electrical power generated
32 by such facility if the rates for such power were determined by inclusion
33 of the entire cost of the facility in the rate base;

34 (6) a comparison of any overruns in the construction cost of the fa-
35 cility under consideration with any cost overruns of any other electric
36 generating facility constructed within a reasonable time before or after
37 construction of the facility under consideration;

38 (7) whether the utility having an ownership interest in the facility
39 being considered has provided a method to ensure that the cost of any
40 decommissioning, any waste disposal or any cost of clean up of any inci-
41 dent in construction or operation of such facility is to be paid by the utility;

42 (8) inappropriate or poor management decisions in construction or
43 operation of the facility being considered;

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1 (9) whether inclusion of all or any part of the cost of construction of
2 the facility under consideration, and the resulting rates of the utility there-

3 from, would have an adverse economic impact upon the people of Kansas;
4 (10) whether the utility acted in the general public interest in man-

5 agement decisions in the acquisition, construction or operation of the
6 facility;

7 (11) whether the utility accepted risks in the construction of the fa-
8 cility which were inappropriate to the general public interest to Kansas;

(14)

9 (12) any other fact, factor or relationship which may indicate pru-

10 dence or lack thereof as that term is commonly used.

11 (b) The portion of the cost of a plant or facility which exceeds 200%
12 of the "original cost estimate" thereof shall be presumed to have been
13 incurred due to a lack of prudence. The commission may include any or
14 all of the portion of cost in excess of 200% of the "original cost estimate"
15 if the commission finds by a preponderance of the evidence that such
16 costs were prudently incurred. As used in this act "original cost estimate"
17 means:

18 (1) For property of an electric utility which has been constructed
19 without obtaining an advance permit under K.S.A. 66-1,159 *et seq.*, and
20 amendments thereto, the "definitive estimate"; and

21 (2) for property of an electric utility which has been constructed after
22 obtaining an advance permit under K.S.A. 66-1,159 *et seq.*, and amend-
23 ments thereto, the cost estimate made by the utility in the process of
24 obtaining the advance permit.

25 ~~(c) In making the determination of "prudence" or lack thereof in de-~~
26 ~~termining the reasonable value of any property under K.S.A. 66-128, and~~
27 ~~amendments thereto, the commission shall consider technologies which~~
28 ~~provide long-term economic, social and other benefits, including, but not~~
29 ~~limited to, environmental benefits and avoided costs of meeting antici-~~
30 ~~ipated regulatory requirements over the life of the property.~~

31 ~~Sec. 2. K.S.A. 66-1223 is hereby amended to read as follows: 66-~~
32 ~~1223. (a) The consumer counsel may do the following:~~

33 ~~(a) (1) Represent residential and small commercial ratepayers before~~
34 ~~the state corporation commission;~~

35 ~~(b) (2) function as an official intervenor in cases filed with the state~~
36 ~~corporation commission, including rate increase requests;~~

37 ~~(c) (3) initiate actions before the state corporation commission;~~

38 ~~(d) (4) represent residential and commercial ratepayers who file for-~~
39 ~~mal utility complaints with the state corporation commission;~~

40 ~~(e) (5) intervene in formal complaint cases which would affect rate-~~
41 ~~payers; and~~

42 ~~(f) (6) make application for a rehearing or seek judicial review of any~~
43 ~~order or decision of the state corporation commission.~~

(12) whether the facility involves a technology which provides long-term economic, social and other benefits, including, but not limited to, environmental benefits and avoided costs of meeting anticipated regulatory requirements over the life of the facility;

(13) a comparison of total costs of generation over the life of the facility and total costs of generation over the life of reasonable alternatives; and

1 ~~(b) In carrying out their duties, the citizens' utility ratepayer board~~
2 ~~and the consumer counsel shall support use of electric generation and~~
3 ~~transmission facilities which have the lowest cost over the life of the fa-~~
4 ~~cilities rather than the lowest short-term cost.~~

5 New Sec. 3. The state corporation commission, in carrying out its
6 duties, shall support use of electric generation and transmission facilities
7 which have the lowest cost over the life of the facilities rather than the
8 lowest short-term cost.

2 9 Sec. 4. K.S.A. 66-128g and 66-1223 are hereby repealed. is

3 10 Sec. 5. This act shall take effect and be in force from and after its
11 publication in the statute book.

HOUSE BILL No. 2589

By Committee on Utilities

1-11

9 AN ACT concerning electricity; placing certain requirements on certain
10 state agencies and certain electric service providers and providing pen-
11 alties for noncompliance; relating to certain revenues of electric public
12 utilities; amending K.S.A. 66-1,184a and repealing the existing section.
13

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

2008

15 ~~New~~ Section 1. (a) On and after January 1, 2007, and before January
16 1, 2010, not less than 2.5% of the total amount of electricity consumed
17 by each state agency shall be generated from renewable energy resources
18 or technologies, as defined in K.S.A. 79-201, and amendments thereto.
19 On and after January 1, 2010, not less than 10% of the total amount of
20 electricity consumed by each state agency shall be generated from such
21 resources or technologies. Only electricity generated at facilities placed
22 in service after December 31, 2006, shall apply towards the percentages
23 required by this subsection.

24 (b) The requirements of subsection (a) shall apply regardless of the
25 provider of the agency's electric service and the electricity shall be pro-
26 vided at the provider's standard rates for electric service. The agency
27 head, in the agency head's discretion, may determine that: (1) The
28 requirements of this subsection shall apply to each facility under the con-
29 trol of such agency; or (2) such requirements shall apply to the aggregate
30 consumption of all facilities under the control of such agency, with greater
31 consumption attributable to some facilities under the control of such
32 agency being offset by lesser consumption attributable to other facilities
33 under the control of such agency.

34 (c) If a state agency and its electric service provider are unable to
35 meet the requirements of subsection (a), the agency and utility may apply
36 to the state corporation commission for an extension of the date for com-
37 pliance by not more than 12 months.

38 ~~(d) Failure to comply with the requirements of this section shall ren-
39 der the state agency and the electric provider liable for civil fines assessed
40 by the commission for each day of noncompliance.~~

(d)

41 (e) The provisions of this section shall not apply to any state agency
42 which is funded solely by user fees.

43 ~~Sec. 2. K.S.A. 66-1,184a is hereby amended to read as follows: 66-~~

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ATTACHMENT 6

1 ~~1,184a. (a) As used in this section:~~

2 ~~(1) "Electric public utility" has the meaning provided by K.S.A. 66-~~
3 ~~101a, and amendments thereto.~~

4 ~~(2) "Renewable attributes" means tradeable renewable energy cred-~~
5 ~~its (with or without other features), tradeable emissions credits, emission~~
6 ~~offsets or other market instruments created or obtained by use of renew-~~
7 ~~able energy resources or technologies.~~

8 ~~(3) "Renewable resources or technologies" means wind, solar, ther-~~
9 ~~mal, photovoltaic, biomass, hydropower, geothermal, waste incineration~~
10 ~~and landfill gas resources or technologies located in Kansas.~~

11 ~~(b) Upon application of an electric public utility, the state corporation~~
12 ~~commission may authorize such utility to:~~

13 ~~(1) Retain 65% of the utility's net revenues from wholesale off-system~~
14 ~~sales of electricity generated from renewable resources or technologies~~
15 ~~or from sales of renewable attributes if such electricity or attributes are~~
16 ~~purchased by the utility at not less than the average price paid by such~~
17 ~~utility for electricity or renewable attributes purchased pursuant to con-~~
18 ~~tracts of five or more years' duration; and~~

19 ~~(2) retain 50% of the utility's net revenues from all other wholesale~~
20 ~~off-system sales of purchased electricity generated from renewable re-~~
21 ~~sources or technologies or from sales of purchased renewable attributes~~
22 ~~from renewable energy procured or constructed principally to serve Kan-~~
23 ~~sas retail customers; and~~

24 ~~(3) retain 50% of the utility's net revenues from wholesale off-system~~
25 ~~sales of electricity generated by capacity placed in service on or after~~
26 ~~January 1, 2008.~~

27 ~~Sec. 3. K.S.A. 66-1,184a is hereby repealed.~~

2

28 Sec. 4. This act shall take effect and be in force from and after its
29 publication in the statute book.

HOUSE BILL No. 2636

By Committee on Utilities
(By request of Select Joint Committee on Energy)

1-18

10 AN ACT concerning the creation of certain cooperatives; providing for
11 generation and purchase of renewable energy; authorizing certain sales
12 of such energy.
13

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

15 Section 1. (a) This act may be cited as the educational entity and
16 municipal renewable energy cooperative act.

17 (b) Subject to the provisions of this act, any educational entity or city,
18 or any two ~~or more~~ educational entities or cities, or both, may create a
19 cooperative for the purpose of generation of renewable energy or pur-
20 chase of renewable energy, or both, for use by such educational entities
21 and cities and by users of electricity located within a participating city.

22 Sec. 2. As used in this act:

23 (a) "Agreement" means the written agreement between or among
24 two ~~or more~~ educational entities or cities, or both, establishing a coop-
25 erative pursuant to this act.

26 (b) "Cooperative" means a cooperative created pursuant to this act
27 by any educational entity or city, or by agreement between any two ~~or~~
28 ~~more~~ educational entities or cities, or both, to exercise any of the powers
29 granted by this act, including the purchase of renewable energy and the
30 acquisition, construction, reconstruction, operation, repair, extension or
31 improvement of facilities for generation of renewable energy or the ac-
32 quisition of any interest therein or any right to part or all of the capacity
33 thereof.

34 (c) "Educational entity" means any public school district, accredited
35 private school, area vocational school, area vocational-technical school,
36 technical college, community college or public or private university.

37 (d) "Person" means a natural person, a public agency, private cor-
38 poration, firm, partnership, cooperative association or business trust of
39 any nature whatsoever, organized and existing under the laws of any state
40 or of the United States.

41 (e) "Renewable energy" means electricity generated from wind, so-
42 lar, thermal, photovoltaic, biomass, hydropower, geothermal, waste incin-
43 eration and landfill gas resources or technologies.

delete "or more"

located on the same
distribution or transmission
line within a single certified
service territory, as defined
in K.S.A. 66-1,170, and
amendments thereto,

HOUSE UTILITIES

DATE: 1/27/06

ATTACHMENT 7

1 Sec. 3. (a) Whenever the governing body of an educational entity or
2 city proposes to create a cooperative, a majority of the members of such
3 governing body shall adopt a resolution providing for the creation of such
4 cooperative.

5 (b) Whenever the governing bodies of two ~~or more~~ educational en-
6 tities or cities, or both, propose to create a cooperative, a majority of the
7 members of each such governing body shall adopt a resolution providing
8 for the creation of such cooperative.

9 (c) Any resolution provided for by this section shall state the purpose
10 for the creation of a cooperative, shall state that bonds and other indebt-
11 edness may be incurred by such cooperative to be paid from revenues of
12 the cooperative and shall state that the educational entity or city is au-
13 thorized for a period not exceeding 40 years to purchase renewable en-
14 ergy from such cooperative. Such resolution shall be published in a news-
15 paper having general circulation in the counties where the educational
16 entity or city is located and shall be effective 60 days after such
17 publication.

18 Sec. 4. (a) (1) When the resolution of the governing body of a single
19 educational entity or city providing for creation of a cooperative becomes
20 effective, the governing body of the educational entity or city shall ap-
21 prove a resolution creating the cooperative, as provided in subsection (b).

22 (2) When the resolutions of the governing bodies of two ~~or more~~
23 educational entities or cities, or both, providing for creation of the co-
24 operative becomes effective, each such educational entity or city shall
25 become a member of the cooperative, with all the rights, powers and
26 duties pertaining thereto, by executing an agreement creating the coop-
27 erative, as provided in subsection (b). The agreement shall be approved
28 by a majority of the members of the governing body of each such edu-
29 cational entity or city, or both, and shall be executed by the chief admin-
30 istrative officer of the educational entity and mayor of each such city.

31 (b) The resolution or agreement creating the cooperative shall in-
32 clude the following:

33 (1) The name of the cooperative, which shall include the words
34 "cooperative";

35 (2) the duration of the cooperative, which may be perpetual;

36 (3) the name of each educational entity or city proposing to be a
37 member of the cooperative;

38 (4) the address of the cooperative's registered office and the name of
39 the resident agent in charge of such office, except that where the city
40 clerk of a member city is to be the resident agent the name of such city
41 clerk need not be specified in the agreement;

42 (5) the manner in which bylaws of the cooperative may be adopted;

43 (6) the number of directors to serve on the board of directors and

strike "or more"

- 1 the method of selecting such directors;
- 2 (7) a statement that neither any educational entity nor any city which
3 is a participant in the cooperative is liable for the obligations of the
4 cooperative;
- 5 (8) any limitation or restriction on the power of the cooperative not
6 specified in this act;
- 7 (9) any other provision relating to the organization or operation of
8 the cooperative deemed appropriate and which is not inconsistent with
9 this act or the laws of this state; and
- 10 (10) such other matters as provided by this act.
- 11 (c) Before a cooperative commences business, the resolution or
12 agreement is filed with the secretary of state and the state corporation
13 commission. A copy thereof, certified by the secretary of state, shall be
14 filed in the office of the register of deeds of each county in which any
15 participating educational entity or city is located. Upon filing of such
16 certified copy of the agreement with the register of deeds of each such
17 county, the cooperative so created shall thereupon be a quasi-municipal
18 corporation.
- 19 Sec. 5. The resolution or agreement creating the cooperative may be
20 amended as the board of directors deems necessary. Any such amend-
21 ment shall be approved by resolution of the governing body of each par-
22 ticipating educational entity or city and shall be executed by the chief
23 administrative officer of each such educational entity and the mayor of
24 each such city.
- 25 Sec. 6. A cooperative shall be governed by a board of directors as
26 provided for in the resolution or agreement creating the cooperative. The
27 board of directors shall be organized, governed, compensated and reim-
28 bursed expenses in accordance with bylaws adopted by the board.
- 29 Sec. 7. (a) A cooperative may exercise the following powers:
- 30 (a) To sue and be sued;
- 31 (b) to have a seal and alter the same at will;
- 32 (c) to adopt, amend and repeal bylaws consistent with the provisions
33 of this act and the resolution or agreement creating the cooperative;
- 34 (d) to generate and purchase renewable energy and sell such energy
35 to the educational entities and cities participating in the cooperative and
36 the users of electricity located within cities participating in the
37 cooperative;
- 38 (e) to make and enter into any other contract or agreement necessary
39 or incidental to the performance of its duties and the execution of its
40 powers under this act, including contracts for the purchase and sale of
41 renewable energy, subject to the limitations and restrictions of this act;
- 42 (f) as provided by section 9, and amendments thereto, to assume and
43 incur indebtedness and to enter into contracts with the Kansas develop-

1 ment finance authority, which is authorized to borrow money, issue bonds
2 and provide financing for the construction, upgrading or repair of renew-
3 able energy generation facilities of the cooperative upon such terms and
4 conditions as required by the authority and such bonds shall be payable
5 from and be secured by the pledge of revenues derived from the opera-
6 tion of such renewable energy generation facilities;

7 (g) to establish, revise and collect rates or charges for renewable en-
8 ergy sold, furnished or supplied by the cooperative;

9 (h) to acquire, hold, lease to and from and dispose of real or personal
10 property necessary for the performance of its duties and the execution of
11 its powers under this act; and

12 (i) to exercise all other powers not inconsistent with the constitution
13 of the state of Kansas or the United States constitution, which powers
14 may be reasonably necessary or appropriate for or incidental to the ef-
15 fectuation of its authorized purposes or to the exercise of any of the
16 powers enumerated in this section, and generally may exercise in con-
17 nection with its property and affairs, and in connection with property
18 within its control, any and all powers which might be exercised by a nat-
19 ural person or a private corporation in connection with similar property
20 and affairs.

21 Sec. 8. (a) A cooperative shall generate ~~and purchase renewable en-~~
22 ~~ergy only in such amounts as are reasonably necessary to serve the con-~~
23 ~~sumptive needs of the educational entities and cities participating in the~~
24 ~~cooperative and the users of electricity located within cities participating~~
25 ~~in the cooperative.~~

renewable energy to serve the consumptive needs of the participants in the cooperative, but not to exceed five megawatts

26 (b) The retail electric supplier ~~shall be required to purchase any sur-~~
27 ~~plus renewable energy generated or purchased by a cooperative at whole-~~
28 ~~sale market prices or shall make a good faith effort to sell the surplus.~~
29 ~~The purchase of such renewable energy shall not be construed to be a~~
30 ~~breach of an existing full service power supply contract.~~

, or generation or transmission utility, serving the area where a cooperative is located may assist the cooperative by purchasing any excess renewable energy produced by the cooperative, assisting in the sale of such excess renewable energy or managing the appropriate ancillary services. Any such purchase or assistance or services provided, and required compensation, shall be negotiated between the parties

31 Sec. 9. (a) A cooperative may enter into agreements with the Kansas
32 development finance authority to issue revenue bonds or provide other
33 financing pursuant to the Kansas development finance authority act,
34 K.S.A. 74-8901 et seq., and amendments thereto, and to provide for pay-
35 ment of the bonds for the purpose of financing the construction, upgrad-
36 ing or repair of renewable energy generation facilities owned by the
37 cooperative.

38 (b) The Kansas development finance authority may pledge the agree-
39 ment or agreements authorized in this section for the payment or re-
40 demption of the bonds. The activities of a cooperative in administering
41 and performing the powers, duties and functions prescribed by the pro-
42 visions of this act from the proceeds of bonds issued for such purpose by
43 the Kansas development finance authority are hereby approved for the

1 purposes of subsection (b) of K.S.A. 74-8905, and amendments thereto,
2 and the authorization of the issuance of such bonds by the Kansas de-
3 velopment finance authority in accordance with that statute. No bonds
4 shall be issued pursuant to this section unless the Kansas development
5 finance authority has received a resolution of the board of the cooperative
6 requesting the issuance of such bonds. The provisions of subsection (a)
7 of K.S.A. 74-8905, and amendments thereto, shall not prohibit the issu-
8 ance of bonds for such purposes when so authorized and any such issu-
9 ance of bonds is exempt from the provisions of subsection (a) of K.S.A.
10 74-8905, and amendments thereto. Bonds issued pursuant to this section
11 shall not be subject to the notice requirements of K.S.A. 74-8905, and
12 amendments thereto.

13 Sec. 10. Any educational entity or city may become a member of a
14 cooperative or withdraw as a member if membership or withdrawal is
15 authorized by resolution of the governing body of the educational entity
16 or city and consented to by resolution of the board of directors of the
17 cooperative. The governing body of the educational entity or city and the
18 board of directors of the cooperative also shall approve by adoption of a
19 resolution, and execute, an agreement creating a cooperative or an
20 amendment to the existing agreement creating the cooperative, adding
21 the member educational entity or city to the agreement or withdrawing
22 the member educational entity or city. Any other amendment to the res-
23 olution or agreement creating the cooperative shall be governed by the
24 provisions of section 5, and amendments thereto.

25 Sec. 11. Any educational entity or city participating in a cooperative
26 may enter into a contract with such cooperative for a period not exceeding
27 40 years providing for the purchase of renewable energy from such
28 cooperative.

29 Sec. 12. A cooperative shall not be subject to the jurisdiction, regu-
30 lation, supervision and control of the state corporation commission.

31 Sec. 13. This act shall take effect and be in force from and after its
32 publication in the statute book.

HOUSE BILL No. 2656

By Committee on Higher Education

1-19

extending application thereof

9 AN ACT amending the KAN-ED act; relating to certain criminal justice
10 agencies; amending K.S.A. 2005 Supp. 75-7222, 75-7223 and 75-7224
11 and repealing the existing sections.

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

14 Section 1. K.S.A. 2005 Supp. 75-7222 is hereby amended to read as
15 follows: 75-7222. As used in this act, unless the context requires
16 otherwise:

17 (a) "Board" means the state board of regents.

18 (b) "Criminal justice agencies" means the Kansas department of cor-
19 rections, the juvenile justice authority and the state courts and their med-
20 ical and education providers;

21 (c) "Hospital" means a licensed hospital, as defined in K.S.A. 65-425,
22 and amendments thereto.

23 (d) "Library" means: (1) The state library; (2) any public library
24 established and operating under the laws of this state; or (3) any regional
25 system of cooperating libraries, as defined in K.S.A. 75-2548, and amend-
26 ments thereto.

27 (e) "Network" means the KAN-ED network created pursuant to
28 this act.

29 (f) "School" means: (1) Any unified school district, school district
30 interlocal cooperative, school district cooperative or nonpublic school ac-
31 credited by the state board of education; or (2) any community college,
32 technical college, area vocational school, area vocational-technical school
33 or Kansas educational institution, as defined in K.S.A. 74-32,120, and
34 amendments thereto.

35 Sec. 2. K.S.A. 2005 Supp. 75-7223 is hereby amended to read as
36 follows: 75-7223. (a) The purpose of this act is to provide for a broad-
37 band technology-based network to which schools, libraries, criminal jus-
38 tice agencies and hospitals may connect for broadband internet access
39 and intranet access for distance learning. For that purpose, the state board
40 of regents shall contract in accordance with this act for the creation, op-
41 eration and maintenance of such network, to be known as the KAN-ED
42 network.

43 (b) The network shall not provide for: (1) Impairment of any existing

the state courts, offices of the
United States department of
justice, federal prisons, federal
courts,

(b) "Clinic" means any office
or facility of a local health
department, as defined in KSA
65-241, and amendments
thereto, or community care
department, as defined in KSA
65-220, and amendments
thereto.

(c) "County office" means any
county office, county court or
county or regional jail, or any
medical and education
provider thereof

[reletter subsections]

(f) "Mental health center
has the meaning provided in
KSA 65-4432 and
amendments thereto.

[reletter subsections]

, clinics, county offices,
mental health centers

HOUSE UTILITIES

DATE: 1/27/04

ATTACHMENT 8

1 contract for the provision of telecommunications services or internet serv-
 2 ices to any school, library, *criminal justice agency* or hospital; (2) state
 3 ownership or construction of any network facilities other than those
 4 owned or being constructed by the state on the effective date of this act;
 5 (3) switched voice access, except to the extent switched access is being
 6 provided by state owned, leased or operated facilities as of the effective
 7 date of this act; (4) transmission of voice over internet or voice over in-
 8 ternet protocol, except to the extent necessary to facilitate interactive two-
 9 way video; or (5) use of the network for purposes inconsistent with the
 10 purposes of this act.

, clinic, county office,
 mental health center

11 Sec. 3. K.S.A. 2005 Supp. 75-7224 is hereby amended to read as
 12 follows: 75-7224. (a) The board shall establish a plan to ensure that all
 13 schools, libraries, *criminal justice agencies* and hospitals have quality, af-
 14 fordable access to the internet and distance learning. The board shall
 15 adopt standards for determining whether such access is available to each
 16 school, library, *criminal justice agency* or hospital desiring such access
 17 and shall adopt priorities for implementation of such access. The board
 18 may request and receive assistance from any school, any library, any hos-
 19 pital, the state corporation commission, any other agency of the state or
 20 any telecommunications, cable or other communications services pro-
 21 vider to gather necessary data to implement such plan and establish such
 22 standards and priorities. The board shall develop a methodology for up-
 23 dating and validating any data collected for periodic revisions of the plan,
 24 standards and priorities. Not less than 75% of all schools which have
 25 applied to the board to participate in the network, 75% of all libraries
 26 which have applied to the board to participate in the network and 75%
 27 of all hospitals which have applied to the board to participate in the net-
 28 work shall have access to the network by July 1, 2004.

, clinics, county offices,
 mental health centers

, clinic, county office,
 mental health center

29 (b) The board shall contract with providers of telecommunications
 30 services, cable services and other communications services for the crea-
 31 tion, operation and maintenance of the network. Such contracts shall be
 32 let by competitive bids as provided by K.S.A. 75-3739, and amendments
 33 thereto.

34 (c) The board shall establish: (1) Technical standards for operation
 35 and maintenance of the network; (2) the method of monitoring operations
 36 of the network; and (3) the method or methods of increasing the capacity
 37 of the network to accommodate changes in the demands of schools, li-
 38 braries, *criminal justice agencies* and hospitals.

, clinics, county offices,
 mental health centers

39 (d) The board shall identify any potential regulatory impediments to
 40 and other regulatory considerations in implementation of the network and
 41 shall propose measures to address such impediments and other
 42 considerations.

43 (e) The board shall assess the need of schools, libraries, *criminal jus-*

, clinics, county offices,
mental health centers

1 *tice agencies* and hospitals for full-motion video connectivity. Based on
2 its findings, the board may develop a plan to provide such connectivity.
3 The plan may require users of such connectivity bear part of its cost.

4 (f) The board may appoint such advisory committees as the board
5 determines necessary to carry out the purposes of this act. The member-
6 ship of advisory committees may include both members of the board and
7 persons who are not board members. Such advisory committees, to the
8 extent appropriate, shall include both communications services providers
9 and participants knowledgeable about topics such as network facilities and
10 services, network content and user training, and such other topics as may
11 be necessary or useful. Members of advisory committees appointed by
12 the board shall receive amounts provided for in subsection (e) of K.S.A.
13 75-3223, and amendments thereto.

14 (g) ~~On or before July 1, 2002, and thereafter as the board deems~~
15 ~~appropriate~~, The board shall adopt rules and regulations to implement
16 and administer the provisions of this act.

17 (h) The board shall have all other powers necessary to achieve the
18 purposes of this act, including but not limited to the power to receive any
19 appropriations, donations, grants, bequests and devises, conditional and
20 otherwise, of money, property, services or other things of value for the
21 purposes of this act.

22 (i) The state department of education, the division of information
23 systems and communications of the department of administration, the
24 state corporation commission and all other state agencies shall cooperate
25 with the board in providing information and other assistance requested
26 by the board for the performance of its duties pursuant to this act.

27 Sec. 4. K.S.A. 2005 Supp. 75-7222, 75-7223 and 75-7224 are hereby
28 repealed.

29 Sec. 5. This act shall take effect and be in force from and after its
30 publication in the statute book.