

MINUTES OF THE HOUSE ENERGY AND UTILITIES COMMITTEE

The meeting was called to order by Chairman Carl Holmes at 9:15 A.M. on February 25, 2008 in Room 783 of the Docking State Office Building.

All members were present except:

Oletha Faust-Goudeau-excused
Don Myers-excused

Committee staff present:

Mary Galligan, Kansas Legislative Research
Carol Toland, Kansas Legislative Research
Mary Torrence, Revisor's Office
Melissa Doeblin, Revisor's Office
Renaë Hansen, Committee Administrative Assistant

Conferees appearing before the committee:

Tom Day, KCC
Representative Tom Holland, Baldwin, Kansas
Representative Mark Treaster, Pretty Prairie, Kansas
Bill Smalley, Smalley Heating and Cooling
Jill Strnad, Sunflower Wind
Tom Thompson, Sierra Club
Dan Nagengast, Director, Kansas Rural Center
Trudy Aron, American Institute of Architects
Representative Vauhgn Flora, Topeka, Kansas
Nancy Jackson, Executive Director, Climate and Energy Project
Michael Bergey, President, Bergey Wind Power
Dave Springe, CURB,
Mark Schreiber, Westar
Dave Holthaus, KEC and KepCo

Others attending:

Twenty-six including the attached list.

Hearing on:

HB 2872- Removing the assessment of actual expense of services by the state corporation commission

There were no proponents to **HB 2872**

Opponents:

Tom Day, KCC, (Attachment 1), offered testimony in opposition of **HB 2872**, noting the history of the original bill.

Hearing was suspended on **HB 2872**.

Hearing on:

HB 2881- Net Metering

Proponents:

Representative Tom Holland, 10th District, Baldwin City, Kansas, (Attachment 2), presented testimony in support of **HB 2881**.

CONTINUATION SHEET

MINUTES OF THE House Energy and Utilities Committee at 9:15 A.M. on February 22, 2008 in Room 783 of the Docking State Office Building.

Forrest Knox closed on the amendment.

Motion to amend failed.

Discussion continued by Representatives: Tom Moxley, Forrest Knox, Margaret Long, and Tom Sloan.

Representative Tom Sloan moved to recommend **HB 2634** as amended and for the revisors make technical clean ups, seconded by Representative Tom Hawk. Motion passed.

Representative Tom Sloan will carry **HB 2634** on the House floor.

Discussion on:

HB 2807-Defining participating member of a rural water district; requirements on water districts.

Discussion ensued between Representatives: Rob Olson, Tom Sloan, Josh Svaty, and Forrest Knox.

It was noted that this bill could be divided into two issues.

Representative Tom Sloan moved to delete everything in sections 2 and parts of section 3 of **HB 2807**, seconded by Representative Cindy Neighbor.

Representative Rob Olson commented on the amendment.

Motion to amend failed 5-10.

Discussion on **HB 2807** continued with Representatives: Rob Olson, and Forrest Knox.

Representative Rob Olson moved to table **HB 2807**, seconded by Representative Vern Swanson. **HB 2807** was tabled.

Discussion on:

HB 2808-Use of eminent domain by public wholesale water supply districts.

Discussion ensued between Representatives : Rob Olson, Tom Sloan, Tom Moxley, Cindy Neighbor, Forrest Knox, and Bill Light.

Representative Tom Sloan moved to redefine the "rural water district" boundary, as being the boundary of its member organizations in **HB 2808**, seconded by Representative Cindy Neighbor. Motion failed.

Representative Rob Olson moved to table **HB 2808**, Representative Dan Johnson seconded the motion. Motion to table **HB 2808** passed.

The next meeting is scheduled for Monday February 25, 2008.

The meeting was adjourned at 10:21 a.m.

HOUSE ENERGY AND UTILITIES COMMITTEE GUEST LIST

DATE: February 22, 2008

NAME	REPRESENTING
Tom DAY	KCC
Colin Hansen	KMU
K. Lincus Gray	KMU
Phil Wages	KEPCO
Dave Holthaus	KEL
David Springe	CLRR
Larry Berg	midwest Energy
Diana Fisk	Verizon
Cheryl Jennison	Cox
Tom Grossner	BT&T
Dan Murray	KCTA
Mick Urban	K65
Paul Snider	KLPL
Wes Ashton	Amia
Lindsey Douglas	Hein Law Firm

HOUSE BILL No. 2634

By Committee on Energy and Utilities

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9 AN ACT concerning telecommunications; ~~relating to the state corpora-~~
10 ~~tion commission~~; establishing the broadband deployment assistance
11 program; amending K.S.A. 2007 Supp. 66-2010 and repealing the ex-
12 isting section.

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

15 New Section 1. As used in sections 1 through 7, and amendments
16 thereto:

17 (a) "Broadband" means any synchronous or asynchronous transmis-
18 sion technology capable of speeds of at least 200 kilobits per second in
19 both directions to and from customer and provider.

20 (b) "Census tract" means a tract identified on the most recent official
21 United States decennial census maps.

22 (c) "Commission" means the state corporation commission.

23 (d) "Department" means the department of commerce.

24 (e) "Government" means the state and any department, agency, au-
25 thority, institution or instrumentality thereof, any county, township, city,
26 school district or other political or taxing subdivision of the state and any
27 other not-for-profit entity primarily funded by appropriations from tax
28 revenues.

29 (f) "Grant" means a broadband deployment assistance program grant.

30 (g) "Potential broadband customer" means any residential, commer-
31 cial or government customer that could receive broadband service
32 through existing telephone or cable lines and has subscribed to such serv-
33 ice, has elected not to subscribe to such service or cannot subscribe to
34 such service because such service is not provided.

35 (h) "Provider" means a provider of wireless, ^{high speed internet ac-}
36 cess service ~~who is~~ domiciled in Kansas.

wireline, cable-modem and other technological means of providing

37 (i) "Underserved rural areas" means that no more than 15% of po-
38 tential broadband customers in a census tract ~~receive~~ broadband of at
39 least 386 kilobits per second in both directions in accordance with the
40 provisions of sections 2 through 5, and amendments thereto.

to persons who are

are capable of

receiving

41 New Sec. 2. On or before October 1, 2008, and annually thereafter,
42 subject to the provisions of section 4, and amendments thereto, each
43 provider of broadband service shall submit to the department ~~a list of all~~

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information presenting the geographic areas where customers are capable of

1 addresses receiving broadband service from such provider. Such list shall
2 be in a form and manner as prescribed by the department. The provider
3 shall categorize such list by the following speeds: 200 kilobits per second;
4 386 kilobits per second; 512 kilobits per second; 1.5 megabits per second;
5 and any additional speeds as required by the department due to changes
6 in technology capabilities. The provider shall also categorize such list by
7 the following types of customers: Residential, commercial, and govern-
8 ment. This section shall apply to all providers that provide broadband
9 service, including satellite transmission.

The department shall not require subsequent annual reports from providers who document the geographic areas where customers are capable of receiving broadband.

10 New Sec. 3. (a) On or before January 15, 2009, and annually there-
11 after, subject to the provisions of section 4, and amendments thereto, the
12 department shall report to the legislature on broadband service being
13 provided in the state of Kansas. Such report shall include the following
14 information:

15 (1) A report by census tract on the number of broadband providers
16 with customers connected and receiving broadband service at each of the
17 speeds required to be reported to the department pursuant to section 2,
18 and amendments thereto;

or other identifiable geographic unit indicating whether broadband service is available and the number of providers that offer service to customers in each census tract;

19 (2) a report by census tract, categorized by the type of customer,
20 showing the percentage of potential broadband customers that are re-
21 ceiving broadband service at each of the speeds required to be reported
22 to the department pursuant to section 2, and amendments thereto, and
23 the percentage of potential broadband customers that are not receiving
24 broadband service at any speed;

2

25 (3) beginning with the department's report in 2010, a report by cen-
26 sus tract of the change in: (A) The number of broadband providers; (B)
27 the percentage of potential broadband customers receiving broadband
28 service categorized by type of customer and by speed as required to be
29 reported to the department pursuant to section 2, and amendments
30 thereto, from the previous year; and (C) the percentage of potential
31 broadband customers that are not receiving broadband service at any
32 speed.

the geographic area or census tract where broadband service is available.

33 (b) The department shall maintain the information provided by each
34 provider pursuant to section 2, and amendments thereto, as confidential
35 and shall report only the aggregated information by census tract to the
36 legislature.

37 (c) The department may adopt rules and regulations as necessary to
38 establish the form and manner in which the provider information shall
39 be submitted and to fulfill all other requirements of the department under
40 this act.

41 (d) The commission shall assist the department in the collection and
42 reporting of the data collected pursuant to section 2, and amendments
43 thereto, in such form and manner as mutually agreed to by the commis-

1 sion and the department.

2 (e) ~~^~~ The department shall, in addition to those reports required by
3 subsection (a), on or before January 15, 2008, and annually thereafter,
4 report to the legislature the names of the broadband service providers
5 that fail to comply with the reporting requirements of section 2, and
6 amendments thereto.

7 New Sec. 4. In the event the federal government or any federal
8 agency implements a national program to collect information regarding
9 broadband service deployment ~~on a census tract or smaller unit of land~~
10 ~~area~~, the provisions of section 2 and subsection (a) of section 3, and
11 amendments thereto, shall no longer be effective, and the department,
12 ~~with assistance from the commission pursuant to subsection (d) of section~~
13 ~~3, and amendments thereto~~, shall collect such broadband service data and
14 report such data to the legislature in a form and manner that is in con-
15 formance with such federal program.

16 New Sec. 5. Nothing in sections 1 through 4, and amendments
17 thereto, shall be construed as authorizing the department ~~or the com-~~
18 ~~mission~~ to regulate the provision of broadband service in any manner not
19 already otherwise authorized pursuant to federal or state law.

20 New Sec. 6. There is hereby established the broadband deployment
21 assistance program. The commission shall administer the program and
22 shall award grants thereunder. ~~The~~ commission is hereby authorized to:

23 (a) Enter into binding commitments for the provision of grants that
24 are awarded by the commission in accordance with the provisions of this
25 act;

26 (b) review applications for grants and select the projects for which
27 grants will be made available;

28 (c) prequalify providers who substantially comply with Kansas statu-
29 tory requirements concerning eligibility for a certificate of convenience
30 pursuant to K.S.A. 66-2005, and amendments thereto;

31 (d) adopt rules and regulations necessary to implement and admin-
32 ister the provisions of this act; and

33 (e) ensure that grants are awarded only to provide support for de-
34 ploying broadband in otherwise underserved rural areas.

35 New Sec. 7. (a) ~~The~~ commission shall adopt rules and regulations
36 establishing criteria for qualifications to receive grants based on:

37 (1) Demonstrated ability of the provider to reliably provide broad-
38 band services and underlying facilities capable of speeds of at least 386
39 kilobits per second, in both directions;

40 (2) technological neutrality, including the use of satellite, cable-mo-
41 dem, digital subscriber line and other technologies in existence on or
42 before the expiration of this act, and including new technologies that the
43 commission shall determine provide comparable or better service to

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In consultation with the division of information systems and communications in the department of administration, the

1 customers;

2 (3) percentage of eligible customers that the provider will be able to
3 reach within one or more census tracts;

4 (4) best value to the KUSF and customers including that the provider
5 shall agree to provide residential broadband services at a cost to the cus-
6 tomer in an amount not to exceed \$50 per month for a period of at least
7 three years; and

8 (5) quality of the provider's marketing plan to inform potential cus-
9 tomers of the availability of broadband services.

10 (b) Grants awarded shall be one-time only to assist in the build out
11 of the provider's broadband system and shall not be used to pay, replace
12 or substitute for recurring, operating, maintenance or other expenses of
13 the provider.

14 (c) Providers awarded a grant may reapply for an additional grant to
15 support capital expenditures to upgrade the technology used to provide
16 broadband services within the same census tract on or after five years
17 after deploying services supported by a previous grant.

18 New Sec. 8. On or before the last day of the 2013 regular session of
19 the legislature, the department ~~and the commission~~ shall submit a written
20 report to the house standing committee on energy and utilities and the
21 senate standing committee on utilities concerning the success and out-
22 comes of the broadband deployment assistance program with an emphasis
23 on whether such program has significantly reduced the number of Kan-
24 sans without access to broadband services.

25 New Sec. 9. Nothing in sections 4 through 8, and amendments
26 thereto, shall be construed as authorizing the state corporation commis-
27 sion, or any other state agency to regulate broadband services which are
28 not regulated by the federal communications commission or pursuant to
29 federal law.

30 Sec. 10. K.S.A. 2007 Supp. 66-2010 is hereby amended to read as
31 follows: 66-2010. (a) The commission shall utilize a competitive bidding
32 process to select a neutral, competent and bonded third party to admin-
33 ister the KUSF.

34 (b) The administrator shall be responsible for: (1) Collecting and au-
35 diting all relevant information from all qualifying telecommunications
36 public utilities, telecommunications carriers or wireless telecommuni-
37 cations service providers receiving funds from or providing funds to the
38 KUSF; (2) verifying, based on the calculations of each qualifying telecom-
39 munications carrier, telecommunications public utility or wireless tele-
40 communications service provider, the obligation of each such qualifying
41 carrier, utility or provider to generate the funds required by the KUSF;
42 (3) collecting all moneys due to the KUSF from all telecommunications
43 public utilities, telecommunications carriers and wireless telecommuni-

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(d) No more than one provider per census tract or other geographic unit shall receive a grant under this program.
(e) Unless there are extenuating circumstances, as defined by the department in rules and regulations, if deployment has not begun within 12 months of the date the grant is awarded, the grant recipient shall repay the grant advanced with interest as determined by the department.

The report shall include, but not be limited to, the amount of grants granted to each provider and the number of customers subsequently able to receive broadband service as a result of those grants.

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1 cations service providers in the state; ~~and~~ (4) distributing amounts on a
2 monthly basis due to qualifying telecommunications public utilities, wire-
3 less telecommunications service providers and telecommunications car-
4 riers receiving KUSF funding; *and (5) distributing amounts on a monthly*
5 *basis to qualifying providers awarded broadband deployment assistance*
6 *program grants pursuant to section 7, and amendments thereto, as di-*
7 *rected by the commission.*

8 (c) Any information made available or received by the administrator
9 from carriers, utilities or providers receiving funds from or providing
10 funds to the KUSF shall not be subject to any provisions of the Kansas
11 open records act and shall be considered confidential and proprietary.

12 (d) The administrator shall be authorized to maintain an action to
13 collect any funds owed by any telecommunications carrier, public utility
14 or wireless telecommunications provider in the district court in the county
15 of the registered office of such carrier, utility or provider or, if such car-
16 rier, utility or provider does not have a registered office in the state, such
17 an action may be maintained in the county where such carrier's, utility's
18 or provider's principal office is located. If such carrier, utility or provider
19 has no principal office in the state, such an action may be maintained in
20 the district court of any county in which such carrier, utility or provider
21 provides service.

22 (e) The KUSF administrator shall be responsible to ensure that funds
23 do not fall below the level necessary to pay all amounts collectively owed
24 to all qualifying telecommunications public utilities, wireless telecom-
25 munications service providers ~~and~~, telecommunications carriers *and*
26 *broadband providers*. The administrator shall have the authority to retain
27 and invest in a prudent and reasonable manner any excess funds collected
28 in any period to help ensure that adequate funds are available to cover
29 amounts payable in other periods.

30 (f) (1) Before July 1, of each year, the chief executive officer of the
31 state board of regents shall certify to the administrator of the KUSF the
32 amount provided by appropriation acts to be expended from the KAN-
33 ED fund for the fiscal year commencing the preceding July 1. Upon
34 receipt of the certification of the chief executive officer of the state board
35 of regents, the KUSF administrator shall add the amount certified to the
36 amount annually required to fund the KUSF as determined pursuant to
37 subsection (b).

38 (2) On or before the 10th day of each month, the administrator of
39 the KUSF shall pay from the KUSF to the state treasurer 1/12 of the
40 amount certified by the chief executive officer of the state board of re-
41 gents pursuant to subsection (a) for the fiscal year preceding the fiscal
42 year in which the payment is made. Upon the receipt of the payment, the
43 state treasurer shall deposit the entire amount in the state treasury and

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1 credit it to the KAN-ED fund. Any such payments shall be made after
2 all payments required by K.S.A. 66-2008, and amendments thereto, for
3 the month are made from the KUSF.

4 (3) Not more than the following shall be paid from the KUSF to the
5 state treasurer pursuant to this subsection (f): In fiscal year 2006,
6 \$10,000,000; in fiscal year 2007, \$8,000,000; in fiscal year 2008,
7 \$6,000,000; and in fiscal year 2009, \$5,500,000.

8 (4) The provisions of this subsection (f) shall expire on June 30, 2009.
9 Thereafter, state general fund moneys shall be used to fund the KAN-
10 ED network and such funding shall be of the highest priority along with
11 education funding.

12 (g) (1) *The KUSF administrator shall add the amount needed to fund*
13 *the broadband deployment assistance program as prescribed by para-*
14 *graph (2) of this subsection (g) to the amount annually required to fund*
15 *the KUSF.*

16 (2) *On or before the 10th day of January, 2010, and on or before*
17 *January, 2014, the KUSF administrator shall pay from the KUSF to each*
18 *qualifying provider awarded a broadband deployment assistance grant*
19 *an amount as directed by the state corporation commission pursuant to*
20 *section 7, and amendments thereto. The moneys paid from the KUSF*
21 *pursuant to this subsection (g) shall be expended only to fund grants*
22 *awarded pursuant to the broadband deployment assistance program. Any*
23 *such payments shall be made after all payments required by K.S.A. 66-*
24 *2008, and amendments thereto, for the month are made from the KUSF.*

25 (3) *Not more than the following shall be paid by the KUSF adminis-*
26 *trator to qualifying providers, in the aggregate, pursuant to this subsec-*
27 *tion (f): In fiscal year 2010, \$500,000; in fiscal year 2011, \$1,000,000; in*
28 *fiscal year 2012, \$1,000,000; in fiscal year 2013, \$1,000,000; and in fiscal*
29 *year 2014, \$500,000.*

30 (4) *The provisions of this subsection (g) shall expire on December 31,*
31 *2013.*

32 Sec. 11. K.S.A. 2007 Supp. 66-2010 is hereby repealed.

33 Sec. 12. This act shall take effect and be in force from and after its
34 publication in the statute book.

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