

MINUTES OF THE SENATE UTILITIES COMMITTEE.

The meeting was called to order by Chairperson Sen. Pat Ranson at 1:00 p.m. on March 16, 2000 in Room 231- N of the Capitol.

All members were present except:

Sen. Hensley was excused

Committee staff present:

Lynne Holt, Legislative Research Department

Mary Torrence, Revisors of Statute Office

Jeanne Eudaley, Committee Secretary

Conferees appearing before the committee:

E. Dean Carlson, Secretary of the Department of Transportation

Janet Luehring, Chief of Telecommunications, Kansas Corporation Commission

Jay Allbaugh, Cox Communications

Others attending:

See attached list

Sen. Ranson called the committee's attention to **HB 2897-public lands; relating to grants of easements** and the briefing by staff yesterday. Questions were raised by the committee, and Mr. Carlson appeared before the committee today to explain and answer some of them. The bill requires an agency head to notify and receive approval from the State Finance Council and other state agencies, as a result of a legislative concern raised by the Select Committee on Information Management regarding contracts the Department of Transportation has entered into with a communications company for installation of optical fiber on highway right of ways. Mr. Carlson explained the department has entered into two such contracts and in return have received access to specified bandwidth and conduits to support the operation of the Intelligent Transportation Systems (ITS). He described the contracts and referred to a map the committee reviewed yesterday (Attachment 1). Mr. Carlson, answering a question from yesterday's briefing, stated the map is the most recent and accurate. He also stated the Kansas Turnpike Association has fiber from Kansas City to north of Emporia. In answer to a question from Sen. Lee yesterday, Mr. Carlson stated his department granted the use of right-of-way by permit along Highway 36 to a company named Qwest. In answer to a question asked by Sen. Jones yesterday, Mr. Carlson stated the KTA has granted permits along the turnpike to two companies for the installation of fiber, one of those being Williams Pipeline Company. He added the KTA receives revenue from the two companies for use of the right-of-ways.

Sen. Barone asked Mr. Carlson to explain the department's right-of-way policy and the Utility Accommodation Policy. Mr. Carlson answered that the Utility Accommodation Policy involves both state and federal laws and is specific as to what it will allow. It gives exclusive rights to utilities to use the right-of-ways if a permit is granted. If for some reason the department needs use of the rights-of-ways, the department may go in and say we need use of the right-of-way; longitudinal use is usually not permitted. They ask the utilities to use the KS-1-DIG line to make sure they are not cutting others' lines.. He stressed the fact that it is important to the department to receive access to support the operation of the ITS (Intelligent Transportation Systems) through the permits it has granted to the utilities. Sen. Barone stated there is confusion over the definition of public utilities and asked Mr. Carlson for their definition. Mr. Carlson defined it as including rural water districts, power lines, pipelines, cable, natural gas lines and phone lines. He stated the department is very cautious about allowing high pressurized natural gas lines usage of the right-of-ways. Sen. Barone stated that the cable we are discussing is not a traditional utility and is not taxed as a utility; he wanted to know how private non-utility companies can get access, like the phone companies. Mr. Carlson responded that with a permit they would be treated like other communication companies, as are the phone companies. Sen. Ranson stated "cable" is not a regulated utility and is not defined or taxed as one. She asked Ms. Torrence for a definition of a "utility", and she responded the definition would include natural gas, electricity, water and possibly sewers. Mr. Carlson stated their policy has been that on a non-interstate highway, they do not restrict companies if they have a permit, unless they pose a

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safety hazard.

Sen. Ranson stated the committee needs to know what the Utility Accommodation Policy is, and Mr. Carlson added it is required by federal and state law and is a Kansas Department of Transportation policy. Sen. Ranson stated the committee needs to be clear on the policy and asked if anyone from the Kansas Corporation Commission could clarify their position on the bill to the committee. Sen. Ranson also questioned the departments' contracts with Digital TeleCorp and if that gave them exclusive use of the right-of-way. He answered that under their policy, as long as a permit is granted, the department would grant use of the right-of-way. Mr. Carlson stated they are more concerned with the physical aspects of granting access to the right-of-ways. He stated they do not allow longitudinal access to the interstate highway; however, they do allow it on the state highways. She then asked him questions regarding his statement that permitting the access will not only benefit the Department of Transportation, but other state agencies. Mr. Carlson answered it is true that access is available to other state agencies, and in giving providers access to the right-of-way, the department remains in control. Sen. Ranson asked Mr. Carlson if he supported this bill, and he answered that they did support it in the House; however, he feels sorry now, as the permits are troublesome and add to their administrative costs. Sen. Salisbury asked for clarification on the longitudinal restriction question, and Mr. Carlson stated it comes under the Utility Accommodation Policy and is enforced at the federal level. Sen. Clark questioned who initiated the contract with DTI, and Mr. Carlson replied that we did - that they were the only bidder. Sen. Ranson thanked Mr. Carlson for resolving the issue, and added that the Department of Transportation did conduct an open seminar and it has been a benefit to the state

Sen. Ranson announced the committee will conduct a hearing on **HB 2984-fiber-optic cable requiring owners to submit information to the state; penalties**. She introduced Janet Luehring who presented information to the committee on the bill (Attachment 2). The bill provides that entities owning fiber facilities in the state be required to provide information regarding its fiber facilities to the KCC, who would prepare a map from the information collected. Ms. Luehring clarified some of the language questions the committee had and some clarifications from Guy McDonald, Senior Telecommunications Analyst for the KCC. Sen. Clark asked Ms. Luehring to justify the fiscal note requesting three additional full-time employees, and Ms. Luehring answered the work would be quite intensive gathering information for the map in the short-time frame called for in the bill. He suggested looking into contracting for personnel, since the work will not continue.

Sen. Ranson introduced Jay Allbaugh, who provided information to the committee (Attachment 3), and suggested an amendment for the committee to consider. He stated concern with fiber-optic cable placed by a cable television company within the borders of its local franchises, which is the reason for the amendment. In answer to a question from Sen. Barone, Mr. Allbaugh stated they would volunteer to provide the information, if amended, rather than having it mandated. He added that cable television is a non-regulated, non-utility company; that there is no problem in reporting within franchise borders; however, there is a confidentiality concern when reporting between cities. Sen. Steffes stated he believes the reason for the bill is to take inventory of fiber-optic cable located throughout the state. He pointed out problems when asking for the information on a voluntary basis, as some would not come forth with the information. Sen. Salisbury stated she was trying to understand the purpose of the bill, and it appears some of the suggestions made would destroy the purpose of the bill. Sen. Barone offered to explain what he believes the bill is about: the purpose is to take inventory of existing fiber routes throughout the state and to determine the capacity available; it excludes reporting within cities; some of the information may be classified as confidential, which causes confusion as to whether it will be shown on the map; the object is that in lieu of the state being in charge, the providers could share, lease, or sell their space. He agreed with the state taking inventory of what is available from private, investor owned companies. Sen. Lee offered an alternative is to ask what we need as a system, and who can provide the services we need and possibly take bids from private companies to provide that service to the state. Sen. Ranson stated we have not established what we need, and agreed that Sen. Lee's suggestion makes sense.

Sen. Morris then introduced pages from his district, who are assisting the committee today.

Sen. Ranson asked if there was anyone in the audience wanting to be heard, and John Federico, representing

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Kansas Cable Telecommunications Association, reminded the committee that cable is not regulated by the KCC and that he has concern for subsection (c) and referred to the statute. John Frederick and David Driver, representing The Boeing Company, stated their belief is that Boeing would have to comply with the legislation and expressed concern regarding conflicting statements in the bill. They stated their company has military contracts which are not public records; they also believe it places a burden on businesses. Mike Reece, representing A T & T, and who appeared before the House committee, stated the House corrected some of his concerns in the amendment they passed. He read a portion of his testimony before the House committee (Attachment 4) and said if the state determines it needs the data required in the bill, a Request for Proposal would eliminate the need for reporting the data.

Sen. Ranson referred the committee to **HB 2897-public lands; relating to grants of easements** and asked Ms. Torrence to draft amendments removing the State Finance Council from the bill and adding the benefit would be to all agencies. She also asked members of the committee to contact Ms. Holt with recommendations for the abandoned well plugging report she is preparing.

Meeting adjourned at 2:00.

Next meeting will be March 20.