

Approved: Carl Dan Holmes  
Date 1-19-1993

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Carl Holmes at 3:30 p.m. on January 13, 1993 in Room 526-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Mary Torrence, Revisor of Statutes  
Cindy Garland, Committee Secretary

Conferees appearing before the committee: Steve Hurst, Director, Kansas Water Office  
Tom Day, Kansas Corporation Commission  
Darrell Monte, Wildlife and Parks  
Representative Doug Lawrence

Others attending: See attached list

Chairperson Holmes welcomed the Committee and others attending the meeting. He then asked each committee member and staff to introduce and give a brief background about themselves.

The Chair advised that although he had not yet received the Rules, he expected they would be similar to past years. He further advised that Committee Meetings will be held Monday through Thursday. Chairperson Holmes stated that his intentions are to be in his office daily from 9:00 a.m. until House Session convenes and would welcome the opportunity to visit with any of the committee members at that time.

Chairperson Holmes spoke briefly of each agency that will be dealing with this committee.

A motion was made by Representative McKinney, seconded by Representative Webb, to approve the Committee minutes of January 11, 1993. The motion carried.

Turning to the agenda item of agency requests, Chairperson Holmes introduced Steve Hurst, Kansas Water Office.

Steve Hurst, Kansas Water Office, appeared before the Committee to request introduction of two bills entitled 1.) Modification of Water Transfer Act as shown on (Attachment 1); 2.) Addition of the Secretary of Agriculture on Kansas Water Authority as shown on (Attachment 2).

A motion was made by Representative Grotewiel, seconded by Representative Gatlin, to introduce bill entitled Modification of Water Transfer Act requested by Mr. Hurst. The motion carried.

A motion was made by Representative Hendrix, seconded by Representative Lawrence, to introduce bill entitled Addition of the Secretary of Agriculture on Kansas Water Authority requested by Mr. Hurst. The motion carried.

Tom Day, Kansas Corporation Commission, appeared before the Committee to request introduction of bill entitled the Kansas underground utility damage prevention act as shown on (Attachment 3).

A motion was made by Representative Shore, seconded by Representative Webb, to introduce bill entitled the Kansas underground utility damage prevention act requested by Mr. Day. The motion carried.

## CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on January 13, 1993.

Darrell Montei, Wildlife and Parks, appeared before the Committee to request introduction of a bill relating to the regulation of commercial guide services; amending K.S. A. 1992 Supp. 32-964 and repealing the existing the section. (Attachment 4)

A motion was made by Representative Grotewiel, seconded by Representative Hendrix, to introduce bill relating to the regulation of commercial guide services; amending K.S. A. 1992 Supp. 32-964 and repealing the existing the section requested by Mr. Montei. The motion carried.

Representative Doug Lawrence appeared before the Committee to request introduction of 1991 Senate Bill 430, an act amending the central interstate low-level radioactive waste compact; amending K.S.A. 65-34a01.

A motion was made by Representative Shore, seconded by Representative Gatlin, to introduce former Senate Bill 430 from 1991 as requested by Representative Doug Lawrence. The motion carried.

The Chair reviewed the agenda for meeting scheduled for January 14, 1993.

The meeting adjourned at 4:15 p.m.

The next meeting is scheduled for January 14, 1993.

## GUEST LIST

**COMMITTEE: ENERGY & NATURAL RESOURCES**

DATE: Jan 13 1993

[illegible]

ARTICLE 15. -- WATER TRANSFER ACT

K.S.A. 82a-1501. ~~Water transfer;~~ Water transfers; definitions. As used in this act:

(a) "Water transfer" means the diversion, transportation and use of water in a quantity of 2,000 acre feet or more per year for beneficial use outside a 50 mile radius from the point of diversion of such water. A water transfer does not include releases from reservoirs to its natural watercourse for use within the natural watercourse or watershed made under the authority of the state water plan storage act, K.S.A. 82a-1301 et seq., and amendments thereto, or the water assurance program act, K.S.A. 82a-1330 et seq., and amendments thereto.

~~(a) "Water transfer" means the diversion and transportation of water in a quantity of 1,000 acre feet or more per year for beneficial use outside a ten mile radius from the point of diversion of such water.~~

(b) "Point of diversion" means:

(1) The point where the longitudinal axis of the dam crosses the center line of the stream in the case of a reservoir;

(2) the location of the headgate or intake in the case of a direct diversion from a river, stream or other watercourse;

(3) the location of a well in the case of groundwater diversion;

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(4) the geographical center of the points of diversion in the case of multiple diversion points.

(c) "Chief engineer" means the chief engineer of the division of water resources of the state board of agriculture.

~~(d) "Secretary" means the secretary of the department of health and environment, or the director of the division of environment of the department of health and environment if designated by the secretary. (d)"Secretary"—means the secretary of the department of health and environment.~~

(e) "Director" means the director of the Kansas water office.

~~(f) "Panel" means the water transfer hearing panel. The panel shall consist of the chief engineer, the director and the secretary. The chief engineer shall serve as chairperson of the panel. All actions of the panel shall be taken by a majority of the members. The panel shall have all powers necessary to implement the provisions of this act.~~

~~(g)~~

~~(g) "Party" means: (1) the applicant and (2) any person who successfully intervenes pursuant to K.S.A. 82a-1503. Any person may seek to become a party prior to the hearing at any time after a complete water transfer application is received up until the deadline set by the hearing officer. Any person seeking to become a party shall petition the hearing officer for intervention. The hearing officer shall allow any person to become a party if that person~~

demonstrates that that person's legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding. If the petition to intervene is approved by the hearing officer, the person must then actively participate in the hearing to be considered a party. (f) "Authority" means the Kansas water authority.

(g) "Panel" means the water transfer hearing panel.

(h) "Party" means any person who intervened at the public hearing held pursuant to K.S.A. 82a-1503, and who presented testimony of witnesses under oath, conducted cross examination, presented oral arguments and filed written briefs. "Party" does not mean a person who made a limited appearance for the purpose of presenting a statement for or against the water transfer.

(h) "Commenting agencies" means the state natural resource and environmental agencies, including the Kansas department of health and environment; the Kansas water office; the Kansas water authority; the Kansas department of wildlife and parks; and the Kansas state board of agriculture's division of water resources.

(i) "Hearing officer" means an independent person knowledgeable in water law, water issues and hearing procedures who shall serve as the presiding officer.

K. (i) "District court" means the district court of Shawnee county.

K.—K.S.A. 82a-1502. Same; approval considerations; emergency transfers, conditions; no approval, when. (a) No person shall make a water transfer in this state unless and until the transfer is approved pursuant to the provisions of this act. No water transfer shall be approved unless: (1) the panel determines that the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer; (2) the chief engineer recommends to the panel and the panel concurs that an emergency exists which affects the public health. ~~No water transfer shall be approved which would reduce the amount of water required to meet the present or any reasonably foreseeable future beneficial use of water by present or future users in the area from which the water is to be taken for transfer, unless (1) the panel determines that the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer; (2) the chief engineer recommends to the authority and the authority concurs that an emergency exist which affects the public health, safety or welfare; or (3) the governor has declared that an emergency exists which affects the public health, safety or welfare. Whenever an emergency exists, a water transfer may be approved by the panel on a temporary basis for a period of time not to exceed one year under rules and regulations adopted by the chief engineer. The emergency approval shall be subject to the terms, conditions and limitations specified by the panel.~~

(b) No water transfer shall be approved under the provisions of this act if such transfer would impair water reservation rights. ~~a water transfer may be approved on a temporary basis for a period of time not to exceed one year under rules and regulations adopted by the chief engineer. The emergency approval~~

shall be subject to the terms, conditions and limitations specified by the chief engineer.—

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(b) ~~No water transfer shall be approved under the provisions of this act if such transfer would impair water reservation rights, vested rights, appropriation rights or prior applications for permits to appropriate water. appropriation rights or prior applications for permit to appropriate water.~~

K.S.A. 82a-1503. Same; applications for transfer, contents; hearings, conduct; panel; hearing panel, composition; matters considered. (a) Any person desiring to make a water transfer shall file, with the chief engineer, an application in the form required by rules and regulations adopted by the chief engineer. ~~If the application is found by the chief engineer to be insufficient to enable the chief engineer to determine the source, — If the application is found to be insufficient to enable the panel to determine the source, nature and amount of the proposed transfer, or it is not complete, it may be returned for correction or completion or for any other necessary information. — it shall be returned for correction or completion or for any other necessary information.~~ This act shall not be construed as to exempt the applicant from complying with the provisions of the Kansas water appropriation act or the state water plan storage act, whichever is applicable.

~~(b) When an application for a water transfer is complete, the panel shall select a hearing officer to conduct the hearing. In addition to the powers granted to the hearing officer in this act, the hearing officer shall also have~~



the powers of a presiding officer as set forth in the Kansas administrative procedure act.

(c) The hearing officer shall commence the hearing process by giving notice of the prehearing conference to the applicant and the appropriate commenting agencies by mail. Notice of the prehearing conference shall also be published in the Kansas register and in at least one paper of general circulation in the area where the proposed point of diversion is located. The hearing officer shall hold a prehearing conference within 120 days of receipt of a complete application and shall commence a formal public hearing within 90 days after completing the prehearing conference. These deadlines may be extended by the hearing officer with the unanimous consent of all the parties, including the applicant. A formal public hearing shall be held in the basin of origin and, if deemed necessary by the hearing officer, a public comment hearing shall be held in the basin of use. The initial order of the hearing officer shall be issued within 90 days after receipt of briefs and oral argument unless that period is waived or extended with the written consent of all parties, or for good cause shown.

(d) If the chief engineer determines it to be in the best interest of the state, the chief engineer may convene the panel to select a hearing officer to conduct a water transfer hearing upon receipt of: (1) an application to appropriate water pursuant to the Kansas water appropriation act or (2) a proposed contract for the sale of water from the state's conservation storage water supply capacity, even though such diversion, transportation and use of water is not a water transfer as defined by K.(b) ~~No water transfer shall be~~

approved unless the applicant has adopted and implemented conservation plans and practices. S.A. 82a-1501, and amendments thereto.

~~(e) To determine whether the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer, (d) The panel shall consist of the chief engineer, the director and the secretary or the director of the division of environment of the department of health and environment if designated by the secretary. The chief engineer shall serve as the chairperson of the panel. All actions of the panel shall be taken by a majority of the members thereof. The panel shall have all powers necessary to conduct the hearings, make its findings and implement the provisions of this act. The hearing shall be conducted in a prudent and timely manner.~~

~~(e) To determine whether the benefits to the state for approving the transfer outweigh the benefits to the state for not approving the transfer, the panel shall consider all matters pertaining thereto, including specifically:~~

~~(1) whether the proposed transfer would reduce the amount of water required to meet the present or any reasonably foreseeable future beneficial use of water by present or future users in the natural watercourse or watershed, aquifer or general area from which the water is to be taken for transfer;~~

~~(2) Any current beneficial use being made of the water proposed to be diverted, -~~

~~(1) Any current beneficial use being made of the water proposed to be diverted, including minimum desirable streamflow requirements;~~

~~(3) any reasonably foreseeable future beneficial use of the water;~~

~~(4) the economic, environmental, public health and welfare and other impacts of approving or denying the transfer of the water;~~

~~(5) alternative sources of water available to the applicant and present or future users for any beneficial use;~~

~~(6) the proposed plan of design, (2) any reasonably foreseeable future beneficial use of the water;—~~

~~(3) the economic, environmental public health and welfare and other impacts of approving or denying the transfer of the water;—~~

~~(4) alternative sources of water available to the applicant and present or future users for any beneficial use;—~~

~~(5) the proposed plan of design, construction and operation of any works or facilities used in conjunction with carrying the water from the point of diversion. The plan shall be in sufficient detail to enable all parties to understand the impacts of the proposed water transfer; and~~

~~(7) the conservation plans and practices adopted and implemented by any persons protesting or potentially affected by the proposed transfer. Such plans and practices shall be consistent with the guidelines for conservation plans and~~

practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto.

~~(f) No water transfer shall be approved unless the applicant has adopted and implemented conservation plans and practices. (6) conservation plans and practices or the need for such plans and practices of persons protesting or potentially affected by the proposed transfer. Such plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto.~~

~~(f) Any person shall be permitted to appear and testify at any such hearing upon the terms and conditions determined by the chief engineer.~~

~~(g) In addition to notice to the parties, notice of any such hearing shall be published in the Kansas register. Such notice shall be published at least 15 days prior to the date of the hearing.~~

~~(h) The record of the hearing and findings of fact shall be public records and open for inspection at the office of the chief engineer. Certified transcripts of the hearing shall be provided at the expense of those requesting same. A transcript shall be provided to the chairperson of the authority.~~

THE FOLLOWING TEXT WAS MOVED

Such plans and practices shall be consistent with the guidelines for conservation plans and practices developed and maintained by the Kansas water office pursuant to subsection (c) of K.S.A. 74-2608, and amendments thereto.

Prior to approval of an application for a water transfer, the panel shall determine whether such plans and practices are consistent with the guidelines adopted by the Kansas water office.

(g) Any person shall be permitted to appear and testify at any such hearing upon the terms and conditions determined by the hearing officer.

(h) The hearing officer shall fairly and equitably assess the following costs of the hearing among the applicant and other parties: the hearing facility, the court reporter, the salary of a hearing officer who is not paid for his or her services as a hearing officer by state funds, the travel expenses of the hearing officer and other reasonable costs associated with the hearing.

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~~(c) Within 60 days of receipt of a sufficient application for a water transfer pursuant to this act, the chief engineer shall convene and conduct a hearing thereon. At such hearing, the panel shall consider the application and determine whether to approve the proposed water transfer in accordance with the provisions of the Kansas administrative procedure act.~~

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~~If it is determined to be in the best interest of the state, the chief engineer may convene and conduct such a hearing within 60 days of receipt of (1) an application to appropriate water pursuant to the Kansas water appropriation act or (2) a proposed contract for the sale of water from the state's conservation storage water supply capacity even though such diversion and transportation of water is not a water transfer as defined by K.~~

THE PRECEDING TEXT WAS MOVED

K.S.A. 82a-1504. ~~Same; decision of hearing officer; review and approval by panel; decision of panel; review and approval by authority and legislature; time frame; appeals.~~ (a) The hearing officer shall render an order either approving, approving in part, or disapproving the proposed water transfer. The hearing officer's order shall include findings of fact relating to each of the factors set forth in subsection (e) of K. ~~(a) The panel shall render an order either approving or disapproving the proposed water transfer. The panel's order shall include findings of fact relating to each of the factors set forth in subsection (d) of K.S.A. 82a-1503 and amendments thereto.~~ The hearing officer may order approval of a transfer of a smaller amount of water than requested upon such terms, conditions and limitations as the hearing officer deems necessary for the protection of the public interest of the state as a whole.

(b) The order of the hearing officer disapproving or approving a transfer in whole or in part shall be deemed an initial order. The panel shall be deemed the agency head for the purpose of reviewing an initial order of the hearing officer and shall review the initial order of the hearing officer. The panel's review shall be limited to a review of the record. The panel may approve or disapprove the initial order or remand the matter for further proceedings.

(c) Any hearings or other proceedings held pursuant to this act shall be held in accordance with the provisions of the Kansas administrative procedure act except as herein provided.

~~The panel may order approval of a transfer of a smaller amount of water than requested upon such terms, conditions and limitations as it deems necessary for the protection of the public interest of the state as a whole.~~

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~~(b) An order of the panel disapproving the transfer shall be deemed a final order. An order of the panel approving a transfer shall be deemed an initial order. The authority shall be deemed the agency head for the purpose of reviewing an initial order of the panel and shall review all such initial orders.~~

~~(c) If the authority approves the water transfer and if there is no judicial review pending therefrom, the chief engineer shall submit the same to the legislature for review as provided for in K.S.A. 82a 1301 et seq., and amendments thereto. Absent legislative disapproval, the chief engineer shall issue the order approving the transfer.~~

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K.S.A. 82a-1505. Same; procedure for appeal from panel's decision; procedure for appeal from hearing panel or authority decision; standards of appeal. (a) Any action of the hearing officer or the panel is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

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(b) The review proceedings shall have precedence in the district court. Appellate proceedings shall have precedence in the court of appeals and in the state supreme court, under such terms and conditions as the supreme court may fix by rule. (a) Any action of the panel or authority is subject to review in

~~accordance with the act for judicial review and civil enforcement of agency actions.~~

~~(b) The attorney general of the state of Kansas shall represent the panel or the authority in any appellate procedure.~~

~~(c) The review proceedings shall have precedence in the district court. Appellate proceedings shall have precedence in the court of appeals and in the state supreme court.~~

K.S.A. 82a-1506. Same; rules and regulations. The chief engineer shall adopt all rules and regulations necessary to effectuate and administer the provisions of this act.



**74-2622. Establishment of Kansas water authority; membership, appointment, qualifications; terms; ex officio members; vacancies; compensation; powers and duties; application of sunset law.** (a) There is hereby established within and as a part of the Kansas water office the Kansas water authority. The authority shall be composed of ~~22~~<sup>23</sup> members of whom 13 shall be appointed as follows: (1) One member shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto. Such member shall serve at the pleasure of the governor and shall be the chairperson of the authority; (2) ten members shall be appointed by the governor for terms of four years. Of the members appointed under this provision one shall be a representative of large municipal water users, one shall be representative of small municipal water users, one shall be a board member of a western Kansas

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groundwater management district, one shall be a board member of a central Kansas groundwater management district, one shall be a member of the Kansas association of conservation districts, one shall be representative of industrial water users, one shall be a member of the state association of watershed districts, one shall have a demonstrated background and interest in water use conservation and environmental issues, and two shall be representative of the general public. The member who is representative of large municipal water users shall be appointed from three nominations submitted by the league of Kansas municipalities. The member who is representative of small municipal water users shall be appointed from three nominations submitted by the Kansas rural water district's association. The member who is representative of a western Kansas groundwater management district shall be appointed from three nominations

submitted by the presidents of the groundwater management district boards No. 1, 3 and 4. The member who is representative of a central Kansas groundwater management district shall be appointed from three nominations submitted by the presidents of the groundwater management district boards No. 2 and 5. The member who is representative of industrial water users shall be appointed from three nominations submitted by the Kansas association of commerce and industry. The member who is representative of the state association of watershed districts shall be appointed from three nominations submitted by the state association of watershed districts. The member who is representative of the Kansas association of conservation districts shall be appointed from three nominations submitted by the state association of conservation districts. If the governor cannot make an appointment from the original nominations, the

nominating authority shall be so advised and, within 30 days thereafter, shall submit three new nominations. Members appointed by the governor shall be selected with special reference to training and experience with respect to the functions of the Kansas water authority, and no more than six of such members shall belong to the same political party; (3) one member shall be appointed by the president of the senate for a term of two years; and (4) one member shall be appointed by the speaker of the house of representatives for a term of two years. The state geologist, the chief engineer of the division of water resources of the state board of agriculture, the secretary of the department of health and environment, the chairperson of the state corporation commission, the secretary of commerce, the director of the Kansas water office, the secretary of wildlife and parks, the administrative officer of the state conservation commission and the director of \_\_\_\_\_, the secretary of the state board of agriculture

the agricultural experiment stations of Kansas state university of agriculture and applied science shall be nonvoting members ex officio of the authority. The director of the Kansas water office shall serve as the secretary of the authority.

(b) In the case of a vacancy in the appointed membership of the Kansas water authority, the vacancy shall be filled for the unexpired term by appointment in the same manner that the original appointment was made. Appointed members of the authority attending regular or special meetings thereof shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

(c) The Kansas water authority shall:

(1) Consult with and be advisory to the governor, the legislature and the director of the Kansas water office.

(2) Review plans for the development, management and use of the

water resources of the state by any state or local agency.

(3) Make a study of the laws of this state, other states and the federal government relating to conservation and development of water resources, appropriation of water for beneficial use, flood control, construction of levees, drainage, irrigation, soil conservation, watershed development, stream control, gauging of stream and stream pollution for the purpose of determining the necessity or advisability of the enactment of new or amendatory legislation in this state on such subjects.

(4) Make recommendations to other state agencies and political subdivisions of the state for the coordination of their activities relating to flood control, construction of levees, drainage, irrigation, soil conservation, watershed development, stream control, gauging of stream, stream pollution and groundwater studies.

(5) Make recommendations to each

regular session of the legislature and to the governor at such times as the authority considers advisable concerning necessary or advisable legislation relating to any of the matters or subjects which it is required by this act to study for the purpose of making recommendations to the legislature. All such recommendations to the legislature shall be in drafted bill form together with such explanatory information and data as the authority considers advisable.

(6) Approve, prior to submission to legislation by the Kansas water office or its director, (A) any contract entered into pursuant to the state water plan storage act, (B) any amendments to the state water plan or the state water planning act and (C) any other legislation concerning water resources of the state.

(7) Approve, before they become effective, any policy changes proposed by the Kansas water office concerning the pricing of water for sale pursuant to the state

water plan storage act.

(8) Approve, before it becomes effective, any agreement entered into with the federal government by the Kansas water office.

(9) Request any agency of the state, which shall have the duty upon that request, to submit its budget estimate pertaining to the state's water resources and any plans or programs related thereto and, upon the authority's receipt of such budget estimate, review and evaluate it and furnish recommendations relating thereto to the governor and the legislature.

(10) Approve, prior to adoption by the director of the Kansas water office, rules and regulations authorized by law to be adopted.

(11) Approve, prior to adoption by the director of the Kansas water office, guidelines for conservation plans and practices developed pursuant to subsection (c) of K.S.A. 74-2608 and amendments



thereto.

(d) The Kansas water authority may appoint citizens' advisory committees to study and advise on any subjects upon which the authority is required or authorized by this act to study or make recommendations.

(e) The provisions of the Kansas sunset law apply to the Kansas water authority established by this section, and the authority is subject to abolition under that law.

Joan Finney  
Governor

Jim Robinson  
Chairman

F. S. Jack Alexander  
Commissioner

Rachel C. Lipman  
Commissioner

Judith McConnell  
Executive Director

Brian Moline  
General Counsel



# Kansas Corporation Commission

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January 13, 1993

Honorable Carl Holmes, Chairman  
House Energy and Natural Resources  
Room 115-S  
State Capitol Building  
Topeka, Kansas 66612

Representative Holmes:

The Kansas Corporation Commission would ask the House Energy and Natural Resources Committee to introduce the following legislation on behalf of the KCC. The legislation proposed for introduction has been approved by the Governor's office.

Attached please find a brief synopsis of each statutory change and proposed new statute.

The attached legislation includes: 1) creation of Mandatory One-Call Damage Prevention Program

The Corporation Commission respectfully seeks introduction of the above-mentioned bill(s) through the House Energy and Natural Resources Committee. Should you have questions, please feel free to call me at 271-3190.

Thank You,

A handwritten signature in black ink, appearing to read "T. A. Day", is written over a horizontal line.

Thomas A. Day  
Director of Administrative Services

*House & E + NR 1-13-93*  
*attachment 3*

## KANSAS CORPORATION COMMISSION

Proposed Legislation  
1993 Legislative Session

### Mandatory One-Call Damage Prevention Program

Recent Federal legislation requires states to institute mandatory one-call notification systems for operators of either natural gas pipelines or hazardous liquids pipelines. Failure to institute mandatory one-call programs will result in states experiencing grant reductions for pipeline safety programs. This bill was introduced in the 1992 Legislature as SB 678. The bill passed the Senate but never had a hearing in the House Energy and Natural Resources committee.

The proposal by KCC staff would include: 1) The entire state being covered by a one-call notification system; 2) toll-free telephone notification; 3) Operators of underground facilities must participate in the system; 4) Excavators must request marking facilities at least 72 hours prior to excavation; 5) The public and known excavators will be notified of the existence of the one-call system; 6) Civil penalties comparable to those provided by the Natural Gas Pipeline Safety Act of 1988 may be assessed for failure to follow program requirements.

Similar legislation was introduced in the 1989 Kansas Legislature as HB 2453 "Kansas Underground Utility Damage Prevention Act". HB 2453 carried over into the 1990 Legislature but was never enacted. Legislation was again introduced in 1992 as SB 678 but was not enacted. Since that time the federal regulation has become effective. Opposition to the bill in the 1989 and 1990 Legislature centered around the word mandatory and required utilization by excavators. Presently there is a voluntary program with most underground facility operators participating, but with the possibility of losing federal grant monies without a mandatory program, this legislation is now more important than ever.

The fiscal impact on the Kansas state agencies is minimal. There are no KCC staff additions required to implement this program. Other agencies will not be impacted, unless they are excavators. Then they will have the same requirements placed on them that any other excavator will have. (Draft language marked Exhibit B is attached.)

\_\_\_\_\_BILL NO. \_\_\_\_\_

AN ACT enacting the Kansas underground utility damage prevention act; concerning prevention of damage to certain underground utility facilities.

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

Section 1. This act shall be known and may be cited as the Kansas underground utility damage prevention act.

Section 2. As used in this act:

(a) "Damage" means any impact or contact with an underground facility, its appurtenances or its protective coating, or any weakening of the support for the facility or protective housing which requires repair.

(b) "Emergency" means any condition constituting a clear and present danger to life, health or property, or a customer service outage.

(c) "Excavation" means any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except tilling the soil, or railroad or road and ditch maintenance that does not change the existing railroad grade, road grade and or ditch flowline, or operations related to exploration and drilling of crude oil or natural gas, or both.

(d) "Excavator" means any person who engages directly in excavation activities within the state of Kansas.

(e) "Facility" means any underground line, system or structure used for producing, gathering, storing, conveying, transmitting or distributing gas, electricity, communication, petroleum, petroleum products or hazardous liquids.

(f) "Marking" means the use of stakes, paint or other clearly identifiable materials to show the field location of underground facilities, in accordance with the resolution adopted August, 1984, by the utility location coordination council of the American public work association.

(g) "Notification center" means a center operated by an organization which has a

minimum of five underground operators participating, and has as one of its purposes to receive notification of planned excavation in a specified area from excavators and to disseminate such notification of planned excavation to operators who are members and participants.

( h ) "Operator" means any person who owns or operates an underground facility, except for any person who is the owner of real property wherein is located underground facilities for the purpose of furnishing services or materials only to such person or occupants of such property.

( i ) "Preengineered project" means a public project or a project which is approved by a public agency wherein the public agency responsible for the project, as part of its engineering and contract procedures, holds a meeting prior to the commencement of any construction work on such project in which all persons, determined by the public agency to have underground facilities located within the construction area of the project, are invited to attend and given an opportunity to verify or inform the public agency of the location of their underground facilities, if any, within the construction area and where the location of all known and underground facilities are duly located or noted on the engineering drawing as specifications for the project.

( j ) "Permitted project" means a project where a permit for the work to be performed must be issued by a state or federal agency and, as a prerequisite to receiving such permit, the applicant must locate all underground facilities in the area of the work and in the vicinity of the excavation and notify each owner of such underground facilities.

( k ) "Person" means any individual, partnership, corporation, association, franchise holder, state, city, county or any governmental subdivision or instrumentality of a state and its employees, agents or legal representatives.

( l ) "Tolerance zone" means the area within 24 inches of the outside dimensions in all horizontal directions of an underground facility.

( m ) "Working day" means every day, except Saturday, Sunday or a legally proclaimed local, state or federal holiday.

Section 3. An excavator shall not engage in excavation near the location of any underground facility without first having ascertained, in the manner prescribed in this act, a location of all underground facilities in the proposed area of the excavation.

Section 4. ( a ) An excavator shall serve notice of intent of excavation at least two full working days, but not more than 10 working days before commencing the excavation activity, on each operator having underground facilities located in the proposed area of excavation.

(b) The notice of intent of excavation shall contain the name, address and telephone number of the person filing the notice of intent, the name of the excavator, the date the excavation activity is to commence and the type of excavation being planned. The notice shall also contain the specific location of the excavation if it is to take place within the boundaries of a city or the specific quarter sections if outside the boundaries of any city.

(c) The provisions of this section shall not apply to a preengineered project or a permitted project, except that the excavators shall be required to give notification in accordance with this section prior to starting such project.

Section 5. (a) This act recognizes the value of and encourages and authorizes the establishment of notification centers. All operators who have underground facilities shall become a member of a notification center.

(b) Upon the establishment of a notification center in compliance with this act, notification, as required by section 4, to operators who are members of the notification center shall be given by notifying the notification center by telephone at the toll free number. The content of such notification shall be as required by section 4.

(c) All operators who have underground facilities within the defined geographical boundary of the notification center shall be afforded the opportunity to become a member of the notification center on the same terms as the original members.

(d) A suitable record shall be maintained by notification centers to document the receipt of notices from excavators as required by this act.

Section 6. (a) An operator served with notice shall, in advance of the proposed excavation, unless otherwise agreed between the parties, inform the excavator of the tolerance zone of the underground facilities of the operator in the area of the planned excavation by marking, flagging, or other acceptable method.

(b) If the operator notifies the excavator that it has no underground facilities in the area of the planned excavation, fails to respond or improperly marks the tolerance zone for the facilities, the excavator may proceed and shall not be liable for any direct or indirect damages resulting from contact with the operator's facilities, except that nothing in this act shall be construed to hold any excavator harmless from liability in those cases of gross negligence or willful and wanton conduct.

Section 7. In the case of an emergency which involves danger to life, health or property or which requires immediate correction in order to continue the operation of an industrial plant or to assure the continuity of public utility service, excavation, maintenance or repairs may be made without using explosives, if notice and advice thereof, whether in writing

or otherwise are given to the operator or notification center as soon as reasonably possible.

Section 8. This act shall not be construed to authorize, affect or impair local ordinances, resolutions or other provisions of law concerning excavating or tunneling in a public street or highway or private or public easement.

Section 9. Upon receiving information as provided in section 6, an excavator shall exercise such reasonable care as may be necessary for the protection of any underground facility in and near the construction area when working in close proximity to any such underground facility.

Section 10. When any contact with or damage to any underground facility occurs, the operator shall be informed immediately by the excavator. Upon receiving such notice, the operator shall immediately dispatch personnel to the location to provide necessary temporary or permanent repair of the damage. If a serious electrical short is occurring or dangerous gases or fluids are escaping from a broken line, the excavator shall immediately inform emergency personnel.

Section 11. (a) In a civil action in a court of this state when it is shown by competent evidence that damage to the underground facilities of an operator resulted from excavation activities and that the excavator responsible for giving notice of intent to excavate failed to give such notice, there shall be a rebuttable presumption that the excavator was negligent for failing to give such notice.

(b) The provisions of subsection (a) shall not apply if the operator whose underground facilities are damaged fails to participate in a notification center.

(c) In no event shall the excavator be responsible for any damage to underground facilities if such damage was caused by the failure of the operator to correctly and properly mark the location of the tolerance zone of the damaged facility.

Section 12. Any person whom this act applies, who violates any of the provisions contained in this act, shall be subject to civil penalties and injunctive relief as set out in K.S.A. 66-1,151 as amended.

Section 13. This act shall be administered and enforced by the State Corporation Commission of the state of Kansas.

Section 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 15. This act shall take effect and be in force from and after its publication in the statute book.

AN ACT relating to the regulation of commercial guide services; amending K.S.A. 1992 Supp. 32-964 and repealing the existing section.

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

Section 1. K.S.A. 1992 Supp. 32-964 is hereby amended to read as follows: 32-964.

(a) As used in this section:

(1) "Commercial guide services" means providing, offering to provide, arranging for or assisting with hunting or fishing activities for others on a commercial basis, including but not limited to providing any one or more of the following when used in conjunction with or for hunting or fishing activities: Pack or riding livestock, transportation other than by commercial carrier, equipment or facilities.

(3) → (2) Terms defined in K.S.A. 1989 1991 Supp. 32-701 and amendments thereto have the meanings provided by that section.

(b) On and after January 1, 1991, A valid commercial guide permit is required to provide commercial guide services in this state.

(c) The provisions of subsection (b) do not apply to a person who:

(1) Possesses a controlled shooting area license and commercial guide services performed by the person are confined to the licensed controlled shooting area;

(2) owns private land and commercial guide services performed by the person are confined to lands owned by the individual;

(3) is a tenant, as defined by K.S.A. 1991 Supp. 32-937 and amendments thereto, and commercial guide services performed by the person are confined to farm or ranch land with respect to which the person is such a tenant;

(4) ~~during the calendar year, performs commercial guide services for five or less days and receives \$500 or less for such services, as determined in accordance with rules and regulations of the secretary;~~

(5) provides commercial guide services in cooperation with a department-approved activity; or

(4) (6) does not receive monetary compensation for providing commercial guide services.

(d) Any person who desires to provide commercial guide services shall apply to the secretary for a commercial guide permit. The application shall give the name and address of the applicant, the type of commercial guide services to be provided, the area of the state where guide services would occur, a listing of facilities proposed for use, a listing of equipment to be available to the commercial guide service customers, including pack or riding livestock, and such other information as required by the secretary. The fee prescribed pursuant to K.S.A. 1989 1991 Supp. 32-988 and amendments thereto shall accompany the application.

(2) "Provisional guide" means a person who, during the calendar year, performs commercial guide services for five or less days and receives \$500 or less for such services, as determined in accordance with rules and regulations of the secretary.

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← is a registered provisional guide;

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(e) The secretary may issue a commercial guide permit if the secretary determines that:

(1) The applicant possesses adequate knowledge of wildlife and parks laws of this state and rules and regulations of the secretary;

(2) the applicant possesses adequate knowledge of hunting or fishing skills; and

(3) the application is complete and accurate.

The secretary may require an applicant to successfully complete a written or oral examination before issuing a commercial guide permit.

(f) A commercial guide permittee shall make such reports of permitted activities to the secretary as required by rule and regulation adopted by the secretary in accordance with K.S.A. ~~1989 1991~~ Supp. 32-805 and amendments thereto.

1992

(g) A commercial guide permittee may employ one or more associate guides to conduct services authorized by the commercial guide permit while the associate guide is in the employment of the commercial guide permittee. ~~On and after January 1, 1991,~~ An associate guide permit is required for any individual so employed by a commercial guide permittee.

(h) Any individual who desires to obtain an associate guide permit shall apply to the secretary. The application shall give the name and address of the applicant; the name, address and commercial guide permit number of the commercial guide by whom the applicant would be employed; the notarized signature of such commercial guide permittee; and such other information as required by the secretary. The fee prescribed pursuant to K.S.A. ~~1989 1991~~ Supp. 32-988 and amendments thereto shall accompany the application.

1992

(i) The secretary may issue an associate guide permit if the secretary determines that:

(1) The applicant possesses adequate knowledge of wildlife and parks laws of this state and rules and regulations of the secretary;

(2) the applicant possesses adequate knowledge of hunting or fishing skills; and

(3) the application is complete and accurate.

The secretary may require an applicant to successfully complete a written or oral examination prior to issuance of an associate guide permit.

(j) Commercial guide permits and associate guide permits expire on December 31 of each year.

(k) A commercial guide permittee, ~~or~~ associate guide permittee ← or provisional guide may assist with the legal taking of wildlife while providing commercial guide services but shall not perform the actual taking or shooting of wildlife for the guided person.

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(l) Unless exempt pursuant to K.S.A. 1989 ~~1991~~ <sup>1992</sup> Supp. 32-919 and amendments thereto, a commercial guide permittee, ~~or~~ associate guide permittee shall be required to possess a valid hunting license issued to such ~~permittee~~ in order to conduct hunting activities. <sup>1992</sup> or provisional guide

~~person~~ Unless exempt pursuant to K.S.A. 1989 ~~1991~~ <sup>1992</sup> Supp. 32-911 and amendments thereto, a commercial guide permittee, ~~or~~ associate guide permittee shall be required to possess a valid fishing license issued to such ~~permittee~~ in order to conduct fishing activities. <sup>1992</sup> or provisional guide

~~person~~ A commercial guide permittee, ~~or~~ associate guide permittee shall be required to possess any stamp as required by law to engage in the activity. or provisional guide

(m) The secretary shall adopt, in accordance with K.S.A. 1989 ~~1991~~ <sup>1992</sup> Supp. 32-805 and amendments thereto, such rules and regulations as necessary to administer and govern commercial guide services, including such restrictions and conditions as required for wildlife resource protection and to protect the public interest and public safety. and provisional guides

(n) In addition to any other penalty prescribed by law, failure to provide required reports, *conviction of a felony within the previous five years* or failure to comply with the wildlife and parks laws of this state or rules and regulations of the secretary shall be grounds for the secretary to refuse to issue, refuse to renew, suspend or revoke a commercial guide permit or an associate guide permit. Any such refusal, suspension or revocation shall be in accordance with the Kansas administrative procedure act.

(o) The secretary may prepare a general publication listing commercial guide permittees and services offered by the permittees for the purpose of assisting the public in securing the services of a commercial guide. No commercial guide permittee shall be included in such publication without the written consent of the permittee.

Sec. 2. K.S.A. 1992 Supp. 32-964 is hereby repealed.

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