

Approved: Carl Dean Holmes  
Date 3-9-93

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 February 25, 1993 in Room 526-S of the Capitol.

All members were present except: Representative Ruff, excused

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

Conferees appearing before the committee: Brian Moline, General Counsel, Kansas Corp. Commission  
Don Schnacke, Kansas Independent Oil & Gas Association  
Representative Walker A. Hendrix, 10th District

Others attending: See attached list

Chairperson Holmes opened the meeting and discussion on SB 29. Representative Grotewiel made a motion, on Page 19 striking statute and inserting the Kansas Register. The motion was seconded by Representative Lawrence. The motion carried.

Representative Hendrix discussed issues raised by Derenda Mitchell, in her testimony yesterday, concerning shut down of a facility with an ex parte order and the requirements in which you have to prove this need. This was a conceptual amendment referring to Page 13, Section 12 (b) (c), Lines 31-43. Representative Hendrix made a motion for this provision to conform to existing law to avoid someone being shut down permanently without showing irreparable harm. This motion was seconded by Representative Shore.

Charles Jones, from the Kansas Department of Health and Environment, reiterated to the Committee that the burden of the proof in seeking injunctive action, the agency would have to prove that there was endangerment or eminent hazards involved. The party, to which this action is taken, is given an opportunity to report and respond to the accusations of the KDHE. He stated that irreparable damage was difficult for the agency to prove. Questions were addressed to Charles Jones by the Committee on the aforementioned subject.

Representative Hendrix restated his motion to concur with the Committee Revisor. The motion is to strike "permanent or" [Page 13, (b)(1)], "or permanent injunction" [Page 13, (3)(c)] and "permanent injunction" at the top of Page 14. Representative Shore seconded. The motion carried.

Representative Grotewiel made a motion to favorably pass SB 29 as amended. Representative Shore seconded. The motion carried. Representative Grotewiel will carry this Bill.

Chairperson Holmes opened the discussion on HB 2443. Representative McKinney presented a balloon of this Bill. (Attachment I) Representative McKinney made a motion to adopt said balloon for discussion. The motion was seconded by Representative Shore. McKinney stated that the process should be instigated immediately for acquisition of water storage, and this would enable using other means besides bonds to finance this acquisition. The motion carried.

Representative McKinney made a motion to add to the language, that the Kansas Development Authority would issue the bonds in regards to means of financing. The motion was seconded by Representative Alldritt. The motion carried.

Representative Powers made a motion to favorably pass HB 2443 as amended. The motion was seconded by Representative McKinney. The motion carried. Representative McKinney will carry this Bill.

The Chair opened the discussion on HB 2444. Representative Freeborn presented a balloon of this Bill. (Attachment II) This is directed to work on the Tulsa Corps of Engineers; directs the Water Authority to make contractual arrangements. Representative Lawrence made a motion to adopt this balloon for discussion.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on February 25, 1993.

Representative Powers seconded the motion. The motion carried.

Representative Grotewiel made a motion to exclude three reservoirs outlined in HB 2443. Representative McClure seconded the motion. The motion carried.

Representative Freeborn made a motion to favorably pass HB 2443 as amended. The motion was seconded by Representative Hendrix. The motion carried. Representative Freeborn will carry this Bill.

The Chair opened the discussion on **HB 2428**. Representative Gatlin gave a report outlining what changes the Subcommittee were suggesting on Page 2 and the new language. Representative Gatlin made a motion to change the language to read, to-wit: "Standards adopted by the secretary and applicable to solid waste processing facilities or solid waste disposal areas shall be no more stringent than the standards required by federal law." The motion was seconded by Representative Freeborn. After the discussion, Representative Grotewiel made a motion to table. Representative Webb seconded. On a show of hands, the motion to table failed; 8 for, 11 opposed.

Representative Lawrence made a motion that would place the burden on the secretary to report back to the House Energy and Natural Resource Committee any standards they have adopted or have proposed for adoption that would be more stringent than federal requirements. Representative McKinney seconded the motion. This would replace and strike the language proposed prior by Representative Gatlin. After discussion, on a show of hands, this motion carried.

Representative Gatlin made a motion to favorably pass HB 2428 as amended. The motion was seconded by Representative Shore. The motion carried. Representative Lawrence will carry this Bill.

The Chair opened the hearing on **HB 2497**. Representative Hendrix appeared as a Proponent and presented a balloon shortening the time frame for the Commission to consider applications to 180 days. (Attachment ~~III~~) 3 If this does not occur, the application would be granted.

Brian J. Moline, General Counsel for the Kansas Corporation Commission, appeared in opposition to **HB 2497**. He presented written testimony stating that this was unnecessary and unwise legislation which could result in hurried, premature decisions and would impose additional costs and delay on individuals and firms with business before the KCC Oil & Gas Division. (Attachment ~~IV~~) 4

Don Schnacke, of the Kansas Independent Oil & Gas Association, also appeared in opposition of **HB 2497**. He presented testimony stated he felt that this legislation was too restrictive and very arbitrary in reference to the 180 days. (Attachment ~~V~~) 5

After questions and discussion by the Committee, the Chair closed the hearings. Representative Hendrix made a motion to reserve HB 2497 for interim study. The motion was seconded by Representative Lawrence. The motion carried.

The meeting adjourned at 5:40 p.m.

The next meeting is scheduled for March 8, 1993.



Date:

## GUEST REGISTER

## HOUSE

## COMMITTEE ON ENERGY AND NATURAL RESOURCES

[illegible]

## HOUSE BILL No. 2443

By Committee on Energy and Natural Resources

2-12

8 AN ACT concerning water; requiring acquisition of certain conser-  
9 vation storage water supply capacity and the issuance of bonds to or use of other means  
10 finance the acquisition.  
11

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

13 Section 1. ~~(a) The director of the Kansas water office shall acquire~~  
14 ~~such conservation water storage supply capacity in federal reservoirs~~  
15 ~~as available pursuant to the memorandum of understanding entered~~  
16 ~~into by the state of Kansas and the U.S. army corps of engineers~~  
17 ~~in 1985.~~

18 (b) The secretary of administration shall request the Kansas de-  
19 velopment finance authority to issue bonds pursuant to the Kansas  
20 development finance authority act for the purpose of acquiring con-  
21 servation water storage supply capacity under subsection (a). The  
22 bonds shall be issued not later than July 1, 1994, and debt service  
23 on the bonds shall begin on or after July 1, 1995.

24 Sec. 2. This act shall take effect and be in force from and after  
25 its publication in the statute book.

In accordance with the provisions of K.S.A. 82a-934 and amendments thereto, the director of the Kansas water office, with the approval of the Kansas water authority, shall acquire water conservation water supply capacity in Tuttle Creek, Melvern and Pomona reservoirs under the provisions of the memorandum of understanding entered into by the state of Kansas and the U.S. army corps of engineers in 1985 as expeditiously as possible utilizing such bonding authority or other means of financing as available to complete the acquisition.

2/25/93  
Attachment 1  
H & NR

House E & NR  
Attachment I  
2/25/93

## HOUSE BILL No. 2444

By Committee on Energy and Natural Resources

2-12

8 AN ACT concerning water; providing for a study of financing options  
9 for acquisition of certain conservation storage water supply  
10 capacity.

11  
12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. The Kansas water authority shall study options for  
14 financing ~~the acquisition by the state of conservation storage water~~ and  
15 supply capacity in federal reservoirs pursuant to the memorandum  
16 of understanding entered into by the state of Kansas and the U.S.  
17 army corps of engineers in 1985. ~~On or before January 1, 1994, the~~  
18 authority shall submit ~~to the legislature a written report of the results~~ or by means of other contractual arrangements. The  
19 of the study together with any related recommendations ~~of the~~  
20 authority.

21 Sec. 2. This act shall take effect and be in force from and after  
22 its publication in the Kansas register.

in the authority's annual report to the governor  
and the 1994 legislature

Attachment 2  
2/25/93  
E & NR

House E & NR  
Attachment II  
2/25/93

(c) If the agency action contemplated by proceedings instituted before the commission under this section is an order as defined in subsection (d) of K.S.A. 77-502 and amendments thereto, proceedings on such order shall be conducted in accordance with the provisions of the Kansas administrative procedure act. To the extent that the procedures contained in subsections (a) and (b) of this section are not in conflict, such procedures shall be supplemental to the procedures contained in the administrative procedure act.

(d) If the commission has not entered a final order in any proceeding under this section, or has not otherwise concluded the proceeding, within 180 days after initiation of the proceeding, the commission shall be deemed to have ~~ordered the proceeding dismissed with prejudice~~ unless hearings are in process in the proceeding on the last day of the 180-day period, in which case the 180-day period shall be extended to the end of the hearings plus 20 days to allow the commission to prepare and issue a final order or take such other final agency action as determined by the commission.

granted the application

(e) If two or more applications on file with the commission are determined by the commission to seek inconsistent relief on the same subject matter, proceedings on the applications shall be held in the order in which filed. The commission shall continue proceedings on any such application until the commission has entered a final order on all such applications filed prior to the filing of such application and the 180-day period shall begin to run with regard to the later filings from the entry of a final order on the applications previously filed. This provision shall not prevent a party from intervening in the docket on the previously filed application and, if such intervention is granted, shall not prevent the party from raising issues which would have otherwise been raised in a docket on the subsequently filed application.

Sec. 2. K.S.A. 1992 Supp. 55-605 is hereby repealed.

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

2/25/93  
Attachments  
H & NR

House E & NR  
Attachment  
2/25/93

TESTIMONY OF  
BRIAN J. MOLINE  
GENERAL COUNSEL  
KANSAS CORPORATION COMMISSION

Good afternoon. My name is Brian Moline. I am General Counsel of the Kansas Corporation Commission. I appear today on behalf of the Corporation Commission in opposition to House Bill No. 2497. House Bill No. 2497 is unnecessary and unwise legislation which could well result in hurried, premature decisions and would impose additional costs and delay on individuals and firms with business before the KCC Oil & Gas division.

In essence, this legislation would place a 180-day limitation from "the initiation of the proceedings" for the Corporation Commission to reach a decision in every case. Presumably "initiation of proceedings" refers to the filing of an application. This legislation is unnecessary since, with rare exception, most of the applications and proceedings before the Oil & Gas division are being accomplished well within the suggested 180-day deadline. During 1992, 287 cases were docketed and, in most of those cases, an Order was issued within 60 days. Forty-one cases were heard in trial type proceedings. Of the 41 cases, only four extended over 180 days and in each of those cases extraordinary circumstances controlled. For example:

- Multiple parties - while most cases before the Corporation Commission have only one party, the Applicant, and occasionally an opponent, the four extraordinary cases contained multiple parties, each with an "application."

House E & KLR  
Attachment 4  
2/25/93

- Numerous amendments to applications or prefiled testimony - in several of the four extraordinary cases the application were amended several times as a result of developments in the case or prefiled testimony was amended at the request of the parties.

- In one of the four cases, a corporate reorganization of Mobile Oil Company, the hearing required new and additional witnesses to be heard after the application was filed.

- In several instances additional oil wells were being drilled or monitored during the proceedings.

Conservation measures, when adversarial, are hotly contested. The legal requirement of due process of law basically means that the timing of the case is driven by the parties and not the Commission. The parties control the pace through the use of interim motions, subpoenas and other procedural matters.

It should be noted that the 180-day deadline in H.B. 2497 would only come into effect in an extraordinary proceeding such as the current Hugoton case.

On May 13, 1992, OXY USA, Inc. filed an application to amend the basic proration order. On June 5, 1992, the Commission issued an order to show cause why the basic proration order should not be amended. On June 11, 1992, Mobile Oil Corporation filed a motion to consolidate and to broaden issues which was granted by the Commission. Since that time, 25 additional parties have intervened in the consolidated proceeding. It must be noted that in this proceeding there is no "application" which could be either granted or denied "with prejudice" as evidenced in the bill.



There are multiple "applications." Technical hearings commenced on August 17, 1992, in Wichita and is scheduled through mid-1993. These proceedings involve highly technical and complex testimony by petroleum engineers, geologists and marketers. Twenty parties are represented by 40 attorneys. To date, there has been over 6,000 pages of testimony and over 500 exhibits. The parties represent diverse points of view and as such the hearings are highly contested. It is not an exaggeration to say that billions of dollars are at stake. Due to the importance of the Hugoton gas field as one of our state's most precious natural resources, the full Commission has elected to hear this entire proceeding. At this time we estimate that all testimony will be completed by May 1993. Thereafter, if necessary, a time will be set for rebuttal testimony by the three applicants and closing arguments scheduled.

Were 2497 current law, the Commission would be faced with one of two alternatives in the Hugoton hearing. One, have the Commission sit in Wichita indefinitely instead of the current one week per month schedule in order to issue an Order within the deadline. Even then there is no reason to believe that the deadline could be met since the clear strategy for one or more of the parties would be to extend the hearings until the magic deadline date was met, thus, winning the controversy through application of statute rather than on the merits. In the event this option would be chosen, the Commission would either have to neglect matters on the utility side or hire an additional hearing examiner or examiners to take care of those matters.

Option two would be not have the Commissioners, or at least all of the Commissioners, listen to this important proceeding so that the other matters before the Commission could also be dealt with in a timely fashion. Either option, splitting the Commission or using a hearing examiner, would clearly depreciate the importance of the hearings and make a fair and impartial resolution more difficult and time consuming.

House Bill No. 2497 also provides that the Commission would have 20 days in order to issue an order in a contested proceeding. The KCC opposes this provision for the following reasons: 1) An artificial 20-day deadline would eliminate any chance for post-hearing briefs, proposed findings by the parties, settlement conferences or the like. 2) Interlocutory appeal would most likely be fatal unless the hearing continued. 3) The deadline does not allow for unforeseen circumstances such as illnesses, vacancies on the Commission, etc. 4) In the Hugoton hearing just mentioned, we anticipate over 10,000 pages of testimony and 1,000 exhibits before the hearings are completed. It is unrealistic to expect a full and reasoned review and decision within 20 days.

In its present form, the legislation envisions a rather peculiar consequence of the failure of the agency to meet the 180-day deadline. The consequences are not visited upon the agency or any of the agency personnel but rather the applicants or other parties in the process. As presently written, the application would be dismissed with prejudice. This is obviously an extreme measure which courts have stated time and again should only be

seen as a last resort. It should be noted that once an action is dismissed with prejudice it can never be brought again. A dismissal with prejudice under these circumstances is likely to have constitutional infirmities.

Another possibility would be dismissal without prejudice. This would still be a harsh remedy. In the first place it would be extremely costly to the applicant and to the state in terms of hearing costs, staff time, witnesses, travel, Commission time, court reporters, etc. Secondly, were a matter to be dismissed without prejudice the whole process would simply begin all over again creating additional expense and delay to the public. A third alternative would be to have the application deemed granted if the 180-day deadline is not met. This alternative ignores the realities of litigation. In the four contested cases I mentioned, three involved multiple applicants with opposing applications. In the Hugoton proceeding there are 3 "applications." Clearly it would be illogical and impossible to deem all three applications, usually conflicting and contradictory, to be "granted."

#### CONCLUSION

A 180-day deadline called for in this legislation is unnecessary and unworkable. As indicated earlier, 85 percent of the docketed cases have orders written well within 60 days of initiation. Only four cases out of 287 went over 180 days in 1992 and in each of those cases there were circumstances which were beyond Commission control.

Failure to meet the 180-day deadline would have harsh effect on individuals and companies in the oil and gas business in Kansas. Whether, by operation of statute, an application would be dismissed with prejudice, dismissed without prejudice or deemed granted has basically the same detrimental effect - additional expense and delay for the individuals and firms doing business before the Oil & Gas division of the KCC. The legislation creates an incentive to one party in a contested proceeding to use every possible procedural tactic in order to drag the proceedings out beyond the magic 180-day limit. Such a successful tactic would then be victorious for one side not on the merits of the case but simply by operation of legislatively mandated statute.

The hearing process is driven by the parties and due process requirements limit the Commission's ability to hasten the proceedings. Should the Commission cut off witnesses, prevent people from cross-examination, prevent parties from submitting additional testimony or exercise any other means to ensure meeting an arbitrary deadline, the end result would surely be judicial reversal and, once again, the process would simply start over again. The cost on the parties and on the public in terms of the Commission's time and expense would be considerable.

To my knowledge, none of the individuals or firms doing business with the Corporation Commission have called for such an arbitrary deadline. The reasons should be obvious. The proposal injects a new consideration into what has heretofore been a relatively effective and efficient means of litigating disputed

oil and gas matters. The potential for mischief is enormous. The potential for improving the process infinitesimal. The Corporation Commission respectfully requests that 2497 be defeated.



FEB 24 1993

**KANSAS CORPORATION COMMISSION**  
Fiscal Summary Information  
for  
Division of the Budget  
Legislative Research Department

**BILL NUMBER:** HB 2497 **REVIEWED FORM:** As Introduced

**Prepared by:**

William Bryson      Director-Conservation Division      February 24, 1993

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**BILL SUMMARY**

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**1. Background and Bill Summary**

House Bill 2497 amends K.S.A. 1992 Supp 55-605 to add a new section (d) which states that if the Commission has not entered a final order or otherwise concluded the proceeding within 180 days after initiation of the proceeding, the application (proceeding) is ordered dismissed with prejudice. Additional provisions state that if hearings are in process on the proceeding on the last day of the 180 day period, the 180 days period will be extended to the end of the hearings plus 20 days to allow the Commission to prepare and issue a final order or other appropriate agency action.

This legislative measure, if passed, would require all cases, no matter how controversial, adversarial or complex to meet a time line that would often be against the best interests of the applicant or the protestants and would severely constrain the Commission to carry out its statutory responsibilities. The bill is unclear as to at what point "a proceeding is initiated." There is no information on the original concern which caused House Bill 2497 to be introduced. The Commission, during 1992 had 287 cases docketed. Only four of 41 cases which went to hearing extended past 180 days.

**2. Affect in Commission's operation or area of responsibility.**

(a) House Bill 2497 would basically curtail the Commission's ability to fairly hear controversial basic proration order disputes between operators where complex geologic or legal issues (pro and con) need full airing for a Commission judgment and subsequent action (order).

(b) The 20 day period for final order preparation and issuance would require additional staff to have even a shot at achieving reasonable compliance. Filing of post hearing briefs would be severely hampered and would have a deleterious effect on the quality of those briefs.

(c) As mentioned above, the Commission Conservation Division would be placed in the dilemma of failing to carry out its statutory mandates. HB 2497 deals with a single issue of concern and ignores the substantial effect on other Commission statutory mandates.

**3. The dollar effect on Divisions budget. The estimated cost to the budget would be an increase of \$141,000 per year.**

4. Cost estimates are based on the knowledge of how much effort, time and expense it takes to review testimony, prepare staff analysis and prepare and issue final orders.
5. See attached sheet of increase staffing and budgeting needs.
6. The long term effect would be the same as projected under (5).

#### EXPLANATION OF ESTIMATED FISCAL IMPACT

See attached sheet.

Fiscal Impact  
House Bill 2497

**Personnel**

2	Attorney A	Salary & Benefits	\$73,645
1	Keyboard Operator II		\$19,300
1	Office Assistant III		<u>\$19,300</u>
<b>Total</b>			<b>\$112,245</b>

**Communications**

Telephone Service for 4 Work Stations	\$1,250
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**Rent**

2 Attorney Offices 150 sq ft ea @ \$10	\$3,000
2 Clerical Work Stations 240 sq ft ea @ \$10	<u>\$2,400</u>
<b>Total</b>	<b>\$5,400</b>

**Capital Outlay**

2 Desks @ \$450	\$ 900
2 Exec Chairs @ \$175	\$ 375
2 Steno chairs @ \$125	\$ 250
2 Computers @ \$3,888	\$7,776
1 Laser Printer	\$4,800
2 Computer Desks	\$ 750
2 Network Connections @ \$4,000	<u>\$8,000</u>
<b>Total</b>	<b>\$22,826</b>

**Grand Total**

**\$141,721**



*Don Schnacke*

## KANSAS INDEPENDENT OIL & GAS ASSOCIATION

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*2*  
*3/25/93*

TO: HOUSE ENERGY & NATURAL RESOURCE COMMITTEE

KIOGA appears in opposition to HB 2497

We don't know what's behind this bill, but our experience is that we would not like to have the KCC tied down like this. It's too restrictive. The KCC has many issues pending.

I have been around when many complex hearings have taken place:

1. Wolfe Creek rate case
2. Infill drilling
3. Hugoton

180 days is very arbitrary and too restrictive.

Hugoton has 75 participants - 35 companies expert testimony studies and reports involving a very complex hearing.

We don't know how you can dismiss with prejudice.

This is a make work bill for attorneys and it is unneeded. We do not have anybody supporting this bill.

*House E&NR*  
*Attachment* *5*  
*2/25/93*