

Approved: 2-9

Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Don Sallee at 8:00 a.m. on February 2, 1993 in Room 423-S of the Capitol.

All members were present or excused:

Committee staff present: Raney Gilliland, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Don Hayward, Revisor of Statutes
Clarene Wilms, Committee Secretary

Conferees appearing before the committee:

Others attending: See attached list

SB-29 - concerning air contaminant emission sources

The Department of Health and Environment presented a memorandum setting out the response of the department to testimony presented by the Sierra Club. Attachment 1

The Kansas Audubon Council handed testimony to the committee clarifying their organization's stand on SB-29, the Air Quality Act. Attachment 2

The Kansas Railroad Association presented committee members with a memorandum requesting an amendment to SB-29. Attachment 3

The attention of the committee was called to the proposed amendment in Attachment 3. Senator Lawrence, with a second by Senator Morris, made a motion to adopt the amendment.

Discussion followed pertaining to the reason for exempting certain entities. Concern was noted that at a later date rules and regulations could deal with this issue if the amendment was not added.

The motion carried.

Senator Martin made a motion to change all of the language in SB-29 stating the secretary "may" to "shall". Senator Walker seconded the motion.

Discussion concerning the motion noted that at least one change should be made in 4b, page 4 and 5e page 6. The comment was made that a blanket substitution of shall, in effect, ties the hands of the department. A reply was made stating the opinion that everyone should be treated in the same manner. Further discussion centered on the fact that until the bill is put into effect and a period of time has elapsed to allow observation of how the provisions of the bill functioned, it was felt no sweeping changes should be made.

Charles Jones, KDHE, spoke to the blanket substitution of using shall, rather than may, noting the department has always gone with the permissive approach rather than the mandated approach with judgments being made by consideration of all pertinent facts. Another reason to use the permissive approach is that should federal regulations change it does not hold the department to implementation of something that no longer applies. The secretary has to balance resources, abilities and requirements, therefore discretionary powers are very important. At times business is allowed to use the monies stipulated as a fine to correct the violation. Mr. Jones further noted the alternative to general permits were site specific permits which could deal with a unique condition of any particular facility. Mr. Jones told members the implementation of the program probably matters more than statutory language. Kansas is in attainment, Kansas has a very pro-active stance on toxins and continues to take a strong position on the air quality program. In conclusion Mr. Jones told committee members a motion with such sweeping changes would cause a lot of problems.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 423-S Statehouse, at 8:00 a.m. on February 2, 1993.

The question was called. The motion failed.

Senator Martin made a motion to put, from this point forward, a ban on incineration. Senator Walker seconded the motion.

Upon discussion Senator Martin noted the motion was intended to grandfather in incinerators presently in operation.

The question was called. The motion failed.

Senator Walker made a motion to delete on page 9, line 16 starting "for the purpose" and including lines 17, 18 and 19. Senator Martin seconded the motion.

The motion was made in order to avoid capping fees if a company was polluting. The company should pay on the amount of pollution it was causing. A member requested input from KDHE. Mr. Jones noted the clean air act has permissive language which allows states to set this cap. It was the consensus of the work group which discussed the entire bill package that even with the cap on fines, it would be sufficient to cause them to improve their emission performance, though not so burdensome as to put at risk the financial health of those industries.

Concern was expressed that some compromise was needed or the bill would fail and the federal regulations would take over.

A member asked whether there was not some position other than an absolute removal of the cap on any emission of any single pollutant that would be acceptable, again asking for some compromise.

A request was made for a list of states who have adopted the cap on fines for emissions of any single pollutant be furnished committee members. A list of the top emitters in the state was also requested.

The motion failed.

Senator Walker made a motion to change the 4,000 tons to 8,000 tons in the cap. Senator Martin seconded the motion.

Concern was expressed that this could result in closing refineries and/or increasing electric rates for all electric consumers.

The motion failed.

The request was made for information as to those who produce 4,000 tons or more of emissions for any single pollutant and those who receive favorable rulings but are above the cap.

A question concerning Section 6 dealing with public hearings was voiced. Mr. Jones noted there was no difference in the old and new language and one individual requesting a public hearing possibly could be denied. A reference was made to Attachment 1, page 2, E. A definition of small business was requested and it was noted the definition used was from the federal act.

Committee members were handed copies of the Kansas Corporation's Report to the 1993 Kansas Legislature. A copy may be found in the office files

The meeting adjourned at 8:55 a.m.

The next meeting is scheduled for February 3, 1993.

GUEST LIST

SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

DATE February 2, 1993(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Tim Louderback Topeka, KS
 CHARLES JONES
 JOHN IRWIN
 CHAS Stanfield Topeka
 Al Stallard
 LEE EISENHOWER TOPEKA
 Carl Daugherty Columbus
 Bill Gaven
 Bill Tancee Wichita
 STEVE KEARNEY TOPEKA
 Mandy Stout Lawrence
 Tom Whitaker TOPEKA
 Tom Tunnell "
 Pat Wilbell Topeka
 ED SCHAUB "
 Rich McKee "
 Whitae, Damon Topeka
 Mike Torrey "
 Jim Lummis "
 Wayne Kitchen "
 Terry Leatherman "
 Mike L. Kirk Topeka
 Woody Moses
 John Peters

Barbee and Associates
 KOHE
 KOHE
 KDH-E
 KDOT
 PROPANE MARKETERS ASSOC. OF KS.
 EMPIRE DISTRICT ELEC.
 Sierra Club
 Boeing
 WASTE MANAGEMENT
 Intern - Sen. Lawrence
 KS MOTOR CARRIERS ASSN
 KS GRAIN & FEED ASSN.
 KS Railroad Assn.
 WESTERN RESOURCES INC.
 KS Livestock Assoc.
 Pete McMill & Associates
 KFCA
 WESTERN RESOURCES
 Western Resources, Inc
 KCCI
 Hein, Ebert & Dixon
 Ks Cement Council / Ks Agg Prod
 Berth Hufst Cup

State of Kansas

Joan Finney, Governor



Department of Health and Environment

Robert C. Harder, Secretary

Reply to:

February 1, 1993

The Honorable Don Sallee
Chairman
Senate Energy and Natural Resources Committee
Room 128 South
State House
Topeka, Kansas 66612

Dear Senator Sallee:

Please find attached a memorandum which sets out KDHE's response to testimony presented by the Sierra Club. We hope you find it useful and would be happy to provide any additional information you might need.

Sincerely,

A handwritten signature in cursive script that reads "Charles Jones".

Charles Jones, Director
Division of Environment

jp
Attachment


Senate Energy & Nat'l Resources
February 2, 1993
Attachment 1

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
DIVISION OF ENVIRONMENT

Bureau of Air and Radiation

M E M O R A N D U M

TO: Charles Jones, Director
Division of Environment

FROM:  John Irwin, Director
Bureau of Air and Radiation

DATE: January 28, 1993

SUBJECT: Response to Kansas Sierra Club Comments on
Senate Bill 29

I have provided below a series of brief clarifying remarks on the major issues raised in the Sierra Club's comments on Senate Bill 29. I do not expect that a formal response is necessary, but it appears appropriate that the Division be prepared to answer questions should they arise. As you are aware, their testimony also raises several philosophical questions pertaining to the Division's enforcement policies, management of incinerator issues and risk assessment procedures. Rather than prepare a lengthy technical document responding to each of these issues, it seems more appropriate that we respond to specific questions, as requested. Suffice it to say, we believe the Kansas air program operates very effectively considering the resources available.

You should also be aware that the Kansas Sierra Club has a member on the Kansas Clean Air Act Implementation Advisory Group who attended two meetings at which Senate Bill 542 was discussed. Most of the issues raised in their testimony could have been easily clarified or resolved in that forum. For some reason, they elected not to raise these questions before the Advisory Group.

Finally, having reviewed these comments and others on Senate Bill 29, we have not identified a substantive need to amend the bill and recommend that the agency continue to support the bill as originally proposed.

Specific Comments on Senate Bill 29

A. Change in Preamble Statement

The old statutory preamble language was removed at the request of the Revisor of Statutes. The statement had no legal significance and such statements are routinely excised as statutes are up-dated.

B. Local Units of Government

The relationship between KDHE and the four local agencies that support the Kansas air program has not been changed in Senate Bill 29. KDHE relies on local government to the extent that their activities augment and are consistent with the state program. While the support of local air agencies has been very helpful, KDHE retains authority to disapprove as a part of the state program any activities that are determined to be inconsistent.

C. Definition of "Air Contaminant"

The statutory definition of air contaminant has remained unchanged in Kansas for over 20 years. Senate Bill 29 does not change it. As enabling legislation, it is important that the Secretary have available a broad definition of air contaminant. Implementing regulations provide more specific definitions when necessary to effectively implement the air program.

D. Permissive Wording

As "enabling" legislation, Senate Bill 29 is intended to empower the Secretary to implement a complex statewide air program and not to prescribe how the program is to be operated. The Secretary must have available certain authorities to gain federal approval but is required to exercise these authorities only to the extent that they apply to Kansas (or are effective in Kansas) or are required by federal law. To force the Secretary to implement each and every action authorized whether or not it continues to be required under federal law or is determined to be an appropriate part of the Kansas program is unsound public policy.

E. Eliminating Mandatory Public Hearings

New Section 6 does not eliminate mandatory public hearings as suggested in testimony. Old Section 5 (c) reads: "The Secretary shall not issue a permit without holding a public hearing upon the written request of any person affected by such issuance. The request for hearing on the issuance of a permit shall set forth the basis for the request and if in the judgement of the secretary there is sufficient reason a hearing shall be held." (Emphasis added.)

New Section 6 (a) reads: "No permit shall be issued, modified, renewed or reopened without first providing the public an opportunity to comment and request a public hearing on the proposed permit action. The request for a public hearing on the issuance of a permit shall set forth the basis

for the request and a public hearing shall be held if, in the judgement of the secretary, there is sufficient reason."

Under both the old language and the new language, a hearing had to be requested and a hearing had to be held if, in the secretary's judgement, sufficient reason was expressed in the request.

F. Issuing Permits Without Public Comment

Section 5 (d) does not authorize permits to be renewed without public comment as suggested in testimony. Section 5 (d) simply states that if a regulated entity timely submits a complete application for a permit and appropriate fees, the current permit will not expire until KDHE has acted upon the application. This is in conformance with the Kansas administrative procedures act (K.S.A. 77-511(d)) and as required by the federal clean air act (section 503(d)). Public participation is still required before the agency is authorized to renew the permit. (See New Sec. 6(a)).

G. Permit Authority for Facilities That Are Not Sources of Air Emissions.

The air quality statutes are intended to address air quality issues only. Other statutes give the secretary or other appropriate entities necessary authority to address other environmental or social issues.

H. Permissive vs. Mandatory Regulations

The legislation gives the secretary authority to apply less stringent requirements or smaller fees to small businesses. However, in order to do so, KDHE will be required to promulgate regulations specifying any less stringent requirements or reduced fees, to whom they will apply, and how such alternative requirements will be implemented. The regulations will provide the specificity to ensure fair and consistent implementation of the authorities granted the secretary under the legislation.

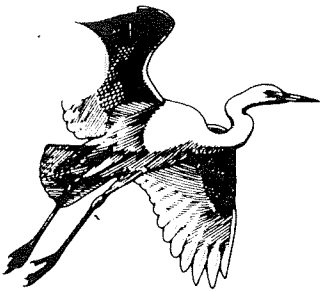
I. Definition of Small Business

The definition of "small business stationary source" stated in New Sec. 15 comes directly from the federal clean air act (Sec. 507(c)) and is the mandatory minimum definition of businesses which may participate in the small business assistance program.

J. Emissions Fee Cap of 4000 Tons

The 4000 ton emissions fee cap statutory language was taken from Section 502 of the federal Clean Air Act which was intended to specifically authorize states to establish a maximum fee liability level. This provision was inadvertently omitted from Senate Bill 542 and the Clean Air Act Implementation Advisory Group recommended that it be added to Senate Bill 29. KDHE concurs with the recommendation because without this provision, the language in New Section 8 leaves the fee assessment process completely open-ended.

clw:Jones/jci



Kansas Audubon Council

February 1, 1993

Senator Don Sallee, Chairman
Energy and Natural Resources Committee

Dear Senator Sallee:

I would appreciate it if you would distribute this letter to the Senate Energy and Natural Resources Committee. I want to try to clarify where our organization stands on SB 29, the Air Quality Act.

I was asked to serve on the task force called by the Kansas Department of Health and Environment as a representative of the Kansas Audubon Council. I attended the first informational and organizational meeting, but found it impossible to attend the succeeding two meetings. I did, however, contact a department secretary the day of the second meeting to share my concerns about the proposed fee structure for businesses which would be regulated under the Clean Air Act.

My primary concern was that there would be no incentive for the myriad of small sources of air contaminants to come into compliance with the provisions of the federal requirements. I fully realize that a fine line must be struck between requiring compliance versus taking into consideration small businesses' ability to pay. In the one instance, the department has to balance requiring them to meet standards, against being so punitive that it would force them out of business. One of the major needs of small businesses is the technical information that large companies likely would have access to on their own staffs.

In order to fulfill the federal requirements, KDHE must provide small businesses that technical assistance. I just recently learned that KDHE is indeed under orders from the Environmental Protection Agency to develop such a program or risk the penalty of having the state lose federal highway funding. SB 29 provides a mechanism for the collection of emission fees (New Section 8) to be used to provide assistance to small businesses. Keeping in mind the reluctance to assess significant fees to small business, the Audubon Council has a hard time understanding the reasoning behind capping the emission fees for volumes in excess of 4000 tons per year for a single regulated pollutant.

Senate Energy & Nat'l Resources
February 2, 1993
Attachment 2

Therefore, I believe there are at least two important questions that must be asked:

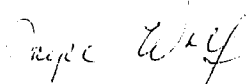
1) How many small stationary sources will be regulated under these provisions and will the emissions fees be adequate to generate enough revenue to finance the needed personnel to provide the required technical assistance?

2) How many and which category of industries would be affected by the 4000 ton cap and what sort of pollutant is being emitted, that is, what would its expected toxicity be?

Finally, judging from some of the questions generated by committee members the last time the bill was considered I want to make certain that participation by our organization in the task force does not imply endorsement for all sections of the bill. Given KDHE's chronic shortfall in needed personnel to promptly deal with permit applications and renewals and to provide adequate monitoring of permitted sites, the Council wants to see some guarantee that this program will generate adequate fees to make the air quality act fully able to be implemented and enforced in Kansas.

Thank you for your attention to this matter.

Sincerely,


Joyce Wolf, Legislative Liaison

KANSAS RAILROAD ASSOCIATION

800 JACKSON

SUITE 1120

PATRICK R. HUBBELL

TOPEKA, KANSAS 66612

913-357-3392

M E M O R A N D U M

TO: Senate Committee on Energy
and Natural Resources

FROM: Kansas Railroad Association
Pat Hubbell

DATE: February 1, 1993

RE: Amendment to SB 29

Page 2, line 18, after...control) shall not apply to locomotives or diesel trucks unless otherwise required by the Federal Clean Air Act.

~~Page 2, line 36, after...contaminant, shall not apply to locomotives or diesel trucks unless otherwise required by the Federal Clean Air Act.~~

Senate Energy & Nat'l Resources
February 2, 1993
Attachment 3