

Approved: Carl Dean Holmes
Date 2/1/94

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 24, 1994 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
Shirley Wilds, Committee Secretary

Conferees appearing before the committee: Charles Jones, KS Dept of Health and Environment
Chris McKenzie Director, League of Municipalities

Others attending: See attached list

Chairperson Holmes called the meeting to order, announcing any additional bill requests would be accepted at the close of today's meeting. He reported to the Committee there are presently 14 bills on the calendar, three having been passed out of Committee, and potentially ten additional bills through requests. He asked that Committee members keep this in mind and to please give serious consideration to the importance of a request if any are forthcoming.

Continued Hearing on HB 2589:

Charles Jones. Mr. Jones told the Committee this bill, in its present form, is to be thought of in conceptual terms. He said the problem exists wherein KDHE is in the position of permitting a number of facilities which are found to be quite controversial. When faced with these controversies, KDHE, by law, executes a public notification and hearing. When most citizens attend the public hearing they construe that to be an opportunity to vent their concerns. He feels there is some misinformation regarding the responsibilities of KDHE. In actuality, under the Kansas Statutes KDHE is constrained to deal with technical issues, whereas the public is also interested in aesthetic issues (dust, order, traffic, appearance, land values, etc).

Mr. Jones suggests a way to clarify some of the controversial issues that inevitably arise is to perhaps consider some free-standing legislation that would require county approval before KDHE would consider applications of certain types of facilities. He proposed that it could be so stipulated: "no new permanent application would be processed by the Secretary for a Solid Waste Facility Permit or confined Operation Waste Permit until the Secretary receives an ordinance or resolution from the governing body of the city or county." This would affirm that the proposed land use has been approved by the local government body. Mr. Jones stated that too often KDHE finds itself as mediator between different local values. He emphasized that local government is in the best position to decide how aesthetics will be in their area. Mr. Jones said the need for his proposed free-standing legislation addresses certain types of other facilities, such as feedlots, industrial facilities, sewage plants, and underground injection wells (Mr. Jones said KDHE would confine or expand the types of facilities, according to the Committees' wishes.

Mr. Jones discussed at length with the committee numerous aspects of his proposed free-standing legislation, addressing the various authorities and needs of KDHE and involved cities and counties.

Chris McKenzie. Having been a former county official, Mr. McKenzie reported to the Committee that he has encountered some of the difficult special use permit matters. He said the language in **HB 2589** raises two policy questions: 1) Page 4, Clause 1, Line 40: recognizes the close connection in the regulatory schemes or concurrent jurisdiction that exists today, but isn't clearly recognized in the law. Mr. McKenzie said in reality if the county or city has a zoning scheme they are not going to be able to own and operate landfills, unless they get the local specialties permit; 2) Page 5, Line 1, Clause 2: the state is not going to impose any other standards in these areas if the local government has already said there has been compliance with the local

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 526-S Statehouse, at 3:30 p.m. on January 24, 1994.

zoning regulations. He said not all local zoning regulations will address aesthetics to the same degree and it would take the state out of that decision-making process. He suggested that the Committee consider very carefully the language draft submitted by Marti Crow (See Minutes of January 20). He is concerned that to put a local governing body in the position of having to approve or disapprove a project without having any standards in place potentially exposes them to liability for acting arbitrarily or capriciously. He said these are very difficult decisions and action must be very deliberate. He advises that if local involvement is appropriate the best way to do it is through zoning, because that is an established scheme for regulating private land use. Mr. McKenzie concluded his remarks by suggesting that there is a need for developing some standards if there is going to be an alternative process.

Ann Smith from the Kansas Association of Counties briefly mentioned she had not had an opportunity to study **HB 2589**, but that the majority of counties do not have zoning ordinances. She agrees with Messrs. Jones and McKenzie in that there is a conflict where there is no zoning and there is a need to draft free-standing legislation to address the issue. She plans to confer with her Association membership, Mr. McKenzie and Mr. Jones and determine appropriate draft language.

It was the consensus of Committee members to review the minutes handed to them today and await approval until tomorrow.

Chairperson Holmes announced that the appointed sub-committee on the Tire Bill has not yet had a meeting. The Chairperson of this sub-committee plans a meeting in the near future.

The sub-committee members on the Reservoir Water Purchase are: Chairperson McKinney, Representatives Gatlin and Kjer (Representative Holmes and Representative Grotewiel are members ex-officio).

The Energy Policy Act Sub-committee members are Representatives Holmes; Grotewiel, Lawrence; Freeborn and Alldritt. This committee's charge recommend a bill to the Committee, following their study of all the present Energy Statutes and EPACT.

Chairperson Holmes made inquiry of any committee bill requests. Representative Alldritt made the motion to introduce a bill to create an Urban Forestry Fund, that would allot state monies to those communities and municipalities in the State that have been designated as a Tree City USA and meet the requirements stipulated by the National Arbor Day Foundation and by the State. Representative Powers seconded the motion. Motion carried.

Upon completion of its business, the meeting adjourned at 4:45 p.m.

The next meeting is scheduled for January 25, 1994.

