

SB 88
Testimony in opposition
Oral In-Person Testimony
Colleen R. Jamison 785-331-8214
Interest represented - self

COLLEEN R. JAMISON

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Good afternoon Chairman Olson, Vice-Chairman Petersen, Ranking Minority Member Francisco, and members of the committee.

My name is Colleen Jamison. I am a solo attorney working primarily in the area of telecommunications regulation at both the state and federal levels. I am a conferee today solely in an individual capacity. Nothing I say should be interpreted as reflecting the view of any of my clients or the view of any state or national organization to which my clients or I may have membership.

I have been concentrating my professional career in telecommunications regulation for almost 23 years. I began my career as a telecommunications litigation staff attorney at the Kansas Corporation Commission in April 2000. I concluded my career at the KCC in September 2011 as Senior Litigation Counsel. Since September 2011, I have been in private practice, representing small rural independent telecommunications companies across the state of Kansas.

I am here today to offer my thoughts on SB88. This bill provides for the election of KCC Commissioners that are now appointed by the Governor. Additionally, the bill creates a utilities regulation division within the attorney general's office and moves any KCC Staff making recommendations to the Commission on behalf of ratepayers to that division. Finally, the bill exempts the KCC from provisions of the Kansas Open Meeting Act. I would like to address each in turn.

Much in the same way that I think the election of judges is a bad idea, I also think the election of utility commissioners is a bad idea. According to a 2020 study by Dr. Janice Beecher with the Michigan State University Institute of Public Utilities, in 2020 only thirteen of fifty states elected commissioners, four according to statute and nine according to the state constitution. Since the 2020 study, New Mexico voters approved a constitutional amendment abolishing the election of five commissioners and, instead, moving to, like Kansas, three appointed members. New Mexico also has statutory minimum commissioner qualifications and has a commissioner nominating commission which screens candidates and forwards qualified candidates to the governor for appointment.

Simply put, the KCC's position within state government is extremely technical in nature and the fundamental underpinnings and theories of utility regulation are complex and nuanced. Much

like I don't think anyone would want as a judge an elected individual who had no legal education at all, so, too would neither the utilities nor ratepayers want as commissioner an elected individual with scarce knowledge of the complexities of utility regulation. The KCC is a creature of this legislature, and this legislature has delegated its ratemaking authority to the KCC in recognition of and deference to its expertise. As a colleague of mine noted to me, in order to get elected a candidate could brazenly promise excessive rate cuts and completely ignore utilities' rights and jeopardize the utility's ability to provide, as required by statute, sufficient and efficient service.

With respect to moving to the Attorney General's office KCC Staff making recommendations to the commission on behalf of ratepayers I have a few comments and concerns. First, I note that for as long as I can remember, the KCC has rarely been fully staffed, but certainly not for lack of effort. KCC positions are largely highly educated and technical in nature. Lawyers. Engineers. Accountants. Economists. Geologists. The KCC's director of utilities just a couple of weeks ago testified to this committee that it has an engineer position open that it has been unable to fill for a year and a half, and noted that even when hired, employees faced a learning curve that could be two to three years or more, and the KCC is constantly losing employees to private industries and in fact just recently lost one of its attorneys to industry. If at the present the KCC struggles to find, hire, and retain qualified candidates, I question whether and how an additional division within the attorney general's office would be able to do so.

Secondly, public utility staff is responsible, during its analysis, for balancing the interest of ratepayers with the regulated utility. When I was staff attorney, my entry of appearance prior to hearings before the Commission would be "My name is Colleen Jamison and I am appearing today on behalf of Commission Staff and the public, generally." Because of a perceived lack of advocacy for residential and small commercial ratepayers, however, the Citizens' Utility Ratepayer Board or CURB was established by statute in 1989. I am not clear on what problem may exist today requiring the creation of yet an additional division within the attorney general's office to carry out the responsibilities within New Section 3 since those are all responsibilities currently held by CURB and existing Commission staff. New Section 3 would require transfer to the attorney general's office KCC Staff that makes non-binding recommendations to the Commissioners on behalf of ratepayers – but I fail to see how this will be accomplished since, to my knowledge, Commission Staff doesn't make non-binding recommendations to the Commission solely on behalf of EITHER ratepayers or the utilities.

I also note a curious anomaly within the bill with respect to funding of the utilities division within the AG's office. Currently the KCC is a fee funded agency and assessments on the utilities it regulates funds both the KCC and CURB operations. The bill allows for the new AG staff to also be funded by that fee assessment, an assessment which is a cost that would be incorporated within a utility's revenue requirement and ultimately paid for by the utility's end user customers. So, adding to the attorney general's office an entire division of highly technical positions would ultimately end up in increased end user rates. And, provisions within New Section 3 curiously call for the attorney general to "subject to appropriations therefore . . . employ attorneys, engineers" etc., and then further on in that same section, the office is allowed

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to contract for professional services “subject to appropriations.” Unless I am misreading, that is general fund appropriations.

Finally, I am puzzled and concerned over why, now, the KCC would be exempted from provisions of the Kansas Open Meetings Act, especially within the context of a bill appearing to be aimed at remedying a perceived lack of accountability to the public in general. Not too long ago there was harsh criticism over the KCC’s practice “pink sheeting” or circulating a draft order for consideration and voting before the order became final. It seems, then, a giant step backwards to now exempt the agency from KOMA. For government to be responsive to its citizens, it must be open and transparent, not closed and secretive.

Thank you for your time today and I am happy to stand for questions at the appropriate time.