

MINUTES OF THE SENATE COMMITTEE ON COMMERCE.

The meeting was called to order by Chairperson Senator Karin Brownlee at 8:00 a.m. on February 16, 2001 in Room 123-S of the Capitol.

All members were present except: Senator Barone (Excused)
 Senator Wagle (Excused)

Committee staff present: April Holman, Legislative Research Department
 Bob Nugent, Revisor of Statutes
 Lea Gerard, Secretary

Conferees appearing before the committee: April Holman, Legislative Research Department
 Rob Hodges, Kansas Telecommunications Industry Assoc.
 Mike Murray, Director of Government Affairs for Sprint
 Mike Reece, Government Affairs for AT&T
 Rachel Lipman Reiber, Vice President Regulator & Govt.
 Affairs, UtiliCorp
 Jim Gartner, Executive Director-External Affairs, SWB
 Mark P. Johnson, Donnenschein, Nath & Rosenthal
 Terry Leatherman, Vice President-Legislative Affairs, KCCI
 Mayor Ed Eilert, Mayor, Overland Park, Kansas
 Don Moler, Executive Director Kansas League of
 Municipalities
 Doug Brown, Public Works, Overland Park, Kansas
 Mike Santos, Sr. Assistant City Attorney, Overland Park, KS.
 Dennis Kissenger, Salina City Manager
 Eric Arner, Sr. Assistant Attorney, City of Lenexa
 Jeanne Hernandez, City of Wichita
 David Corliss, City of Lawrence
 Dean Katerndahl, Mid-America Regional Council
 Don Seifert, City of Olathe

Others attending: See attached list.

HB 2035 - Enacting the KAN-ED act.

Senator Kerr moved, seconded by Senator Brungardt that Senate Substitute for HB 2035 be amended to remove any references of "Senate confirmation of the advisory board" in the bill. The voice vote was in favor of the motion.

Senator Steineger moved, seconded by Senator Emler, that Senate Substitute HB 2035 be recommended favorable for passage as amended. The recorded vote was Yes - 7 No - 0 in favor of the motion.

SB 306 - Telecommunications, Right-of-Way.

Letter submitted to the Committee from Duane Goossen, Director of the Budget, that a fiscal note for **SB 306** is being prepared (Attachment 1).

April Holman, Legislative Research Department, briefed the Committee on **SB 306**. Franchise fees have been on the books since KSA 12-2001 which originated in 1945. Cities are authorized to enter into franchise agreements to charge franchise fees or taxes by statutes. Among the activities for which cities may grant the permission and collect franchise fees is the construction and operation of telecommunication lines. By statute all contracts granting an original franchise right or privilege for expanding, renewing, or amending any existing grant right or privilege, the franchise must be approved by a city ordinance. Franchise fees are a significant source of locally generated revenue for many cities. As you look at **SB 306**, this will set-up a new system of access line

fees for telecommunications instead of the current system of franchise fees.

Rob Hodges, Kansas Telecommunications Industry Association, presented testimony in support of **SB 306**. The bill was introduced by the telecommunications industry on January 30, 2001. This bill will separate right-of-way occupancy from the obligation to pay franchise fees and replace the franchise fees with an access line fee. We are intending to keep the cities financially whole in that transition of one fee to another. In fact this will allow many cities that would be at the maximum called for in the bill to actually grow their revenue source. It does provide a procedure for a protest petition similar to the position of 911 taxes which we have had for sometime and will assure compliance with the Telecommunications act of 1996 (Attachment 2).

Mike Murray, Director of Governmental Affairs-Sprint, testified in support of **SB 306**. In Sprint's view the proposed legislation will speed the development of competition; reduce administrative and legal costs for cities and telecommunications providers; give municipalities full authority to manage their public right-of-way in a manner consistent with the Federal Telecommunications act; and keep municipalities financially whole (Attachment 3).

Mike Reece, Government Affairs Consultant, AT&T testified in support of **SB 306**. Mr. Reece testified that **SB 306** would provide a fair and reasonable compensation to the cities, while providing carriers the ability to bring the benefits of the enhanced telecommunications infrastructures to citizens of Kansas rapidly. It eliminates costly and time consuming burden to negotiate with individual cities whose ordinances may contain specific and arbitrary provision (Attachment 4).

Rachel Lipman Reiber, Vice President of Regulatory and Governmental Affairs, Everest Telecommunications testified in support of **SB 306**. The process in several cities is being driven by the Mid America Regional Council (MARC) and its out of state consultants, who are promoting a "model" ordinance. This model ordinance is totally focused on maximizing revenues for the cities. Of particular concern is the fact that the model ordinance embodies principles that fly in the face of the Telecommunications Act of 1996, and which are the absolute antithesis to being neutral (Attachment 5).

Jim Gartner, Executive Director-External Affairs, Southwestern Bell testified in support of **SB 306**. Mid American Regional Council (MARC) has put together a "model" ordinance and there are areas that we disagree with. With the MARC agreement, there is a tax increase for the telecommunications industry and proposed ordinances that will delay delivery of advanced services (Attachment 6).

Mark P. Johnson, Attorney with law firm of Sonnenschein, Nath & Rosenthal testified in support of **SB 306** (Attachment 7).

Terry Leatherman, Vice President-Legislative Affairs KCCI, presented testimony in support of **SB 306** (Attachment 8).

Mayor Ed Eilert, Mayor of Overland Park, testified in opposition to **SB 306** stating this bill would take away the city's ability to effectively manage its right of way and cancel the city's ability to establish appropriate compensation means and rates for telecommunication service providers who enter the right of way (Attachment 9).

Don Brown, City Engineer of the City of Overland Park, testified in opposition to **SB 306** (Attachment 10).

Mike Santos, Senior Assistant City Attorney, Overland Park, testified in opposition to **SB 306** (Attachment 11). The bill is fundamentally unfair, local governments will have no ability to conserve and protect the resources of the public right-of-way or the utility easements. Private telecommunication providers may enter these areas and use as much of the resources as they may choose and only be required to pay an access line fee.

Dennis M. Kissinger, City Manager Salina, testified in opposition to **SB 306** (Attachment 12). The issues raised by SB 306 do not just impact communities in the metropolitan areas. As a city official, we take our stewardship of the public right-of-way very seriously. We recognize that new technology and industry advances have changed the dynamics of the right-of-way use dramatically from 30 years ago. It appears with **SB 306** another industry group desiring to use the public right-of-way for their business doesn't want to work with local

government through the franchise process. Their answer is to seek to exempt their industry from Kansas franchise laws allowing them to have a special privilege in using the public right-of-way in communities.

Eric Arner, Senior Assistant City Attorney, Lenexa, Kansas testified in opposition to **SB 306** (Attachment 13). Briefly summarized the City of Lenexa opposes the bill basically on two fronts right-of-way management and access line fees. The bill would seriously impact the ability of local government to effectively and efficiently manage their right-of-way.

Jeanne Hernandez, Franchise Manager Wichita testified in opposition to **SB 306** (Attachment 14). If this bill is adopted, it would undermine the essential concept of municipal control over public right-of-way. SB 306 would take away government rights and duties to manage the right-of-way.

David Corliss, Assistant City Manager & Director of Legal Service testified in opposition to **SB 306** (Attachment 15). This bill would destroy the City of Lawrence's authority to hold private companies responsible for what they do on public right-of-way.

Donald R. Seifert, Policy Development Leader, City of Olathe testified in opposition to **SB 306** (Attachment 16). Summarized the management of local right-of-way as the core function of the business we call local government. All basic local government services: public safety, transportation, and utilities, depend on the public right-of-way for the service delivery.

Dean Katerndahl, Mid-American Regional Council (MARC) testified in opposition to **SB 306** (Attachment 16).

Robert D. Roddy, Senior Manager, Public Works Department, Wyandotte County submitted written testimony in opposition to **SB 306** (Attachment 17).

William L. Kostar, Mayor of Westwood, presented written testimony in opposition to **SB 306** (Attachment 18).

Meeting adjourned at 9:30 a.m.

Next meeting scheduled February 19, 2001 at 8:30 a.m.