

SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2591

As Recommended by House Committee on
Energy, Utilities and Telecommunications

Brief*

HB 2591 would amend the Kansas Opens Meetings Act (KOMA) to exempt the Kansas Corporation Commission (Commission) from its provisions for matters relating to docketed proceedings before the Commission; prohibit *ex parte* communications in all Commission proceedings; and discharge Commission staff, technical staff, and the Office of General Counsel from being considered parties to any proceeding before the Commission.

Legislative Findings

The bill would include whereas clauses setting forth findings about the work of the Commission. The clauses would state the Commission is subject to the Public Utility Act, which sets forth provisions concerning proceedings before the Commission. The clauses would further state the proceedings are primarily conducted in accordance with the Kansas Administrative Procedures Act (KAPA), and that the agency complies with KOMA. The clauses would also state the Commission's orders rely on law and the basis of fact, and that the Commission is subject to the Kansas Judicial Review Act and state governmental ethics law.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Definitions

The bill would define the term “*ex parte* communication” to mean any communication with a commissioner or presiding officer that pertains to the merits of a docketed proceeding before the Commission, when that communication is made in the absence of another party to the proceeding, or their legal counsel.

KOMA Exemption

The bill would amend open meetings law to specifically exempt the Commission from the requirements of KOMA for meetings involving matters related to docketed proceedings before the agency.

Ex Parte Communication

The bill would also amend provisions of the KAPA relating to proceedings before the Commission to specify that KAPA applies to all docketed proceedings before the agency, including adjudicative proceedings. [*Note: Current law only subjects Commission adjudicative proceedings to KAPA.*]

Additionally, the bill would clarify that once the Commission has made a determination and announced a hearing will be held, parties to the proceeding, or their counsel, would be prohibited from engaging in any *ex parte* communication. Any written *ex parte* communications from any party regarding such proceedings to a commissioner must be made available to all parties if such communications took place after it was determined a hearing should occur.

The bill would exempt Commission staff, including technical staff and the Office of General Counsel, from being considered parties to any proceeding before the Commission and allow commissioners and presiding officers to discuss freely with any staff member Commission duties with respect

to any proceeding. The bill would also prohibit commissioners from being furnished with any facts that are outside the record and that could reasonably be expected to influence their decision on matters pending before the Commission.

Background

The bill was introduced by the House Committee on Energy, Utilities and Telecommunications at the request of the Committee Chair.

House Committee on Energy, Utilities and Telecommunications.

In the House Committee hearing, a representative of Kansans for Lower Electric Rates and Kansas Industrial Consumers Group provided **proponent** testimony, generally stating the bill would allow the agency's commissioners to better collaborate, since, under current rules, they are unable to freely discuss issues. The proponent noted that Commission staff are currently the primary point of contact for exchanging information. The proponent also stated that the bill would lead to better outcomes for Kansas' energy future.

Written-only proponent testimony was provided by the Kansas Chamber.

Neutral testimony was provided by the Kansas Corporation Commission.

Written-only **opponent** testimony was provided by representatives of the Kansas Press Association and the Kansas Association of Broadcasters, who generally stated that other bodies across the state with few members are subject to KOMA and that the bill does not meet the requirements of articulating substantial government interest that outweighs the public's right to be informed.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KCC indicated enactment of the bill would have no fiscal effect.

Kansas Corporation Commission; Kansas Open Meetings Act; ex parte communications; commission proceedings