

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on February 11, 2008 in Room 526-S of the Capitol.

Committee members absent:

Committee staff present: Raney Gilliland, Kansas Legislative Research Department  
Cindy Lash, Kansas Legislative Research Department  
Mike Corrigan, Revisor of Statutes  
Ann McMorris, Committee Secretary

Conferees appearing before the committee:

Others in attendance: See attached list

Chairperson Emler opened for further discussion and possible action on:

**SB 515 - electric generation, transmission and efficiency and air emissions**

Sen. Francisco inquired whether Midwest and Sunflower were selling their renewable energy credits from the production of the wind power at Montezuma. Mr. Penrod responded that only those credits from 2007 could be sold but he did not know the amount that was sold .

Sen. Pyle inquired whether Robert's Rules of Order applied to further action in the committee on this bill since no written rules had been made. Chair responded that roll call vote can be made by motion and second.

Sen. Francisco noted she had received considerable help from Sunflower, Westar and KCPL in getting a much better understanding of the offset costs.

Sen. Pine requested an explanation of the process of the proposed Algae Biocenter. Mr. Penrod explained it is a greenhouse environment. It would utilize methanol gas and make use of waste water. Q. Was the Kansas BioScience Authority involved? A. Yes, in Phase I. There was further discussion on water use and savings and the cost of processing algae to biodiesel.

Chair closed discussion and asked for action on the **SB 515**.

Moved by Senator Apple, seconded by Senator Lee, to amend **SB 515** by deleting the language starting on page 2, line 8 through page 12, line 7 (z515g13). Motion carried. "No" votes recorded from Sen. Francisco and Senator Reitz. (Attachment 1)

Moved by Senator Pyle to make a substitute motion. This amendment removes the carbon tax and replaces it with a tax credit. New language would be inserted in section (h) (1) page 11, lines 4 thru 37. Basically, starting in 2009, the tax credit is created for the owners of coal plants. Credit is for \$50 per pound of carbon dioxide reduced from the previous year. After discussion, Senator Pyle withdrew his motion. (Attachment 2)

Moved by Senator Taddiken, seconded by Senator Lee, amend **SB 515** by deleting Section 1 through Section 8 - page 1 line 15 through page 4, line 6. Motion carried.

Moved by Senator Petersen, seconded by Senator Taddekin, amend **SB 515** on page 26, Sec. 34 by striking the language starting at the end of line 5 through line 9 and inserting new language and by striking the language on page 27, line 2 -3 "member -owned generation and transmission cooperative and a member" and inserting 'cooperative as defined in subsection (a), that does not provide retail electric service and an owner' as shown in the balloon z515g15. Motion carried. (Attachment 3)

Moved by Senator Apple, seconded by Senator Reitz, amend **SB 515** on page 4, line 17 and 18 make these persons non-voting members; line 20 change to one member; line 11 appoint two persons with scientific background. Motion carried.

CONTINUATION SHEET

MINUTES OF THE Senate Utilities Committee at 9:30 A.M. on February 11, 2008 in Room 526-S of the Capitol.

Moved by Senator Taddiken, seconded by Senator Petersen, amend the proposed language of **SB 515** into **HB 2066** and delete all the current language in **HB 2066**, the new bill would be **Senate Substitute for HB 2066**. Motion carried. “No” votes recorded from Sen. Francisco and Sen. Reitz.

Moved by Senator Apple, seconded by Senator Lee, **Senate Substitute for HB 2066** as amended be passed out favorably. Motion carried. No” votes recorded from Sen. Francisco and Sen. Reitz.

Chairperson Emler read the Statement of Legislative Intent as follows:

**STATEMENT OF LEGISLATIVE INTENT**

On September 24, 2007, in response to a request from the Secretary of Health and Environment, the Attorney General issued a legal opinion (Ks. Atty. Gen. Op. No. 2007-31) which concluded that K.S.A. 65-3012 is applicable to the air quality permitting process and that this statute authorizes the Secretary to deny a permit application based on anticipated emissions of a particular pollutant for which there are no federal or state emission standards. However, these views of K.S.A. 65-3012 do not accurately reflect the intent of the Legislature.

As a matter of fact, the Legislature has never intended K.S.A. 65-3012 to have any application in the air quality permitting process. Moreover, the Legislature has never intended to authorize the Secretary of Health and Environment to deny, modify or otherwise take adverse action on any air quality permit application based on anticipated emissions of any air contaminant or pollutant for which there are no established federal or state emission standards.

Accordingly, the amendments to K.S.A. 65-3012 contained in **SB 515** do not change the existing law, but are intended only to correct a misinterpretation and application of that law by the Kansas Attorney General and the Secretary of Health and Environment.

This bill, in part, is intended:

\*To reject the profoundly mistaken views of legislative intent and statutory construction in Kansas Attorney General Opinion No. 2007-31;

\*To reiterate the limitations on the authority of the Secretary of Health and Environment under the Kansas Air Quality Act which the Legislature has never intended to remove or relax;

\*To ensure that the Secretary of Health and Environment cannot, without prior authorization from the Legislature, set emission standards for any air emissions that are more stringent than any emission standards established by the EPA in regulations under the Clean Air Act;

\*To ensure that the Secretary of Health and Environment cannot, without prior authorization from the Legislature, set emission standards for any air contaminant or pollutant for which the EPA has not established emission standards in regulations under the Clean Air Act;

\*To protect any applicant for an air quality permit from adverse administrative or judicial action in any pending proceeding based on any mistaken interpretation or application of K.S.A. 65-3012.

This bill does not establish lower standards for the issuance of air quality permits. On the contrary, this bill establishes - for the first time - a framework for mandating the mitigation of carbon dioxide emissions while simultaneously prohibiting the construction of new fossil-fueled merchant plants in this State.

Moved by Chairperson Emler, seconded by Senator Apple, the Statement of Legislative Intent be made a part of the minutes of this meeting. Motion carried.

Adjournment

Respectfully submitted,

Ann McMorris, Secretary

Attachments -3