

MINUTES OF THE House COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Representative David J. Heinemann at
Chairperson

3:30 ~~am~~/p.m. on February 15, 1983 in room 519-S of the Capitol.

All members were present except:
Representative Keith Roe (excused)

Committee staff present:
Theresa Kiernan, Revisor of Statutes' Office
La Nelle Frey, Secretary to the Committee

Conferees appearing before the committee:

Richard Brewster, Standard Oil Company of Indiana (Amoco Production Company).
Donald Schnacke, Kansas Independent Oil and Gas Association.
George Sims, Mobil Oil Corporation.
Jack Glaves, Anadarko.

Opponents of:
HB 2208 - An act relating to oil and gas leases; concerning covenants of reasonable exploration and development of lands covered by such leases; prescribing certain circumstances under which a presumption of a breach and violation of such covenants will arise.

Richard Brewster, representing Amoco Production Company, testified in opposition to HB 2208. He said the intent of the bill as he understood it was to encourage deep horizons production in Southwest Kansas. In reference to this encouragement of deep horizons production, he pointed out to committee members that since 1940, Amoco had drilled approximately 300 deep wells in the western portion of the state; and, since 1973, had drilled 61 deep horizons wells. He said that of those 61 wells, 29 were dry holes; 27 were oil; and 5 were gas. He stated that Amoco continues its intense seismic operations in Southwest Kansas, searching the deeper horizons. Mr. Brewster noted that HB 2208 shifted the burden of proof from the lessor to the lessee, when the lessee has failed reasonably to explore under his lease. He said he had several proposed amendments to HB 2208 which, if the bill passed, would give an existing producer the opportunity and time to take steps to preserve his rights to develop a field he has discovered (see attachment 1).

Donald Schnacke, Kansas Independent Oil and Gas Association, testified in opposition to HB 2208. He said his organization did not feel there was a need for this legislation for a number of reasons. He elaborated on those reasons and provided committee members with suggested changes in the bill (see attachment 2).

George Sims, Mobil Oil Corporation, testified in opposition to HB 2208. He said some of the aspects of the bill might make producers reluctant to conduct major exploration efforts in the deep horizons. He stated he did not think the bill was needed.

Jack Glaves, Anadarko, testified in opposition to HB 2208. He said he did not think the bill was needed since present law has prudent operator test.

A brief discussion period followed each of the presentations of testimony on HB 2208.

There being no further business to come before the committee, the meeting adjourned at 5:05 p.m.

The next meeting of the committee will be held February 17, 1983.

Rep. David J. Heinemann, Chairman

Date February 15, 1983

GUESTS

HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

NAME

ADDRESS

ORGANIZATION

17 in attendance

HOUSE BILL No. 2208

By Committee on Energy and Natural Resources

2-4

0015 AN ACT relating to oil and gas leases; concerning covenants of
0016 reasonable exploration and development of lands covered by
0017 such leases; prescribing certain circumstances under which a
0018 presumption of a breach and violation of such covenants will
0019 arise.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. As a matter of Kansas public policy, all oil and gas
0022 leases and subleases for the exploration, development and pro-
0023 duction of oil, gas or other minerals, or any combination thereof,
0024 which are held by production shall be presumed to contain, in
0025 addition to any expressed covenants therein, an implied cove-
0026 nant to reasonably explore and to develop the minerals which are
0027 the subject of such lease. Such implied covenant shall be a
0028 burden upon the lessee and any successor in interest.

0029 Sec. 2. In any action in which relief is sought based upon
0030 breach or violation by a lessee of an implied or expressed
0031 covenant of reasonable exploration or of reasonable develop-
0032 ment of lands covered by an oil, gas or oil and gas lease held by
0033 production, if the party who seeks such relief produces compe-
0034 tent evidence that: (a) At the time such action is commenced
0035 there is no mineral production pursuant to such lease from a
0036 subsurface part or parts of the land covered thereby with respect
0037 to which such relief is sought and (b) initial oil, gas or other
0038 mineral production on the lease commenced at least 15 years
0039 prior to the commencement of such action, a presumption shall
0040 arise that the lessee has breached and violated such covenant
0041 insofar as it relates to such subsurface part or parts of land,

0042 Sec. 3. The presumption established by section 1 may be
0043 overcome by the lessee proving by ^{clear and convincing} evidence

by the record owner(s) of at least 51% of the mineral
interests subject to the existing lease,

or actual drilling commenced by the lessee or sublessee

and (c) the lessor has received a bona fide offer by a pros-
pective lessee to explore by drilling such subsurface part
or parts of the land. Such bona fide offer shall be
accompanied by a good faith bond, in an amount to be deter-
mined by the court, and shall be deposited with the court.

a preponderance of the

0014 dence that the lessee has fully complied with such covenant
0015 prior to bringing such action for relief.

0016 Sec. 4. Nothing in this act shall apply to the depth interval
0017 from the surface of the land to the base of the deepest producing
0018 formation as of the date of such action.

0019 Sec. 5. As created by this act, it shall be against Kansas
0020 public policy to provide for a waiver of the presumption, es-
0021 tablished by section 1, in any lease or sublease for the explora-
0022 tion, development or production of oil, gas or other mineral, or
0023 any combination thereof.

0024 Sec. 6. This act shall not alter or affect substantive rights or
0025 remedies under any such mineral leases under the common law
0026 or statutes of the state of Kansas. The evidentiary presumption
0027 afforded by this act shall be cumulative and in addition to all
0028 other substantive rights and remedies in existence under the
0029 common law and statutes of this state on the effective date of this
0030 act.

0031 Sec. 7. This act shall take effect and be in force from and
0032 after its publication in the Kansas register.

Sec. 10.

If the court finds that the lessee against whom the action was brought has complied with its order to develop pursuant to Section 7 of this act, the action shall be dismissed and the said lessee shall retain the mineral rights to the subsurface part or parts which are the subject of this action.

In determining whether the lessee has fully complied with such covenant, the court shall consider all relevant evidence, including, but not limited to the cost-effectiveness of the development of such subsurface part or parts and the marketability of the oil, gas or other minerals sought.

New Sec. 7. Upon a finding by the court that the lessee has complied with the covenant created by this act, the bond provided for by subsection (c) of section 2 of this act shall be paid over to the lessee. Upon a finding by the court that the lessee has breached and violated the covenant created by this act, the bond shall be returned to the party who paid same. The court shall then grant to the lessee against whom the action was brought a reasonable time to develop the subsurface part or parts which are the subject of the action. In determining what shall constitute a reasonable time, the court shall consider all relevant evidence, including but not limited to the economic feasibility of such development and the marketability of the oil, gas or other minerals sought.

New Sec. 8. Upon expiration of the development time granted by the court as provided by Section 7 of this act, the lessee against whom the action was brought shall report to the court its development. If the court then finds, after hearing, that the said lessee has not developed the subsurface part or parts as provided in its order, the court shall declare said lessee's rights to such subsurface part or parts terminated and shall order that the mineral owner(s) may enter into a lease agreement with any party for the right to explore and develop mineral interests below the deepest producing formation as of the date the action was commenced.

New Sec. 9. Any order by the court pursuant to this act shall apply only to such subsurface part or parts of land for which a bona fide offer to explore by drilling was received. If no development of oil, gas or other mineral production of such subsurface part or parts occurs within five (5) years of the date of a new lease for such development, the rights to explore and develop the said subsurface part or parts shall revert to the lessee against whom the original action was brought.



KANSAS INDEPENDENT OIL & GAS ASSOCIATION

500 BROADWAY PLAZA • WICHITA, KANSAS 67202 • (316) 263-7297

Re: HB 2208 February 15, 1983

HB 2208 is similar to bills introduced since 1976. Two Attorney-General opinions stated in 1976 and 1977 it was unconstitutional.

Kansas law now is that there is an implied covenant to presently produce a lease. Lawsuits on this issue are common. Prior testimony has indicated that many landowners have not pursued this remedy in the courts-but rather they would look to the legislature to legislate something that is available to agrieved parties.

We think the word "development" in the title and lines 26,31, & 52 should be deleted. Kansas law enforces the implied covenant to develop now-the drilling of more wells after oil and gas is found. Kansas law does not enforce the implied covenant to explore-drill to new depths or on parts of a lease where no geological reason to drill. The treatment in Hugoton is no different than in other counties, except in reverse order.

1983 is different than 1982. This issue is now before the Federal Court in Kansas in Amoco vs. Douglas Energy. We think that case is important and the legislature should wait to see what the out come of that suit will develop.

This bill puts in jeopardy leases that normally are used to show the lending industry a justification for loans.

This bill is state wide legislation and effects oil and gas leases throughout Kansas. There is strong opposition to this legislation in our industry.

The bill would inhibit future secondary and tertiary recovery projects-forcing the giving up of a lease in the middle of a project.

This bill would require forced exploration. The standard for the burden of proof would shift to the lessee, contrary to Kansas law. The burden of proof on the part of the lessee is next to impossible-the showing of production in all zones.

If your really serious about this bill and you recognize this problem exists only in the Hugoton field, consisting of 9 counties, then why not restrict it to those counties?

It could be restricted to "zones lying 50 feet above the Morrow formation and all zones below".

SB 586 (1982) also had language that indicated the evidence had to include "(c) the lessee has not reasonably tested through drilling operations on such part or parts of such lease which is the subject of the action for relief". We think the entire burden of proof should not shift away from the lessor.

SB 586 (1982) restricted it to horizons below 3500 feet. We could support 4500 feet. We think 15 years is too short. It should be 20-25 years.

We do not believe there is a need for the legislation to act on this bill. We recommend it not be passed.

Donald P. Schnacke