

Approved 2-13-90
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Dennis Spaniol at
Chairperson

3:30~~xxx~~/p.m. on January 31, 1990 in room 526-S of the Capitol.

All members were present except:
Representative Barr (Excused)

Committee staff present:
Raney Gilliland, Principal Analyst, Legislative Research
Pat Mah, Legislative Research
Mary Torrence, Revisor of Statutes' Office
Maggie French, Committee Secretary

Conferees appearing before the committee:
Shari Albrecht, Administrator, Conservation Division, Kansas Corporation
Commission
Randy Debenham, Research Analyst, Utilities Division, Kansas Corporation
Commission

Chairman Dennis Spaniol called the meeting to order.

House Bill No. 2707 was brought up for final action by Chairman Spaniol. Vice-Chairman Holmes moved to pass House Bill No. 2707 and his motion was seconded by Representative Rezac. Discussion followed. Motion passed.

The chairman recognized Shari Albrecht, Administrator, Conservation Division, Kansas Corporation Commission, who testified as a proponent for House Bill No. 2696 concerning oil and gas and relating to notice of applications for and hearings on unit operation (Attachment 1). Discussion followed. The chairman concluded hearings on House Bill No. 2696.

The chairman announced testimony on House Bill No. 2697 concerning oil and gas and relating to responsibility for pollution from abandoned wells would be provided by Shari Albrecht, Administrator, Conservation Division, Kansas Corporation Commission. Following her testimony (Attachment 2), Ms. Albrecht requested the committee to recommend passage of House Bill No. 2697. After discussion which included possible abrogation of responsibility by the Kansas Corporation Commission which could weaken the intent of the Legislature; failure to record leases; purchases of leases on abandoned wells; responsibility for liability, etc., Vice-Chairman Freeman requested the committee be provided with examples of violations for the 25-county region in Southeast Kansas; the number of recorded leases in the same area, and the number of contracts let for District 3 (including the names of the firms receiving the awards and the dollar amount of individual bids). Hearings on House Bill No. 2697 were concluded by the chairman.

Chairman Spaniol recognized Randy Debenham, Research Analyst, Utilities Division, Kansas Corporation Commission, who presented testimony in support of House Bill No. 2699 concerning the State Corporation Commission and providing for exemption of certain public utilities from certain aspects of commission regulation (Attachment 3). After discussion concerning potential growth of the specified utilities; how safety laws are affected, etc., the chairman concluded hearings on House Bill No. 2699.

The meeting adjourned at 4:40 p.m.

Date: 1-31-90

GUEST REGISTER
HOUSE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

NAME	ORGANIZATION	ADDRESS	PHONE
ROBERT ANDERSON	MO COMT OIL & GAS	OTTAWA	242-1234
MIKE MCGRAW	OMY USA Inc	Tulsa	918 5614744
JEFFREY CONRAD	KG & E	LAWRENCE	354-1741
TREVA POTTER	PEOPLES NAT. GAS	TOPEKA	235-5996
Bill Fuller	Kansas Farm Bureau	Manhattan	587-6110
Woody Woodman	KCPH	KCMO	556-2155
Jim Ludwig	KPL	TOPEKA	296-7911
Charlene Stinson	Ks Natural Resource Council	Topoka	233-6707
Jimmy R. Hagler	Ks Wildlife Federation	Topoka	266-6185
Jeff Chanay	KIOGA	Topoka	267-5004
STEVE KEANEY	COASTAL	"	233-4512
Julie Hein	MESA	Topoka	273-1441
Gary Hulitt	Governor's Office	Topoka	296-6240
Bill Rinehart	Chevron U.S.A, Inc	Tulsa	918/560-4305
ROSS MARTIN	KPC	TOPEKA	234/0589
Alan Meyer	Governor's office	Topoka	—
Rebecca Pien	AMCO	Topoka	273-4170

STATEMENT
BY THE
KANSAS CORPORATION COMMISSION
IN SUPPORT OF
HOUSE BILL NO. 2696

PRESENTED TO THE HOUSE
ENERGY AND NATURAL RESOURCES COMMITTEE
REPRESENTATIVE DENNIS SPANIOL, CHAIRMAN
JANUARY 31, 1990

SHARI ALBRECHT
KANSAS CORPORATION COMMISSION
202 WEST FIRST ST.
WICHITA, KANSAS 67202
(316) 263 - 3238

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1-31-90
ATTACHMENT 1*

Mr. Chairman and members of the committee:

I am Shari Albrecht, Director of the Kansas Corporation Commission's Conservation Division. I am here today representing the Commission in support of House Bill No. 2696. This bill proposes amendments to K.S.A. 55-1310 relating to notice of applications for and hearings on unit operation.

INTRODUCTION

K.S.A. 55-1310, enacted in 1967, currently requires the Commission to give notice of an application for unit operation and the time and place of hearing on the application. The applicant is currently required to file with the Commission, at least 15 days before the hearing, a list showing the names and addresses of all oil and gas lessees and other oil and gas interests owners owning interests in the pool underlying the acreage subject to the application. The list is also required to include names and addresses of lessors, mineral owners and mortgagees of oil and gas interests of record. It is to the persons on this list that the Commission is required to provide notice. In addition, the Commission is required to publish newspaper notice of the hearing. The statute also provides that the Commission may require the applicant to pay the costs of providing notice.

EXPLANATION OF AMENDMENTS

The proposed amendment to K.S.A. 55-1310 would require the applicant to submit the list of names with the filing of the application and to provide notice to the listed persons and to

publish notice of the hearing in the appropriate newspapers. The amendment further deletes the language requiring the Commission to provide notice.

FISCAL IMPACT

The proposed amendment of K.S.A. 55-1310 does not fiscally impact the applicant since the Commission currently has discretion to require reimbursement for notice costs. Requiring the applicant to furnish and publish notice is consistent with the notice procedure required for all other applications filed with the Commission.

Deletion of the language requiring the Commission to give notice of applications for unit operations will save staff time spent in preparing and mailing the notices.

The Commission asks that you recommend this bill for passage.

Thank you for the opportunity to testify today. I would be pleased to respond to any questions you may have regarding this bill.

STATEMENT
BY THE
KANSAS CORPORATION COMMISSION
IN SUPPORT OF
HOUSE BILL NO. 2697

PRESENTED TO THE HOUSE
ENERGY AND NATURAL RESOURCES COMMITTEE
REPRESENTATIVE DENNIS SPANIOL, CHAIRMAN
JANUARY 31, 1990

SHARI ALBRECHT
KANSAS CORPORATION COMMISSION
202 WEST FIRST ST.
WICHITA, KANSAS 67202
(316) 263 - 3238

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1-31-90*

ATTACHMENT 2

Mr. Chairman and members of the committee:

I am Shari Albrecht, Director of the Kansas Corporation Commission's Conservation Division. I am here today representing the Commission in support of House Bill No. 2697. This bill proposes amendments to K.S.A. 1989 Supp. 55-179 relating to responsibility for pollution from abandoned wells.

INTRODUCTION

K.S.A. 1989 Supp. 55-179, although newly enacted in 1986 with the passage of House Bill No. 3078, is essentially an amended version of its predecessor, K.S.A. 55-140, which was first enacted in 1949 and repealed with the enactment of House Bill No. 3078. I have attached the version of K.S.A. 55-140 as it appeared in the 1983 statute book, Volume 4. As you can see, I have highlighted the language which was "amended" with the enactment of K.S.A. 1989 Supp. 55-179. I have also attached K.S.A. 1989 Supp. 55-179 in which I have highlighted any new or "amended" language.

K.S.A. 1989 Supp. 55-179 currently requires the Commission to make an investigation of any complaint filed pursuant to K.S.A. 1989 Supp. 55-178 to determine if any abandoned well is polluting or likely to pollute any usable water supply or causing the loss of usable water. As part of the investigation, the Commission must determine (1) whether the abandoned well is causing or likely to cause pollution or loss and (2) whether a person legally responsible for the care and control of the well exists.

K.S.A. 1989 Supp. 55-179(b) currently specifies that the determination of legally responsible person shall include, but not

be limited to: any operator of a waterflood or other pressure maintenance program deemed to be causing pollution or loss of usable water; the current or last operator of the lease upon which the well is located, irrespective of whether such operator plugged or abandoned the well, and the original operator who plugged or abandoned the well.

EXPLANATION OF AMENDMENT

The proposed amendment to K.S.A. 1989 Supp. 55-179 would change the language "shall include" in paragraph (b) to "may include" for determining the legally responsible person. As noted earlier, K.S.A. 55-140 used the language "may include", which language was first enacted in 1971 with the passage of House Bill No. 1323. See L. 1971, Ch. 187, Section 3.

Over the years the Commission has primarily viewed the current or last operator of the lease upon which the well is located as the legally responsible person, largely because the statute indicates that the current or last operator can be considered "irrespective of whether such operator plugged or abandoned such well." The emphasized language essentially places a duty on the current or last operator to take proper care and control of any abandoned or plugged well on the lease regardless of his fault. The Commission has interpreted this language as notice to lease purchasers to "buyer beware".

It has been the Commission's position that any current or last operator deemed legally responsible should be required to properly plug and abandon the well. If the operator believes he's been found unjustly responsible, he is in a better position than the Commission to pursue his predecessors in interest for reimbursement since he should have knowledge of their existence and whereabouts through the chain of lease assignments to which he is a party. The Commission only has access to such leases and agreements to the extent they are recorded in the Register of Deeds Offices, which recording is not required by law.

The use of the language "shall include", however, requires that the Commission consider all of the persons listed in K.S.A. 1989 Supp. 55-179(b) as well as any other person who may conceivably be in the chain of possession of the well. Such an exhaustive investigation is extremely time-consuming and ultimately defeats the purpose of K.S.A. 1989 Supp. 55-179, which is to protect groundwater resources and to reduce the deterioration of groundwater quality resulting from land use activities. See Proposal No. 23, Report on Kansas Legislative Interim Studies to the 1986 Legislature, p. 223. Arguably, the "shall include" language attempts to require the Commission to determine legal responsibility under the comparative negligence doctrine. However, this reading of the statute is inconsistent with the more specific language making the current or last operator legally responsible, irrespective of whether such operator plugged or abandoned the

wells. In order to eliminate this inconsistency, and in recognition of the prior long-standing use of "may include" which gives the Commission flexibility and discretion in determining legal responsibility, the Commission supports the proposed amendment to House Bill No. 2697.

FISCAL IMPACT

The proposed amendment of K.S.A. 1988 Supp. 55-179 will reduce the Commission's expenditure of investigation and hearing time in determining legal responsibility. A typical investigation currently takes approximately 50 man-hours of field personnel time valued at an average of \$35.00 per hour. Preparation for and hearing takes approximately 29-45 man-hours of legal staff time valued at \$33.00 per hour.

The number of potentially responsible persons reviewed can vary with the age of the well, but typically involves investigation of at least four persons. The proposed amendment should reduce these costs by approximately two-thirds for a savings of \$2000.00 for each typical investigation and hearing. Last fiscal year, approximately 84 investigations were conducted and in the first half of FY 90 approximately 63 investigations have been conducted.

In addition, the proposed amendment would reduce the amount of time spent on any one investigation, allowing either more investigations to proceed or more time to be spent in administering other programs. No additional positions or operating expenditures

would be required. These identified savings would be anticipated to continue in the future.

An immeasurable fiscal impact of retaining the current statutory language is that an exhaustive investigation could cause more harm environmentally as the well continues to pollute through the investigation process.

The Commission asks that you recommend this bill for passage.

Thank you for the opportunity to testify today. I would be pleased to respond to any questions you may have regarding this bill.

55-140. Same; investigation by secretary or commission; findings; responsibility for remedial action; costs; hearings and orders; presumption of polluting, when. (a) Upon receipt of any complaint filed pursuant to K.S.A. 55-139, and amendments thereto, the commission or the secretary shall make an investigation for the purpose of determining whether such abandoned well is polluting or is likely to pollute any usable water strata or supply or causing the loss of usable water, or the commission or the secretary may initiate such investigation on its own motion. If the commission or the secretary shall determine:

(1) That such abandoned well is causing or likely to cause such pollution or loss; and (2)(i) that no person is legally responsible for the proper care and control of such well; or (ii) that such person so legally responsible for the care and control of such well is dead or no longer in existence or insolvent or cannot be found, then, within 60 days after completing its investigation, the commission shall plug, replug or repair such well, or cause it to be plugged, replugged or repaired, in such a manner as to prevent any further pollution or danger of pollution of any usable water strata or supply or loss of usable water. The cost of such plugging shall be paid by the commission from the conservation fee fund. For the purposes of this section, a person who is legally responsible for the proper care and control of an abandoned well may include, but is not limited to, the following: Any operator of a waterflood or other pressure maintenance program deemed to be causing pollution or loss of usable water; the current or last operator of the lease upon which such well is located,

irrespective of whether such operator plugged or abandoned such well; and the original operator who plugged or abandoned such well.

(b) Whenever the commission or the secretary determine that a well has been abandoned and is causing or is likely to cause pollution of any usable water strata or supply or loss of usable water, and whenever the commission or the secretary shall have reason to believe that a particular person is legally responsible for the proper care and control of such well, the commission shall cause such person to come before it at a hearing held substantially in the manner prescribed by K.S.A. 55-605, and amendments thereto, and to show cause why the requisite care and control has not been exercised with respect to such well. After such hearing, if the commission finds that such person is legally responsible for the proper care and control of such well and that such well is abandoned, in fact, and is causing or is likely to cause pollution of any usable water strata or supply or loss of usable water, the commission may make any order or orders prescribed in K.S.A. 55-162. Proceedings for rehearing and review of any of the commission's orders may be held pursuant to K.S.A. 55-606, and amendments thereto.

(c) For the purpose of this act and the acts of which this act is amendatory, any well which has been abandoned, in fact, and has not been plugged pursuant to the rules and regulations in effect at the time of plugging such well shall be and is hereby deemed likely to cause pollution of a usable water strata or

supply.

History: L. 1949, ch. 308, Section 2; Lo. 1953, ch. 284, Section 3; L. 1971, ch. 187, Section 3; L. 1982, ch. 228, Section 18, July 1.

55-179. Investigation of complaint by the commission; findings; responsibility for remedial action; costs; hearings; orders.

(a) Upon receipt of any complaint filed pursuant to K.S.A. 1987 Supp. 55-178 and amendments thereto, the commission shall make an investigation for the purpose of determining whether such abandoned well is polluting or is likely to pollute any usable water strata or supply or causing the loss of usable water, or the commission may initiate such investigation on its own motion. If the commission determines;

(1) That such abandoned well is causing or likely to cause such pollution or loss; and

(2) (A) that no person is legally responsible for the proper care and control of such well; or (B) that such person so legally responsible for the care and control of such well is dead or no longer in existence or insolvent or cannot be found, then, within 60 days after completing its investigation, the commission shall plug, replug or repair such well, or cause it to be plugged, replugged or repaired, in such a manner as to prevent any further pollution or danger of pollution of any usable water strata or supply or loss of usable water. The costs of such plugging shall be paid by the commission from the conservation fee fund.

(b) For the purposes of this section, a person who is legally responsible for the proper care and control of an abandoned well shall include, but is not limited to, the following: Any operator of a waterflood or other pressure maintenance program deemed to be causing pollution or loss of usable water; the current or last operator of the lease upon which such well is located,

irrespective of whether such operator plugged or abandoned such well; and the original operator who plugged or abandoned such well.

(c) Whenever the commission determines that a well has been abandoned and is causing or is likely to cause pollution of any usable water strata or supply or loss of usable water, and whenever the commission has reason to believe that a particular person is legally responsible for the proper care and control of such well, the commission shall cause such person to come before it at a hearing held in accordance with the provisions of the Kansas administrative procedure act to show cause why the requisite care and control has not been exercised with respect to such well. After such hearing, if the commission finds that such person is legally responsible for the proper care and control of such well and that such well is abandoned, in fact, and is causing or is likely to cause pollution of any usable water strata or supply or loss of usable water, the commission may make any order or orders prescribed in K.S.A. 55-162, and amendments thereto. Proceedings for reconsideration and judicial review of any of the commission's orders may be held pursuant to K.S.A. 55-606, and amendments thereto.

(d) For the purpose of this section, any well which has been abandoned, in fact, and has not been plugged pursuant to the rules and regulations in effect at the time of plugging such well shall be and is hereby deemed likely to cause pollution of any usable water strata or supply.

(e) For the purpose of this section, the person legally responsible for the proper care and control of an abandoned well shall not include the landowner or surface owner unless the landowner or surface owner has operated or produced the well, has deliberately altered or tampered with such well thereby causing the pollution or has assumed by written contract such responsibility.

History: L. 1986, ch. 201, Section 31; L. 1986, Ch. 356, Sec. 165; July 1.

HOUSE BILL 2699

TESTIMONY OF

Randy R. Debenham
Utilities Division
Kansas Corporation Commission

Mr. Chairman and Members of the Committee:

My name is Randy Debenham. I am a Research Analyst for the Utilities Division of the Kansas Corporation Commission. I am representing the Commission in support of House Bill 2699, which would remove certain small consumer-owned utilities from our economic regulation. I thank you for the opportunity to testify.

The Kansas Corporation Commission (KCC) proposes to exempt from its economic regulation, those nonprofit utilities in which: (1) every customer is an owner of the utility and has an equal vote on matters concerning the utility; (2) the utility employs no full-time employees; and (3) the utility has no more than 100 customers. The function of a public utility commission is to protect consumers of utility monopolies from monopolistic behavior and rates, while ensuring a fair rate of return to the utility and its investors. Investor-owned utilities, absent regulation, would tend to operate in such a manner as to maximize the return to its investors at the expense of its customers.

The small utilities this legislation would affect are owned by their customers. There is no reason for these utilities to charge rates higher than necessary for the operation of the utility.

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1-31-90
ATTACHMENT 3

This legislation would exempt three utilities from KCC economic regulation. They are M & R Gasline, which has seven customer/owners outside of Chanute and less than two miles of pipeline; Scotsman Estate Association, a water company with 35 customer/owners outside of Buffalo; and Cherokee Cooperative Water Company, which has 14 customer/owners outside of Coffeyville.

This legislation may soon affect two additional utilities. Onion Creek Water Company is in default on loan payments and has been seized by the lending bank. The lending bank is now looking for a buyer and has approached the customers of Onion Creek. If the company were sold to its customers, it may also qualify under the proposed exemption. Onion Creek has 26 customers outside of Coffeyville.

The KCC is looking at taking jurisdiction of D & W Water Company outside of Manhattan. I have not yet examined their situation, but understand that it is a nonprofit association of about 32 homeowners. They may also be affected by this legislation.

Employees of the affected utilities are typically unpaid volunteers, generally retired, with little or no knowledge of regulation. Complying with our rules and regulations is a genuine monetary and time burden for these utilities and their employees.

The KCC has never received a complaint from a customer of any one of these utilities. The reason is simple. The customer would essentially be complaining about himself or herself.

The KCC asks that you recommend this bill for passage. I will be pleased to respond to any questions the Committee may have.