

Approved April 6, 1992  
Date

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by Senator Lana Oleen at  
Chairperson

1:45 a.m./p.m. on March 30, 1992 in room 531-N of the Capitol.

All members were present except: Senator Oleen, Bogina, Doyen, Gaines, Kanan, Moran,  
Strick and Vidricksen.

Members Absent - Excused: Senator Francisco.

Committee staff present:

Julian Efird, Kansas Legislative Research Department  
Fred Carman, Revisor of Statutes Office  
Mary Allen, Committee Secretary

Conferees appearing before the committee:

Cindy Lash, Legislative Division of Post Audit  
Brian Moline, State Corporation Commission

The meeting of the Senate Committee on Governmental Organization was called to order at 1:45 p.m. by the Chairman, Senator Lana Oleen. Chairman Oleen called on Cindy Lash, Legislative Division of Post Audit, to present that Division's performance audit report entitled "Reviewing Potential Overlap in State Agencies' Responsibilities for Protecting Groundwater and Regulating Transportation".

Ms. Lash said that this audit looked at several issues relating to the State Corporation Commission. The first, she said, involved reviewing whether there is unnecessary duplication between the Commission and the Department of Health and Environment in protecting groundwater resources. She noted that review showed that both agencies have statutory responsibility for preventing and cleaning up pollution from oil and gas activities with the Commission being responsible for the clean up of pollution resulting from active production of oil or gas and the Department responsible for clean up of land where oil and gas production has been abandoned. She observed that although the agencies have adopted a memorandum of understanding to help minimize duplication, the potential for inefficiency still exists. Ms. Lash said that the Audit Report recommends: (1.) To comply with K.S.A. 55-185, the Corporation Commission and the Department of Health and Environment should have a current, signed memorandum of understanding at all times; and, (2.) To reduce potential duplication and inefficiency between the agencies, the Legislature should study the issue of consolidating protection of groundwater from oil and gas pollution into one agency.

The second issue which was addressed in this Audit Report, Ms. Lash said, was whether there appears to be overlapping responsibilities between the Corporation Commission's Transportation Division, the Highway Patrol, and the Department of Revenue and Transportation in regulating transportation in Kansas. She noted that the review conducted to address that issue showed that, while regulation of transportation was fragmented between numerous state agencies, each agency or division appeared to handle a separate and distinct type of activity, which was generally related to that agency or division's statutory purpose. She stated that the Audit Report recommends that in order to reduce the number of places that motor carriers have to report mileage information, the Secretary of Revenue should direct the Division of Property Valuation, the Motor Carrier Services Bureau and the Business Tax Bureau to look into ways of sharing that information so that motor carriers could report it to the Department only once. A further recommendation states that in order to reduce the inefficiencies that exist from having several different agencies involved in motor carrier regulation, the Corporation Commission, the Highway Patrol, and the Departments of Revenue and Transportation should establish an interagency group, composed of staff from the various divisions that regulate motor carriers, to consider options contained in the Post Audit Report and other options for streamlining motor carrier regulation in Kansas and to report these options to the 1993 Legislature.

The final issue considered for the Post Audit Report was to identify options to

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

room 531-N, Statehouse, at 1:45 ~~am~~/p.m. on March 30, 1992

help minimize the conflicts which a regulatory agency faces in protecting the public while, at the same time, insuring that the regulating industry remains viable. Ms. Lash said that to insure that regulation is balanced and fair, states have a responsibility to insure that the people who do the regulating are as free from bias as possible. She listed several things which the Legislature could do to insure that the Corporation Commission and its staff are as independent as possible such as restricting employment with regulated industries, setting qualifications for Commission members, and prohibiting staff from serving on industry committees. She pointed out, however, that such policies could have some disadvantages which could diminish the benefits gained from greater independence from the industry. (See Attachment I for copy of Ms. Lash's testimony.) (A copy of the Performance Audit Report is on file in the Legislative Division of Post Audit.)

Brian Moline, General Counsel for the State Corporation Commission, answered questions concerning staff which serve on industry committees and he noted that there are two committees which have been set up to study state energy policy, one a legislative committee and one an industry committee, on which staff members of the Corporation Commission serve. In addition, he said, the Director of the Conservation Division serves on a number of interstate advisory committees.

Chairman Oleen announced that the two bills which are before the Committee concerning the State Corporation Commission, SB 426 and HB 2667, will be held for further discussion at the next meeting of the Committee on March 31, 1992.

The Committee turned its attention to bills previously heard.

Senate Bill 472 - Sunset law, Kansas lottery, executive director, commission, continuation.

Senator Kanan moved that SB 472 be reported favorably for passage. Senator Vidricksen seconded the motion. The motion carried. Senator Doyen voted no.

House Bill 2960 - Community colleges, boards of trustees, student member.

Senator Gaines moved that HB 2960 be reported favorably for passage. Senator Moran seconded the motion. The motion carried.

House Bill 3136 - State school for visually handicapped, name changed to state school for the blind.

Senator Doyen moved that HB 3136 be amended by incorporating into the bill the provisions of HB 2985, as requested by Representative Bryant, to provide that trainers of guide dogs, while engaged in the training of such dogs, would have access to public facilities if they are a representative of a certified school. Senator Moran seconded the motion. The motion carried.

Senator Doyen moved that HB 3136, as amended, be reported favorably for passage. Senator Vidricksen seconded the motion. The motion carried.

The meeting was adjourned by Chairman Oleen at 2:25 p.m.

GUEST LIST

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NAME

REPRESENTING

Tom DAY

KCC

Mary E. Turkington

Kansas Motor Carriers Assn-

Cindy Lash

Post Audit

Sharon Patnode

Post Audit

Brian Mohr

KCC

Jean McNeill

KCC

**Legislative Post Audit Presentation to the  
Senate Governmental Organization Committee**

**March 30, 1992**

Reviewing Potential Overlap in State Agencies' Responsibilities  
for Protecting Groundwater and Regulating Transportation

Senator Oleen, members of the Committee-

In the first part of this audit, we were asked to look at whether there was unnecessary duplication between the Commission and the Department of Health and Environment in protecting groundwater resources. Since at least the 1930s, both agencies have been involved in protecting water from oil and gas pollution. There is a timeline on pages 4 and 5 of the audit that spells out each agency's involvement over the years.

We found that, although the Commission and the Department do not duplicate each other's efforts on groundwater protection, inefficiencies result from having two agencies involved in this area. Current statutes assign pollution cleanup to both agencies, with individual responsibility to be defined in an interagency memorandum of understanding. The statutes list a number of areas that are to be included in the memorandum.

Under the memorandum, the agencies have divided responsibility for clean up as follows: the Commission cleans up pollution from active production of oil and gas, while the Department cleans up pollution on land where production has been abandoned. (active leases vs. abandoned leases). If pollution flows beyond the boundaries of an active lease, the agencies cooperate on clean up.

This arrangement prevents the agencies from duplicating each other's efforts on the same piece of land, but it provides no particular benefit to the State. The agencies handle pollution clean up the same way; there is no real difference between them on the procedures they follow in responding to pollution. And, whenever more than one governmental agency is assigned responsibility for a function, it creates the appearance of duplication and the potential for inefficiency. We found several areas that can create inefficiency in the current system:

-because the agencies do not have have the same definition of what constitutes an abandoned lease, and neither follows the definition in the memorandum of understanding, it is possible that either could claim responsibility for clean up on a particular lease, depending on which agency it was initially reported to

-both agencies could be working with the same landowner. A landowner's property could contain both active and abandoned leases, which could involve both agencies in the event of pollution. In addition, because pollution from oil and gas

*Senate Committee on Governmental Organization*

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*Attachment I*

transportation pipelines is the Department's responsibility, a landowner with pollution from an active lease and pollution from the pipeline would be working with both agencies. The profile on page 8 describes this situation.

-additional paperwork is generated because both agencies report all spills and complaints to each other. While this keeps each agency informed about situations they may receive calls about, it creates a substantial flow of paperwork.

We talked to representative of the State's groundwater management districts, environmental groups, several State water agencies, and the federal EPA. No one but the environmental groups thought there was currently overlap or duplication between the agencies, but many people noted that there was confusion among the public as to which agency to notify about pollution problems.

We also talked with representatives of the oil and gas agency in five states (CO, LA, NM, OK, TX). In all of these states groundwater protection and pollution clean up related to oil and gas activities was the sole responsibility of the oil and gas regulatory agency. None of the states split pollution clean up between two agencies, as Kansas does.

We also asked how the States handled regulation of injection wells, and found that in all cases, Class II wells were regulated by the oil and gas agency. The other types of wells were generally regulated by other agencies.

We make two recommendations: first, that the Commission and the Department renew their memorandum of understanding, which expired last June, and include in the memorandum all elements required by statute. Second, that the Legislature study the issue of consolidating pollution clean up from oil and gas activities in one agency.

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The second area we were asked to address related to whether there were overlapping responsibilities between the Corporation Commission's transportation division, the Highway Patrol, and the Departments of Revenue and Transportation in regulating transportation in Kansas. We found that regulation of transportation was fragmented between numerous agencies, but that each agency or division appeared to handle activities which were generally related to their statutory function. Our work in this area was limited to motor carriers because this is the primary function of the Commission's Transportation division.

Motor carriers are companies or individuals involved in operating one or more motor vehicles, such as trucks, trailers, cars, or busses, to carry goods or passengers. Motor carriers that operate in Kansas must meet a number of requirements, which are handled by a variety of State agencies. The graphic on page 17 shows the responsibilities of the four main agencies involved with motor carriers, as well as five other agencies that are involved to a lesser extent. Briefly,

- the Corporation Commission issues operating authority, which specifies the goods to be transported and the routes a motor carrier is allowed to travel. The Commission also examines and inspects motor carriers' operations.

-the Department of Revenue collects property and fuel use tax, and registers interstate motor carriers.

-the Department of Transportation issues permits for vehicles that are oversize or overweight.

-the Highway Patrol enforces all State laws and regulations related to motor carriers on State roads.

The table on page 18 shows regulatory activities related to motor carriers, and which State agency is responsible for carrying out the activities. The table shows four activities that more than one agency is involved with, however, there is little actual overlap in what the agencies actually do. For example,

-All four agencies can issue rules and regulations. The Highway Patrol has chosen not do so because the other agencies appear to have covered all the necessary areas. The other three agencies have issued regulations that strictly relate to their areas of responsibility.

We talked with officials in the surrounding states, as well as Iowa and Minnesota to see how they structured regulation of motor carriers. Generally, the states spread regulation among many agencies. Five of the six states had at least three agencies involved in regulating motor carriers. They generally tried to compensate for this fragmentation by centralizing information in some way, ranging from a pamphlet that listed all requirements and where to go for each, to having some type of one-stop-shop, a single location where motor carriers could obtain nearly every item necessary to operate legally. The profile on page 21 describes how Iowa and Minnesota have implemented the one-stop-shop concept.

Kansas could streamline its process as well. Representatives of the motor carrier industry told us that motor carriers needed a single phone number they could call to get comprehensive information on Kansas' requirements.

In addition, we found that several agencies collect the same information from motor carriers. Interstate motor carriers must report their total annual mileage, and miles traveled in Kansas, to three different divisions within the Department of Revenue. A list of all vehicles and identifying information must be reported to two division in Revenue and also to the Corporation Commission. Insurance information must be reported to three agencies.

There are several options the State could consider, all of which have been used by other states:

-centralize all regulatory information - well-publicized single phone number that

would provide comprehensive information about all requirements; pamphlet.

- put representatives from every agency involved in regulating motor carriers in one building (Minnesota)

- have one State agency serve as an agent for all others - single point of contact, employees cross-trained to issue authorizations for all programs.

- reorganize all functions relating to regulation of motor carriers into a new or existing agency (Iowa)

We make two recommendations: first, that the Secretary of Revenue directs his division heads to look into ways of sharing information so that motor carriers can report mileage information to the Department only once. Second, that the Commission, the Highway Patrol and the Departments of Revenue and Transportation establish an interagency group to study options for streamlining motor carrier regulation, and should report their findings and recommendations to the 1993 Legislature.

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In the third question we were asked to identify options to help minimize the conflict a regulatory agency faces in protecting the public while at the same time ensuring that the regulated industry remains viable.

To ensure that regulation is balanced and fair, states have the responsibility to ensure that those who do the regulating are as free as possible from actual bias or the appearance of bias. There are a number of things the Legislature could do to help ensure the Commission and its staff are as independent as possible. Each action has benefits as well as disadvantages.

- the Legislature could place responsibility for environmental protection and regulation of oil and gas production in separate agencies. This approach has not been taken by any of the states we surveyed, and would further fragment regulation of the industry.

- the Legislature could require that Commission employees not work in the regulated industry for a certain period of time before or after they are employed by the Commission. This would provide stronger assurances of staff independence, but could make it difficult for the Commission to hire knowledgeable and experienced staff.

- the Legislature could establish qualifications for serving on the Commission. By requiring the Commission to be made up of members with a variety of backgrounds in areas related to regulation (rate-setting, geology, etc), the Commission as a whole would be more independent from the regulated industry. However, some capable people who didn't meet specific qualification could be excluded.

- the Legislature could prohibit the Commission's staff from serving on industry-related advisory committees. This would help maintain independence, however the State would then have no input to the committees.

-the Legislature could strengthen laws prohibiting financial ties or compensation from the industry. Currently the prohibition applies only to commissioners, attorneys, and the Secretary of the Commission. Extending the prohibition to cover all employees, or at least division heads, would strengthen present statutes.

When we interviewed staff of oil and gas regulatory agencies in five states (CO, LA, NM, OK, TX) we found those states have placed few restrictions on their regulatory staff. The table on page 28 shows the results of our interviews. As the footnotes show, many of the states that have some type of limit are really not very restrictive. For example, three states had limits employment with the industry after leaving the regulatory agency, but they simply prohibited the person from directly representing the industry before the commission for a year or two.

All of these actions we have laid out could help increase the Commission's independence from the industry, but all must be weighed against their potential disadvantages.