

Approved: 2/9/95  
Date

## MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES .

The meeting was called to order by Chairperson Ben Vidricksen at 9:00 a.m. on February 8, 1995 in Room 254-E of the Capitol.

All members were present except:

Committee staff present: Hank Avila, Legislative Research Department  
Ben Barrett, Legislative Research  
Bruce Kinzie, Revisor of Statutes  
Martha Ozias, Committee Secretary

Conferees appearing before the committee:

William R. Bryson - Director of the Oil and Gas Conservation  
Division for the Kansas Corporation Commission  
Jack Tierce - Deputy Director of the Transportation Division,  
State Corporation Commission  
Mary Turkington - Kansas Motor Carriers Association  
Pat Wiechman - Kansas Automotive Dismantlers and Recyclers  
Association

The Chairman called the meeting to order and introduced William Bryson.

### **HB 2042-PROHIBITING GAS OR OIL WELLS NEAR RAILWAYS**

This bill contains some statutory language which is outdated and obsolete and no longer applies to the modern day oil and gas industry.

Mr. Bryson explained that railroads now own the right of way which covers 100 feet from the tracks and have the power of preventing a well from being drilled. This statute has not had application for several decades and he requested that it be repealed. (Attachment 1)

### **HB 2043-CONCERNING CRUDE OIL; RELATING TO CERTAIN BONUS OR DISCOVERY ALLOWABLES**

Mr. Bryson also spoke in support of this bill which likewise has statutory language which is obsolete and is no longer applicable to current regulations of the oil and gas industry. (Attachment 2)

A motion was made by Senator Papay to pass HB 2042 and HB 2043 favorably and place on the Consent Calendar. This was seconded by Senator Harris. Motion carried.

### **SB 162-CONCERNING REGULATION OF MOTOR CARRIERS**

Jack Tierce addressed this legislation which affects 38 Kansas statutes by eliminating the reference to price, route and service, and some clean up language. Private, interstate exempt, and interstate regulated motor carriers are not affected by the changes of the federal preemption legislation. Intrastate common, contract and local wrecker carriers are the only motor carriers which are impacted. The main change adds a new type of certificate issued to common carriers transporting property other than household goods and eliminates local wreckers. (Attachment 3)

Mary Turkington expressed strong support for this bill which offers a workable statutory framework through which these federal changes may be accommodated without major disruptions in the Kansas transportation system. (Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES, Room 254  
E-S Statehouse, at 9:00 a.m. on February 8, 1995.

Senator Papay made a motion to pass this bill favorably. A seconded was made by Senator Jones. Motion carried.

Pat Weichman requested introduction of a new bill to correct provisions, in last year's SB 162, that could not be enforced and was causing problems with smaller industries. The new language will identify major component parts.

A motion was made by Senator Burke to have this legislation introduced. This was seconded by Senator Rock. Motion carried.

Senator Emert requested introduction of a bill concerning foreign cars brought into the state to be inspected by the Highway Patrol or designee. A seconded was made by Senator Jones. Motion carried.

A motion to approve the minutes of the February 2nd meeting was made by Senator Papay. A second was made by Senator Jones. Motion carried.

The meeting was then adjourned by the Chairman.

The next meeting is scheduled for February 9, 1995.



TESTIMONY ON HOUSE BILL 2042  
BY THE KANSAS CORPORATION COMMISSION  
PRESENTED BEFORE THE SENATE TRANSPORTATION  
AND UTILITIES COMMITTEE

February 8, 1995

I am William R. Bryson, Director of the Oil and Gas Conservation Division for the Kansas Corporation Commission. I am appearing in support of House Bill 2042 which proposes repeal of two statutes which have been on the books since 1905. Sometime last year, the Chairman of the House Energy and Natural Resources Committee asked us to review our statutes for any outdated, obsolete measures which no longer apply to modern day oil and gas regulation.

KSA 55-110 is a general statute making it unlawful to drill or operate an oil or gas well within 100 feet of the center of a right of way of any steam or electric line of a railway. KSA 55-111 is a companion statute which describes the penalties for violation of KSA 55-110. This statute was passed when there was a concern over the personal health and safety of humans from fire, explosion or electrocution if such wells were located close to the passage of steam locomotives and electric trolley lines. Such accidents had occurred in Ohio and Pennsylvania in the late 1890's and early 1900's.

Current day railroads own the right of way which covers 100 feet from tracks and have the power of preventing a well from being drilled by just not leasing the property. In addition, KCC staff reviews well locations as a part of its intent to drill approval process.

These statutes have not had application for several decades and we are requesting your support to have them repealed.

SENATE TRANSPORTATION

DATE: 2/8/95

ATTACHMENT: 1

TESTIMONY ON HOUSE BILL 2043  
BY THE KANSAS CORPORATION COMMISSION  
PRESENTED BEFORE THE SENATE TRANSPORTATION AND  
UTILITIES COMMITTEE

February 8, 1995

I am William R. Bryson, Director of the Kansas Corporation Commission, Conservation Division. I am testifying in favor of House Bill 2043. During the fall of 1994, the Commission was requested by the Chairman of the House Energy and Natural Resources Committee to review Chapter 55 for statutory language which was obsolete and no longer applicable to current regulation of the oil and gas industry. Contained in House Bill 2043 are two sets of statutes which we are recommending for repeal.

In KSA 55-603 and KSA 55-604, we are recommending deletion of all reference to the temporary bonus and discovery allowable. In 1994, the KCC approved amending regulations KAR 82-3-203 to greatly liberalize the allowable production under statewide rules for newly discovered oil wells believing that the regulations that we had in effect served as a deterrent or disincentive to exploration. The new regulation, which is attached as Table I, will cover most new discoveries under statewide rules and the need to give a temporary bonus or discovery allowable becomes academic. This change does not affect the operators opportunity to come before the Commission to seek a spacing order or specific allowable for a new pool nor does it deter the operators from seeking a dissolution of existing spacing or allowable order for a field. Finally, the repeal of existing statutory language would not affect the eligibility of new oil pool discoveries for severance tax exemption or allowance. The Commission, upon its own motion has put up over 600 oil and gas field spacing and proration orders for dissolution through hearing since 1991. This process is reflective of the fact that Kansas is rapidly becoming a unprorated state for oil production. In prorated fields, a temporary bonus could be allowed as a part of the Basic Proration Order.

We are also recommending total repeal of KSA 55-604(b) on pages 2 and 3 of House Bill 2043, which describes the process described to be followed by the Commission in establishing market demand for oil. There may be someone attending this hearing which recalls the last market demand hearing for oil, but it has been at least a decade. There is no way, Kansas with its 3% of the domestic market, can create a surplus or import price. Foreign entities such as OPEC do that for us. The Commission does have market demand hearings for statewide gas production every six months. Since Kansas will never return as a major player in oil production (we rank 8th in the U.S.), this part of KSA 55-604 is no longer needed.

The final set of statutes recommended for repeal are KSA 55-612 and 55-613. These are mentioned under Section 3 of page 4 of HB 2043. The entire text of these statutes is provided as an attachment. These statutes were enacted by the 1973 Legislature as a result of concerns over low crude oil prices and empowered the Commission to

Testimony HB 2043  
February 8, 1995  
Page 2

determine inadequate field prices for crude oil in the interest of preventing physical and economic waste and after hearings (KSA 55-613), to set a minimum price of crude oil at a price when such production would not create waste. As far as KCC staff recalls, no such hearings have ever been held and none are likely since Kansas acting alone would only hurt itself by taking such action. Acting in concert with other oil producing states would cause a form of cartel which has been dimly viewed from a legal perspective.

We would appreciate the Committee's consideration repealing the statutory provisions set forth in House Bill 2043.

Attachment #1

82-3-203 State and pool allowable and proration.

(a) Well allowables for non-prorated pools. Allowables shall be assigned on an individual well basis. The allowables for each well in non prorated pools shall be set by the following depth schedule and shall take effect from the date of first production:

<u>Producing Interval</u>	<u>Daily Production Allowable</u>
Found Between	bbls/well/day
0-4000'	100
4001-6000'	200
Below 6000'	300

Regulation before change:

<u>Pool Depth Range</u>	<u>Maximum Allowable bbls/well/day</u>
0 to 2,500	50
over 2,500 to 4,500	53
over 4,000 to 4,500	56
over 4,500 to 5,000	62
over 5,000 to 5,500	70
over 5,500 to 6,000	78
over 6,000	88

**55-612. Minimum price of crude oil; determination by corporation commission.** Whenever the corporation commission of the state of Kansas shall determine that inadequate field prices of crude oil are making it economically unfeasible to continue the production of crude oil from wells otherwise actively producing oil, thereby resulting in economic waste and physical waste of the oil resources of this state and nation, such commission is hereby authorized to fix the minimum price of crude oil at a level sufficient to conserve such oil resources and to prevent economic waste and physical waste of such resources.

**History:** L 1973, ch. 219, Section 1; July 1.

**55-613. Hearing on minimum price of crude oil.** The corporation commission may fix the minimum price of crude oil under the provisions of this act only after holding hearings thereon in proceedings conducted in the manner provided by K.S.A. 55-605, and amendments thereto. Actions for judicial review of any such order may be brought in the manner provided by K.S.A. 55-606, and amendments thereto.

**History:** L 1973, ch. 219, Section 2; L 1986, ch. 318, Section 76; July 1.



STATEMENT OF THE  
STATE CORPORATION COMMISSION

Presented to the Senate Transportation Committee  
February 8, 1995

SENATE BILL NO. 162

Mr. Chairman and Members of the Committee:

My name is Jack Tierce and I am the Deputy Director of the Transportation Division, State Corporation Commission.

The Corporation Commission, Transportation Division, has regulatory authority over liquid pipelines, railroads and motor carriers transporting property and passengers in Kansas. This legislation deals only with motor carriers who operate as a public motor carrier of property or passengers, contract motor carrier of property or passengers, and local wrecker carriers. The following is a brief description of each type motor carrier.

PUBLIC MOTOR CARRIER OF PROPERTY OR PASSENGERS (common carrier) is a carrier who holds itself out to the public to transport for hire either interstate and intrastate.

CONTRACT MOTOR CARRIER OF PROPERTY OR PASSENGERS (contract carrier) is a carrier who holds itself out to transport for hire and is not included in the term "public motor carrier of property or passengers" either interstate and intrastate.

PRIVATE MOTOR CARRIER OF PROPERTY is a person who transports their own property which is sold or to be sold. The definition also includes a person who transports the property of others not for hire but in the furtherance of a commercial enterprise other than transportation.

LOCAL WRECKER CARRIERS perform wrecker or towing service for hire wholly within the corporate limits of a city, or between two contiguous cities and within three miles of the corporate limits.

These motor carriers are required to file an application, proof of insurance, process agent, list of vehicles, balance sheet, and must also pay the regulatory fees or be registered pursuant to the Single State Insurance Registration program before operating upon Kansas highways.

Recently, the United States Congress adopted legislation entitled The Federal Aviation Authorization Act of 1994 which amended the Interstate Commerce Act. This legislation provides that states will not be permitted to regulate price, routes or service of intrastate motor carriers of property (except household goods) after January 1, 1995. You should note that passengers are not considered property and like household goods those carriers continue to be regulated without change.

Price relates to the filing of tariffs, which establishes the rates that a motor carrier may charge.

Routes means that the Commission cannot limit a motor carrier to a certain geographic area of the state.

Service refers to the common carrier obligation to provide transportation to shippers on a first come/first serve, in a nondiscriminatory and on a non preferential basis; that obligation no longer exists.

Other amendments provide that certain areas of state regulation regarding cargo liability, bills of lading, credit rules and antitrust immunity for joint line rates would not be preempted, provided the requirements were no more burdensome than the federal rules; and the provisions apply only to a motor carrier at the request of that carrier. The act specifically did not preempt state oversight of safety and insurance.

The Kansas Attorney General, representing the Kansas Corporation Commission, joined the Oklahoma Corporation Commission, Michigan, Montana and Teamsters challenging the constitutionality of the act under the Commerce Clause, the Tenth Amendment and the Guarantee Clause of the constitution. Plaintiffs' complaints for declaratory and injunctive relief were denied by order dated December 30, 1994 in the United States District Court for the Western District of Oklahoma. The Kansas Attorney General has joined the other plaintiffs by appealing the order to the United States Court of Appeals, The Tenth Judicial Circuit.

Pursuant to K.S.A. 66-1,111 motor carriers are still required to file applications, register equipment, maintain liability/cargo insurance, process agents, balance sheets and comply with safety regulations adopted by the Commission.

This legislation affects thirty-eight (38) Kansas statutes only by eliminating the reference to price, route and service; and some minor cleanup language. Private, interstate exempt, and interstate regulated motor carriers are not affected by the changes of the federal preemption legislation. Intrastate common, contract and local wrecker carriers are the only motor carriers which are impacted.

The main change in this legislation adds a new type of certificate issued by the Commission (certificate of public service) to those common carriers transporting property other than household goods and eliminates local wreckers. The existing common and local wrecker carriers are grandfathered as having a certificate of public service without any additional filing with the Commission by those motor carriers in K.S.A. 66-1,114 as amended.

The Kansas Corporation Commission staff and the Kansas Motor Carriers Association has worked together to ascertain that all statutes have been addressed.

If you desire, I will go over the legislative changes line by line or statute by statute. Otherwise the changes deal with removal of price, route and service from the statutes to comply with federal legislation.

The Commission would request that the committee respond favorably. I will attempt to answer any questions.

STATEMENT

By The

KANSAS MOTOR CARRIERS ASSOCIATION

-----

Supporting Senate Bill 162 which revises  
regulatory statutes affecting motor carriers.

-----

Presented to the Senate Transportation  
and Utilities Committee, Senator Ben  
Vidricksen, Chairman; Statehouse, Topeka,  
Wednesday, February 8, 1995.

-----

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Mary E. Turkington, Executive Director of the Kansas Motor Carriers Association with offices in Topeka. I am here today along with Tom Whitaker, our Governmental Relations Director; representing our member-firms and the highway transportation industry.

We are here to support strongly the provisions of Senate Bill 162. The statutory provisions proposed in S.B. 162 address the necessary revisions in current Kansas law to respond to the federal legislation adopted by the U.S. Congress in August, 1994, and which became effective January 1, 1995.

Mr. Jack Tierce, Deputy Director of the Transportation Division of the State Corporation Commission, correctly has identified the Federal Aviation Authorization Act which fundamentally changed motor carrier state and federal regulatory relationships.

SENATE TRANSPORTATION

DATE: 2/8/95

ATTACHMENT: 4



I would state at the outset that I personally am a "states righter" and that I have spent my adult life working for a transportation industry that is a quasi-public utility serving the transportation needs of the shipping public. I firmly believe that it is in the public's interest to have carriers clearly identified, to have safety and insurance requirements that protect the shipping public and fellow motorists and to assure shippers and consumers alike that transportation needs will be met whether such origin and destination points are on heavily used "traffic lanes" or in more remote communities wherever those may be.

The litigation in which the Attorney General represented the Kansas Corporation Commission to join others in contesting the federal legislation, was a necessary step to "clear the air" on whether such sweeping regulatory changes adopted by the Congress are lawful. We are here this morning facing the reality that the federal legislation apparently is indeed lawful and that Kansas needs to revise its statutes accordingly.

I might offer a brief explanation of how this regulatory issue was brought to a head by Federal Express which did not wish to have its intrastate trucking movements involving air cargo regulated. The 9th Circuit Court of Appeals of California ruled that the State of California could not regulate such intrastate trucking movements. The U.S. Supreme Court affirmed this circuit court decision and a catalyst for change was created that ultimately reached to the Congress.



It is important to remember, as you consider this legislation, that regulatory requirements for the intrastate transportation of household goods and passengers must remain in place. Congress didn't pre-empt states from continuing to regulate these transportation services. Therefore, Senate Bill 162 has been most carefully drafted not to disturb the statutory requirements for such transportation.

Mr. Tierce further has explained that only price, routes and service are the areas states will not be permitted to regulate for intrastate motor carriers.

The federal legislation does not change regulatory requirements for:

- private carriers
- interstate "exempt" for-hire carriers
- interstate regulated motor carriers

The Kansas Corporation Commission will continue to require:

1. An application for a certificate of public service from any new carrier proposing to offer intrastate for-hire transportation service. If granted, all such intrastate certificates will be state-wide as to territory authorized to serve.
2. All existing intrastate carriers of property now holding certificates of convenience and necessity from the KCC, will be "grandfathered" for state-wide service if such carriers are in compliance with current rules and regulations.



3. All carriers will continue to be required to register annually with the Commission, each power unit that will be operated in the state at \$10 per power unit. (This has been the law since 1956.)
4. Proper insurance must be filed and maintained by all KCC carriers.
5. Financial responsibility will be a factor to be documented by any new applicant.
6. Carriers must comply with the safety regulations adopted by the Commission. [Kansas currently has adopted the federal safety rules and regulations in most instances].
7. The KCC will develop rules involving:
  - uniform cargo liability rules
  - uniform bills of lading & receipts for property being transported
  - uniform credit rules; and
  - antitrust immunity for joint line rates or routes, classifications and mileage guides where applicable.

Carriers can choose to be governed by one or more of the four permissible rules outlined here.

8. It is not "open season" for anyone to go lease or buy a truck and simply begin hauling property for others. Carriers must file an application with the KCC and receive the proper credential from the Commission.

By way of clarification, those operating vehicles with farm registration credentials will continue to be restricted by registration limitations imposed by chapter 8 prohibiting such vehicles from hauling "for-hire." The regulatory reform proposals do not change such restrictions.



I would add, Mr. Chairman and members of the Committee, that the economic effect of the changes imposed on the state by the Congress will be difficult to predict. For some carriers, especially wholly intrastate carriers, the changes may be devastating. For others with major interstate operations, the changes may not be as challenging.

We believe the work product before you offers shippers, carriers, the consuming public and regulatory officials a workable statutory framework through which these federal changes may be accommodated without major disruptions in the Kansas transportation system.

Our industry deeply appreciates the cooperation and consideration we have received from the State Corporation Commission and its staff in our combined effort to bring a workable legislative proposal to you as you create sound public policy to address these regulatory changes.

The Kansas Motor Carriers Association expects to continue to work with its members and affected shippers to provide the quality transportation service that directly helps drive the economy of our state.

We ask your support of Senate Bill 162.

We will be pleased to respond to any questions we might answer.

#####