

MINUTES OF THE SENATE UTILITIES COMMITTEE

The meeting was called to order by Chairman Jay Emler at 9:30 A.M. on February 13, 2007 in Room 526-S of the Capitol.

Committee members absent: Senator Roger Reitz- excused

Committee staff present: Raney Gilliland, Kansas Legislative Research Department
Tatiana Lin, Legislative Fellow
Mike Corrigan, Revisor of Statutes
Ann McMorris, Committee Secretary

Conferees appearing before the committee: Leo Haynos, KCC
Maurice Korphage, KCC

Others in attendance: See attached list

Approval of Minutes

Moved by Senator Francisco, seconded by Senator Taddiken, approve the minutes of the Senate Utilities Committee meetings held on February 7, 2007 and February 8, 2007. Motion carried.

Chair opened the hearing on:

SB 238 - State corporation commission authorized to fix, charge and collect fees for application for intent to drill a well

Proponent:

Maurice Korphage, Director of Oil and Gas Division, KCC, offered support for two amendments to K.S.A. 55-151 in **SB 238**. (1) the first amendment regarding notification of intents to drill aligns the statute with the current practice which has evolved with technological changes; and (2) the second amendment eliminates the prohibition against the Commission charging a fee for an application for an intent to drill and allows the Commission to charge a fee which would be established by regulations adopted by the Commission. (Attachment 1)

Questions from the committee on horizontal drilling and number of applications for intent to drill.

Chair closed the hearing on **SB 238**.

Chair opened the hearing on:

SB 326 - State corporation commission duties concerning natural gas and energy in emergency situations

Proponent

Leo Haynos, Chief of Gas Operations and Pipeline Safety for KCC, appeared on behalf of the KCC in support of **SB 326**. He urged the updating of the existing statutory framework to provide clarify and prevent conflicts with recent Kansas law. This group of statutes requires the Commission to develop a comprehensive state energy conservation plan in accordance with federal requirements. The proposed revision would still require the KCC to develop an emergency management plan but would limit the scope of the plan to natural gas and electricity. (Attachment 2)

Chair closed the hearing on **SB 326**.

Moved by Senator Francisco, seconded by Senator Lee, to move **SB 326** out favorably and place on the consent calendar. Motion carried.

Chair asked committee for their consideration of **SB 238**. Several concerns voiced regarding the KCC setting fee for intent to drill applications. It was felt that the bill language should be more specific and that the Legislature should have more authority on the setting of fees. The intent to drill fees charged by surrounding states were requested. KCC was asked to come back with language that would clarify the fee structure

CONTINUATION SHEET

MINUTES OF THE Senate Utilities Committee at 9:30 A.M. on February 13, 2007 in Room 526-S of the Capitol.

authority. No further action taken on **SB 238**.

Addendum: Action taken on **SB 326** will be delayed and the bill taken back to Committee to correct a wrong word - on page 2, line 37 the word "energy" should be "emergency."

Adjournment.

Respectfully submitted,

Ann McMorris, Secretary

Attachments -2

**Testimony of M. L. Korphage
Division Director
State Corporation Commission of Kansas
Conservation Division
before the
Senate Committee on Utilities
February 13, 2007**

SB 238

Good morning Chairman Emler and members of the Senate Utilities Committee. I am appearing here today in support of Senate Bill 238 and the amendments to K.S.A. 55-151 made in the bill.

The proposed amendments to K.S.A. 55-151 are twofold: (1) Instead of sending copies of intents to drill to the Kansas Department of Health and Environment (KDHE) and the Clerk of the County in which a well is located, the information concerning the intent to drill could be made available to these parties, (2) The prohibition against the Commission charging a fee for an application for an intent to drill would be eliminated and the Commission would be allowed to charge a fee for an intent to drill. Any such fee would be established by regulations adopted by the Commission.

Currently, at their request, the Commission is not sending copies of intents to drill to KDHE or to county clerks. Currently the intents to drill issued are posted daily on the KCC website and are available to KDHE, county clerks and the public. This practice has been in place for several years and has been satisfactory to all parties. In addition, we are currently in the testing stage to allow electronic filing of applications for intents to drill. The proposed amendment aligns the statute with the current practice which has evolved with technological changes and which appears to be working very well for those involved in the process.

The bulk of the Conservation Division's operating funds come from assessments on oil and gas produced in the State. Experience over the last ten years has shown that an assessment based on production of depleting resources needs to be increased every four or five years. Although small in comparison to the price of oil and gas, the last two increases have doubled the assessment. We believe that we need to start looking at other methods for funding part of the Division's operations at some point in the future. One such possible option is to place a fee on drilling intents.

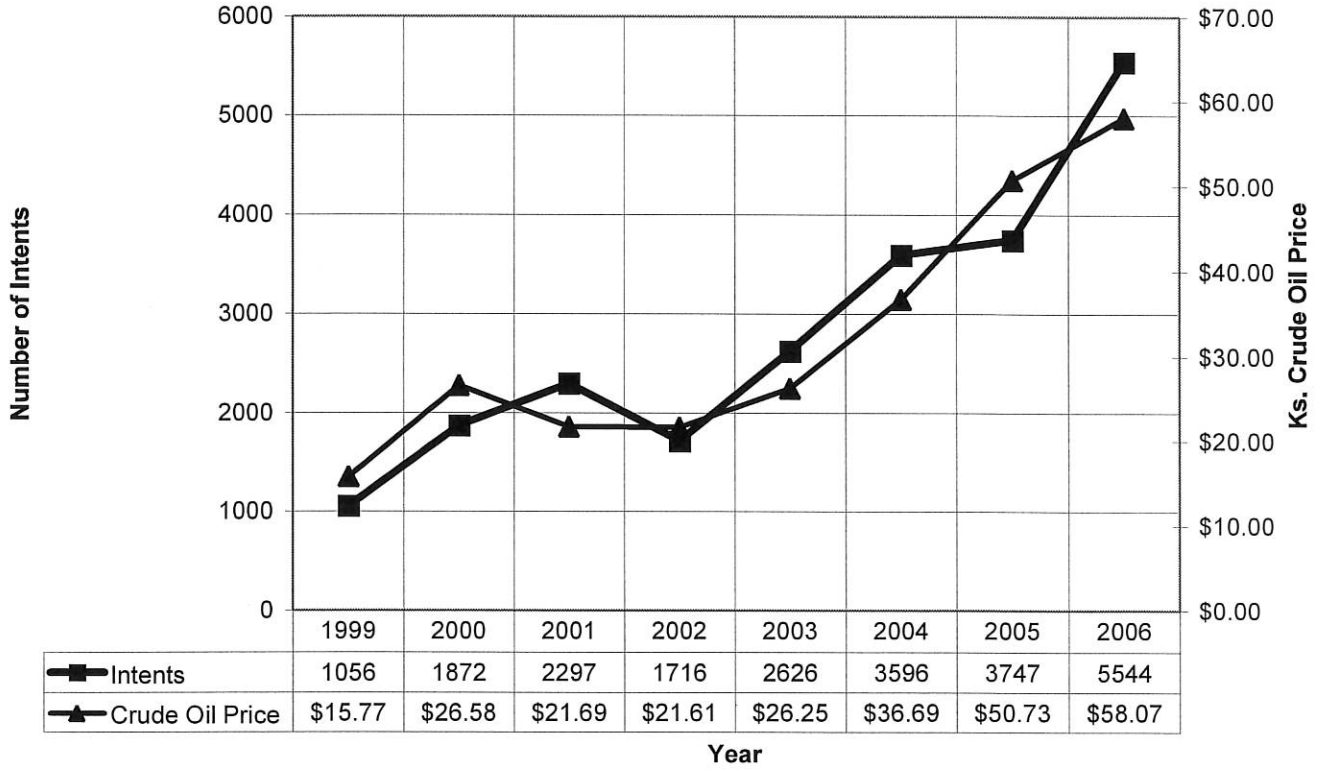
In discussions with industry members of the oil and gas advisory Committee we have identified three areas that could be at least either partially or wholly funded through fees placed on drilling intents. A fee on intents to drill would place the burden of funding that part of the Division's operations on the parties using those resources rather than additional assessments on production. Or such a fee could be used to help fund the Abandoned Well Assurance Fund. That fund is used to plug abandoned wells drilled after July 1, 1996 when there is no viable responsible party available to pay plugging costs. The number of these wells, which could come

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under this fund, will increase with time and the Commission in cooperation with industry is looking at methods to fortify the fund. And finally a fee on drilling intents might also be used to replace the current well plugging fee, which is charged to operators when wells are plugged. That action would in effect place a fee at the front end of the life of a well rather than at the end of the well's productive cycle.

While the Division has no immediate plans to propose a regulation placing a fee on intents to drill we believe it is an option that should be available for consideration by the Commission. Any such fee would be subject to the Commission's regulatory process, which would have the Commission receiving recommendations from the Oil and Gas Advisory Committee and would also involve a public hearing to receive additional comment from industry and the general public. For informational purposes I have attached a graph, which shows the number of drilling intents issued during the period 1999–2006.

Thank you for the opportunity to provide these comments, should the Committee have any questions I would be glad to answer them.



■ Intents	1056	1872	2297	1716	2626	3596	3747	5544
▲ Crude Oil Price	\$15.77	\$26.58	\$21.69	\$21.61	\$26.25	\$36.69	\$50.73	\$58.07

■ Intents ▲ Crude Oil Price



KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR
BRIAN J. MOLINE, CHAIR
ROBERT E. KREHBIEL, COMMISSIONER
MICHAEL C. MOFFET, COMMISSIONER

**Before the Senate Utilities Committee
Comments by the
Staff of the Kansas Corporation Commission
February 13, 2007**

Senate Bill 326

Thank you Mr. Chair and members of the Committee. I am Leo Haynos, Chief of Gas Operations and Pipeline Safety for the Kansas Corporation Commission. I am appearing today on behalf of the KCC Staff in support of SB 326 which amends K.S.A. 74-616, 74-619, and 74-620 and deletes 74-618. This group of statutes can be described as the laws that require the Corporation Commission to develop a comprehensive state energy conservation plan in accordance with federal requirements. The administration of these laws became the duty of the Commission in 1983 when the legislature enacted K.S.A. 74-622 which abolished the Kansas Energy Office and assigned its functions to the KCC. For the most part, the requirements of K.S.A. 74-616 through 74-621 remain relevant, appropriate law. In fact, this body of law provides the statutory authority for the KCC to establish and operate the Energy Office which supplies much needed assistance and expertise in the area of conservation and energy efficiency. A full discussion of the history of this requirement is attached to my testimony. Staff believes it is appropriate to update the existing statutory framework to provide clarity and prevent conflicts with more recent Kansas law.

K.S.A. 74-616(f) requires the KCC to establish an energy resources emergency management plan for adoption during any energy emergency declared under specific provisions outlined in K.S.A. 74-619. K.S.A. 74-616(f) requires the emergency plan to include a system of energy allocation and curtailment priorities for energy resources. Further, energy resources

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is defined in K.S.A. 74-618 as any recognized substance or process that can be utilized to obtain energy, and specifically includes propane, butane, gasoline, kerosene, home heating oil, diesel fuel, other middle distillates, aviation gasoline, kerosene type jet fuel, naphtha type jet fuel, residual fuels, crude oil, and other petroleum products and hydrocarbons as may be determined by the state corporation commission. In short, the language incorporated into the KCC's functions and responsibilities from the energy office statutes requires data collection, analysis, monitoring, and emergency planning related to many fuel types beyond the ordinary purview of the KCC.

K.S.A. 74-619 currently provides for the declaration of energy emergencies and outlines steps taken to declare an energy emergency within the state. However, in September 2006, Governor Kathleen Sebelius, consistent with the National Response Plan (NRP), signed the Kansas Response Plan (KRP), which follows the template of the National Incident Management System (NIMS). The KRP was designed to streamline federal and state interaction during emergency response to any specific threat or incident.

K.S.A. 74-616 et seq. needs to be amended as proposed by SB 326 to more accurately reflect the current abilities, functions, and expertise of the KCC, and eliminate any confusion stemming from the existing language in the definition of "energy resources" which includes fuels beyond the regulatory scope of the KCC. The proposed changes will limit KCC management of emergency plans to energy sources over which we have jurisdiction; namely, natural gas and electricity. With this change, there is no longer a need for K.S.A. 74-618 which defines energy resources, therefore we suggest in SB 326 that 74-618 be repealed. The deletion of the term "energy resources" does not leave a gap in regulatory oversight of emergency preparedness for the other types of fuels mentioned above. It simply recognizes the capabilities and jurisdictional restraints of the KCC. The oversight and monitoring of the other fuel sources remains a function of the U.S. Department of Energy, Energy Information

Administration.

SB 326 strikes language that refers to an energy emergency proclamation by the governor under K.S.A. 74-619 and instead provides for an emergency management plan for natural gas and electric energy to be adopted when the Emergency Support Function 12 of the Kansas Response Plan is activated. Similarly, due to the adoption of the Kansas Response Plan and the framework of responsiveness outlined in that document, 74-616(g), (h) and (i) are no longer necessary as those responsibilities now rest with the Kansas Department of Emergency Management (KDEM) in accordance with federal and state emergency policy. K.S.A. 74-619 as amended would reference a “state of disaster” emergency declared by the governor in accordance with K.S.A. 48-924 et. seq. which is appropriately the body of Kansas law that now governs any emergencies occurring in the state. With the reference to K.S.A. 48-924 and the adoption of the KRP, it is unnecessary for the emergency declaration provisions contained in 74-619 to exist. As it is written today, we believe 74-619 may create a conflict with the assignment of emergency duties to KDEM.

In sum, we support SB 326 because it updates the law to reflect the Commission’s current capabilities. The proposed revision to the statute would still require the KCC to develop an emergency management plan but would limit the scope of the plan to natural gas and electricity. The proposed revision will also align the activation of emergency response with the emergency response structure now in place and adopted by the governor.

This concludes my testimony and I would be happy to answer any questions you may have.

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ATTACHMENT

Historical background and Purpose of State Energy Policy

To better understand the evolution of the definitions and functions of this group of statutes, it is helpful to begin with the creation of the Kansas Energy Office. Created originally as a state agency separate and independent of the KCC, the Kansas Energy office sprang up in the mid-1970s in the wake of the Arab oil embargo and national policies that ensued. The first piece of federal legislation that drove the shape that state energy offices began to take as they were created was the federal Emergency Petroleum Allocation Act of 1973 (EPAA). As the U.S. was forced to rely on its own oil production and reserves, The Department of Energy and the EPAA created the initial framework through which the government could begin to extensively survey and analyze supply and demand for petroleum fuel products as well as implement sweeping strategies for allocating limited resources. In 1973, the President and Congress decided to involve the states in the allocation process by setting aside a percentage of the fuels going to a state to be distributed by the state government on an emergency basis.¹ This period for states was rife with confusion as start-up agencies funded by a combination of state and federal dollars struggled to administratively carry out the functions required in many cases in order to continue to receive funding. There was no template for creating energy offices, and many of those federal initiatives came with federal grant monies in exchange for programs carrying out specific functionalities essential to the purpose of the federal body of law in place at the time.² With the federal laws reflecting the shift in federal energy policy focus as the U.S. emerged from the embargo era, many states were left again struggling with what was a meaningful and appropriate role for a state energy office when petroleum fuel supply scarcity was no longer perceived as serious a threat as before. The EPAA was repealed in 1981, along with the myriad of laws that were created in the wake of

¹ Alfred R. Light, "Federalism and the Energy Crisis: A View from the States," Publius 6, no. 1 (Winter 1976): 81-96, 83.

² Id, p 86.

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the onset of the embargo, and the federal funding that had been earmarked by Congress to carryout the functions of state energy offices also went away. Many state energy offices, while clearly not going away entirely, were forced to restructure.

It seems Kansas was typical of other states creating energy offices in the 1970s, and that many of the issues that drove restructure and refocus of those offices after the embargo scare was over were issues considered in Kansas as well. It seems that the language carried forward in K.S.A. 74-616 et. seq. when the Kansas Energy Office became a part of the Kansas Corporation Commission as part of a restructure, has definitely departed from the purpose it originally served, but now may also no longer fit into the emergency plans and preparedness policies that are evolving at both the federal and state levels. The ability of the KCC to monitor and plan for emergencies for all of the fuel types defined in K.S.A. 74-618 is not practical, and even the term “emergency” means something very different than the term “emergency” as used to create this language in the 1970s. Emergency at that time related to embargo related fuel shortages. “Emergency” as anticipated by today’s emergency plans are different than supply and demand issues considered in the 1970s.

“Energy Resources” and the Kansas Emergency Plan

In September 2006, Governor Kathleen Sebelius, consistent with the National Response Plan (NRP), signed the Kansas Response Plan (KRP), built on the template of the National Incident Management System (NIMS). As stated in the preface of the plan, the KRP was designed to support Kansas law and aid decision making entities during the response to any specific threat or incident. K.S.A. 74-616 et seq. appears to be in conflict with the KRP in designating the process for declaring an energy emergency within the state.

Since the 1970s and since the deregulation of petroleum industries, many states today interact with a variety of federal and regional agencies to help protect citizens during energy

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emergencies. Currently, the Department of Energy (DOE) gathers much of the information available regarding petroleum, specifically through the Energy Information Administration (EIA). The EIA provides energy data, statistics, and analysis. The DOE is the lead federal agency when federal emergency plans are activated. Under the Emergency Support Function of the federal plan the DOE is the primary federal agency responsible for:

- Forecasting energy supply and demand, and estimating system damage;
- Advising local authorities on energy restoration, assistance and supply priorities;
- Providing a single point of access for departmental assets and expertise;
- Assisting in the provision of temporary fuel supply
- Serving as an information clearinghouse on recovery assistance, funding, and emergency response resources and organizations for the energy sector.

To date, according to the National Association of State Energy Offices (NASEO), despite all 50 states having energy offices, only 3 states actually attempt the full array of functionalities essential to collect accurate and meaningful data, record maintenance, analysis and forecasting of fuel supply and usage.³

³ New York, Hawaii, California.