

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairman Lance Kinzer at 3:30 p.m. on January 20, 2010, in Room 346-S of the Capitol.

All members were present except:

Representative Marti Crow- excused
Representative John Grange- excused
Representative Jim Ward- excused
Representative Kay Wolf- excused

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Matt Sterling, Office of the Revisor of Statutes
Jill Wolters, Office of the Revisor of Statutes
Athena Andaya, Kansas Legislative Research Department
Jerry Donaldson, Kansas Legislative Research Department
Sue VonFeldt, Committee Assistant

Conferees appearing before the Committee:

Representative Carl Holmes-Chairman of the House Energy & Utilities Committee
Doug Louis-Conservation Division, Kansas Corporation Commission

Others attending:

No guest list attached

Chairman Kinzer advised the committee an email was sent to all members today with an attached copy of the proposed advance Directive form from Christy Molzen of the Kansas Judicial Council in regards to **HB 2109**. This was provided in response to a question at the Committee meeting on January 19th. It was also stated they may need to make some changes to the form if the bill is amended.

The hearing on **HB 2418 - Carbon dioxide reduction act; limiting liability of the state of Kansas** was opened.

Matt Sterling, Office of the Revisor of Statutes, presented an overview of the bill which amends K.S.A. 2009 Supp. 55-1636 and 55-1637 to clarify that the Kansas Corporation Commission, the state of Kansas and any agent or employee thereof are not liable or responsible for any damages resulting from a leak or discharge of carbon dioxide from any carbon dioxide injection well or underground storage of carbon dioxide, except as permitted by the Kansas tort claims act. He added there could still be some liability under the tort claims act if a regulatory body was negligent in its inspection, licensing or supervision of carbon dioxide injection well or underground storage facility while that facility was in operation.

Under current law, the carbon dioxide reduction act imposes financial responsibility on the operators of carbon dioxide injection wells or storage facilities as part of the regulatory scheme, but contains no provision concerning liability of a facility that is no longer maintained due to abandonment by the operator. This bill will clarify that liability would not be passed on to the state or the Kansas Corporation Commission in those circumstances. (Attachment 1)

Proponents:

Representative Carl Holmes appeared before the committee in support of this bill. He provided the background information and explained this bill is necessary to clear up a disagreement that developed over HB2419, passed during the 2007 legislative session which authorized the Kansas Corporation Commission (KCC) to regulate carbon dioxide sequestration. His intent in developing the legislation in 2007 included the State of Kansas not taking liability for the storage of carbon dioxide. The KCC took the position the State of Kansas would take responsibility for the carbon dioxide after a period of time, when they developed the administrative rules and regulations. The Joint Committee on Administrative Rules and Regulations, during the hearing process, recommended the state not take liability for the storage of carbon dioxide. The KCC agreed to adopt rules and regulations without the liability issue being addressed, so the legislature could amend and clarify this issue during the 2010 legislative session. He said this bill clearly corrects that problem.

CONTINUATION SHEET

Minutes of the House Judiciary Committee at 3:30 p.m. on January 20, 2010, in Room 346-S of the Capitol.

He also mentioned another situation which needs to be addressed in the near future. In the storage of carbon dioxide underground, who owns the pore space for its storage; the surface owner or the mineral owner of the property? He suggested either an interim Judiciary committee or the Joint Committee on Energy and Environmental Policy study this topic. (Attachment 2)

Doug Louis, Conservation Division, Kansas Corporation Commission, spoke to the committee and explained the steps regarding the development of the Rules and Regulations on Carbon Sequestration, resulting in a decision to amend K.A.R. 82-3-1117 to eliminate the State assumption of post-closure responsibility in light of their understanding that an interim committee was going to consider legislation to address this issue. He stated this bill covers this issue.

Mr. Lewis further stated the KCC staff does not have a concern with the general limitation on state responsibility following closure of a CO2 facility in this bill, however, they do have concern with the specific language in **HB 2418** (h), which may limit the Commission's authority to remedy a post-closure emergency in a case in which there is no viable operator. He included an attachment to his testimony suggesting language that would add the language "and, except the commission may plug and remediate wells in emergency situations when there is no viable operator". (Attachment 3)

After discussion, Chairman Kinzer asked the staff to research and advise what existing liability the state currently has.

The hearing on **HB 2418** was closed.

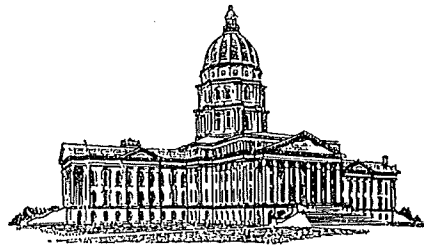
The next meeting is scheduled for January 21, 2010.

The meeting was adjourned at 03:55 p.m.

MARY ANN TORRENCE, ATTORNEY
REVISOR OF STATUTES

JAMES A. WILSON III, ATTORNEY
FIRST ASSISTANT REVISOR

GORDON L. SELF, ATTORNEY
FIRST ASSISTANT REVISOR



OFFICE OF REVISOR OF STATUTES
KANSAS LEGISLATURE

Legal Consultation—
Legislative Committees and Legislators
Legislative Bill Drafting
Legislative Committee Staff
Secretary—
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Kansas Commission on
Interstate Cooperation
Kansas Statutes Annotated
Editing and Publication
Legislative Information System

MEMORANDUM

To: Chairman Kinzer and members of the House Judiciary Committee
From: Matt Sterling, Assistant Revisor of Statutes
Date: January 20, 2010
Subject: House Bill 2418

House Bill 2418 amends K.S.A. 2009 Supp. 55-1636 and 55-1637 to state that the Kansas Corporation Commission, the state of Kansas and any agent or employee thereof are not liable or responsible for any damages resulting from a leak or discharge of carbon dioxide from any carbon dioxide injection well or underground storage of carbon dioxide, except as permitted by the Kansas tort claims act. Liability could still exist under the tort claims act if a regulatory body was negligent in its inspection, licensing or supervision of a carbon dioxide injection well or underground storage facility while that facility was in operation.

Under current law, the carbon dioxide reduction act imposes financial responsibility on the operators of carbon dioxide injection wells or storage facilities as part of the regulatory scheme, but contains no provision concerning liability of a facility that is no longer maintained due to abandonment by the operator. This amendment would clarify that liability for any abandoned carbon dioxide injection well or storage facility would not be passed to the state or the Kansas Corporation Commission in those circumstances.

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January 20, 2010

HB2418

Chairman Kinzer, and committee members, I appreciate the opportunity to present information concerning HB2418.

HB2418 clears up a disagreement that developed over HB2419, passed during the 2007 legislative session. HB2419 authorized the Kansas Corporation Commission (KCC) to regulate carbon dioxide sequestration. The disagreement concerns the State of Kansas taking liability for the storage of carbon dioxide underground. My intent in developing this legislation in 2007 included the State of Kansas not taking liability for the storage of carbon dioxide. The KCC took the position the State of Kansas would take responsibility for the carbon dioxide after a period of time, when they developed the administrative rules and regulations. The Joint Committee on Administrative Rules and Regulations, during their hearing process, recommended the state not take liability for the storage of carbon dioxide. The KCC agreed to adopt rules and regulations without the liability issue being addressed, so the legislature could amend and clarify this issue during the 2010 legislative session.

The 2007 act did not clearly state my position concerning state liability. HB2418 clearly corrects that problem. The rules and regulation committee had legislative staff draft HB2418 to remedy the problem. Subsection (h) on page 2 of the bill is designed to correct the problem. I'm not an attorney and would support any changes that do not change the intent of HB2418.

My concern is the long-term liability to the State of Kansas. I conducted hearings after the natural gas explosions in Hutchinson. It was apparent that Kansas did not have laws and rules and regulations in place before the accident to have prevented that situation. They are in place today. At the current time, I am not aware of any commercial disposal of carbon dioxide underground in Kansas; however, I know of a couple of proposed projects in the near future. To my knowledge, only one state will take liability for carbon dioxide as a result of a federal grant for a coal gasification project in their state.

At this time, I would like to mention another situation, which needs to be addressed in the near future. In the storage of carbon dioxide underground, who owns the pore space for its storage; the surface owner or the mineral owner of the property? I suggest either an interim Judiciary committee or the Joint Committee on Energy and Environmental Policy study this topic.

I thank the committee for the opportunity to explain my reasoning for this legislation, ask for your support of the legislation, and will try to answer your questions.

House Judiciary

Date 1-20-10Attachment # 2



Mark Parkinson, Governor
Thomas E. Wright, Chairman
Michael C. Moffet, Commissioner
Joseph F. Harkins, Commissioner

**House Judiciary Committee
House Bill 2418
Comments by Doug Louis
Conservation Division, Kansas Corporation Commission
January 20, 2010**

Chairman Kinzer and members of the House Judiciary Committee, I am Doug Louis, Director of the KCC Conservation Division. I am here today to testify on HB 2418.

Background

As directed by the 2007 Legislature in HB 2419, the KCC has drafted Rules and Regulations on Carbon Sequestration. The KCC began the process in the summer of 2007 with a group composed of KCC Staff, KDHE Staff, KGS Staff, EPA Region 7 Staff and Industry. At the same time, the group tracked EPA CO2 regulation proposals, the Interstate Oil and Gas Compact Commission's CO2 Sequestration Model Regulations and the concerns in other states regarding CO2 storage. The main areas the regulations cover are: Site selection criteria, design and development, operation criteria, casing requirements, monitoring and measurement requirements, safety requirements, closure and abandonment requirements, financial assurance and long-term monitoring.

Rule and Regulation Development

On May 9, 2008, the KCC staff made the initial submittal of the regulations to the D of A. That complete draft received final approval from the D of A on August 29, 2008, following approval of parts of the regulations on July 10, August 6 and August 7, 2008. The D of A then submitted all the regulations to the AG's office for review. On January 9, 2009, the AG's office approved the Regulations in its entirety.

On January 22, 2009, the regulations and notice of the public hearing were published in the Kansas Register. The Public Hearing was scheduled for March 26, 2009.

On February 13, 2009, the Joint Committee on Administrative Rules & Regulations held a hearing. The KCC received a letter from the Kansas Legislative Research Department with comments from the Joint Committee on February 20, 2009. The committee expressed concerns with the state assuming responsibility of the CO2 after a facility's closure.

Following the March 26 public hearing, the KCC staff suggested changes and the regulations were submitted to the Commissioners on April 16, 2009. The Commissioners held Open Meetings to discuss the regulations on July 15, September 28 and October 2.

On October 2, 2009, the Commissioners approved staff's changes and, considering that concerns had been expressed in the February 23 letter regarding provisions relating to post-closure

responsibility, and in light of our understanding that an interim committee was going to consider legislation (legislation which appears now as HB 2418) addressing this issue, the Commissioners decided to amend K.A.R. 82-3-1117 to eliminate the State assumption of post-closure responsibility.

A subsequent public hearing was held on January 6, 2010 to receive comment on proposed K.A.R. 82-3-1117. In an open meeting held earlier today the Commissioners discussed all of the CO2 regulations.

Comment

KCC Staff does not have a concern with the general limitation on state responsibility following closure of a CO2 facility, expressed in HB 2418. We do, however, have a concern with the specific language in HB 2418 (h), which may limit the Commission's authority to remedy a post-closure emergency in a case in which there is no viable operator. As an attachment to this testimony, I have provided suggested language which would allow the KCC to plug and remediate wells in emergency situations.

Thank you for this opportunity to provide comment and if the Committee has questions I will be happy to answer them.

HOUSE BILL No. 2418

By Joint Committee on Administrative Rules and Regulations

1-11

9 AN ACT concerning the carbon dioxide reduction act; pertaining to lia-
10 bility of the state of Kansas; pertaining to rules and regulations; amend-
11 ing K.S.A. 2009 Supp. 55-1636 and 55-1637 and repealing the existing
12 sections.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

15 New Section 1. (a) Except as permitted by the Kansas tort claims
16 act, no provision of this act shall establish or create or impose upon the
17 commission, any agent or employee thereof, or the state of Kansas any
18 liability or responsibility to pay any damages resulting from the leak or
19 discharge of carbon dioxide from any carbon dioxide injection well or the
20 underground storage of carbon dioxide.

21 (b) This section shall be supplemental to and a part of the carbon
22 dioxide reduction act.

23 Sec. 2. K.S.A. 2009 Supp. 55-1636 is hereby amended to read as
24 follows: 55-1636. K.S.A. 2009 Supp. 55-1636 through 55-1640, *section 1*,
25 79-233 and 79-32,256, and amendments thereto, may be cited as the
26 carbon dioxide reduction act.

27 Sec. 3. K.S.A. 2009 Supp. 55-1637 is hereby amended to read as
28 follows: 55-1637. (a) As used in K.S.A. 2009 Supp. 55-1637 through 55-
29 1640, and amendments thereto:

30 (1) "Carbon dioxide injection well" means any hole or penetration of
31 the surface of the earth used to inject carbon dioxide for underground
32 storage or for enhanced recovery of hydrocarbons and any associated
33 machinery and equipment used for such injection of carbon dioxide. "Car-
34 bon dioxide injection well" does not include underground storage.

35 (2) "Commission" means the state corporation commission.

36 (3) "Underground storage" means any underground formation where
37 carbon dioxide is injected for sequestration.

38 (b) *Except as provided in subsection (h)*, for the purposes of protect-
39 ing the health, safety and property of the people of the state, and pre-
40 venting escape of carbon dioxide into the atmosphere and pollution of
41 soil and surface and subsurface water detrimental to public health or to
42 plant, animal and aquatic life, the commission, on or before July 1, 2008,
43 shall adopt separate and specific rules and regulations establishing

1 requirements, procedures and standards for the safe and secure injection
2 of carbon dioxide and maintenance of underground storage of carbon
3 dioxide. Such rules and regulations shall include, but not be limited to:
4 (1) Site selection criteria; (2) design and development criteria; (3) oper-
5 ation criteria; (4) casing requirements; (5) monitoring and measurement
6 requirements; (6) safety requirements, including public notification; (7)
7 closure and abandonment requirements, including the financial require-
8 ments of subsection (e); and (8) long-term monitoring.

9 (c) *Except as provided in subsection (h), the commission may adopt*
10 *rules and regulations establishing fees for permitting, monitoring and in-*
11 *specting operators of carbon dioxide injection wells and underground*
12 *storage. Fees collected by the commission under this subsection shall be*
13 *remitted by the commission to the state treasurer in accordance with the*
14 *provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of*
15 *each such remittance, the state treasurer shall deposit the entire amount*
16 *in the state treasury and credit it to the carbon dioxide injection well and*
17 *underground storage fund.*

18 (d) The commission or the commission's duly authorized represen-
19 tative may impose on any holder of a permit issued pursuant to this sec-
20 tion such requirements relating to inspecting, monitoring, investigating,
21 recording and reporting as the commission or representative deems nec-
22 essary to administer the provisions of this section and rules and regula-
23 tions adopted hereunder.

24 (e) Any company or operator receiving a permit under the provisions
25 of this act shall demonstrate annually to the commission evidence, satis-
26 factory to the commission, that the permit holder has financial ability to
27 cover the cost of closure of the permitted facility as required by the
28 commission.

29 (f) The commission may enter into contracts for services from con-
30 sultants and other experts for the purposes of assisting in the drafting of
31 rules and regulations pursuant to this section.

32 (g) Rules and regulations adopted under this act shall apply to any
33 carbon dioxide injection well or underground storage, whether in exis-
34 tence on the effective date of this act or thereafter.

35 (h) *No rule and regulation adopted under the provisions of this sec-*
36 *tion shall create or impose upon the commission, any agent or employee*
37 *thereof or the state of Kansas any liability for the underground storage of*
38 *carbon dioxide or the maintenance of any carbon dioxide injection well*
39 *or underground storage of carbon dioxide except as permitted by the*
40 *Kansas tort claims act. From and after July 1, 2010, any requirement in*
41 *any rule and regulation adopted by the commission which conflicts with*
42 *the prohibition prescribed in this section shall be null and void.*

43 Sec. 4. K.S.A. 2009 Supp. 55-1636 and 55-1637 are hereby repealed.

and except the
commission
may plug and
remediate wells
in emergency
situations when
there is no
viable operator.

1 Sec. 5. This act shall take effect and be in force from and after its
2 publication in the statute book.