

Before the Standing Senate Ways and Means Committee
February 11, 2021
548-S 10:30 a.m.

Presentation of Kansas Corporation Commission Staff's Supporting Testimony
Concerning HB2022

By

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Chair Billinger, Vice Chair Claeys, Ranking Minority Member Hawk, and members of the committee, thank you for the opportunity to present testimony on behalf of staff of the Kansas Corporation Commission (Commission or KCC) concerning HB2022.

HB2022 is essentially the amended HB2536 from last session. HB2536 was amended by the Standing House Appropriations Committee to contain the provisions of HB2534 and HB2535 in addition to HB2536. The amended version of HB2536 passed out of that Committee unanimously before the session ended but was never taken up by the full House due to the pandemic-shortened session. HB2022 was voted out of the Standing House Appropriations Committee unanimously and passed the full House without opposition. I will address each of the provisions of HB2022 below.

Historic Joint Program Resolution

This bill repeals K.S.A. 55-163, which requires the KCC and the Kansas Department of Health and Environment (KDHE) to enter into an interagency agreement for the integration of certain oil and gas regulatory operations in 1982. At the time, there was overlapping jurisdiction between the KCC and the KDHE over regulation of the oil and gas industry. As a result of the interagency agreement, the KCC and the KDHE formed joint offices and regulated the oil and gas industry concurrently. In 1984, the KCC was granted primacy for the Underground Injection Control (UIC) program for Class II injection well operations from the Environmental Protection Agency as part of the Safe Drinking Water Act of 1984. In 1986, the legislature passed K.S.A. 74-623, which vested the Commission with exclusive jurisdiction over the regulation of oil and gas activities. These activities specifically include “(1) All practices involved in the exploration for and gathering of oil and gas and the drilling, production, lease storage, treatment, abandonment and postabandonment of oil and gas wells; (2) underground porosity storage of natural gas, as defined in K.S.A. 55-1,115, and amendments thereto; and (3) prevention and cleanup of pollution of the soils and waters of the state from oil and gas activities described in (1) or (2).” After the enactment of K.S.A. 74-623, the need for a joint program no longer existed.

K.S.A. 55-163 should have been repealed at that time. House Bill 2022 simply removes this obsolete and unnecessary statute.

Combining of Statutory Plugging Funds

In short, this bill combines the two existing funds used to plug abandoned wells, the Abandoned Well Plugging and Site Remediation (Legacy) Fund and the Well Plugging Assurance (Assurance) Fund. The current distinction between the funds is that their use is dependent upon when the abandoned well was drilled. If the abandoned well was drilled prior to July 1, 1996, the KCC uses the Legacy Fund. The Assurance Fund is used specifically for any well drilled on or after July 1, 1996. Historically, the Assurance Fund has rarely been used. The main source of revenue for the Assurance Fund is monies associated with the annual licensure and license renewal of operators, which generally amounts to just under \$500,000.00 per year. The Legacy Fund is the primary source of funding to plug abandoned wells and to pay costs associated with the investigation and remediation of historical contamination sites. Throughout the existence of the Legacy Fund, revenue has been derived from a variety of sources. In 2015, State General Fund and Water Plan contributions were removed. The revenue in the Legacy Fund comes from a transfer of \$800,000.00 per year from the Conservation Fee Fund (mills levied against production), fifty percent of Kansas' share of production on federal lands in Kansas, and a transfer of \$500,000.00 from the Assurance Fund.

Combining these funds would allow access to the little-used Assurance Fund monies to help address what staff sees as a funding need in the near future. The expectation for the funding need is based on staff's recent efforts to revamp the way in which abandoned wells get plugged in Kansas. In this effort, staff has conducted outreach to potential abandoned well plugging contractors in each of the four KCC Districts. To date, staff's efforts have more than doubled the number of qualified contractors to plug wells in all four Districts. These outreach efforts and the current conditions in the oil and gas market lead staff to believe we will see a significant increase in the number of wells plugged annually; therefore, access to more funding is necessary.

Abandoned Well Plugging Responsibility

When I joined the KCC as a Litigation Counsel in 2008, it was on the heels of the Commission's "Quest" decision, involving abandoned well plugging responsibility for old oil wells during the height of Kansas' coalbed methane rush. The Quest decision came after the Commission's "New Donna Lee" decision and altered a prior Commission's interpretation of K.S.A. 55-179. The Quest decision resulted in numerous meetings in an effort to best address Kansas' abandoned well issue. The meetings ultimately resulted in an investigative docket. In 2011 and 2012, the Commission again issued an interpretation of K.S.A. 55-179. At that time, the Commission's decision was challenged before the District Court and Court of Appeals. In 2015, the decision was refused review by the Kansas Supreme Court. The ensuing years have been fraught with uncertainty regarding this issue until various stakeholders engaged in the process of drafting this

legislation. The legislation you have before you is the product of months of discussion and compromise between stakeholders and staff. The result of those meetings is an end product that removes the uncertainty surrounding the current K.S.A. 55-179. The bill before you establishes six clear categories of responsible parties. This improvement will provide staff and industry with the statutory direction necessary to make regulatory and business decisions regarding the plugging of abandoned wells.

Reimbursement Procedure

Lastly, this bill directs staff to develop a program whereby any person not responsible for the well's abandonment may apply to be eligible for reimbursement of the costs associated with plugging abandoned well. A reimbursement program will help all parties involved because it will allow for more wells to be plugged that would likely not be plugged using state funds due to their priority level. Addressing these wells outside of the normal state plugging process will help reduce the overall inventory of abandoned wells and will reduce the long-term pollution risk. There is a lot of work to be done to establish the regulations necessary to administer a program of this nature.

Thank you for the opportunity to speak to you today. I will gladly stand for questions.

