

Before the House Committee on Agriculture and Natural Resources Budget

Monday February 20, 2023
Opposition Testimony HB 2386

Submitted by Lynn Retz, Executive Director and
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On behalf of the Staff of the Kansas Corporation Commission

Chairman Corbet, Vice Chair Seiwert, Ranking Minority Member Carlin, and members of the Committee, thank you for the opportunity to provide Opposition testimony on behalf of the staff of the Kansas Corporation Commission (Commission).

The Kansas Corporation Commission (Commission) appreciates the opportunity to provide testimony in opposition of House Bill 2386, and we respectfully request the Committee consider our agency's concerns. House Bill 2386 would prohibit the Commission's Transportation Division Special Investigators (SIs or investigators), Conservation Division Environmental Compliance Regulatory Specialists, Utilities Division Pipeline Safety Staff, and Engineering Staff from "entering or remaining on private property" without first obtaining a court-issued subpoena or warrant or receiving written consent from the owner of such property. This would prohibit us from timely addressing and remediating safety and environmental issues. Moreover, this delayed response would most likely increase remediation costs and could result in federal agencies taking the investigatory lead without written landowner consent. In addition, staff engineers inspect electrical lines and gas lines in neighborhoods accompanied by the utility's staff. In almost all cases, the utility lines are located in an easement on private property. As drafted, the bill would require staff engineers to obtain written permission from every house, while the accompanying utility staff do not.

Further, this legislation does not repeal any of the other existing statutory ingress and egress rights granted to state agencies to fulfill their statutory duties. The lack of repeal leads to the potential confusion created by the direct conflict with existing statutory authorities, not just for the Commission, but any state agency.

It also will jeopardize Kansas primacy over federal laws. For example 49 USC 60105 states:

- (a)... the Secretary of Transportation may not prescribe or enforce safety standards and practices for an intrastate pipeline facility or intrastate pipeline transportation to the extent that the safety standards and practices are regulated by a State authority

(f) If after receiving a certification the Secretary decides the State authority is not enforcing satisfactorily compliance with applicable safety standards prescribed under this chapter, the Secretary may reject the certification, assert United States Government jurisdiction, or take other appropriate action to achieve adequate enforcement. The Secretary shall give the authority notice and an opportunity for a hearing before taking final action under this subsection. When notice is given, the burden of proof is on the authority to demonstrate that it is enforcing satisfactorily compliance with the prescribed standards

Specifically the Transportation Division believes that the broad nature of this bill would prevent its investigators from completing their statutorily authorized work of ensuring the safe operation of motor carriers in the state of Kansas.

Pursuant to K.S.A. 66-1,108b, the legislature granted the Commission the “full power, authority and jurisdiction to supervise and control motor carriers,” mandating that the Commission “shall inquire into any neglect or violations of the laws pertaining to the regulation of motor carriers of this state by any motor carrier or any person retaining the transportation services of that motor carrier.” In fulfilling that mandate the Commission was instructed that it “shall carefully examine and inspect the condition of each motor carrier, its equipment, the manner of its conduct and its management with reference to the public safety and convenience.” Further, K.S.A. 66-1,108c vested the Commission with “the authority to examine all accounts and records pertaining to its regulation of motor carriers.”

The Commissions Transportation Division foresees a number of scenarios where this bill would impede our investigators from ensuring the safety of the motoring public. These situations include:

- The Commission’s investigators often examine documents and records at a motor carrier’s place of business. Although our investigators make efforts to schedule investigation at pre-arranged times with motor carriers, frequently visiting a motor carrier in-person and entering on to private property to knock on a door or enter into a business that is otherwise open to the public to speak with a representative of the carrier is necessary. HB 2386 makes no exemption for entering onto private property for the purposes of facilitating a compliance review. No definition of “entering” is provided that exempts walking up to the front door and knocking or entering a business that is open to the public.
- At times a motor carrier may be renting space from a separate landlord or property manager, which would require our investigators to research the owner of that property and contact a third party with no relation to the investigation to obtain written permission to enter.
- Our investigators may seek to meet on land that is private property, but open to the public. Travel centers or gas stations with large parking lots are oftentimes the sites of

such meetings. If, pursuant to an investigation, a motor carrier and an investigator need to meet outside of a motor carrier's place of business, the parties could not easily relocate to a larger venue with the passage of this bill. If that gas station, Home Depot or Walmart parking lot, or other private business did not previously grant written permission to our investigators it would be off limits.

- Many hours of investigations would be spent researching the chain of title on a specific lot, countless phone calls and emails (as knocking would now be prohibited) to attempt to contact the owner and, if found, request a written signature from that individual.
- The bill does not contemplate a property owner living outside of the state and being unavailable to sign.
- The bill does not specify who could sign in an owner's stead.
- Although the bill grants an exemption to law enforcement it does not contemplate a jointly coordinated effort between law enforcement and state employees. Our investigators work hand in hand with local law enforcement and the Kansas Highway Patrol (KHP). If, for example, the KHP contacts our investigators and asks them to meet them at the site of an inspection on a private lot, the scenario of our investigators standing on a public roadway unable to join the KHP and motor carrier on a private lot is a potential result of the bill.

The KCC Staff opposes this bill because it would impede the legitimate and necessary work of the Divisions. Creating additional obstacles in this manner only serves to embolden those that do not want to operate lawfully and puts the public at risk.

For the reasons mentioned above, the Commission Staff opposes HB 2386.