

House Concurrent Resolution No. 5023

By Committee on Energy and Utilities

3-3

1 A CONCURRENT RESOLUTION urging the United States Congress to
2 preserve the primacy of the Kansas Corporation Commission to
3 regulate hydraulic fracturing in compliance with state regulations and
4 not to enact any future legislation that would remove this primacy.
5

6 WHEREAS, The Safe Drinking Water Act (SDWA) was originally
7 passed by Congress in 1974 to protect public health by regulating the
8 nation's public drinking water supply; and

9 WHEREAS, Since the 1974 enactment of the Safe Drinking Water
10 Act, the Environmental Protection Agency (EPA) has never interpreted
11 hydraulic fracturing as constituting "underground injection" within the
12 definitions of the SDWA; and

13 WHEREAS, The United States 11th Circuit Court of Appeals ruled
14 contrary to the argument of the EPA that hydraulic fracturing constituted
15 "underground injection" under the SDWA, *Legal Environmental*
16 *Assistance Foundation v. United States Environmental Protection*
17 *Agency*, 118 F.3d 1467 (11th Cir. 1997); and

18 WHEREAS, In 2004, the EPA published a final report summarizing a
19 study that evaluated the potential threat to underground drinking water
20 sources from hydraulic fracturing of coal bed methane production wells
21 and the EPA concluded that "the injection of hydraulic fracturing fluids
22 into coal bed methane wells poses minimal threat" to underground
23 sources of drinking water and that "additional or further study is not
24 warranted at this time"; and

25 WHEREAS, Any federal rule-making concerning the states' sovereign
26 right in permitting the quantity of water used for hydraulic fracturing
27 would be outside the EPA's purview; and

28 WHEREAS, In the Energy Policy Act of 2005, the United States
29 Congress explicitly exempted hydraulic fracturing from the provisions of
30 the Safe Drinking Water Act; and

31 WHEREAS, Hydraulic fracturing is a proven technology with a long
32 history of environmentally safe use in the completion of oil and gas
33 wells; and

34 WHEREAS, The oil and gas producing states regulate hydraulic
35 fracturing as a component of their regulatory programs for the drilling,
36 completion, operation and plugging of oil and gas wells; and

1 WHEREAS, The reservoirs that produce oil and gas are highly
2 variable geologically and separated geographically across the oil and gas
3 producing states such that state regulatory agencies are best suited by
4 local expertise and experience to effectively regulate hydraulic fracturing;
5 and

6 WHEREAS, State regulatory agencies are the most appropriate
7 regulatory bodies to provide oversight and protection of hydrologically
8 and environmentally sensitive localities as they relate to hydraulic
9 fracturing; and

10 WHEREAS, The SDWA was never intended to grant the federal
11 government authority to regulate oil and gas drilling and production
12 operations, such as "hydraulic fracturing," under the Underground
13 Injection Control program; and

14 WHEREAS, The regulation of hydraulic fracturing under the Federal
15 Safe Drinking Water Act would add burdensome and unnecessary
16 regulatory requirements to the drilling and completion of oil and gas
17 wells, thereby increasing costs of producing domestic natural gas
18 resources without any ancillary benefit to public health, safety or the
19 environment; and

20 WHEREAS, The increased cost of producing domestic natural gas
21 resources will reduce domestic supplies of oil and natural gas, increase
22 utility prices and other costs to consumers, reduce tax and royalty
23 revenues for local, state and federal governments and increase the
24 nation's dependence on foreign energy imports; and

25 WHEREAS, Domestic production of oil and natural gas will ensure
26 that the United States continues on the path to energy security; and

27 WHEREAS, The Interstate Oil and Gas Compact Commission (IOGCC)
28 conducted a survey of oil and gas producing states and set forth its
29 opposition to federal regulation of hydraulic fracturing under the
30 underground injection control program in Resolution 09.011, dated
31 January 7, 2009, "Urging Congress Not to Remove Exemption of
32 Hydraulic Fracturing from Provisions of the Safe Drinking Water Act";
33 and

34 WHEREAS, The states' public utility commissioners represented by
35 The National Association of Regulatory Utility Commissioners adopted a
36 similar resolution in July 2009: Now, therefore,

37 *Be it resolved by the House of Representatives of the State of Kansas,*
38 *the Senate concurring therein: That we support continued jurisdiction of*
39 *the states to conserve and properly regulate oil and gas production in their*
40 *unique geological and geographical circumstances; and*

41 *Be it further resolved: That we urge the United States Congress to*
42 *take such actions as are necessary to preserve and maintain the exemption*
43 *from the Safe Drinking Water Act for hydraulic fracturing; and*

1 *Be it further resolved:* That the Secretary of State provide an enrolled
2 copy of this resolution to the Speaker of the United States House of
3 Representatives, the Majority Leader of the United States House of
4 Representatives, the Minority Leader of the United States House of
5 Representatives, the Majority Leader of the United States Senate, the
6 Minority Leader of the United States Senate and to each member of the
7 Kansas Congressional Delegation.
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