



## Proponent Testimony on HB 2705

February 18, 2020

### House committee on Commerce, Labor and Economic Development

Chairman Tarwater and members of the committee, I am Alan Morgan, a Certified Professional Landman by examination from Sugar Land, Texas. I have been a Petroleum Landman for over 42 years. I am a Past President of the Houston Association of Professional Landmen and have been recognized as the 2001 Landman of the Year and the 2013 Lifetime Achievement Award by the American Association of Professional Landmen. Although I am a Texan by residence, I am a Kansan by heart. Both my son and daughter are successful graduates of the University of Kansas.

Numerous industries and professions, whose members have a long standing tradition of performance of services as independent contractors rather than as employees and who perform services free from control and direction of the recipient of such services, have been specifically excluded from the definition of employment found in the employment security law.

Section 530 of the Federal Revenue Act of 1978 provides for a "Safe Harbor" provision which allows payors to treat workers as independent contractors regardless of the common law test. The American Association of Professional Landmen, "AAPL," has been responsible for legislation amending the states' respective unemployment compensation acts/employment security laws in Texas, New Mexico, Oklahoma, Louisiana, Colorado, North Dakota, Montana and Michigan to recognize the independent contractor status of petroleum landmen on a working contractual basis. These states encompass approximately 85% of the membership of AAPL. If there is a reasonable basis for treating a petroleum landman working on a contractual basis as an independent contractor, then the IRS will recognize the same. The respective state where petroleum landmen are on a contractual basis by excluding them from the employment security law will be a reasonable basis for treating that class as an independent contractor.

In the oil and gas industry, services performed by petroleum landmen on a contractual basis have traditionally been treated as services performed by independent contractors. This traditional independent contractor treatment is due to the specific nature of land related services, such services generally being free from significant control and direction of the service recipient. In spite of the long standing tradition of the treatment of services provided by landmen as being independent contractor services, no specific exclusion of such services currently exists under the employment security law.

This bill would provide that services performed by petroleum landmen on a contractual basis would not be considered services performed in employment so long as one or more of the following services are performed on a contractual basis: (i) Negotiating for the acquisition or divestiture of mineral rights; (ii) negotiating business agreements that provide exploration for or development of minerals; (iii) determining ownership in minerals through the research of public and private records; (iv) reviewing the status of title, curing title defects, providing title due diligence and otherwise reducing title risk associated with ownership in minerals or the acquisition and divestiture of mineral properties; (v) managing rights or obligations derived from ownership or interests in minerals; or (vi) unitizing or pooling of interests in minerals.