Testimony of David E. Pierce in Support of House Bill 2179
Committee on Taxation
February 24, 2015

I am a professor at Washburn University where I teach courses in Oil and Gas Law. I appear today solely in my personal capacity. I am not representing Washburn, nor do I have a client. I offer my testimony as a student of oil and gas law, and K.S.A. 79-420, during the past 30 years.

House Bill No. 2179 eliminates an unnecessary and fundamentally unfair portion of 79-420 that takes property away from the intended purchasers and donees and gives it back to the sellers and donors. This taking occurs merely to enforce the prompt recording of certain severances of minerals from the balance of the land. I am not aware of any other Kansas statute where the summary remedy for failing to report to the government is a total forfeiture of your property.

Through the years a complex body of law has developed around 79-420 as courts try to mitigate its harsh impact on unsuspecting Kansas property owners. The basic problem, however, remains. This is vividly illustrated by the facts in *Ingraham v. Fischer*, No. 109,584, 312 P.3d 989 (Kan. Ct. App. 2013), *rev. denied*, (unpublished decision). As the court noted: "In a wonderful act of generosity, Monty D. Hall executed a deed conveying 50 percent of his mineral interests in certain real property to the sons of family friends for the purpose of providing for their education." Monty delivered the deed to the mother of the two boys as their custodian under the Kansas Uniform Gifts to Minors Act, but she failed to record it in a timely manner as required by 79-420. After Monty died, the heirs to his estate, two cousins, were able to assert that the conveyance to the two boys was void because it was not "recorded within 90 days after execution" or otherwise timely listed for taxation. The boys got nothing, Monty's gift was destroyed, Monty's donative plans were negated by cousins – and 79-420.

The last sentence of 79-420 is the problem. This problem also haunts title attorneys. The problem is generally immune from any statute of limitations because of the difficulty of obtaining adverse possession over a severed mineral interest. The lingering impact of the statute is illustrated in *Becker v Rolle*, 211 Kan. 769, 508 P.2d 509 (1973), where the mineral deed was executed on April 22, 1929 and recorded April 5, 1930. This recording failed to comply with K.S.A. 79-420 so the deed was void. However, the issue was not raised until 40 years later. Nevertheless, the deed was void and treated as though the conveyance never occurred. Subsection (b) of HB 2179 is designed to deal with these lingering title issues going forward.

I reviewed the HB 2179 fiscal note prepared by the Kansas Division of the Budget. I disagree with the Director's conclusion that enacting HB 2179 will significantly impact property tax revenues. I believe it will have no fiscal impact. Every properly informed property owner has the incentive to promptly record any conveyance to avoid the risk of losing their property to a bona fide purchaser. The remedy portion of 79-420 that is being eliminated by HB 2179 will not change the incentive to record. It will merely prevent the harsh remedy of taking property away from the true owner because they failed to record promptly.