

JUDICIARY SUBCOMMITTEE ON CIVIL PROCEDURE

Senator Richard Rock, Chairman

February 20, 1991
10:00 a.m.
Room 514-S

SB 139 - Saline county law library feed authorized.
withdrawn, no hearing

SB 171 - crimes and punishment, statutory conflict resolution.
-- Gordon Self, Revisor's office, explained this is not a substantive change, but combines two versions of the same statute into one.

Subcommittee recommendation: to amend to become effective upon publication in the Kansas Register; and to recommend favorably for passage as amended.

SB 144 - transfer of offenders to Topeka Correctional Facility
--Would increase from 3 - 5 days, not counting weekends and holidays, the time the DOC has to accept into custody individuals sentenced into custody by the secretary of corrections.

PROPOSERS

Chuck Simmons, Department of Corrections (ATTACHMENT 1)

OPPOSERS

none appeared

Subcommittee recommendation: no action taken.

SB 146 - creating the employed parolees fee fund; funds used to hire people to assist parolees in obtaining and maintaining gainful employment.

Creates a new fund which would support five positions to assist parolees with employment. Parolees are assessed \$7 per month.

PROPOSERS

Roger Werholtz, Department of Corrections (ATTACHMENT 2)

OPPOSERS

none appeared

Subcommittee recommendation: amend to include language which would waive this fee when it would create an undo hardship for parolees and their families; to recommend favorably for passage as amended.

SB 148 - limiting payments for housing inmates in county jails. Places a cap on payments to counties for housing parole violators in county jails.

PROPOSERS

Robert Werholz, Department of Corrections (ATTACHMENT 3)

OPPOSERS

Anne Smith, Kansas Association of Counties (ATTACHMENT 4)

Subcommittee recommendation: to not recommend for passage.

SB 12 - security interests in oil and gas production.
Serves interest owners in case of a bankruptcy by making them
secured parties.

PROPOSERS

Mary E. May, Southwest Kansas Royalty Owners (ATTACHMENT 5)
Bill Fuller, Kansas Farm Bureau (ATTACHMENT 6)
John Small, Koch Oil Co. (ATTACHMENT 7)
Donald Schnacke, KIOGA (ATTACHMENT 8)

OPPOSERS

none appeared

Subcommittee recommendation: no action taken.

SB 13 - interest from proceeds on oil and gas production.
Sets up time frame for payments of interest on oil and gas
production.

PROPOSERS

Greg Stuckey, Southwest Kansas Royalty Owners (ATTACHMENT 9)
Donald P. Schnacke, KIOGA (ATTACHMENT 10)
Jonathan Small, Koch Oil Co. (ATTACHMENT 11)

OPPOSERS

none appeared

Subcommittee recommendation: no action taken.



DEPARTMENT OF CORRECTIONS

OFFICE OF THE SECRETARY

Landon State Office Building
900 S.W. Jackson—Suite 400-N
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(913) 296-3317

Joan Finney
Governor

Steven J. Davies, Ph.D.
Secretary

To: Senate Judiciary Committee

From: Steven J. Davies, Ph.D.
Secretary of Corrections

Subject: Senate Bill No. 144

Date: February 20, 1991

Senate Bill No. 144 would amend K.S.A. 1990 Supp. 75-5220 by increasing from three days to five days, not counting Saturdays, Sundays, and holidays, the period within which the Department of Corrections must accept into custody individuals who have been sentenced to the custody of the secretary of corrections. This period begins when the secretary is notified by the sheriff that inmate has been sentenced to the secretary's custody.

Significant increases in new admissions to the custody of the secretary of corrections has made it extremely difficult for the department to accept inmates within the three day period now provided by statute. This has in some case resulted in inmates being retained in county jails beyond the three day period. In a recent opinion, the Attorney General held that the Department of Corrections was responsible for costs incurred by the county in keeping the inmate past the three day period.

New admissions averaged 327 per month in FY 90, compared to 294 in FY 89 and 250 in FY 88. To date in FY 91, new admissions are averaging 317 per month. This includes 352 new admissions in July and 366 new admissions in August.

New admissions are evaluated at the reception and diagnostic unit of Topeka Correctional Facility. A limited number of beds are available at that facility. While efforts have been taken to shorten the evaluation process so that inmates can be moved through

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the facility at a faster pace, the high rate of new admissions is still making it difficult to accept all new admissions within the three day limit.

The increase to a five day period is viewed as a reasonable attempt to resolve this problem without creating additional burdens on other governmental entities. The additional period of time would give the Department of Corrections some flexibility in planning and operations to work with the high numbers of individuals being admitted to the secretary's custody each month.



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Joan Finney
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Steven J. Davies, Ph.D.
Secretary

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE ON SENATE BILL 146
ROGER WERHOLTZ, DEPUTY SECRETARY OF CORRECTIONS
DIVISION OF COMMUNITY AND FIELD SERVICES MANAGEMENT
FEBRUARY 20, 1991

I would like to take this opportunity to speak in support of Senate Bill 146 which establishes a parole supervision fee for all employed parolees of \$7.00 per month. Funds generated by these fees will go to support job development and employment activities on behalf of individuals under the supervision of parole services in each of the five parole regions serving the state of Kansas.

For several years, community corrections programs have demonstrated the importance of employment in maintaining offenders successfully in Kansas communities. They have devoted staff time and in some instances have created full time job development positions to serve their offender populations. I am sure that every member of the Legislature is familiar with the statistical information that community corrections programs have provided regarding the contributions made by offenders under their supervision in terms of taxes paid, child support paid, restitution and court costs paid, etc. These results are achievable because the offenders are gainfully employed and the high level of employment is attributable, at least in part, to the job development and job maintenance efforts of community corrections programs.

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Common sense tells us that employment and a legitimate source of income are important to any individual's successful functioning in the community. This is an item of critical importance to individuals attempting to reintegrate into the community after a period of incarceration. Employment resources available to parolees to date have consisted of whatever resources are available from other public agencies within a given community. Parolees' abilities to access these services and compete with other citizens for the services and employment are limited. Parolees frequently require special assistance and attention because of their inability to cope with the complex systems of state agencies or their lack of capacity to present themselves appropriately when applying for employment. The services provided by the funds generated through this parole fee will provide the support and assistance necessary to make offenders more competitive in their attempts to obtain legitimate employment.

The potential for additional generated income which would be returned to the State General Fund is significant. If the Department were successful in collecting supervision fees from only 50% of the parole population supervised in the state of Kansas, that would still generate an estimated \$221,000.00 annually. That figure should be sufficient to staff and equip the five positions in each of the state's parole regions. As these positions begin to impact on the level of employment amongst the parole population, it can be assumed that further income would be generated which would become available for other purposes.

While much of this discussion has been focusing on the potential impact of improving employability of offenders, it is also important to convey a message to them that they bear responsibility for the supervision they continue to receive while in the community. Even though \$7.00 per month amounts to only a token fee for most people, it conveys a message that they share in the cost of their supervision.

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Again, we would like to encourage the support and passage of this bill which will provide an important tool to assist the Department of Corrections and its task of supervising some of the most difficult and problematic offenders residing in Kansas communities.



Attachment

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Joan Finney
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Secretary

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE ON SENATE BILL 148
ROGER WERHOLTZ, DEPUTY SECRETARY OF CORRECTIONS
DIVISION OF COMMUNITY AND FIELD SERVICES MANAGEMENT
FEBRUARY 20, 1991

The Department of Corrections wishes to express its support for Senate Bill 148. In Fiscal Year 1990, the Department expended approximately \$438,000.00 to house parole violators in county jails pending their return to state facilities. The Department was forced to seek (and we received) supplemental funding of \$147,100.00 to make it through the year. This bill will place a cap on maintenance costs paid to counties for housing these individuals. This will provide one element of cost control to the Department that it does not currently have. The Department has also put in place a system to monitor jail expenditures by parole region with multiple levels of review to insure that no parolee is in jail unnecessarily.

At this time, we believe only two counties, Shawnee and Graham, will be affected by the cap. The savings there alone could exceed \$75,000.00 over a three year period. However, with more counties building new jails, the potential for excessive charges will no doubt increase, and under current statutes, the state has no choice but to pay whatever fee is developed for jail costs.

Some may argue that the counties are doing the state a favor by housing these individuals. We would respectfully disagree with

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that contention and argue that we are doing the county a service by removing parolees exhibiting dangerous behavior from the streets, generally more rapidly than by any other means. An analysis of revocation reasons reveals that some of the most common behaviors which result in parolees being held in local jails include absconding, terroristic threats, possession of weapons including firearms, assaultive activities, drug use, excessive alcohol usage, etc. Obviously, removing these people from the streets is of great benefit to local public safety.

Attached to this testimony are the current per diem payments made to each county.

Table 1.2 Kansas Department of Corrections: Operating Costs Per Capita - FY 1990

| Facility | ADP | FY 1990 Expenditures | Annual Per Capita | Daily Per Capita |
|--|-------|----------------------|-------------------|------------------|
| Lansing Correctional Facility | 1,826 | \$ 26,537,286 | \$14,533 | \$39.82 |
| Hutchinson Correctional Facility | 1,532 | 19,512,969 | 12,737 | 34.90 |
| Topeka Correctional Facility | 603 | 11,889,451 | 19,717 | 54.02 |
| Norton Correctional Facility | 477 | 8,529,574 | 17,882 | 48.99 |
| Ellsworth Correctional Facility | 436 | 6,543,485 | 15,008 | 41.12 |
| Winfield Correctional Facility | 261 | 3,483,674 | 13,347 | 36.57 |
| Wichita Work Release Facility | 153 | 1,881,073 | 12,295 | 33.68 |
| El Dorado and Toronto Correctional Work Facilities | 200 | 2,022,168 | 10,111 | 27.70 |
| Osawatomie Correctional Facility | 69 | 1,157,936 | 16,782 | 45.98 |
| Community Residential Centers | 25 | 277,722 | 11,109 | 30.44 |
| Contract Work Release | 5 | 47,085 | 9,417 | 25.80 |
| Subtotal | 5,587 | \$ 81,882,423 | 14,656 | \$40.15 |
| Inmate Medical and Mental Health Care | 5,587 | 10,626,324 | 1,902 | 5.21 |
| Inmate Programs | 5,587 | 9,336,221 | 1,671 | 4.58 |
| Total | 5,587 | \$101,844,968 | 18,229 | \$49.94 |

Note: Because expenditures for inmate programs and health care were consolidated in the KDOC central office budget, commencing with FY 1990, these costs are not included in the facility operating expenditures and per capita costs. Accordingly, the per capita costs for these programs have been determined on a systemwide basis.

Also, the systemwide expenditures for inmate programs reflect only direct program expenditures. The expenditures do not include any costs for KDOC central office personnel to coordinate and manage delivery of the programs.

The operating capacity of existing KDOC facilities is 5,452 beds. The operating capacity has been established by court order, effective July 1, 1991. An interim inmate population cap has also been set by the court, temporarily allowing the Department to exceed the operating capacity level. The population cap in effect on November 30, 1990 is 6,041.

The Department currently has two facilities under construction which will increase the operating capacity of the system. El Dorado Correctional Facility is a 640-bed maximum security facility scheduled to become operational in 1991. Larned Correctional Mental Health Facility is a 150-bed mental health facility scheduled to come on-line early in 1992.

In addition to its own facilities, the Department places inmates at Larned State Hospital, which has the

**Rates Paid to County Jails for Holding Parole Violators
as of February 13, 1991**

| County | Per Day Rate | Date Rate Was Set |
|-----------|--------------|-------------------|
| Allen | \$25.00 | 9-5-89 |
| Anderson | NR | N/A |
| Atchison | 6.00 | 5-25-83 |
| Barber | 15.00 | 5-6-83 |
| Barton | 25.00 | 1-1-84 |
| Bourbon | 26.50 | 7-1-83 |
| Brown | 25.00 | 4-4-83 |
| Butler | 20.00 | 10-1-83 |
| Chase | NR | N/A |
| Chataugua | 20.00 | 1-1-88 |
| Cherokee | NR | N/A |
| Cheyenne | NR | N/A |
| Clark | NR | N/A |
| Clay | 15.00 | 10-19-81 |
| Cloud | 15.00 | 7-1-81 |
| Coffey | NR | N/A |
| Comanche | NR | N/A |
| Cowley | 30.00 | 12-1-87 |
| Crawford | 22.50 | 12-3-85 |
| Decatur | NR | N/A |
| Dickinson | 35.00 | 7-1-90 |
| Doniphan | NR | N/A |
| Douglas | 34.75 | 1-1-89 |
| Edwards | 25.00 | 1-5-87 |
| Elk | NR | N/A |
| Ellis | 30.00 | 9-27-87 |
| Ellsworth | NR | N/A |
| Finney | 30.00 | 5-16-86 |
| Ford | 30.00 | 1-1-89 |

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Rates Paid to County Jails for Holding Parole Violators
as of February 13, 1991

| | | |
|-------------|-------|---------|
| Franklin | 4.30 | 1-23-89 |
| Geary | 30.00 | 4-1-87 |
| Gove | NR | N/A |
| Graham | 50.00 | 3-3-89 |
| Grant | 30.00 | 4-13-89 |
| Gray | 6.00 | 8-2-82 |
| Greeley | NR | N/A |
| Greenwood | NR | N/A |
| Hamilton | 30.00 | N/A |
| Harper | 30.00 | 4-1-88 |
| Harvey | 30.00 | 4-4-89 |
| Haskell | NR | N/A |
| Hodgeman | NR | N/A |
| Jackson | 35.00 | 6-29-90 |
| Jefferson | 35.00 | 7-7-89 |
| Jewell | 10.00 | 3-1-87 |
| Johnson | 28.00 | 6-1-82 |
| Kearney | 30.00 | 1-1-86 |
| Kingman | 25.00 | 3-1-82 |
| Kiowa | 20.00 | 7-1-84 |
| Labette | 18.00 | 5-22-85 |
| Lane | 30.00 | 9-16-85 |
| Leavenworth | 26.75 | 1-1-86 |
| Lincoln | NR | N/A |
| Linn | NR | N/A |
| Logan | 30.00 | 2-1-90 |
| Lyon | 25.00 | 2-14-85 |
| Marion | NR | N/A |
| Marshall | NR | N/A |
| McPherson | 20.00 | 5-1-83 |

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| Rates Paid to County Jails for Holding Parole Violators as of February 13, 1991 | | |
|--|-------|----------|
| Meade | 30.00 | 2-2-86 |
| Miami | 30.00 | 1-1-90 |
| Mitchell | 7.00 | 1-1-81 |
| Montgomery | 30.00 | 4-28-90 |
| Morris | NR | N/A |
| Morton | 40.00 | 9-1-88 |
| Nemaha | NR | N/A |
| Neosho | 25.00 | 4-25-86 |
| Ness | NR | N/A |
| Norton | 40.00 | 5-22-89 |
| Osage | NR | N/A |
| Osborne | 15.00 | 7-1-81 |
| Ottawa | 6.00 | 1-1-88 |
| Pawnee | 30.00 | 9-1-89 |
| Phillips | 35.00 | 1-23-89 |
| Pottawatomie | 12.00 | 2-13-89 |
| Pratt | 0 | 7-5-83 |
| Rawlins | NR | N/A |
| Reno | 30.00 | 1-1-83 |
| Republic | 25.00 | 11-8-86 |
| Rice | 10.00 | 6-30-86 |
| Riley | 30.00 | 3-20-90 |
| Rooks | 40.00 | 7-11-89 |
| Rush | NR | N/A |
| Russell | 30.00 | 12-28-89 |
| Saline | 30.00 | 1-1-91 |
| Scott | 25.00 | 1-1-88 |
| Sedgwick | 39.50 | 6-1-87 |
| Seward | 30.00 | 3-19-90 |
| Shawnee | 71.03 | 1-1-91 |

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**Rates Paid to County Jails for Holding Parole Violators
as of February 13, 1991**

| | | |
|------------|-------|----------|
| Sheridan | NR | N/A |
| Sherman | 35.00 | 1-9-89 |
| Smith | 35.00 | 1-1-89 |
| Stafford | NR | N/A |
| Stanton | 30.00 | 1-1-88 |
| Stevens | 10.00 | 12-7-87 |
| Sumner | 14.50 | 2-27-84 |
| Thomas | 30.00 | 8-1-87 |
| Trego | 20.00 | 2-17-81 |
| Wabaunsee | 20.00 | 12-4-87 |
| Wallace | NR | N/A |
| Washington | 40.00 | 3-12-90 |
| Wichita | NR | N/A |
| Wilson | 15.00 | 8-3-81 |
| Woodson | 20.00 | 12-19-88 |
| Wyandotte | 42.00 | 9-1-85 |

NR - No Rate Has Ever Been Established.



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John T. Torbert

February 25, 1991

To: Senate Judiciary Subcommittee
Chairman Richard Rock

From: Anne Smith
Director of Legislation

Re: SB 148

The Kansas Association of Counties opposes SB 148.

Paragraph B of the bill requires that the daily maintenance costs, including medical, paid by the Department of Corrections, shall not exceed the average daily cost of housing an inmate in a state correctional facility for the previous fiscal year.

Costs that are assessed to the state by the counties should be the actual cost to the county, not based on the previous fiscal year which is not reflective of current costs.

The KAC urges the Judiciary Subcommittee to reject this legislation as it is another attempt to have counties administer a program without adequate funding.

Thank you for allowing us to address these concerns.

*Attachment 4
Subcommittee - Judiciary
2-20-91*

STATEMENT OF MARY E. MAY
IN SUPPORT OF SENATE BILL NO. 12

Since the early 1980's the oil and gas industry in Kansas has experienced hard times. The financial woes of the oil and gas operator have been commonplace. An operator's financial distress is seldom confined to his own financial statement, but rather clearly impacts the financial welfare of others. In many instances, the law in Kansas provides some level of protection for those affected. For example, if an operator fails to pay a drilling contractor or the supplier of pipes for his well, those suppliers of materials and services can acquire a lien on the oil and gas leasehold estate of the nonpaying operator. Those lien rights are provided in K.S.A. 55-207, et seq.

It is not, however, only the supplier who feels the operator's financial strain. An operator who cannot pay his supplier will most likely fail to pay the royalty owner and other working interest owners who are entitled to proceeds from the production of oil and gas. There is, however, no Kansas statute to protect their rights, as in the case of a supplier. If an operator files for bankruptcy, these interest owners are mere unsecured creditors who generally receive nothing for their unsecured claims in a bankruptcy. Senate Bill No. 12 is designed to correct that problem.

Senate Bill 12 provides a security interest to both royalty and working interest owners, as secured parties, in oil and gas production, as defined in the Bill, and the proceeds therefrom, to secure the obligations of the first purchaser. Both

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Oklahoma and Texas have adopted similar legislation, and, in fact, Senate Bill No. 12 is patterned after the Texas statute.

The Bill's approach is simple.

A signed division order, agreement to purchase oil or gas production or other writing recognizing the interest owners' interest is sufficient to serve as security agreement between the interest owner and the first purchaser and automatically perfects the interest owners' interest. (Section 1). If the interest is evidenced by a recorded deed, mineral deed, reservation in either, oil or gas lease, assignment or other writing, that writing serves as a filed financing statement. The writings, whether recorded or not, serve to create a security interest in oil and gas production, as well as any proceeds therefrom. No other filing is required, simplifying the manner in which the interest is obtained and detected. (Sections 2 and 3).

The security interest created serves to protect the interest owner in the event of a bankruptcy filing, by elevating the status of the interest owner to that of a secured creditor - a position that those unfamiliar with bankruptcy law might have assumed the interest owner already occupied.

The relative priorities of the various interest owners among themselves and with respect to other creditors are also set forth in the Bill (Sections 7 and Sections 6 and 8, respectively).

If a dispute arises among the interest owners and the first purchaser, the Bill provides for the manner in which the dispute can be resolved, which protects both the interest owner and the first purchaser. (Sections 11 and 12).

Likewise, the rights of buyer in the ordinary course of business will find that his rights have not been impaired by the Bill. (Sections 5 and 13). He retains his ability to buy oil and gas production free and clear of any liens. The Bill, to the extent possible, protects the rights of those who, until now, were long forgotten, while at the same time leaving essentially undisturbed the sale of oil and gas to others.

Members of the oil and gas industry, including representatives of the Southwest Royalty Owners Association, Koch Industries, Inc., and the Kansas Independent Oil and Gas Association met to discuss the issues relating to the Bill. In those meetings, numerous aspects of the Bill were discussed and negotiated. Senate Bill No. 12 has met with the approval of those participating in the discussions.

On behalf of the Southwest Kansas Royalty Owners Association, I urge that the Legislature of the State of Kansas to enact Senate Bill No. 12.



PUBLIC POLICY STATEMENT

Attachment

SENATE JUDICIARY COMMITTEE

Subcommittee in Civil Procedure

Re: S.B. 12 - Security Interests in Oil and Gas Production
S.B. 13 - Interest on Proceeds from Oil and Gas Production

February 20, 1991

Topeka, Kansas

Presented By:
Bill R. Fuller, Assistant Director
Public Affairs Division
Kansas Farm Bureau

Chairman Rock and members of the Subcommittee:

My name is Bill Fuller. I am the Assistant Director of the Public Affairs Division for Kansas Farm Bureau. We certainly appreciate this opportunity to express support for both S.B. 12 and S.B. 13 on behalf of the farmers and ranchers who are members of the 105 County Farm Bureaus in Kansas.

Our support is based upon a new section in Farm Bureau policy adopted in 1990 and reaffirmed by the 439 Voting Delegates at the 72nd Annual Meeting of Kansas Farm Bureau for 1991:

Mineral Interests

We believe legislation should provide for an orderly divestiture of mineral interests held by the

*Attachment 6.
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Farm Credit System. These mineral interests should be appraised and sold to the owners of overlying surface property.

We support legislation to reduce from 20 years to 10 years the time required for unused mineral interests to be returned to the owner of the overlying surface land.

We support legislation which would result in renegotiation of mineral leases involving infill drilling.

We support legislation to give a royalty owner a lien to ensure royalty payment - or an improved, secured creditor position in the case of a mineral producer bankruptcy.

We believe legislation is needed to protect a landowner and royalty owner from division orders which modify or amend the terms of an original lease to the disadvantage of a royalty owner or landowner. We support legislation to require the payment of interest on suspended royalties.

We believe S.B. 12 and S.B. 13 will insure that interest owners receive payments due them on proceeds derived from oil and gas production. We certainly appreciate the preliminary work during the 1990 Session, study and introduction of legislation by the 1990 Interim Committee on Assessment and Taxation and the cooperation among the various parties in resolving this important issue. We urge passage of S.B. 12 and S.B. 13. Thank you!

1991 SENATE BILL 12

I am Jonathan P. Small, attorney and lobbyist for Koch Industries and I appear today on behalf of Koch Industries and their position regarding Senate Bill 12.

Koch Oil Company, as a purchaser of oil in Kansas, is in favor of this bill. Passage of this bill would benefit oil and gas interest owners throughout the state. It provides all interest owners, working and royalty, with a security interest either in the production they own or, when sold, upon the proceeds of that sale. The language used in this bill is quite similar to legislation that has been in effect in Texas for some time. In the state of Texas this legislation has been effective in protecting the rights of oil and gas interest owners. A significant feature of this bill is that it allows protection of the owners' interest without disrupting the sale of oil and gas or acting to cloud title of other owners in a lease. An additional benefit is that the security interest of these owners is perfected without the necessity of additional legal action by the owners.

Koch believes that these changes would be a logical extension of UCC concepts. It is understood that the legislature might have concerns about amending a "uniform" law, however these changes are relatively minor in comparison to the overall scheme of the UCC. The amendments would not alter other aspects of the UCC and would not be of interest to those states which do not have oil or gas production. It is important that the laws of Kansas reflect the concerns and needs of it's citizens.

Koch urges the passage of this bill. It is an important piece of legislation for all entities in the oil and gas business. It allows protection to royalty and working interest owners without adversely impacting the normal course of business.

Your favorable consideration is very much appreciated.

Respectfully submitted,



Jonathan P. Small
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Attachment 8

February 20, 1991

TO: Senate Judiciary Subcommittee

Re: SB 12 - Security Interest in Oil and Gas Production

This bill now has a three session history. SB 2353 (1989), SB 510 (1990), and now, SB 12 (1991). It became clear to us last year that SB 510 would not pass and in the interest of keeping the legislation alive we recommended an interim study. SB 12 arises from Proposal No. 8 of last summer's interim study.

There was a concerted effort to reach agreement among many individuals and groups with interest in this subject.

SB 12, in effect, follows Texas law and would amend the uniform commercial code and provide for a statutory security interest and a lien on oil and gas production in favor of interest holders, including royalty and working interests. The security interest would be perfected automatically without filing of record. It would set up a priority of claim in the event of default or judgement.

The statutory lien would secure the obligations of first purchasers of oil and gas production to pay the purchase price to all interests. In effect, it would protect interest holders in the event of financial failure or bankruptcy of a first purchaser of crude oil or natural gas.

When we completed our work last summer before it was presented to the interim committee, we did say that although we were satisfied with the terms of the proposal, we recognized that there might be others that did not participate who may want to contribute to the design of this new law. There was no testimony in opposition to the legislation during the interim committee hearing.

We are pledged to recommend passage of the legislation, but we would reserve the right to look closely and speak further regarding any amendments that might be proposed. This is complex legislation, not easily understood, and legislation that can be easily fouled with additional amendments. This statute follows current Texas law which has had, to date, no legal contests or reported difficulty.

We recommend passage of SB 12.

Donald P. Schnacke

*Attachment 8
Subcommittee - Judiciary
2-20-91*

STATEMENT OF GREGORY J. STUCKY
IN SUPPORT OF SENATE BILL NO. 13

My name is Gregory J. Stucky, from Wichita, Kansas. I am testifying on behalf of the Southwest Kansas Royalty Owners Association, a non-profit association comprised of over 2,000 owners of royalty interest under oil and gas leases in a ten (10) county region in southwest Kansas within the confines of the Hugoton field. I am a lawyer with the law firm of Fleeson, Gooing, Coulson & Kitch, in Wichita, and the primary emphasis of my practice has been in oil and gas law. I am the past President of the Oil and Gas Section of the Kansas Bar Association.

LEGISLATIVE HISTORY OF SENATE BILL NO. 13

The predecessor to Senate Bill No. 13 was the 1989 House Bill 2958. That bill was sponsored by Representative Shore. Last Year the House Committee on Energy and National Resources conducted hearings on that bill, and a substitute bill was adopted by the Committee. The House of Representatives passed the substitute bill by a vote of 123 to 1, and it was assigned to the Senate Energy and Natural Resources Committee. Hearings were conducted before that Committee but no action was taken on the bill. Instead, Senator Doyan, Chairman of the Senate Energy and Natural Resources Committee, stated he would request an interim study on this bill.

This bill was assigned for interim study to the Special Committee on Assessment and Taxation. Between the close of the 1989 Legislative Session and that interim study, members of the

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oil and gas industry, including representatives of the Southwest Kansas Royalty Owners Association, Koch Industries Inc., and the Kansas Independent Oil and Gas Association, met to discuss issues relating to certain provisions of the bill. In those conferences, the participants negotiated numerous aspects of the bill, primarily the rate of interest required to be paid under the terms of the bill, and finally agreed to a compromise bill. That bill was then proposed to the Special Committee on Assessment and Taxation for its interim study. Hearings were subsequently held on that compromise proposal. That compromise proposal, endorsed by the interim study, has now become Senate Bill No. 13.

DISCUSSION OF SENATE BILL NO. 13

Senate Bill No. 13 in general requires the payment of interest by a party holding money attributable to production from a Kansas oil or gas well if that holding party does not disburse money within the time frame provided in the Bill.

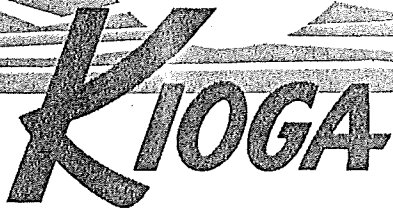
Kansas royalty owners would be one group who will benefit from this legislature. The protection afforded by this Bill, however, is not confined to royalty owners. Other parties who receive production payments, such as working interest owners and overriding royalty interest owners, would also be entitled to interest in the event that the party holding funds does not make timely payments. Because there are representative of other parts of oil and gas industry here, I will only address the need for this bill from the point of view of a royalty owner.

A royalty owner would, for example, be a farmer in western Kansas who owned his land and executed an oil and gas lease. Timely payment of royalties has always been a matter of utmost concern to that farmer and other royalty owners in Kansas. Royalty owners generally are paid monthly under the terms of the oil and gas lease. For a variety of reasons, some of which are admittedly valid, those royalties are on occasion suspended. For example, on the death of a royalty owner or another occasion which the royalty payments would be transferred to another party, those royalty payments are suspended until satisfactory documentation is obtained. When the operators of a well change, royalty payments are also suspended during the transition. When there is a change in the purchaser of the production, royalty payments are also often suspended, pending the receipt by the purchaser of a new division order from the royalty owners. There are endless other reasons why royalty owners do not see their regular monthly checks.

Senate Bill No. 13 does not attempt to classify, as justified or unjustified, each of the endless number of reasons why royalty payments should be suspended. Its approach is much simpler. It is based upon fundamental equitable considerations. This Bill merely provides that if royalty payments are suspended for any reason, interest should be paid by the suspending party. It is the suspending party who has the use of the royalty owner's funds during the period of suspension, and under the terms of the bill it is that party who pays interest to the royalty owners for the use of those funds.

The interest required to be paid is modest. If the suspending party places the suspended payments in an interest bearing escrow account, that party only needs to pay the amount of interest accrued on that escrow account. If the suspending party, however, decides not to place the money in an escrow account, that suspended money draws interest at 1 1/2 percentage points above the New York Federal Reserve discount rate. Today that interest rate required to be paid under the Bill is about 7.5%.

This compromise Bill addresses an inequitable situation. In the past, parties could suspend payment from production of oil and gas for significant periods of time and escape from payment of interest on those suspended amounts. With the passage of Senate Bill No. 13, that inequity would no longer exist. On behalf of the Southwest Kansas Royalty Owners Association, I urge that the Legislature of the State of Kansas enact Senate Bill No. 13.



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February 20, 1991

TO: Senate Judiciary Subcommittee

Re: SB 13 - Payment of Interest on Proceeds from Oil and Gas Production

SB 13 has a legislative history in that the subject matter was cited as Subs. HB 2985 (1990). Like SB 12, it became clear to us that there was so much confusion in the development of this bill that we asked that it be studied during the summer so we could build a consensus among all the industry interests. This bill was studied under Proposal No. 8 and has arisen from an agreed upon compromise consensus proposal. We are committed to its passage in its present form.

SB 13 would require the payment of reasonable interest after a period of time on money held by a first purchaser.

We consider SB 13 a compromise bill, but probably as close to reality as we will get without offending the purchasers or the interest holders.

Again, as in SB 12, not all potential interested parties participated in the summer-long sessions and it is possible that there might be opposition. As I recall, there was no opposition expressed at the summer interim committee meeting.

We recommend passage of SB 13 in its present form.

Donald P. Schnacke

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1991 SENATE BILL 13

I am Jonathan P. Small, attorney and lobbyist for Koch Industries, and I appear today on behalf of Koch Industries and their position regarding Senate Bill 13.

Koch Oil Company is in favor of this bill. The bill in its present form is the result of a compromise reached as a result of several meetings of various members of the oil and gas industry. All parties involved, including Koch, made compromises concerning what they felt should be contained in this legislation.

The bill merely provides that when oil or gas proceeds are held in suspense by the dispenser of the proceeds, interest shall accrue. The concept is quite simple and provides a benefit to all oil and gas interest owners. Koch believes this approach to interest in oil and gas proceeds is very important. The issue of interest is not clouded with questions like when it is proper for proceeds to be held in suspense. In our experience in other states that have not taken this type of approach the result has been expensive litigation for all parties concerned.

Koch urges the subcommittee to pass this bill as presented.

Your favorable consideration is very much appreciated.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Jonathan P. Small'.

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