

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on March 20, 2009, in Room 446-N of the Capitol.

All members were present.

Committee staff present:

Kristen Kellems, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Corey Carnahan, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Alissa Vogel, Committee Assistant

Others attending:

See attached list.

The meeting began with continuing discussion on **SB 184 - Surface owner notice act.**

Kristen Kellems distributed a copy of the amendments made to **SB 184**, approved in the previous Committee meeting. (Attachment 1)

Senator McGinn stated that the Committee could continue working with the amendments made to the original language of **SB 184** or consider new agreed upon language made between the interested parties.

Senator Bruce provided the Committee with an explanation of the new language contained in the substitute for **SB 184**. (Attachment 2) The proposed substitute for **SB 184** includes: definitions of "surface" or "surface estate" and "surface owner," including the name and address of the surface owner on an application of intent to drill, notice of transfer or operator, and notice of intention to plug and abandon a well, including on the application of intent to drill non-binding preliminary estimates of the location of roads of ingress or egress, any tank battery, and any pipeline or electrical line, requiring a copy of an application to be sent to the surface owner, and confirming the authority of the Kansas Corporation Commission (KCC) to seek advise from the advisory committee and adopt rules and regulations necessary to carry out provisions of the act.

Terry Holdren stood before the Committee and suggested, rather than use section 4 in the proposed substitute for **SB 184**, the Committee might consider amending existing language located in K.S.A. 55-151 and K.S.A. 55-173.

Marge Petty, Kansas Corporation Commission, informed the Committee that the KCC is unsure what impact the proposed legislation will have on her agency. The KCC has moved to an electronic filing system, and **SB 184** could possibly cost the agency some programming dollars, time, and people. The concern is that when operators do not send notification to the surface owner, the burden is placed on the KCC to follow through with the notification.

She stood for questions.

Senator Bruce asked whether, in section 2, the definition of "surface owner" was necessary. Terry Holdren stated the importance of the definition is to limit the application of the notice requirement to those who are actually surface owners.

Senator Francisco asked whether K.S.A. 55-173 needed to be amended, as there is an inconsistency of language. Kristen Kellems suggested striking the language that requires the surface owner to request notification from the KCC, instead placing the burden on the operator to fill out the application, in which the KCC would then send out a letter of notification to the surface owner.

Senator Bruce moved to adopt the proposed substitute for SB 184 with the following changes: "July 1, 2009" would be included in section 5 for a time limitation to adopt rules and regulations, and latitude would be given to the Revisor of Statutes Office to amend inconsistencies with existing statutory law.

Kristen Kellems clarified that changes would be made to K.S.A. 55-151 and K.S.A. 55-173 and section 4

CONTINUATION SHEET

Minutes of the Senate Natural Resources Committee at 8:30 a.m. on March 20, 2009, in Room 446-N of the Capitol.

of the proposed substitute for **SB 184** would be stricken. Terry Holdren requested that language not be stricken in K.S.A. 77-173 that would allow the landowner early on in the process to request that he or she be given the well for irrigation or other farm purposes after the oil and gas operators are done producing the well. Discussion was held on whether any language needs to be added that would have the KCC report back to the Committee. Senator Francisco seconded the motion made by Senator Bruce, and the motion carried.

Senator Teichman moved to pass SB 184 favorably out of Committee. Senator Francisco seconded the motion, and the motion carried.

Senator Francisco presented an overview of **SB 286 - Repealing statutes that authorize the destruction of prairie dogs by certain townships** and **SB 287 - Prairie dog management, control and conservation**. She explained to the Committee that the Federal government has designated the black-footed ferret as an endangered species, which has an affect on the prairie dog population, a major food source for the black-footed ferret. Senator Francisco believes Kansas law concerning prairie dogs may come under scrutiny, because current law allows for the poisoning of prairie dogs. **SB 186** would repeal the current law concerning the destruction of prairie dogs, and **SB 287** provides an alternative method for prairie dog control and management.

She stood for questions. Raney Gilliland provided additional information on existing agreements made between Kansas landowners and the U.S. Fish and Wildlife Service, which deal with the reintroduction of the black-footed ferret, and the questions raised regarding prairie dog management and control.

The meeting was adjourned at 9:05 a.m.

SENATE BILL No. 184

By Committee on Natural Resources

2-3

9 AN ACT enacting the Kansas surface owner notice act; relating to oil
10 and gas operations; state corporation commission.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. Sections 1 through 7, and amendments thereto, may be
14 cited as the Kansas surface owner notice act.

15 Sec. 2. As used in this act:

16 (a) "Agricultural surface use" means the use of the surface estate for
17 pasture, livestock, cultivation, harvesting, growing of crops, timber,
18 grasses and other vegetation, woodlands and hunting, including any im-
19 provements, fresh water and soil used for these purposes;

20 (b) "commission" means the state corporation commission;

21 (c) "oil and gas" means crude oil, natural gas, casinghead gas, con-
22 densate, or any combination thereof, inclusive of shale or coal bed
23 methane;

24 (d) "oil and gas operations" means those operations which require
25 entry upon the surface estate, including geophysical operations, drilling
26 operations, completion operations, production operations, plugging and
27 abandonment operations, and restoration of the surface estate;

28 (e) "oil and gas operator" means the person or such person's repre-
29 sentative who is responsible for or conducts or controls the physical op-
30 eration of a well and who conducts oil and gas operations on its own behalf
31 or on behalf of others on a surface estate pursuant to an oil and gas lease
32 or other agreements or contracts;

33 (f) "person" means any natural person, partnership, governmental or
34 political subdivision, firm, association, corporation or other legal entity;

35 (g) "surface" or "surface estate" means a specific tract of land and
36 improvements thereon created by and held in fee or other legal title under
37 a deed or other instrument of conveyance, or equitable title under a
38 recorded contract for deed, by a person other than the United States, a
39 state, an Indian tribal organization or any agency, instrumentality or sub-
40 division of any of the foregoing, regardless of whether such person also
41 owns or otherwise holds interest in the mineral estate underlying the
42 surface estate; and

43 (h) "surface owner" means any person who holds or owns legal title

Amendments to SB 184

Prepared by: Kristen Kellems
Revisor of Statutes Office

March 19, 2009

z184h1.pdf

Kristen Kellems

Senate Natural Resources

March 20, 2009

Attachment #1

1-2

1 to the surface estate or an interest therein, as shown on the records of
2 the register of deeds for the county where the surface estate is located,
3 and who is assessed real estate property taxes in accordance with the
4 records of the county treasurer, except that surface owner shall not in-
5 clude a tenant or persons whose only rights to use that surface estate are
6 based upon an easement, right-of-way, license, mortgage lien, severed
7 mineral interest or any non-possessory interest in the surface.

8 Sec. 3. (a) An oil and gas operator shall notify the surface owner, in
9 accordance with the provisions of this section, not more than 180 days
10 nor less than five business days prior to the commencement of the fol-
11 lowing oil and gas operations on the surface estate and expressly or im-
12 pliedly allowed pursuant to an oil and gas lease or other contract govern-
13 ing the use of the surface estate:

- 14 (1) Well site preparation or the drilling of a new well;
- 15 (2) the construction of roads, but not including repair or maintenance
- 16 of such roads;
- 17 (3) the plugging of any well;
- 18 (4) the installation, removal, replacement, relocation or substantial
- 19 repairing of a pipeline or an electrical line;
- 20 (5) the installation of a tank battery;
- 21 (6) ~~geophysical operations to determine the potential for oil and gas~~
- 22 ~~operations; and~~

and

23 ~~the~~ the construction, expansion, installation or reworking of any other
24 facility, structure or operation which substantially disturbs the surface or
25 substantially expands the use of the surface from conditions existing prior
26 to such operations.

27 (b) With regard to each proposed oil and gas operation requiring
28 notice in accordance with subsection (a):

29 (1) Each such specifically identified oil and gas operation shall be
30 noticed on a form prescribed for such purposes and adopted by the com-
31 mission prior to the commencement of such operation, except that the
32 oil and gas operator may combine all or some of the required notices of
33 oil and gas operations into a single notice if such operations shall be
34 completed within six months from the initial date of entry upon the sur-
35 face estate for the conduct of such oil and gas operations;

36 (2) in accordance with subsection (c), the oil and gas operator shall
37 provide a copy of the prescribed and completed form to the surface owner
38 not more than 180 days nor less than five business days prior to the
39 commencement of such oil and gas operations, unless otherwise agreed
40 to in a writing acknowledged by both parties pursuant to section 4, and
41 amendments thereto;

42 (3) the oil and gas operations form prescribed by the commission
43 shall: Include a general description of the proposed location and the

1 planned oil and gas operations to be conducted; specifically provide that
 2 the surface owner may contact the oil and gas operator through its rep-
 3 resentative designated on such form to discuss the proposed operations;
 4 include the designated representative's address and telephone number;
 5 and include an electronic mail or facsimile address, if available;

6 (4) in determining surface ownership, the oil and gas operator shall
 7 be entitled to rely solely upon the property ownership records maintained
 8 by the treasurer for the county where the relevant surface estate is lo-
 9 cated; and

10 (5) in the case of drilling operations, a copy of the approved intent
 11 to drill shall be posted on the commission website for the surface owners
 12 to access or it may be obtained by the surface owners from the oil and
 13 gas operator upon written request, including via electronic mail or
 14 facsimile.

15 (c) Unless otherwise waived pursuant to section 4, and amendments
 16 thereto, the oil and gas operator shall give the notice required under
 17 subsection (a) to the surface owner either:

18 (1) By certified, first class, express ~~or~~ overnight mail addressed to the
 19 surface owner at the address obtained from the county treasurer for the
 20 county where the surface estate is located and such notice shall be mailed
 21 within the notice period provided in this section prior to commencement
 22 of the oil and gas operations required to be noticed on the prescribed
 23 commission form; or

,
 , or delivery confirmation

24 (2) by personal delivery by the oil and gas operator to the surface
 25 owner at the address obtained from the county treasurer for the county
 26 where the surface estate is located not less than ~~ten~~ days prior to com-
 27 mencement of the oil and gas operations required to be noticed on the
 28 prescribed commission form.

five

29 (d) When notice is provided by mail, the notice period provided in
 30 this section shall commence on the date of the postmark on such notice.

31 (e) Notice by the oil and gas operator to the surface owners of record,
 32 as provided under this section, shall be deemed conclusive notice to all
 33 persons having any legal or equitable interest in or to the surface estate.

34 (f) Notice by the oil and gas operator to the surface owner shall con-
 35 tain a general description of the proposed location and the planned oil
 36 and gas operations.

37 (g) If the oil and gas operator has complied with the notice provisions
 38 of this section, the oil and gas operator shall be entitled to enter upon
 39 the surface owner's land and conduct the oil and gas operations in ac-
 40 cordance with the terms and conditions of any lease or other existing
 41 contractual or lawful right.

42 (h) The oil and gas operator shall deliver to the surface owner a copy
 43 of the well plugging application contemporaneously with the filing of such

1-4

1 application with the commission.

2 Sec. 4. The surface owner and the oil and gas operator may, by an
3 agreement ~~separate and apart from an oil and gas lease~~, alter or waive, in
4 whole or in part, their respective rights and obligations under section 3,
5 and amendments thereto, provided such alteration or waiver conspicu-
6 ously and expressly acknowledges that such agreement alters the provi-
7 sions of section 3, and amendments thereto. ~~Such agreement shall only~~
8 ~~be enforceable for one year and must be renegotiated annually.~~

9 Sec. 5. Notwithstanding any provision of this act to the contrary, no
10 prior notice shall be required in any exigent or emergency situation which
11 requires that an oil and gas operator immediately access the surface estate
12 and conduct activities that are reasonably necessary to protect health,
13 safety or the environment, or that are reasonably necessary to protect or
14 safeguard the oil and gas operator's equipment. Within ~~48 hours~~ after
15 entry under such exigent or emergency situation, the oil and gas operator
16 shall provide the surface owner with the information required under sub-
17 sections (b)(1) and (f) of section 3.

two business days

18 ~~Sec. 6. (a) Jurisdiction to implement and enforce the provisions of~~
19 ~~this act is hereby conferred on the commission, except that nothing in~~
20 ~~this act shall be construed to divest the district courts of Kansas of juris-~~
21 ~~isdiction to determine the issues relating to private contract rights or in any~~
22 ~~way limit or effect the rights or remedies which are otherwise available~~
23 ~~or permitted by law to either surface owners or oil and gas operators.~~

24 ~~(b) The commission, with input from the advisory committee on reg-~~
25 ~~ulation of oil and gas activities authorized under K.S.A. 55-153, and~~
26 ~~amendments thereto, shall adopt such rules and regulations deemed nec-~~
27 ~~essary to carry out the provisions of this act, including provisions for ad-~~
28 ~~ministrative penalties for failure to comply with this act.~~

And by renumbering the remaining section accordingly

29 Sec. 7. This act shall take effect and be in force from and after its
30 publication in the statute book.

Proposed Substitute for Senate Bill No. 184

By Committee on Natural Resources

AN ACT enacting the Kansas surface owner notice act; relating to oil and gas operations; state corporation commission; amending K.S.A. 2008 Supp 55-151 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. Sections 1 through 7, and amendments thereto, may be cited as the Kansas surface owner notice act.

Section 2. As used in this act:

(a) “surface” or “surface estate” means a specific tract of land and improvements thereon created by and held in fee or other legal title under a deed or other instrument of conveyance, or equitable title under a recorded contract for deed, by a person other than the United States, a state, an Indian tribal organization or any agency, instrumentality or subdivision of any of the foregoing, regardless of whether such person also owns or otherwise holds interest in the mineral estate underlying the surface estate; and

(b) “surface owner” means any person who holds or owns legal title to the surface estate or an interest therein as shown on the records of the register of deeds for the county where the surface estate is located, and who is assessed real estate property taxes in accordance with the records of the county treasurer, except that surface owner shall not include a tenant, or persons whose only rights to use that surface estate are based upon an easement, right-of-way, license, mortgage lien, severed mineral interest or any non-possessory interest in the surface.

Senator Bruce
Senate Natural
Resources
March 20, 2009
Attachment #2

Section 3. K.S.A. 2008 Supp. 55-151 is hereby amended to read as follows:

55-151. (a) Prior to the drilling of any well, every operator shall file an application of intent to drill with the commission. Such application shall include such information as required by the commission including the name and address of the surface owner and shall be on a form prescribed by the commission. Such application shall also include non-binding preliminary estimates of the location of roads of ingress or egress, any tank battery, and any pipeline or electrical line. The commission shall, upon receipt of such application, send a copy of such notice to the named surface owner. Such notice shall include contact information for a designated representative of the applicant, including name, address, phone number, fax or email. The commission need not send a copy of such notice if the operator verifies that the application filed with the commission has been delivered to the surface owner of record.

(b) No change in the use of a well shall be made without express approval of the commission. The state corporation commission shall have the authority to adopt rules and regulations to fix, charge and collect a fee for an application of intent to drill a well, except that such fee for an application of intent to drill a well shall not exceed \$300. No drilling shall be commenced until the authorized agents of the commission have approved the application. The agent, in giving approval, shall determine that the proposed construction of the well will protect all usable waters, Such approval shall include the amount of pipe necessary to protect all usable water, plugging requirements upon abandonment and such other requirements deemed appropriate by the commission. The commission may refuse to process any application submitted pursuant to this section unless the applicant has been in compliance with all rules and regulations adopted pursuant to this act.

(c) The commission shall make available to the secretary of the department of health and environment information related to all notifications of intents to drill. The commission shall make available to the clerk of any county in which a well will be drilled information related to the intent to drill for such well.

Handwritten notes:
2/2/08
1/2/08
1/2/08
1/2/08
1/2/08

Section 4. The commission shall require an oil and gas operator to file an application for a notice of transfer of operator or a notice of intention to plug and abandon a well. Such application shall include the name and address of the surface owner. The commission shall, upon receipt of such application, send a copy of such notice to the surface owner. Such notice shall include contact information for a designated representative of the applicant, including name, address, phone number, fax or email. The commission need not send a copy of such notice if the operator verifies that the application filed with the commission has been delivered to the surface owner of record.

Section 5. The commission, with input from the advisory committee on the regulation of oil and gas activities authorized under K.S.A. 55-153, and amendments thereto, shall adopt or amend such forms and rules and regulations deemed necessary to carry out the provisions of this act.

Section 6. K.S.A. 2008 Supp 55-151 is hereby repealed.

Section 7. This act shall take effect and be in force from and after its publication in the statute book.