

## CHAPTER 94

HOUSE Substitute for SENATE BILL No. 93\*

AN ACT creating the Kansas petroleum education and marketing act.

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

Section 1. The provisions of sections 1 through 11, and amendments thereto, shall be known and may be cited as the Kansas petroleum education and marketing act.

Sec. 2. As used in this act:

(a) "Act" means the provisions of sections 1 through 11, and amendments thereto;

(b) "board" means the Kansas oil and gas resources board as created by this act;

(c) "first purchaser" means:

(1) With regard to crude oil, the person to whom title first is transferred beyond the gathering tank or tanks, beyond the facility from which the crude oil was first produced, or both; and

(2) with regard to natural gas, the person to whom title first is transferred beyond the inlet side of the measurement station from which the natural gas was first produced;

(d) "independent producer" means a person who complies with both of the following:

(1) Produces oil or natural gas and is not engaged in refining either product; and

(2) derives a majority of income from ownership in properties producing oil or natural gas;

(e) "interest owner" means a person who owns or possesses an oil or gas leasehold interest in the gross production of oil or natural gas produced from a well in Kansas. For the purposes of this act, an oil and gas leasehold estate interest shall include the working interest and any overriding interest carved out of the working interest in any oil and gas lease, but shall not include royalty interests;

(f) "person" means an individual, group of individuals, partnership, corporation, association, limited liability company, cooperative or any other entity or an employee of the entity; and

(g) "qualified producer association" means an entity that is organized under section 501(c)(6) of the federal internal revenue code and in existence on the effective date of this act, organized and operates within the state of Kansas, and in which a majority of the members of such association's governing body consists of independent producers. In addition to any other entity which constitutes a qualified producer association as defined in this subsection, the Kansas independent oil and gas association, the Kansas petroleum council and the eastern Kansas oil and gas association shall be qualified producer associations.

Sec. 3. (a) It shall be lawful for any group of qualified producer associations to create, fund, administer, operate, manage, be members of and enjoy the benefit of a Kansas oil and gas resources board to administer a Kansas petroleum education and marketing program provided that the requirements of this act are met. The purpose of the board created by this act shall be to: (1) Coordinate a program designed to demonstrate to the general public the importance and significance of the oil and natural gas industry in Kansas; (2) encourage the wise and efficient use of energy; (3) promote environmentally sound production methods and technologies; (4) support research and educational activities concerning the oil and natural gas industry; (5) promote oil and natural gas exploration and production safety; (6) support job training and research activities concerning oil and natural gas production; and (7) implement and comply with the provisions of this act. The Kansas oil and gas resources board may be formed as a not-for-profit member corporation in which the Kansas independent oil and gas association, the Kansas petroleum council and the eastern Kansas oil and gas association shall be members. The Kansas oil and gas resources board, if formed as a not-for-profit member corporation, shall be formed, operated and dissolved in accordance with the provisions of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, and shall enjoy all of the rights of not-for-profit member corporations under Kansas law, subject to the restrictions and conditions set forth in this act. The Kansas oil and gas resources board

shall be a voluntary private organization and shall not be deemed in any manner to be a governmental or quasi-governmental board or other such organization.

(b) The board's governing body shall be composed of 15 members to be appointed by the governing bodies of the following qualified producer associations as follows: (1) Ten trustees to be appointed by the Kansas independent oil and gas association;

(2) three trustees to be appointed by the Kansas petroleum council; and

(3) two trustees to be appointed by the eastern Kansas oil and gas association.

(c) A trustee of the board shall:

(1) Be at least 25 years of age;

(2) be a resident of the state of Kansas; and

(3) have at least five years of active experience in the oil and natural gas industry.

(d) A trustee shall serve for a term of three years, except that of the initial appointments: (1) Five trustees shall serve for one year; (2) five trustees shall serve for two years; and (3) five trustees shall serve for three years. Vacancies in the board for any trustee shall be filled by the qualified producer association which appointed the vacating member and shall be filled for the remaining term of the vacating trustee.

(e) After July 1, 2006, the trustees of the board which are appointed by the qualified producer associations may by majority vote appoint a nonindustry representative to serve as an additional trustee. The additional trustee shall have full voting rights and privileges and shall serve a three-year term. Such trustee may be removed at any time from the board by majority vote of the trustees appointed by the qualified producer associations.

(f) The board shall elect annually a presiding officer of the board.

(g) The board may elect other officers as considered necessary by the board.

(h) No trustee of the board shall receive a salary or reimbursement for duties performed as a member of the board, except that trustees are eligible to received reimbursement for travel expenses incurred in the performance of board duties.

Sec. 4. The board shall have the following powers and duties, to:

(a) Administer and enforce the provisions of this act;

(b) establish an office for the board within the state of Kansas;

(c) elect a presiding officer and any other officers that may be necessary to direct the operations of the board;

(d) employ personnel as shall be deemed necessary to carry out the provisions of this act;

(e) administer the oil and gas resources fund;

(f) approve or disapprove the budget of the board;

(g) adopt rules as the board deems necessary to carry out the provisions of this act;

(h) enter into contracts or agreements for studies, research projects, experimental work, supplies or other services to carry out the purposes of this act; and to incur those expenses necessary to carry out such purposes. A contract or agreement entered into under this subsection shall provide that:

(1) The person entering the contract or agreement on behalf of the board shall develop and submit to the board a plan or project together with a budget that shows estimated costs to be incurred for the plan or project; and

(2) the person entering the contract or agreement shall keep accurate records of all such person's transactions, account for funds received and expended and make periodic reports to the board of activities conducted and other reports that the board may require;

(i) keep accurate records of all financial transactions performed pursuant to this act. Such records shall be audited annually by an independent auditor and an annual report shall be compiled;

(j) accept and deposit into the oil and gas resources fund donations, grants, contributions and gifts from any public or private source; and

(k) keep an accurate record of all assessments collected.

Sec. 5. (a) There shall be an annual meeting of the board at which the annual report and proposed budget shall be presented. The board, at the call of the presiding officer, shall hold at least three other regular

meetings each year. The presiding officer shall establish the time, manner and place for all meetings and shall provide notice of the meetings. A majority of the members of the board shall constitute a quorum for the transaction of any business of the board. In addition, the board shall determine the circumstances under which additional meetings of the board may be held.

(b) The board may appoint a director who shall carry out the provisions of the act. The director shall not be one of the appointed board members.

Sec. 6. The Kansas oil and gas resources board is hereby authorized to levy assessments on the production of oil and natural gas in Kansas for the purposes of a petroleum education and marketing program. There is hereby created a special fund to be designated as the oil and gas resources fund. The fund shall be a continuing fund, not subject to fiscal year limitations and shall consist of all moneys received by the Kansas oil and gas resources board from assessments received and collected pursuant to section 7, and amendments thereto, and donations, grants, contributions and gifts from any public or private source.

Sec. 7. (a) To fund the activities of the Kansas oil and gas resources board, and in the discretion of the board, a voluntary assessment not to exceed 0.05% of the gross revenues from oil or natural gas produced from each well in the state of Kansas shall be deducted from proceeds paid by the first purchaser to each interest owner. Any interest owner may elect not to be subject to the assessment or may seek a refund, as provided in this act. An annual cap of \$20,000, determined on a calendar year basis, shall be placed on assessments against any one interest owner. An interest owner's assessments shall cease immediately for the remainder of the calendar year when such interest owner's assessments reach the annual cap, except that additional voluntary contributions made by any such interest owner shall not be considered in determining whether such cap has been exceeded. This assessment is a voluntary checkoff and shall be treated in all respects accordingly. Any interest owner may elect not to be subject to the assessment by notifying the board and the first purchaser of the interest owner's desire not to participate in the checkoff. Upon receipt of the notice, the first purchaser shall not deduct the assessment from proceeds paid to such interest owner. The assessment shall not in any manner be deemed to be a tax or governmental assessment of any kind, and the state of Kansas shall have no duty or responsibility with respect to any such assessment.

(b) The assessment imposed pursuant to subsection (a) shall be deducted from the proceeds of production and collected by the first purchaser. There shall be a conspicuous line item on each run statement showing the amount and pertinent time period of the assessment. The run statement shall provide the Kansas oil and gas resources board contact information for obtaining more information or directions for obtaining a refund of the assessment. The assessments, which are imposed on the interest owner, shall be remitted to the Kansas oil and gas resources board by the first purchaser not later than the 15th day of each month following the end of the month in which the assessment was collected. The moneys collected pursuant to section 6, and amendments thereto, shall be deposited with a bank or savings and loan association and shall be used only in defraying costs of administration of the petroleum education and marketing program and for carrying out the provisions of sections 3, 4, 9 and 10, and amendments thereto.

(c) The board shall be responsible for taking any appropriate legal action necessary to collect any assessment which is not paid or is not properly paid by the first producer.

Sec. 8. (a) Any person subject to the assessment levied by section 7, and amendments thereto, may request a refund as provided in this section of the assessment paid on production for the preceding calendar year. Upon compliance with the provisions of this section and rules adopted by the board to implement this section, the board shall refund to each person requesting a refund the amount of the assessment paid by or on behalf of the person during the preceding calendar year. Refunds made shall include interest earned at the rate equal to the average United States treasury bill rate of the preceding calendar year as certified by the state treasurer.

(b) The request for a refund of the assessment paid on production for the preceding calendar year shall be made before the end of the third

calendar month following the calendar year for which the refund is requested. Failure to request a refund during this period shall terminate the right of any person to receive a refund for the assessment paid on production for the preceding calendar year. The board shall give notice of the availability of the refund through press releases or another means the board deems appropriate.

(c) Each person requesting a refund shall execute an affidavit showing the amount of refund requested and demonstrating that the affiant was the owner of the production and such other matters as the board reasonably requires for which the refund is requested. The board may verify the accuracy of the request for refund prior to issuance of such a refund.

(d) No person requesting a refund under this section shall be eligible to serve or have a representative serve as a member of the board.

Sec. 9. (a) All interest earned on moneys in the oil and gas resources fund shall remain in the fund.

(b) The board shall not use any funds collected under section 7, and amendments thereto, for the purpose of influencing government action or policy, except that the board may recommend amendments to this act.

Sec. 10. In the event of the establishment of a national or regional program for an assessment on oil and natural gas production for an education and marketing program for oil and natural gas, the board, by majority vote, may elect to designate up to a maximum of 35% of the funds collected under this act to the national or regional program in lieu of an additional assessment as may be required by the national or regional program.

Sec. 11. (a) This act is intended as enabling legislation and shall not be construed to limit any lawful activity, including the creation of any checkoff, education and marketing program or other type of association otherwise permitted by law.

(b) If any provision of this act is held to be invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional provision.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2006.

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