

SESSION OF 2012

SUPPLEMENTAL NOTE ON SENATE BILL NO. 271

As Amended by Senate Committee of the Whole

Brief*

SB 271 would enact new law regarding ownership of pore space.

"Pore space" would be defined as openings between or within geologic material under surface lands, which may be referred to as voids or interstices. The ownership of all pore space in all the strata below the surface lands and waters of Kansas would be vested in the owners of the surface above the strata.

Any conveyances of the surface ownership of real property would be a conveyance of the pore space in all strata, unless the pore space already had been severed from the surface ownership or is explicitly excluded in the conveyance. No agreements conveying mineral or other interests underneath the surface would imply conveyance of pore space ownership in the stratum, unless the agreement explicitly conveys the pore space ownership interest. The owner of any pore space interest would have no right to use the surface estate beyond what is set out in a properly recorded instrument conveying the pore space.

To determine the priority of subsurface uses between a severed mineral estate and pore space, the severed mineral estate would be considered the dominant priority use. The severed mineral estate would be considered dominant regardless of whether ownership of the pore space is vested in the several owners of the surface or is owned separately from the surface (except in the case of the use and

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

acquisition of pore space owned, used, or contracted for underground storage). A severed mineral estate would include the granting of an oil and gas lease and any other right to explore for, develop, or produce oil and gas or any other mineral.

The language of the bill would not alter, amend, diminish, or invalidate rights to the use of subsurface pore space that were acquired prior to the effective date of the bill.

Background

The bill was introduced by the Joint Committee on Energy and Environmental Policy, based on informational hearings held by the Joint Committee during the 2011 Interim.

At the Senate Committee on Natural Resources hearing, the Southwest Kansas Royalty Owners Association provided proponent testimony, stating the bill is consistent with the common law practices in Kansas on the ownership of pore spaces and also is consistent with how other states have dealt with the issue. Southern Star Central Gas Pipeline, Inc., provided neutral testimony on the bill. Southern Star stated it was not opposed to the general theories behind the bill, but expressed concern over some of the bill's original language, stating that there may be potential unintended consequences for surface owners, mineral interest owners, and gas storage operators in the state.

At a later Senate Committee hearing, information provided by Professor David E. Pierce, Washburn University School of Law, was submitted to Committee members. The information reviewed the various sections of the bill, based upon Professor Pierce's legal knowledge in oil and gas law. The Office of the Revisor of Statutes' staff for the Senate Committee also provided information regarding other states' definitions of "pore space" and other information regarding Kansas law on various terms included in the bill.

The Senate Committee adopted several amendments to the bill. The amendments included:

- Technical corrections and clarifying language;
- Definitions of pore space and severed mineral estates;
- An exception from the priority of a severed mineral estate as a dominant priority use for pore space owned, used, or contracted for underground storage;
- A requirement for the Kansas Corporation Commission (KCC) to promulgate rules and regulations to administer the Act, including, but not limited to, defining "usage of pore space"; and
- Deletion of various sections of the bill, including notice requirements, altering common law, instruments that transfer the rights to pore space; transfers of pore space rights made after the effective date of the bill are null and void at the option of the surface estate owner; descriptions; and other technical amendments.

The Senate Committee of the Whole adopted several amendments to the bill, which included:

- Removing language concerning whether a severed pore space interest is created prior to a severed mineral estate from the determination of priority of subsurface uses as between a severed mineral estate and pore space;
- Deleting "by contract or lease" as a description of acquiring rights to the use of subsurface pore space; and

- Removing authority for the KCC to promulgate rules and regulations to administer the Act, including, but not limited to, defining "usage of pore space."

The fiscal note by the Division of the Budget on the bill, as introduced, states the KCC estimates there would be no fiscal effect upon passage of the bill. An updated fiscal note taking into the consideration the Senate Committee's or the Senate Committee of the Whole's amendments was not available.