

SENATE BILL No. 553

By Committee on Ways and Means

2-23

9 AN ACT concerning natural gas storage; relating to recovery of migrating
10 gas; amending K.S.A. 55-1,115, 55-1201 and 55-1210 and repealing
11 the existing sections.
12

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

14 Section 1. K.S.A. 55-1,115 is hereby amended to read as follows: 55-
15 1,115. (a) On or before July 1, 2002, the state corporation commission
16 shall adopt rules and regulations governing underground porosity storage
17 of natural gas. Such rules and regulations shall include the permitting,
18 monitoring and inspecting of underground porosity storage of natural gas
19 and the closure and abandonment of such underground porosity storage
20 of natural gas. Such rules and regulations may establish fees for permit-
21 ting, monitoring, inspecting and closing or abandoning underground po-
22 rosity storage of natural gas.

23 *(b) (1) The commission shall not amend or renew any permits issued*
24 *on or after July 1, 2002, for the underground porosity storage of natural*
25 *gas to a natural gas public utility seeking renewal of such permit according*
26 *to rules and regulations as promulgated under subsection (a), if such util-*
27 *ity is seeking a certificate of public convenience and necessity pursuant*
28 *to 15 U.S.C. 715f, in order to recover migrating gas beyond the limitations*
29 *as set forth in K.S.A. 12-1210, and amendments thereto.*

30 *(2) The commission shall assess a \$1,000 penalty for each day that*
31 *such utility is found to be in violation of rules and regulations due to*
32 *leaking or migrating gas. The commission may suspend or cancel such*
33 *permits upon a finding that continued operation of the storage facility*
34 *causes waste, pollution or a threat to public safety.*

35 ~~(b)~~ (c) No hydrocarbon storage shall be allowed in any underground
36 formation if water within the formation contains less than 5,000 milli-
37 grams per liter chlorides, except that the provisions of this subsection
38 shall not prohibit the storage of hydrocarbons in an underground porosity
39 storage facility if such storage facility was in use before July 1, 2001.

40 ~~(c)~~ (d) The provisions of K.S.A. 55-162 and 55-164, and amendments
41 thereto, shall apply to violations of the rules and regulations adopted
42 pursuant to this section.

43 ~~(d)~~ (e) As used in this section and K.S.A. 55-150, 55-155, 55-182 and

1 74-623, and amendments thereto, “underground porosity storage” means
2 the storage of hydrocarbons in underground, porous and permeable ge-
3 ological strata which have been converted to hydrocarbon storage.

4 Sec. 2. K.S.A. 55-1201 is hereby amended to read as follows: 55-
5 1201. As used in this act:

6 (a) “Underground storage” shall mean storage in a subsurface stra-
7 tum or formation of the earth;

8 (b) “natural gas” shall mean gas either while in its original state or
9 after the same has been processed by removal therefrom of component
10 parts not essential to its use for light and fuel;

11 (c) “native gas” shall mean gas which has not been previously with-
12 drawn from the earth;

13 (d) “natural gas public utility” shall mean any person, firm or cor-
14 poration authorized to do business in this state and engaged in the busi-
15 ness of *the underground storage of natural gas* or transporting or distrib-
16 uting natural gas by means of pipelines into, within or through this state
17 for ultimate public use;

18 (e) “commission” shall mean the state corporation commission;

19 (f) “*conservation division*” shall mean the *conservation division of the*
20 *state corporation commission*;

21 (g) “*adjoining*” shall mean *the area which includes the surface and*
22 *subsurface area within a ½ mile radius of a certified boundary of an*
23 *underground storage field; and*

24 (h) “*state emergency management*” shall mean *the division of emer-*
25 *gency management within the office of the adjutant general.*

26 Sec. 3. K.S.A. 55-1210 is hereby amended to read as follows: 55-
27 1210. (a) All natural gas which has previously been reduced to possession,
28 and which is subsequently injected into underground storage fields, sands,
29 reservoirs and facilities, whether such storage rights were acquired by
30 eminent domain or otherwise, shall at all times be the property of the
31 injector, such injector’s heirs, successors or assigns, whether owned by
32 the injector or stored under contract *except as limited by this section.*

33 (b) In no event shall such gas be subject to the right of the owner of
34 the surface of such lands or of any mineral interest therein, under which
35 such gas storage fields, sands, reservoirs and facilities lie, or of any person,
36 other than the injector, such injector’s heirs, successors and assigns, to
37 produce, take, reduce to possession, either by means of the law of capture
38 or otherwise, waste, or otherwise interfere with or exercise any control
39 over such gas. Nothing in this subsection shall be deemed to affect the
40 right of the owner of the surface of such lands or of any mineral interest
41 therein to drill or bore through the underground storage fields, sands,
42 reservoirs and facilities in such a manner as will protect such fields, sand,
43 reservoirs and facilities against pollution and the escape of the natural gas

1 being stored.

2 (c) With regard to natural gas that has migrated to adjoining property
3 or to a stratum, or portion thereof, which has not been condemned as
4 allowed by law or otherwise purchased:

5 (1) The injector, such injector's heirs, successors and assigns shall not
6 lose title to or possession of such gas if such injector, such injector's heirs,
7 successors or assigns can prove by a ~~preponderance of the~~ *clear and con-*
8 *vincing* evidence that such gas was originally injected into the under-
9 ground storage.

10 (2) The injector, such injector's heirs, successors and assigns, shall
11 have the right to conduct such tests on any existing wells on adjoining
12 property, at such injector's sole risk and expense including, but not limited
13 to, the value of any lost production of other than the injector's gas, as
14 may be reasonable to determine ownership of such gas.

15 (3) The owner of the stratum and the owner of the surface *property*
16 *outside the injector's certified storage boundary* shall be entitled to such
17 compensation, including, *but not limited to*, compensation for use of or
18 damage to the surface or substratum, *trespass, conversion and slander of*
19 *title*, as is provided by law, and shall be entitled to recovery of all costs
20 and expenses, including reasonable attorney fees, ~~if litigation is necessary~~
21 ~~to enforce any rights under this subsection (c) and the injector does not~~
22 ~~prevail~~ *associated with determining the extent of migrated and migrating*
23 *natural gas, the negotiating of lease agreements for the storage of natural*
24 *gas, any proceedings before any state or federal agency having oversight*
25 *of underground storage fields or the transportation of natural gas and*
26 *any other litigation necessary to enforce any rights under this subsection*
27 *(c). Subsection (c) shall also apply retroactively to all such litigation and*
28 *such state and federal proceedings.*

29 (4) *The injector and such injector's heirs, successors or assigns shall*
30 *lose title to and possession of such injected gas if the migration of such*
31 *gas is a result of pressure in a storage field or reservoir, measured in psig,*
32 *in excess of 75% of the fracture gradient of such field or reservoir as*
33 *determined by a step rate test or as calculated by a licensed engineer or*
34 *licensed geologist using a testing technique accepted by the conservation*
35 *division of the state corporation commission.*

36 (5) *The injector and such injector's heirs, successors or assigns shall*
37 *lose title to and possession of migrated and migrating natural gas if such*
38 *injector, injector's heirs, successors or assigns fail to notify the commis-*
39 *sion, record owners in effected areas, state emergency management and*
40 *any other interested parties that such injector and such injector's heirs,*
41 *successors or assigns knows of or has reason to know of natural gas that*
42 *is migrating or has migrated outside of a certified storage area. Such*
43 *notification shall be made within 30 days of the date that the injector and*

1 *such injector's heirs, successors or assigns, knows of or has reason to know*
2 *of such migrated and migrating gas.*

3 (6) *The rule of capture shall apply to any gas that has migrated or is*
4 *migrating beyond such adjacent property as described in this section.*

5 (7) (A) *The injector and such injector's heirs, successors and assigns*
6 *shall compensate any taxing entity for loss of ad valorem taxes caused by*
7 *the migration of the injector's gas into any property outside the injector's*
8 *certified storage boundary if such migration or subsequent condemnation*
9 *of the property affected by the migration results in a cessation of produc-*
10 *tion or taking of oil or natural gas from any existing oil or gas well which,*
11 *at the time of cessation, was subject to ad valorem taxation. (B) The*
12 *amount of tax compensation shall be based on the fair market value of the*
13 *proved producing and proved non-producing gas or oil attributable to*
14 *royalty, overriding royalty, working interest or otherwise, which could*
15 *have been produced from any such well under its estimated commercial*
16 *life but for the cessation caused by the migration of the injector's gas. (C)*
17 *The claim for recovery for affected taxing entities shall be made by the*
18 *county in which any such well is located and calculated by the county*
19 *appraiser. It will be assumed for purposes of this section that the fair*
20 *market value was or could have been produced in the year of cessation*
21 *or condemnation, whichever is latest. The valuation of such fair market*
22 *value will be made by the county appraiser in accordance with K.S.A. 79-*
23 *329, 79-330 and 79-331, and amendments thereto. The injector and such*
24 *injector's heirs, successors and assigns shall file with the county appraiser*
25 *a statement of assessment on or before April 1 of the year following ces-*
26 *sation or condemnation in accordance with K.S.A. 79-332a, and amend-*
27 *ments thereto. (D) The mill levy for the applicable taxing entities in effect*
28 *for the year of cessation or condemnation shall be applied in making the*
29 *tax calculation and such injector, such injector's heirs, successors and*
30 *assigns will be invoiced for the tax so calculated and if such tax is not paid*
31 *within 30 days of the invoice, such tax will be delinquent and be a lien*
32 *on the injector's real and personal property located in such county. De-*
33 *linquent taxes will accrue interest and penalties in accordance with K.S.A.*
34 *79-2004, and amendments thereto.*

35 (d) *The injector, and such injector's heirs, successors and assigns, and*
36 *any surface or mineral rights owner with title or an interest in an under-*
37 *ground storage field, reservoir or facility or any area containing migrated*
38 *and migrating gas, shall have the right to compel compliance with this*
39 *section by injunction or other appropriate relief by application to a court*
40 *of competent jurisdiction. A surface or mineral rights owner bringing*
41 *such actions shall be entitled to recover costs as described in subsection*
42 *(c)(3).*

43 Sec. 4. K.S.A. 55-1,115, 55-1201 and 55-1210 are hereby repealed.

1 Sec. 5. This act shall take effect and be in force from and after its
2 publication in the Kansas register.