

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairperson David Corbin at 10:45 a.m. on February 11, 2003, in Room 519-S of the Capitol.

All members were present except:

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Steve Miller, Sunflower Electric Power Corporation
David Eyerly, enXco
Troy Helming, Kansas Wind Power, LLC
Barbara J. Hinton, Legislative Post Auditor
Christy Caldwell, Greater Topeka Chamber of Commerce
Martha Smith, Kansas Manufactured Housing
Bill Yanek, Kansas Association of Realtors
Ed Jaskinia, Associated Landlords of Kansas

Others attending: See attached list.

Senator Corbin called the Committee's attention to the minutes of the past three meetings. Senator Buhler moved to approve the minutes of the January 29, February 4, and February 5 meetings, seconded by Senator Donovan. The motion carried.

Continued hearing on: SB 85—Property taxation; eliminating wind energy resources property exemptions

Steve Miller, Sunflower Electric Power Corporation, testified in opposition to **SB 85**. Because use of renewable generation sources is growing in Kansas, Sunflower investigated the potential for adding wind generation to its portfolio of generation assets and recently announced the purchase of the first 30 MW of wind energy from the RES North America project in Wichita County. However, if the bill is passed, the cost for power from this project would increase more than 20 percent, and neither RES nor Sunflower could absorb the cost. As a result, the project would be killed. Mr. Miller pointed out that the project will bring more jobs to the area and, in addition, add a new source of generation actively supported by the Legislature in the last few years. (Attachment 1)

Les Evans, President of Windpower, Inc., testified in opposition to **SB 85**. He pointed out that the Legislature exempted renewable energy resources from property taxation specifically to encourage development within the state. He followed with an itemization of wind generation projects occurring after the exemption was enacted. In his opinion, passage of the bill will send a message that the rules of the game are not stable in Kansas and are subject to change at any time. Additionally, he is concerned that the bill targets only wind

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energy technology, thus, discouraging the development of wind generation resources in the state while encouraging other renewable energy resources or technologies. (Attachment 2)

In response to questions from Senator Corbin, Mr. Evans expressed his opinion that **SB 85** should not be addressed in the Taxation Committee. Mr. Evans contended that the issue is not tax related but, instead, specifically concerns the appropriateness of wind power development in the Flint Hills, which is a subject that would be better handled by either the Utilities or Environment Committee. He reasoned if the bill truly was meant to address a tax issue, it would not have specifically targeted wind power but would have included all forms of renewable energy.

David Eyerly, enXco, testified in opposition to **SB 85**, noting that enXco owns over 3,000 wind turbines in Minnesota and California and also manages other wind farms in California, Texas, and Iowa. Currently, enXco considers Kansas to be a prime area for wind energy development. However, passage of the bill would adversely affect enXco's ability to find a buyer for the power because it would raise the cost of doing business in Kansas. Mr. Eyerly went on to discuss other arguments against the passage of **SB 85** as follows: (1) Wind should not be treated differently from other forms of renewable generation, (2) Passage would send a message that the state's intention was to use legislation merely to attract technology and then remove the incentive once the technology is installed, and (3) It is merely an attempt by a few people to stop potential development in the Flint Hills and will unnecessarily hinder the development of wind power elsewhere in the state. In conclusion, Mr. Eyerly emphasized that removing a supposed incentive as soon as it is used sets a bad precedent, and he suggested that preserving the natural beauty of the Flint Hills should be left to local authorities. (Attachment 3)

Troy Helming, Kansas Wind Power, LLC, gave final testimony in opposition to **SB 85**. He noted that his company is the only Kansas based and Kansas funded developer of wind power. He outlined the reasons wind developers are looking at Kansas, noting that developers do not specifically come to Kansas due to the property tax exemption because there are 23 other windy states which also have an exemption. In this regard, he discussed a table shown in his written testimony which compares the wind power policy in Kansas with other states. He went on to present an overview of his company, emphasizing the it takes two to five years to develop a potential site for a wind farm, and any change in Kansas' policy would force his company to develop in another state. In closing, he observed that it is important for Kansas to begin to focus on reducing dependence on coal from Wyoming and on foreign oil. However, the bill sends an opposite message. (Attachment 4)

Senator Corbin commented that **SB 85** was not introduced with the intent of placing wind farms totally back on the tax roll but rather as a starting point for a discussion on the issue of payment-in-lieu of taxes by wind power companies. He added that the bill was never intended to hold up development of wind farm projects. He noted that if the issue is not resolved before the "turn around" date, he would not object if the bill was killed in Committee. With this, the hearing on **SB 85** was closed.

SB 99—Disclosure of income and expense information in valuation of income producing property for property tax purposes

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Barbara J. Hinton, Legislative Post Auditor, testified in support of **SB 99**. She explained that the bill was introduced by the Legislative Post Audit Committee due to the results of a performance audit assessing how accurately counties are valuing large commercial office buildings for tax purposes. It was discovered that relatively few property owners provided income and expense data to county appraisers when asked to do so. During the audit, it was discovered that, of 32 major office buildings in four major Kansas counties, approximately one-fourth were not accurately appraised. She noted that there is no consequence for failure to comply. The bill would create a 10 percent penalty provision similar to the penalty established in the District of Columbia. She reported that the District of Columbia's response rates range from 60 percent to 75 percent whereas the response rate is 11 percent for the four large Kansas counties studied in the audit. (Attachment 5)

Ms. Hinton also reported that the national association of assessing officers (IAAO) recommends the income approach when appraising commercial properties. In order for that method to be accurate, accurate market data is needed on average rents, average expenses, and average vacancies. She explained that the Property Valuation Division (PVD) requires counties to survey property owners every year to get information about income, expense, and vacancy rates so that average rates can be developed for use in mass appraisal. The information is not used by PVD to value any individual building but to develop averages to be used in formulas to produce accurate appraisals. The refusal of property owners to furnish the requested data greatly hampers the ability of PVD to develop the most accurate appraisal possible on commercial buildings. The IAAO recommends statutory penalty provisions to ensure that more accurate information will be gathered.

Mark Beck, Property Valuation Division, stood in response to Committee questions. He reiterated that the concept of the bill is to provide more information and more accurate assessments. He noted that for income-producing property, the appraisal must involve all three methods to appraise value—comparable sales, the cost approach, and the income/expense approach, but the residential side does not involve the same issue. As to the form used by counties to gather information on commercial properties, Mr. Beck informed the Committee that the forms are not standardized, and each county develops its own form. He clarified that the producing income addressed in the bill concerns the building producing (market rent), not the business producing.

Senator Oleen reported that the members of the interim post audit committee found the information regarding noncompliance was quite alarming. She suggested that it would be helpful if the Committee and the conferees would read the full post audit performance report on the problem that prompted the introduction of **SB 99**. Ms. Hinton agreed to furnish Committee members with a copy of the post audit report.

Christy Caldwell, Greater Topeka Chamber of Commerce, testified in opposition to **SB 99**. She pointed out that currently a business property owner must provide income and expense information only in the event the owner challenges the value or protests the property tax. However, the bill will require all income-producing property owners to give the county appraiser their income/expense information whether there is an appeal or not. In addition, she noted that the current form for income and expense information provided by the appraiser does not always permit the taxpayer the opportunity to clarify and fully explain the figures. She went on to say that the bill does not ensure that the information the taxpayer is required to provide will be deemed complete and used only for the purpose intended. In her opinion, the 10 percent penalty in assessed value is arbitrary and punitive. She pointed out that an unintended result could be a backlog of appeals before

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the State Board of Tax Appeals and an increased number of angry taxpayers. (Attachment 6)

Martha Smith, Kansas Manufactured Housing, read testimony in opposition to **SB 99** prepared by Rod Taylor, owner of South Village, Inc., in Topeka. Mr. Taylor complains that, even though most of the large parks in the Topeka area supplied financial information to the appraiser, the appraiser chose to use small run down parks for the model, many not in Topeka. He notes that the annual maximum expenses for the small parks are substantially less than the expenses for South Village which is a larger, nicer, and well maintained park. Documentation regarding the model is attached to his testimony. Mr. Taylor argues that providing requested information to appraisers is burdensome and an invasion of privacy. (Attachment 7)

Bill Yanek, Kansas Association of Realtors, testified in opposition to **SB 99**. In his opinion, the disclosure of income and expense information for valuation purposes should remain voluntary, the 10 percent penalty for not submitting the requested information is too harsh, and non-public business entities should be able to maintain control over business income and expense information dissemination. (Attachment 8)

Ed Jaskinia, Associated Landlords of Kansas, testified in opposition to **SB 99**. He expressed his concerns regarding the right to privacy issue. He pointed out that the income approach is never used to lower property values. He noted that two other valid methods, market and replacement, do not mandate that taxpayers give up their right to privacy. He complained that the bill would allow county appraisers to pick one or all the property owners in their district, basically, to submit their tax returns.

There being no others wishing to testify on **SB 99**, the hearing was closed.

SCR 1603–Urging Congress to enact legislation that would allow the Internal Revenue Service to share corporate tax information with the states

Barbara J. Hinton, Legislative Post Auditor, called the Committee's attention to pages of the relevant performance audit report attached to her written testimony. In looking at Kansas income tax returns for 80 large corporations for tax years 1998 through 2000, it was noticed that the percentage of income the corporations had apportioned to Kansas had dropped 27 percent in just two years. It is possible some major companies operating in Kansas could be under reporting or sheltering income. Because federal regulations prohibit the IRS from sharing information about how much of a corporation's income is apportioned to any state, it is impossible to know whether all the income is being apportioned without auditing each corporation. (Attachment 9) With this, the hearing on **SCR 1603** was closed.

The meeting was adjourned at 11:55 a.m. The next meeting is scheduled for February 12, 2003.