Approved: March 13, 2003
Date

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairperson David Corbin at 10:45 a.m. on March 6, 2003, in Room 519-S of the Capitol.

All members were present except: Senators Oleen, Pugh, and Taddiken

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: Melissa A. Wangemann, Deputy Assistant Secretary of State
Marlee Carpenter, Kansas Chamber of Commerce & Industry

Others attending: See attached list.

SB 29–Corporation code amendments

Senator Corbin noted that **SB 29** passed out of the Senate Judiciary Committee but was referred to the Senate Assessment and Taxation Committee after objections regarding the sections of the bill relating to franchise taxes paid by corporations were raised on the Senate floor.

Melissa Wangemann, Deputy Assistant Secretary of State, testified in support of **SB 29**, noting that it was introduced following a two-year study of the Kansas corporate code by a team of lawyers, and several revisions to the Kansas corporate code were reviewed by the Senate Judiciary Committee. She briefed the Committee on the sections of the bill relating to the franchise tax formula and the calculation of parent/subsidiaries net worth. As to the franchise tax formula, she noted that a 2002 amendment raised the rate for calculating the tax from $1 to $2 for each $1,000 of net worth with the intent of doubling the general fund revenue received. However, that projection has not been realized during the first and second quarters of Fiscal Year 2003. She pointed out that the first two quarters may not reflect the new formula because most annual reports and franchise taxes are due in the third quarter, and many filers have been slow to learn of the increase. As to the calculation of net worth, she explained that, because the franchise tax is based on net worth, parent entities which own net worth in subsidiaries are taxed twice. In an effort to remedy this inequity, the Secretary of State amended the bill by adding a provision allowing a parent corporation to subtract any net worth reported by a subsidiary entity before computing its franchise tax. Ms. Wangemann noted that, although the amendment would have a fiscal impact on the State General Fund, the Secretary of State has no way to estimate the impact. In conclusion, she emphasized that the Secretary of State and the Kansas Bar Association are concerned that the noncontroversial and substantive law changes in **SB 29** will be lost because of continued debate on the franchise tax issue. For this reason, she requested that franchise tax issues be removed from the bill. (Attachment 1) For the Committee's information, Ms. Wangemann called attention to a handout concerning the type and number of entities that file annual reports with the

Secretary of State and the amount of franchise tax paid. (Attachment 2)

Marlee Carpenter, Kansas Chamber of Commerce and Industry, testified in support of **SB 29**, noting that, primarily, it conforms the Kansas corporate code with the Delaware corporate code. She discussed concerns regarding the franchise fee provisions of the bill, reminding the Committee that the franchise fee was increased 100 percent without a hearing in the last hours of the 2002 Legislative Session. The Chamber supports the reduction of the franchise fee from $2 to $1 for every $1,000 of net worth as amended into **SB 38** and suggests that **SB 29** be amended to reflect that change. She pointed out that reducing the fee would provide some relief to businesses most impacted by last year's increase. In addition, she noted that the Chamber believes that the cap should not be increased. In conclusion, Ms. Carpenter called attention to a copy of a suggested amendment to the franchise fee statute attached to her written testimony. She explained that the franchise fee is based on a company's net worth. For multi-state companies, there are three factors to apportion the net worth to Kansas–property, payroll, and sales. If a company does not have one of the factors, the statute requires that it use 100 percent for that factor, thus causing the company's net worth apportioned to Kansas to be overstated. The Chamber believes it would be more appropriate to ignore the non-factor, which is consistent with the manner in which a non-factor is handled for income tax apportionment purposes. (Attachment 3)

Senator Corbin began a discussion of the fiscal impact related to Ms. Carpenter's suggestions. With regard to the fiscal note on **SB 29**, Chris Courtwright, Kansas Legislative Research Department, reported that, in conversations with the Secretary of State, the Division of the Budget, and the Department of Revenue, the Department of Revenue estimated that the bill would have a negative fiscal note of approximately $6 million related to the parent/subsidiary language. If the amendment in **SB 38** was placed in **SB 29**, the Budget Division estimates an additional cost of $10 million to $11 million. He had no information on the apportionment amendment offered by Ms. Carpenter. Ms. Wangemann commented that the suggested amendment would decrease revenue, and she agreed to research the subject further and report back to the Committee. Senator Corbin commented that, although this is a policy issue, the fiscal note is an important factor. With this, the hearing on **SB 29** was closed.

Senator Corbin called the Committee's attention to the minutes of the February 25 and 26 meetings and the minutes of the meeting at the rail on February 26.

Senator Donovan moved to approve the minutes of the February 25 and 26, 2003, meetings and the meeting at the rail on February 26, seconded by Senator Haley. The motion carried.

The meeting was adjourned at 11:15 a.m.

The next meeting is scheduled for March 12, 2003.