

SESSION OF 2006

**CONFERENCE COMMITTEE REPORT BRIEF  
ON HOUSE SUBSTITUTE  
FOR SENATE BILL NO. 303**

As Agreed to May 9, 2006

**Brief\***

House Sub. for SB 303 would enact the Kansas Energy Development Act authorizing income tax credits, accelerated depreciation, and property tax exemptions for several types of energy-related projects. Projects for which those tax incentives would be created by the Act are oil refineries, crude oil and natural gas liquids pipelines, integrated coal or coke gasification (ICCG) nitrogen fertilizer plants, cellulosic alcohol plants, and integrated coal gasification power plants (ICGPP).

The bill would create the following tax incentives.

- An income tax credit, beginning with the 2006 tax year, for investments in new construction or expansion of an existing entity, if the taxpayer agrees to operate the entity for at least ten years.
  - For all projects except ICCG nitrogen fertilizer plants and pipelines, expansion of an existing plant would have to be at least 10 percent of capacity in order to qualify for the tax credit. For ICCG nitrogen fertilizer plants, the minimum qualifying expansion would be 20 percent of capacity. Expansion of a pipeline would not qualify for the tax credit.
  - The credit would be in an amount equal to the sum of 10 percent of the investment for the first \$250 million invested and 5 percent of the amount of investment over \$250 million.
  - The credit would be awarded in ten equal annual installments, beginning with the year the entity or its expanded capacity is placed into service.

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No brief is prepared when the report is an agreement to disagree. The conference committee report brief for this bill may be accessed on the Internet at <http://www.kslegislature.org/klrd/>

- If an installment amount exceeds the taxpayer's income tax liability for a tax year, the remainder may be carried over for deduction from the taxpayer's income tax liability in the next tax year. The carry-forward provision would be authorized for no more than four years, in addition to the ten years for which installment payments are authorized.
  - If the entity (or portion thereof to which the tax credit applies) fails to operate for the required ten-year period, the tax credit would have to be paid back.
- A deduction from Kansas adjusted gross income for amortization of the amortizable costs (this amortization will be subject to accelerated depreciation for ten years (55 percent first year, 5 percent for nine years).
- Kansas Development Financing Authority (KDFA) financing assistance for projects provided with tax incentives under the bill.
- A ten-year (beginning with purchase or the start of construction) property tax exemption for new equipment and construction or expansion of capacity by at least 10 percent for refineries, pipelines, ICCG nitrogen fertilizer plants and cellulosic alcohol plants.
- A 12-year (beginning with purchase or the start of construction or installation) property tax exemption for any new or expanded (by at least 10 percent) ICGPP property, except transmission equipment located at the plant.
- A 12-year (beginning with purchase or the start of construction or installation) property tax exemption for property purchased for or constructed or installed at an ICGPP to comply with federal or state air emission standards.
- An income tax credit for qualified expenditures made by refineries and certified by the Secretary of Health and Environment as required for an existing refinery to meet federal or state environmental standards established after December 31, 2006. If the amount of the credit exceeds the taxpayer's liability for the year in which the expenditure is made, the remainder of the credit could be carried forward to subsequent years. The bill would create procedures for applying to the Secretary of Health and Environment for the required certification.

## **Conference Committee Action**

The Conference Committee agreed to the House amendments to the bill and further agreed to:

- Reduce the income tax credit for projects covered by the bill to 10 percent of the first \$250 million investment and 5 percent of the amount in excess of \$250 million (the threshold amount in the House version of the bill was \$500 million);
- Delete provisions providing tax incentives for new or expanded nuclear generating plants;
- Delete a requirement that energy produced by an ICGPP primarily serve Kansas retail electricity customers; and
- Make technical and clarifying amendments.

## **Background**

SB 303, as passed by the Senate during the 2005 Session, would have authorized the Kansas Corporation Commission (KCC) to determine the reasonableness of, regulate, and supervise curtailment of service from a gas gathering system to an end-use customer. The provisions were enacted in 2005 HB 2263.

Provisions of the House substitute bill were introduced as House Bills 2900 through 2904. Each of those bills addressed separate energy related facilities: oil refineries – HB 2900; crude oil and natural gas liquids pipelines – HB 2901; integrated coal or coke gasification nitrogen fertilizer plants – HB 2902; cellulosic alcohol plants – HB 2903; and new or expanded nuclear generation facility and integrated coal gasification power plants – HB 2904. The House Utilities Committee combined the provisions of those bills, deleted the substance of SB 303, and recommended introduction of the combined provisions as a House substitute for the latter bill.

The introduced versions of House Bills 2900-2904 were referred both to the House Taxation and the House Utilities Committees. The Committees conducted a joint hearing on the bills and referred the bills to a joint Subcommittee. The Subcommittee recommended amendments to the bills and those amendments were adopted by both standing Committees. Those amendments included:

- Simplifying and clarifying the tax credit provisions to:
  - Remove the cap on each installment payment and require instead that the credit be taken in 10 equal annual installments. (As introduced, the bills would have required each of the 10 annual payments be in an amount equal to 25 percent of the total credit amount, divided by 10, or the taxpayer's total income tax liability, whichever is less.)
  - Remove the language limiting any tax credit amount carried forward beyond the initial 10 years to 50 percent of the taxpayer's income tax liability for the taxable year. (The amended provisions would therefore allow any remaining tax credit to be carried forward for a maximum of four years beyond the initial 10 years.)
  - Allow the tax credit to be transferred to a pass-through entity.
  
- Prohibiting expenditures used to qualify for the tax credit from being used to qualify for any other Kansas income tax credit.
  
- Including the production of coproducts in the definition of "cellulosic alcohol plant," thus extending tax incentives to investments in certain additional related manufacturing capacity.
  
- Increasing from 10 percent to 20 percent the amount by which the capacity of an existing ICCG nitrogen fertilizer plant must be expanded in order to qualify for the tax incentives.
  
- Expanding the scope of the tax incentives to include pipelines carrying natural gas liquids that meet specified criteria. (The introduced provisions would only have applied to pipelines carrying crude oil.)
  
- Adding a requirement that qualifying pipelines would have to be accessible to refineries and natural gas liquid-processing facilities in Kansas.
  
- Creating the same tax incentives for restoration of production of a refinery that has been out of production for five or more years, as in the introduced provisions for new and expanded refineries.

- Creating procedures for the Secretary of Health and Environment's certification responsibilities relative to the income tax credit for expenses made to comply with environmental requirements.
- Excluding from the property tax exemption transmission equipment and other reals and personal property at the site of an ICGPP or nuclear facility.
- Remove the specific adjustment of the income tax credit by the amount of Kansas coal used at an ICGPP.
- Make technical changes.

In addition, the House Taxation Committee amended the provisions to require that the income tax credit for a new or expanded facility be forfeited if the beneficiary of the credit fails to operate the new or expanded facility for the required number of years. The House Utilities Committee concurred in that amendment.

The House Utilities Committee amended the House Substitute bill to exclude from the tax incentive provisions expansion of pipeline capacity. Thus, incentives created by the bill apply only to construction of pipelines that meet specific criteria.

The following fiscal estimates prepared by the Kansas Department of Revenue for the provisions of the bill as recommended by the House Committees. These estimates do not reflect the Conference Committee amendments to the bill.

- The refinery provisions of the bill are expected to result in a \$2.7 million fiscal impact in FY 2007 (*i.e.*, \$2.7 million in income and property tax revenues that will not be realized). This estimate assumes that the current, actual Coffeyville Resources refinery expansion project would qualify for the tax incentives. In addition, the estimate assumes that a six-year \$500 million refinery construction project would start in FY 2007 and be completed in FY 2013. The income tax credits for the anticipated new project would not apply until the year after the project was completed. The estimated impact in that year (FY 2014) is \$8.41 million.
- The pipeline provisions of the bill are expected to result in a \$1.71 million state fiscal impact in FY 2009 (*i.e.*, \$1.71 million in

income and property tax revenues that will not be realized). This figure assumes that both the Conway natural gas liquids pipeline project and the Cushing extension crude oil pipeline projects qualify for the incentives created by the amended bill.

- The ICCG nitrogen fertilizer plant provisions of the bill are expected to result in a \$200,000 state fiscal impact in FY 2007 (*i.e.*, \$200,000 in income and property tax revenues that will not be realized). This estimate assumes that the current Coffeyville Resources nitrogen fertilizer plant expansion project would qualify for the tax incentives in the bill. No other project is anticipated in the estimate.
- The cellulosic alcohol plant provisions are expected to have no fiscal impact in the foreseeable future. This estimate assumes that no such facility would be built in Kansas in the near future.
- The ICGPP and nuclear generating facility provisions are expected to result in a \$1.29 million fiscal impact in FY 2013 (*i.e.*, \$1.29 million in income and property tax revenues that will not be realized). This estimate assumes hypothetically that construction of a \$100 million integrated coal gasification plant will begin in FY 2008 and be completed in FY 2013.