

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Senator David Corbin at 8:00 a.m. on March 22, 2000 in 245-N of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Lila McClafin, Committee Secretary

Conferees appearing before the committee:

Jack Glaves, Panhandle Eastern Pipe Line Company
George Barbee, Northern Natural Gas Company

Others attending:

See attached list.

With a motion from Senator Stephens and a second from Senator Vratil the minutes of March 16, 2000 were approved as written.

Chairperson Corbin opened the discussion on **Sub. For HB 2144**. He reminded the committee that there was a motion on the floor from the March 21 meeting. The motion was to adopt the amendments presented by Margaret Fast from the Kansas Water Office. The amendments would redefine the term "multipurpose small lake project" to include certain recreation features, and it would allow the state to participate with up to 50 percent of the engineering and renovation costs of Class I and II multipurpose small lakes if it is determined that this is the most cost effective alternative for a public water supply source.

The committee discussed the motion, and a senator expressed concern that the amendment would expand the program too much. Senator Vratil pointed out some technical corrections needed to be made to the amendment. Senator Biggs moved to offer a substitute motion to include the technical corrections in his motion, the motion was seconded by Senator Stephens. Motion carried. Senator Vratil moved that Sub. For HB 2144 be passed as amended. Senator Biggs seconded the motion. Motion carried.

Chairperson Corbin announced that **SB 469-MTBE** bill had been tabled in the House Environment Committee.

Chairperson Corbin referred to **SB 571**-Natural gas producer ad valorem tax refund. He said Senator Morris had staff prepare a proposed **Substitute for SB 571** that would address the questions raised when we heard the original bill whether it would stand up to the legal challenge. It was his intent to let any member of the audience that wanted to comment on the substitute proposal after they heard it reviewed.

Staff was called on to explain the proposed substitute bill (Attachment 1).

Senator Morris briefly described the changes in the bill and gave the history of the situation with the ad valorem tax and why he felt some legislation should be enacted to relieve the royalty owners and consumers of the burden placed on them by FERC.

Senator Morris moved to cleanup the language in Section 2 and Substitute for SB 571 as amended be adopted. The motion was seconded by Senator Huelskamp. The motion carried. A lengthy discussion followed. The consensus of the committee seemed to be it was time for the issue to be settled, and it was suggested that an interim committee study the issue. If something is not done by the 2001 Session the legislature should move to pass legislation on the issue.

Jack Glaves said he thought the consensus of the committee seemed to be that they should study it during

CONTINUATION SHEET

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the interim. He didn't think it was right to pass the substitute bill without extensive study and one that puts KCC right in the middle to adjudicate.

George Barbee said he was of the opinion that the committee was not ready to put the proposed legislation into law. It is a very complex questions with lots of legal questions. If their natural gas prices would be increased they would not be competitive with out of state pipelines. He was of the opinion it needed some very deep study.

Chairperson Corbin said that he thought an interim committee should be requested and this issue should be one of the top priorities for study. He would hope that an interim study committee would develop recommendations to present to the 2001 legislature. He said he planned that this would be the final meeting of the session, and he thanked members of the committee for their work and support this session. The committee adjourned at 9:00 a.m.

Proposed Substitute for SENATE BILL NO. 571

By Committee on Energy and Natural Resources

AN ACT concerning natural gas; authorizing certain refunds and reimbursements of refunds of certain ad valorem tax reimbursements; authorizing the issuance of bonds and imposing a tax on certain transportation of natural gas.

WHEREAS, Since 1974, the Federal Energy Regulatory Commission (FERC) and its predecessor, the Federal Power Commission, had allowed natural gas producers and royalty owners of Kansas natural gas to include the cost of state ad valorem taxes in their rates regulated by the FERC; and

WHEREAS, In 1983, a petition challenging the inclusion of the costs of ad valorem taxes in rates was filed with FERC and FERC affirmed its prior rulings allowing recovery of those costs; and

WHEREAS, After the D.C. Circuit Court in 1988 ordered FERC to review its rulings, FERC reversed itself in 1993 and ordered the payment of refunds retroactive to the year 1988; and

WHEREAS, Kansas producers and royalty owners paid the refunds ordered, including interest, but in 1996 the D.C. Circuit Court reversed the FERC decision and required instead payment of refunds, including interest, retroactive to any recovery of the ad valorem tax after October 4, 1983, the time of filing of the initial petition in the case; and

WHEREAS, The tax policy of the State of Kansas has been based on the assumption that natural gas producers and royalty owners would be allowed to recover both ad valorem and severance tax as a cost of production; and

WHEREAS, To effectuate that longstanding state policy and to carry out the intent of the Kansas Legislature in adopting that policy: Now, therefore,

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

Section 1. As used in this act:

(a) "Commission" means the state corporation commission.

(b) "Director" means the director of taxation of the department of revenue.

(c) "Natural gas" has the meaning provided by K.S.A. 55-1201, and amendments thereto.

(d) "Person" means any individual, corporation, limited liability company, partnership, association or other legal entity.

(e) "Pipeline" means a natural gas company transporting natural gas in interstate commerce subject to the jurisdiction of the federal energy regulatory commission (FERC) and a company transporting gas in intrastate commerce subject to the jurisdiction of the state corporation commission but shall not mean a person engaged in the local distribution of natural gas or in the gathering or production or sale of natural gas.

(f) "Producer" means a person who made a "first sale" of natural gas, as that term is defined in the federal natural gas policy act of 1978, from one or more wells in Kansas, including any predecessors, successors and royalty owners, and against whom a pipeline has claimed that refunds and interest associated with the ad valorem tax is due and owing.

Sec. 2. (a)(1) Any producer may file with the commission a claim for payment to cover any claims ~~of~~ of refunds, and any interest thereon, predicated on the collection of reimbursement for Kansas ad valorem taxes in connection with the first sale of natural gas.

(2) Any pipeline, on behalf of a producer, may file with the commission a claim for payment of such refunds and interest, provided that the pipeline executes a release, satisfactory to the commission, that relieves the producer and any associated royalty owner from all liability for any claims for such refunds and interest.

(b) Each claim filed pursuant to subsection (a) shall be verified and submitted to the commission upon forms prescribed and furnished by the commission and shall be accompanied by such additional documentation as required by the commission to determine eligibility for payment of the claim. The commission shall review each claim and shall approve payment to each eligible claimant.

(c) The commission may adopt rules and regulations as

necessary to administer the provisions of this section, including, but not limited to, terms of eligibility. The commission, in its discretion, may approve payment only for claims for refunds, without interest. If, for any reason payments for only refunds do not operate to extinguish all liability of producers the commission may approve payment to cover claims of interest as well.

Sec. 3. (a) There is hereby established in the state treasury the natural gas producer ad valorem tax refund and bond retirement fund. The fund shall consist of:

(1) Moneys credited to the fund from proceeds derived from the sale of bonds issued by the Kansas development finance authority pursuant to this act;

(2) revenue collected from the tax imposed by this act;

(3) interest credited to the fund pursuant to subsection (c); and

(4) any amounts appropriated, contributed or otherwise made available for the purposes of the fund.

(b) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the natural gas producer ad valorem tax refund and bond retirement fund interest earnings based on:

(1) The average daily balance of moneys in the natural gas producer ad valorem tax refund and bond retirement fund for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

(c) Moneys in the natural gas producer ad valorem tax refund and bond retirement fund shall be utilized exclusively for the following purposes:

(1) To pay qualifying claims pursuant to section 2, and amendments thereto; and

(2) as a source of revenue and security for the payment of principal and interest on bonds issued under the provisions of this act.

(d) All expenditures from the natural gas producer ad valorem tax refund and bond retirement fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the commission or the chairperson's designee for the purposes set forth in this section.

Sec. 4. (a) For the purpose of paying refunds on behalf of producers pursuant to this act, the commission may enter into agreements with the Kansas development finance authority to issue revenue bonds in an amount not exceeding an amount equal to \$360,000,000 plus all amounts required for costs of the bond issuance. The activities of the commission in administering and performing the powers, duties and functions prescribed by the provisions of this act from the proceeds of bonds issued for such purpose by the Kansas development finance authority are hereby approved for the purposes of subsection (b) of K.S.A. 74-8905, and amendments thereto, and the authorization of the issuance of such bonds by the Kansas development finance authority in accordance with that statute. The provisions of subsection (a) of K.S.A. 74-8905, and amendments thereto, shall not prohibit the issuance of bonds for such purposes when so authorized and any such issuance of bonds is exempt from the provisions of subsection (a) of K.S.A. 74-8905, and amendments thereto.

(b) To the extent provided in the agreement entered into by the commission and the authority, proceeds derived from the sale of revenue bonds issued pursuant to this section shall be deposited in the state treasury and credited to the natural gas producer ad valorem tax refund and bond retirement fund.

(c) Revenue bonds, including refunding revenue bonds, issued hereunder shall not constitute an indebtedness of the state of Kansas, nor shall they constitute indebtedness within the meaning of any constitutional or statutory provision limiting the incurring of indebtedness.

(d) Revenue bonds, including refunding revenue bonds, issued hereunder and the income derived therefrom are and shall be

exempt from all state, county and municipal taxation in the state of Kansas, except Kansas estate taxes.

Sec. 5. (a) For the privilege of transporting natural gas from, within and through this state by pipeline and for the purpose of raising revenue for payment of principal and interest due upon revenue bonds issued pursuant to this act, there is imposed a tax at the rate of \$.02 per thousand cubic feet of natural gas so transported by pipeline. Such tax shall not apply to the local distribution of natural gas or to the production and gathering of natural gas. Such tax shall be paid by the pipelines, provided, however, that where natural gas is transported through interconnections between two pipelines, the tax will be paid by the last transporting pipeline prior to either leaving the state or being delivered to a local distribution company or direct sale customer. The tax shall be remitted to the director by the pipeline on or before the last day of each month. Such remittance shall be accompanied by a return upon forms prescribed and furnished by the director.

(b) The director may grant a reasonable extension of time for filing any return and remittance of taxes due under this act upon good cause shown. Interest shall be charged at the rate prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, for the period of such extension for the remittance of taxes.

Sec. 6. When requested by the director, any pipeline transporting natural gas from, within or through the state of Kansas shall be required to furnish the director such information relative to the transportation of such gas as the director may require. The director shall have authority to:

(a) Inspect bills of lading, waybills, meter or other charts, documents, books and records relating to the transportation of natural gas by the transporter; and

(b) demand the production of such bills of lading, waybills, charts, documents, books and records relating to the transportation of natural gas at any point in the state of Kansas

designated by the director.

Sec. 7. (a) If any taxes imposed under this act and determined and assessed by the director are unpaid: (1) Not due to negligence or to intentional disregard of this act or rules and regulations of the secretary, interest on such taxes shall be added at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid; (2) due to negligence or to intentional disregard of this act or rules and regulations of the secretary, but without intent to defraud, a penalty of 10% of the amount of such taxes shall be added, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid; or (3) due to fraud with intent to evade the tax imposed by this act, there shall be added thereto a penalty of 50% of the amount of such tax, together with interest at the rate per month prescribed by subsection (a) of K.S.A. 79-2968, and amendments thereto, from the date the tax was due until paid.

(b) If any person fails or refuses to make any return when required to do so under the provisions of this act, such person shall be subject to a penalty of \$25 per day for each return which such person fails or refuses to file.

(c) The director, in the exercise of discretion and upon making a record of the reason therefor, may waive or reduce any of the penalties provided by subsection (a)(1), (a)(2) or (b) if, in the judgment of the director, there is due and reasonable cause that the taxes are unpaid or that the return is not filed.

(d) In addition to any other penalty provided by this section, it is a class C misdemeanor for any person to: (1) Fail to make a return or pay any tax as required by this act; (2) make a false or fraudulent return or fail to keep any books or records required pursuant to this act; (3) willfully violate any rules and regulations adopted by the secretary for the enforcement and administration of this act; (4) aid and abet another in attempting to evade the payment of any tax imposed by this act;

or (5) violate any other provision of this act.

(e) The director shall examine all returns filed under the provisions of this act and shall issue notices and final determinations of tax liability hereunder in the manner prescribed by K.S.A. 79-3226, and amendments thereto.

Sec. 8. Each pipeline shall make and keep a complete and accurate record in the form required by the director showing the gross quantity of natural gas transported, and such other information as required by the director for the purposes of administering and enforcing the tax imposed by this act. Such records shall at all times during business hours of the day be available for and subject to inspection by the director, or the director's duly authorized agents and employees, for a period of three years from the last day of the calendar year to which the records pertain. Such records shall be preserved during the entire period during which they are subject to inspection by the director, unless the director in writing previously authorized their disposal.

The amount of taxes imposed by this act shall be assessed within three years after the return is filed. In the case of a false or fraudulent return with intent to evade tax, the tax may be assessed or a proceeding in court for collection of such tax may be begun at any time, within two years from the discovery of such fraud. The provisions of K.S.A. 79-3226, and amendments thereto, relating to procedures for contesting a proposed assessment of additional tax or the denial of a refund shall apply as if set forth in this section. No refund shall be allowed by the director after a period of three years from the date the return was filed or after one year from the date the assessment is made, whichever is later, unless before the expiration of such period a claim therefor is filed by the taxpayer. No suit or action to recover on any claim for refund shall be commenced earlier than six months after the date such claim is filed with the director.

At any time before the expiration of time prescribed in this

section for the assessment of additional tax or the filing of a claim for refund, the director may enter into a written agreement with the taxpayer consenting to the extension of the periods of limitations for the assessment of tax or for the filing of a claim for refund. The extended periods agreed upon may be extended by subsequent written agreements made before the expiration of the extended periods previously agreed upon. In consideration of such agreement or agreements, interest due in excess of 48 months on any additional tax shall be waived.

Sec. 9. (a) All revenue collected or received by the director from the tax imposed by this act shall be remitted daily to the state treasurer. Upon receipt of a remittance, the state treasurer shall deposit the entire amount in the state treasury. The state treasurer shall first credit such amount thereof as the director shall order to the natural gas pipeline privilege tax refund fund established by subsection (b). The state treasurer shall credit the remainder to the natural gas producer ad valorem tax refund and bond retirement fund established by section 3, and amendments thereto.

(b) The natural gas pipeline privilege tax refund fund not to exceed \$50,000 is hereby established in the state treasury for the prompt payment of refunds of the tax imposed by this act. Within the limit set by this section, such fund shall be in such amount as the director determines necessary to meet current refunding requirements under this act.

Sec. 10. The secretary of revenue shall administer the provisions of sections 5 through 9, and amendments thereto, and may adopt rules and regulations to administer and enforce the provisions of such sections.

Sec. 11. This act shall take effect and be in force from and after its publication in the Kansas register.

TO: Senate Energy and Natural Resources Committee Members

FROM: Senator David Corbin
Chair

DATE 3-28-00

RE: Minutes of 3/28 Meeting

Attached are the minutes of March 28, 2000 meeting. After reviewing if there are any changes please notify the committee secretary, Lila 6-7388. If we do not hear from you by noon Friday, 3/31, the minutes will stand approved as written.

Thank you.