

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 10:50 a.m. on March 22, 2001, in Room 519-S of the Capitol.

All members were present except: Senator Pugh

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

Conferees appearing before the committee: Bruce Graham, Kansas Electric Power Cooperative

Others attending: See attached list.

HB 2268—Concerning electric public utilities; relating to inclusion of certain property in rate base; providing for issuance of bonds for certain purposes; providing for certain property tax exemptions.

Chairman Corbin informed the Committee that **HB 2268**, as amended by the Senate Committee on Utilities, had not yet been printed; therefore, no action could be taken at this meeting. Chris Courtwright, Legislative Research, distributed copies of the supplemental note on the bill prepared after it was amended and passed out of the Utilities Committee on March 21.

Bruce Graham, Kansas Electric Power Cooperative (KEPCO), testified in support of **HB 2268**. He believes the bill will encourage the construction of generation in Kansas. He emphasized that new generation in Kansas by KEPCO and other native utilities and/or independent power producers will provide additional power supply flexibility in the future. He noted that there is no 33 to 25 percent constitutional concern in **HB 2268** as there may be in **SB 177** and **HB 2266**. (Attachment 1)

Mr. Graham informed the Committee that he was present at the hearing in the Committee on Utilities on March 21 when **HB 2268** was amended, and he conceptually supports the amendments. With regard to the need for new generation, he noted that Vice President Dick Cheney predicts the United States will need 13,000 new power plants over the next 20 years, roughly 65 each year. Mr. Graham feels that the bill offers a good incentive for new power plants to be built in Kansas rather than outside the state.

Senator Lee recalled that, when **HB 2268** came from the House to the Senate, an automatic ten-year property tax abatement was included. The abatement concerned some legislators because the entities addressed in the bill have the power of eminent domain and; therefore, they have the ability to build a facility in any location they choose. With this in mind, the bill was amended to abate the state portion of the property tax and all transmission for ten years. In order to ensure that facilities would be located where the people wanted them, an abatement for the remainder of the facility would be a local option. However, the Revisor of Statutes has indicated that this concept is unconstitutional because, by law, the state does not have the power to give discretionary authority to local units of government in this regard. Senator Lee noted that Judge Kay McFarland, Chief Justice of the Kansas Supreme Court, dissented from the majority opinion.

Don Hayward, Revisor of Statutes Office, informed the Committee that the Supreme Court ruled in a 1982 case (*VonRuden v. Miller 231K1*) that the power to exempt property from taxation is plenary with the legislature, and the legislature has solely and wholly that power. Based upon that decision, a statutory provision delegating the authority to exempt from taxation to a local entity is an unlawful delegation of the legislature's exclusive authority to so exempt and is unconstitutional.

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 1:-50 a.m. on March 22, 2001, in Room 519-S of the Capitol.

Senator Clark quoted a portion of Judge McFarland's dissent to the majority opinion "which invalidate the statutes as unlawful delegations of legislative authority in contravention of article 2, section 1, of the Kansas Constitution." Chairman Corbin closed the discussion on **HB 2268**, noting that the issues will be discussed further when the amended version is available and the bill can be officially heard.

Senator Allen requested an interim study as a follow-up on a previously heard bill, **SB 233**, which would have exempted the sale of natural gas from local sales tax for one year. She suggested that the interim committee address (1) the feasibility of creating a permanent utility bill assistance program for low income consumers and (2) the feasibility of legislation which would require local governments to tax residential and commercial natural gas based on volumetric measurements as opposed to the current system of local sales taxes. (Attachment 2)

Chairman Corbin called the Committee's attention to the minutes of the March 20 and 21 meetings.

Senator Jenkins noted that a correction was necessary in the March 20 minutes on page 2, paragraph 5, to change "June 27, 1998" to "June 25, 1998." The minutes of the March 20, 2001, meeting were approved as corrected.

The minutes of the March 21 meeting were approved.

Chairman Corbin announced that the Committee will meet the week of March 26, 2001, on a date to be announced.

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



Kansas Electric Power Cooperative, Inc.

Testimony on HB 2268

Before Senate Assessment and Taxation Committee – March 22, 2001

Bruce Graham, Vice President of Member Services and External Affairs

Kansas Electric Power Cooperative, Inc. (KEPCo)

The Kansas Electric Power Cooperative (KEPCo) has consistently supported legislation that will encourage the construction of generation in the state of Kansas. One-third of KEPCo's power supply comes from contracts we have negotiated with other utilities. We constantly evaluate those contracts and other options and believe that new generation in Kansas, by KEPCo, other native utilities and/or independent power producers, will provide additional power supply flexibility in the future.

We appreciate the fact that the Senate and the House have been working toward that same goal. SB 177/HB 2266 provide incentives to encourage generation by non-regulated independent power producers. An existing regulated Kansas utility could not receive those incentives unless the plant was built by a subsidiary and outside of its rate base. But what about a utility, like KEPCo, that may want to build a rate-base generation facility in Kansas. HB 2268 recognizes that nothing requires us to build that generation in a high-tax state like Kansas and, therefore, permits a property tax exemption for an existing Kansas utility in order to encourage construction here at home. HB 2268 also permits the KCC to consider allowing the recovery of costs for Construction Work in Progress (CWIP) on such a facility.

There is no 33 to 25 percent constitutional concern in HB 2268 as there may be in SB 177/HB 2266. Meanwhile, if HB 2268 is approved, new generation property can receive a property tax exemption during the next decade as we work to address the Kansas Constitution and reduce property taxes on all Kansas generation property.

Thank you for your willingness to consider steps that can be taken now to ensure adequate generation, transmission, and an equitable tax structure, in order to maintain the state's history of reliable and affordable electric service.

KEPCo is a generation and transmission utility that provides wholesale electricity and other services to 21 rural electric distribution cooperatives with member/consumers spanning two-thirds of rural Kansas.

*Senate Assessment & Taxation
3-22-01
Attachment 1*

Phone: 785.273.7010

Fax: 785.271.4888

www.kepco.org

P.O. Box 4877

Topeka, KS 66604-0877

600 Corporate View

Topeka, KS 66615

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS

CHAIR: ELECTIONS AND LOCAL GOVERNMENT
MEMBER: ASSESSMENT AND TAXATION
EARLY CHILDHOOD DEVELOPMENT SERVICES
FINANCIAL INSTITUTIONS AND INSURANCE
REAPPORTIONMENT

BARBARA P. ALLEN
SENATOR, EIGHTH DISTRICT
JOHNSON COUNTY
P.O. BOX 4042
OVERLAND PARK, KANSAS 66204
(913) 384-5294
STATE CAPITOL, ROOM 120-S
TOPEKA, KANSAS 66612-1504
(785) 296-7353

March 22, 2001

The Honorable Dave Kerr
President of the Kansas Senate
State Capitol - Room 359-E
Topeka, Kansas 66612

The Honorable David Corbin
Chairman - Senate Assessment and Taxation Committee
State Capitol - Room 143-N
Topeka, Kansas 66612

Re: Request for Interim Study As Follow-Up to S.B. 233

Dear President Kerr and Senator Corbin:

High natural gas prices and the resulting difficulty low-income consumers have experienced paying their natural gas bills have been well documented during the 2000-2001 heating season. As you know, low natural gas reserves and extremely cold weather, combined with a decrease in production by producers, resulted in record gas prices this winter. Many consumers struggled to pay their natural gas bills and may soon have their natural gas turned off. Others have large unpaid balances to retire.

In addition, as you are aware from my work on S.B. 233, I am concerned about the revenue "windfall" local governments can receive from franchise fees and sales tax on sales of natural gas as a result of soaring gas prices. I believe it is important we look into options to avoid these two situations occurring in the future.

Therefore, I respectfully request an interim study this summer made up of two components:

1. The feasibility of creating a permanent utility bill assistance program for low-income consumers. I believe Kansas lawmakers should create a state program, similar and in addition to, the federal LIEAP program. We, as a legislative body, need to examine options to fund the program for all consumers of natural gas, electricity, propane, and other heating sources. One example might be allowing consumers to designate any refunds due them be placed in a low-income energy assistance fund. The committee will need to address issues such as funding, eligibility, scope and implementation of such a program, and should look at the experiences of similar programs in other states.

Senate Assessment & Taxation
3-22-01 Attachment 2

The Honorable Dave Kerr
The Honorable David Corbin
March 20, 2001
Page 2

2. The feasibility of legislation which would require local governments to tax residential and commercial natural gas based on volumetric measurements, as opposed to the current system of local sales taxes. During the heating season of 2000-2001, many local governments received a tremendous "windfall" of revenue from surcharges on natural gas. Requiring local governments to tax gas on a volumetric scale would be fairer to the consumer (as the consumer has some control over gas usage, as opposed to gas prices, over which the consumer has no control), as well as provide revenue stability to local governments.

Thank you for your consideration of these two interim topics. I will be happy to answer any questions you may have regarding these proposals.

Sincerely,



Barbara P. Allen,
Senator, District 8

cc: Senator Stan Clark, Chairman Senate Utilities Committee
Senate Majority Leader Lana Oleen