

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:40 A.M. on March 14, 2007 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Kansas Legislative Research Department
Martha Dorsey, Kansas Legislative Research Department
Gordon Self, Office of Revisor of Statutes
Judy Swanson, Committee Assistant

Conferees appearing before the committee:

Representative Lana Gordon
Representative Terrie Huntington
Patty Clark, Department of Commerce
Kevin Wilmont, KU Film School
Dennis Fallon, Independent Film Producer
Trevor McKeeman, NISTAC
Mark Schreiber, Westar
Steve Miller, Sunflower Electric
Duane Simpson, Association of Ethanol Processors
Sue Schulte, Kansas Corn Growers
Brad harrelson, Kansas Farm Bureau
Senator Pat Apple
Philip Cosby, National Coalition for Children & Families

Others attending:

See attached list.

Hearing on **HB 2440**, Enacting the Kansas film production investor tax credit act, was opened.

Representative Lana Gordon gave background information on **HB 2440**. (Attachment 1) Kansas would reap benefits both economically and culturally by expanding the film industry in the state.

Representative Terrie Huntington testified Missouri was contemplating raising its film credits from \$1.5 million to \$10.5 million. (Attachment 2) **HB 2440** would be a start in the right direction to be competitive with other states. It would help expand job opportunities for film workers within the state, and impact those communities where filming occurs by increasing revenues in many areas.

Patty Clark, Department of Commerce, said the goal of combining the tax credits in **HB 2440** would be to attract one or two films with budgets in the \$2 million to \$13 million range. (Attachment 3) The Governor has provided \$2 million in tax credits for FY 2008 for the purpose of enhancing film production opportunities in Kansas. She explained how the credits would be applied, and how the bill would allow Kansas to compete for film production expansion. She proposed language KDOC would like placed in the bill that would require an annual report, and will submit a balloon amendment for the Committee's consideration.

Kevin Wilmont, KU Film School, said three feature films were made in Kansas since 1991. He shared the Film Task Force recommendations, and agreed to provide written testimony.

Dennis Fallon, Independent film producer, said film producers need incentives as they try to raise money and survive in the marketplace. (Attachment 4) He reviewed projects on which he has worked, and said the investor tax credits are very exciting for investors. He would like the opportunity to use the proposed tax credits in his future projects.

During Committee discussion on **HB 2440**, Patty Clark said the current sales tax rebate incentive was not much help. She said the Task Force had discussions on what types of projects it wanted to incentivize. The bill lists the types of projects the bill will not incentivize. DOC will have to be subjective on the projects it allows to qualify for the incentives. The hearing was closed.

CONTINUATION SHEET

MINUTES OF THE Senate Assessment and Taxation Committee at 10:40 A.M. on March 14, 2007 in Room 519-S of the Capitol.

Hearing on **HB 2405**, incentives for production of energy from renewable resources and use of waste energy from electric generation; sunset of certain tax credits, was opened.

Trevor McKeeman, NISTAC, testified in support of **HB 2405**. (Attachment 5) NISTAC is a partner with the Kansas Bioscience Authority and Sunflower Electric Power Corporation for the Sunflower Integrated Bioenergy Center. Renewable energy technology and good public policy can promote both economic and environmental advancement, two items that are not mutually exclusive.

Mark Schreiber, Westar Energy, provided written testimony in support of **HB 2405**. (Attachment 6) The hearing was closed.

Hearing on **HB 2419**, carbon dioxide reduction act, was opened.

Steve Miller testified Sunflower Electric Power Corporation intends to use CO2 to grow algae at the proposed Integrated Bioenergy Center, not simply sequester it. (Attachment 7) He feels the bill, as currently written, over-regulates the proposed algae growth activity, and he included proposed language to **HB 2419**, which supports Sunflower Electric's position.

Written testimony was received from Duane Simpson, Association of Ethanol Processors, in support of **HB 2419**. (Attachment 8)

Written testimony was received from Tom Day, Kansas Corporation Commission, stating the KCC holds a neutral position on **HB 2419**. (Attachment 9) The hearing was closed.

Hearing on **HB 2476**, incentives for purchase and installation of equipment for blending and storing biofuel, was opened.

Sue Schulte, Kansas Corn Growers, testified in favor of **HB 2476**. (Attachment 10) By helping ensure the availability of all biofuels in Kansas, we are helping to minimize our reliance on foreign oil, while minimizing the cost of such fuels by ensuring they are available in more locations.

Written testimony in favor of **HB 2476** was received from Brad Harrelson, Kansas Farm Bureau (Attachment 11) and Duane Simpson, Association of Ethanol Processors (Attachment 12). The hearing was closed.

Hearing on **SB 291**, excise tax on certain sexually explicit businesses, was opened.

Senator Apple distributed the 2005 Special Committee on Assessment and Taxation report on Excise Tax or Licensure Tax—Sexually Oriented Businesses. (Attachment 13) The Special Committee recommended the introduction of a bill. Gordon Self, Revisor of Statutes, reviewed **SB 291** and explained the constitutional questions it poses. **SB 291** is patterned after a Utah law that is currently being challenged in Utah District Court.

Philip Cosby, National Coalition for the Protection of Children and Families, testified in favor of **SB 291**. (Attachment 14) The sex industry boasts unmatched wealth. For thirty years the courts have consistently upheld the negative effects of the sex industry upon a community. Mr. Cosby reviewed a notebook. A copy of the notebook can be obtained from the National Coalition for the Protection of Children and Families Office. The hearing was closed.

Chairman Allen distributed information the Committee requested from the Department of Commerce re incentives Sprint has received through the IMPACT program. (Attachment 15)

Senator Schmidt moved to approve the minutes of the March 7 and March 8 Committee meetings. Senator Donovan seconded the motion, and the motion carried.

Being no further business, the Committee adjourned at 11:40 A.M. The next meeting will be March 15.

SENATE
ASSESSMENT & TAXATION COMMITTEE

GUEST LIST

DATE: 03-14-07

NAME	REPRESENTING
Dennis Follow	Waldo West Productions
Carol McDonnell	Tallgrass Runners
Kevin Willmott	K'ee Film
Michelle Peterson	Capitol Strategies
Leonore Rowe	LWVK
Carole Jordan	KDA
Patty Clark	KDOC
Sue Schulte	Ks Corn Growers Assn
Dave Hiltlaus	KEC
Michael Hooper	Kearney & Assoc
Duane Simpson	KGFA-KARA
David Klepp	KC STAR
BRAD HARRELSON	KFB

STATE OF KANSAS

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TOPEKA
HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

CHAIR: ECONOMIC DEVELOPMENT AND TOURISM
MEMBER: COMMERCE AND LABOR
EDUCATION BUDGET
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT
ARTS & CULTURAL RESOURCES

Madam Chair and Members of Senate Taxation Committee:

I come before you today, to testify in favor of HB 2440.

I will give you some background in how this evolved.

About 3 years ago the House Economic Development Committee heard from interested parties concerning growing the independent film industry in Kansas. Two proposals were presented. One project was a group of investors who wanted to build a major entertainment area including sound stage, theatres and all that the industry would require. The other group, called Kansas Connection consists of young filmmakers from Kansas originally, living in California, who would like to come home and be able to do their work and live here. They both had different plans for legislation.

Our committee became very excited about the prospects. I chaired a sub-committee named "Lights Camera Action" to further discuss the possibilities. We involved Kansas Inc. in conducting a feasibility study, which was completed earlier this year. This Legislative session, members of my committee expressed interested in pursuing more about the film industry and what we might be able to do as a State to create a climate in which filmmaking can grow. After hearing further presentations from filmmakers as well as the results of the Kansas Inc. study, we composed 3 bills. Much of the content in the bills we are presenting today was patterned after what other States are offering. We also have patterned a portion of the bill after the bioscience angel investor to create a pool to encourage the film industry to invest more in Kansas. HB 2440 passed out of the House 82 votes in favor.


Film incentive bills passed out of the House 2 years ago. The Senate Taxation Committee held hearings on film incentive bills two years ago, but may not have had time to work them. Since that time the Governor formed a task force on film in Kansas. The task force consisted of representatives of the Department of Commerce, members of the film industry as well as some legislators. The Task Force made some recommendations and we made some changes to improve the previous Legislation.

Other countries and states have been successful with the industry. The time is ripe for Kansas to create a bigger playing field because the dollar is currently not strong enough for instance, in Canada, to offer the price breaks as in recent times, so less filmmakers are attracted there. We certainly would reap many benefits both economically and culturally by creating opportunity for more of the film industry to grow in Kansas.

The economic impact of different size film projects, based upon information from the Association of Film Commissioners International, can have a large daily impact on a community in which the work is done.

I will leave more of the details to the other conferees. I appreciate your time and consideration of ways to create more jobs in Kansas.

Thank you,


Lana Gordon

Assessment & Taxation
Date 3-14-07
Attachment # 1

STATE OF KANSAS

TERRIE W. HUNTINGTON
REPRESENTATIVE, 25TH DISTRICT
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COMMITTEE ASSIGNMENTS
VICE-CHAIR: ECONOMIC DEVELOPMENT
MEMBER: COMMERCE & LABOR
TRANSPORTATION
JOINT COMMITTEE ON ECONOMIC DEVELOPMENT

TOPEKA

HOUSE OF
REPRESENTATIVES
Testimony for HB 2440
Senate Assessment and Taxation
March 14, 2007

Senator Allen, Senator Donovan, and Senator Lee:

I was appointed to the Kansas Film Commission in 2003. Since that time I've had the opportunity to hear from the Film Commission board and numerous Kansans living outside the State regarding the need for tax incentives for the film industry. Two bills introduced in 2005 made it half way through the hearing process, and were subsequently put on hold until the Film Task Force completed its study.

During the past two years, Kansas has lost two major film opportunities because we didn't have sufficient incentives. Merchant Ivory productions wanted to film scenes at KU in Lawrence, but moved to Boulder instead, because Colorado offers tax credits. The company that filmed Capote wanted to shoot in Kansas, but went to Canada.

The same afternoon this bill was heard in the House Economic Development Committee, Missouri was holding hearings on HB 360, which would raise their film credit from \$1.5 million to \$10.5. Oklahoma offers an investment tax credit up to 25 percent of production costs. On March 30 of last year, Idaho became the 38th state to offer incentives to the film industry. While Kansas may not be competitive with Louisiana or New Mexico, passing HB 2440 is a start in the right direction.

To quote ART IDAHO, 2006, "The potential for economic impact is great. Before Louisiana passed its incentives in 2002, the annual economic impact from filmmaking in that state was estimated at around \$34 million. Two years after the incentives passed, Louisiana was boasting an annual impact of \$133 million."

We have an opportunity with HB 2440 to create that same economic impact in Kansas. It won't be a brick and mortar creation, a concept with which we're more familiar, but it will expand job opportunities for film workers within the state, and impact those communities where filming occurs, by increasing revenues from hotels, restaurants, warehouses, and construction crews.

Thank you for favorable consideration of HB 2440.

A handwritten signature in cursive script that reads "Terrie W. Huntington".

Terrie W. Huntington
25th District

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Assessment & Taxation
Date 3-14-07
Attachment # 2



KANSAS

DEPARTMENT OF COMMERCE

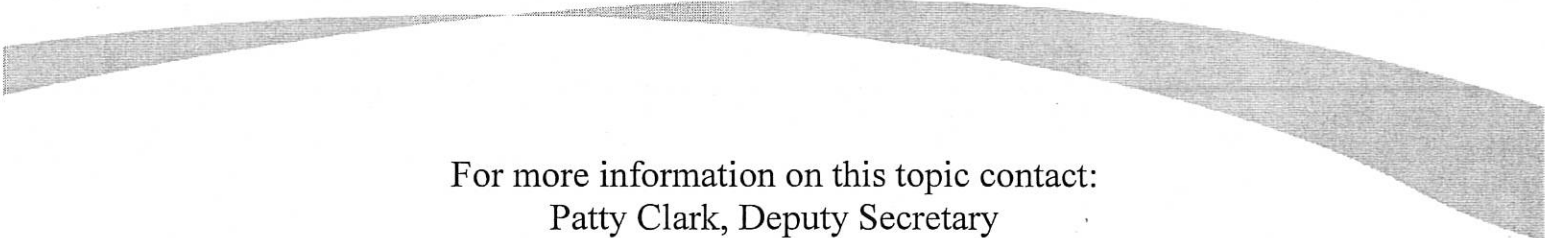
Steve Kelly, Acting Secretary



House Bill 2440

Senate Assessment and Taxation

March 14, 2007



For more information on this topic contact:

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Assessment & Taxation
Date 3-14-07
Attachment # 3

Madame Chair and members of the Committee, I am Patty Clark and I serve as Deputy Secretary for the Department of Commerce. I also served, along with Peter Jasso and Bill Thompson, as staff liaison to the Governor's Film Task Force and we appreciate the opportunity to provide testimony in support of House Bill 2440.

Governor Sebelius has provided \$2,000,000 in tax credits for FY 2008 for the purposes of enhancing film production opportunities in Kansas. HB 2440 provides tax credits for investment in film productions filmed in Kansas as well as tax credits for film production expenditures made in Kansas. We believe \$2,000,000 is a good beginning benchmark to test the effectiveness of these tax credits and to better gauge the potential economic impact of film production on the Kansas economy.

You will note that the Film Commission Office is allowed the flexibility to award these tax credits between the two uses in any given fiscal year based upon the types of films we have the possibility of recruiting and the overall demand for the tax credits. We believe this flexibility will provide maximum use of the tax credits and greater return on investment by the state.

With this combination of tax credits, our goal would be to attract one or two films with budgets in the \$2 million to \$13 million range. These could include from a made-for-TV movie to a "Capote" size independent feature film. The following example provides estimated economic impact:

- Assume an overall film project budget is \$13 million ("Capote" was \$8 million and "Infamous" was \$13 million).
- AFCI statistics indicate that 35-50% of film project expenditures are spent on location. At 50% of a \$13 million production, \$6,500,000 would be spent in Kansas. Using the 30% production tax credit \$1,950,000 in tax credits would be awarded to this film production.

We could also use this combination of tax credits to assist indigenous film producers to film smaller projects in Kansas which carry an investment of \$50,000 to \$1 million, with most of those productions coming in at under \$100,000. An example of how the investor tax credit could be applied follows:

- Assume the investment required to produce a smaller film project by a native Kansan is \$1,000,000.
- Interested investors provide equity capital for half the production costs or \$500,000. Those investors would then claim \$250,000 in investor tax credits at the 50% level.

Certainly in any given year we could not hope to recruit all of the above but we wanted to benchmark for you what we believe is a realistic expectation for this new incentive tool you are considering.

One recommendation we would like to offer is that the statute call for an annual report to be provided to the Governor's office as well as key legislative committees regarding how the tax credits were used, what films were recruited and a tracking of economic impact. If these provisions are included, we can ensure accountability, review of effectiveness, determine our state's competitive position in the film industry and determine if the provisions should be extended or enhanced in later years.

We look forward to the opportunity these new incentives provide and believe they are a useful tool to allow Kansas to compete for the types of film production mentioned earlier and we hope to report back on their successful utilization and a resulting positive economic impact.

Thank you and we would be happy to take any questions from the Committee.

Madame Chair and members of the committee, my name is Dennis Fallon; I am a Producer/Director of major motion pictures. I am also a partner in Waldo West Productions. Waldo West has offices in Los Angeles, CA and the Kansas City area. I definitely appreciate the opportunity to provide testimony in support of House Bill 2440.

Governor Sebelius has provided \$2,000,000 in tax credits for FY 2008 for the purposes of enhancing film production opportunities in Kansas. HB 2440 provides tax credits for investment in film productions filmed in Kansas as well as credits for film production expenditures in Kansas.

As a Producer for us to raise money and survive in the market place we need incentives. We have made 4 films in Missouri (budgets between \$1.5 million and \$3 million) and the reason they were filmed in Missouri is because of tax credits. If Missouri had not provided these tax credits, we would have had no choice but to shoot in another state. Our budgets are growing and our future projects are ranging between \$5 million & 15 million.

We recently finished our latest movie "All Roads Lead Home" in Missouri and spent about \$2 million in the state in Hotels, Car Rentals, Entertainment, props, crew, Etc. Also, the jobs that we employed were very high paying positions, averaging about \$1500.00 to \$2000.00 a week for a 6-week period, several of these positions were on the payroll for 14 weeks. In addition we have trained several lower paying positions to be moved up to 1st level crew.

As Patty Clark stated in her testimony 2 films a year in the \$2 million to \$13 million range could keep an average crew person working 6 months out of the year, with an average salary of \$52,000 a year not including overtime. The additional 6 months out of the year they could be working on commercial and smaller budget films to double that salary. On "All Roads Lead Home" we averaged about 65 crewmembers a day on set. The bigger the budget the bigger the crew.

The investor tax credits are very exciting for an investor. With tax credits on the film, the federal government incentives and a potential investor credit, this makes it very exciting. As a producer this is exactly what we need to get projects off the ground and moving.

I look forward to the opportunity to use these tax credits in our future projects.

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Assessment & Taxation
Date 3/14/07
Attachment # 4

**TESTIMONY SUBMITTED TO
SENATE ASSESSMENT & TAXATION COMMITTEE
IN SUPPORT OF HB2405**

Presented by
Trevor McKeeman,

March 14, 2007

Chair Allen and members of the Committee good morning and thank you for the opportunity to testify before you today on HB2405. My name is Trevor McKeeman and I serve as the Business Development Manager for National Institute for Strategic Technology Acquisition and Commercialization (NISTAC). Our organization was founded by Kansas State University and KTEC to promote economic growth in Kansas through the commercialization of intellectual property.

Support for HB2405

Before addressing specific components of the bill, I would first like to commend the Chair and Committee for hearing this legislation today. Clearly this committee is interested in identifying legislation that promotes greater energy efficiency and renewable energy.

Renewable energy is a significant topic for the state of Kansas which has many of the natural resources required to take advantage of these new industries. Growth in this sector will impact the citizens of this state from southwest Kansas to Kansas City and it has both environmental and economic implications. I would also commend the House Utilities Committee for their work on this legislation which, I believe, will help position the state as a leader in this field.

Sunflower Integrated Bioenergy Center

Beyond the broader conversation of promoting renewable energy within the state, today I approach this legislation from the standpoint of the Sunflower Integrated Bioenergy Center. This project includes a number of commercial and leading edge renewable energy facilities that will be colocated near Holcomb Kansas to create synergies between the systems.

NISTAC has been very fortunate to partner with the Kansas Bioscience Authority and Sunflower Electric Power Corporation in this endeavor and when it is completed the facility will be unique in the world. I have included a process flow of the center in my testimony and would be delighted to answer any questions that you might have later.

Promoting a Broader Range of Renewable Energy

The legislation we are reviewing today is important because it works to promote renewable energy and waste energy utilization in areas that have not received as much support as say ethanol. Effectively, this bill identifies a number of technologies in the market related to biomass and industrial processes that should be encouraged. While the Federal Government has not acted on some of these opportunities, the state can and should.

Assessment & Taxation
Date 3-14-07
Attachment # 5

Specific Benefits of the Legislation

The broad scope of this bill addresses several important technologies. However given the limited time available to the committee, I would like to touch on two areas of the legislation that I feel are particularly important. I will briefly address these points by their corresponding section in the bill. This legislation utilizes incentives such as accelerated amortization, tax credits, and KDFA bonds for each provision.

Sec 7-9 Waste Heat Utilization System at an Electric Generation Facility

- This section promotes the recovery and utilization of waste heat from electric generation facilities. This heat can then be utilized in the production of biofuels or potentially used for additional electrical generation. Using this waste heat will displace additional fossil fuel consumption and result in fewer emissions and greater energy efficiency.

Sec 18-21 Biomass Expansion from "Cellulosic Alcohol Plant"

- Certainly the amendments proposed in the Cellulosic Alcohol section create a very positive environment for the development of other bioenergy fuels such as bio-methane.
- While cellulosic ethanol has received a great deal of attention nationally, other technologies such as anaerobic digestion and algae reactors have been largely overlooked by the federal government.
- These bioenergy technologies have significant environmental benefits and the flexibility built into the language of this bill, helps to give Kansas the opportunity to take a leadership position in promoting these and other emerging technologies.

Members of the Committee, we are at an interesting juncture where renewable energy technology and good public policy can promote both economic and environmental advancement, two items that are not mutually exclusive. Thank you again for allowing me to speak here today. I am pleased to answer any questions that you might have and I encourage you to support this legislation.



MARK A. SCHREIBER
Director, Government Affairs

**Testimony of Mark Schreiber
Director Government Affairs, Westar Energy
On House Bill 2405
March 14, 2007**

Madame Chair and members of the committee, my name is Mark Schreiber. I am the Director Government Affairs for Westar Energy. Westar Energy supports HB 2405.

House Bill 2405 provides incentives for utilization of waste heat from electric generating plants for further electric generation. The use of waste heat from our plants to generate more electricity increases the overall efficiency of the plant by creating more megawatts per unit of fuel. In addition the bill provides incentives for new integrated coal gasification plants. Currently there are only two IGCC plants in the country. Both could be characterized as demonstration projects. However, Duke Energy and AEP have both indicated interest in building commercially viable IGCC plants within the next few years. Indiana passed incentive legislation to assist siting an IGCC plant in their state.

Bringing new technology to commercial operation is expensive. Incentives provide some relief to the companies bringing this technology forward. The fiscal impact of these incentives must also be considered. However, the nation will continue to need a baseload fuel such as coal for the foreseeable future. The use of waste heat that makes coal plants more efficient or the commercial use of IGCC technology to use coal with less emissions appears to be sound use of incentives.


Thank you for the opportunity to provide these written comments to the committee today.

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Assessment & Taxation
Date 3-14-07
Attachment # 6



SUNFLOWER ELECTRIC POWER CORPORATION

A Touchstone Energy® Cooperative 

TESTIMONY SUBMITTED TO SENATE ASSESSMENT AND TAXATION COMMITTEE IN SUPPORT TO HB2419

Presented by
Steve Miller, Sr. Manager, External Affairs

March 14, 2007

Mr. Chairman, and members of the Committee, my name is Steve Miller. I am the Senior Manager for External Affairs for Sunflower Electric Power Corporation. Our interest in this legislation is driven primarily by our efforts, along with National Institute for Strategic Technology Acquisition and Commercialization, or NISTAC and the Kansas Bioscience Authority, to develop the Sunflower Integrated Bioenergy Center.

Sequestration versus Utilization

At the bioenergy center, we intend to use CO₂ to grow algae, in other words, we are going to use the CO₂, not simply sequester it. We were encouraged by and support the changes that allow for the utilization, not simply the sequestration of CO₂ that were made by the House of Representatives. We are quite excited about adding value, not simply sequestering carbon dioxide.

Regulatory Issues

We do believe, however, this bill, as currently written, “over-regulates” this activity. It also describes CO₂ as a pollutant and we don’t believe that is appropriate. Much of the needed regulatory structure already exists in the oil and gas regulations, and we believe it is best if the KCC determine what the details of these regulations should involve. To over regulate this activity is to risk the creation of a Yucca Mountain environment where the cost is so prohibitive the activity cannot be accomplished.

To fix these shortcomings, we propose the following changes which will remove the onerous language concerning the characteristics of CO₂ and it will provide the KCC with the authority to determine what the appropriate regulations should be to accomplish the goal of sequestration and utilization.

The changes we propose would begin in Section 2(b), on line 29.

For the purposes of protecting the health, safety and property of the people of the state, ~~and preventing escape of carbon dioxide into the atmosphere and pollution of soil and surface and subsurface water detrimental to public health or to plant, animal and aquatic life;~~ the commission, on or before January July 1, 2008, shall adopt separate and specific rules and regulations establishing requirements, procedures and standards for the safe and secure injection of carbon dioxide and maintenance of underground storage of carbon dioxide. ~~Such rules and regulations shall include, but not be limited to: (1) Site selection criteria; (2) design and development criteria; (3)~~

~~operation criteria; (4) casing requirements; (5) monitoring and measurement requirements; (6) safety requirements, including public notification; (7) closure and abandonment requirements, including the financial requirements of subsection (f) (e); and (8) long-term monitoring.~~

Long-term storage

We are hopeful that the Hugoton gas field might, when depleted, be an ideal location for long-term CO₂ storage. After all, it once held the world's largest natural gas reserve. Common sense suggests that its physical structure surely can contain one of the world's largest reservoirs of sequestered CO₂. If this proves to be true, it certainly would help us successfully develop programs to ensure long-term sequestration.

Conclusion

We believe this legislation will help Kansas become a leader in the field of CO₂ sequestration and utilization. For this to work, however, it must be accomplished in a way that doesn't place costly and unnecessary regulations on the development of these technologies.

We urge you to support this bill with the amendment we've offered and thank you for the time to comment of this legislation.

Assessment & Taxation
Date 3-14-07
Attachment # 7-2

Assessment & Taxation
Date
Attachment #



Ethanol - *Made in Kansas*

Association Of Ethanol Processors

Statement in Support of HB 2419
Senate Assessment and Taxation Committee
Sen. Barbara Allen, Chair
March 14, 2007

Thank you, Madam Chair and Members of the House Energy and Utilities Committee, for the opportunity to testify on HB 2419. My name is Duane Simpson; I am the Vice President of Government Affairs for the Kansas Association of Ethanol Processors. KAEP is the trade association that represents ethanol plants and their affiliated industries in the state.

In the production of ethanol, Carbon Dioxide (CO₂) is a byproduct. Most ethanol plants in the US and in Kansas simply vent the CO₂ into the atmosphere. Of course, in some cases, CO₂ can be a valuable byproduct. For example, it is often captured by plants near soft drink bottling facilities and sold to carbonate those drinks. In the oil patch, it is injected into the ground to help increase production from oil wells. In both of these cases, the CO₂ is not released into the atmosphere.

HB 2149 both regulates and encourages the capture and injection of CO₂ in this manner. KAEP supports legislation that encourages reductions in greenhouse gases and we believe this bill is a positive step in the right direction. We urge the committee to pass HB 2419.

KANSAS

CORPORATION COMMISSION

KATHLEEN SEBELIUS, GOVERNOR
BRIAN J. MOLINE, CHAIR
ROBERT E. KREHBIEL, COMMISSIONER
MICHAEL C. MOFFET, COMMISSIONER

Senate Assessment and Taxation Committee
HB 2419
Written Comments
Conservation Division
Kansas Corporation Commission
March 14, 2007

The Conservation Division of the State Corporation Commission provides these written comments with regard to House Bill 2419 as amended by the House. The legislation proposes to provide for income tax reductions, property tax exemptions and certain new regulations for carbon dioxide (CO₂) injection wells. As our area of expertise does not include the tax ramifications of the proposed legislation we are providing primarily background information on the current status of such injection and associated regulation. In addition we will offer some general comment and recommendations with respect to this legislation.

Background and Current Status – CO₂ Injection

The Commission has been involved in underground fluid injection in Kansas as a part of oil and gas operations since the mid 1930's. In some limited cases that injection has included the injection of CO₂ for enhanced oil production. Additionally there has also been some interest very recently in Kansas and other locations to utilize CO₂ injection to enhance Coalbed Methane gas production. In such instances where injection of CO₂ ultimately involves enhancement of oil or gas production (EOR or EGR) the Commission already has authority and regulation in place within the Conservation Division regulations (K.A.R. 82-3-400 et seq.).

Continued concern with regard to the effect of CO₂ as a "greenhouse gas" has spurred a significant amount of on-going research at the federal level into the process that has been termed Carbon Capture and Geologic Storage or CO₂ Sequestration. As a part of that research the Interstate Oil and Gas Compact Commission (IOGCC) has been working to address regulatory concerns related to CO₂ by developing a regulatory framework, which will provide guidance to States on the capture, transportation, injection, and post injection storage or sequestration of CO₂. Attached to these comments is a brief summary of the IOGCC Geological CO₂ Sequestration Taskforce's recommendations concerning the injection and post injection storage components of that process. Phase II of the IOGCC's effort will include the publication and dissemination of approved model statutes and regulations for CO₂ injection and storage. The initial draft in the Compact's approval process for those proposed model statutes and regulations are due to be presented at an upcoming mid-year meeting with possible adoption at a later annual meeting.

At the federal regulatory level US EPA has recently issued a program guidance document that

recommends to States like Kansas, that have elected to maintain primacy over injection operations under provisions of the Federal Safe Drinking Water Act, that any non-EOR or non-EGR CO₂ injection be issued regulatory permits under what US EPA terms the Class V experimental technology well class. US EPA's rationale is that providing authority under this class of wells will allow US EPA and the States to better evaluate the technical issues associated with CO₂ injection while maintaining protective safeguards of underground sources of drinking water and public health and safety. At the same time such projects will assist in the development of a scientifically sound regulation for commercial-scale CO₂ injection / storage projects, if developed in the future. Development of such projects will depend heavily on the evolution of a carbon tax credit system for storing or sequestering CO₂ under future atmospheric carbon reduction efforts. Currently, KDHE has authority from US EPA to administer the Class V injection program in Kansas. For the Commission to issue non-EOR or non-EGR CO₂ injection permits as contemplated under this Bill would require US EPA, KDHE, and KCC to modify existing primacy agreements with regard to the Class V program in Kansas. Conservation Division staff and KDHE Division of the Environment staff have had discussions concerning such modifications to existing primacy agreements and believe that they can be successfully developed with US EPA.

The Conservation Division believes that it can cover current levels of CO₂ injection work related to EOR or EGR using existing agency resources. Additional permitting and regulatory control work needed once new regulations are in place may require limited additional staffing as non-EOR or non-EGR CO₂ injection operations expand.

Comments / Recommendations –HB2419-as Amended by the House

The number of future non-EOR and non-EGR projects is unknown and largely dependent on the future development and expansion of a carbon credit system. This program may need a funding mechanism for start up costs for non-EOR and non-EGR injection / storage especially if the Division hires consultants per subsection (f) to help in developing regulations.

New Section 2 of the Bill originally instructed the Commission to adopt specific regulation related to CO₂ injection and storage on or before January 1, 2008. That provision has been amended by the House to an extended date of July 1, 2008. Considering the current level of on-going technical research with regard to injection and post injection operations as well as on-going efforts to develop model regulations, and the need to modify existing primacy agreements with US EPA and KDHE that additional time to complete any new regulations is well warranted.

Thank you for this opportunity to provide comment.

Interstate Oil and Gas Compact Commission
Carbon Capture and Storage: A Regulatory Framework for States
Summary of Recommendations

*(For Injection and Post-Injection Storage)

Injection: Injection is defined as the placement, through wells, of CO₂ under pressure into underground geological formations. There are four primary options for the geologic storage of CO₂: in depleted oil and natural gas reservoirs; in deep saline formations; in salt caverns; and adsorption within coal beds that cannot be mined. Other possible options include organic shales, fractured basalts and hydrates.

IOGCC Summary Recommendations

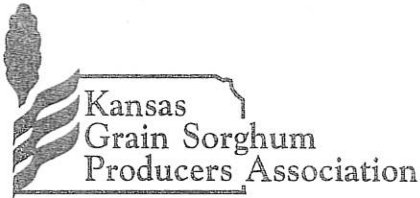
- Require clarity and transparency in all statute and regulation development. Existing regulatory frameworks provide a successful analogue for CCGS and should be examined to determine if they will adequately address the unique properties of CCGS.
- States and provinces with natural gas storage statutes should utilize their existing natural gas regulatory frameworks, with appropriate modifications, for CCGS.
- Should EPA recommend that injection of CO₂ for non-EOR purposes be regulated under the UIC program, the Task Force strongly recommends reclassifying such wells either as a subclass of Class II or a new classification. The Task Force strongly believes that inclusion of non-EOR CCGS wells under Class I or Class V of the UIC program would not be appropriate.
- States and provinces with regulations for acid gas injection should utilize their regulatory frameworks, with appropriate modifications, for CCGS.
- Review existing CO₂ EOR, natural gas storage and acid gas regulations to ensure that operational plans for addressing public health and safety, as well as release or leakage mitigation procedures, are adequate.
- Regulations governing permitting processes should adequately address reservoir properties relative to the interaction of CO₂ with rock matrix and reservoir fluids.
- Well and equipment operational regulations should take into account the unique properties of CO₂.
- Regulations governing permitting processes for non-EOR CO₂ injection projects should respect existing property rights dictated by state law in issuing CO₂ storage site permits.
- Existing monitoring regulations currently in use for CO₂ EOR, natural gas storage, and acid gas injection that do not adequately address monitoring and verification requirements for CO₂ storage should be amended that the CCGS is performing as expected relative to safely storing CO₂ away from the atmosphere,

- accounting for those volumes, and establishing leak detection protocols.
- Adapt and modify established permitting regulations and standards for site characterization for purposes of CCGS. Consider results of DOE-sponsored partnership research and other ongoing research.
- Involve all stakeholders, including the public, in the rule making process at the earliest possible time.

Post Injection Storage: Post injection storage is defined as storage in depleted oil and natural gas reservoirs (including terminated CO₂ EOR projects), saline aquifers; salt caverns; and coal beds that are not able to be mined.

IOGCC Summary Recommendations

- Require clarity and transparency in all statute and regulation development.
- Consider the potential need for legislation to clarify and address the unknown issues which may arise in the ownership of storage rights (reservoir pore space) and payment for use of those storage rights.
- Research the chemical transformations that are likely to take place in the reservoirs over long periods of time which may impact, positively or negatively, reservoir integrity in CO₂ storage time frames. Some work has already been done in this area.
- Construct a regulatory framework for the storage stage that allows for the potential of future removal of CO₂ for commercial purposes.
- Given the long time frames proposed for CO₂ storage projects, innovative solutions to protect against orphaned sites will need to be developed. The current model utilized by most oil and natural gas producing states and provinces – whereby the government provides for ultimate assurance in dealing with orphaned oil and natural gas sites – may provide the only workable solution to this issue. This can be accomplished through state and provincial government administration of federally guaranteed industry-funded abandonment programs.
- Establish technical standards for well abandonment and site closure accounting for specialized concerns dealing with the unique properties of CO₂ impacts on reservoir characteristics, well construction, and cementing techniques normally used in the oil and natural gas industry.
- Establish procedures for long-term reservoir management and monitoring. A new framework will need to be established to address the long-term monitoring and verification of emplaced CO₂ to confirm that injected volumes remain in place.
- Establish a regulatory threshold requiring mitigation procedures to be initiated.
- Involve all stakeholders, including the public, in the rule making process at the earliest possible time.



WRITTEN STATEMENT

TO: Senate Assessment and Taxation Committee
FROM: Sue Schulte, Director of Communications
DATE: March 14, 2007
SUBJECT: House Bill 2476

The Kansas Corn Growers Association and Kansas Grain Sorghum Producers wish to submit this brief testimony in regard to HB 2476, a bill that would provide incentives to expand biofuels blending facilities in Kansas.

Ethanol today enjoys the opportunity of being generally available at some, but not all of our state's nineteen terminal facilities. This bill will help our state expand the availability of ethanol and biodiesel at Kansas terminals. Most of the facilities that do blend ethanol are located along and east of Highway 81. With the expansion of the ethanol industry that is currently occurring in the western Kansas, we should do what we can to provide an opportunity for producers to sell their product close to home, and to provide an opportunity for consumers in those areas to buy ethanol and biodiesel as well.

We have seen a keen interest in expanded biofuels use in Kansas. Clearly, expanded use is dependent upon competitive, readily available product for retailers to offer. By helping ensure the availability of all biofuels in Kansas, we are helping to minimize our reliance on foreign oil while also minimizing the cost of such fuels by having them available in more locations. Getting this fuel into more terminals will make it more readily available to all Kansas consumers.

PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON ASSESSMENT AND TAXATION

RE: HB 2476, an act concerning energy; relating to certain fuel storage and blending equipment; concerning certain income tax credits, income tax deductions and property tax exemptions.

March 14, 2007
Topeka, Kansas

Testimony provided by:
Brad Harrelson
State Policy Director
KFB Governmental Relations

Chairperson Allen and members of the Senate Committee on Assessment and Taxation, thank you for the opportunity to appear today and offer testimony in support of HB 2476. I am Brad Harrelson, State Policy Director—Governmental Relations for Kansas Farm Bureau. KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

On behalf of Kansas Farm Bureau I would like to extend our appreciation to the committee and the Legislature for its past support for bio-fuels. You undoubtedly share our firm commitment to this valuable, renewable energy resource. We at KFB stand ready to assist you in your mission to promote these alternative fuels.

Biofuels have tremendous upside not only for ag producers, but also fuel consumers. Consumption of alternative fuel reduces our dependence on foreign oil and enhances market demand for corn, soybeans and other crops, which is good for Kansas agriculture, and the rural Kansas economy.

As you know, our members consume large quantities of fuel, oil and fertilizer in a variety of uses ranging from running the tractor or combine, to the irrigation engine, to

the application of nitrogen fertilizers that are petroleum derived products. In fact, within their communities, many of them purchase larger quantities of fuel than their local school district. Regularly, fuel expense is the largest input cost in overall production outlay. Farmers, as you know, operate their business without the opportunity to pass costs on to others. They are subject to receiving only what the market will pay for their commodities without regard for the costs of production. For these reasons, proactive programs that potentially lower future fuel costs are of vital importance.

Therefore, producing fuel from Kansas corn and soybeans is better long-term than continuing to rely on imported foreign oil. That's why putting new biofuel incentives in place are important to Kansas Farm Bureau. These incentives would help us build infrastructure for the industry and local demand for Kansas crops, while at the same time lowering the long-term cost of biofuel production. It is a win-win for Kansas farmers and consumers. For these reasons, KFB supports the proposal contained in HB 2476, which is a positive step and viable commitment by the state that should be seriously considered.

In conclusion, thank you for your consideration, your support of bio-fuels and Kansas agricultural producers. We stand ready to assist as you consider these important measures. Thank you.



Ethanol - Made in Kansas

Association Of Ethanol Processors

Statement in Support of HB 2476
Senate Assessment and Taxation Committee
Sen. Barbara Allen, Chair
March 13, 2007

Thank you, Madam Chair and Members, my name is Duane Simpson; I am the Vice President of Government Affairs for the Kansas Association of Ethanol Processors. KAEP is the trade association that represents ethanol plants and their affiliated industries in the state. On behalf of the members of KAEP I am testifying in support of HB 2476.

HB 2476 gives a tax credit of 10% on the first \$10,000,000 invested and 5% thereafter on investments for blending and storage equipment to blend renewable fuels into petroleum products. KAEP supports this bill for two basic reasons. First of all, our members qualify for the credit if they choose to build the blending facilities at the ethanol plant. Some plants throughout the country have started doing this in order to help promote the sell of E-85 and a tax credit will help Kansas ethanol plants if they choose to do so. Secondly, regardless if our members actually take the tax credit, the incentive for other businesses will help build the badly needed supply chain for E-85. Today, it is very difficult for a retailer that wants to sell E-85 to find a fuel terminal that provides ethanol. This type of credit will make it easier for retailers that want to provide E-85 to get the fuel. As more Kansas consumers purchase Flex Fuel Vehicles, we're going to need more than 16 E-85 gas stations in the state. This bill helps alleviate the supply chain problems. I urge the committee to support HB 2476.

Special Committee on Assessment and Taxation

EXCISE TAX OR LICENSURE TAX—SEXUALLY ORIENTED BUSINESSES

CONCLUSIONS AND RECOMMENDATIONS

The Committee has concluded the use of sexually oriented businesses by some customers has resulted in negative effects that are serious enough to result in additional state expense. The Committee was presented testimony indicating the incidence of sex offenses committed in this state is alarmingly high. Prosecution of sex offenders and subsequent treatment services for victims and offenders results in the expenditure of a significant amount of valuable state and local resources. The Committee received compelling testimony describing a connection between sexually oriented businesses and sex offenses. According to expert testimony, while it cannot be shown that all users of sexually oriented businesses commit sex offenses, it is the case that many sex offenders use such businesses. The use of these businesses constitutes a high-risk situation for the offender, and such use often becomes part of a deviant cycle that can lead ultimately to sex offending.

The Committee therefore recommends the introduction of legislation that would impose an excise tax on sexually oriented businesses. The bill should be modeled after both the enacted Utah law and the proposed Oklahoma legislation. The Committee believes that the imposition of this modest excise tax on sexually oriented businesses will not be an undue burden on such businesses but rather will provide an essential source of revenue to provide necessary services for victims and offenders of sex offenses from a source that bears a portion of the responsibility for the individual and societal damages caused to Kansans related to sex offenses.

The Committee believes the issue merits review by the following standing legislative committees: House and Senate Judiciary, Senate Ways & Means and House Appropriations, and House Taxation and Senate Assessment and Taxation committees.

The Committee recognizes alternatives were raised through testimony and discussion that offered alternatives with respect to the scope of the taxation and other aspects of the issue. The Committee also recognizes the specific programs or proportions of revenue might need to be adjusted to fit Kansas' programs and appropriations requirements. The Committee therefore recommends the standing committees work with the Kansas Department of Revenue and others to examine various alternatives raised with respect to the scope of businesses covered, program funding, and other related issues.

Proposed Legislation: The Committee recommends the introduction of one bill on this topic.

BACKGROUND¹

As authorized by the Legislative Coordinating Council, the Special Committee

on Assessment and Taxation was directed to study a proposed excise tax or licensure tax on certain sexually oriented businesses, similar to legislation under consideration by the Oklahoma Legislature earlier this year.

This proposed tax is in the nature of an excise or service tax on transactions

¹ This background section was prepared by staff from the Office of the Revisor of Statutes and the Kansas Legislative Research Department.

conducted by certain defined sexually explicit businesses. Such transactions include amounts paid to or charged for services provided and items of personal property sold by such businesses. Such businesses primarily are escort services, nude and semi-nude clubs and adult entertainment facilities, and adult bookstores and adult video stores. It is in the nature of an excise tax since it is a tax based on amount of business done rather than an assessment based on valuation or wealth. Excise taxes are not based on rules of apportionment or equality but instead typically are a fixed, often absolute and direct charge laid on merchandise, products, commodities or services. Excise taxes are an impost for a license or privilege to pursue certain callings or occupations, or to deal in special commodities, or to exercise particular franchises.

The tax in the states that have enacted or are considering enacting this type of legislation is imposed as a set amount per transaction or as a percentage of any amounts paid to or charged by the business for certain specified transactions. The legislation usually provides for the expenditure of revenue collected to be used for general purposes or specific purposes.

Tax on Sexually Explicit Businesses—Other States

Enacted Legislation in Other States: Utah

At least one state, Utah, has passed legislation imposing a tax on sexually explicit businesses and escort services. Enacted in 2004, the legislation imposes the following two taxes:

- A tax on a sexually explicit business in an amount equal to 10 percent of amounts paid to or charged by the business for a number of specified transactions, including admission fees, user fees, retail sale of tangible personal

property made within the state, and food, beverage and service sales.

- A tax on an escort service equal to 10 percent of amounts paid to or charged by the service for any escort-type transaction.

The legislation also created the "Sexually Explicit Business and Escort Service Fund," into which all tax money generated must be deposited. The fund money is to be used to pay for treatment of sex offenders as follows:

- 60 percent to provide treatment services to nonworking or indigent adults who have been convicted of sexual offenses and are not currently incarcerated;
- 15 percent to provide outpatient treatment services to convicted sex offenders who are on parole or probation;
- 10 percent to implement treatment programs for juveniles who have been convicted of sexual offenses; and
- 15 percent to provide funding for any task force administered through the Attorney General's Office that investigates and prosecutes individuals who use the Internet to commit crimes against children.

The Utah law codified at §59-27-101 of the Utah Code Annotated also provides definitions as to the businesses and activities subject to taxation and requirements for such businesses with regard to the filing of returns, maintenance and examination of records, assessment and collection of the tax, audits, claims and refunds and penalties and interest for failure to comply, and provides authority to the Utah Tax Commission to administer the Act.

**States With Proposed Legislation:
Oklahoma and Missouri, 2005**

At least two other states' legislatures, those of Missouri and Oklahoma, have attempted unsuccessfully to pass legislation taxing similar types of businesses. The bills are summarized below:

- Oklahoma-2005 HB 1532 – As engrossed by the House, this bill would have established taxes on sexually explicit businesses, escort services, adult bookstores and adult video stores equal to 10 percent of amounts paid for fees, services or items purchased at these establishments. The bill would have required all such tax revenues to be placed in a revolving fund designated specifically for domestic violence and sexual abuse programs. HB 1532 passed the House of Representatives 76-18. It was received by the Senate in March and referred to the Committee on Appropriations. It never was reported and missed all deadlines. It will be carried over to 2006.
- Missouri-2005 SB 32 – As introduced, the bill would have required sexually oriented businesses to pay a \$5 admission tax for each person entering a sexually oriented business. In addition, it would have created an adjusted gross receipts tax at a rate of 20 percent for all sexually oriented businesses. The revenues from both taxes would have been deposited into the "State Schools Money Fund". In addition to these two taxes, the bill would have imposed restrictions on activities at sexually oriented businesses. As most recently amended, the tax provisions were removed from the bill. Only the provisions related to restrictions on activities remained.

Analysis of Utah/Oklahoma Laws

A member of the Oklahoma House of Representatives indicated the Oklahoma

legislation generally was based on the Utah law. It appears that the Oklahoma legislation was very much based on the Utah law with the following differences:

- 1) The Oklahoma legislation imposes a tax on amounts paid for items purchased from or services provided by adult bookstores or adult video stores but the Utah law does not. The Utah law is limited to escort services and strip clubs.
- 2) Certain definitional differences either related to conformity with Oklahoma law or choices made by the Oklahoma Legislature such as the definition of what constitutes nudity, and the inclusion of adult bookstores and adult video stores.
- 3) Some minor tax collection, reporting and enforcement issues that relate more to individual state procedures rather than substantive policy issues and were probably enacted at the request of the state tax commission or department.
- 4) The revenues from the proposed Oklahoma tax are to be placed in a fund specifically designated for domestic violence and sexual abuse programs. The Utah law provides that the revenue from such tax shall be placed in a fund to be expended for sex offender treatment programs and the prosecution of individuals who use the Internet to commit crimes against children.
- 5) The Oklahoma law also contains a specific statement of legislative intent that the purpose of the tax is to "discourage the general public from engaging in activity or from using economic resources for a purpose the legislature finds to be harmful to the welfare of its citizens and not to have been enacted for the principal purpose or object of raising revenue". No such statement of legislative intent was enacted as part of the Utah law.

Legal Challenges to the Utah Law

The Sexually Explicit Business and Escort Service Tax Act (2004) has been challenged in the Third Judicial District Court of the State of Utah by numerous plaintiffs who are owners and operators of entertainment establishments featuring semi-nude dancers and escort services. The plaintiffs brought suit in 2004 against the Utah State Tax Commission before the law took effect. The plaintiffs have requested the court to grant temporary and permanent injunctive relief against the State Tax Commission from enforcement of the law, and have requested damages and attorney fees.

For the past year, the plaintiffs and the State of Utah litigated whether the district court had jurisdiction or whether the Utah Tax Commission initially should review this action. Recently the Court of Appeals ruled that the District Court had jurisdiction. An official with the Utah Attorney General's Office indicated the plaintiffs are filing another amended complaint. Both the plaintiffs' attorney and a representative of the Attorney General's Office in Utah predict that this case will go to trial.

The complaint and amended complaints filed by the plaintiffs allege that the law is unconstitutional. The plaintiffs claim that the law:

- 1) Abridges and restrains plaintiffs' rights to free expression as guaranteed by the First and Fourteenth Amendments of the Constitution of the United States and constitutes a prior restraint on such free expression.
- 2) Denies equal protection of the law in that the legislation and enforcement thereof is arbitrary, oppressive and capricious and requires plaintiffs to submit to controls not imposed on similarly situated businesses.

- 3) Constitutes an unlawful exercise of the State's taxing power in that the law singles out constitutionally protected businesses for disparate treatment based on improper predicate.
- 4) Allows inspection of plaintiff's records without judicial authority in violation of Fourth and Fifth Amendments of the Constitution of the United States.
- 5) Constitutes an unlawful and unauthorized taking of private property without just compensation, without due process of law and without a public purpose, in violation of the Fifth Amendment of the Constitution of the United States.

General Legal Analysis

Although the plaintiffs have raised many constitutionally-based challenges to the Sexually Explicit Business and Escort Service Tax Act, the primary areas of constitutional concern involve the Free Speech and Free Association Clauses of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment. There does not appear to be a case decided by the United States Supreme Court that addresses the taxation of sexually explicit materials. The Court has decided cases involving taxation on other activities (press) protected by the First Amendment. It is important to note that if the activities or property taxed by the law are found to be obscene, such activities or property are not protected by the First Amendment.

As a general rule, the constitutional guarantees of freedom of speech and of the press are subject to the proper exercise of the government's power of taxation, so that the imposition of uniform and nondiscriminatory taxes is not invalid as applied to persons or organizations engaged in the dissemination of ideas through the publication or distribution of writing.

The spectrum of this legal question ranges as follows: A general tax which only tangentially impacts constitutionally protected speech is valid but a tax laid specifically on the exercise of one's First Amendment rights is itself unconstitutional. It is apparent that this tax falls somewhere in between these two extreme positions along that legal spectrum.

The two critical points of analysis are:

- 1) Legal precedent set in the Utah case; and
- 2) A Court is most likely to uphold this tax legislation if the tax is necessary to serve a compelling state interest, and that the tax is narrowly drawn to achieve that purpose.

The state interests expressed by the Utah and Oklahoma Legislatures fall into three categories:

- 1) General revenue needs of the state. This state interest, by itself, has not been found by the Courts in First Amendment cases to be a sufficient enough compelling interest.
- 2) Limiting or discouraging activity in an area determined by the state to be harmful to the welfare of its citizens (Oklahoma).
- 3) Providing revenue for treatment of victims and offenders of domestic and sexual violence and abuse (Utah and Oklahoma) and prosecution of sex offenders (Utah).

A Court will determine the constitutionality of this tax based on whether it finds a compelling state interest to justify any infringement of constitutional rights, and whether the legislation is drawn narrowly enough to accomplish the compelling state

interest and not unnecessarily infringe upon the rights of individuals any more than is necessary to accomplish such interest.

COMMITTEE ACTIVITIES

At the September meeting, staff outlined the history of legislation in other states and summarized the legal challenges to such legislation. At the October meeting a public hearing ensued, at which time four conferees appeared in support of establishing such a tax, two appeared neutrally to provide information, and one conferee appeared in opposition.

The major proponent, Representative Shari Weber, addressed the issue of a connection between sexually oriented businesses and the exacerbation of sex offenses. She stated the reason the state has a compelling interest to place an excise tax on sexually oriented businesses specifically is that the behavior choices of sex offenders are fueled with the products available at these businesses. Representative Weber said the state now bears greater costs, which are incurred because of sex crimes. In general, she said the reasoning for adding an excise tax is that of these businesses' adverse effects on the health, well-being and safety of the state's citizens. An official from the Kansas Sentencing Commission appeared neutrally to present the historical trends of sex offenders convicted. A contractor with the Kansas Department of Corrections responsible for the sex offender treatment programs appeared neutrally to discuss programmatic issues, including the connection between sex offenders' behavior and the use of sexually oriented materials. This individual stated that, while it cannot be shown that all users of sexually oriented businesses commit sex offenses, it is the case that many sex offenders use such businesses. The use of these businesses, he said, constitutes a high-risk situation for the offender. It often becomes part of the

deviant cycle. While it does not cause the behavior, it frequently sets up a cycle that can lead ultimately to sex offending.

Other proponents discussed related issues, including profitability of the sex industry, negative secondary effects, and individual and family effects of the use of these businesses. One proponent suggested the tax, if one were enacted, should follow the product as opposed to following the business. Some businesses sell sexually oriented products as a small proportion of their overall inventory.

The opponent noted the proposed excise tax does not address material which is sold through the Internet or through satellite or cable television. He questioned how the proposed excise tax would be enforced against those businesses that sell sexually explicit materials as only a small portion of their inventory. He stated his opinion that any admission fee imposed on the customer entering a video or book store constitutes an unconstitutional prior restraint on free speech. Finally, he predicted the Kansas Legislature will not be able to prove a compelling state interest sufficient to justify the infringement upon constitutional rights.

At the November meeting, the Committee reviewed its policy options and made final decisions.

CONCLUSIONS AND RECOMMENDATIONS

The Committee has concluded the use of sexually oriented businesses by some individuals has resulted in negative effects that are serious enough to result in additional state expense. The Committee was presented testimony indicating the incidence of sex offenses committed in this state is alarmingly high. Prosecution of sex offenders and subsequent treatment services for victims and offenders results in the expenditure of a significant amount of valuable state and local resources. The Committee received compelling testimony describing a connection be-

tween sexually oriented businesses and sex offenses. According to expert testimony, while it cannot be shown that all users of sexually oriented businesses commit sex offenses, it is the case that many sex offenders use such businesses. The use of these businesses constitutes a high-risk situation for the offender, and such use often becomes part of a deviant cycle that can lead ultimately to sex offending.

The Committee therefore recommends the introduction of legislation that would impose an excise tax on sexually oriented businesses. The bill should be modeled after both the enacted Utah law and the proposed Oklahoma legislation. The Committee believes that the imposition of this modest excise tax on sexually oriented businesses will not be an undue burden on such businesses but rather will provide an essential source of revenue to provide necessary services for victims and offenders of sex offenses from a source that bears a portion of the responsibility for the individual and societal damages caused to Kansans related to sex offenses.

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The Committee recognizes alternatives were raised through testimony and discussion that offered alternatives with respect to the scope of the taxation and other aspects of the issue. The Committee also recognizes the specific programs or proportions of revenue might need to be adjusted to fit Kansas' programs and appropriations requirements. The Committee therefore recommends the standing committees work with the Kansas Department of Revenue and others to examine various alternatives raised with respect to scope of businesses covered, program funding, and other related issues.

NATIONAL COALITION
FOR THE PROTECTION OF
CHILDREN & FAMILIES

TESTIMONY OF PHILLIP COSBY
BEFORE THE
KANSAS SENATE ASSESMENT AND TAXATION COMMITTEE
PROPONENT OF SB 291
March 14, 2007

Madame Chair Barbara Allen and honorable members of the Senate Committee on Assessment and Taxation, my name is Phillip Cosby of the *National Coalition for the Protection of Children and Families* based out of Kansas City. I am honored to have the privilege to speak in support of SB 291 and the subject of the taxation of Sexually Oriented Businesses (S.O.B.s) and Sexually Explicit Materials. In the past three and one half years I have spoken to thousands of Kansans concerning the negative effects the sex industry imposes upon communities and individuals. I also present to the communities strategies and legal remedies to confront this growing epidemic in an effort to protect Kansas families.

The logic of taxing the sex industry for the damages and associated tax burden incurred by it's "toxic waste" runs parallel to the underpinnings of S.O.B. zoning law. For decades the courts consistently have upheld the right of communities to protect themselves from the proven "negative secondary effects" of the sex industry through the implementation of S.O.B. zoning ordinance regulations. New York City and Times Square being a famous example of effective S.O.B. zoning regulation.

Today we are not debating the content of pornographic materials, as objectionable as they may be to you and me; rather on point to this taxation hearing are the deleterious effects of Sexually Oriented Businesses and Sexually Explicit Materials on communities. It is the expense and negative effects of the sex industry on communities that are central to this discussion.

At this point I want to briefly go through the notebook I have provided you and touch on those subjects that are tabbed A-H. (**Review of notebook**)

SB 291 needs to be a well crafted and defensible statute. Litigation is a certainty.

1. SB 291 must have a solid foundation answering the critical question of WHY a tax is being imposed on the sex industry. It is the first question the courts consider. The "negative secondary effects" argument is imperative in every aspect of this statute and must be emphasized at every opportunity. This is not a 1st amendment "content of materials" question. (*Example of a preamble is provided in TAB "E".*)
2. Hold to the statutory definitions already established in **K.S.A. 12-770**. In this Statute the language used is *Sexually Oriented Businesses*. *Sexually explicit materials* such as magazines, videos & motel adult pay per view movies as defined in **K.S.A. 12-770** must be included in SB 291.
3. Penalties need to be addressed. Without adequate penalties there is no compliance.

4. Raise the current proposal of a 10% tax to a mark of **25%** which is in line with Federal internet pornography taxation proposals. Kansas prison population statistics show 25%-30% of the 9,000 KDOC inmates are sex offenders. At a cost of \$50,000 per prisoner annually this is a serious drain on resources. These expenses do not include the victims' life long trauma, public health costs or local law enforcements expense of arrests, incarceration and prosecution. This drain on public funds calls for strong medicine.

In our lifetime pornography was once limited to behind the counter of a few stores. Now it is commonplace on the highways, television and mains streets of our communities. With emerging technologies such as the hand-held, internet ready personal play stations I-pod, and full streaming wireless video phones the menace has been exacerbated. Do you remember a time when you and I as children played all Saturday long in our neighborhood without parents being overly fearful for our safety? Where are those groups of children today? Maybe you and I cannot bring back a simpler time of relative freedom and safety but we can recognize the deleterious and predatory nature of the pornography industry and show leadership in Kansas. We don't need any other states example to dictate what the evidence and common sense tells us is a threat to Kansas families.

In Summation: The taxation logic is straight forward:

- A.** The sex industry boasts unmatched wealth and potential limitless expansion as the wireless, hand held technologies further fill their coffers. .
- B.** For thirty years the courts have consistently upheld the very real negative effects of the sex industry upon a community.
- C.** Why should the average Kansas taxpayer bear the financial burden alone? The sex industry needs to help pay for cleaning up of the damage.
- D.** How will law enforcement keep pace with the biggest social tsunami of our time?

The documented harms of ***“Negative Secondary Effects”*** **are not conjecture but real!**

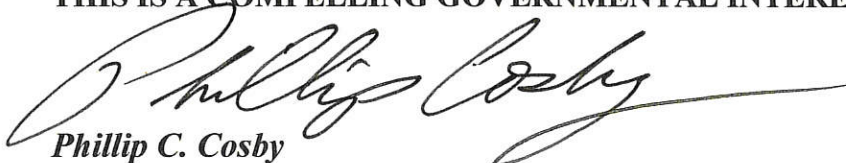
Real victims - Real crimes – A real tax burden that Kansans must not bear alone.
(See CD in Notebook of Negative Secondary Effects Studies-22 Court Cases & 20 Land-use Studies)

Your “Oath of Office” to uphold the Constitution includes:

“to provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity”

This revenue is necessary to further secure the safety and health of Kansas citizens.

THIS IS A COMPELLING GOVERNMENTAL INTEREST!



Phillip C. Cosby

Executive Director, Kansas City Office

National Coalition For The Protection of Children & Families

15621 W. 87th St., Suite #182, Lenexa, KS. 66219

Phone: 913-787-0075

Email: pcosby@nationalcoalition.org

From: "Rae Anne Davis" <rdavis@kansascommerce.com>
To: <allen@senate.state.ks.us>
Date: 3/13/2007 5:07 PM
Subject: Sprint - Sen Tax.doc

CC: "Patricia A. Clark" <pclark@kansascommerce.com>, "Steve R. Kelly" <skell...

DATE:

March 13, 2007

TO:

The Honorable Barbara Allen
 Chair, Senate Assessment and Taxation

FROM:

Rae Anne Davis
 Deputy Secretary for Workforce Development

RE:

Incentives Provided to Sprint

During the March 8, 2007 Senate Assessment and Taxation meeting, in which SB 344 was amended to provide for permanent changes to the IMPACT enacting legislation, Senator Lee requested that we provide the Committee with information regarding incentives Commerce has provided to Sprint in the past. A list of incentives is below. Please contact me with any questions.

1997 IMPACT grant

\$4.1 million

Assessment & Taxation
 Date 3-14-07
 Attachment # 15

1204 Trainees

Current Status: All funds disbursed

1998 IMPACT grant (Sprint Spectrum)

\$1.4 million

503 Trainees -

Current Status: \$15,600 unused

1999 IMPACT grant

\$25 million

7200 Trainees

Current Status: All funds disbursed

2006 IMPACT grant

\$7.4 million

1799 Trainees

Current Status: open project, \$3.6 remains

FY 1989 to FY 1993

Kansas Industrial Training (KIT)/Kansas Industrial Retraining (KIR) grants totaling \$496,008 to provide training to 915 new employees and retraining to 6,058 existing employees

Assessment & Taxation
Date 3-14-07
Attachment # 15-2