

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Barbara Allen at 10:39 A.M. on March 12, 2008 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Office of Revisor of Statutes
Chris Courtwright, Kansas Legislative Research Department
Scott Wells, Office of Revisor of Statutes
Ryan Hoffman, Kansas Legislative Research Department
Judy Swanson, Committee Assistant

Conferees appearing before the committee:

Senator Umbarger
Robert Vancrum, Quest
Mark Schreiber, Weststar Energy
Senator Pyle

Others attending:

See attached list.

Hearing was opened on **SB 665—Late filing of property tax returns by public utilities.**

Senator Dwayne Umbarger testified in favor of **SB 665.** (Attachment 1) He said there is currently no statute that allows the Director of Property Valuation to impose a penalty on a public utility for late filing or for under reporting valuations as there is for locally assessed property. This has caused problems in some counties in southeast Kansas as it relates to a public utility that has not filed in a timely manner. Public utility tax returns are due on or before March 20 of each year with no statutory penalties for failing to file. The bill adapts the statutory penalties currently in place for locally appraised property and applies them to state appraised property. Senator Umbarger said he would be open to amendments on **SB 665.**

Scott Wells, Kansas Legislative Research Department (KLRD) reviewed **SB 665.**

Robert Vancrum, Quest, presented background information on why Quest was late in filing its tax returns last year. (Attachment 2) Since last year, Quest has changed its SEC filing date to better coincide with the state deadlines. He made several suggested amendments to **SB 665.** He suggested two 30-day extension periods in which to make and file tax returns. He stated that merchants and motor carriers incur no penalties, and questioned why utilities are being singled out.

Mark Schreiber, Westar Energy, presented a neutral statement on behalf of Westar Energy, Kansas City Power & Light, Kansas Gas Service Company and AT & T. (Attachment 3) Mr. Schreiber said the penalties in **SB 665** are based on a percentage of the company's assessed valuation, and if Westar was one day late in filing the proper forms, the director of PVD could assess Westar a penalty of \$20 million. Senator Donovan said he thought the penalty would be better applied to the amount of unpaid taxes as compared to the assessed valuation.

In response to Senator Lee, Paul Snider, Kansas City Power & Light, said there are fundamental differences in the way utilities are assessed as opposed to general businesses. Electric and gas utilities were not included in the M&E exemptions passed several years ago. There is a chance the penalties could be rolled into rates if they occur in the test years. Senator Lee expressed concern about giving utilities a lower fine than regular businesses. Mr. Schreiber said property tax is recovered generally through a surcharge.

In response to Chairman Allen, Mr. Vancrum said he had no objection to language being changed from "received by" to "postmarked by" or "electronically filed by". Mark Beck, Property Valuation Department, said he would be glad to work with interested parties on amendments to **SB 665.**

CONTINUATION SHEET

MINUTES OF THE Senate Assessment and Taxation Committee at 10:39 A.M. on March 12, 2008 in Room 519-S of the Capitol.

Senator Apple said he has an issue in his district with a YMCA that had applied for a property tax exemption. He will submit an amendment that will allow county clerks to disallow those evaluations in their reporting.

The hearing closed.

Hearing on **SB 617--Income tax credit for property taxes paid by certain taxpayers** was opened.

Chris Courtwright, KLRD, reviewed the bill. He said **SB617** would add another tool for assisting seniors in Kansas in getting property tax relief. **SB 617** would create a refundable income tax credit. To qualify for this credit a person must be 65 years of age or older, have an annual income at or below the federal poverty level, and reside in their residence. An amended fiscal note will be forthcoming which will be approximately \$35-\$38 million. In response to Senator Donovan, Mr. Courtwright said residents could only receive the Homestead tax exemption credit or this proposed credit, not both. Steve Stotts, Kansas Department of Revenue (KDOR) estimates out of 80,000 Homestead exemption claimants, approximately 8,000 are ages 65 or older (10%).

Senator Pyle said **SB 617** would provide some relief and financial security to the neediest of seniors in their retirement years. (Attachment 4) He feels it would help them avoid nursing care, which would provide a cost savings to the state. In response to Senator Schmidt, Mr. Stotts said "annual income" in **SB 617** would be calculated on federal adjusted gross income, and that is the figure KDOR used when it calculated the fiscal note. Alternatively, Homestead income is figured on all household income, which includes social security income, etc. Military pensions are taxable at the federal level, but are exempt in Kansas. Mr. Stotts said he could calculate fiscal notes if the amount of the credit refund was capped at different levels. Senator Pyle said he did not consider expanding the Homestead tax exemption law.

Senator Lee requested KDOR recalculate the fiscal note on this bill using the old definition of Homestead income (before last year's changes) to see what the fiscal note would be, and also what would happen to the Homestead program if \$6 million was put into it.

Chairman Allen appointed Senator Lee, Senator Bruce and Senator Pine to a sub-committee to study **SB 617**. The charge to the sub-committee is to come back with a bill that has a fairly small fiscal note. The sub-committee will meet Monday, March 17 at 10:30 a.m. and Tuesday, March 18 at 11:00 a.m.

Discussion was held on **HB 2641--Non deduction of property taxes paid by certain nonresident taxpayers subject to Kansas income tax liability.**

Senator Schmidt moved to amend **HB 2641** by taking the contents from **SB 592** as currently amended, but removing from those contents the state capitol renovation sales tax exemption, and putting the remainder in **HB 2641**. Senator Jordan seconded the motion, and the motion passed.

Senator Schmidt moved to further amend **HB 2641** by adding a provision that would exempt sales tax on sales and direct purchases for all senior centers in Kansas and to the extent that this provision is different from what is currently in the amended version of **SB 592**, leave the current senior center provisions in the amended **HB 2641**. Senator Schmidt further clarified that if the general sales tax exemption for all senior centers covered the specific sales tax exemption for the two senior centers in **SB 592**, the specific sales tax exemption could be stricken from the bill. If not, as in the case of the construction sales tax exemption for the Paola Senior Center, the language should be written as a specific exemption. Senator Donovan seconded the motion, and the motion passed.

Senator Schmidt moved to further amend **HB 2641** by including the contents of **SB 550** in **HB 2641**. Senator Donovan seconded the motion, and the motion passed.

Senator Donovan noted he believes the fiscal note on **SB 550** is still incorrect.

CONTINUATION SHEET

MINUTES OF THE Senate Assessment and Taxation Committee at 10:39 A.M. on March 12, 2008 in Room 519-S of the Capitol.

Senator Schmidt moved to report **HB 2641** as amended favorable for passage and to give the revisor discretion to submit it as an amended bill or as a substitute bill. Senator Jordan seconded the motion, and the motion passed.

Being no further business, the meeting adjourned at 11:45 a.m. The next meeting will be March 13.

SENATE ASSESSMENT & TAXATION COMMITTEE GUEST LIST

DATE: 3-12-08

NAME	REPRESENTING
Ave Arts	KDOR
Alan Allen	Lanora KS
Pam Dean	KCK
Austin Hayden	Hein Law Firm
Dustin Meyer	Pinegar, Smith, & Assoc.
Karl Wenger	Kearney & Assoc.
Shanira Stafford	KS Grain & Feed Assn.
Mike Murray	Eurobank
John H. Hughes	AT&T
Isaac Ferguson	Kansas Chamber of Commerce
John Gardner	KANSAS GAS Service
DINA FISK	VERIZON
Bob Vancouver	Quest Resources
Mike Reel	Quest Wireless
Steve Johnson	ONEOK, Inc.
Mick Urban	Kansas Gas Service, A div. of Oneok, Inc.
Paul Snider	KCP&L
Mark Schreiber	Westar
Whitney Damron	KS Gas Service

**SENATE
ASSESSMENT & TAXATION COMMITTEE
GUEST LIST**

DATE: 3-12-08

NAME	REPRESENTING
Kip Strate	Kansas Gas Service
R. Dawn Baylyff	Kansas Gas Service
Ben Cleaves	D&B

State of Kansas
Senate Chamber

DWAYNE UMBARGER

SENATOR, FOURTEENTH DISTRICT
LABETTE & NEOSHO COUNTIES
AND PARTS OF CHEROKEE
AND MONTGOMERY COUNTIES

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COMMITTEE ASSIGNMENTS

CHAIRMAN: WAYS & MEANS
CHAIRMAN: JOINT COMMITTEE ON STATE
BUILDING CONSTRUCTION
MEMBER: JUDICIARY
ORGANIZATION, CALENDAR
& RULES
JOINT COMMITTEE ON
PENSIONS, INVESTMENTS
& BENEFITS

Senate Bill 665 is before you today to address an oversight in statute, as it relates to public utilities reporting their assessed property valuations.

There is no statute that allows the Director of Property Valuation to impose a penalty on a public utility for late filing or for under reporting valuations, as there is for locally assessed property (K.S.A. 79-1422). This has caused problems in some counties in southeast Kansas as it relates to a public utility who has not filed in a timely manner. This information was provided to me by Neosho County Clerk, Randal Neely.

As I understand, in July of 2007, the Property Valuation Division of the Department of Revenue gave Neosho County an "assumed value" of \$5.4 million for this public utility's property valuation, because the public utility had not reported their valuations. The "assumed value" referred to is the requirement for the county clerk to use last year's value as an estimate for the preparation of the county budget. As noted in K.S.A. 79-5a27, this "assumed value" cannot be used to calculate actual levies.

This "assumed value" of \$5.4 million, as reported by the Property Valuation Division, was included in total valuation to figure 2008 budgets for Neosho County, Neosho County Community College, Chanute Unified School District 101, townships, cemeteries and any other taxing entities that have portions affected by this public utility property values.

However, as of October 1, the Property Valuation Division did not have the values reported to them by this public utility. Therefore, the \$5.4 million "assumed valuation" used in figuring the mill levies could not be used in the final valuation numbers as noted in K.S.A. 79-5a27. The failure to report on a timely basis resulted in the Neosho County valuation to be \$100,097,608 instead of \$105,497,608, using the "assumed value" of \$5.4 million. The ad valorem tax amount of \$5,372,979 required was divided by the total valuation for that particular taxing entity to calculate the mill levy. The mill levy became 53.676 mills.

This is not the end of this unfortunate sad story. If this public utility had reported values to Property Valuation Division on time in March, the county would have had the correct figure of \$9,815,864, instead of the "assumed value" of \$5.4 million. This correct valuation of \$109,913,413, instead of the incorrect valuation of \$100,097,608, as prescribed by the Property Valuation Division would have meant that the mill levy for Neosho County would have been 48.927 mills, not 53.676 mills; a difference of 4.749 mills for Neosho County alone. The Neosho County Community College mill levy would have been affected in the same manner, for a difference of 3.05 mills. The Chanute Unified School District 101 school levy would have had a lower mill levy of somewhere between 3.5 and 4 mills, if this public utility had reported on time.

Senate Bill 665 would address these concerns with the stipulations outlined on the next page.

Assessment & Taxation
Date 3-12-08
Attachment # 1

SB 665 EXPLAINER

- Public utility tax returns are due on or before March 20 of each year with no statutory penalties for failing to file or underreporting.
- The proposed bill simply adapts the statutory penalties currently in place for locally appraised property and applies them to state appraised public utilities.
- The penalties are: (1) for public utility tax returns that are filed not more than one month after the due date, 5% of the assessed value with an additional 5% for each additional month that the return is not filed, up to a maximum of 25%; (2) after a year the penalty is 50% and the property is deemed to have "escaped taxation."
- The penalties are also applicable to any portion of the property that is underreported (the penalty is added only to the underreported portion, not the portion that was timely reported).
- Public utilities may request an extension of the time to file, provided they do it in writing prior to the date the return is due.
- The director of property may grant one extension, not to exceed 30 days.
- If the request for extension is denied, the public utility is to be notified in writing and then will have five days to file the return before penalties begin to accrue.
- The Board of Tax Appeals may abate or reduce the penalty based on "excusable neglect" on the part of the public utility.
- Provisions are included for the value and penalties for property that has "escaped taxation" (discovered or reported more than one year from the date it was supposed to be reported) to be placed on the tax rolls as an "escaped appraisal" and, in those cases, the tax is due within 45 days.

TESTIMONY TO SENATE ASSESSMENT AND TAXATION COMMITTEE
ON BEHALF OF QUEST RESOURCES CORP. AND AFFILIATED COMPANIES
Concerning SB 665, Late filing Property Tax Returns by Public Utilities
Robert Vancrum, Kansas Government Affairs Consultant and
Counsel for Quest Cherokee, LLC
March 11, 2008

Chairman Allen and Other Honorable Senators:

I'm here representing Quest, which is in the perhaps unenviable role of having been the most recent and well publicized but certainly not the only late filer that led to the filing of this legislation. We have met with Senator Umbarger and Property Valuation Division (PVD) in attempting to craft an acceptable solution allowing flexibility in time for public filing companies that must comply with all SEC filing rules and synchronize all reporting requirements with the filing dates in Kansas.

This is what happened last year. Public utilities property tax returns are due in Kansas on March 20th. (KSA 79- 5a02). Our SEC filing date for last year fell on nearly the same date - our subsidiary has to have information finalized and consistent with our SEC filing in order to do the Kansas returns. I am told that was impossible - our controller called PVD before March 20th, and was granted an extension. He was assured that under current Kansas law there was no penalty for late filing. They filed on July 15th and received no acknowledgment (the prior two years' returns were filed in August and were processed before the counties needed final information in September, but two people had left PVD in the meantime). PVD called our Oklahoma City office on October 15th and said they needed to have inventory reallocated to the headquarters county of the pipeline subsidiary, which was done and the return refiled in a matter of hours, however this was obviously too late to be included in the counties' assessments for last year.

Since last year, we have changed our SEC filing date, have outsourced the preparation of the return and certainly have made everyone in our controller's office more aware of the problem, since we don't want a repetition of last year. We are also supporting this bill that would impose severe penalties on late filing, but would suggest some minor amendments, which are set forth in the attached balloon. We had originally told PVD we wanted to have the possibility of an extension to June 15 if we could show good cause. The people to whom we outsourced the return said the March 20th deadline can't be met. I would point out that this statute has never had a penalty. Comparable statutes in KSA79 -6a02 for Motor Carriers and KSA79-1422 for all other businesses DO NOT LIMIT EXTENSIONS at all.

We would suggest that the one extension of 30 days in lines 25 and 26 be either expanded to two extensions of 30 days each as I have done in the balloon - or better yet- one extension of 60 days if the committee thinks this is reasonable. Since the entire idea of an extension is discretionary with PVD I don't see the problem. I would remind the committee that there has never been a penalty here and this is affecting every utility in the state. Surely a more cautious approach makes sense.

However PVD is saying they cannot live with getting the returns later than April 20th because of the time it takes to process them. Even if this causes them a problem, they always have the power to deny the extension, which would force the utility to file right away. You will note we are also asking for 10 days if the extension is denied, and don't think that's unreasonable. We also think the filing should not be dependent on proving that director RECEIVED the request for extension. Even the IRS uses the date of mailing as the date determining that a request is timely. Remember, final information is not needed in the counties until September.

SENATE BILL No. 665

By Committee on Ways and Means

9 AN ACT concerning property taxation; relating to public utilities; late
10 filing of returns, penalties.

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

12 Section 1. (a) Any public utility required to make a return in writing
13 to the director of property valuation on forms prescribed by the director
14 showing all the information that the director requires and deems neces-
15 sary for the appraisal and apportionment of values of such public utility's
16 property that fails to make such return on or before the date prescribed
17 by K.S.A. 79-5a02, and amendments thereto, shall be subject to a penalty
18 as follows:
19

20 The director, after having ascertained the assessed value of the prop-
21 erty of such public utility, shall add 5% thereto as a penalty for late filing
22 if the failure is not for more than one month, with an additional 5% for
23 each additional month or fraction thereof during which such failure con-
24 tinues, not exceeding 25% in the aggregate.

25 For good cause shown the director may grant one extension in time,
26 not to exceed 30 days, in which to make and file such return. Such request
27 for extension of time must be in writing and shall state just and adequate
28 reasons on which the request may be granted. The request must be re-
29 ceived by the director on or prior to the due date of the return. In the
30 event the extension is granted, no penalty shall accrue until the due date
31 of such return. In the event the extension is denied, the public utility
32 shall be notified in writing of such denial and shall file the return within
33 five days following receipt of such notice of denial. Penalties for late filing
34 of such return shall accrue at the end of such five-day period.

35 (b) If, within one year following the date prescribed by K.S.A. 79-
36 5a02, and amendments thereto, any public utility that fails to make a
37 return in writing to the director of property valuation on forms prescribed
38 by the director showing all the information that the director requires and
39 deems necessary for the appraisal and apportionment of values of such
40 public utility's property or fails to make and file a full and complete return
41 for such purposes, the director shall proceed to ascertain the assessed
42 value of the property of such public utility, and for this purpose the di-
43 rector may examine under oath any person or persons whom the director

or two extensions

each

mailed to

extended

ten

2-22



MARK A. SCHREIBER
Director, Government Affairs

Testimony of Westar Energy on SB 665 Before the Senate Assessment and Taxation Committee

March 12, 2008

Good morning Chairwoman Allen and members of the committee. Thank you for the opportunity to provide comments on Senate Bill 665. Our proposed change is conceptually supported by Kansas City Power and Light, Kansas Gas Service and AT&T.

The bill creates a penalty structure for late filing of information by a public utility needed by the Property Valuation Division (PVD) of the Department of Revenue. As a public utility, Westar Energy files the required information by the statutory date of March 20 each year. If more severe penalties for timely submittal of the proper information were needed, we would certainly support that move...to a certain extent.

Westar Energy's assessed valuation is approximately \$400 million, which makes us the largest public utility in the state. The penalties outlined in SB 665 are based on a percentage of the company's assessed valuation. If we were one day late in filing the proper forms, the director of PVD could assess Westar a penalty of \$20 million. Although that would certainly be a strong motivation for filing on time, we think it is excessive. We would like to offer as an alternative that the penalty would be a percentage of the assessed valuation up to an assessed value of 100,000.

We understand the need for PVD to have correct information in time to calculate and provide counties accurate valuation numbers for producing mill levies. With our suggested change, we believe the penalty would be sufficient to prevent late filings.

Thank you again for your time.

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STATE OF KANSAS
SENATE CHAMBER



COMMITTEE ASSIGNMENTS
MEMBER: ELECTIONS & LOCAL GOVERNMENT
NATURAL RESOURCES
UTILITIES
JOINT COMMITTEE ON SPECIAL CLAIMS
AGAINST THE STATE

Senator Dennis Pyle

**Testimony presented to
The Assessment and Taxation Committee
March 12, 2008**

Madam Chairperson, members of the committee, thank you for the opportunity to testify concerning SB 617.

SB 617 is a proposal to give our neediest seniors help with the ever-increasing property tax burden. Under this proposal, tax eligible seniors, those 65 and older and whose annual income is at the federal poverty level or less, will receive a refundable income tax credit against their residential property tax liability. Under this proposal, the state, not the counties, will pay the cost.

As most of us are well aware, property taxes often outpace inflation and income for many retirees in our state. SB 617 will help provide some relief and financial security to our neediest seniors in their retirement years.

SB 617 will give families peace of mind, especially in instances where Grandma or Grandpa are challenged with paying property taxes, getting groceries or medical care, and ever-increasing energy concerns.

Through this refundable credit, some retirees will be able to avoid nursing care which provides cost savings to the state, which I don't believe is considered in the fiscal note.

SB 617 could be considered an economic stimulus package and model of government efficiency, given the fact that the refund is a direct payment.

Madam Chairperson, members of the committee, it is time for the state to respond to the growing concerns surrounding property taxes, especially from seniors on fixed incomes. These most valuable members of our community have paid their dues – they've won wars and given us the quality life we enjoy. This is a small step toward paying back a tremendous debt of gratitude we owe them.

Thank you.

Assessment & Taxation
Date 3-12-08
Attachment # 4