

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman Les Donovan at 10:30 a.m. on February 11, 2009, in Room 535-N of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Office of the Revisor of Statutes
Scott Wells, Office of the Revisor of Statutes
Corey Carnahan, Kansas Legislative Research Department
Chris Courtwright, Kansas Legislative Research Department
Mary Jane Brueck, Committee Assistant

Mark Goodwin, County Attorney, Lyon County
Mark McAnarney, Assistant City Manager, Emporia
Sen. Jim Barnett
Kent Craft, past president of the Kansas BASS Chapter Federation
Randall Allen, Executive Director Kansas Association of Counties
Clint Patty, Frieden & Forbes, representing Counties Gas Association
Mark Low, Mead County Appraiser
Bob Boaldin, Morton County Board of Commissioners
Dudley Feuerborn, County Commissioner, Anderson County Board of Commissioners
Tony Fowler, Montgomery County Board of Commissioners
Mark Beck, Property Valuation, Department of Revenue
Ron DeGramo, Rpresident Kansas Legislative Policy Group
Ron Gaches, on behalf of Southern Star
Larry Garrett, Sr. Council of El Paso Corporation

Others attending:

See attached list.

Chairman Donovan opened the meeting, and announced he would hear testimony on **HB 2026 - Election in Lyon county to increase retailers' sales tax declared valid, and tax imposed. Mark Goodwin, County Attorney, Lyon County spoke in favor of the bill.** (Attachment 1) Mark McAnarney, Assistant City Manager, Emporia spoke favorably on the bill, on behalf of Matt Zimmerman, Emporia City Manager. (Attachment 2) Sen. Barnett also is in favor of this bill. (Attachment 3) Chairman Donovan pointed out that if this bill passes in the Senate it will be effective on publication of the Register. Sen. Steineger moved this bill be moved to the Senate floor. Sen. Holland seconded the motion. Motion passed.

Next heard was **SCR 1602 - Constitutional amendment authorizing legislature to provide for the classification and taxation of watercraft.** Kent Craft gave testimony in favor of passage of the resolution. (Attachment 4) Sen. Holland made a motion to move the resolution out of committee favorably for passage. Sen. Lynn seconded the motion. Motion passed.

The committee then discussed **SCR 1607 - Constitutional amendment to define underground storage natural gas owners as public utilities and subject them to property taxation.** Randall Allen, Executive Director Kansas Association of Counties (Attachment 5), Clint Patty, Frieden & Forbes, representing Counties Natural Gas Association (Attachment 6), Mark Low, Mead County Appraiser (Attachment 7), Bob Boaldin, Morton County Board of Commissioners (Attachment 8), Dudley Feuerborn, County Commissioner, Anderson County Board of Commissioners (Attachment 9), Tony Fowler, Montgomery County Board of Commissioners (Attachment 10), and Mark Beck, Property Valuation, Department of Revenue (Attachment 11) all spoke in favor of this bill. Ron DeGarmo, President Kansas Legislative Policy Group sent written testimony favoring passage of this bill. (Attachment 12)

Opponents to the bill were Ron Gaches, on behalf of Southern Star, El Paso, Northern Natural Gas, and Panhandle Eastern (Attachment 13) and Larry Garrett, Sr. Council of El Paso Corporation. (Attachment 14)

CONTINUATION SHEET

Minutes of the Senate Assessment And Taxation Committee at 10:30 a.m. on February 11, 2009, in Room 535-N of the Capitol.

Chairman Donovan opened the testimony for questions. Sen. Colyer asked how neighboring states treat this tax question. Sen. Brownlee asked if the state can tax the owned stored gas of out of state companies, what other entities could be captured by this bill.

Chairman Donovan closed the hearing on **SCR 1607**.

Chairman Donovan asked the committee what they wished to do regarding **SB 98 - Period of limitations for refunds and adjustments of income by the internal revenue service under the Kansas income tax act**. Sen. Holland moved that the committee move the bill out favorably for passage. Sen. Brownlee seconded the motion. Motion carried.

The Chairman asked for approval of the minutes of the January 29 and February 4 meetings. Sen. Holland moved approval of the minutes. Sen. D. Schmidt seconded the motion. Motion passed.

The next meeting is scheduled for February 12, 2009.

The meeting was adjourned at 11:45 a.m.

SENATE
ASSESSMENT & TAXATION COMMITTEE

GUEST LIST

DATE: 2/11/09

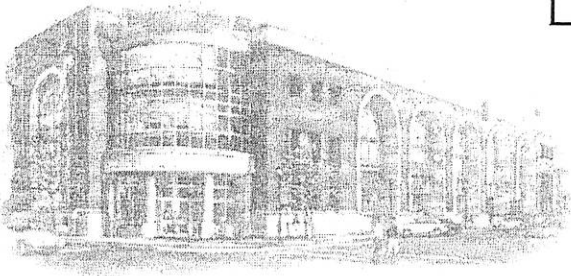
NAME	REPRESENTING
Sean Tomb	Dir. of The Budget
Richard Cram	KDOR
MARK BECK	KDOR
LON STANTON	NORTHERN NATURAL GAS Co.
Ron Gachas	El PASO, NMG, Panhandle, SSCGP
Laurey E. Garrett	Colorado Interstate Gas Co.
Jennifer Webster	El Paso - Colorado Interstate Gas
TONY FOWLER	MONT. Co.
Roger Hamm	KDOR
Bill Waters	KDOR
Courtney Hadley	KDOR
Bob Chalkoist	KDOR
James Bartle	Dept. of Revenue

SENATE
ASSESSMENT & TAXATION COMMITTEE

GUEST LIST

DATE: 2/11/09

NAME	REPRESENTING
Michelle Butler	Capital Strategies
John D. Piregan	County Natural Gas Storage Coalition
Bob Boaldin	11
Clint Patty	11
Mark Lion	Megdo Co
Juli Peterlin	Pineblow - Smith
Whitney Jansen	KS Gas Service
Mick Usher	Kansas Gas Service
Randall Allen	Ks. Association of Counties
LeRoy Burk	ME. County
MARC GOODMAN	LYON CO ATTORNEY
Scott A. Briggs	Chairman Lyon County Commission
Brad Stauffer	Carter Group
Keet Craft	KS BARS Federation National
Wes Ashton	Black Hills Energy
RONALD RICHEY	
CARMEN ALDRITT	KDOR
Tony Folsom	KDOR



LYON COUNTY COURTHOUSE

430 COMMERCIAL
EMPORIA, KANSAS 66801

MARC GOODMAN
LYON COUNTY COUNSELOR
TELEPHONE (620) 341-3270
FACSIMILE (620) 341-3419

February 10, 2009

Senator Les Donovan, Chairperson
Committee on Assessment and Taxation
State Capitol Building
Topeka, KS 66612

Re: House Bill 2026

Thank you for the opportunity to address the Committee on Assessment and Taxation regarding House Bill 2026. On behalf of the Lyon County Commission and the people of Lyon County, I am here today to state support for this bill.

The purpose of the bill is to validate the result of the election held August 5, 2008, on the question of increasing the county-wide retailers' sales tax by 1%, in order to reduce the ad valorem property tax and for capital outlay. As in the House bill, the election question also provided for a five-year sunset after the commencement of the tax.

The issue of an increase in the county-wide retailers' sales tax had been researched and explored beginning in the Fall of 2007, and the possible need for implementing it was accelerated by the loss of revenues expected after the Tyson Fresh Meats closures in January, 2008.

On May 1, 2008, the Board of Commissioners of Lyon County formally discussed placing the sales tax question on the August 5, 2008 ballot, and then requested a resolution be prepared to enact the same.

On May 15, 2008, the Board passed the resolution proposing the 1% increase in county-wide retailers' sales tax to be submitted to the voters of the county at the election on August 5, 2008.

On June 20, 2008, notice was provided the County election officer that there would be a special question election.

On August 5, 2008 the election took place and on August 8, 2008 the Abstract of Votes was signed certifying that the yes vote was 2692, the nay 1615.

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On August 14, 2008, the Board, as a result of the election, implemented the 1% increase in the county-wide retailers' sales tax by resolution, with an implementation date of October 1, 2008.

In discussion with the Kansas Department of Revenue between August 8, 2008, and August 14, 2008, county officials were made aware of not only problems with the implementation date, but of a misinterpretation of statutes as Lyon County already had a 1/2 % tax in effect from 1999 for courthouse construction.

House Bill 2026 is the mean of correcting the misinterpretation and validating the popular vote.

This correction is seen as a matter of high importance to the people of Lyon County. It now only is intended to provide property tax relief and assist capital outlay, but its proceeds by statute will be shared by all cities within Lyon County. Then it affords relief to the City of Emporia, but will provide a crucial revenue stream for projects in the small 3d class cities in Lyon County.

We respectfully request passage of House Bill 2026.

Thank you,

Marc Goodman
Lyon County Counselor

TESTIMONY BEFORE THE SENATE TAX COMMITTEE

FEBRUARY 11, 2009

The City of Emporia and Lyon County are seeking approval of HB 2026, which would permit Lyon County to collect the full 1-cent sales tax that the voters approved in August 2008. The voters passed the referendum by a 62% majority, showing a clear indication of the community's support for this tax. Unfortunately, the County is currently unable to collect the tax that was approved by the voters because Lyon County currently has a ½-cent sales tax to pay for a new Courthouse. Due the County Commission's prudent planning, the courthouse is anticipated to be paid off by 2012, seven years ahead of schedule.

This County pledged that the sales tax will be used to reduce property taxes. As a sign of good faith, the County Commission lowered the mil rate by over 5 mils for the 2009 fiscal year even though the sales tax is currently in abeyance. The City pledged to use its share of the sales tax to maintain its infrastructure. If this bill is not approved, it will delay infrastructure improvements to the tune of an estimated \$2,155,990 for FY 2009. The City, which delayed a number of infrastructure improvements in 2008 due to the unknown impacts from the Tyson layoffs, cannot afford to further delay maintenance of its streets, sidewalks and other critical infrastructure. If the bill is not passed shortly, the City will lose one-third of its anticipated revenues for 2009 as the City's budget was predicated on the authorizing legislation being passed in time to be implemented April 1. A delay to July 1 will cost the City approximately \$720,000.

The referendum was a joint effort by the County Commission and City Commission to provide a specific funding mechanism for maintaining infrastructure and lowering property taxes by moving the burden to sales taxes. The City joins the County in urging the Committee to pass HB 2026 in order to permit the will of the citizens to be carried out expeditiously. Thank you for this opportunity to testify before the Committee and I will be happy to answer any questions.

Cordially,

CITY OF EMPORIA

Matt Zimmerman

City Manager

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Attachment 2

JIM BARNETT
SENATOR, 17TH DISTRICT
CHASE, COFFEY, GREENWOOD
LYON, MARION, MORRIS, AND OSAGE
COUNTIES



TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
CHAIR: PUBLIC HEALTH AND WELFARE
CHAIR: KANSAS HEALTH POLICY OVERSIGHT
COMMITTEE
MEMBER: AGRICULTURE
FINANCIAL INSTITUTIONS AND
INSURANCE
ORGANIZATION, CALENDAR AND RULES

TESTIMONY FOR SENATE ASSESSMENT AND TAXATION COMMITTEE
Wednesday, February 11, 2009 – 10:30am – Room 535 North

HB 2026 AN ACT concerning sales taxation; relating to countywide retailers' sales tax in Lyon county **[and Rawlins counties]**; amending K.S.A. 2008 Supp. 12-187 and 12-189 and repealing the existing sections

Chairman Donovan and distinguished members of the Senate Assessment and Taxation Committee, I am pleased to speak in support of HB 2026 to ratify the results of the August 2008 election that sought to increase the current sales tax from 0.5 to 1.5 percent in Lyon County.

The increase, as approved by the voters, would be used for property tax reduction and capital outlay.

The bill is necessary because Lyon County fell under the 1% rate cap applicable to certain counties. The current set of requirements for special elections represents somewhat of a patchwork set of laws, and frequently, county attorneys and other officials have experienced difficulty with appropriate wording of resolutions. This happened several years ago in Sedgwick County and has also occurred in other counties in recent times.

I ask for your support of HB 2026. To the best of the recollection of those involved in the legislative process, the Kansas Legislature has never rejected this type of bill seeking to ratify the results of a local sales tax election.

Senator Jim Barnett

Kansas State Capitol
Assessment and Taxation Committee
Topeka, Kansas
February 11, 2009

RE: SCR 1602

Mr. Chairman and distinguished members of this committee.

My name is Kent Craft. I am one of the past presidents of the Kansas BASS Chapter Federation Nation, a 40-year boat owner in Kansas and a life long resident of Kansas. The president of the Kansas BASS Federation Nation is a Kansas Highway Patrolman in Liberal and due to his assignments is unable to be here today and has asked me to speak in his behalf. I appreciate the opportunity to be here today to speak in behalf of SCR 1602. I am hoping this resolution will open the doors to reducing the extremely high personal property tax on Kansas's watercraft.

I have enjoyed fishing and being on the water all my life. Our first boat was a 12-foot aluminum boat with a very old Johnson motor in 1968. Today that old motor would be worth a lot of money as an antique. We didn't have a trailer so; we transported the boat on the top of my car. Through out 40 years of marriage, we have owned ten boats and motors.

In the early years, boats and motors were relatively simple and inexpensive. Since we could not afford a new boat the personal property tax did not seem outrageously high. Since that time, the cost of new boats, motors, trailers and accessories have sky rocketed, but the method used in Kansas to tax them has remained the same. Thus placing a tremendous tax burden on boat owners and a selling dilemma on marine dealers.

This past summer I was shopping for a new or different fishing boat. I found one I liked. It was a 2007 Triton TR 200 boat with a 2002 Mercury 225 hp. EFI motor. I called Ernestine, Sedgwick County watercraft appraiser, and asked her what my annual tax would be on this boat and motor. She told me that the OBS appraised value of the boat and motor is \$29,500.00. Depending upon next year's mill levy, I was told that my tax would be at least \$1,000.00 a year and that did not include the boat trailer. That high of a tax was not in our budget.

Knowing the tax on watercraft in Oklahoma is more reasonable, I called the County Appraiser in Newkirk, Oklahoma for a tax estimate. He told me that in Oklahoma boats are taxed on a rate of \$1.00 per every \$100.00 of the boat's manufacture's retail selling price up to \$150 with a maximum annual fee of \$151.00. Motors are taxed exactly the same way. Boat trailers are not taxed as they are considered part of the boat. Therefore, my tax in Oklahoma would be no more than \$302.00 a year. In addition, my annual fee/tax would be reduced 10% per year up to 11 years. Then the

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annual fee would remain the same. By registering this boat in question, I would save \$698.00 a year, if I by-passed the 3.25% excise tax.

Hoping to get a better price on the bass boat, I told the marine dealer about the high tax I would be paying. I was told that they would fax all the necessary paper work to Newkirk. All I have to do would be to drive down there and sign a couple papers. The dealers know the tax is prohibitive in selling new boats. So to help the customer and to help sell the boat, some are helping potential boat owners by making it easier to go out of state to reduce the tax burden.

Thirty thousand dollars is not a lot to spend on a new boat. Many fully rigged new fishing boats may cost as much as \$55,000.00. Depending upon the mill levy, their annual tax could be as much as \$2,000.00 a year, not including the trailer. In Oklahoma, their tax would be \$302.00 including the trailer, if the excise tax is by passed. One of my supervisors as work purchased a 23-foot ski boat this summer. It is registered in Kansas and he told me he got a deal at \$ 55,000.00. When I told him what his personal property tax would be, he said he was taking it to Texas.

Wondering what our other neighboring states would tax me on my Triton. I called the State Appraisers office in Missouri. I was told that the tax on watercraft varied from county to county and township to township. Since I enjoy fishing Truman Lake, I asked for the phone number of the Benton County Appraisers Office in Warsaw, Missouri. I was told that I had to own some property or be a resident to be eligible to take advantage on their watercraft tax, but as a property owner, my annual tax in Benton County on the boat and motor in question would be about \$360.00 based upon a 5.1 tax levy. She said that some county's tax levy is as low as 4.5.

I called the State Appraisers office in Nebraska and asked the same question. I was shocked to find out that watercraft in Nebraska are not taxed unless they are used for commercial purposes. I asked the question three times to make sure he understood my question and the answer was the same. I received the same response from the Department of Revenue in Colorado.

Without a doubt, I believe it is time for Kansas to make a change in the method used to tax watercraft. As you know, Kansas boat owners are registering out of state so they can afford to upgrade or purchase a new boat and marine dealers are helping in the process just so they can continue to do business. With the excessively high price of gas and the out of date personal property tax on watercraft, it presents a tremendous burden for the average wage earner to go fishing, pleasure boating and/or skiing.

For the past 20 years or so, I have fished many bass tournaments in Kansas and in neighboring states. Of course, most anglers do not share fishing secrets, but will talk about the cost of boats and related items. During one conversation at a motel this year, the statement was made by one of Kansas's BASS Federation Officers, that he pays more

in Kansas personal property tax on his boat and motor than he does for both his relatively new family car and truck.

I hope to retire in a year. I had hoped to volunteer for the Make-A-Wish Foundation, KDWF, fish and hunt. Taking my grandchildren fishing is a thrill. I have a 5-year-old grand daughter who loves to fish and be out doors. Being on a fixed income and paying high taxes will greatly limit our outings. I want my grand children to learn to enjoy fishing, boating, skiing and, in the process, learn the proper use of watercraft as I taught my sons. The taxes are becoming very prohibitive. Personal property tax on watercraft is only one. I think it is embarrassing that Kansas is so far behind that the average Kansan has to go out of state for a tax savings. All boaters know we will be required to pay a tax on our watercraft and we all would much rather see our tax money used in Kansas rather than neighboring states, but the difference is too great and we are welcomed with open arms not only not only at the registration offices, but on their lakes as well.

I believe, along with several hundred other Kansas boat owners; the passage of SCR 1602 is a step in the right direction. I believe a significant reduction in personal property tax on watercraft will not only keep boater registration in Kansas;

- It will help marine dealers in selling new/used watercraft,
- Promote and encourage boat owners to upgrade their watercraft,
- Increase usage on Kansas waters,
- Increase State moneys through increased boat registrations,
- Decrease problems for KDWF officials and county appraisers and
- Help many of us spend more time enjoying what Kansas has to offer.

I realize that a couple years ago, a similar opportunity was presented to the Kansas voters, but failed. I believe there were several reasons for its failure, the inclusion of aircraft, the complex wording of the amendment posted at the voting places and lack of understanding the purpose of the amendment.

Oh, I did not buy the Triton. I kept my old boat. The motor still runs and it floats.

Thank you for your consideration.

Kent Craft
Kansas BASS Federation Nation Legislative Liaison



KANSAS
ASSOCIATION OF
COUNTIES

Testimony concerning SCR 1607
Taxation of Stored Natural Gas
Senate Assessment and Taxation Committee
February 11, 2009
Presented by Randall Allen, Executive Director
Kansas Association of Counties

Chairman Donovan and members of the Committee, thank you for the opportunity to present testimony concerning SCR 1607, concerning the taxation of stored natural gas. Last November at our annual conference, our members voted unanimously to support a constitutional amendment providing that *all* stored natural gas in Kansas, regardless of whether it is owned by a KCC-regulated utility or not, is subject to ad valorem property taxation. Currently, KCC-regulated utilities pay property taxes on their stored natural gas while out of state utilities storing natural gas underground in Kansas do not. This is unfair, as well as a drain on tax revenues to the State of Kansas and local taxing subdivisions. We further believe that it has been legislative intent for this natural gas to be taxed, although a 2007 Kansas Supreme Court ruled that non-KCC regulated utilities are not public utilities as defined by K.S.A. 79-5a01 (a) and that their natural gas rights and inventories are therefore exempt from ad valorem property taxation in Kansas.

It is estimated that fifteen counties contain underground storage of natural gas held for resale. The Kansas Department of Revenue estimates that the 2004 valuation of this gas would have resulted in \$10 million of additional ad valorem taxes. Counties that would be immediately impacted by this constitutional amendment include: Allen, Anderson, Chautauqua, Elk, Jefferson, Kingman, Leavenworth, Meade, Montgomery, Morton, Pratt, Reno, Rice, Wilson, and Woodson.

We urge the committee to consider and report SCR 1607 favorably to the full Senate. Thank you for the opportunity to present our position.

The Kansas Association of Counties, an instrumentality of member counties under K.S.A. 19-2690, provides legislative representation, educational and technical services and a wide range of informational services to its member counties. Inquiries concerning this testimony should be directed to Randall Allen or Melissa Wangemann by calling (785) 272-2585.

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Senate Assessment & Taxation

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LAW OFFICES OF
FRIEDEN & FORBES
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

JOHN C. FRIEDEN P.A.*
RANDALL J. FORBES P.A.
KEVIN M. FOWLER
CLINTON E. PATTY

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EMAIL: patty@friedenforbes.com

**ALSO ADMITTED IN MISSOURI*

TESTIMONY
By
**CLINT PATTY ON BEHALF OF THE
COUNTY NATURAL GAS COALITION**

**Before the
SENATE COMMITTEE ON ASSESSMENT AND TAXATION
Regarding SCR 1607**

February 11, 2009

Chair Donovan, members of the committee, my name is Clint Patty. I am an attorney with the law firm of Frieden and Forbes in Topeka, Kansas, and am here representing my client, the County Natural Gas Coalition (the "Counties") a group of several Kansas Counties who are seeking to close an existing tax loophole under Kansas law. I have been asked to provide testimony to support the proposed constitutional amendment contained in SCR 1607.

The need for this resolution cannot be understated for the Counties and the state of Kansas. The following is a brief summary of how the convergence of several factors have led to the unintended consequence of losing millions of dollars in state and local tax revenues.

Nonresident utilities, like Central Illinois Public Service Company, Union Electric Company, and Missouri Gas Energy are engaged in the business of selling and/or distributing natural gas. Pursuant to contract, some of the gas they purchase is placed in storage in several counties across Kansas for withdrawal on a seasonal and scheduled basis.

Prior to 1992, Natural Gas inventories in storage was treated as the property of the various pipeline companies storing gas in Kansas. They were assessed ad valorem tax for the gas, which has always been treated as tangible personal property. The following timeline details other events related to this issue regarding the Kansas Constitution and statutory treatment of gas in storage.

- **1986:** Article 11, § 1 of the Kansas Constitution amended to create a new exemption from property taxation for merchants' and manufacturers' inventory (note: natural gas is treated as inventory).
- **1988:** The Kansas Legislature enacts K.S.A.79-201m to implement the Constitutional exemption. At that time, the statute reiterated that merchants' and manufacturers' inventory was

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exempt from all property or ad valorem taxes and defined the terms "merchant," "manufacturer," and "inventory." However, there was no mention of public utilities.

- **1990:** The issue of whether the “merchants and manufacturers” exemption applied to the inventory of public utilities reached the Kansas Supreme Court in when it determined that natural gas owned by public utilities and stored for resale came within the exemption for merchants' inventory and could not be taxed. *Colorado Interstate Gas Co. v. Board of Morton County Comm'rs*, 247 Kan. 654, 802 P.2d 584 (1990).
- **1990:** During the pendency of the *Colorado Interstate Gas* proceedings, the legislature amended K.S.A.1988 Supp. 79-201m, effective December 8, 1989, to make the merchants' and manufacturers' inventory exemption inapplicable to the tangible personal property of a public utility as defined by K.S.A. 79- 5a01.
- **1992:** In 1992, Kansas voters approved another amendment to Article 11, § 1 of the Kansas Constitution. The amendment denied public utilities the merchants' and manufacturers' inventory exemption and, thus, made the constitution consistent with the previously adopted statute, K.S.A.1988 Supp. 79-201m.
- **FERC Changes the Rules with Order 636 in 1992 (1999):** In 1992, FERC Order 636 changed the way the entire natural gas industry operated, stating that natural gas pipeline companies were no longer the “owners” of natural gas in storage. Instead, ownership was shifted to the end users of the gas in storage, public utilities. Once the rule was fully implemented (1999), the pipeline companies were no longer required to pay ad valorem taxes on natural gas in storage.
- **Meade County Attempts to Shift the Tax From the Pipeline to the Utilities Resulting in the Kansas Supreme Court’s Problematic Decision, *In re Cent. Illinois Public Services Co.* (2000).** In 2000, Meade County assessed and taxed nonresident public utilities stored natural gas inventories. The utilities filed tax exemption applications and grievances with BOTA, and the issue resulted in the Kansas Supreme Court’s decision *In re Cent. Illinois Public Services Co.*, 276 Kan. 612, 78 P.3d 419 (Kan. 2003). In short, the Supreme Court held that because the common understanding of the term “public utilities” in 1992 did not include nonresident Kansas utilities, the voters of Kansas could not have intended for the 1992 Constitutional amendment to have applied to nonresident utilities. This case presents the greatest challenge in taxing nonresident utilities, in that any subsequent attempt at a statutory solution runs afoul of the Constitutional definition.
- **Attempt at a Statutory Solution – 2004.** In 2004, the definition of a “public utility” was expanded by the Kansas Legislature under K.S.A. 79-5a01 to arguably include those who “own control *and* hold for resale” inventories of natural gas in Kansas. This resulted in the Supreme Court’s second rejection of attempts to tax nonresident natural gas inventories, *In re Director of Property Valuation*, 284 Kan. 592, 161 P.3d 755 (Kan. 2007) (holding that non resident utilities do not “control *and* hold for resale” stored natural gas, and, therefore, do not meet the modified definition of public utilities in K.S.A.2006 Supp. 79-5a01(a)). Because the

statutory change was insufficient by definition, the Court did not have to rule on the Constitutional conflict the statute creates in light of *In re Cent. Illinois Public Services Co.*

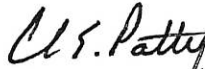
SCR 1607 Closes the Loophole

We believe that because of the Court's holding limiting the Constitutional definition of a "public utility" to residents, no statutory amendment to the contrary will trump the *In re Cent. Illinois Public Services Co* decision. Therefore, we propose amending Art. 11 § 1 of the Kansas Constitution to close the loophole for nonresident utilities who control, hold or store natural gas for resale in an underground formation in this state. This would effectively change the constitutional definition of a "public utility" to include nonresident public utilities that store natural gas in the state of Kansas, and avoid any argument that the voters did not intend to include these companies in the tax rolls.

In short, it is our belief that SCR 1607 closes the tax loophole that exists for nonresident utilities storing natural gas, ends the inequity that exists for resident utilities subject to the tax and will allow millions of dollars lost after the Supreme Court's 2003 decision to be returned to our County and State governments.

I thank you for your time and would be glad to address and questions you might have.

Sincerely,



Clinton E. Patty
Frieden & Forbes



Meade County Appraiser

**Meade County Courthouse • P.O. Box 278 • Meade, KS 67864
620/873-8710 • Fax: 620/873-8713**

**Testimony of
Mark Low
Meade County Appraiser**

SCR 1607

Before the Senate Committee on Assessment and Taxation

February 11, 2009

Chairman Donovan and Members of the Committee:

My Name is Mark Low, County Appraiser for Meade County. Thank you for the opportunity to appear before the committee to provide testimony in support of SCR 1607. I wanted to provide a brief history of our efforts to close this loophole.

In 2004, the assessed value of stored natural gas in Meade County was estimated at \$23 million. After the Kansas Supreme Court's decision in Central Illinois Public Service Company v. Meade County, the assessed value dropped significantly, dropping by nearly \$20 million. I, along with the Property Valuation Division of the Kansas Department of Revenue, and attorneys for Meade County, sought to amend K.S.A. 79-5a01 as it defines public utility to include all companies located in-state or out-of-state, that own, control, and hold natural gas.

A statutory change was chosen instead of a constitutional change because of the desire for expediency purposes and to bring back on to the tax rolls the \$20 million in assessed value of natural gas storage in Meade County.

House Bill 2897 passed the House 101-23. The bill was not heard in the Senate but was added to a House Substitute for Senate Bill 147 during a conference committee on a range of tax issues. House Substitute for Senate Bill 147 was later approved by the Senate 40-0 and in the House 109-11. Ultimately, as provided earlier, the change to K.S.A. 79-5a01 did not meet the approval of the court.

We estimate that the Meade District Hospital, Unified School District No. 226, and Meade County together lost \$2 million in tax revenue a year, every year, since 2005. \$2 million is significant in a county with a population of less than 5,000 people and a county budget of only \$6 million. In addition, broadening the tax base will alleviate some of the burden on Meade County businesses and residents. Currently, 45% of the county tax base is made up of in-state public utilities. As the law now stands, the tax burden on our in-state utilities is higher because of the loophole that exempts those out-of-state entities that store the same natural gas in Kansas. Passage of SCR 1607 will end the inequality that exists for these resident utilities and return millions to the Meade County tax rolls.

Thank you for your time, I will be glad to stand for questions.

Senate Assessment & Taxation

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Attachment 7

MORTON COUNTY COMMISSIONERS

1ST DISTRICT

RON DEGARMO
Rolla, Kansas 67954
(620) 593-4455

2ND DISTRICT

BOB BOALDIN
Elkhart, Kansas 67950
(620) 697-2286

3RD DISTRICT

TERESA HARDER
Elkhart, Kansas 67950
(620) 697-2099

**Testimony of
Commissioner Bob Boaldin
Morton County Board of Commissioner**

Senate Concurrent Resolution 1607

Senate Committee on Assessment and Taxation

February 11, 2009

Mr. Chairman and members of the Committee:

Thank you for allowing me to testify today in support of Senate Concurrent Resolution 1607. I am Bob Boaldin, from Elkhart, Kansas. I have served as a member of the Morton County Board of Commissioners for over 20 years and am here today in that capacity and as a representative for the newly formed **County Natural Gas Coalition**. I have enclosed a list of the affected counties and members of the Coalition with my testimony.

Morton County is located in the southwest corner of Kansas. Like many small rural Kansas communities, the population of our county is declining and we are challenged to address the basic needs of our citizens through a declining tax base. The majority of our counties' tax base is derived from farming, agricultural related business and the oil and natural gas industry.

For many decades, Morton County and other members of the **County Natural Gas Coalition** were permitted, by law, to assess and collect ad valorem property tax on natural gas held in storage by both resident and non-resident companies. Through a combination of a change in federal regulations and the Kansas courts, a loophole was created that exempted out-of-state utilities from taxation on their stored natural gas.

Our estimates show that Morton County has lost about \$500,000 a year in tax revenue as the valuation of stored natural gas in our county dropped more than \$6 million between 2004 and 2007 as most of our stored natural gas was taken off the tax rolls. \$500,000 a year is real money for a county with less than 3,500 residents. **In all, members of the Coalition have lost a total of nearly \$9 million per year since the Court's decision.**

The County Natural Gas Coalition supports the broadening of our tax base whenever possible. We support passage of SCR 1607 in order to give Kansas voters the opportunity to reinstate the unintentional exemption of a unique type of property.

Thank you for your attention to this matter.

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Attachment 8

Kansas Counties with Stored Natural Gas

Allen

Anderson

Chautauqua

Elk

Jefferson

Kingman

Kiowa

Leavenworth

Meade

McPherson

Montgomery

Morton

Pratt

Reno

Rice

Wilson

Woodson



ANDERSON COUNTY COMMISSION

100 E. 4th Ave.
Garnett, KS 66032

Dudley Feuerborn, Chairman
Eugene Highberger, Member
Dean Register, Member

**Testimony of
Commissioner Dudley Feuerborn
Anderson County Board of Commissioners**

SCR 1607

Before the Senate Committee on Assessment and Taxation

February 11, 2009

Chairman Donovan and Members of the Committee:

My name is Dudley Feuerborn, I am a County Commissioner for Anderson County. Thank you for the opportunity to appear before the committee to provide testimony in support of SCR 1607. I want to share with the committee the effects of the loss of revenue as a result of the Supreme Court's 2003 decision in Central Illinois Public Service Company v. Meade County.

On December 2, 2004, Missouri Gas Energy, in Anderson County, filed an application for tax exemption for the allocated natural gas inventory with the Director of the Property Valuation Division pursuant to K.S.A. 79-213. The exemption caused Anderson County to lose \$486,884.93 or almost 8% of the projected budget for 2005. More important was the hit experienced by our local school districts. Unified School District #365 in Garnett suffered a budget loss of \$215,860 while Unified School District #479 in Colony had a budget shortfall of \$61,434.78. In all, the taxing subdivisions in Anderson County lost tax revenue totaling over \$1 million, a significant amount of money for a county with a population of just over 8,000 people and only 4,231 tax payers. As a result, we had to increase our mill levy 12 mills to make up for some of the lost revenue.

The Anderson County Commission supports the passage of SCR 1607. We believe the change to the Kansas Constitution is necessary to close the unintended loophole in the state's valuation of stored natural gas.

Thank you for this opportunity. I will be glad to stand for questions at the appropriate time.

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Attachment 9

COUNTY COMMISSIONERS

Montgomery County
217 East Myrtle
Independence, Kansas 67301

Phone (620) 330-1111 Fax (620) 330-1202

Tony Fowler
District No. 1

Larry McManus
District No. 2

Fred Brown
District No. 3

**Testimony of
Commissioner Tony Fowler
Montgomery County Board of Commissioners**

SCR 1607

Before the Senate Committee on Assessment and Taxation

February 11, 2009

Chairman Donovan and Members of the Committee:

My name is Tony Fowler, I am a County Commissioner for Montgomery County. Thank you for the opportunity to appear before the committee to provide testimony in support of SCR 1607.

Montgomery County was not hit as hard by the loss of revenue as a result of the Kansas Supreme Court ruling that natural gas held by out-of-state entities was not considered a public utility for ad valorem property tax purposes as some of the other counties. Montgomery County was fortunate enough to experience an expansion of the Coffeyville Resources oil refinery and nitrogen fertilizer plant. The expansion and reappraisal of the plant increased property valuation in Montgomery County by \$807 million, offsetting lost revenue that resulted from the Supreme Court's decision on natural gas.

However, it is estimated that Montgomery County lost more than \$250,000 a year in tax revenue, revenue that would have broadened our tax base. In 2004, Montgomery County collected \$281,354 in ad valorem property taxes on a stored natural gas assessed value of \$2.1 million. In 2007, that number had dropped to \$18,415, on an assessed valuation of only \$146,021. A substantial loss.

That is a lost revenue source to Montgomery County schools, its cemeteries, and its hospitals and an increased tax burden for Montgomery County citizens and businesses, like Coffeyville Resources, that employ hundreds of Kansans. *Why should Kansas companies have to step-in for out-of-state utilities taking advantage of the state's storage capacity?*

Passage of SCR 1607 will broaden our tax base and reduce the tax burden on Montgomery County businesses and citizens. I urge the passage of SCR 1607 and will stand for any questions.

Senate Assessment & Taxation

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Attachment 10

**Testimony on Taxation of Stored Natural Gas in Kansas
to
The Senate Committee on Assessment and Taxation**

**by Mark S. Beck
Director
Kansas Department of Revenue-Division of Property Valuation**

February 11, 2009

SENATE CONCURRENT RESOLUTION 1607

Chairman Donovan, members of the committee, I speak today in support of SCR 1607. This legislation is designed to implement what we believe to be the intent of the Kansas voters that stored natural gas held for resale in underground formations in this state be subject to property taxation. I will give you a brief history of the taxation of stored natural gas in Kansas and explain how it came to no longer be taxed.

Prior to the approval by the people of the Classification Amendment to the Kansas Constitution in 1986, which became effective January 1, 1989, all inventory, included stored natural gas, was subject to property taxation. The 1986 amendment exempted from property taxation merchants' and manufacturers' inventories.

Upon implementation of the amendment in 1989, several public utilities contended that the inventory exemption included their stored natural gas. Several of these utilities filed a case at BOTA, now COTA. BOTA ruled that their stored natural gas was taxable; however, the Kansas Supreme Court, in 1990, reversed BOTA and ruled that it was exempt inventory. *Colorado Interstate Gas Co. v. Board of Morton County Comm'rs*, 247 Kan. 654 (1990).

In reaction to this decision of the Court, the legislature submitted another constitutional amendment to the people, specifically providing that all inventories of public utilities, including stored natural gas held for resale, were to be subject to property taxation. This amendment was approved by Kansas voters in 1992, and once again stored natural gas was subject to property taxation in Kansas.

The taxation of stored natural gas held for resale was not challenged so long as it was owned by state assessed public utilities. In fact, most of the stored natural gas was owned by the pipeline companies who own the underground storage facilities. In the late 1990s the Federal Regulatory Commission (FERC) implemented FERC Order 636, which prohibited the pipeline companies from owning and marketing stored natural gas. Upon the implementation of FERC Order 636, title to the stored natural gas was transferred from the pipelines to various marketing companies, municipalities and out-of-state utilities. These entities did not meet our statutory definition of a Kansas public utility; therefore, there was no longer a legal basis to value the stored natural gas and tax it. Several counties did, however, attempt to value the stored natural gas and tax it. Several of these companies appealed the counties taxation of their stored natural gas ultimately to the Kansas Supreme Court. In *In re Tax Exemption Application of Central Illinois Public Service Co.*, 276 Kan. 612 (2003), the Kansas Supreme Court held that since these non-resident utilities, marketing companies and municipalities did not meet our statutory definition of a public utility, the natural gas was exempt inventory.

In 2004, the Kansas legislature amended K.S.A. 79-5a01, which is the statutory definition of public utilities for property tax purposes, to provide that such natural gas was to be taxed. After this statutory change, commencing in 2004, the state [PVD] again valued the stored natural gas. And once again, several taxpayers appealed and once again the Kansas Supreme Court, in *In re Appeal of Director of Property Valuation*, 284 Kan. 592 (2007), held that the stored natural gas was exempt inventory.

In 2004, PVD advised that a constitutional amendment might be necessary to tax the stored natural gas, however, as I have stated, a statutory change was attempted rather than a constitutional amendment. Our belief that a constitutional amendment was necessary stemmed from language in the *Central Illinois* case, where the Kansas Supreme Court stated that a constitutional provision must be interpreted based on the statutes in existence at the time the amendment was approved by the voters. In this case, 1992, is the last time article 11, section 1 of the Constitution was amended. In 1992, K.S.A. 79-5a01 did not subject non-resident utilities, municipalities and marketing companies owning stored natural gas in underground formations in this state to taxation; therefore, it is likely the Kansas Supreme Court would hold in a future case, without a constitutional amendment, that the voters did not intend that stored natural gas owned by non-resident utilities, marketing companies and municipalities be taxed.

Again, it is our view, that the Kansas people want the natural gas that is stored in underground formations in this state taxed. The passage SCR 1607 will, in our view, not only implement what we believe to be the intent of the people, but protect a valuable portion of the tax base that has been lost due to regulatory changes that occurred outside the State of Kansas.

For all these reasons, we recommend SCR 1607 for passage.



KANSAS LEGISLATIVE POLICY GROUP

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**Testimony of
Commissioner Ron DeGarmo
Morton County Commissioner
President, Kansas Legislative Policy Group**

Before the Senate Committee on Assessment and Taxation

Senate Concurrent Resolution 1607

February 11, 2009

Chairman Donovan and Members of the Committee:

The Kansas Legislative Policy Group (KLPG) is pleased to provide written testimony in support of Senate Concurrent Resolution 1607. KLPG is a bipartisan, non-profit organization of elected commissioners from 30 western Kansas counties. We appreciate the opportunity to submit remarks on this issue, which is of great importance to our member counties.

SCR 1607 will correct an unintentional loophole created by a combination of changes in federal regulation and decisions by Kansas courts that exempted from ad valorem taxation natural gas held in storage by out-of-state entities. Closing this loophole will provide the 15 affected counties increased annual tax revenue of almost \$9 million. The Kansas Legislative Policy Group supports every opportunity to broaden our tax base. Broadening the base reduces the tax burden on everyone and enables our member counties to provide necessary public services to their citizens.

We encourage the Committee to favorably consider Senate Concurrent Resolution 1607.

Thank you for your consideration and the opportunity to present these written remarks.

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GACHES, BRADEN & ASSOCIATES

Government Relations & Association Management

825 S. Kansas Avenue, Suite 500 • Topeka, Kansas 66612 • Phone: (785) 233-4512 • Fax: (785) 233-2206

**Testimony of Southern Star Central Gas Pipeline
In Opposition to SCR 1607 – Increasing Taxes on Interstate Gas Inventories
Submitted to Senate Tax Committee
Presented by Ron Gaches
Wednesday, February 11, 2009**

Thank you Chairman Donovan and members of the committee for this opportunity to speak about the proposed property tax on interstate gas inventories. My name is Ron Gaches and I represent Southern Star Central Gas Pipeline.

Southern Star is one of a small number of interstate pipeline companies that operate natural gas underground storage facilities in the state of Kansas. These storage fields are typically in what we call porosity fields – underground geological formations that previously produced natural gas. The companies that store interstate natural gas are regulated by the federal government. Also, in Kansas, the Oil and Gas Conservation Division of the Kansas Corporation Commission has promulgated rules and regs to establish guidance on the safe operation of these facilities.

Other interstate storage companies operating in Kansas include El Paso, Northern Natural Gas and Panhandle Pipeline. Interstate storage operations are typically part of the operations of an interstate pipeline company. Gas purchasers buy gas throughout the year and store it for later use. Many large purchasers of gas (typically large industrial users, utilities, municipalities and even gas producers) will purchase natural gas during the warm months for their use during the cold winter months. They use the gas to heat homes, or commercial and industrial facilities, or to generate electricity in natural gas turbines. Other natural gas is used to make a variety of products for use in agriculture and industry.

There are nearly 20 underground storage fields operating in Kansas and most of them store gas owned by out-of-state companies.

This proposed constitutional amendment, SCR 1607, is the latest installment in a dispute over the taxation of natural gas that began in 1986. That's the year Kansas adopted the constitutional amendment that explicitly exempted merchants and manufacturers inventories from application of the property tax. The core question this resolution tries to address is whether or not natural gas owned by out-of-state entities and stored temporarily in Kansas is exempt from property tax because it is an inventory, or subject to tax because it is public utility property.

Southern Star and the other interstate natural gas storage companies contend the gas should be regarded as an inventory and exempt from property tax. This debate has been ongoing for more than two decades with occasional decisions by the courts and the legislature that highlight the nature of the controversy.

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In 1992 the legislature approved a constitutional amendment that attempted to exclude public utility property from the inventory exemption.

In 2003 the Kansas Supreme Court ruled that interstate pipeline customers were not public utilities and therefore the gas they own was not subject to the property tax.

In 2004 the legislature statutory language that attempted to redefine public utility property in a way to capture interstate storage gas for property taxes.

In 2007 the Kansas Supreme Court again ruled that the interstate gas owners were not subject to the property tax.

Obviously, a pattern has emerged. The legislature has ceded to the efforts of the counties where storage is located and tried to find a way to define public utility property to capture interstate natural gas in storage, while the Kansas Supreme Court has consistently found that those efforts fall short and the gas is not subject to the tax.

Now, the counties have hired lobbyists to persuade you that interstate storage gas should be subject to the property tax. In a few minutes Larry Garrett of El Paso/Colorado Interstate Gas will provide an overview of the legal arguments that the gas storage industry is convinced will prevail in the next court consideration of this issue, should this proposed language be added to the Kansas Constitution. But first I'd like to comment on the public policy objectives of the proposed constitutional amendment.

The Kansas counties that are home to underground storage facilities have struggled mightily to impose the property tax on interstate storage gas. It has repeatedly been difficult to do so. Notwithstanding repeated legislative initiatives to amend the Kansas constitution or statutes, the Kansas courts have consistently held with the out-of-state taxpayers and ruled the gas is exempt from local property taxes.

We believe Kansas tax policy should encourage storage of gas in Kansas facilities. It promotes the value of the entire natural gas production, processing, pipeline and storage industries in Kansas.

What is the possible public policy purpose of imposing the property tax on interstate gas? Does the gas impose a burden on the local units of government? No. Does the transport of the gas through Kansas impose a burden on local units of government? No. In fact, the storage industry is nearly invisible to most Kansans and imposes remarkably few demands on local units of government and its neighbors.

Don't storage companies and interstate pipelines pay any property taxes? Sure they do. In fact they pay significant property taxes. They are public utilities and assessed at 33% of their fair market value, the highest tax burden on any class of property.

Consider the property tax contribution to Meade County – one of the counties asking for interstate storage gas to be taxed. Last year, Panhandle's Borchers Field storage facility (one of

the largest storage facilities in Kansas) paid \$2.2 million in property taxes to Meade County. That's \$2.2 million in property taxes on the value of the storage facility and the "working gas." Working gas is the gas owned by the storage company and necessary to maintain for the efficient operation of the field.

In addition, Panhandle paid \$1.25 million in property taxes on their pipeline and transportation facilities in Meade County. That's \$3.45 million in property taxes in one year. Similarly, Southern Star paid more than \$8.5 million in property taxes in 67 Kansas counties last year. The largest amounts, including more than \$900,000 in Anderson County and nearly \$770,000 in Montgomery County, were in the counties where they have storage facilities.

Isn't that enough? I don't think the argument can seriously be made that storage companies and interstate pipelines aren't paying their fair share of Kansas property taxes.

The tax of stored gas is attractive simply because it is a way for a small number of Kansas counties to raise revenue from out of state taxpayers. If we re-impose the property tax do you think we will have any out of state gas owners that would knowingly allow their gas to be stored in Kansas? Of course not.

If the legislature is going to redefine "public utility" so that natural gas is no longer eligible for the merchants and manufacturers property tax exemption, why stop there? Why not redefine public utility to recapture the tax on wheat, or corn, or milo? What do you think would happen to the Kansas grain elevator business if the legislature redefined "public utility" to insure that grains held in storage were subject to the property tax?

Does that sound too farfetched? Then consider the application of this concept to the other common carriers that runs through our state – interstate railroads and motor carriers, and the warehouse centers that support them. Suppose we redefine "public utility" so that it captures all of the inventories carried by the railroads and held temporarily at the new intermodal transportation facility being constructed south of Olathe. Right now that's a project projected to result in hundreds of millions of dollars of new investment in transportation infrastructure, warehousing and distribution facilities. What do you imagine would happen to that investment if we impose the property tax on the inventory that might be held by those facilities?

There are hundreds of warehousing facilities in Kansas that temporarily store the inventory moved through Kansas by trucks. What do you think would happen to the Kansas trucking industry if we imposed a tax on all of the inventories shipped by Kansas truckers or held temporarily in a Kansas warehouse?

Consider the impact on our manufacturing centers in Kansas City and Wichita. General Motors has a major plant in Kansas City, Kansas producing the award winning Malibu, and Wichita remains the general aviation capitol of the world and home to Boeing's expansive commercial airline business. What would happen to those businesses if we re-imposed the property tax on the product inventories they produce?

The answer to all of these questions is simple. Imposing the property tax on these inventories will drive much of the grain elevator, railroad or trucking business out of the state. General Motors cars will be built somewhere else; and New Mexico, Mississippi, Texas, Missouri and Oklahoma will suddenly look much more attractive for Kansas airplane manufacturers.

Now, these examples might sound preposterous to everyone on this committee. After all, no one here is suggesting we impose the property tax on the grain, cattle, airplane parts, automobiles or any of the other inventories that flows through Kansas or is stored here temporarily.

But look closely at the language of the proposed constitutional amendment. On page three, lines 9 – 11 the amendment reads, “The legislature shall have the authority from time to time to redefine the term ‘public utility’ for purposes of subclassification and taxation under this article.”

That’s powerful stuff. The bill supporters are suggesting that the legislature have the ability to redefine the term “public utility.” “Public utility” may no longer have the definition you think it has or our business community thinks it has, because we’re going to give the legislature the authority to redefine “public utility.” A tax exempt inventory is only tax exempt until the legislature redefines it as a “public utility.”

What if a future legislature decided that not only are railroads common carriers, the inventory they haul is “public utility” property. What if a future legislature decided that not only are interstate truckers common carriers, the inventory they haul is “public utility” property. What if the legislature decided that not only are grain elevators attached to railroads and interstate trucking, but the inventory they hold is “public utility” property?

Doesn’t that sound like something the counties would ask the Legislature to do in an economic downturn - impose property taxes on out-of-state property owners whose property just happens to spend some time in storage in Kansas? In fact, that’s exactly what they are trying to do with interstate storage gas.

Counties that are home to gas storage fields are simply trying to impose taxation without representation. The gas can’t vote. The gas owners are all out-of-state and can’t vote. From the counties’ perspective, this is the perfect tax. They can impose a tax on a group of taxpayers who can’t vote to throw them out. That’s called taxation without representation and we’re pretty familiar with the concept. It didn’t prove popular with taxpayers in 1776 and it isn’t popular today, unless you’re the King George the 3rd of England, or a Kansas County.

We believe the counties have it wrong. You shouldn’t be considering a constitutional amendment to increase taxes on interstate storage gas. Instead you should be considering an amendment that makes it clear ALL storage gas is exempt from property tax.

Passage of SCR 1607 isn’t an economic recovery effort. It’s a government stimulus effort.

Kansas utility consumers ... your constituents ... need and deserve a break. The state has slipped into recession. Employers are hemorrhaging jobs faster than anyone can remember. And energy prices have been at all time highs.

The local property taxes on natural gas owned by Kansas utilities are passed on 100% to Kansas utility consumers. The gas is already subject to the state severance tax when it is produced and the consumers' energy bills are already subject to a variety of local and state taxes and fees. The property tax on natural gas is a third and redundant tax on the same molecule of gas.

It has become standard tax policy in Kansas that we tax a product at the point of retail sale or consumer use, and not impose taxes on the inputs required to produce the product or service. Except with natural gas where we impose a triple tax on Kansas consumers. It's obscene. Where is the outrage?

The dirty little secret about taxes on natural gas owned by Kansas utilities is that they are hidden taxes. The Kansas consumer pays the taxes but never sees the tax bill. It's all just rolled into their utility bill.

Instead of asking your constituents if they think Kansas should impose a tax on interstate storage gas, ask them if they support elimination of the hidden natural gas taxes buried in their utility bills. Ask them if they believe they deserve relief from the triple taxation of natural gas. I'm guessing that if your constituents understood what was going on they would probably tell you they have had enough of hidden taxes.

Mister Chairman, SCR 1607 is a tax increase plain and simple. This is a dispute that has gone on for more than twenty years. These counties have known for years the fragile legal status of this revenue source; as a result of the 2007 court decision the tax has been refunded for several prior years and not collected the last two years.

Notwithstanding the best efforts of lobbyists for the counties to fashion an excuse to impose property taxes on interstate storage gas, the Kansas Supreme Court has consistently decided in favor of the taxpayer. Continuing the effort to impose this tax will only result in more legal expenses for the state and counties and more frustration for a storage industry that has been proud to call Kansas home, but is questioning the state's commitment to its success.

Instead of looking for ways to increase taxes, we urge you to look for ways to offer your constituents some badly needed financial relief and eliminate the property tax on storage gas owned by Kansas utilities.

More importantly, consider the potentially adverse implications of granting future legislatures the authority to redefine what is "public utility" property. That is an open invitation to taxpayer abuse.

We ask this committee to consider all of the implications of the policy represented by SCR 1607 and reject it. You wouldn't do this to Kansas agribusiness, interstate motor carriers or railroads, or Kansas auto or aviation manufacturers. You shouldn't do it to our natural gas storage industry.

Thank you for your consideration and I'll respond to any questions.

Testimony of Colorado Interstate Gas Company
In Opposition to SCR 1607 - Increasing Taxes on Interstate Gas Inventories
Submitted to Senate Tax Committee
Presented by Laurence E. Garrett
Wednesday, February 11, 2009

Thank you, Chairman Donovan and members of the committee, for the opportunity to address the proposed property tax on interstate gas inventories. My name is Laurence E. Garrett and I am an attorney for Colorado Interstate Gas Company ("CIG"), located in Colorado Springs, Colorado.

The purpose of my testimony is to oppose SCR 1607 on the grounds that it exceeds permissible state authority under the United States Constitution. The proposed legislation contains two constitutional infirmities. First, it does not satisfy the "minimum contacts" requirement under the Due Process Clause of the United States Constitution. Second, it does not pass muster under the Commerce Clause of the United States Constitution because it fails the "substantial nexus" test that the courts have adopted in Commerce Clause jurisprudence.

SCR 1607 clearly fails to satisfy the "minimum contacts" requirement under the Due Process Clause of the United States Constitution. Under that test, no state can reach beyond its borders to tax a non-resident where doing so offends "traditional notions of fair play and substantial justice," a principle which has long been established by *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and its progeny. Although physical presence is not necessarily required, an out-of-state taxpayer must purposefully direct its efforts toward state residents and must purposefully avail itself of the benefits and protections of the economic market in the state in order for state taxation to pass Due Process muster. See, *Quill Corp. v. North Dakota*, 504 U.S. 298, 307-308 (1992).

The minimum contacts requirement assures that a company "[has] fair warning that [its] activity may subject [it] to the jurisdiction of a foreign sovereign." *Id.*, quoting *Shaffer v. Heitner*, 433 U.S. 186, 218 (1985). As noted by the Fourth Circuit Court of Appeals, in exploring the due process limits on the legislative power of a state, the Supreme Court has employed language similar to that used in personal jurisdiction matters, explaining that "there must be at least some minimal contact between a State and the regulated subject before it can, consistently with the requirements of due process, exercise legislative jurisdiction." *Adventure Communications, Inc. v. Kentucky Registry of Election Finance*, 191 F.3d 429, 436 (4th Cir. 1999). The Supreme Court has also held that third party actions cannot provide the necessary nexus, stating "The unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum state." *Hanson v. Denckla*, 357 U.S. 235 (1958).

The proposed legislation would unlawfully tax out-of-state taxpayers who have never purposefully directed their activities toward residents of the state of Kansas and have never purposefully availed themselves of any benefits or protections of the

economic market in the state of Kansas. There is simply not sufficient “minimum contact” between the state of Kansas and the out-of-state taxpayers to satisfy the requirements of the Due Process Clause. Additionally, the mere fact that CIG – a third party – has temporary custody of the taxpayers’ property at CIG’s in-state storage facilities cannot serve to support Kansas taxation on the out-of-state taxpayers since they have absolutely no control (actual or constructive) over the ingress and egress of natural gas to and from the Kansas storage facilities operated by CIG. The Due Process Clause forbids imputation of such independent, third-party actions to the purported out-of-state object of state legislation for purposes of establishing constitutionally sufficient minimum contacts.

Furthermore, SCR 1607 does not pass muster under the Commerce Clause of the United States Constitution because the activity which is proposed to be taxed lacks any “substantial nexus” to Kansas. The United States Supreme Court has adopted and consistently applied a four-part test for determining whether a state tax on an interstate business is valid under the Commerce Clause. A tax passes muster against a Commerce Clause challenge so long as the “tax [1] is applied to an activity with a substantial nexus with the taxing state, [2] is fairly apportioned, [3] does not discriminate against interstate commerce, and [4] is fairly related to the services provided by the state.” *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

The first part of the test requires a substantial nexus between the taxpayer and the state to ensure that interstate commerce is not unduly burdened. It poses an even higher hurdle than the minimum contacts necessary to satisfy the Due Process Clause test: “[A] corporation may have the ‘minimum contact’ with a taxing state as required by the Due Process Clause, and yet lack the ‘substantial nexus’ with that state as required by the Commerce Clause.” *Quill Corp. v. North Dakota*, 504 U.S. 298, 313 (1992). This principle was affirmed by the Supreme Court of Kansas in *In re Appeal of InterCard, Inc.*, 270 Kan. 346, 14 P.3d 1111, 1115 (2000). There, the Kansas Supreme Court held that “[i]t is well settled that under the Commerce Clause a state may not subject a business to tax unless the business has a substantial nexus within the state.”

The definition of what constitutes a “substantial nexus” has been the subject of a long line of United States Supreme Court and state court decisions. Although the specific boundaries of the “substantial nexus” requirement have not been defined with great specificity, there is a “bright line” test which was established by the United States Supreme Court in *National Bellas Hess, Inc. v. Department of revenue of Ill.*, 386 U.S. 753 (1967) and which was reaffirmed in the *Quill Corp.* case. In those cases, the Supreme Court held that taxpayers “whose only connection with customers in the [taxing] state is by common carrier” do not maintain a substantial nexus with a state that permits the state to impose taxes. CIG, a federally regulated, open-access transporter of natural gas in interstate commerce is the functional equivalent of a common carrier. It can no more serve as the proxy or vehicle for taxation by Kansas on an out-of-state taxpayer than could the common carrier as issue in *National Bellas Hess* serve as the proxy or vehicle for taxation by Illinois on an out-of-state taxpayer. Therefore, the proposed constitutional amendment violates the Due Process Clause by attempting to

sweep within the taxing jurisdiction of the state of Kansas virtually any entity without regard to whether the entity has a substantial nexus with Kansas.

Thank you for allowing me to present this testimony. I respectfully urge you to reject SCR 1607 on the grounds that it violates the United States Constitution. I would be happy to answer questions.