SESSION OF 2007

SECOND CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2145

As Agreed to April 25, 2007

Brief*

Senate Sub. for HB 2145, as agreed to by the Conference Committee, would amend existing law and enact new law addressing inspection of petroleum meters on vehicle tanks, wind generation projects at two community colleges, parallel generation of electricity from renewable resources, incentives for retailers of alternative motor fuels and biodiesel, and training for operators of underground storage tanks. Some provisions included in the bill were initially considered by the Legislature in: HB 2145, as amended by the Senate Committee of the Whole; HB 2127, as passed by the House; and SB 327. The bill also includes a technical amendment to 2007 SB 190, as signed into law. Major provisions of the bill as agreed to by the Conference Committee are described below.

Inspection of Petroleum Meters on Vehicle Tanks – Amendments

The bill would amend the definition of a "dispensing device" to allow petroleum inspection fee funds to be used for inspecting and testing meters on vehicle tanks. In addition, the bill would authorize the Secretary of Agriculture to reduce the fees and charges imposed upon manufacturers, importers, exporters or distributors first selling, offering for sale, using or delivering gasoline or diesel including government sales when

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the Secretary of Agriculture determines that the fees and charges being paid are yielding more revenue than required to administer the petroleum inspection program.

Wind Generation Education Projects at Community Colleges

In addition, the bill would authorize Cloud County and Dodge City Community Colleges each to establish a wind generation education pilot project. Prior to instituting an electric generation project that would result in sale of energy on the electric grid, each of the colleges would be required to make a finding that either:

- Net energy cost savings will accrue from renewable generation over a 20-year period; or
- Renewable generation is a science project being conducted for educational purposes and that the project may not recoup the expenses of the project through cost savings.

Both community colleges would be permitted to contract or enter into a finance, pledge, loan, or lease-purchase agreement with the Kansas Development Finance Authority (KDFA) as a means of financing the cost of a renewable generation project. KDFA would be permitted to finance the construction and installation of a renewable generator by either school for parallel generation through the issuance of revenue bonds.

Parallel Generation from Renewable Resources – Amendments

In regard to commercial customers participating in parallel generation other than Cloud County and Dodge City community colleges, the bill would amend existing law to increase from 100 kilowatts to 200 kilowatts the maximum allowable generation capacity for parallel generation from renewable resources. The community colleges would be treated as parallel generators as long as their renewable generation capacity is 1.5 megawatts or less. A generator used by a commercial customer for parallel generation would have to be appropriately sized for the customer's anticipated electrical load. The bill would limit commercial customers who power irrigation pumps with renewable energy generators to connecting a maximum of 10 such pumps to a utility's system. The parallel generator would have to attach the mechanism necessary to feed excess electrical power onto the utility's system on the customer's side of the retail electric meter. Utilities would be required to provide a written estimate of costs expected to be incurred by the utility and billed to a parallel generator when a customer notifies the utility of intent to construct and install parallel generation capacity. The bill also would limit the number and size of renewable generators that can connect to the utility's system and utilities would not be required to purchase from parallel generator more than 4 percent of the utility's peak power requirement. The bill also would require the KCC to establish terms and conditions of parallel generation contracts if the renewable generator and the utility cannot agree on contract terms.

The bill would provide that the amount of compensation for energy supplied to a utility by the community colleges would be 100 percent of the utility's monthly system average cost of energy per kilowatt hour. In the case of renewable generation with a capacity of 200 kilowatts or less, the compensation would remain at the current level of at least 150 percent of the utility's monthly system average cost of energy per kilowatt hour.

The bill would provide that electricity generated by parallel generators would be included as part of the state's generation of electricity by wind for purposes of meeting the Governor's goals. Those goals are production of 10 percent of the state's electricity by wind by 2010 and 20 percent by 2020.

Motor Fuel Dealers – Incentive for Selling Renewable Fuels

The bill would create a monetary incentive for licensed retail motor fuel dealers selling renewable fuels and for licensed retail dealers of biodiesel beginning in 2009 and ending in 2026. "Biodiesel" would be defined by the bill to be a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from vegetable oils or animal fats and that meets the specifications adopted by rules and regulations of the Secretary of Agriculture pursuant to current law. The specification would have to meet American Society for Testing and Materials Specification D6751-07 for biodiesel fuel (B100) blend stock for distillate fuels, but could be more stringent regarding biodiesel quality and usability. Renewable fuels would be defined by the bill to be a combustible liquid derived from grain starch, oil seed, animal fat or other biomass; or produced from biogas source, including any nonfossilized, decaying, organic matter which is capable of powering spark-ignition machinery.

A maximum of $400,000 quarterly would be transferred from the State General Fund to the Kansas Retail Dealer Incentive Fund, created by the bill, from which the incentive payments would be made. No more than $1.5 million could be in the Fund. If the balance in the Fund exceeds $1.1 million at the time of a quarterly transfer, the transfer would be limited to the amount necessary for the Fund to reach $1.5 million. The Secretary of Revenue would be authorized to pro-rate the incentive payments if the amount in the fund is insufficient to pay all incentives claimed.

For any quarter in which a retail dealer sells renewable fuels from a fixed location, the retail dealer would be eligible for an incentive of $0.065 per gallon of renewable fuels sold if the required threshold percentage is met. The threshold percentage for the incentive payment for renewable fuel sold would be 10 percent in the calendar year 2009 and gradually increase to 25 percent beginning on January 1, 2024. If in any quarter the retailer fails to meet the threshold percentage by 2 percent or less, the payment would be $0.045. No incentive payment would be made if retailer fails to meet the threshold percentage by more than two percent.

The bill also would establish an incentive payment of $0.03 per gallon of biodiesel sold by a retail dealer. The threshold percentage for the incentive payment for the sale of biodiesel would be 2 percent in calendar year 2009 and gradually increase to 25 percent in calendar year 2025. No provision would be established for a payment if there is a percentage disparity in sales of biodiesel.

The Secretary of Revenue would be authorized to adopt rules and regulations necessary to administer the act. The Secretary also would be required to annually submit a written report to the House Appropriations Committee, the House Energy and Utilities Committee, the Senate Ways and Means Committee, and the Senate Agriculture Committee beginning with the 2010 Legislative Session. The report would contain information regarding incentive payments claimed and amounts of renewable fuels and biodiesel sold in the state, including any recommendation for statutory changes.

Alternative-Fuel Fueling Stations – Amendments

Existing law regarding incentives for alternative-fuel fueling stations would be amended to permit any such station placed in service on or after January 1, 2009 to be eligible for an income tax credit equal to 40 percent of the total amount expended, not to exceed $100,000 for each fueling station. The tax credit could be carried forward for four years after the taxable year in which the expenditure was made.

In addition, the definition of "alternative fuel" would be amended to clarify the types of fuels included in the definition. The definition of "biodiesel" would be amended to make it consistent with the definition in other provisions of this act.

Reimbursement of Above Ground Storage Tank Operators

The bill would extend the deadline for application for reimbursement of owners of aboveground storage tank facilities or bulk plants for costs incurred in upgrading a facility or for closure expenses from January 1, 2009 to January 1, 2011.

Conference Committee Action

The Second Conference Committee on Senate Sub. for HB 2145 amended the Senate version of the bill to:

- Eliminate from the bill provisions authorizing funding of the Cloud County Community College wind project from revenue originally credited to the Petroleum Products Inspection Fee Fund;
- Add various provisions of SB 327 to create an incentive of $0.065 per gallon for retail sale of "renewable fuels" and $0.03 per gallon for retail sale of "biodiesel" with a limit of $400,000 per quarter from the State General Fund beginning January 1, 2009;
- Provide income tax incentives for alternative-fuel fueling stations placed in service on or after January 1, 2009; and
- Include in the bill a technical correction to SB 190, as that bill was signed into law. The correction requires that application for reimbursement for upgrade or closure of aboveground storage tanks must be made by January 1, 2011.

Background

The bill as agreed to by the Conference Committee included some, but not all of the provisions of four different bills, the background of which is summarized below.

HB 2145. At the hearing on HB 2145 before the House Agriculture and Natural Resources Committee, the only conferee was a representative of the Kansas Department of Agriculture. The conferee indicated that the bill would require the testing of vehicle tank meters which are mounted on trucks that deliver fuel to farms and homes. The conferee stated that the annual testing of these meters is important to protect consumers. The conferee informed the Committee that there are only two service companies available to conduct tests and that many vehicle tank meters are not being tested annually.

The House Committee on Agriculture and Natural Resources amended HB 2145 to allow the Secretary of Agriculture to reduce the fees and charges imposed upon manufacturers, importers, exporters or distributors first selling, offering for sale, using or delivering gasoline or diesel including government sales when the Secretary of Agriculture determines that the fees and charges being paid are yielding more revenue than required to administer the petroleum inspection program.

The Senate Committee on Agriculture amended certain provisions of HB 2127 into this bill; created a Wind Generation Education Pilot Project Fund (WGEPPF); authorized Cloud County Community College to establish a wind generation education pilot project and to use money in the WGEPPF to finance the project; decreased the compensation which a utility would provide to a customer supplying energy from renewable resources to a utility from 150 percent to 100 percent of the utility's monthly system average cost of energy per kilowatt hour; deleted a provision in HB 2127 which would have created a property tax exemption for property used for storage of electrical power generated by renewable resources through parallel generation; provided for the allocation of $50,000 from the PIFF to be credited to the WGEPPF; and decreased the amount of money allocated from petroleum inspection fees to the SGF from $250,000 to $50,000.

The Senate Committee of the Whole amended the bill to provide that renewable generators with a capacity of 200 kilowatts or less would be compensated by a utility at 150 percent of the utility's monthly system average cost of energy per kilowatt hour as compared to 100 percent for all other parallel generators.

The fiscal note on the original HB 2145 indicates that the Kansas Department of Agriculture believes that passage of HB 2145 would require one-time costs of $20,000 to purchase specialized test equipment. In addition, the Department would dedicate 0.25 of an existing FTE position to inspect the meters. The associated salary costs would total approximately $16,000 per year. These costs can be absorbed within the agency's current resources. The source of funding would be the Petroleum Inspection Fee Fund, which has adequate resources to support the additional expenditures. Any fiscal effect associated with HB 2145 is not included in *The FY 2008 Governor's Budget Report.*

The Division of the Budget's fiscal note for the original HB 2127 indicates that enactment of the bill would have a negligible budget effect on the Kansas Corporation Commission. The Department of Revenue reported that it cannot estimate the effect the bill's property tax exemption would have on state revenues. The fiscal note states that any impact of the bill is not included in the Governor's FY 2008 budget.

There was no fiscal note available for the substitute bill.

SB 327. The bill was introduced by Senator Bruce and 19 other Senators. At the Senate Assessment and Taxation Committee hearing on the bill, proponents included Senator Bruce, the Kansas Association of Ethanol Producers, and the Petroleum Marketers and Convenience Store Association of Kansas.

The Senate Committee on Assessment and Taxation amended the bill as suggested by Senator Bruce. The Senate Committee of the Whole made a technical amendment to the bill.

At the House Committee on Energy and Utilities hearing, SB 327 was supported by Senator Bruce, who suggested amendments. The bill also was supported by testimony from the Association of Ethanol Processors, Kansas Soybean Association, Petroleum Marketers and Convenience Store Association of Kansas, Kansas Corn Growers Association, Kansas Grain Sorghum Producers Association, the Kansas Farm Bureau, and the Kansas Cooperative Council. The House Committee amended the bill to:

- Change the bill from one authorizing income tax credits to one creating incentives that would be paid quarterly based on the volume of renewable fuels and biodiesel sales;
- Establish the renewable fuels incentive at 6½ cents per gallon only for renewable fuels manufactured in Kansas;
- Restrict the incentives to retail sellers of motor fuel or special fuels located in Kansas;
- Define "renewable fuels" to be E-85, B-5, and B-10;
- Require transfer of $500,000 quarterly from the State General Fund to the Kansas Retail Dealer Incentive Fund (created by the bill) to finance the incentives;
- Require that retailers file for the incentive electronically;
- Authorize the Secretary of Revenue to adopt rules and regulations to administer the Act; and
- Sunset the Act on July 1, 2012.

The House Committee amendment appears to materially change the potential fiscal impact from that discussed in the fiscal note prepared for the introduced version of the bill. The House Committee did not have a revised fiscal note at the time it took action on the bill.

The Conference Committee on HB 2145 included provisions regarding renewable fuels and biodiesel retail incentives that were drawn in part from an amendment to SB 327 proposed to the House Committee by Senator Bruce, but that was not adopted by the Committee.

HB 2127. The bill was introduced by the House Committee on Energy and Utilities to amend the statute governing parallel generation of electricity from renewable resources and to create a property tax exemption for storage of energy generated from renewable resources. At the House Energy and Utilities Committee hearing, individuals from Larned, Burdett, and Great Bend, Kansas testified in support of the introduced version of the bill. A representative of the Kansas Chapter of the Sierra Club also testified in support of the bill. No one testified in opposition to the bill at the House Committee hearing. A representative of KEPCo presented proposed amendments at the House Committee hearing.

The Senate Committee on Utilities amended some provisions of HB 2127 into HB 2145 and replaced provisions of HB 2127 with provisions of SB 20. (See discussion of HB 2145 background above.)

At the time the Conference Committee took action on HB 2145, HB 2127 was in the Senate Committee on Ways and Means.

SB 190. After SB 190 was signed by the Governor, a conflict was identified in regard to the date before which application must be made for reimbursement for upgrade or closure expenses. The Conference Committee report on HB 2145 corrected that conflict by requiring application to be made by January 1, 2011.

renewable fuel incentives; petroleum meter inspection; wind generation