SESSION OF 2014

CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2643

As Agreed to May 2, 2014

Brief*

HB 2643 would make a number of amendments to property tax, motor vehicle tax, and mortgage registration tax provisions, and would make a change to an income tax penalty provision. The "rural opportunity zone" (ROZ) program would be expanded. The bill also contains a severability clause.

Property Tax Provisions

One section of the bill would seek to clarify, retroactively, legislative intent from 2006 when a property tax exemption for certain commercial and industrial machinery and equipment was enacted by determining the circumstances under which property could be classified as personal property or real property. In making the classification determination, county appraisers would be required to conform to the definitions of real and personal property provided elsewhere in Kansas law.

Where the classification of property may not be otherwise clearly determined, appraisers would be required to utilize a three-part, fixture-law test (generally involving annexation, adaption, and intention) in determining its classification as real or personal.

Additional language would further clarify that the basic factors in determining whether items would be classified as

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*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at http://www.kslegislature.org/klrd real or personal would be their designated use and purpose; that such determination would be made on a case-by-case basis; and that all three parts of the three-part fixture test would have to be satisfied for an item to be classified as real property.

Another set of provisions would stipulate that after July 1, 2014, owners of property constructed or purchased with the proceeds of industrial revenue bonds (IRBs) and exempt from property tax would be required to notify county appraisers within 30 days of the completion of improvements on the projects, and the county appraiser subsequently would be required to classify the improvements as real or personal property. Owners aggrieved with the classification determination could appeal to the Court of Tax Appeals. Property classified pursuant to this process could not be reclassified within two years after the expiration of the exemption absent the approval of the Court of Tax Appeals or determination of a material physical change to the property, a material change in the use of the property, or a substantial change in directly applicable law. A statute relating to the IRB exemption also would be amended to clarify that any listing of property at the time of the exemption application process would not constitute an official classification for property tax purposes.

Taxpayers or county appraisers would be authorized to request that the Property Valuation Division (PVD) of the Department of Revenue contract with independent appraisers to classify and appraise certain “complex” properties. PVD would be required to contract with qualified appraisers who are certified real property appraisers with at least three years of experience in classifying and appraising complex properties. Counties would be responsible for paying all reasonable costs of the independent classifications and appraisals, regardless of which party made the request. Final determinations made by independent appraisers would be deemed admissible before the courts and the Court of Tax Appeals in any subsequent proceedings. PVD would be allowed to require county appraisers and taxpayers to submit relevant documentation to the independent appraisers.

A further section would define for property tax purposes beginning in tax year 2014 commercial and industrial machinery and equipment to include such property used directly in the manufacture of cement, lime or similar products. Property that would be eligible would include kilns, pumps, lifts, process fans, bucket elevators, compressors, raw mills, hammer mills, grinders, conveyors, ball mills, mixers, storage tanks, scales, crushers, reclaimers, processing vessels, filters, electric motors, cement and clinker coolers, finish mills, separators, electric hoists, stackers, roller mills, clinker breakers, hydraulic and lubricating systems used directly in manufacturing and processing activities, analyzers, aeration systems, air pollution control equipment, bulk loading systems, material and gas flow distribution gates, and handling and transport systems. Any such property valued and assessed as public utility property would not qualify for the statutory designation as commercial and industrial machinery and equipment.

Motor Vehicle Tax Provision

An additional provision would clarify that a motor vehicle tax exemption involving up to two vehicles owned by certain members of the military would include those full-time members stationed in Kansas who are active guard or reservists under either Title 10 or Title 32 of the *United States Code*.

Mortgage Registration Tax Provisions

The mortgage registration tax would be phased out over five years, while additional fees collected by county registers of deeds would be phased in over four years.

The mortgage registration tax, which currently is levied at the rate of 0.26 percent of the principal debt or obligation secured by mortgages, would be reduced to 0.2 percent for all mortgages received and filed for record during calendar year 2015; 0.15 percent during calendar year 2016; 0.1 percent during calendar year 2017; and 0.05 percent during calendar year 2018. The tax would be repealed altogether beginning in 2019.

Current law provides that 25/26ths of the revenue be retained by counties, with 1/26th coming to the state for deposit in the Heritage Trust Fund. The bill would repeal the requirement that any mortgage registration tax receipts be distributed to the Heritage Trust Fund on and after January 1, 2015.

A number of statutory fees currently charged pursuant to KSA 28-115 relative to documents filed with county registers of deeds would be increased from 2015 through 2018 (but would not be increased for a final time in 2019 when the mortgage registration tax rate is reduced for the final time).

The fee increases would be as follows:

	Current Law	CY 2015	CY 2016	CY 2017	CY 2018 and thereafter
First page of deeds, mortgages, other instruments	$ 6.00	$ 8.00	$ 11.00	$ 14.00	$ 17.00
Each additional page of such documents	2.00	4.00	7.00	10.00	13.00
Recording town plats per page	20.00	22.00	25.00	28.00	31.00
Release/assignment of mortgages	5.00	7.00	10.00	13.00	16.00
Certifying instruments on record	1.00	3.00	6.00	9.00	12.00
Signature acknowledgment	0.50	2.50	5.50	8.50	11.50
IRS tax lien filing notices	5.00	7.00	10.00	13.00	16.00
IRS/KDOR lien release notices	5.00	7.00	10.00	13.00	16.00
Liens for materials/services under KSA 58-201	5.00	7.00	10.00	13.00	16.00

Relative to these aforementioned fees, a new cap would apply beginning in calendar year 2015 such that a maximum of $125 could be levied for recording mortgages of $75,000 or less involving single-family principal residences.

In addition to the foregoing fee increases, an additional fee of $1 would be levied beginning in calendar year 2015 and credited to the Heritage Trust Fund on the first and all subsequent pages of any deeds, mortgages, and other instruments and on release or assignments of mortgages. An annual statutory cap of $100,000 on Heritage Trust Fund mortgage registration tax distributions from any given county would be replaced with a new cap of $30,000 from any given county relative to this new $1 replacement fee.

An existing separate fee of $2 per page would be increased to $3 per page beginning in calendar year 2015, and receipts from this additional $1 fee would be split into two separate $0.50 portions and deposited in the County Clerk Technology Fund (CCTF) and the County Treasurer Technology Fund (CTTF), which are new funds created by the bill for each county. Moneys up to $50,000 in each county deposited in the CCTF and the CTTF would be required to be used by county clerks and county treasurers to acquire equipment and technological services for the storing, recording, archiving, retrieving, maintaining and handling of certain data. County commissions would be authorized to divert amounts in excess of $50,000 in each county for technological needs of other county offices upon the finding of county clerks or treasurers that such amounts exceed the technological needs of those offices.

Income Tax Provision

Another part of the bill would exempt from a 50 percent underpayment of liability penalty provided under current law certain income taxpayers who timely pay (generally within 30 days) any tax assessed pursuant to adjustments made by the Director of Taxation. In order to qualify for this exemption, taxpayers must have previously paid in full the amount of tax due as stated on the original returns.

ROZ Program

Four additional counties would be added to the ROZ program pursuant to KSA 2013 Supp. 24-50,222, bringing the total number of designated counties to 77. The additional counties would be Cherokee, Labette, Montgomery, and Sumner.

Severability Clause

A severability clause would stipulate that if a portion of the bill were to be held invalid, such invalidity would not affect other provisions of the act.

Conference Committee Action

The Conference Committee on May 2 agreed to remove a Senate Committee of the Whole amendment that would have provided a property tax exemption for certain health clubs and to insert the mortgage registration tax provisions of SB 298 as amended by the Senate Committee of the Whole. The Conference Committee also agreed to insert the original subject matter of HB 2557 relating to income tax penalties, as well as the ROZ expansion provisions from HB 2417.

Background

The original bill dealt with the provisions seeking to clarify legislative intent from 2006 regarding the classification of certain property as real or personal. The House Taxation Committee on March 11 amended the bill to include the provisions regarding the authorization of taxpayers or county appraisers to request PVD-approved contract appraisals of certain complex properties and to add certain language relating to the classification and tax treatment of property which had been exempt pursuant to the issuance of IRBs.

The House Committee of the Whole on March 25 adopted an amendment said to represent a compromise agreed to by a number of the parties interested in the machinery and equipment issue. The House Committee of the Whole also adopted a second amendment that incorporated the provisions of HB 2456 as amended by the

House Committee of the Whole (generally those provisions dealing with the tax treatment of property used directly in the manufacture of cement, lime or similar products, as well as the motor vehicle tax exemption clarification).

The Senate Committee of the Whole amended the bill on April 4 to make several technical changes; clarify the circumstances under which taxpayers or county appraisers could request PVD-approved contract appraisals; add the severability clause; and add the proposed exemption for certain health clubs.

Fiscal effects associated with the property tax and motor vehicle tax provisions remain unknown.

The income tax penalty provision would be expected to reduce State General Fund (SGF) receipts by $0.5 million annually and would necessitate an additional $156,700 in additional administrative costs for the Department of Revenue in FY 2015.

The ROZ expansion provision would be expected to reduce SGF receipts by $0.8 million in FY 2015 and $2.5 million in FY 2016 and thereafter.

According to the PVD, mortgage registration tax receipts in CY 2013 were $47.079 million. Of this amount, $45.269 million was retained by counties, while $1.810 million was collected for the Heritage Trust Fund. But an estimated $0.719 million of Heritage Trust Fund collections was retained in several counties pursuant to a statutory cap of $0.1 million on such distributions from any given county. Estimated Heritage Trust Fund distributions in CY 2013 therefore were $1.092 million.

The phased reduction in the county's share of the tax would be expected to equate to a loss of $9.054 million in CY 2015; $18.108 million in CY 2016; $27.161 million in CY 2017; $36.215 million in CY 2018; and $45.269 million in CY 2019 and thereafter.

Based on additional data obtained from PVD, the higher county-retained fees levied pursuant to KSA 2013 Supp. 28-115, absent the newly proposed cap for certain mortgages of $75,000 or less, would increase revenues by $4.450 million in CY 2015; $11.124 million in CY 2016; $17.799 million in CY 2017; and, when fully phased in, $24.473 million in CY 2018. The actual increase in such fees would be expected to be below these amounts, which have not been adjusted to account for the $125 cap provision applicable to certain mortgages.

The additional $1 fee earmarked for the CCTF and the CTTF would provide $2.225 million beginning in CY 2015 ($1.1125 million to each fund).

The additional $1 increase in selected fees for the Heritage Trust Fund also would be expected to increase fees by $2.225 million beginning in CY 2015. Because of changes in the cap provision, the Heritage Trust Fund would receive an estimated $1.166 million of that amount, with various counties retaining the balance.

Estimates for three counties (Labette, Thomas, and Osage) were adjusted on April 29 to reflect more accurate information on per-page filing fees than had previously been available.

Property Tax Machinery and Equipment; Motor Vehicle Tax; Mortgage Registration Tax

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