

SESSION OF 2014

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2643**

As Amended by Senate Committee of the Whole

**Brief\***

HB 2643, as amended by the Senate Committee of the Whole, would seek to retroactively clarify 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 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

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

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) 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.

An additional section 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*.

A final provision would provide a property tax exemption beginning in tax year 2015 on all property owned and operated by a health club. The bill defines health clubs as facilities that provide cardio, weight training, or strength and conditioning equipment for physical fitness. The exemption would not apply to clubs that are primarily intended as weight control facilities, health spas, dance studios; martial arts, tennis, racquet or basketball facilities; swimming pools; or golf clubs. The exemption also would not apply within certain redevelopment districts established prior to July 1, 2014, until such time as such districts terminate or expire.

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.

## **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 exemption for certain health clubs.

A fiscal note on the Senate Committee of the Whole version of the bill was not immediately available.