

## MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman John Edmonds at 9:00 a.m. on March 18, 2004 in Room 519-S of the Capitol.

All members were present.

Committee staff present:

Chris Courtwright, Legislative Research Department  
Martha Dorsey, Legislative Research Department  
Gordon Self, Revisors of Statutes  
Carol Doel, Committee Secretary

Conferees appearing before the committee:

Representative Ward Loyd  
Representative Doug Patterson  
Richard Cram, Department of Revenue  
Linda Terrill, Legal Counsel for Meade County  
Bill Waters, Kansas Department of Property Valuation  
Larry Baer, Kansas League of Municipalities  
Tom Fuhrmann, Morton county Appraiser  
John Pinegar, Kansas Legislative Policy Group  
Dick Brewster, BP America Inc.  
Ron Gaches, Northern Natural Gas, Southern Star Pipeline, El Paso  
Tom Whitaker, Kansas Motor Carriers  
Jack Graves, Panhandle Energy  
Chris Wilson, Kansas Building Industry  
Wess Galyon, Wichita Area Builders Assoc  
Bobbie Flory, Lawrence Home Builders Assoc  
Bob Watson, City of Overland Park

Others attending:

See Attached List

Chairman Edmonds opened the meeting calling for any bill introductions. Representative Larkin wished to have a bill introduced which would repeal **SB 7**.

Hearing no objections, the Chairman accepted that bill for introduction.

He then turned the committees' attention to **HB 2897** and introduced Representative Ward Loyd as a proponent of the bill. This bill is intended to modify certain law regarding taxation of natural gas held in underground storage in Kansas. With the changes that have occurred in the way America does business in general, and those who engage in production, transmission, and delivery of natural gas in particular, and especially on the federal level, skillful lawyers have so narrowed and fashioned laws and regulations as to render no longer taxable a significant part of the traditional tax base. He urged the committee to act favorably on this bill. (Attachment 1)

Richard Cram, Department of Revenue stood to say that the Department was in support of **HB 2897**. (No Testimony)

The second proponent of **HB 2897** was Linda Terrill, Legal Counsel for Meade County. Meade County is trying to get back the tax base that they lost in the 2003 decision. Because of the way Kansas Funds schools, it is really an issue of statewide impact as we are all in the same boat when it comes to the issues affecting the tax base in Kansas. (Attachment 2) Ms. Terrill also submitted a copy of a case currently before the Supreme Court of Kansas regarding application of Central Illinois Public Services Company, et al., for exemption from Ad Valorem Taxation in Meade. (Attachment 3)

Bill Waters from the Department of Revenue, Division of Property Valuation addressed the committee in support of **HB 2897** stating that this bill broadens the tax base by requiring the state assessment of stored

## CONTINUATION SHEET

MINUTES OF THE HOUSE TAXATION COMMITTEE at 9:00 a.m. on March 18, 2004 in Room 519-S of the Capitol.

natural gas owned by non-resident public utilities. ([Attachment 4](#))

Assistant General Counsel for League of Kansas Municipalities, Larry Baer as its intent is to fix a condition that allows certain types of property to escape taxation. The League believes in fair and equal taxation of property. ([Attachment 5](#))

Next to appear in support of **HB 2897** was Thomas Fuhrmann, County Appraiser for Morton County. Mr. Fuhrmann stated that he would hesitate to say how much money the passage of this bill would generate. Information at this time indicates the storage capacity ranging from 4 million cubic feet, provided by CIG, to 22 million cubic feet, estimated by the U.S. Department of Energy. ([Attachment 6](#))

John Pinegar representing Kansas Legislative Policy Group strongly supports the preservation of the tax base for all counties and also encourages the elimination of all exemptions. Passage of **HB 2897** would be another step in this endeavor. ([Attachment 7](#))

There were no more proponents and the Chairman opened the floor to opponents of **HB 2897** recognizing E.R. (Dick) Brewster, Government Affairs Director BP America Inc. The bill makes two changes in current law. The first change is in Section 1, (a) of K.S.A. 79-201f, and it is the repeal of the so-called "Freeport law," which specifically exempts from property taxes property moving in interstate commerce through, or over, the state. The second amendment of current law appears on page 2 of the bill, in lines 16 through 20. These changes modify the definition of "public utility". In his testimony Mr. Brewster provided information regarding the changes in the amendments which bring concern. ([Attachment 8](#))

Ron Gaches representing El Paso, Northern Natural Gas, and Southern Central Pipeline, submitted comments in opposition to **HB 2897**. In his comments he stated that nobody is going to want to claim any gas that is stored in Kansas if we impose a new tax on gas stored here. Telling gas storage companies that they have to change the way they operate in Kansas for the purpose of identifying whose gas is stored where will only further drive up the cost of storage in Kansas and expand the negative impacts of this bill. ([Attachment 9](#))

Addressing the committee in opposition of **HB 2897**, was Tom Whitaker, Executive Director of the Kansas Motor Carriers Association. Removal of this exemption would seem to allow Kansas to tax property moving through Kansas in interstate commerce on our trucks as well as property moving on the rail system or over our heads in airplanes. The US Commerce Clause prohibits the imposition of a state tax that discriminates or unduly burdens interstate commerce, thereby impeding free private trade in the national marketplace. Elimination of paragraph (a) of K.S.A. 79-201f would open the door to unfair taxation in Kansas and sends a bad message to businesses shipping goods through Kansas. ([Attachment 10](#))

Jack Glaves testifying on behalf of Panhandle Energy in opposition to **HB 2897** stating that this bill would require the conclusion that natural gas held in federally-regulated storage facilities, which is "in interstate commerce", is subject to local ad valorem taxes, unlike all non-public utility merchants inventory, which is tax free under the Kansas Constitution. If every county through which that gas moves could tax it, the consumer would be a hapless victim of "the power to destroy. ([Attachment 11](#))

Randall Allen, Kansas Association of Counties submitted written testimony in support of **HB 2897** ([Attachment 12](#)) as well as written testimony from Morton County Commissioners also in support of the bill ([Attachment 13](#))

Chairman Edmonds closed the hearing on **HB 2897** and opened the hearing on **HB 2834**.

Representative Doug Patterson was recognized submitting testimony in support of **HB 2834**. In his testimony, Representative Patterson stated that the bill does the following:

1. Authorizes the imposition of a development excise tax.
2. Requires the development excise tax to be justified.
3. Projections on how the proceeds of the development excise tax will be used are required.
4. There will be accountability for the usage of this tax.

He further stated that this seems fair to him.

## CONTINUATION SHEET

MINUTES OF THE HOUSE TAXATION COMMITTEE at 9:00 a.m. on March 18, 2004 in Room 519-S of the Capitol.

KBIA (Kansas Building Industry Association) was represented by Chris Wilson in favor of **HB 2834**. Ms. Wilson's related that the KBIA represents over 2600 members involved in the state's residential building industry. This bill would require that municipalities provide information regarding how excise taxes are calculated and how the funds collected are spent. Currently, excise taxes are collected and spent without such information available to the public. (Attachment 15)

Wess Galyon, President/CEO of the Wichita Area Builders Association also appeared before the committee in support of **HB 2834**. Mr. Galyon related not only what the bill does not do and what the bill does do, but also that they feel it is needed in order to keep municipalities consistently accountable with regard to the imposition of such taxes in accordance with claims made them they are justified and that the monies will be used for the purposes for which they are collected, and to prevent municipalities from using funds collected for some unrelated purpose at some future point subsequent to the imposition of such a tax. (Attachment 16) Mr. Galyon also submitted for committee review written testimony from Richard Standrich, Mayor of Derby, Kansas. (Attachment 17)

Next to come before the committee in support of **HB 2834** was Bobbie Flory testifying for Lawrence Home Builders Association. In her testimony she related that they support **HB 2834** because it will help limit the arbitrary nature of current excise taxes. It will mandate that municipalities provide a rationale for the tax amount other than what the community next door charge. (Attachment 18)

With no other person wishing to testify as a proponent, the Chairman recognized Larry Baer, Kansas League of Municipalities as the first opponent on **HB 2834**. He stated that the League does not know what problem or problems this bill addresses or proposes to fix. Adopting legislation where there is no specific need is not good policy. (Attachment 19)

As the final opponent to **HB 2834**, Robert Watson, City Attorney for the City of Overland Park gave testimony that related that the bill is a thinly disguised attempt to characterize cities' excise taxes as impact fees. It is their feeling that this bill is unnecessary and that the bill will confuse the law rather than clarify it because it is unclear exactly when a city would have to "prepare a document" (line 21): at the time it sets the tax rate or each time an activity triggers application of the tax rate? (Attachment 20)

With no other person wishing to address **HB 2834** the Chairman closed the hearing.

Due to lack of time, the Chairman will reschedule **HB 2540** which was also on the schedule.

A sub committee consisting of Representative O'Malley, Representative Brunk and Representative Flora was appointed to further study **HB 2834**.

The meeting was adjourned at 10:30 a.m.