SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 91

As Agreed to May 13, 2015

Brief*

House Sub. for SB 91 would replace the renewable energy portfolio requirements with a voluntary renewable energy goal, reduce the lifetime property tax exemption to ten years for new renewable resources after December 31, 2016, and exclude individuals or companies that generate electricity from renewable resources at wholesale only from the definition of public utility.

Renewable Energy Goal

The bill would establish the following renewable energy standard for Kansas as of January 1, 2016: a voluntary goal that 20 percent of a utility's peak demand within the state be generated from renewable energy resources by the year 2020. The bill also would declare it is in the public interest to promote renewable energy development in order to best utilize the abundant natural resources found in the state.

The voluntary goal would replace the existing renewable energy portfolio standard that requires affected utilities to achieve net renewable generation capacity equal to at least 20 percent of the utility's peak demand by the year 2020, either by generating or purchasing electricity from renewable resources or by purchasing renewable energy credits. The portfolio standard also sets intermediate standards that must

*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 be achieved for the years 2011 through 2015 (10 percent) and the years 2016 through 2019 (15 percent).

The bill would continue all rules and regulations of the Kansas Corporation Commission (KCC) in effect on June 30, 2015, that allow a utility to recover costs incurred to meet the renewable portfolio standard (RPS). In addition, the KCC would be required to allow affected utilities to recover reasonable costs that have been:

- Committed to be incurred to comply with the RPS prior to its repeal; or
- Incurred as a result of meeting the 20 percent goal.

The bill also would specify nothing in the act shall be construed to impair any existing contracts, leases, or agreements.

The bill would repeal statutes related to the mandate that require the KCC to promulgate rules and regulations to do the following: establish renewable portfolio requirements, calculate and report the statewide retail rate impact of the portfolio requirements, set penalties for violations of portfolio requirements, and establish a certification process for use of renewable energy resources. The bill also would delete definitions specific to the existing mandate.

Changes to Property Tax Exemption

The bill would provide a property tax exemption for the life of property that is actually and regularly used to generate electricity using renewable energy resources or technologies if the facility filed an application for an exemption or received a conditional use permit on or before December 31, 2016.

After December 31, 2016, exemptions granted for property primarily used for wholesale sale of renewable energy resources for which applications were filed after December 31, 2016, would be limited to ten years.

The bill would amend KSA 79-223 to state an electric generation facility used predominately to produce and generate electricity utilizing renewable energy resources or technologies would not qualify for a commercial and industrial machinery property or *ad valorem* tax exemption.

Definition of Public Utility for Property Tax Classification

The bill would specifically exclude from the definition of public utility any entity to the extent that its activities or facilities generate, market, or sell electricity at wholesale only, has no retail customers, and is produced and generated using renewable energy resources or technologies.

Conference Committee Action

The second Conference Committee agreed to the House amendments to the bill, with the following revisions:

- Added language to allow affected utilities to recover costs incurred as a result of meeting the voluntary 20 percent goal and allowed to recover costs committed to be incurred as a result of complying with the RPS prior to its repeal;
- Added language to clarify, in KSA 79-223, an electric generation facility used predominately to produce and generate electricity utilizing renewable energy resources or technologies does not qualify for a commercial and industrial machinery property or *ad valorem* tax exemption;
- Deleted the lifetime tax exemption for renewable energy resources located on the property of any

business organization intended to offset the onsite electrical needs of the business organization; and

- Made a technical amendment.

Background

On May 4, 2015, the House Energy and Environment Committee amended HB 2373, struck the contents of SB 91, and inserted the amended contents of HB 2373 into SB 91.

On March 11, 2015, the Senate Committee on Utilities amended, then recommended SB 91, and subsequently inserted the contents into HB 2231, which passed both chambers. The contents of SB 91, as inserted into HB 2231, would extend the sunset date on the statutory transfers to the Abandoned Oil and Gas Well Fund (Fund) of the KCC from July 1, 2016, to July 1, 2020. The bill also would delete a quarterly transfer of $100,000 from the State Water Plan Fund to the Fund and increase the quarterly transfer from the KCC's Conservation Fee Fund to the Fund from $100,000 to $200,000. In addition, the bill would repeal law regarding a prohibition on transfers from the State General Fund to the Fund in FY 2013, FY 2014, and FY 2015 and the aggregate amount of the transfers from the State Water Plan Fund to the Fund in those three fiscal years.

HB 2373

At the House Committee hearing on HB 2373, as introduced, a representative from Utah State University, the Chief Executive Officer of the Kansas Chamber of Commerce, a representative from Americans for Prosperity, a representative from Kansans for Liberty, and Senator Knox testified as proponents of the bill, stating the RPS is a contributor to increased energy rates and has a negative effect on the economy. Written-only proponent testimony was provided by the Kansas Livestock Association and The Heartland Institute.

Opponent testimony was provided by a representative of the Reno County Chamber of Commerce, a representative of The Wind Coalition, a representative of Kansans for Clean Energy, a representative of NextEra Energy Resources, two private citizens, and a farmer and landowner. Opponents of the bill stated repealing the RPS would disrupt a positive and stable business and policy environment. Written-only opponent testimony was received from Alexander Community Wind Farm, EDP Renewables North America LLC, Kansas Farm Bureau, Cloud County Community College, Dodge City/Ford County Economic Development Council, Harvey County Council of Governments, Vestas-American Wind Technology, Inc., Invenergy, Infinity Wind Power, Enel Green Power North America, Inc., Siemens Wind Power Nacelle Assembly Facility, EDF Renewable Energy, Greater Kansas City Chamber of Commerce, Greenwood Consulting Group LLC, Clean Line Energy Partners, Iberdrola Renewables LLC, and a private citizen.

Neutral testimony was received from a representative of Westar Energy, KCP&L, and Empire District Electric. The neutral conferee proposed an amendment that would ensure a mechanism for cost recovery remains in place related to the development of wind to achieve the RPS. Written-only neutral testimony was provided by the KCC.

The House Committee amended the bill to repeal the renewable energy portfolio standard mandate and all of the statutes relevant to the mandate. The Committee changed the renewable energy standard to a voluntary goal of 20 percent of a utility's peak demand within the state be generated from renewable energy resources by 2020. The Committee added language to allow the utilities to continue to recover costs incurred to meet renewable energy standards as are in effect on June 30, 2015.

The House Committee added language to change the lifetime property tax exemption to ten years for property used predominately to produce and generate renewable energy for wholesale sale, unless a taxpayer has filed for an exemption or been granted a conditional use permit before or on December 31, 2016.

The House Committee inserted language to provide a lifetime tax exemption for renewable energy generation property placed on the property of a business organization if the purpose of the renewable energy generation property is to offset the onsite energy costs of the business organization.

Finally, the House Committee added provisions to exclude generators and producers of renewable energy from the definition of public utility for property tax purposes, and to opt out of those provisions.

No fiscal note was available on the current contents of the bill.

Renewable Energy Standards Act; property tax exemption

ccrb_sb91_02_0512.odt