

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairperson David Corbin at 10:45 a.m. on March 20, 2003, in Room 519-S of the Capitol.

All members were present except: Senator Donovan

Committee staff present: Chris Courtwright, Legislative Research Department
April Holman, Legislative Research Department
Gordon Self, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Conferees appearing before the committee: Brian Cox, Attorney, Kansas Department of Revenue
Bill Waters, Attorney, Property Valuation Division
Mark Beck, Director, Property Valuation Division

Others attending: See attached list.

Senator Corbin called the Committee's attention to the minutes of the March 19 meeting. Senator Oleen moved to approve the minutes of the March 19, 2003, meeting, seconded by Senator Clark. The motion carried.

Senator Corbin announced that, although the meeting was called for discussion and possible action on the inheritance tax, no action would be considered due to the fact that **SB 94**, abolishing the inheritance tax, was pulled from the Senate General Orders and re-referred to the Assessment and Taxation Committee for the purpose of considering amendments to add an enforcement provision and to make it revenue neutral. A copy of the proposed amendments will be distributed to committee members before the next meeting scheduled for March 24. He informed the Committee that another previously heard bill, **SB 148**, enacting the Kansas Estate Tax, will be the subject of an interim study.

Senator Oleen reported that she received an answer to a question she raised at a previous meeting as to the amount of inheritance tax which has been collected to date. The Department of Revenue informed her that 12 taxpayers have asked for an extension. However, because taxpayers still have nine months before estate taxes are due, the fiscal note information is somewhat cloudy at this point in time. For the Committee's information, Senator Corbin distributed a copy of the Department's response to other questions concerning estate tax issues. (Attachment 1)

The Committee's attention was turned to a previously heard bill, **SB 29**, concerning corporation code amendments and franchise fees. Senator Corbin reminded that Committee that, during a discussion of the bill at the March 19 meeting, Melissa Wangemann, legal counsel for the Secretary of State, suggested amendments to address concerns expressed by the Committee. He called attention to copies of the proposed amendments drafted by Ms. Wangemann. (Attachment 2) Gordon Self, Revisor of Statutes Office, explained that first amendment would strike language in Section 81 on page 95 regarding share holders' equity, and the second amendment would add a provision for collection of data by the Secretary of State.

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on March 20, 2003, in Room 519-S of the Capitol.

Senator Goodwin moved to amend **SB 29** as suggested by Ms. Wangemann, seconded by Senator Buhler. The motion carried.

Senator Clark moved to recommend **SB 29** favorably for passage as amended, seconded by Senator Oleen. The motion carried.

Senator Corbin opened a discussion on **HB 2005**, which concerns income tax credit for property taxes paid on railroad machinery and equipment. He noted that Senator Oleen raised questions at the March 19 hearing concerning pending railroad litigation related to the bill. Bill Waters, attorney for the Property Valuation Division, distributed copies of a memorandum containing background information on the Railroad Revitalization and Regulatory Reform Act of 1976, commonly called the 4-R Act. The memorandum notes that Kansas was involved in some of the earliest 4-R litigation in the early 1980s. (Attachment 3)

Senator Lee asked how passage of the bill as amended by the House could be justified since it has a \$1.3 million fiscal note in 2004 and a \$1.4 million fiscal note in 2005. In response, Mr. Hubbell, representing Kansas Railroads, stated that he estimates that the fiscal note on the bill will be \$800,000 or \$900,000. Senator Clark noted that, if the state loses the lawsuit, the state will experience an \$8 million "hit" in 2004.

Senator Oleen commented that Mr. Hubbell indicated in previous testimony that pending railroad litigation would result in a tax refund in addition to a tax credit if the railroad wins. In response, Brian Cox, an attorney for the Kansas Department of Revenue, reported that in litigation in Federal District Court captioned *Union Pacific Railroad vs. Stephen Richards, Secretary, Kansas Department of Revenue*, the Secretary filed a Motion to Dismiss for Failure to State a Claim. The plaintiff responded to the motion, and the Department filed a reply brief on March 19. The brief raises a question as to whether the statute at issue, K.S.A. 79-32-206, in fact violates the federal 4-R Act. The Department claims that the statute does not violate the 4-R Act and raises procedural issues, including whether this law properly permits suit against the state in federal court, a constitutionally based argument. The Department also raises a question about the proper party defendant in this case. Mr. Cox said that he does not foresee oral arguments being held in this case. He could not say when a decision from the judge could be expected.

Bill Waters, attorney for the Property Valuation Division, responded to questions from Senator Lee regarding his memorandum on the 4-R Act and the assessment rate of business machinery and equipment compared to rate used for railroads. He pointed out that the theory of the 4-R Act is absolute equal treatment between the railroads and the other property that the state assesses as commercial and industrial property.

Senator Lee recalled that, during a conference committee meeting last year concerning a drafting error in related bill, legislators were assured the lawsuit would be dropped if the bill passed that year. Although the bill passed, the lawsuit has not been dropped. In light of this, Senator Lee moved to amend **HB 2005** by removing the language amended into it by the House Taxation Committee on page 1, lines 31, 33, and 34.

Committee discussion followed regarding the effect of Senator Lee's motion. Senator Lee clarified that the House amendment created a fiscal note for the bill because it made the credit available to railroads at the 15 percent level for tax years 2003 and 2004, two years earlier than previous legislation. She explained that her

CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 10:45 a.m. on March 20, 2003, in Room 519-S of the Capitol.

motion returns the bill to its original intent to not let the tax credits go to state assessed utilities other than railroads, starting in 2005. Staff confirmed that, if the bill is not passed, the unanticipated fiscal impact will be at least \$42 million beginning in Fiscal Year 2006. Senator Taddiken seconded Senator Lee's motion. The motion carried.

Senator Lee moved to recommend **HB 2005** favorably for passage as amended.

As requested by Senator Oleen, Mr. Hubbell clarified that the federal case concerns what happens in the future, and the "back year" tax is being appealed with the Board of Tax Appeals. The appeal proceeding has been stopped. However, if the railroads go forward with the appeal and are successful, the credit will go back to 1998, resulting in the estimated \$8 million fiscal note.

Senator Goodwin seconded Senator Lee's motion. The motion carried.

The meeting was adjourned at 11:25 a.m.

The next meeting is scheduled for March 24, 2003.