

SESSION OF 2020

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 126**

As Recommended by Senate Committee on
Utilities

Brief*

Sub. for SB 126 would create and amend law relating to the tracking and collection of state and federal income tax by public utilities subject to rate regulation by the Kansas Corporation Commission (KCC).

Income Tax Exemption

The bill would exempt every electric and natural gas public utility, as defined in law, that is not a cooperative or owned by one or more such cooperatives, and is subject to rate regulation by the KCC from Kansas income tax.. Such utilities would not collect, as a component of their retail rates, Kansas income tax expenses.

Tracking Changes To Income Tax Collection

The bill would require a public utility, as defined in KSA 66-104, that includes expenses related to income taxes as a component of its retail rates to track an overcollection or undercollection of income tax expenses if the income taxes assessed on a utility are adjusted as a result of any changes in state or federal law.

*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>

Application for New Rates

The bill would require a utility to file an application for new retail rates reflecting adjusted income tax rates with the KCC within 30 days of the change in state or federal law if the adjustment results in an overcollection or undercollection of income tax expenses that is equal to or exceeds 0.25 percent of a utility's KCC approved base revenue level from the utility's most recent rate proceeding. The utility would then be required to refund or collect the tracked amounts from their retail customers in a manner approved by the KCC.

KCC Order

The KCC would be required to issue an order addressing an application for adjusted retail rates due to a change in income tax expenses within 120 days. Such an order would be required to:

- Give due consideration to the common interests of the utility and its customers, including but not limited to:
 - The use of a two-year implementation of current period rate changes to maintain the credit quality of the utility by ensuring that any such change in rates would not cause the utility's credit metrics that are traditionally considered by credit rating agencies to deteriorate to a level that could impair the utility's current credit rating.

If a retail rate change to address adjusted income tax expense is implemented over a period of time, the utility would be required to track and defer any overcollection or undercollection of income tax expenses as a regulatory liability or asset, as appropriate, that would accrue interest at the utility's cost of short-term debt and refund or collect the balance in the next full general rate proceeding.

Full Rate Proceeding Clarification

The bill would make clear that a filing resulting from adjusted income tax rates could not require the utility to file a full general rate case, or require the utility to update any component of retail rates other than the income tax expense component. The bill would provide that rate updates resulting from changes in income tax expenses would not be considered a violation of any existing rate moratorium agreement.

Excess Accumulated Deferred Income Tax Balances

The bill would require excess accumulated deferred income tax balances resulting from income taxes adjusted due to changes in state or federal law be maintained on the utility's books of account until new retail rates from its next full general rate proceeding after the altered income tax rates take effect, at which time such balances would be required to be reflected in retail rates.

Excess accumulated deferred income tax balances resulting from changes in state law effective January 2021 would be authorized by the KCC to amortize into retail rates over 30 years.

Excess accumulated deferred income tax balances resulting from any other changes in state or federal law would be authorized by the KCC to amortize into retail rates in a manner consistent with requirements of state and federal tax law and relevant regulations, and in a manner which will not impair the utility's credit rating.

Municipal and Cooperative Utilities

The bill would clarify that provisions related to adjustments for state or federal income tax expenses would

not apply to municipal electric or natural gas utilities, or a cooperative.

Definitions

The bill would define “overcollection or undercollection of income tax expense” as the portion of utility revenue representing the difference between the cost of service as approved by the KCC in the utility’s most recent base rate proceeding and the cost of service that would have resulted had the provision for state or federal income taxes been based upon the adjusted corporate income tax rate.

Technical Changes

The bill also would make technical changes.

Background

The bill was introduced by the Senate Committee on Assessment and Taxation. The bill was referred to the Senate Committee on Utilities on February 8, 2019.

In the March 20, 2019, Senate Committee hearing, a representative of the Kansas Industrial Consumers Group (KICG) provided proponent testimony, stating reduction in utility income tax collection would directly reduce utility rates because tax expenses are passed on to consumers. Written-only proponent testimony was provided by representatives of Renew Kansas Association and the Kansas Grain and Feed Association.

Opponent testimony was provided by representatives of Black Hills Energy, Evergy, Kansas Gas Service, and Liberty Utilities. Opponents stated the bill could negatively impact certain deferred tax benefits that have accrued for utility customers, resulting in increased rates, multiple rate cases in a single year, and implementation of rate reductions at an

unreasonable pace. Written-only opponent testimony was submitted by Atmos Energy Corporation.

Neutral testimony was provided by a representative of the KCC, outlining concerns with various provisions of the bill identified by KCC staff.

No action was taken on the bill in 2019 and the bill remained in the Senate Committee. In the January 28, 2020 Senate Committee hearing representatives of the Citizens' Utility Ratepayer Board (CURB), KICG, and the Wichita Regional Chamber of Commerce provided proponent testimony. The representatives stated generally that the bill would offer an opportunity to lower electric rates for residential and industrial consumers. Written-only proponent testimony was provided by Americans for Prosperity Kansas, and a representative of Renew Kansas Association and the Kansas Grain and Feed Association.

Opponent testimony was provided by representatives of Black Hills Energy, Evergy, Kansas Gas Service, Liberty Utilities, and Sunflower Electric Power Corporation. Opponents generally stated they are not opposed to the concept of the bill, but are concerned that it would not achieve the desired result of lowering electric rates and have a negative impact on utility credit ratings.

Neutral testimony was provided by a representative of the KCC. The representative's testimony was substantially similar to testimony provided at the March 20, 2019, Senate Committee hearing.

The Senate Committee adopted a substitute bill that included the following changes:

- Allow provisions of the bill to apply in situations where income tax is undercollected;
- Establish what circumstances must exist before a utility must file an application for new rates;

- Clarify that a utility would not need to file a full general rate case when overcollection or undercollection of income tax occurs;
- Clarify that an application for adjusted rates would not constitute a violation of any existing rate moratorium agreement if it only updates income tax expense components of a utility's base rates;
- Establish requirements for an order issued by the KCC in response to an application for adjusted rates resulting from a change in state and federal income tax law;
- Clarify that provisions related to adjustments for state or federal income tax expenses would not apply to municipal electric or natural gas utilities, or a cooperative; and
- Clarify that provisions related to the income tax exemption would not apply to cooperative utilities, or a utility owned by one or more cooperative, subject to rate regulation by the KCC .

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the KCC indicates enactment of the bill would have no effect on agency expenditures. Additionally, the Department of Revenue was unable to determine the fiscal effect enactment of the bill would have, if any, on the agency or state revenues. A fiscal note was not immediately available on the substitute bill, as recommended by the Senate Committee. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2020 Governor's Budget Report*.