

## MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE.

The meeting was called to order by Chairperson David Corbin at 10:50 a.m. on March 22, 2001, in Room 519-S of the Capitol.

All members were present except: Senator Pugh

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

Conferees appearing before the committee: Bruce Graham, Kansas Electric Power Cooperative

Others attending: See attached list.

**HB 2268—Concerning electric public utilities; relating to inclusion of certain property in rate base; providing for issuance of bonds for certain purposes; providing for certain property tax exemptions.**

Chairman Corbin informed the Committee that **HB 2268**, as amended by the Senate Committee on Utilities, had not yet been printed; therefore, no action could be taken at this meeting. Chris Courtwright, Legislative Research, distributed copies of the supplemental note on the bill prepared after it was amended and passed out of the Utilities Committee on March 21.

Bruce Graham, Kansas Electric Power Cooperative (KEPCO), testified in support of **HB 2268**. He believes the bill will encourage the construction of generation in Kansas. He emphasized that new generation in Kansas by KEPCO and other native utilities and/or independent power producers will provide additional power supply flexibility in the future. He noted that there is no 33 to 25 percent constitutional concern in **HB 2268** as there may be in **SB 177** and **HB 2266**. (Attachment 1)

Mr. Graham informed the Committee that he was present at the hearing in the Committee on Utilities on March 21 when **HB 2268** was amended, and he conceptually supports the amendments. With regard to the need for new generation, he noted that Vice President Dick Cheney predicts the United States will need 13,000 new power plants over the next 20 years, roughly 65 each year. Mr. Graham feels that the bill offers a good incentive for new power plants to be built in Kansas rather than outside the state.

Senator Lee recalled that, when **HB 2268** came from the House to the Senate, an automatic ten-year property tax abatement was included. The abatement concerned some legislators because the entities addressed in the bill have the power of eminent domain and; therefore, they have the ability to build a facility in any location they choose. With this in mind, the bill was amended to abate the state portion of the property tax and all transmission for ten years. In order to ensure that facilities would be located where the people wanted them, an abatement for the remainder of the facility would be a local option. However, the Revisor of Statutes has indicated that this concept is unconstitutional because, by law, the state does not have the power to give discretionary authority to local units of government in this regard. Senator Lee noted that Judge Kay McFarland, Chief Justice of the Kansas Supreme Court, dissented from the majority opinion.

Don Hayward, Revisor of Statutes Office, informed the Committee that the Supreme Court ruled in a 1982 case (*VonRuden v. Miller 231K1*) that the power to exempt property from taxation is plenary with the legislature, and the legislature has solely and wholly that power. Based upon that decision, a statutory provision delegating the

## CONTINUATION SHEET

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE at 1-:50 a.m. on March 22, 2001, in Room 519-S of the Capitol.

authority to exempt from taxation to a local entity is an unlawful delegation of the legislature's exclusive authority to so exempt and is unconstitutional.

Senator Clark quoted a portion of Judge McFarland's dissent to the majority opinion "which invalidate the statutes as unlawful delegations of legislative authority in contravention of article 2, section 1, of the Kansas Constitution." Chairman Corbin closed the discussion on **HB 2268**, noting that the issues will be discussed further when the amended version is available and the bill can be officially heard.

Senator Allen requested an interim study as a follow-up on a previously heard bill, **SB 233**, which would have exempted the sale of natural gas from local sales tax for one year. She suggested that the interim committee address (1) the feasibility of creating a permanent utility bill assistance program for low income consumers and (2) the feasibility of legislation which would require local governments to tax residential and commercial natural gas based on volumetric measurements as opposed to the current system of local sales taxes. (Attachment 2)

Chairman Corbin called the Committee's attention to the minutes of the March 20 and 21 meetings.

Senator Jenkins noted that a correction was necessary in the March 20 minutes on page 2, paragraph 5, to change "June 27, 1998" to "June 25, 1998." The minutes of the March 20, 2001, meeting were approved as corrected.

The minutes of the March 21 meeting were approved.

Chairman Corbin announced that the Committee will meet the week of March 26, 2001, on a date to be announced.

The meeting was adjourned at 11:15 a.m.