

Approved: 4/1/93  
Date

## MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES

The meeting was called to order by Chairperson Ben Vidrickson at 9:00 a.m. on March 12, 1993 in Room 254-E of the Capitol.

All members were present except:

Burke-Excused  
Rock -Excused

Committee staff present: Hank Avila, Legislative Research Department  
Ben Barrett, Legislative Research Department  
Bruce Kinzie, Revisor of Statutes  
Martha Ozias, Committee Secretary

Conferees appearing before the committee:

Dedra Platt, Department of Revenue  
Joe Lieber, Executive Vice President, Kansas Cooperative Council  
Bob Lee, President, National Society of Accountants for Cooperatives and  
Director of Services for Kansas Farmers Service Association  
Bill Burton, Office Manager, Agco, Inc., Russell  
Rachel Lipman, Kansas Corporation Commission  
Alan Decker, Consumer Counsel, The Citizens' Utility Ratepayer Board

Others attending: See attached list

Dedra Platt addressed the committee in support of **SB 401** which concerns motor-vehicle fuel or special fuel exemption permit. She explained that there are two reasons for the bill, one is that some key and card fuel systems produce information on a billing cycle only and not for each purchase, the other is that some non-highway users may not purchase in 40 gallon quantities. This bill would remove the requirement that fuel be purchased in 40 gallon quantities to qualify for an exemption permit or to qualify for a refund on fuel for non-highway purposes. No refund would be issued until the refund amount exceeds \$25.00. (See Attachment A)

Joe Lieber spoke in support of the bill because it would create less paper work for the Council. (See Attachment B) He introduced Bob Lee who explained the retailers position stating that numerous ag-producers fill their off-highway vehicles at cardtrol/keytrol facilities and often use less than 40 gallons. This bill will grant relief to retailers and exempt users. He discussed the problem of massive paperwork and enforcement and suggested that the most practical method would be to have the exempt user pay the tax and apply for a refund. They would also like to see the effective date advanced to July 1, 1994. (See Attachment C) Also introduced was Bill Burton who supported the changes this bill would bring about as well as having an allowance for refunds, but encouraged the committee to go a step further to relieve some of the burden that SB 551 places on fuel distributors. (See Attachment D)

A Fiscal Note for **SB 401** was distributed to the committee. (See Attachment E)

Attention was turned to **SB 394** concerning assessment of expenses of investigations or appraisals of public utilities and common carriers. Rachel Lipman addressed this bill explaining that if it were adopted it would permit the direct assessment of costs incurred by the KCC in its participation in proceedings before federal agencies, specifically the Federal Energy Regulatory Commission. This change would result in the utilities, on whose behalf the costs were incurred, to bear those charges. (See Attachment F)

Alan Decker explained that this bill attempts to clarify the Citizens Utility Ratepayers Board's authority to assess its costs to utilities. The changes use as much of the existing statutory language as possible to ensure that there were as few changes as possible to the statute. CURB supports adding language to the statute which would indicate that the assessment limit is subject to CURB's fiscal year budget appropriation. (See Attachment G)

## CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON TRANSPORTATION AND UTILITIES, Room 254-E  
Statehouse, at 9:00 a.m. on March 12, 1993.

A Fiscal Note for **SB 394** was distributed to the committee. (See Attachment H)

The chairman called for a decision on **SB 401**. Senator Emert made a motion to move this bill favorably out of committee. A second was made by Senator Papay. Motion carried.

The meeting was then adjourned by the chairman.

The next meeting is scheduled for March 15, 1993.

# GUEST LIST

## SENATE TRANSPORTATION COMMITTEE

DATE: March 12, 1993

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
ALAN DECKER	TOPEKA	CORB
TREVA POTTER	"	UTLICORP
ED SCHACB	"	WESTERN RESOURCES
MARSHALL CLARK	"	KEC
Tom DAY	"	KCC
Chad Husley	"	KOMA
Tom Tunnell	Topeka	KS GRAIN & FEED ASSN.
Bob Lee	HUTCHINSON	KS FARMERS SERVICE
Mike Toney	Topeka	KGFA
Jul Lubis	Topeka	KS Co-op Council
Bill Burton	Russell	Agco, Inc.
Ann Wells	Topeka	KS Co-op Council
Whitney Dameron	Topeka	Pete McGill & Associates
Jim Cooper	St. James	Quick Trip
Mike Messersmith	Hutchinson	Kansas Farmers Service
Mike Rees	TOPEKA	AT-T
Dave Nichols	TOPEKA	SWBT
Doug Smith	Topeka	SITA
Al LeDoux	Holt-on	Sen. Franks office
Rachel Lipman	Topeka	KCC
Walter Carithers	Topeka	KDOR

GUEST LIST (continued)

DATE: March 12, 1993

[illegible]



STATE OF KANSAS



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Robert B. Docking State Office Building  
915 S.W. Harrison St.  
Topeka, Kansas 66625-0001

(913) 296-3044  
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Department of Revenue  
*Division of Taxation*

MEMORANDUM

TO: The Honorable Ben E. Vidricksen, Chairman  
Senate Committee on Transportation and Utilities

FROM: Dedra Platt, Administrator  
Motor Fuel Tax Section  
Kansas Department of Revenue

DATE: March 12, 1993

SUBJECT: Senate Bill 401

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Thank you for this opportunity to appear before the Committee.

The Department of Revenue supports passage of Senate Bill 401. As introduced, the bill would remove the requirement that fuel be purchased in 40-gallon quantities to qualify for an exemption permit or to qualify for a refund on fuel for non-highway purposes. The bill provides that no refund will be issued until the refund amount exceeds \$25.00.

Senate Bill 551, enacted in 1992, moved the point of taxation on diesel fuel from the retailer/user level to the wholesale distributor level, conforming this fuel with regular motor-vehicle fuel. With the taxation of diesel at the distributor level, there are two main reasons for Senate Bill 401. One is that some key and card fuel systems produce information on a billing cycle only; and not for each purchase. The other is that some non-highway users may not purchase in 40-gallon quantities.

The Department estimates that passage of this bill would not have a fiscal impact on the Special City and County Highway Fund and the State Highway Fund, and that any administrative costs incurred would be minimal.

ATTACHMENT A

3/12/93

TRANS.  
3/12/93  
A-1

Testimony on Senate Bill 401  
Senate Transportation Committee  
March 12, 1993  
Prepared by Joe Lieber  
Kansas Cooperative Council

Mr. Chairman and members of the Committee: I'm Joe Lieber, Executive Vice President of the Kansas Cooperative Council. The Council has a membership of over 200 cooperative businesses. Of these members, nearly 150 of them are local farm, supply cooperatives. These cooperatives are owned by the members and most sell fuel to their members.

The Council supports SB 401 because it creates less paper work for our members, but it does not go far enough to lessen the paper work.

Last year the Legislature passed Senate Bill 551 that was going to cut down on cheating with the use of diesel fuel. We did not oppose the bill because we agreed with the philosophy of the bill. Our problem is with the regulations that determine the paper work. I do not understand the problem but I have invited two people who do.

Bob Lee is the Director of Services of the Kansas Farmers Service Association, and is currently the president of the National Society of Accountants for Cooperatives. Bob works with and advises cooperatives on tax matters.



The other conferee is Bill Burton, controller for Agco, Inc., the local cooperative in Russell. Bill is the front line person who will be doing all of this paper work.

After listening to Bob and Bill you can better understand the problems with SB 551, and either repeal it or amend it to start in 1994 so the problems can be worked out.

Thank you.

TRANS.  
3/12/93  
B-2

Testimony on Senate Bill 401  
Senate Transportation Committee  
March 12, 1993  
Prepared by Bob Lee  
Kansas Farmers Service Assn.

Good morning and thank you for giving us the opportunity to explain the retailers position regarding SB 401. I am Robert E. Lee, President of the National Society of Accountants for Cooperatives (NSAC) and Director of Services for Kansas Farmers Service Association (KFSA). NSAC is a 2000 member organization of Tax Attorneys, CPAs, Tax Consultants and Chief Financial Officers. KFSA has about 175 Kansas agricultural cooperatives as members. Our membership serves approximately 175,000 agricultural producers. Most, if not all, buy diesel fuel and gasoline used for tax exempt purposes.

SB 401 is indeed a great improvement with the removal of the present 40 gallon minimum requirement. Numerous ag-producers fill their off-highway vehicles at cardtrol/keytrol facilities. Often it is for the purpose of topping off the tank before returning to the field. Many times this fill will be less than 40 gallons. This bill will grant much relief to retailer's and exempt users.

The main issue, however is S.B. 551. Reducing the thousand of dollars of tax abuse was the intent. We as responsible taxpayers agree with the purpose and that all taxpayers should pay what is legally require. But, will this bill in fact stop or even limit the abuse? Most persons who work with the exempt users feel that in its present form the abuse will continue. It appears that



instead of curtailing any abuse it has only created horrendous record keeping requirements for exempt users and retailers, and will generate monstrous piles of paper to be processed by the Kansas Department of Taxation (KDT).

In the present form every Kansas retailer (and some out of state retailers) must supply, monthly, the KDT with a list of every delivery to an exempt user during the month. Many months of the year I can imagine tons of paper flowing in and lying somewhere around the State House.

The retailer must supply this information to the KDT which in turn requires a great deal of additional time and generates extra expense. Yes, there is a provision permitting retailer's a 2.5% handling allowance deduction from reported taxable gallons. This will be so very small, unless the retailer can persuade exempt users into paying the tax and requesting a refund, that it will create nothing but further intimidation. Larger retailers may be able to handle the additional expense. We are attempting to create a better business atmosphere for our smaller retailers; however, this bill is one more nail in the coffin.

We have been holding information meetings for retailers around the state with Excise Tax Personnel as presenters. They do a fantastic job. We owe them a tremendous thanks for the work that they have done and for their support in getting this bill introduced. Retailers are very disturbed about the additional record keeping requirements and serving as enforcers.

The real uprising will peak when informational meetings for exempt users are held and we focus on the record keeping requirements necessary to satisfy the examiner. Most are not yet aware of the present record keeping requirements.

Enforcement is now a problem. The state does not have sufficient manpower to examine both retailer and the exempt user. To maintain any semblance of enforcement, both must be examined. The most practical enforcement method would be to have the exempt user pay the tax and apply for a refund. The only enforcement necessary then is examination of refund claims.

We would like to see the effective date advanced to July 1, 1994 which would give us time to produce a more satisfactory solution for enforcement and still substantially reduce the abuse.

Again, we thank the Excise Tax Department for their concern for the retailer and we sincerely support this bill. It is necessary even if the delay is not practical.

The cooperatives sincerely thank you for your time and your consideration.

TESTIMONY ON SENATE BILL NO. 401  
SENATE TRANSPORTATION COMMITTEE  
FRIDAY, MARCH 12, 1993  
PREPARED BY: BILL BURTON, OFFICE MANAGER  
AGCO, INC. - RUSSELL, KS

Mr. Chairman and members of the committee. Good morning. I am Bill Burton, Office Manager of Agco, Inc. of Russell, KS. Agco, Inc. retails over 1,500,000 gallon of motor-vehicle and special fuels through two service station and two bulk fuel facilities annually. I appreciate the opportunity to speak to this bill.

Senate Bill 401, by eliminating the 40 gallon minimum purchase, fulfills the intent of the law by making all fuels consumed for non-highway purposes exempt from tax. In particular it helps resolve the problem of selling tax-exempt fuel through self-service automated fuel systems, such as card-trol and key-trol facilities, where the distributor has little or no control on the quantity of fuel delivered per transaction. It also alleviates the necessity to separate sales transactions based on quantity and allows us to handle all transactions the same that are of a like tax status.

However, this bill does little to resolve the burdensome paperwork problems imposed on fuel distributors by Senate Bill 551 passed during the 1992 Legislative Session. The changes made by Senate Bill 551 will create a paperwork burden both initially to implement new procedures and on an ongoing basis to document tax-exempt sales.

Initially, besides making application for a new distributor's license and bond, we feel it necessary to inform our patrons of their need to either apply for an exemption permit or tax refund permit. We will spend from \$ 400 to \$ 500 to direct-mail this information to our patrons. In addition our staff will spend a lot of time answering questions, explaining options, and helping our patrons complete the necessary forms.

Also we will need to change our accounting procedures in order to accommodate the changes made by Senate Bill 551. We will now have the possibility on diesel fuel, for example, for it to be sold at three different prices. We will be selling diesel fuel with both state and federal excise taxes included, with it being exempt from both, and with it being exempt from federal excise tax but taxable at the state level. At this point in time our thinking is we will have to add the last scenario into our accounting system and treat it as a new product. This will involve adding a new code to computer systems as well as adding the new product on preprinted sales tickets. In addition we will need to spend some time educating our employees as to the new regulations and procedures.



More significantly the recordkeeping required on an ongoing basis will be even more time consuming and costly. Currently we are required to record and report taxable sales for special fuel tax purposes. Under the new regulations we will be required to keep track of our exempt sales. Presently taxable sales amount to around 7 % of total sales. We currently spend 10 to 15 minutes a day to record these by hand. If we use the same methodology to record exempt sales it could take 2 1/2 to 3 hours a day, which could cost an additional \$ 4,500.00 annually on labor alone. More than likely this would force us to try to automate this procedure through the use of our computer system. However, as of now our system is not programmed to give us the required information for exempt sales. The cost to reprogram has not as yet been determined and more importantly may not be able to be accomplished by the July 1st implementation date.

In conclusion, I support the changes Senate Bill 401 would bring about, but hope it would be possible to take it a step further so as to relieve some of the burden Senate Bill 551 places on fuel distributors. Most distributors I have talked to would have agreed to a change that would have made special fuels taxable like motor-vehicle fuel has been, with no exemption permit but having an allowance for refunds. In lieu of that either more changes in Senate Bill 401 or an extension of the time when Senate Bill 551 is to become effective would seem to be in order.

TRANS.  
3/12/93  
D-2

STATE OF KANSAS



DIVISION OF THE BUDGET

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State Capitol Building  
Topeka, Kansas 66612-1504  
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FAX (913) 296-0231

Joan Finney  
Governor

Gloria M. Timmer  
Director

March 10, 1993

The Honorable Ben Vidricksen, Chairperson  
Committee on Transportation and Utilities  
Statehouse, Room 143-N  
Topeka, Kansas 66612

Dear Senator Vidricksen:

SUBJECT: Fiscal Note for SB 401 by Senate Committee on Ways  
and Means

In accordance with KSA 75-3715a, the following fiscal note  
concerning SB 401 is respectfully submitted to your committee.

SB 401 would repeal the 40-gallon minimum purchase requirement  
for exemption from taxation of fuels that are not for use by motor  
vehicles upon the public highways. A refund of taxes paid would  
not be made unless the refund amount from cumulative sales would  
exceed \$25. The bill would be effective upon its publication in  
the statute book.

The Department of Revenue indicates that passage of this bill  
would not affect state revenues or expenditures.

Sincerely,

A handwritten signature in cursive script that reads "Gloria M. Timmer".

Gloria M. Timmer  
Director of the Budget

cc: Steve Stotts, Department of Revenue

401.fn

ATTACHMENT E

3/12/93

TRANS.  
3/12/93  
E-1

Testimony of the Kansas Corporation Commission  
to the  
Senate Transportation and Utilities Committee  
concerning S.B. 394

The Kansas Corporation Commission supports S.B. 394 which contains a change to K.S.A. 66-1502. The change to the end of the first paragraph of the statute, would, if adopted, permit the direct assessment of costs incurred by the KCC in its participation in proceedings before federal agencies, specifically the Federal Energy Regulatory Commission. Currently those costs are being assessed to all jurisdictional utilities through their general quarterly assessments. The proposed change would result in the utilities on whose behalf the costs were incurred, primarily Western Resources, to bear those charges. This change would not affect the company's ability to recover the assessments from ratepayers. The fiscal note to this change is approximately \$105,000. This consists of the \$75,000 contract with the Washington law firm of Lane & Mittendorf, which assists the KCC in its participation in proceedings at the FERC. It also includes 90 percent of the salary and benefits of one staff attorney, an amount which does not exceed \$40,000.



**SENATE TRANSPORTATION AND UTILITIES COMMITTEE**

Comments on

SENATE BILL No. 394 - Assessment of Utilities

By

THE CITIZENS' UTILITY RATEPAYER BOARD  
Alan Decker - Consumer Counsel

In part, this bill attempts to clarify the Citizens' Utility Ratepayer Board's (CURB) authority to assess its costs to utilities. Questions have been raised regarding CURB's ability to issue its own assessment order, and CURB seeks these changes to alleviate the uncertainty regarding CURB's authority to assess its costs to utilities.

A brief explanation of how questions regarding CURB's assessment authority arose may be helpful. CURB began as a division within the Kansas Corporation Commission. While CURB was a part of the Commission, its budget and assessments were a part of the Commission's budget and assessments. However, in 1991 the legislature established CURB as a separate agency, including providing for separate budget and assessments. Thus, CURB's expenses are assessed to and collected from the utility's and ultimately the ratepayers who are represented by CURB. CURB's transition to a separate agency was completed by July 1992, and CURB issued its first assessment orders during the summer of 1992.

After CURB issued its first assessment orders, a utility filed a formal objection with the Commission questioning whether CURB had the power to issue those orders. The utility contended that K.S.A. 66-1502 did not provide CURB with the authority to issue its own orders. Thus, CURB felt it would be beneficial to

all parties to clarify CURB's assessment authority under K.S.A. 66-1502.

CURB's general authority to assess its costs is outlined in K.S.A. 66-1225. That statute provides that "[t]he budget of the board shall be financed in the same manner as the budget of the state corporation commission is financed. . . ." The current K.S.A. 66-1502 further specifies CURB's assessment authority. However, after the objection was raised, CURB felt all parties would benefit from a clarification of CURB's authority.

I would also note that the requested changes use as much of the existing statutory language as possible to ensure that there were as few changes as possible to the statute. In that regard, the requested changes on page 2, lines 23 through 30, were offered to clarify and insure that the Commission's assessment limits were not reduced. There was some question whether the current assessment limit was for both the Commission and CURB or whether each agency had a separate assessment limit. If the assessment limit was a combined limit for both agencies, then that could effectively reduce the Commission's assessment by the level of CURB's assessment. The proposed changes establish a separate limit for each agency.

It should also be noted that CURB's budget appropriations prevent it from assessing to the limit. To insure that there is no question regarding CURB's assessment level, CURB supports adding language to this section of the statute which would indicate that the assessment limit is subject to CURB's fiscal year budget appropriation.

STATE OF KANSAS



DIVISION OF THE BUDGET

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Governor

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Director

March 10, 1993

The Honorable Ben Vidricksen, Chairperson  
Committee on Transportation and Utilities  
Statehouse, Room 143-N  
Topeka, Kansas 66612

Dear Senator Vidricksen:

SUBJECT: Fiscal Note for SB 394 by Senate Committee on Ways  
and Means

In accordance with KSA 75-3715a, the following fiscal note  
concerning SB 394 is respectfully submitted to your committee.

SB 394, as introduced, would allow the Kansas Corporation  
Commission to assess costs to a public utility or common carrier  
when the KCC intervenes in any proceeding before a federal  
regulatory body other than the Interstate Commerce Commission. The  
bill also would allow the billing to a public utility or common  
carrier to be sent by regular U.S. mail, rather than by registered  
mail, as is now required by the statute. In addition, the bill  
would clarify the assessment powers of the Citizens' Utility  
Ratepayer Board by codifying the agency's current practices  
regarding assessments.

SB 394 would have no fiscal impact on the Kansas Corporation  
Commission or the Citizens' Utility Ratepayer Board.

Sincerely,

A handwritten signature in cursive script that reads "Gloria M. Timmer".

Gloria M. Timmer  
Director of the Budget

cc: Beth Runnebaum, CURB  
Tom Day, KCC

394.fn

ATTACHMENT H

3/12/93

TRANS.  
3/12/93  
H-1