

MINUTES OF THE HOUSE TAXATION COMMITTEE

The meeting was called to order by Chairman Richard Carlson at 3:35 p.m. on January 26, 2011, in Room 783 of the Docking State Office Building.

All members were present except:

Representative Brunk - excused

Committee staff present:

Gordon Self, Office of the Revisor of Statutes
Scott Wells, Office of the Revisor of Statutes
Chris Courtwright, Kansas Legislative Research Department
Michael Wales, Kansas Legislative Research Department
Marla Morris, Committee Assistant
Allen Jeffus, Office Assistant

Conferees appearing before the Committee:

Denise Walsh, Director of Corporate Taxes, Hill's Pet Nutrition, Inc.
John Idoux, Century Link
Kent Eckles, The Kansas Chamber

Conferees providing written testimony only:

Bill Boisture, Hawker Beechcraft
Jennifer Bruning, Overland Park Chamber of Commerce
John Woodfill, Ash Grove Cement Company
Mark Beshears, Sprint
Angela Pitale, Next Era Energy Resources

Others attending:

See attached list.

Chairman Carlson welcomed newly appointed Representative Dennis Hedke to the Taxation Committee. Representative Hedke represents District 99, which includes portions of Sedgewick and Butler Counties.

Bill Introductions:

Senator Kelsey requested introduction of a bill for a comprehensive tax revision plan. Representative Carlson moved introduction of the bill. The motion was seconded by Representative Kleeb. The motion carried.

Representative Brookens requested introduction of a bill dealing with a procedure in front of the tax court and the Department of Revenue with respect to filing for an application of exemption to assure that the counties impacted would have the ability to receive notice of the application being filed and the opportunity to be heard at the hearing. Representative Carlson moved introduction of such bill. Representative Dillmore seconded the motion. The motion carried.

Representative Carlson moved bill introduction for technical cleanup of a bill from previous legislation. The motion was seconded by Representative Kleeb. The motion carried.

Chairman Carlson opened the hearing on:

HB 2051-Business and job development carry forward credits under Kansas income tax act.

Scott Wells, Office of the Revisor of Statutes, briefed the Committee on **HB 2051** which would amend K.S.A. 79-32,141 and K.S.A. 2010 Supp. 79-32,160a. Chris Courtwright, Kansas Legislative Research Department (KLRD), Richard Cram, Kansas Department of Revenue (KDOR) and Mr. Wells responded to questions from the Committee.

Denise Walsh, Director of Corporate Taxes, Hill's Pet Nutrition, Inc., spoke in support of **HB 2051** (Attachment 1). She stated, **HB 2051** attempts to correct issues which would make the High Performance Incentive Program (HPIP) credits awarded to a company better able to drive private sector investments and jobs. She stood for questions. Rick Wienckowski, Chief Financial Officer, Hills Pet Nutrition, Inc.,

CONTINUATION SHEET

Minutes of the House Taxation Committee at 3:35 p.m. on January 26, 2011, in Room 783 of the Docking State Office Building.

explained briefly how a large multi-national corporation pays taxes in Kansas serving as a unitary tax state that taxes world-wide incomes of large multi-national companies.

Chairman Carlson requested Richard Cram, KDOR, in coordination with the Kansas Department of Commerce, to prepare a twenty minute review of the qualifications required for HPIP credits and the definition of a Unitary Group as defined by the Kansas Department of Revenue. The review will be provided to the Committee before the bill is presented for action.

John Idoux, CenturyLink, testified in support of **HB 2051**. Century Link has been in Kansas for over 110 years, operating under the names of Embarq, Sprint and United Telephone. CenturyLink urges support of **HB 2051**, stating the proposed HPIP modifications provide needed flexibility and reduced administrative burdens for Kansas companies and allows these companies to better serve their Kansas customers (Attachment 2). He stood for questions.

Kent Eckles, The Kansas Chamber, urged the Committee to pass favorably **HB 2051** (Attachment 3). He stated The Kansas Chamber has long supported simplification of HPIP and adding flexibility to the program, which is achieved in **HB 2051**. Mr. Eckles suggested the measures in **HB 2051** be included in the Governor's proposal to replace HPIP with Expensing of Capital investment. He stood for questions.

Chairman Carlson directed the Committee to the written only testimonies in support of **HB 2051**:

Bill Boisture, Hawker Beechcraft (Attachment 4)

Jennifer Bruning, Overland Park Chamber of Commerce (Attachment 5)

John Woodfill, Ash Grove Cement Company (Attachment 6)

Mark Beshears, Sprint (Attachment 7)

Angela Pitale, Next Era Energy Resources (Attachment 8)

Chairman Carlson closed the hearing on **HB 2051**.

The next meeting will be Monday, January 31, 2011.

The meeting adjourned at 4:50 p.m.

HOUSE TAXATION COMMITTEE

Date: January 26, 2011

Name	Representing
LARRY R. BAKER	LKIM
Mandy Miller	SCOTT
Michelle Butler	Cap. Strategic's
KS Chamber	KS Chamber
Mel Munroe	Capital Advantage
Dina Fick	Verizon
Bud Burke	Cosma
John Isaac	CenturyLink
DEBORAH HEW	HEW LAW FIRM
Ron Engbar	KARER
JUDITH GANN	CAPITOL ADVANTAGE
MIKE MURRAY	" "
Karen Kline	Bright & Computer
RON GACHES	GBA : Sprint
Pat McNeill	TRIF RL
Bernice Koch	KEPC
Mike McManis	Capital Advantage
Kalvin Osterhaus	LPA
Kimberly Slaty	WC
Jim May	Spirit Aero Systems



Hill's Pet Nutrition, Inc. and Subsidiaries

P. O. Box 148
Topeka, Kansas 66601-0148
(785) 354-8523

Testimony of Denise Walsh, Hill's Pet Nutrition, Inc.
House Committee on Taxation
Support for HB 2051
January 26, 2011

Mr. Chairman and members of the House Taxation Committee:

My name is Denise Walsh. I am the Director of Corporate Taxes for Hill's Pet Nutrition here in Topeka. I appreciate the opportunity to testify today and provide some comments on HB2051.

In the past few years the world has been going through a significant economic down turn which has negatively impacted all sectors of the economy, including pet food. Yet Hill's Pet Nutrition this past December just had the grand opening of a \$220 Million state-of-the-art pet food manufacturing plant employing directly and indirectly over 150 individuals in Emporia, Kansas. The average wage of this new facility is over \$45,000/year (plus benefits). Hill's considered several US states, as well as other countries, when deciding where to locate this investment. HPIP in Kansas was a major positive factor in our decision to locate the plant here. This demonstrates that when done correctly, Kansas can proactively provide a viable tax environment and generate a win-win-win scenario for the state of Kansas, local communities and the private sector.

Kansas is not only competing for these investments in facilities and employment with other states in the US, but also globally with other countries as companies grow and supply their products to a world market. This globalization provides Kansas the opportunity to attract investments in capital and employment from across the world. HB2051 attempts to correct a couple of issues which would make the HPIP credits awarded to a company better able to drive private sector investments and jobs.

When a group of corporations (as in Hill's case) conducts a unitary business both within and without Kansas, under Kansas law the income of the entire family of companies must be reported and apportioned to Kansas. However, the use of any tax credits or incentives is only allowed on a separate company basis. While there is no Unitary Concept for Individuals, these concepts can be quite complicated in the corporate tax arena. A good analogy would be to have a Kansas couple file a joint return and be taxed on all their income in Kansas but because the wife's income is generated outside of Kansas the tax liability generated in Kansas on the wife's income would not be able to be offset by any credits earned by the husband.

While revoking the combined unitary concept would be too costly for the state at this time, leveling the field so that tax credits can be used to offset the combined tax liability of the entire unitary group is a necessary step towards making Kansas more competitive in attracting and retaining multinational companies, and generating private sector jobs. Because of this unitary group limitation, many corporations have not been able to utilize to the fullest extent the HPIP credits already granted to them. This change together with an extension of the carryover period *would allow the state to leverage these same dollars already granted* to generate future investments by making the Kansas subsidiary within these unitary groups very attractive for new investments as these unused credits could be used to offset future tax costs associated with expansions into the state for "back office" functions such as accounting, legal, HR, order management and IT services.

These changes would have an immediate and positive impact in driving investments that create new private sector jobs in Kansas. It is important for investors to have certainty on what to expect when making investments in a particular location. All other things being equal, most investors would choose to invest in locations where the most favorable tax infrastructure is already in place. We encourage Kansas to act now on these issues for the benefit of all.

Thank you for your consideration and I would be pleased to answer any questions you may have.

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Testimony in Support of House Bill 2051

**Testimony by CenturyLink
John Idoux, Kansas Governmental Affairs
Before the House Taxation Committee
January 26, 2011**

Thank you Chairman Carlson and members of the Committee. My name is John Idoux with CenturyLink's Governmental Affairs team and I appreciate this opportunity to express CenturyLink's support of HB 2051. As a leading national rural telecommunications provider with significant operations and employees in Kansas, CenturyLink has made substantial investments in Kansas. Modifying the High Performance Incentive Program (HPIP) to allow greater flexibility and workability for tax credits previously earned will allow CenturyLink and other Kansas companies to continue to invest in Kansas.

CenturyLink Introduction

CenturyLink has provided communications services in Kansas for over 110 years under various names. On July 1, 2009, Embarq and CenturyTel completed its merger and the new company, CenturyLink, is now the leading rural broadband and communications company serving predominantly rural markets in 33 states. CenturyLink serves over 84,000 rural Kansans in 119 communities including Junction City/Fort Riley, Gardner, Spring Hill, and 111 communities with less than 1000 residents. CenturyLink has deployed high speed Internet facilities to all 119 Kansas communities and nearly 85% of customers have access to high speed broadband with additional deployment planned. CenturyLink also provides wholesale transport services and has more than 750 route miles of fiber optics in Kansas.

In April 2010, CenturyLink announced plans to acquire Qwest and the transaction is expected to close in the first half of 2011. The combination of CenturyLink and Qwest will result in a company serving local markets in 37 states with approximately 5 million broadband customers, 16 million access lines, 1.5 million video subscribers and more than one million wireless consumers (statistics as of Sept. 30, 2010).

Needed Flexibility

As mentioned above, CenturyLink currently operates in 33 states and will soon operate in 37 states once the Qwest merger is closed. The Kansas HPIP initiative truly differentiates Kansas from other states as CenturyLink maintains a significant Kansas workforce with nearly 2300 employees. Approximately 95% of these jobs support national or regional functions and the remaining 5% support Kansas-specific network operations. Over the past two years, CenturyLink subsidiaries have provided \$613,500,000 in taxable wages and \$28,400,000 in withholding taxes for the state of Kansas. As of December 31, 2009, CenturyLink has \$877 million in total investment in Kansas.

CenturyLink's investment in Kansas over the past years has allowed CenturyLink to take advantage of the Kansas HPIP initiative through the generation of credits and sales tax exemptions. However, due to the current rules, CenturyLink has not been able to utilize all credits generated. It is a reasonable expectation for companies like CenturyLink that invest in Kansas, follow the HPIP rules, and earn the tax credits to be able to use the credits. HB 2051 allows for enhanced utilization of credits that have already been earned by companies operating and investing in Kansas. While the Kansas companies involved with the HPIP initiative vary greatly and span all industries, the unprecedented recession has impacted every company and the business cases surrounding the investments made.

Modifying the HPIP initiative by (1) allowing the unitary group to claim the credits, (2) extending the carry forward period to 20 years and (3) eliminating the requirement of recertification provides CenturyLink and other Kansas companies with much needed flexibility and workability as each company weathers the economic downturn and nascent recovery. CenturyLink, like other Kansas companies, may now not be able to use the earned credits within the first 10 years as initially envisioned. Also, the requirement to recertify annually to use credits already earned is not only administratively burdensome but an inefficient use of limited resources by the companies and the State.

Benefitting Kansans

CenturyLink continues to invest in Kansas. Modifying the HPIP initiative not only provides CenturyLink with needed flexibility but in turn allows CenturyLink to bring additional benefits to rural Kansans. The availability of high speed Internet is a priority not only for CenturyLink but for its rural customers. The ability to use the HPIP credits already earned provides CenturyLink with additional financial resources to invest in Kansas and better address this high priority need.

As mentioned above, CenturyLink has deployed high speed Internet facilities to all 119 Kansas communities and nearly 85% of customers have access to this critical service. CenturyLink has made its high speed Internet investment in Kansas without any federal or state subsidies and without any of the \$7.2 billion available from the federal stimulus program to advance broadband. CenturyLink plans additional deployment as well although the business case to expand broadband services becomes more and more difficult to fiscally justify. With broadband service starting at \$15/month, or \$180/year, the payback period for this investment is measured in years, given our costs to build, maintain and operate the network.

Having access to the additional resources the HPIP credits provide allows CenturyLink to make infrastructure investments in Kansas that benefit rural Kansans.

Conclusion

CenturyLink urges you to support House Bill 2051. It is likely that CenturyLink would continue to qualify for HPIP, provided of course that CenturyLink continues to maintain jobs, investment and participate in training grants. Through the HPIP, CenturyLink also receives exemptions from sales tax for purchases so the HPIP initiative is very beneficial and differentiates Kansas from other CenturyLink work locations. The proposed HPIP modifications provides needed flexibility and reduced administrative burdens for Kansas companies which allows these companies to better serve their Kansas customers.

Thank you for your consideration.

**Testimony before the House Taxation Committee
HB 2051 – High Performance Incentive Program (HPIP) Modifications
Presented by J. Kent Eckles, Vice President of Government Affairs**



Wednesday, January 26th, 2011

The Kansas Chamber of Commerce appreciates the opportunity to present testimony in favor of House Bill 2051, which would make three simple and much needed modifications to the High Performance Incentive Program (HPIP).

Firstly, the bill would allow a corporation with multiple unitary groups to apply existing HPIP credits against the tax liability of any member or members of its unitary group in their combined tax report. Secondly, the measure would extend from 10 to 20 years the deadline for corporations to claim existing HPIP investment tax credits. Finally, the legislation will eliminate the requirement that a company attains recertification before utilizing the tax credits.

The Chamber has long supported simplifying and adding flexibility to HPIP and irrespective of what happens with the program when this committee hears and works the bill seeking to eliminate HPIP in favor of expensing of capital investments, this legislation achieves those stated goals.

Our members in capital intensive industries have expressed their concerns regarding the aforementioned proposal (HPIP/Expensing) directly to the Secretaries of Revenue and Commerce and while details are still being worked out, this measure makes HPIP much more attractive to those companies using the program. Further, it would allow said companies more time to utilize those credits against their tax liability should the program ultimately be eliminated.

We urge the Committee to pass favorably HB 2051.

The Kansas Chamber, with headquarters in Topeka, Kansas, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to do business. The Chamber represents small, medium, and large employers all across Kansas. Please contact me directly if you have any questions regarding this testimony.



835 SW Topeka Blvd. Topeka, KS 66612 785.357.6321

House Taxation

Date: 1-26-11

Attachment: 3

January 25, 2011

Representative Richard Carlson
Chair, House Taxation Committee
State Capitol
300 SW 10th Avenue
Topeka, KS 66612-1590

Mr. Chair and Members of the Committee:

HB2051, currently in the Senate Assessment and Taxation Committee, contains three suggested changes that would modify K.S.A. 79-32.141 and K.S.A. 2010 Supp. 79-32, 160a related to the High Performance Incentive Program. One change I would like to highlight is removing the requirement for recertification in subsequent years when a business intends to utilize the credits.

This change is important because companies go through a complicated and time consuming certification process to earn the credits. Years later when they want to utilize the credits they have to repeat the onerous certification process again. Removing this requirement would eliminate bureaucracy and expense for companies who have already earned the credits and should be able to easily utilize them as needed by the business.

The purpose of this letter is to make you aware of our strong support of this provision and ask for your support in recommending HB2051 for passage. This change is important for simplifying the High Performance Incentive Program and can help companies expand facilities that create jobs and economic growth.

Sincerely,


Bill Boisture
Chairman and CEO

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Written Testimony in Support of House Bill 2051

**Submitted by Jennifer Bruning
On behalf of the Overland Park Chamber of Commerce**

**House Taxation Committee
Wednesday, January 26th, 2011**

Mr. Chairman Carlson, Mr. Vice-Chairman Kleeb and Committee Members:

My name is Jennifer Bruning, and I am Vice President of Government Affairs with the Overland Park Chamber of Commerce. I am writing today on behalf of our board of directors and our nearly 1,000 member companies. I appreciate the opportunity to share written testimony in support of House Bill 2051, which makes several key amendments to the High Performance Incentive Program (HPIP) tax credits.

Historically the HPIP program has been an important part of Kansas' economic development toolbox, offering employers that pay above-average wages and demonstrate strong commitment to skills development for their workers a 10 percent income tax credit for eligible capital investment exceeding \$50,000 in their facility. Current law restricts the carry forward period of these credits to 10 years. We ask that you extend the carry forward period of these credits to 20 years for the following reasons:

- Several Overland Park Chamber members and area businesses have been awarded HPIP tax credits in the last 10 years and have cited access to these credits as one of the key positive factors in their decision making process to locate their facility in Kansas or expand their current facility.
- Because of our current economic climate, these companies have been unable to utilize the credit before the 10-year expiration date, meaning that under current law they will lose the benefits of the program.
- Should the carry forward period be extended to 20 years it would allow these member companies to come out of this dark economic period with a stronger and more competitive fiscal outlook, thus encouraging these employers to hire more private sector employees and gradually leading to even more capital investment in facilities, technology and employee training and education.

The Overland Park Chamber also supports the two other provisional changes within this bill to the HPIP program – 1) allowing the unitary group to claim the credits and 2) removing the recertification requirement.

Passage of HB 2051 provides an opportunity for you as Kansas' legislators to show your constituents you are doing everything in your power to grow the Kansas economy by encouraging job creation and by driving more capital investment in the State. For the many reasons listed above, we encourage you to support House Bill 2051. Thank you for your consideration.

**9001 W. 110th Street • Suite 150
Overland Park, KS 66210
t: 913.491.3600 • w: opchamber.org**

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**Before the House Taxation Committee
House Bill 2051
John Woodfill, Senior Vice President
Ash Grove Cement Company
January 26, 2011**

Mr. Chairman and members of the House Assessment & Taxation Committee, we encourage you to favorably consider House Bill 2051 (HB 2051), a bill that modifies the High Performance Incentive Program (HPIP). HPIP has been an important incentive for Kansas businesses growing and expanding in this state, and a few minor adjustments will enhance the program.

In 1999, the Ash Grove Cement Company began a modernization project totaling nearly \$200 million at its Chanute cement manufacturing plant. Ash Grove is a 129-year-old, family-owned cement manufacturer, and it is the largest U.S.-owned cement company. Headquartered in Kansas, Ash Grove remains at the cutting-edge of adopting technology that incorporates the latest environmental controls and enhances energy efficiency.

The Ash Grove Chanute plant has been in operation for 103 years, and it is the oldest plant of the company's eight active cement plants west of the Mississippi. The plant employs 137 employees, with both a union and non-union workforce. The company is a solid supporter of local education, charitable and civic organizations, often the "first call" for assistance in emergencies.

The modernization project qualified under the HPIP statute, and we fulfilled our commitment to the state, which included the \$200 million investment in Chanute, paying higher than average wages to the employees and engaged employees in ongoing training. In the intervening years, the U.S. economy deteriorated significantly, and our company was not immune to the effects of the downturn. As a result of the downturn, Ash Grove would not be able to utilize the credits it earned from this significant investment in Kansas.

We agree with the approach in HB 2051, which would extend to 20 years from 10 years the life of the HPIP credits we earned with the state's approval. We believe that adopting this extension would benefit a cross-section of businesses committed to Kansas and provide ongoing high-quality, high-paying jobs.

Section 1 of HB 2051 merely clarifies existing law. The current allocation of Kansas income tax to the unitary group differs from the way the Department of Revenue allocates credits to be utilized by the unitary group. This section brings clarity to the allocation of credits, consistent with the allocation of tax.

We appreciate your consideration of Ash Grove's perspective on HB 2051. We encourage you to support its passage. Thank you.

Michael R. Woodfill, Agent

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To: Representative Richard Carlson, Chairperson
House Committee on Taxation

From: Mark Beshears, Senior Counsel - State & Local Tax

Date: January 26, 2011

Re: H.B. 2051

Thank you for the opportunity to submit written testimony in support of H.B. 2051. The bill makes several much needed changes to the provisions authorizing High Performance Incentive Program ("HPIP") credits. This program is one of the most meaningful tools for inducing capital investment in Kansas.

Extension of HPIP Carryforward Period

The High Performance Incentive Program ("HPIP"), currently allows a 10% investment tax credit to taxpayers that make a significant investment in Kansas and meet some relatively stringent criteria, including paying higher than average wages to employees. If the credits are not able to be utilized by a taxpayer to offset Kansas income tax, the credits may be carried forward for a period of 10 years. H.B. 2051 would extend the credit carryforward period from 10 to 20 years. Any tax credits that may have previously expired would not be revived under this proposal. The extended carryforward period is warranted at this time for the following reasons:

1. Taxpayers utilizing the credits have invested billions of dollars in Kansas and paid higher than average wages to their employees and have originally taken the HPIP credit into account when determining whether the Kansas projects would be viable.
2. The current economic conditions prevent many of these taxpayers from completely utilizing the credits before the 10 year carryforward period expires.
3. Currently any credits not used in 10 years are lost and taxpayers are effectively denied the benefits which may have originally prompted the Kansas investment.
4. Taxpayers who strive to maintain an ongoing business presence in Kansas in these difficult economic times should be allowed to utilize the credits when economic conditions improve.

5. Other tax credit programs in Kansas and at the federal level provide for much longer carryforward periods:

- a. Enterprise Zone Credit – unlimited carryforward period under K.S.A. 79-32,160a; and
- b. Federal Business Credit - 20 year carryforward period under IRC § 39.

Other Provisions of J.B. 2051

Sprint also supports the provisions of H.B. 2051 which clarify how HPIP credits are utilized in a unitary group and eliminate the requirement for annual recertification once the HPIP project has been completed.

Thank you for your continuing efforts to make Kansas an attractive place for businesses to locate and expand. I would be happy to provide any additional information the Committee may require as it deliberates this very important bill.



Before the House Taxation Committee
HB 2051
Angela Pitale, Director of Tax
NextEra Energy Resources LLC
January 26, 2011

Mr. Chairman and Members of the Committee:

My name is Angela Pitale, the Director of Tax for NextEra Energy Resources, LLC. I appreciate this opportunity to express our support of HB 2051 which modifies the High Performance Incentive Program ("HPIP"). The proposed modifications to HPIP provide much needed flexibility for tax credits already earned and will have a positive impact on the valuation of new opportunities for investment in Kansas.

Introduction: NextEra Energy Resources

NextEra Energy Resources, LLC ("NextEra") is a leading clean energy provider with natural gas, wind, solar, hydroelectric and nuclear power plants in operation in 26 states and Canada. We develop, construct and operate generation facilities to produce electricity and develop the critical infrastructure for power delivery. NextEra has made substantial capital investment in Kansas with the development and construction of Gray County Wind Energy Center, located in Gray County. Gray County is a 112.2 megawatt wind generation plant capable of generating enough electricity to power about 35,000 homes. NextEra continues to search for additional development opportunities in Kansas and other states.

Kansas requires consolidated companies doing business in Kansas and other jurisdictions to calculate and pay corporate income tax on a portion of the income of the entire group. However, the utilization of HPIP tax credits is limited by separate company income restrictions. This

NextEra Energy Resources, LLC

700 Universe Boulevard, Juno Beach, FL 33408

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inconsistency yields an inequitable result for taxpayers and in many cases renders the tax credits worthless. This would be eliminated by enacting the proposal to allow the credits to offset taxable income of the unitary group.

Additionally, the increase in the carry forward period for tax credits earned under HPIP would factor into future investment. The HPIP credits were factored into the economic analysis that drove the decision to invest in our Gray County facility. However, due to factors largely beyond NextEra's control, i.e., an economic downturn followed by increased federal tax incentives that apply for Kansas income tax purposes, it is faced with the possibility of expiring HPIP tax credits relating to our capital commitment to Kansas. We understand that other taxpayers face a similar situation. The extension of the carry forward period for HPIP tax credits would provide greater opportunity for utilization and could make investment in Kansas more attractive in the future.

Conclusion: Support HB 2051

Tax incentives that cannot be utilized have no value, and do not provide the intended incentive to invest and create jobs. In order to allow the credits to serve their intended purpose, NextEra urges favorable consideration of HB 2051.

Thank you for your consideration.

Michael R. Murray, Agent