

Corrected

SESSION OF 2007

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2038

As Amended by Senate Committee of the Whole

Brief*

HB 2038, as amended, would provide a property tax exemption for certain new nuclear generation facilities and exempt such facilities from various siting requirements; several income tax incentives for qualified investments in fuel storage and blending equipment used for biofuels; and various tax incentives for renewable electric cogeneration facilities and certain waste heat utilization systems.

Nuclear Generation Facilities

The bill would create a property tax exemption, beginning with the 2007 tax year, for certain new nuclear generation facilities in Kansas. New facilities to which the exemption would apply would have to be within three miles of an existing nuclear facility. The bill also would exempt from statutory facility siting requirements new nuclear facilities or the addition of nuclear generating capacity to a nuclear facility within three miles of an existing nuclear facility.

The property tax exemption would apply from the time of purchase or start of construction and would continue for ten years after the completion of the new facility. The property tax exemptions would apply only to projects begun after December 31, 2006.

One provision would require the owners of new property eligible for the exemption to pay to the appropriate taxing

*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>

subdivisions a payment-in-lieu-of-taxes (PILOT) equal to the amount which would have been levied upon the real portion of such property for as long as the exemption granted in the bill remains in effect.

Biofuels Equipment Tax Incentives

The bill further would provide income tax incentives for investment in fuel storage and blending equipment used for biofuels. Biofuels would be defined by the bill to be fuel made from organic matter, including organic waste, but excluding fuel made from oil, natural gas, coal or lignite, or products of those substances.

The bill would create an income tax credit for tax years 2007 through 2011 for investments in the purchase, construction or installation of equipment used for storing and blending petroleum based fuel and biodiesel, ethanol or other biofuel and installed at a fuel terminal, refinery or biofuel production plant. The tax credit would not be available for equipment that is used only to denature ethyl alcohol.

The tax credit would be equal to 10 percent of the taxpayer's qualified investment for the first \$10 million invested and 5 percent of the investment in excess of \$10 million. The credit would be taken in 10 equal annual installments beginning with the year the equipment is placed into service. Any excess credit could be carried over for deduction from the taxpayer's income tax liability in subsequent years for a maximum of 14 years after the first installment. The bill would provide for making the income tax credits available to pass-through entities and co-owners of storage and blending equipment.

In order to be eligible for the tax credit, the taxpayer would be required to enter into and remain in compliance with an agreement with the Secretary of Commerce requiring, among other things, that the taxpayer will maintain operation of the equipment for at least 10 years during the term of the tax credit. The Secretary of Commerce would be required to determine

annually whether the taxpayer is in compliance with the agreement. The Secretary of Commerce would be authorized to adopt rules and regulations to administer the provisions regarding the taxpayer agreements.

The bill also would provide for an income tax deduction based on accelerated depreciation for storage and blending equipment. This income tax deduction would extend over a ten-year period and be equal to 55 percent the first year, 5 percent for each of the nine subsequent years. The deduction would be available beginning in tax year 2007. The Secretary of Revenue would be authorized to adopt rules and regulations necessary to implement the tax deduction provisions.

Renewable Electric Cogeneration and Waste Heat Utilization Tax Incentives

Additional provisions would provide tax incentives for investment in new renewable electric cogeneration facilities and waste heat utilization systems at electric generation facilities. The bill also would authorize the Kansas Development Finance Authority (KDFA) to assist in financing of those cogeneration facilities and waste heat utilization systems. Finally, the bill would amend certain existing incentives for investment in alcohol fuels production facilities to include a broader range of input materials and fuel products.

Renewable electric cogeneration facilities eligible for the tax incentives and KDFA financing under the bill would be facilities, built after December 31, 2006 and located in Kansas, that generate electricity from renewable energy resources or technologies for use in an industrial, commercial or agricultural process. The cogeneration facility and the process consuming the electricity would have to be owned by the same entity. The bill would create an income tax credit for tax years 2007 through 2011 for investments in the construction of the cogeneration facility and in real and tangible personal property used in the facility.

In order to be eligible for the tax credit, the taxpayer would be required to enter into and remain in compliance with an agreement with the Secretary of Commerce requiring, among other things, that the taxpayer will maintain operation of the cogeneration facility for at least 10 years during the term of the tax credit. The Secretary of Commerce would be required to determine annually whether the taxpayer is in compliance with the agreement. The Secretary of Commerce would be authorized to adopt rules and regulations to administer the provisions regarding the taxpayer agreements.

The tax credit would be equal to 10 percent of the taxpayer's qualified investment for the first \$50 million invested and 5 percent of the investment in excess of \$50 million. The credit would be taken in 10 equal annual installments beginning with the year the facility is placed into service. Any excess credit could be carried over for deduction from the taxpayer's income tax liability in subsequent years for a maximum of 14 taxable years after the first installment. The bill would provide for making the income tax credits available to pass-through entities and co-owners of the cogeneration facility.

The bill also would provide for an income tax deduction based on accelerated depreciation for a cogeneration facility. This income tax deduction would extend over a ten-year period and be equal to 55 percent the first year, 5 percent for each of the nine subsequent years. The deduction would be available beginning in tax year 2007. The Secretary of Revenue would be authorized to adopt rules and regulations necessary to implement the tax deduction provisions.

Certain waste heat utilization systems would be eligible for a property tax exemption beginning with tax year 2007. The exemption would be for the ten-year period after the facility is completed. Waste heat utilization facilities would be defined to be facilities and equipment used to recover waste heat created during electricity generation and the use of that heat to generate additional electricity or to produce fuels from renewable energy resources.

The bill further would provide an income tax deduction for accelerated depreciation for waste heat utilization systems in Kansas. This income tax deduction would extend over a ten year period and be equal to 55 percent the first year, 5 percent for each of the nine subsequent years. The deduction would be available beginning in tax year 2007. The Secretary of Revenue would be authorized to adopt rules and regulations necessary to implement the tax deduction provisions.

The bill would authorize the KDFA to issue tax-exempt revenue bonds to finance construction of cogeneration facilities and waste heat utilization systems at electric generation facilities in the state. The bonds would be repaid from revenues of the facilities and would not constitute state debt.

Tax credits and incentives relating to cellulosic alcohol production plants would be expanded to include other forms of biomass-to-energy plants. Biomass would be defined to include any organic matter available on a renewable or recurring basis, including solid and liquid organic waste, but excluding petroleum oil, natural gas, coal and lignite, and any products of those substances; and corn or grain sorghum suitable for human consumption.

“Biomass-to-energy plant” would be defined to be an industrial process plant located in Kansas that produces annually:

- At least 500,000 gallons of cellulosic alcohol;
- Liquid or gaseous fuel or energy in a quantity having a BTU value equal to or greater than 500,000 gallons of cellulosic alcohol; or
- Oil produced for direct conversion into fuel in a quantity having a BTU value equal to or greater than 500,000 gallons of cellulosic alcohol.

The existing provisions that would be extended to biomass-to-energy plants include:

- Eligibility for KDFA financing assistance;
- A ten-year property tax exemption;
- An investment tax credit of 10 percent of the first \$250 million invested and 5 percent of the amount over \$250 million. Existing law would be amended to make those tax credits available only until the end of tax year 2010; and
- Accelerated depreciation over 10 years (55 percent the first year and 5 percent for the succeeding nine years).

Existing law also would be amended to make income tax credits created in 2006 for investment in a new or expanded oil refineries, certain pipelines, integrated coal gasification power plants, or integrated coal or coke gasification nitrogen fertilizer production facilities, available only until the end of tax year 2010.

Background

The original bill, which dealt with the nuclear generation facilities issue, was introduced by the House Committee on Energy and Utilities.

The House Committee of the Whole amended the bill to specify that waste heat utilization systems to which the incentives apply must be located in Kansas and to make a technical correction to the bill.

The Senate Assessment and Taxation Committee amended the bill to add the PILOT provision; the provisions of HB 2405 as amended by the House Committee of the Whole (renewable electric cogeneration facilities and waste heat

utilization); and the provisions of HB 2476 as recommended by the House Committee on Energy and Utilities (biofuels).

The Senate Committee of the Whole amended the bill to remove provisions that would have extended the property tax exemption to expanded nuclear generation facilities.

The latest fiscal notes available from the Department of Revenue suggest that the Senate Assessment and Taxation version of the bill would not affect State General Fund receipts in FY 2008; would reduce receipts by \$0.5 million in FY 2009; and would reduce receipts by \$0.8 million in FY 2010.