

SESSION OF 2009

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 98**

As Agreed to March 31, 2009

Brief*

House Sub. for SB 98 would renew the mandatory school district general fund property tax levy; amend the definition of public utility; and add specific factors needed to be considered in the determination of fair market value for property tax purposes.

School Finance Levy Provisions

The bill would renew for the 2009-2010 and 2010-2011 school years (tax years 2010 and 2011) the mandatory school district general fund property tax levy at the current level of 20 mills. The bill also would extend for the same two tax years the residential "homestead" property tax exemption from that levy equivalent to \$20,000 of appraised valuation per parcel.

Property Tax on Stored Gas

An additional section would amend the definition of public utility in KSA 2008 Supp. 79-5a01 to include marketers and other entities which own, broker or market natural gas inventories stored for resale in underground formations in Kansas.

Additional language would stipulate that the purpose of this part of the bill is to carry out the mandate of the electorate relative to a constitutional amendment adopted in 1992 that explicitly provided for the property taxation of public utility inventories.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

Fair Market Value of Section 42 Housing

Finally, the bill would add certain requirements to the list of factors needed to be considered in the determination of fair market value for property tax purposes. Specifically, county appraisers would be required to take into account when determining the productivity of property the extent to which various rental and other restrictions have been imposed by state, federal and local governing bodies, including those restrictions associated with the rental or lease of such property to low-income individuals pursuant to section 42 of the federal Internal Revenue Code.

Conference Committee Action

The Conference Committee agreed to insert the provisions of SB 255 (as introduced); SB 312 (as introduced); and HB 2319 (House Tax Committee version) into House Sub. for SB 98.

The original SB 98 would have amended KSA 79-3220 to clarify deadlines applicable to filing income tax refund claims. The House Tax Committee replaced those provisions with a substitute bill that dealt with clarifying the estate tax treatment of agricultural land. All provisions from both versions of the bill were moved to HB 2172 pursuant to an agreement by the Conference Committee.

Background

The Governor's Budget assumes continuation of the mill levy and the residential exemption at the current levels. If the mill levy were to not be renewed, local effort for purposes of the school finance formula would be reduced by an estimated \$574.9 million for FY 2010, and an estimated \$605.6 million for FY 2011.

The Kansas Supreme Court in *Colorado Interstate Gas*

Co. v. Board of Morton County Commissioners, (247 Kan. 654) in 1990 ruled that natural gas held for resale by a public utility was entitled to an exemption as merchants' and manufacturers' inventory.

The Legislature in 1992 in response to that decision submitted a constitutional amendment to voters that made several changes to the property tax classification system, including language that explicitly excluded public utility inventories from the merchants' and manufacturers' inventory exemption.

In the late 1990s, the Federal Energy Regulatory Commission (FERC) implemented FERC Order 636, which effectively prohibited pipeline and storage companies from owning and marketing natural gas. As a result of this order, title to stored natural gas was transferred to various marketing companies, municipalities, and out-of-state utilities.

The Kansas Supreme Court in *In re Tax Exemption Application of Central Illinois Public Service Co.*, (276 Kan. 612) in 2003 subsequently ruled that none of these entities met the statutory definition of a public utility.

The Legislature in 2004 in response to that decision amended the statutory definition of public utility to provide that companies owning, controlling and holding for resale natural gas in underground formations are public utilities. The Kansas Supreme Court in *In re Appeal of Director of Property Valuation* (284 Kan. 592) in 2007 subsequently ruled that the stored gas was still exempt as inventory because storage companies controlled the gas (so companies owning and selling the gas did not meet all three statutory requirements of owning, controlling, and holding for resale).

Proponents said that it was appropriate for the Legislature to statutorily determine the definition of public utility; and that the state and its political subdivisions provide valuable governmental services that protect the gas and its free flow to and from the underground formations.

Opponents threatened additional litigation.

A fiscal note indicated that if the property were to be returned to the tax rolls, school district general funds would receive an additional \$1.700 million in local effort in FY 2010; and state building funds would receive an additional \$0.128 million.

Another fiscal note on the provisions relative to the valuation of Section 42 housing indicated that such provisions would not be expected to have any significant impact on state property tax revenues.

School Finance Levy; Property Tax on Stored Gas; Fair Market Value of Section 42 Housing