

MINUTES OF THE SENATE ASSESSMENT AND TAXATION COMMITTEE

The meeting was called to order by Chairman David Corbin at 10:40 a.m. on January 21, 2004, in Room 519-S of the Capitol.

All members were present except:

Senator Edward Pugh- excused

Committee staff present:

Chris Courtwright, Legislative Research Department

Martha Dorsey, Legislative Research Department

Gordon Self, Revisor of Statutes Office

Shirley Higgins, Committee Secretary

Conferees appearing before the committee:

Senator Tim Huelskamp

Others attending:

See Attached List.

Committee discussion on bill heard during 2003 Legislative Session – **SB 85–Eliminate property tax exemption for property utilizing wind resources and technologies to produce energy.**

Senator Corbin opened the discussion by calling attention to a letter distributed by Senator Huelskamp with an attached memorandum from the Midwest Project Director for enXco, who states that repealing the property tax exemption for wind energy farms could have a destabilizing impact on a Spearville project currently being developed and finalized. Senator Huelskamp notes that both he and his constituents agree that passage of **SB 85** will have a negative impact on the community of Spearville and Ford County. (Attachment 1)

For the Committee’s information, Senator Corbin distributed copies of letters in opposition to **SB 85** which he received from Grant County Economic Development, the Stevens County Economic Development Board, and the Ford County Board of County Commission. Along with the letters, he distributed copies of a January 2004 National Conference of State Legislatures briefing on tax and landowner revenue generated by wind energy projects. (Attachment 2)

Senator Corbin commented that a permanent property tax exemption sometimes “raises people’s eyebrows” because permanent exemptions almost never happen. He noted that the debate concerns whether or not to have a permanent exemption for what is considered a fledgling industry. He called upon Gordon Self, Revisor of Statutes Office, for background information on the bill.

Mr. Self explained that current law in effect since 1999 (K.S.A. 2002 Supp. 79-201) provides a property tax exemption for all property “actually and regularly used predominantly to produce and generate electricity utilizing renewable energy resources or technologies.” He noted that the definition of renewable energy specifically includes wind resources or technologies. As introduced, **SB 85** provided that, commencing in tax year 2003 and all tax years thereafter, the property tax exemption for wind resources or technologies only is eliminated. He went on to say that, after the Committee had a hearing on the bill, he was directed to draft a balloon of the bill in an attempt to come to an agreement among the various interests. (Attachment 3) The balloon provides that, commencing in tax year 2003 and all tax years thereafter, the wind resources exemption is restored with the condition that the taxpayer wanting the exemption enters into a contract with the board of county commissioners for the payment of service charges in lieu of taxes, and the taxpayer continues to make the in lieu of taxes payments.

Senator Corbin commented that the issue concerns companies offering a payment in lieu of taxes as a means to compete with other companies. In essence, the offer amounts to buying access to an area in order to cut through zoning regulations. However, that is not the reason the exemption was put in place. He noted that a court case in Butler County addressed the issue and determined that the Butler County Commissioners could not use payment in lieu of taxes as a factor in their decision to grant the permit for use.

Senator Lee asked Mr. Self if the proposed provision that the property tax exemption will cease if the

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payment in lieu of taxes is not made is constitutional. Mr. Self commented that the provision is unique; however, the Legislature has the authority to allow for the contract. She then confirmed with Mr. Self that local governments do not have the authority to give an exemption for longer than ten years and asked if a constitutional amendment would be required in order for the Legislature to give local units of government the ability to give a property tax abatement for longer than ten years. Mr. Self said the EDX is constitutional, but the IRB is statutory. Therefore, the answer is yes and no. Senator Lee went on to explain that she was a member of the conference committee **SB 85** and at that time the House Utilities Chair demanded that the exemption be made permanent because of the inability of local units of government to give a permanent exemption. She observed that it is obvious from materials presented to the Committee that there are now local units of government that are interested in allowing an exemption for longer than ten years. She asked if it would be constitutional to change the statutes to allow counties the ability to grant a permanent exemption if they so desire as opposed to a flat out permanent exemption. In response, Mr. Self said he would research her suggestion.

Senator Corbin commented that, unfortunately, a permanent exemption has become an issue of the east vs. the west part of the state. He noted that Senator Huelskamp views the exemption as an economic development tool. However, the question remains as to if more is gained in the long run by creating economic development which involves lost property tax revenue.

In response, Senator Huelskamp said that the City of Spearville is not primarily concerned about the permanent property tax exemption as a public policy issue. He noted that Spearville residents support a proposed \$150 million wind farm construction project being developed on 20,000 acres in the area, but the possibility that the exemption could be repealed in the middle of negotiations with the wind energy company creates uncertainty. In his opinion, the changing the rules in the middle of the game may ruin negotiations, which are fragile because so many landowners are involved. He noted that the wind farm is a huge economic development in Ford County and urged the Committee to act on the bill soon to end the uncertainty and to make clear what the public policy will be for years to come.

Senator Corbin commented that opposition to the permanent exemption in Butler County is due, in part, to environmental concerns. He noted that the key question for persons in the wind farm industry concerns the availability of electric transmission lines. The number of wind farms in the western part of the state is limited because of transmission problems; however, the Butler County area is much closer to transmission lines. He agreed that changing the rules creates uncertainty. He commented that the issue of repealing the permanent tax exemption for wind energy farms would not have surfaced if the industry had not begun making payments in lieu of taxes in order to buy access.

Senator Oleen asked if a county would be required to share payment in lieu of taxes with school districts. In response, Chris Courtwright, Legislative Research Department, said that a statute relative to the IRB law provides that, once an IRB has been granted by a county, payments in lieu of taxes must be distributed to all taxing subdivisions in the same proportion as property taxes. However, the exemption for wind farms is different because it was not granted through an IRB but through a state statute. Since the payment in lieu of taxes agreement with the county is not one pursuant to the IRB law, he was uncertain if counties would be required to share with school districts.

Senator Goodwin asked if information is available on how many counties do not have zoning laws. She commented that perhaps counties with no zoning laws have no authority over contracts between landowners and distributors of wind energy.

Senator Lee requested that staff research whether or not the constitution allows a statutory change to allow counties to grant multiple ten year extensions as opposed to current law which allows only one ten year extension. In addition, she expressed her concern about the constitutionality of requiring payment in lieu of property tax. In this regard, Senator Corbin commented that some of the wind farm projects will be in rural areas with very limited access, and the roads will have to be improved due to the heavy equipment traveling to the area during construction and later for maintenance. Although the payment in lieu of taxes was meant to offset the cost, it is possible that the payments will not be enough. As a result, the burden will fall on all county taxpayers.

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Pending the receipt of the information requested by committee members, Senator Corbin closed the discussion. He noted that he plans to visit with committee members individually before scheduling further discussion and possible action on **SB 85**.

Senator Donovan moved that the minutes of the January 20, 2004, meeting be approved, seconded by Senator Buhler. The motion carried.

The meeting was adjourned at 11:20 a.m.

The next meeting is scheduled for January 27, 2004.