Approved: 4-30-10
Date

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 a.m. on March 4, 2010, in Room 548-S of the Capitol.

All members were present except:
Senator Julia Lynn- unexcused
Senator Susan Wagle- excused

Committee staff present:
Ken Wilke, Office of the Revisor of Statutes
Reed Holwegner, Kansas Legislative Research Department
Kathie Sparks, Kansas Legislative Research Department
Marilyn Arnone, Committee Assistant

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Conferees appearing before the Committee:
Jeff Conway, Department of Commerce

Others attending:
See attached list

HB 2551 - Granting authority to the department of commerce to recapture unissued recovery zone bonds

Chairperson Brownlee opened the hearing on **HB 2551** and asked Reed Holwegner, Legislative Research Department, to comment on the bill. Reed explained that part of the economic recovery package Congress passed about a year ago was Recovery Zone bonds, a type of economic development bonds. These bonds are similar to Build America bonds and is a program in which the federal government will reimburse municipalities up to 45% of the interest paid. The distribution method is outlined in federal law in Internal Revenue Code that allocates these bonds to counties and to large municipalities with populations of 100,000 or more. After being distributed, there is no provision as to what happens to these bonds if local municipalities decide not to use them. The Department of Commerce is requesting the authority to pull back those bonds if they are not issued by June 30, 2010, and allow the Department of Commerce to reallocate those bonds to any other county or any other municipality regardless of size if they have plans or intentions for bonding purposes. The other type of bonds are called Qualified Energy Conservation Bonds and can be used for things such as energy consumption for local units of government, research facilities and research grants, demonstration products, energy technologies and for public education that would promote energy efficiency.

Chairperson Brownlee called on Jeff Conway, Department of Commerce, to testify. Mr. Conway said this bill is based on a Missouri statute and much of the mechanics in the bill is being done. The critical piece of this bill is recapture. Mr. Conway introduced Ed Serrano, manager of the Recovery Zone bonds and Mari Tucker, manager of the Qualified Energy Conservation Bonds in the Department of Commerce to be available to answer any specific questions the committee might have. Some new language in this bill allows the recapture of bonds that were allocated and not used. The Commerce Department wants to be notified if bonds are not going to be used, so the department can re-allocate those bonds where they will be used. Recovery Zone bonds expire on June 30, 2010. Commerce would like to have this bill in place as quickly as possible so re-allocations can be made before the expiration date. The QEC bonds extend indefinitely. There have been some re-allocations announced recently. Beneficiaries of that re-allocation were Ford County, Harvey County, Edwardsville, Concordia, Norton County, Bonner Springs and Topeka. For Kansas, through the Recovery Act, there has been about $135 million in authority facility bonds, and $90 million in economic development bonds, and in the most recent round of re-allocations was $30 million in facilities and $20 million in economic development bonds. Again, the critical part of this bill is to recapture bonds that will not be used and to reallocate them to where they will be used. (Attachment 1)

Chairperson Brownlee asked which type bonds were being used by the counties and cities that had been mentioned earlier. Facility bonds were used for Ford County, Harvey County, City of Edwardsville, and City of Concordia. Economic Development bonds were awarded to Norton County, Bonner Springs and City of Topeka.

Senator Faust-Goudeau asked Mr. Serrano if individuals can not be refused the bonds if they don't want to give them up, and is there some information that says the bonds cannot be used for anything except the original issue. Mr. Serrano said some people feel they are losing something if they give up the bonds, but they may apply again for the bonds at a future date. The bonds must be used by a certain date.

Ken Wilke told Chairperson Brownlee there is a technical amendment needed on this bill. Subsection C, on lines 41 and 43 on page 1, and 27 and 28 on page 2 are redundant in the way they are stated because each allows for the department to adopt rules and regulations for the administration of the Act. The committee has several options: Act can be changed to Section; strike one of the sub section C; or amend sub section C in both places. One of these actions would fix the problem.

In response to Senator Emler's question, the cleanest way to fix the problem would be to change "act" to "section." Mr. Conway said the reason there was some duplication in the language was because the two different programs might be located in different places in the statutes.

Chairperson Brownlee asked if the definition of local government included school districts. Mr. Conway will have to look at federal statutes and get back to her on that question.

Chairperson Brownlee closed the hearing on **HB 2551.**

HB 2553 - Updating references to the standard industrial classification codes in the Kansas enterprise zone act

Chairperson Brownlee opened the hearing on **HB 2553.** Jeff Conway testified on the bill. This bill updates some references to the Standard Industrial Classification (SIC) code in the state statutes by converting them to references to the successor North American Industry Classification (NAICS) code. The changeover was mostly seamless, but there were a few places where there was not a perfect transition. (Attachment 2)

Senator Schodorf called attention to the misprinting of NAICS on page 2, line 14 of the bill.

Chairperson Brownlee closed the hearing on **HB 2553.**

HB 2554 - Authorizing the issuance of bonds for certain economic development projects

Chairperson Brownlee opened the hearing on **HB 2554** and asked Jeff Conway to testify.

Mr. Conway said **HB 2554** simply corrects two technical mistakes in a bill that was passed by the Legislature during the 2009 Session. The relevant language had been layered on previous language causing two places where the insertion of "eligible wind and solar energy business" was necessary. Throughout the bill, the insertions were necessary to make the references complete as three-prong references. (Attachment 3)

Chairperson Brownlee closed the hearing on **HB 2554.**

The next meeting is scheduled for March 9, 2010.

The meeting was adjourned at 09:20 a.m.

COMMERCE COMMITTEE GUEST LIST

DATE: 3-4-10

NAME	REPRESENTING
Ed Serrano	Commerce
Mari Tucker	Commerce
Jeff Conway	Commerce
[illegible]	Gaches Braden
Leigh Keck	Hein Law Firm
Sean Miller	Capitol Strategies
[illegible]	KAPA

KANSAS
DEPARTMENT OF COMMERCE

Mark Parkinson, Governor
William R. Thornton, Acting Secretary

KansasCommerce.com

Testimony on HB 2551

to

The Senate Commerce Committee

By Jeff Conway
Legislative Liaison
Kansas Department of Commerce

March 4, 2010

Chairwoman Brownlee and Members of the Committee:

HB 2551 is a bill primarily designed to authorize the Department of Commerce to recapture allocated funds after the local governments have had a reasonable amount of time to issue bonds under two separate bond programs. Both programs are created and administered pursuant to federal law, and the law is clear that reallocations can be made by the state. It follows that Commerce should be given the authority to recapture those unused funds for reallocation to maximize the overall benefit this program has on the state.

The bill is patterned on existing Missouri law, and provides the necessary definitions to describe the bonds and provides cites to the appropriate federal law for the authority for their issuance. The bill also provides a mechanism by which the local governments receive notice of the allocation and either waive the allocation or provide a notice of intent to issue the bonds. The bill also authorizes Commerce to reallocate the recovered bond authority due to waiver or recapture.

<u>Recovery Zone Bonds:</u>
In June of 2009, the U.S. Treasury Department announced $25 billion in bonds authority available under the Recovery Zone Bonds program. Created by the American Recovery and Reinvestment Act (Recovery Act), Recovery Zone Bonds are targeted to areas particularly affected by job loss and are intended to help local governments obtain financing for much needed economic development projects, such as public infrastructure development.

Recovery Zone Bonds are two new types of bonds created by the Recovery Act to help economically distressed areas. The Recovery Act included $25 billion for two new types of Recovery Zone Bonds– $10 billion for Recovery Zone Economic Development Bonds and $15 billion for Recovery Zone Facility Bonds.

Recovery Zone Economic Development Bonds were created to encourage investment in public facilities and infrastructure with benefits paid from the federal government to the issuing municipality. Economic Development bonds are taxable to the bond holders, but the U.S. Treasury will pay to the issuer (cities, counties) an amount equal to 45 percent of each interest payment.

Recovery Zone Facility Bonds are federally tax-exempt bonds that were created to encourage investment in privately owned or used projects and can provide the issuer with a lower cost of capital. These bonds will likely be industrial revenue bonds, industrial development bonds or other types of private activity bonds.

Qualified Energy Conservation Bonds (QECBs):
The Energy Improvement and Extension Act of 2008, enacted in October 2008, authorized the issuance of Qualified Energy Conservation Bonds (QECBs) that may be used by state, local and tribal governments to finance certain types of energy projects. QECBs are qualified tax credit bonds, and in this respect are similar to new Clean Renewable Energy Bonds or CREBs.

The October 2008 enabling legislation set a limit of $800 million on the volume of energy conservation tax credit bonds that may be issued by state and local governments. However, The American Recovery and Reinvestment Act of 2009, enacted in February 2009, expanded the allowable bond volume to $3.2 billion.

The advantage of these bonds is that they are issued--theoretically--with a 0% interest rate. The borrower pays back only the principal of the bond, and the bondholder receives federal tax credits in lieu of the traditional bond interest. The tax credit may be taken quarterly to offset the tax liability of the bondholder. Credits exceeding a bondholder's tax liability may be carried forward to the succeeding tax year, but cannot be refunded. Energy conservation bonds differ from traditional tax-exempt bonds in that the tax credits issued through the program are treated as taxable income for the bondholder.

QECBs are not subject to a U.S. Department of Treasury application and approval process. Bond volume is instead allocated to each state based on the state's percentage of the U.S. population as of July 1, 2008. The allocation for Kansas was $29,070,000. Each state is then required to allocate a portion of its allocation to "large local governments" within the state based on the local government's percentage of the state's population. Large local governments are defined as municipalities and counties with populations of 100,000 or more. To date, Douglas County and the city of Kansas City have expressed an interest in issuing bonds for projects. Large local governments may reallocate their designated portion back to the state if they choose to do so.

The definition of "qualified energy conservation projects" is fairly broad and contains elements relating to energy efficiency capital expenditures in public buildings; renewable energy production; various research and development applications; mass commuting facilities that reduce energy consumption; several types of energy related demonstration projects; and public energy efficiency education campaigns. Renewable energy facilities that are eligible for CREBs are also eligible for QECBs.

I would be happy to answer any questions the committee may have.

KANSAS
DEPARTMENT OF COMMERCE

Mark Parkinson, Governor
William R. Thornton, Acting Secretary

KansasCommerce.com

Testimony on HB 2553

to

The Senate Commerce Committee

By Jeff Conway
Legislative Liaison
Kansas Department of Commerce

March 4, 2010

Chairwoman Brownlee and Members of the Committee:

HB 2553 updates some references to the Standard Industrial Classification (SIC) code in the state statutes by converting them to references to the successor North American Industry Classification System (NAICS) code.

NAICS was developed under the auspices of the federal Office of Management and Budget (OMB), and adopted in 1997 to replace the SIC code. The Kansas statutes contained some limited flexibility to ease the transition, but the federal government and nearly all businesses now use the NAICS system exclusively.

Every effort was made to faithfully convert the old SIC code categories into the corresponding NAICS code categories, but a perfect match is often not possible. The changes were made to the relevant sections of the Kansas Enterprise Zone Act, the High Performance Incentive Program (HPIP), and the property tax exemption statute.

The HPIP program currently allows the Secretary of Commerce to determine eligibility for the program when a difference exists between the SIC code and the NAICS code. With the elimination of the use of the SIC code by this bill, we propose that the Secretary still retain some discretion to determine eligibility for the program if the company's primary business activity does not align perfectly with the NAICS categories in place at the time of application.

Even with the passage of this bill, there may be a few remaining references to SIC codes in Kansas law. Those remaining references, however, are not in statutes that fall under the purview of Commerce. The changes in HB 2553 would adequately update the statutes for Commerce's purposes.

I would be happy to answer any questions the committee may have.

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DEPARTMENT OF COMMERCE

Mark Parkinson, Governor
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Testimony on HB 2554

to

The Senate Commerce Committee

By Jeff Conway
Legislative Liaison
Kansas Department of Commerce

March 4, 2010

Chairwoman Brownlee and Members of the Committee:

HB 2554 simply corrects a couple of technical mistakes in a bill that was passed by the Legislature during the 2009 session. That bill, SB 108, added some language to the Economic Revitalization and Reinvestment Act to authorize up to $5 million in bonds per project to be issued for the purposes of eligible wind or solar energy businesses.

The relevant language had been layered onto previous language authorizing bonding for "eligible aviation projects" (the so-called Cessna Bill), which had in turn been layered onto previous language authorizing bonding for "eligible businesses" (the so-called Boeing Bill).

During the review of the bill prior to final passage, I noticed that there were two places where the necessary insertion of "eligible wind and solar energy business" was missing. Throughout the bill, the insertions were necessary to make the references complete as three-prong references.

I learned then that the bill was too far along in the process for an amendment to be added to include the two missing references. Thus, HB 2554 was introduced this year.

I would be happy to answer any questions the committee may have.

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Senate Commerce Committee
Date: March 4, 2010
Attachment # 7-1