



**2022 Kansas Legislative Session
Weekly Legislative & Regulatory Update
Week 6**

At a Glance

- Mega Water Bill, HB 2686, is introduced
- Its not the Superbowl Shuffle, but it is a committee reshuffle
- APEX bill signed into law, Veto Override of Congressional maps finish
- Renewable energy subject to the most number of bills of any issue thus far this session

Looking Ahead

- 14-18 February – Briefing and Hearings on HB 2686
- 24 February - Turnaround

Its Good to Be King

Water

It is not the budget bill, but so far [HB 2686](#) takes the crown on the largest bill to be introduced this session. At 283 pages long, the mega water bill, which has been months in the making sits a top the throne as the longest bill – until the budget bills are introduced. Even then, the water bill may still stand on top of the heap. Under the provisions of the bill, a new state agency titled the Kansas Department of Water & Environment (KDWE) would be created. The new agency would separate the Environment division which currently is the E in the Kansas Department of Health & Environment while moving the Division of Conservation and Division of Water Resources both currently residing in the Department of Agriculture into the newly created agency. There are several new revenue streams introduced in the bill.

- A new water and environment maintenance fee fund is established to fund the State Water Plan. Currently the water plan is funded by State General Fund (SGF) dollars and this year will be the first year since 2008 that the State will have made is full \$8 million appropriation. The State is still about \$80 million behind in money owed. A water & environment maintenance board is also created to oversee the maintenance fund.
- A new water rights fees on all existing owners of a water right or permit to appropriate beneficial use is instituted. The fee shall be a minimum of \$25 per acre foot up to \$250 based on water quantity.

- Water protection fees on public water systems, industrial use permit holders and stockwatering permit holders are allowed under Section 206. The current fee for each entity is \$0.03 per 1,000 gallons of water which would increase to \$0.05 per 1,000 gallons of water. The fees will be used to support implementation of the State Water Plan.

Sections 10-19 of the bill are devoted to amending the Ground Water Management District (GMD) Act. New provisions are created to provide new election policies beginning in 2023 for GMD Board and to require GMDs to submit an annual financial as well as conservation and stabilization report to the Chief Engineer. An annual report is to be made to the Legislature detailing the finances (using GAAP accounting principles) and previous year's activities of the GMD.

Lastly, Section 249 of the bill clarifies the role of the Chief Engineer stating that an order of the Chief Engineer is considered a final order and that orders of the Chief Engineer shall no longer be subject to the review by a department secretary.

The House Water Committee over the last two sessions, has held the equivalent of a PhD-level course in Kansas water law and policy leading up to the introduction of this bill. There will be two days of committee briefings on Monday and Tuesday followed by two days of hearings on the measure Wednesday and Thursday.

Redistricting/Committee Shuffle

While democracy does not have kings and queens, there are certainly individuals in the top position of political power including the Governor, the Speaker of the House and the Senate President. This week, the Senate President flexed his power following the redistricting veto override in the Senate. Last Thursday, Governor Kelly vetoed the Ad Astra 2 Congressional map which split Wyandotte County between the 2nd and 3rd Congressional districts and put the City of Lawrence – the only community in Douglas County – into the 1st District with the balance of DGCO remaining in the 2nd. With more than 27 Republicans in the Kansas Senate, a veto override effort was attempted. The first day, the override failed by 3 votes of the needed 27. The next day following negotiations, the override in the Senate was achieved. The House moved to override the next day and did so. On Thursday evening, the Senate President announced a significant committee reshuffling as three members of the Senate Republican caucus were removed from and demoted from certain committee positions.

- Senator John Doll (R-Garden City) did not vote to override but had previously expressed his intent to leadership. No changes to committee assignments.
- Senator Dennis Pyle (R-Hiawatha) initially did not vote to override and was removed from his position on Senate Utilities as well as Senate Transportation.

- Senator Alicia Straub (R-Ellinwood) was removed from both the Senate Ethics & Transparency Committee and Senate Elections & Local Government Committee. She was Vice-Chair of Senate Agriculture & Natural Resources and will remain on the committee, but will no longer be the Vice-Chair.
- Senator Mark Steffen (R-Hutchinson) did not vote to override initially. He was removed from the Senate Assessment & Taxation Committee and was removed as Vice-Chairman of the Senate Commerce Committee. He will remain on the committee though. Senator Steffen is a doctor, but has been a champion against vaccines and order health protocols. He introduced a bill this session that would exempt doctors from action by the Board of Healing Arts (BOHA) for prescribing non-traditional treatments such as ivermectin for COVID-19. The measure was allowed to pass committee on Wednesday morning following the successful override, but by Thursday evening the bill was returned to committee. The Board of Healing Arts has been investigating the Senator for nearly 18 months it was revealed recently.

The House and Senate continue to work on the new House and Senate district maps which will likely be revealed following Turnaround. The Ad Astra 2 Congressional map is surely headed toward litigation.

APEX

The Kansas Legislature passed and the Governor signed into law the king of all economic development incentive packages to attract a new manufacturing facility to the State. It has been said, that Kansas is a finalist alongside Tulsa, Oklahoma, for the 4 million square foot facility that would employ more than 4,000 people and bring \$4 billion in direct new investment to the State along with at least 5 other suppliers. The incentive package could be worth up to \$1.3 billion to Kansas taxpayers making it the largest incentive package passed in the State's history. A final decision is expected to be made in the coming weeks. Kansas' final offer was submitted by 5:00p last Wednesday just days after the Oklahoma legislature opened its session and began working on its incentive package.

The above mentioned topics were the headline grabbers last week, but there was a flurry of other activity paving the way for next week's House of Origin deadline. All non-exempt bills or bills that haven't been "blessed" by Leadership, must pass their House of Origin to continue through the process.

Sales Tax

Sales tax matters are exempt from the deadline, but one of the sales tax bills did advance from a committee last week. SB 339 which moves the state sales tax to 0% on food and prepared food (think restaurants, convenience stores, bottled water, candy and

dietary supplements) from 6.5% passed the Senate Assessment & Taxation Committee. The bill also allows for local governments to retain or exempt food sales tax as well. The fiscal note on SB 339 was provided to cost the State \$319.8 million in 2022 increasing to \$786.6 million by 2024. However, SB 339's price tag increased when picked up a companion. SB 359 was amended into SB 339. SB 359, moves to 0% the state sales tax on utility services for commercial and industrial customers. It does allow local units to exempt or not utility sales tax. Residential electric, natural gas, water and wastewater customers are already exempt from the state sales tax. The fiscal loss to the state would be about \$60 million annually or \$245 million over four years. Implementation of the state sales tax exemption on food and utility service would be delayed to 2024 so the State could see the economic effects of implementing the APEX economic incentive package.

City/County Sales Tax

There has been some chatter in recent days about revisiting SB 87 which discontinues the current apportionment of countywide retailers' sales tax imposed for general purposes between the county and cities which has been in effect since 1978. For reference, currently, 93 of the 105 counties levy a countywide sales tax. In 2020, 492 Kansas cities received a total of \$271,112,274 and 82 Kansas counties received \$214,258,925 through the formula. In Kansas, 90% of the sales taxes generated in the state are generated within city limits. 84% of the residents of Kansas live in cities. In most cases, most of the sales tax is generated inside city limits and there has been a recognition that a portion of those sales tax dollars should stay where they are generated. According to the League of Municipalities, many cities across the state use the proceeds from this tax in lieu of property taxes and to pay debt service. If this law went into effect, it likely would cause cities to have to raise property taxes or cut vital city services relied upon and expected by their citizens. There is no requirement in SB 87 for an interlocal agreement on sales tax between cities and counties.

Targeting Renewable Energy

A review of the bills introduced confirms that there are more bills targeting renewable energy development than any other issue being considered this session. There are eight bills that individually and certainly collectively would end all renewable energy development in Kansas. Most of the eight bills are forward looking but some have look back provisions including a bill that could invalidate thousands of leases and language related to shadow flicker mitigation that would cause for an undetermined number of turbines to be shuttered until complete mitigation could be implemented. None of the eight bills have moved out of committee, but the Chairman intends to work bills for three days this week in his committee.

SB 417 related to the Coal Combustion Residual rule had a hearing on Friday in the Senate Ag & Natural Resources committee. The bill would allow Evergy, Sunflower and Kansas City Board of Public Utilities to impose an additional fee to pay for costs of a state-run CCR plan rather than a federally administered program.

SB 349 is scheduled for a hearing Tuesday in Senate Utilities. The bill would impose a 1% rate cap on electric investor-owned utilities in Kansas.

Kimberly Svaty drafted a 72-slide Energy 101 power point presentation for the House Energy & Utilities Committee which will be delivered on Tuesday. On Thursday, there will be presentations to the committee regarding Integrated Resource Planning (IRP).

As always, please call/email or text anytime with questions! We are here to help!

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