



**2022 Kansas Legislative Session
Weekly Legislative & Regulatory Update
Week 7**

At a Glance

- Mega Water Bill, HB 2686 receives hearing
- Sales Tax bill adds several costly provisions & APEX
- Renewable Energy in the news
- New Senate district maps this week?

Looking Ahead

- 21 February – Last day for committees to meet
- 24 February – Turnaround
- 1 March – Legislature resumes work

Seventh Inning Stretch

In baseball, it is tradition in the seventh inning to take a stretch. The conclusion of this week is similar to the seventh inning stretch. The game pauses and we all take stock of what has transpired. In this version of the 7th week stretch, the bills which have not passed their chamber of origin, will be dead for the session – unless of course they were bills introduced in one of the six House or Senate committees that do not have bill deadlines or if they have been blessed by Leadership. The bill tracker which has been collecting bills and ideas for two legislative sessions, will be shorter by week's end.

Water Bill – HB 2686

The House Committee on Water, after an entire year spent looking at the organization of water in Kansas, issued its principle bill, HB 2686, ten days ago, just a few days before turnaround. Without an ounce of hyperbole, the bill is the single most comprehensive water bill to come before the Legislature in at least a generation, perhaps since the Groundwater Management Act in the early 1970s. At 283 pages long, it is larger than most annual budget bills.

There are multiple provisions to the bill, all significant in their own right.

Reorganization

HB 2686 creates a new Department of Water and the Environment, with a gubernatorial appointee Cabinet-level Secretary. Within that agency would be almost

every portion of other agencies that touch water - the Division of Water Resources would be removed from the Department of Agriculture and would be placed in the new Department of Water and Environment (KDWE); the Environment Division of the Kansas Department of Health and Environment would be moved into KDWE as well. The Kansas Water Office would also be moved into the new agency. The Chief Engineer of the Division of Water Resources would remain a classified position, most other division heads and the new Secretary of course would be unclassified. The Bill would also create a Water Maintenance Board, which would be similar to the Kansas Board of Agriculture, and would provide input to the Secretary of KDWE.

New Funding

Kansas has historically underfunded or not funded at all the state's water plan fund. Estimates are as high as a cumulative underfunding of nearly 80 million dollars. Most of the fees that do exist have not been increased since they were set in 1989. This bill would increase the fees on municipal and stockwater users from \$.03/gallon to \$.05/gallon. Additionally, HB 2686 would create a new fee for irrigators - that fee would be \$1/acre foot of water used, to not exceed \$250 dollars. An acre foot of water is 325,850 gallons, so that fee is still considerably less than the municipal water fee.

Elections of Groundwater Management District Boards

Currently Groundwater Management Districts (GMDs) have their elections at annual meetings, and the only qualified electors and potential board members are entities that either have an appropriated water right or 40 acres of contiguous ground. Municipalities only receive one vote for their water right(s) per municipality. By design, the greatest number of voters in a GMD are individual farmers with irrigation water rights, and so they typically dominate the GMD boards. HB 2686 expands the election of GMD Boards to include any qualified elector in the GMD territory, and moves the elections to the general election ballots. So, anyone that is 18 or over and is eligible to vote in state and local elections can also both vote in GMD elections and run for the board.

The GMD section of the bill also includes stronger reporting requirements for the GMDs to the Kansas Legislature, including full audits of finances, annual reports, and the filing of an actual plan with the Kansas Legislature from each GMD on how it intends to conserve water.

This is not an exhaustive list of everything the bill does - at 283 pages it is difficult to reduce. However, these three are the principle changes and the ones getting the most attention. The bill can be located in [HB 2686](#), and there is also a Revisor's brief for the bill because of its length.

The past week the Water Committee had two days of informational background on the bill on Monday and Tuesday, proponents of the bill testified on Wednesday, opponents of the bill on testified on Thursday, and on Friday the committee discussed all they heard the previous four days. The Committee is scheduled to have committee discussion again on Monday, February 21st as well. The bill is exempt and does not need to meet calendar deadlines by the end of the week, and we anticipate the Chairman will ask the committee for amendments with the intent to actually work the bill the first week of March after the Legislature returns.

Both the Kansas Municipal Utilities (KMU) and REAP - the Regional Economic Area Partnership of South Central Kansas spoke in favor of the bill. Johnson County WaterOne also spoke in favor. All the proponents generally had portions of the bill they felt strongly about and other portions on which they were indifferent, which isn't surprising given a bill this size.

On Thursday, the opponents were unified in their dislike of the entire bill. Many of the opponents were members of the five Groundwater Management Districts, and Kansas Farm Bureau and the Kansas Livestock Association also spoke against the bill.

Friday's committee discussion centered around the voting provisions of the GMDs and the new and enhanced fees. Though no committee vote was taken, it was evident during discussions that there were not strong feelings toward adjusting the GMDs - both their voting and reporting - and there certainly wasn't strong committee interest on addressing fees at all this session. Monday's discussion is supposed to be focused on the reorganization.

Sales Tax

SB 359, which effective July 1, 2023, reduces to 0% state sales tax on commercial and industrial utility (electric, natural gas and water) customers has been rolled into SB 339, which is the large food state sales tax elimination bill. We are closely watching both bills to ensure they still allow local/county governments discretion on whether to assess or exempt sales tax. SB 339 already included state sales tax exemptions for food and food ingredients including candy, soft drinks, food sold in restaurants and the like and would be effective January 1, 2024. The projected negative fiscal impact to the state by 2024 for SB 339 is around \$655M which does not include the \$50-\$60M in loss from shifting the state sales tax on commercial and industrial utility service to zero. Before moving the bill to the Senate floor, the Committee added a series of other tax related measures to SB 339 including: (1) increasing the property tax exemption for the statewide mill levy for schools from \$20,000 to \$65,000 (\$100,000 was sought in a separate bill with a \$147 million negative fiscal impact); (2) eliminating the statewide 1.5 mill levy for repairing and rebuilding state properties with a \$66 million

negative budget impact and a few other provisions such as a Back to School sales tax holiday.

With a nearly \$3 billion in a revenue surplus, lawmakers are looking at a variety of ways to pay down state debt, save money, fund KPERS and provide tax relief. The House and Senate will pass their respective tax bills that toward the latter part of session can be negotiated and also weighed against the APEX economic incentive package that came into being after session started.

APEX

Kansas made its official bid for the APEX project – a proposed 4 million square foot manufacturing facility that would create 4,000 new highly skilled jobs and total about \$4 billion in new investment – just shy of two weeks ago. Unconfirmed reports suggest the manufacturing facility could relate to the manufacture of electric vehicles. The company decision is supposed to occur in late February with an announcement in early March.

Rules & Regulations

An interesting resolution (HCR 5014) moved to the full House for debate this week. The Senate has a similar resolution (SCR 1618) under consideration as well. The resolutions would amend the Kansas Constitution to allow the Legislature the ability to revoke, amend or simply review any rule or regulation. The House failed (80-33) to pass the HCR with the needed two-thirds majority (84 votes) but it could be taken up again on Tuesday. The Senate's version of the resolution is still in committee, but could begin moving this week.

Renewable Energy

Senate Utilities Chairman Mike Thompson (R-Shawnee) introduced eight separate measures to halt and ratchet back development of renewable energy in Kansas. Hearings have been held in two separate committees on four of the eight bills thus far – more than any other issue this legislative session. The bills include:

- SB 323 – altering landowner contracts, undoing 100 years of Kansas contract caselaw
- SB 324 – invalidating contracts
- SB 325 – statewide zoning
- SB 353 – mile setbacks, sound, lighting, shadow flicker
- SB 374 – removing the property tax exemption for renewable energy – which all other forms of generation (except nuclear), transmission and pipelines receive - EXEMPT
- SB 383 – complicated compensation formula for non-participating landowners
- SB 478 – county-crafted lighting regulations which should be set by the FAA

- SB 481 – solar siting

SB 353 was not worked as the Chairman announced he couldn't work the bill at the time. The Chair attempted to work SB 323 and SB 324, but they failed to secure seconds on two key motions. The Chairman left both open on the table for now.

Below is a sampling of some of the news stories that came out of this week's activities.

1. ['This is punitive': Kansas Senate committee considers poison pill wind energy bills -](#)

[Kansas Reflector](#)

2. Kansas lawmaker reverses decision to bar environmental health scientist from testimony

<https://amp.kansascity.com/news/politics-government/article258397523.html>

3. Kansas Senate committee unable to advance anti-wind bills, chairman says

<https://kansasreflector.com/2022/02/16/kansas-senate-committee-unable-to-advance-anti-wind-bills-chairman-says/?eType=EmailBlastContent&eld=03deae0b-8afc-42e6-9a7d-6e8051a65217>

Conclusion

There is a bevy of bills that may not withstand the Turnaround deadline which looms this week. The week 8 report will feature the outcome of many of these bills. Also, the proposed new Senate district maps are reported to be making their appearance this week so Senators can see what districts may collapse and how their district boundaries will change.

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

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