

KANSAS LEGISLATIVE NEWS

FRIDAY, APRIL 14, 2017 - KLN BY ZACK PISTORA, STATE LOBBYIST



NOT MUCH PROGRESS, ENVIRONMENTAL OR OTHERWISE, AS REGULAR SESSION ENDS

Plenty of Unfinished Business for State Lawmakers to Tackle in May's Veto Session

On April 7th, the Kansas Legislature ended the regular session by passing a rescission bill to true up the State's Fiscal Year 2017 deficit of \$280 million before heading to their nearly month-long Spring Break.

With the rescission bill and 45 other bills that were mostly minor and technical public policy

improvements, the 2017 Legislature is returning to their home districts with little to show their constituents after 57 days in session.

Of course, many knew that the 2017 Legislative Session was going to be a sluggish type of session from the beginning. Last year, key leaders of the chambers had earlier budgeted a 100-day session (instead of the typical 90-day session) for 2017 because of the "heavy-lifting" of working a new 2-year budget, a restructured tax plan, and creating a new school finance formula. On top of that,

ENVIRONMENTAL ISSUES WERE LARGELY SIDELINED WITH MOST LAWMAKERS ZOOMED IN ON BUDGET & TAX

with nearly a third of all the lawmakers being brand new to the Kansas Legislature following the 2016 election, the learning curve was correctly predicted to slow lawmakers' policymaking

pace. Still, after three months of being up at the Statehouse, Legislators ought to have more done by now, if you ask me.

To be clear, there are several lawmakers that certainly have tried to reach solutions to major issues, including taxes, health care, carrying guns on college campuses, water conservation, and more. However, most legislation has not prevailed. The two biggest political setbacks? Not overcoming Governor Sam Brownback's executive vetoes on Medicaid Expansion and a Tax Remedy for the failed 2012 Tax Cuts plan.

INSIDE THIS KLN: AN UPDATE ON KANSAS ENVIRONMENTAL ISSUES:

Water:

- House Appropriations Committee Rejects Amendment for Increased Funding for State Water Priorities

Climate:

- No legislative action or discussion this session

Earthquakes/ Fracking:

- Committee Chairs consider full Legislative Hearing in 2018
- New Injection Well proposed for Flint Hills above fault area
- Sierra Club loses lawsuit on Injection Disposal

Energy:

- KS Corporation Commission holds hearing on Energy Efficiency; Study of Solar next
- KS Supreme Court Green Lights Permit for Sunflower's Holcomb II Coal Plant

Environmental issues, like many other policy sectors, were largely sidelined this session with most legislators zoomed in on addressing the State's budget and tax problems. Aside from a few committees hearing about a dozen bills, the Legislature has been quite unproductive on environmental matters thus far.

Therefore, our elected leaders are missing prime opportunities for our state to make strides in policymaking when it comes to connecting our environment, our economy, and the quality of life for all of us in our ecosystem.

State legislators will go back to Topeka on May 1st, likely for a full month's of work. What remains on

the to-do list: Passing a 2-year Omnibus budget for FY 2018 & FY 2019, a new tax plan, a new (perhaps by tweaking the former) school finance formula, and resolving the popular pushback of allowing guns on college campuses starting July 1. Sadly, most environmental issues will have to wait til next year for action.

LEGISLATION:

Passed & Signed into Law:

SB 46 – Managing Water Rights and Impairment Problems through Notice and Administrative Procedure

- *This bill requires any person with a valid water right or permit to divert and use water to first exhaust the administrative remedies available to the person before seeking a court-ordered injunction to stop the impairment of the person's water right by the activity of another entity without prior right to the same water. Furthermore, this bill provides notice and management plan requirements surrounding a "Water Conservation Area", which is a voluntary water-use reduction strategy for water right holders.*

Passed House 114-0, Senate 38-0

HB 2140 – Adopts the Great Plains Interstate Fire Compact to promote prevention /control of Wild Fires

- *HB 2140 authorizes the KS Governor to enter into coordination with Colorado, Nebraska, New Mexico, North Dakota, Saskatchewan, South Dakota, and Wyoming, to fight wild fires in the Great Plains.*

Passed House 124-1, Senate 40-0

HB 2312 – Establishes Administrative Appeals Process for Certain Fertilizer and Water Orders

- *The bill requires a notice and potential hearing under the Kansas Administrative Procedure Act before final action may be taken on certain fertilizer orders (i.e. custom blending of fertilizers, ammonium nitrate dealers, and fertilizer brand registration). In addition, the bill codifies current rules and regulations that allow for review of water orders by the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.*

Passed House 121-4, Senate 38-1

Viable Bills for Veto Session:

SB 60 – Extends schedule of agriculture fees on pesticides, fertilizers, dairy products, and certain dam inspection fees. **Passed House 94-24, but sits in Conference Committee on amendment discussion**

HB 2182 – Enacting the Kansas Agricultural Industry Act (Industrial Hemp)

- *This bill allows industrial hemp to be researched at colleges and universities and establishes growing licenses for industrial hemp supervised by KS Dept. of Agriculture and the Kansas Bureau of Investigation.*

Passed House 103-18; Now in Senate Commerce committee awaiting a bill hearing

HB 2406 – Ends Tax Exemption for New Pipeline Property

Had hearing recently in House Taxation, but no action on the measure yet

SB 224 / HB 2382 - Both Bills Increase the Motor Fuels Tax;

Both Bills had Hearings in Late March; No action taken yet

MAJOR STORIES ON KANSAS ENVIRONMENTAL ISSUES:

State Budget:

The Legislature Passed a True-Up, "Rescission" bill to add \$280 million to fix Fiscal Year 2017's budgetary deficit. [S Sub for Sub for HB 2052](#) borrows future money by delaying millions in payments for State Employee Pensions, transfers funds from the idle Treasurer's Unclaimed Property Fund, and transfers \$22.2 million from state agencies and the State Highway Fund to the State General Fund. The bill passed 108-15 in the House, and 30-10 in the Senate. Next, the Legislature will work on the Omnibus Budget Bill in the Veto Session, which will chart the budget for the upcoming two fiscal years and resolve a projected \$1 BILLION dollar deficit. Of course, a critical part of the equation will be the Tax Plan to raise funds to cover that billion-dollar shortfall.

Water:

Despite all the time, bills, and informational presentations on fixing water policy and providing dedicated funding to the State Water Plan Fund in the new House Water and Environment Committee, no significant legislation was produced or passed. The Committee did put together a list of top funding priorities for water projects and a letter to the House Appropriations committee encouraging an extra \$1.7-\$2 million in the budget for water, but no success resulted. Democrats on House Appropriations, Rep. Sydney Carlin D-Manhattan and Rep. Henry Helgerson D-Wichita, tried to amend the budget bill to include these important funds, but the committee rejected their proposal. I expect the KS Legislature to take a more aggressive try next year perhaps to incorporate policy fixes upon irrigation, which accounts for 85% of the State's water use.

Climate:

Despite continued evidence that Kansas and the rest of the planet are undergoing drastic changes in the Earth's climate, Kansas lawmakers have taken no action to discuss or address climate change. Even with Kansas having its biggest-ever wild fire (twice as big as last year's record-setting fire) that implicated human and animal lives and destroyed huge amounts of property and habitat, our leaders have not acknowledged the intersection of natural disasters, extreme weather conditions, and human-induced climate impacts. Globally, 2016 was the warmest year ever since recording climate conditions began in 1895, beating the previous warmest years, 2015 and 2014.

Energy:

The Kansas Corporation Commission (KCC) is still taking public comments until May 5th on their KCPL Energy Efficiency docket. The KCC is evaluating the cost-recovery of KCPL's 14 programs to conserve and upgrade customer's buildings. <http://kcc.ks.gov/pi/complaint.cgi?dkt=16-KCPE-446-TAR> The next energy docket will contemplate the fair value of solar power to Kansas customers and utilities. We will ask for your help in encouraging the KCC not to create an unwarranted tax on solar. Finally, the KCC will soon be reaching a decision on the merger of Great Plains Energy (KCPL parent company) and Westar Energy (before April 24th), which will affect two-thirds of Kansas electricity customers.

MAJOR STORIES ON KANSAS ENVIRONMENTAL ISSUES CONTINUED...

Kansas Earthquakes and Wastewater Injection Disposal from Fracking:

Kansans continue to fall victim to manmade earthquakes in Kansas and Oklahoma as the result of ongoing injection disposal from wastewater generated by hydraulic fracturing in oil and gas extraction. In the last 10 days, Kansas experienced 5 ground-shaking earthquakes in both northern and southern Kansas. Our state has experienced at least 151 Kansas earthquakes this year already. New analysis reveals that more earthquakes are happening outside the "Area of Seismic Concern" of South-Central Kansas's Harper and Sumner counties. Read this recent article for more info: <http://www.mcphersonsentinel.com/news/20170412/earthquake-numbers-drop-but-issues-still-remain>

What is worse, is that the Kansas oil and gas industry has not been held accountable for their contribution to these earthquakes. Property damages, such as cracked walls and foundations, and broken water lines have cost taxpayers, private homeowners, and business owners lots of money, without much accommodation. The fortunate few with earthquake insurance that covers these manmade earthquake damages will likely pay higher premiums for additional claims, otherwise, most Kansans will have to eat the costs of damage at no-fault of their own. Oklahoma is undergoing lawsuits dealing with these types of scenarios right now. Not to mention, if Kansans get damages from an Oklahoma earthquake, will Oklahoma help pick up the tab? There are a lot of unanswered questions involving insurance, liability, real estate values, interstate cooperation, and more that need to be addressed in a full legislative discussion. There is hope here. In talking with Committee Chairs, Tom Sloan (R-Lawrence) of House Water and Environment and Senator Dan Kerschen (R-Garden Plain) of Senate Agriculture and Natural Resources, I have been given strong indications that we will have a broader discussion about this topic at the beginning of the next legislative session.

In a new development, the Kansas Corporation Commission (KCC) has recently given this topic some deserved attention. The agency, which regulates oil and gas activity in our state, has decided to indefinitely keep the limits on injection disposal amounts in the 'Area of Seismic Concern' in South-central Kansas. This area, which endures the heaviest amount of oil and gas drilling and injection disposal, has benefitted from the much-needed regulations. The KCC has stated that these regulations have been successful in bringing down the frequency of strong earthquakes in the area, and that they will consider expanding the injected barrels per day limits to other areas of Kansas. Of the 4555 Class II Injection Wells that Kansas has, a small portion of the injection wells account for most of total wastewater disposal. In 2015, Kansas injected over 1 billion barrels (over 40 billion gallons) of wastewater back underground, with 203 of these wells injecting over a million barrels each. It is this extreme level of injected fluids that are adding a huge weight and pressure buildup, and causing fault slips / earthquakes to happen.

Speaking of injection wells and earthquake-prone areas, the KCC recently received significant pushback at a pre-hearing for a proposed injection well in the Flint Hills. Quail Oil and Gas Co. has filed an application for a new injection well in Morris County, directly above the Humboldt Fault Line and Nemaha Ridge geologic areas. A hearing has been set for June 15th in Wichita. Kansas Sierra Club plans to testify and persuade commissioners to incorporate seismic-danger criteria as part of the injection disposal well permitting process. For more information about this story, read here:

http://www.emporiagazette.com/news/article_01e761a4-745a-5a66-9b4b-2d67adce2a24.html

MAJOR STORIES ON KANSAS ENVIRONMENTAL ISSUES CONTINUED...

Sierra Club lawsuits:

Holcomb II Coal Plant: Sierra Club lost two major legal challenges recently. First, after a decade of back-and-forth, the Kansas Supreme Court decided to give the green light on the KS Health and Environment permit to allow construction of the Sunflowers Holcomb II Coal Plant. Earthjustice, representing the Sierra Club, challenged the permit in court in January 2016 arguing that the fast-tracked permit failed to comply with the EPA's greenhouse gas rules by failing to set gas emission limits. However, the court ruled that the Sierra Club had brought new arguments forward in the appeal that could not be considered in reversing the administrative action.

As written, the proposed 895mw Holcomb coal plant would emit 8,000,000 tons of greenhouse gases each year and amount to almost \$3 billion to build. According to the U.S. Energy Information Administration estimates of overnight capital costs, the \$2.8 billion cost for the plant could cover the capital costs of 1.5 GW of wind or 1.1 GW of utility scale solar.

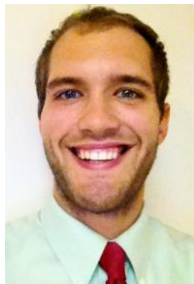
Despite the legal permission, the Holcomb II coal plant is likely not viable to build today. Elizabeth Katt Reinders, Senior Campaign Representative for Sierra Club's Beyond Coal Campaign, says that "Sunflower's \$2.8 billion dollar coal plant faces additional hurdles. The decade-old proposed plant no longer has a buyer lined up for its power output, the project may still require federal financing approvals, and perhaps most significantly, the energy market in Kansas and the surrounding area has changed dramatically in favor of abundant low-cost clean energy, putting the new plant proposal on shaky ground at best."

Injection Wells & Earthquake Lawsuit in Southern KS and Oklahoma: On April 4th, the United States District Court for the Western District of Oklahoma issued a decision to dismiss three oil and gas operator defendants, Chesapeake Energy, Devon Energy, and New Dominion, in a lawsuit brought forward by the Sierra Club. While the Sierra Club alleged that both the number and severity of earthquakes in the region had increased as a result of the defendants' "deep injection of liquid waste from oil and gas activities" and "the earthquakes induced by defendants' waste disposal activities present an imminent and substantial endangerment to the public health and environment." However, the court held that the Oklahoma Corporation Commission had taken appropriate steps forward, and that the federal court had no jurisdiction to impose action over the State agency. The case was *Sierra Club v. Chesapeake Operating, LLC*, Case No. CIV-134-F (W.D. Okla. April 4, 2017) and you can the order here: <https://www.documentcloud.org/documents/3535999-Sierra-Club-vs-Chesapeake-Order.html#document>

THANK YOU FOR READING THIS KS LEGISLATIVE NEWS UPDATE:

I appreciate all your help in engaging our legislators to consider our views and your financial support for me to continue our work in the Statehouse. Your membership in Sierra Club is making a difference. Please contact me if I can be of any help.

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The Sierra Club is the largest grassroots environmental organization dedicated to preserving, protecting, and enjoying our great outdoors. The Kansas Chapter represents our state's strongest grassroots voice on environmental matters for more than forty years.