

# 2015 Kansas Legislative Update

Capital City: Topeka

Primary Elections: August 2, 2016 (All House and Senate seats)

General Elections: November 1, 2016

Legislature convenes the second Monday in January for a 90-day session. Current 2015 session is in its 110<sup>th</sup> day.

**Governor:** Sam Brownback(R). First elected Nov. 2010. Four year term. Won re-election in 2014 (50% - 46%)

Limited to two terms. No term limits for legislators.

**Senate:** 32 R, 8 D

Term 4 years. Next Senate election in 2016

Senate President – Susan Wagle (R - Wichita), ALEC board member

Minority Leader – Anthony Hensley (D - Topeka)

Major Utility Committee – Senate Utilities Committee (11 members)

Chair – Rob Olson (R - Olathe)

**House:** 97 R and 28 D

Term 2 years

Speaker – Ray Merrick (R - Stilwell), ALEC board member

Minority Leader – Tom Burroughs (D – Kansas City).

Major Utility Committees – House Energy and Environment (19 members)

Chair – Dennis Hedke (R - Wichita)

- House Utilities and Telecommunications (19 members)

Chair – Joe Seiwert (R – Pretty Prairie)

**Regulatory Body:** Kansas Corporation Commission

Three-person commission appointed by the Governor. No more than two can be of the same party as the governor. Confirmed by the Senate.

Chairwoman Shari Feist-Albrecht appointed in 2014. The two most recent chairmen of the Senate Utilities committee are now commissioners.

Has transmission siting authority.

# 2015 Kansas Legislative Update

The Kansas legislative session is limited to 90 days. However, this year the session finally ended on Day 113, June 12. The reason for the overtime is the inability of the House and Senate to agree on a tax bill to fund the budget. Two years ago, large tax cuts were enacted. The economic growth projected by the cuts' proponents have not materialized yet, so a large budget deficit has resulted. Options on raising the sales tax, removing sales tax exemptions, taxing Medical Care Organizations, tax amnesty, etc. have been raised. However, the tax cut proponents refused to rollback the tax cuts given to LLCs. A bill passed both chambers with the minimum required by raising the state sales tax to 6.5%, reducing income tax exemptions, plus some other measures.

The following utility-related bills were enacted during the 2015 Session of the Kansas Legislature.

**SB 109 – Kansas Disaster Utilities Response Act** – Initiated by AT&T in an effort to streamline processes for out-of-state utility workers responding to disasters in Kansas. Bill similar to legislation being advocated in other states (model legislation). All utilities supported it. Out-of-state businesses conducting operations within the state for disaster or emergency-related work are not considered to have established a level of presence requiring registration, licensing, or filing or remitting state or local taxes. Similarly, out-of-state employees are not considered to have established residency in the state that would require the employee or the employee's employer to file and pay state income taxes. However, out-of-state businesses and employees are required to pay transaction taxes and fees on purchases for use or consumption in the state during the disaster response period, unless otherwise exempted.

Out-of-state businesses and employees that remain in the state after the disaster response period are subject to the state's normal standards for residency or doing business in the state and are responsible for tax requirements or obligations and registration, licensing, or filing requirements.

Upon request of the Kansas Department of Revenue (KDOR), the out-of-state business or its affiliate that enters the state is required to provide a written statement that the business is in the state for disaster or emergency-related purposes. An annual record of all declared state disasters and emergencies is to be maintained by the KDOR and the agency is authorized to Promulgate any necessary rules and regulations to implement the Act.

**House Sub for SB 91 – RPS repeal** - Replaces the 20% by 2020 renewable energy portfolio requirements with a 20% by 2020 voluntary renewable energy goal and reduces the lifetime property tax exemption to ten years for most new renewable resources after December 31, 2016. The bill was a compromise worked on between The Wind Coalition, Americans For Prosperity (AFP) and the Kansas Chamber of Commerce. All utilities will meet the 20% requirement by the end of 2016.

**HB 2048 – Scrap Metal Theft Reduction Act** - The bill would give the Attorney General jurisdiction and authority over the implementation, administration, and enforcement of the Act, including certain specified powers, and authorize the Attorney General to adopt rules and regulations to implement the Act. The bill would establish the Scrap Metal Theft Reduction Fee Fund to be administered by the Attorney General, which would be credited with all fees, charges, or penalties collected by the Attorney General under the Act. Expenditures from the

# 2015 Kansas Legislative Update

Fund would be used for the administration of the duties, functions, and operating expenses incurred under the Act.

By July 1, 2016, the Attorney General would be required to establish and maintain a database of scrap metal sales regulated elsewhere in the Act. Information from this database would be used for law enforcement and other purposes necessary to implement and enforce the Act. Information in the database would be confidential and released only to law enforcement for authorized uses. The information would not be a public record or subject to the Kansas Open Records Act.

On and after January 1, 2016, the bill would establish civil penalties of \$100 to \$5,000 for each violation of the Act by a scrap metal dealer, which could be imposed by the Attorney General and subject to appeal under the Kansas Judicial Review Act.

The bill would prohibit municipalities from enacting or enforcing any ordinance, resolution, or regulation relating to the implementation, administration, and enforcement of the Act, and declare any such ordinance, resolution, or regulation adopted prior to July 1, 2015, null and void. No action or prosecution based upon such ordinance, resolution, or regulation could be taken for any violation on or after July 1, 2014.

The bill would require the Attorney General to establish a system for the public to confirm scrap metal dealer registration certificates, but disclosure of information from the system would not constitute an endorsement of any scrap metal dealer. The bill would require applicants to provide additional information regarding their names, corporate structure, and location and hours. The list of prior convictions within ten years an applicant must disclose would be expanded to include all crimes involving property, poisoning a domestic animal, perjury, compounding a crime, obstructing legal process or official duty, falsely reporting a crime, interference with law enforcement, interference with judicial process, or any crime involving dishonesty or false statement, including similar convictions in other jurisdictions. The bill would allow the Attorney General to set registration fees of \$500 to \$1,500 per place of business, and the registration period would be lowered from ten years to one year, with renewal fees of not more than \$1,500.

Effective January 1, 2016, the list of disqualifications for registration would be expanded to include:

- A person who is not a U.S. citizen or legal permanent resident;
- A person who has entered into a diversion agreement for certain crimes; and
- A person who does not own the premises for which a license is sought, unless the person has a written lease for at least three-fourths of the period of the license.

In the Senate Committee on Judiciary, conferees appearing in support of the bill included Senator Petersen; the Sedgwick County District Attorney; the Director of the Kansas Bureau of Investigation (KBI); an Assistant Attorney General; representatives of Advantage Metals Recycling, Kansas Cable Telecommunications Association, Kansas Electric Cooperatives, and Kansas Farm Bureau; and a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers Association, and Kansas Sheriffs Association. The Senate Committee received written proponent testimony from representatives of the City of Topeka, the City of Wichita, Kansas Agribusiness Retailers Association, Kansas Association of Counties, Kansas

# 2015 Kansas Legislative Update

Association of Ethanol Processors, Kansas Cooperative Council, Kansas Grain and Feed Association, and the Kansas Judicial Council.

The bill would amend the statute governing the crime of criminal damage to property to create the crime of aggravated criminal damage to property, which would be defined as criminal damage to property, if the value or amount of damage exceeds \$5,000, committed with the intent to obtain regulated scrap metal or related items, where the crime is committed on any building, structure, residence, facility, site, place, property, vehicle, or infrastructure. The bill sets forth a number of specific locations or properties that would fall within these categories, and it provides definitions for “infrastructure” and “site.” The new crime would be a severity level 6, nonperson felony, and a special sentencing rule would be added to the sentencing grid statute imposing a sentence of presumptive imprisonment where an offender has a prior conviction for any nonperson felony. In amendments to the criminal damage to property statute and the authorized dispositions statute, the bill would set forth various costs to be included in determining the amount of damage to property, including cost of repair or replacement; loss of production, crops, and livestock; labor and material costs; and costs of equipment used to abate or repair the damage.

There was no neutral or opponent testimony.

**HB 2233 – Clean Power Plan** - Establishes the procedure for developing and submitting a state plan (Plan) to the EPA to comply with the proposed Clean Power Plan rule.

The bill would authorize the Secretary of Health and Environment to develop and submit a Plan to the EPA for compliance with the requirements of the proposed federal CPP rule. The Secretary would be authorized to implement the Plan through flexible regulatory mechanisms, including the averaging of emissions, emissions trading, or other alternative implementation measures that the Secretary determines to be in the interest of Kansas. The Secretary also could enter into voluntary agreements with utilities that operate fossil-fuel based electric generating units with Kansas to implement these carbon dioxide emission standards. The agreements could aggregate the carbon dioxide emissions levels from electric resources in the State, including coal, petroleum, natural gas, or renewable energy resources as defined in statute, that are owned, operated, or utilized by power purchase agreements by utilities for purposes of determining compliance with the carbon dioxide emission standards.

The bill would create the Clean Power Plan Implementation Study Committee (Committee), which would hold informational hearings and receive updates from the Kansas Department of Health and Environment (KDHE), KCC, and the Attorney General about the implications of the adoption of a Plan for the CPP. The Committee would be made up of 11 voting members, including:

- Five members from the Senate Committee on Utilities, including:
  - Chairperson;
  - Vice-chairperson;
  - Ranking Minority Member; and
  - Two others appointed by the President of the Senate.
- Six members from the House Committee on Energy and Environment, including:
  - Chairperson;
  - Vice-chairperson;

# 2015 Kansas Legislative Update

- Ranking Minority Member; and
- Three others appointed by the Speaker of the House.

Members would be appointed on or before July 1, 2015, for a term ending on June 30, 2017, when the Committee would sunset.

The Secretary would be required to submit to the Committee:

- A plan to investigate, review, and develop a Plan no later than November 1, 2015;
- Information on any final rule adopted by the EPA regarding the CPP no later than February 1, 2016; and
- Any information requested by the Chairperson of the Committee.

The KCC would be required to submit to the Committee:

- Information regarding each utility's re-dispatch options along with the cost of each option;
- The lowest possible cost re-dispatch options on a state-wide basis; and
- The impact of each re-dispatch option on the reliability of Kansas' integrated electric systems.

If a proposed Plan is disapproved by the Committee, the Secretary would be required to resubmit a revised Plan to the Committee.

Prior to submitting any Plan to the EPA, the Secretary would be required to:

- Submit the Plan as proposed rules and regulations;
- Request a review of the proposed Plan by the Office of the Attorney General, who could certify to the Secretary that the Plan will not hinder, undermine, or harm the State's position in any current or pending litigation relating to the federal CPP rule; and
- Not submit a Plan if the Attorney General review indicates the Plan would adversely impact the State's legal position in any current or pending litigation relating to the federal CPP rule.

Submission of the Plan to the EPA would be dependent upon the final adoption of the federal CPP rule. If the federal emission guidelines are not adopted, or are adopted and subsequently suspended or vacated in whole or part, the Secretary would be prohibited from carrying out the Plan. The Secretary would be responsible for submitting a Plan to the EPA in a timely manner. The Secretary would be required to prepare and submit a Plan to the EPA four calendar days prior to the federal submission deadline established by the EPA, if the Secretary has previously submitted the Plan for review by the Committee. The Secretary could submit any proposed Plan to the EPA that has been submitted to the Committee and has not been disapproved by the Committee within 30 days of the Committee receiving the Plan.

The main opponents during the bill negotiations were Americans For Prosperity and Koch Industries.

# 2015 Kansas Legislative Update

**Tax Policy** - Due to the tax cuts enacted the last couple of years, the state is in the hole about \$800M. A large piece of the tax policy was to exempt owners of LLCs from state income tax. The governor has advocated strongly to move towards sales taxes and away from income tax as the state's revenue source. With a veto threat imminent, legislators have been looking at existing sales tax exemptions. Currently residential electric and gas customers do not pay a sales tax on their bills. If this exemption was removed, they would pay an additional 6.15% (and possibly higher). Our president, along with every utility in the state sent letters to legislators urging them to not remove that exemption.

**Rate cases** – Both KCP&L and Westar filed for rate increases this year. By law, the Kansas Corporation Commission has 240 days to decide on the case. KCP&L should get a decision late August, early September. Westar should get their response late October, early November. Much of the increase is due to emission control equipment installed on a two unit coal plant co-owned by both utilities. Both companies are concerned about the potential for a significantly lower ROE, based on an Atmos Energy case from last year that received a 9.1% ROE.