

# KLPG Capitol Highlights

## 2018 Legislature, Final Week

### Inside this issue:

Final Tax Bill	1
DCF Regulations	2
Fracking Logistics	2
Revenue & Rating Increase	3
Real ID Access	3



### FINAL TAX BILL

In an unanticipated development on the final day of the 2018 legislative session the Kansas House of Representatives failed to secure the minimum 63 votes necessary to pass the major tax bill the Senate had approved with a 21-19 vote earlier in the day on May 4th. The legislation would have afforded individuals the option of itemizing deductions on their state returns and delivered big tax breaks to business in wake of a state government revenue windfall tied to changes in federal tax law. The 59 House supporters of the tax bill - which was drafted by negotiators from the House and Senate - contended failure to approve it equated to picking the pockets of Kansas taxpayers who expected to benefit from federal tax reform while the 59 members who voted against the bill expressed wariness of depleting the state's cash reserves with so many state budget needs still unmet.

### SHORTAGE FIX

Governor Colyer has signed legislation fixing a flaw in the new public-school funding measure that inadvertently shorted schools \$80 million. The bill now ensures that the state phases in the full \$534 million

increase in spending over five years as intended. Attorney General Derek Schmidt can now file a written defense of the law ahead of the May 22nd Supreme Court hearing to determine whether the proposed increase is constitutionally adequate.

### HANDLING HARASSMENT CLAIMS

Kansas legislators are moving to ban taxpayer-funded settlements of sexual harassment claims against state officials and block non-disclosure agreements in harassment cases. House and Senate negotiators agreed to include a provision in the budget legislation that would prohibit any state agency from using State funds to settle sexual harassment claims against elected officials or state employees. They also agreed to include a ban on using state funds to pursue non-disclosure agreements in harassment cases. As part of the budget, the anti-harassment provisions would expire in July 2019, but lawmakers could consider a permanent law next year. A former top legislative aide went public last fall with allegations that a lawmaker had asked her for sex and that female college interns had regularly served as designated drivers for drunken lawmakers. Prior to that the Kansas Legislature claims it has no record of any sexual misconduct complaints against lawmakers since 2008. Leaders updated the Legislature's anti-harassment policy in February. Their action came days after Republican Gov. Jeff Colyer issued an executive order mandating annual sexual harassment training for roughly 20,000 executive branch employees under his control.

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## **FIREARM BILL NOT VOTED ON**

Lobbyists with the Kansas State Rifle Association worked hard but failed before the end of session to persuade Senate Majority Leader Jim Denning, to schedule a vote on HB 2042, a bill that would have required Kansas to recognize out-of-state licenses and permits for concealed handguns and lower the concealed-carry permit age in Kansas from 21 to 18. House and Senate Democrats said votes didn't exist to pass the bill in the face of elevated anti-gun violence protests and Kansas lawmakers felt the need to be sensitive to the on-going national discussion about whether limits ought to be placed on firearm sales and possession despite constitutional protections of the Second Amendment. However, Governor Colyer did sign HB 2145 to make it a criminal offense in Kansas to possess a firearm within 5 years of a conviction for domestic violence offenses.

## **ACCOUNTABILITY FOR DCF**

Senators gave unanimous approval to House Substitute for SB 336. Under the bill, in cases involving a child's death from abuse or neglect, DCF would be required, upon request, to release within seven days information about the age and sex of the child, the date of the

fatality, a summary of any previous reports the agency had received about the child, and a list of any services the agency had recommended. Similar provisions would apply to children who die while in custody of the state foster care system, regardless of the cause of death. The same bill also contains language that had been considered in separate legislation giving attorneys and heirs of people who are killed by law enforcement officers access to audio and video recordings of those incidents that are captured on police body or dashboard cameras. Under current law, anyone who is an heir-at-law to a person killed in such an incident may request to view such video. But the law does not specify how long a law enforcement agency can wait before honoring such a request. The bill would require disclosure to those heirs within 20 days after a request is made. It would also add an attorney for the heir-at-law to the list of people authorized to make the request. The bill also requires agencies to notify people if their personal information is shared, and to provide a free year of credit monitoring. The bill, which the House previously passed without opposition, now goes to Governor Colyer's desk.

## **LIQUOR LAWS TO CHANGE**

A bill to allow self-serve beer taps and longer hours for serving liquor passed in the Kansas House on a 94-28 vote and the Senate approved it on a 34-4 vote. It now awaits Governor Colyer's signature to be law. Kansas is among just a few states that still does not allow self-serve beer taps in restaurants and bars. The move to legalize them was spurred by the prospect of a new restaurant in downtown Topeka, blocks from the Statehouse. The bill also will allow establishments licensed to sell alcohol to serve

customers as early as 6 a.m. rather than the current 9 a.m. restriction.

## **FRACKING MISTAKES FOUND**

A citizen inquiry last November prompted the Kansas Corporation Commission to order an internal investigation of more than 4,000 saltwater injection oil well permits approved since October 2008, the year the KCC changed the public comment period to be cited in published public notices for proposed injection wells from 15 to 30 days. The KCC found 1,007 permits for 2,111 injection wells, including 60 in Douglas County, were approved with public notices that stated the public comment period was only 15 days, instead of the required 30 days. The investigation also found that the erroneous public notices were provided to the KCC staff, but the errors were not detected as part of the review process. The investigation order also created a jurisdictional docket, allowing well operators and others with standing to file briefs about what should be done once it was known how many injection permits were approved with improper public notices. The Douglas County Commission is among the parties responding, joining with the Sierra Club and several Douglas County residents in engaging attorney Robert Eye to represent them before the KCC. Eye noted the county joined the action with the goal of making the KCC follow its own rules and procedures and in his submitted brief he argues that all permits in question should be revoked because the KCC failed to follow its own established procedures to protect the due process rights of Kansas citizens. Briefs from the attorneys representing well operators concede the public comment deadline was mistaken but argue what is characterized as a clerical error was harmless and should not void issued permits or make them subject to further review. Moreover, oil industry

attorneys argue that case law has found the misstatement of the public comment period in a public notice is a "palpable irregularity but it cannot be regarded as a fatal defect." KCC staff will make its recommendations of how to handle the improper notification issue to the three KCC commissioners in early June. Commissioners will have until late June to decide what to do. It has been suggested that the KCC staff's approval of so many wrongfully noticed permits over such a long period of time may point to a completely broken process that may require the state legislature to form a task force to see what can be done to fix it.

## HUD RENT INCREASES

U.S. Department of Housing and Urban Development Secretary Ben Carson announced measures that would increase rents for people living in public housing or receiving Section 8 housing subsidies. The new policies include raising minimum rent from \$50 to \$150 and increasing from 30% to 35% the amount of adjusted gross income that a family pays. The proposal also would eliminate deductions for certain medical expenses and child-care costs that currently are subtracted from income. These changes will adversely affect Kansas individuals & families with an average income of less than \$15K annually. To seemingly counter balance a recent Presidential executive order requiring government agencies to toughen work requirements for low-income Americans who receive Medicaid, public housing and other welfare benefits, HUD has changed the requirement for income certification from once a year to once every three years to encourage residents who are

under-employed or unemployed to seek better paying jobs, knowing that their rent wouldn't be adversely affected for three years.

## KANSAS SCORE IMPROVES

In the report issued May 4th S&P Global Ratings - a national credit rating agency - has upgraded Kansas from a negative to stable "AA-" rating, attributing the revised outlook to increased revenue. Also revised was the outlook on the state's appropriation-secured debt to stable from negative with an affirmed "A+" rating on that debt. The report noted that Kansas' economy is showing weaker growth than the rest of the nation with a moderate concentration in the manufacturing sector, although the state's unemployment is below national average.

## MIDWEST PRESSURE WAVE

Geologists are blaming a sequence of 13 small earthquakes that originated in Kansas in April on an underground pressure wave that is slowly creeping northward into the state from the Oklahoma border region. On the Oklahoma side of the border, the U.S. Geological Survey recorded 57 quakes for April, many of which were felt in southern Kansas. Quakes in the two states have been tied to underground injections of wastewater from oil and gas drilling known as fracking.

## REAL ID ACCESS

The Kansas Department of Revenue has created a new web link allowing Kansans to determine whether they have the required documents already on file to obtain a Real ID credential before they leave home. The interactive portal allows Kansas residents to

search by inputting their driver's license number, name and date of birth. Real ID is a federal law enhancing security standards for state issued identification. Since its launch in Kansas last August, the number of Kansans obtaining the federally compliant credential has steadily increased. To date, nearly 50 percent of state identification cards issued per month are Real ID compliant. To become Real ID compliant, Kansas residents must bring proof of social security, such as an unlaminated social security card, or a paystub or W-2 with the full social security number displayed, into their local driver's license office, as well as an original birth certificate or valid U.S. passport. Individuals can verify if they have the required Real ID documents already on file by going to:

[www.kdor.ks.gov/Apps/DLStatus/secure/default.aspx](http://www.kdor.ks.gov/Apps/DLStatus/secure/default.aspx)

## REVENUES INCREASE

Kansas Department of Revenue Secretary, Sam Williams, announced on May 1st that the state treasury received \$66 million more than expected in April. The surge in revenue reflects imposition of higher state income tax rates, dividend to the state from federal tax reform and improvement in some areas of the Kansas economy. Overall state tax receipts for April were \$293 million above last year with sales tax receipts alone accounting for nearly \$10 million of that total. It was the 11th consecutive month that revenues have exceeded expectations — the longest streak of monthly surpluses since at least 1989

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