Editor's note: We apologize for lateness of this issue; KRC ran into technical difficulties. Also, Policy Watch will pause while the Legislature takes its recess. We will be back for the veto session in early May. Look for another issue around April 30!

LEGISLATIVE COORDINATING COUNCIL (LCC) POWER PLAY

By Paul Johnson

Kansas legislative leaders - with their super-majorities in tow - are trying to build a new political power kingdom. Might always makes right, so the long held constitutional power division between co-equal branches of government – executive, legislative & judicial – apparently does not count.

The vehicle for construction is the Legislative Coordinating Council (LCC) that is comprised of eight legislators – three Republicans from the House, three Republicans from the Senate and two Democrats from the House and the Senate. According to the new kingdom’s thinking, the LCC - with the President of the Senate as chair and the Speaker of the House vice-chair - should have controlling authority over public health mandates, State budget administration, education policy and judicial topics. It takes only 5 votes to wield the power.

The President of the Senate was elected to his seat with 27,000 votes while the Speaker of the House garnered 12,000. Officials elected Statewide from the Governor to the Secretary of State should be subservient to this.

This pursuit of power started with controlling the Governor’s emergency orders to counteract public health challenges. Now the LCC will assume that power. Any future use of federal pandemic assistance must gain the LCC’s stamp of approval. Election legislation is proposed to limit the Governor’s authority to modify electoral procedures in pandemics or the Secretary of State to work with any judicial orders involving electoral activities. While the 1970’s antiquated unemployment computer was not upgraded in 2011 under Governor Brownback, the proposed upgrades must now be on a fast track timeline to satisfy the LCC. Policies supporting private schools with public funds are now leveraged into essential K-12 public education funding to hold public schools hostage to these constitutionally questionable changes with the blessing of the LCC.

Next year we will see a state constitutional amendment to allow the Legislature veto authority control over rules and regulations promulgated by State agencies to implement legislation. The constitutional firewall between the Legislature and the Executive branch will be shredded. With one party control desired, the LCC will direct redistricting maps in 2022 for legislative districts that assure even greater political power.

BUDGETARY SCRAMBLE
As of this writing on Friday morning, it is impossible to predict a final outcome for the State Budget and public school funding. April 9 is the final day of the regular session but it could extend into the early morning hours of Saturday. One option may be to pass the State Budget without public education funding and hold that battle for the veto session in early May.

The House did pass a version of a combined public education funding/private school subsidies bill - but just 64 to 59. The Senate deadlocked on this education bill and could not muster the required 21 votes. That attempt for the 21 votes will come late Friday, and if passed, sets the stage for an inevitable veto from the Governor. So the veto session in May will lengthen.

In terms of the rest of the State budget, austerity is the operative word after the Governor took $345 million in allotments last June and demanded that State agencies propose budgets for 2022 that had 10% reductions. A very few of these reductions were restored by the Legislature but key items such as state employee salary increases or adding more judicial staff have been punted to the veto session. There is still great uncertainty over the permissible use of the federal pandemic funds.

The tax cut bill sent to the Governor has turned out to be much more costly given whether any of the business federal funds can be taxed at the State level? Come mid-April, the Consensus Revenue Estimating Group will meet to establish new revenue estimates for the remainder of 2021 and 2022. These estimates have to be used to arrive at a final 2022 Kansas budget.

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**KANSAS VOTING LAW CHANGES GO TO GOVERNOR**

Although the Kansas Secretary of State swore to the legitimacy of the 2020 election, and both chambers are controlled by one party and Trump was the clear winner in the 2020 presidential race, Kansas will not be left out of the race to defend the integrity of elections—no matter how unwarranted. Despite critics who say the changes to state election laws will make it more difficult to vote and there was no evidence of voter fraud, voting law changes were sent to the Governor’s desk where a possible veto awaits.

According to the League of Women Voters of Kansas, the Senate and House passed voter suppression bills HB 2183 and HB 2332 April 8, 2021, and they are headed to the Governor's desk. These bills include:

- Making it a crime for a person for return more than ten mail-in ballots for other voters. This creates a new crime without any provision for how it is tracked.
- Making it a misdemeanor for a candidate to assist any voter beyond their immediate family. This would include Precinct Committeemen/women. Voters should be able to choose who they want to help with their ballots and this could impact the ability for elderly or handicapped in group homes.
- Removing the Secretary of State's, or any other elected official or court's, ability to allow additional time for ballots to return in case of emergency.
- Making it a felony for election offices to receive monies from any source beyond appropriations or fees. This could have broader effects on under-funded county election offices.
- Imposing strict requirements on mailing applications for advance ballots and who can send out applications.

These bills also include issues which are already crimes:

- Changing a vote: K.S.A. 25-2423
- Signature Matching on Advanced Ballots: K.S.A. 25-1122(e)(1)
- False Representation of an Election Official: K.S.A. 21-5917
- Candidates not handling ballots KSA 25-2804(b)
- Alteration of Advance Mail Ballot Postmark: K.S.A. 25-2420

ENERGY NOTES

SOLAR CUSTOMERS TO GET REFUNDS
(By the Climate and Energy Project)

On April 8, the Kansas Corporation Commission (KCC) unanimously voted to require Evergy to refund solar customers for demand charges, stating in the order “upon further review of the legal authority cited by the Solar Group, the Commission is persuaded DG (distributed generation) customers are entitled to refunds.”

In February, the KCC struck down Evergy’s proposed grid access fee and $35 minimum bill, but did not grant our refund request. CEP, Vote Solar and Sierra Club asked the Commission in March to reconsider their initial refusal to issue refunds and in today’s order, they agreed. Evergy will be required to give refunds to customers who were placed on the Distributed Generation Residential Standard (RSDG) rate based on what they would have paid on the Residential Standard (RS) rate. Generally, utilities have 30 days to comply with a Commission order. This is a huge win for solar advocates across Kansas.

In her remarks, Commissioner Susan Duffy said, “I do hope the parties take this time to look at more modern ways to grapple with this issue”. Chairman French added, “I think we need to look at new ways to address this issue - other states have done Value of Solar studies, which does not presuppose an outcome. We need a modern, holistic approach and we should look at this from a different angle.”

It was clear from the order that the Commission wants stakeholders to come together and determine how to move forward. Additionally, solar advocates requested that solar customers be allowed to choose any Residential Standard (RS) rate, Evergy agreed to change their tariff to allow solar users to sign up for any rate except the Time of Use (TOU) pilot, stating complexity with that rate and net-metering. The Commission agreed with their offer.

In response to the Electric Companies’ Petition for Reconsideration and Clarification, the Commission provided clarification that only an added service - such as exporting - will justify an added fee such as the proposed grid access charge, making it more difficult for Evergy to add discriminatory charges to solar customers going forward.

WIND FARM VALUATION AND TAX POLICY

This policy is not easy to explain and has dramatically changed over the last twenty-five years. In 1999, State law established a lifetime property tax exemption for renewable energy production equipment. This was before the first wind farm in Gray County in 2002. Wind farms did offer ‘payments in lieu of taxes – PILOT’s’ - from the start but they differed among various wind farm developers. In 2015, a new state law changed this arrangement for new wind farms providing a ten-year exemption as is the case for other energy production facilities.

Today there is not one ‘clearinghouse of information’ on the PILOT payments as well as property taxes paid to counties. The testimony provided by the Kansas Department of Revenue – Division of Property Valuation on January 28, 2021 is incomplete in not listing all the wind farms now in Kansas or the exact amount of PILOT’s being paid to the 30 counties but does list valuation and assessed value of most wind farms in Kansas.

The 1999 law was in response to the declining oil and natural gas reserves in Kansas and a path for a new energy future. The property tax exemption for renewable energy generation was designed for new, private investment. This law was not requested by the wind industry at that point. Willing landowners and communities
along with the world-class wind resource and access to transmission propelled the explosion of wind development starting in 2006 and on to today.

In 2020, there were 41 wind farms with 3,622 turbines and an appraised value of $1.582 Billion (and an assessed value of $395 million). Kansas is number 2 in the country for wind energy as a share of total electricity generation. 41.6% of all Kansas electricity was wind generated in 2020. There are $12 Billion in capital investments in wind projects with 12,000 direct and indirect jobs created by wind industry. More than $36 million is made in land leases to families annually and Kansas ranks 4th in the nation for installed wind capacity.

The 2015 law moved the ‘life-of-the-project’ exemption to a 10-year exemption for any renewable energy project that came on line after January 1, 2017. This tax change also classified wind farms as commercial property rather than as utility property which shifted the property value assessment from the State to the counties. It is important to note that wind energy has donation agreements or PILOT’s in lieu of taxes with host counties while solar farms, landfill gas or hydropower does not. This law excluded any electric generation facility utilizing renewable energy technologies from the definition of “commercial and industrial equipment” that was exempted from property tax in 2006. This law also excluded wind or solar farms from the public utility definition. They are now valued by the county appraiser and not the State.

The Kansas Department of Revenue (KDOR) testimony lists the appraised value of each wind farm, the assessed value and the estimated tax. While in 2020 the estimated tax was $56.2 million, KDOR had PILOT information on only 5 wind farms but KDOR was never instructed to be the ‘clearinghouse’ data source for these PILOT payments to counties. These PILOT’s are paid directly to the county and it is the county making the decision on the funds and whether they are shared with other entities such as school districts. This varies between wind farm host counties. This is still a work in progress to collect complete PILOT information and property taxes paid.

http://www.kslegislature.org/li/b2021_22/committees/ctte_s_assess_tax_1/misc_documents/download_testimony/ctte_s_assess_tax_1_20210128_01_testimony.html

http://www.kslegislature.org/li/b2021_22/committees/ctte_s_assess_tax_1/misc_documents/download_testimony/ctte_s_assess_tax_1_20210128_02_testimony.html

2020 Annual Economic Impacts of Kansas Wind Energy REport

The Legislative Policy Watch Update is a project of the Kansas Rural Center. KRC promotes the health of the land and its people through research, education and advocacy that advance an ecologically sound, economically viable, and socially just agriculture.

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