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(See items on Immigration, KEPC and Action Needed at the end of this report)

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## **2013 LEAGUE OF WOMEN VOTERS OF KANSAS E-REPORT #3**

January 25, 2013 – Paul Johnson

### **CONSTITUTIONAL BATTLE OVER SELECTING JUDGES**

The battle is on to change the selection of Kansas Supreme Court and Appeals Court justices. The Kansas House Judiciary committee and the Kansas Senate Judiciary committee have voted out nearly identical concurrent resolutions (SCR 1601/HCR 5002) to have the Governor choose a judicial appointment and the Kansas Senate to confirm that appointment. This procedure will apply to both the Kansas Supreme Court and the Kansas Court of Appeals. It will take 84 of 125 votes in the Kansas House and 27 of 40 Kansas' Senators to place this constitutional change before the voters.

One difference between the House and Senate is that the House would place this constitutional amendment on the November 2014 ballot while the Senate would have the vote on the August 2014 primary ballot. The Senate has a trailer bill – SB 8 – that establishes a new commission on judicial qualifications. Once the Governor selects a judicial nominee, this new commission would research the qualifications of this nominee and file a report with Senate within 30 days after the nomination. The Senate has 60 days after the Governor's nomination to vote on this nominee. Right now – the schedule is for the Senate to have the floor debate on this constitutional amendment next Wednesday – January 30 starting at 2:30 p.m. This floor debate will be live on the web at [www.kslegislature.org](http://www.kslegislature.org).

The Senate vote will be the first real test of political support for this fundamental change. The Senate vote may be easier than the House vote. If constitutional change is not possible, the House has a bill – HB 2019 – that would change the selection of the Court of Appeals by statute since the Court of Appeals is not in the State Constitution. This would be accomplished by simple majority votes in the House and Senate along with the signature of the Governor. No public vote would be involved. While it may not be possible to change the selection process of the Kansas Supreme Court judicial nominations, there may be the political muscle to change the

Supreme Court Nominating Commission so that lawyers are not a majority on this 9 member panel.

## **WATER LEGISLATION**

The drought is focusing the debate on water supplies for 2013 and beyond. At the request of Representative Tom Sloan, the Kansas House Agriculture and Natural Resources committee has introduced House Bill 2031 that would change the funding of the State Water Plan Fund from fees and transfers to sales tax funding. The Kansas Department of Agriculture has HB 2051 that expands local enhanced management areas, fine tunes multi-year flex accounts and develops limited transfer permitting of existing water rights to accelerate potential economic activity such as horizontal fracking for oil. Senate Bill 32 would reinstate the Local Environmental Protection Program that assists counties through grants to test private water wells and septic systems. Bids are now being taken by the Kansas Water Office to assess the cost of dredging some part of John Redmond Reservoir.

The State Water Plan Fund expenditures continue to decline from \$15.2 million in 2012 to a projected expenditure of only \$12.5 million in 2015. For many years, \$6 million was transferred from the State General Fund to the State Water Plan Fund but that was ended the last four years. \$2 million has been transferred from 'lottery receipts' to the State Water Plan Fund but that transfer stops for 2014. HB 2031 would eliminate certain chemical and fertilizer fees while moving the funding of the State Water Plan to a 'one tenth of one cent' sales tax. This could generate \$45 million. There are many technical changes to be researched. The bill right now assumes that the state sales tax will decline to 5.7% from the present 6.3% and that .1% will be added. The Governor built a budget on a 6.3% state sales tax so would it be possible to add that .1%. Given how the Kansas Legislature has reneged on past funding promises to the State Water Plan, the question is "how soon would this sales tax be taken for other needs?" At least with fees on fertilizer, pesticides, sand dredging and municipal water use, it is politically easier to hold on to those dedicated funding sources.

HB 2051 from the Kansas Department of Agriculture wants to expand voluntary local enhanced management areas (LEMA's) by allowing any county or group of counties to propose a LEMA and initiate the hearing process. LEMA's are locally-initiated, locally-driven voluntary water conservation plans established in 2012 but limited to only groundwater management districts. The Multi-Year Flex Account (MYFA) program, as revised by the 2012 Kansas Legislature, provides water rights holders a voluntary option to develop a five-year planning tool to strategically manage their water. This legislation would further enhance the ability of the water rights holders to carry unused quantities of a MYFA over and roll into the next MYFA. Limited Transfer Permitting would allow a limited transfer of an existing water right to allow a short-term new use with a corresponding reduction in the base water right. These limited transfers could be used for horizontally fracked oil exploration, construction or for municipal use. Kansas has issued 270 'fracking permits' with 90 of these wells now producing.

## LEGISLATIVE NOTES

To this point in the session, there have been 79 bills introduced into the Kansas House and 104 bills introduced into the Kansas Senate. There have also been several concurrent resolutions such as the ones on judicial selection. I will highlight a few of these bills that may get more attention. You can read the titles of these bills on this website and click on a particular bill to read it and see the committee assignment.

[http://www.kslegislature.org/li/b2013\\_14/measures/bills/](http://www.kslegislature.org/li/b2013_14/measures/bills/)

**SCR 1602** will set constitutional term limits on legislators. This limits legislators to 8 years of service starting in 2015. This measure is set for hearings next week in Senate Ethics, Elections and Local Government.

**SB 48** requires employers to use the federal 'E-Verify' system to check the citizenship status of a potential employee. This is probably the first bill of many from the Secretary of State dealing with undocumented immigrants. It is assigned to Senate Commerce.

**SB 63** is an elections bill from the Secretary of State dealing with strengthening voting crime penalties and allowing the Secretary of State or the Attorney General to prosecute election violations. Now only county or district attorneys can prosecute.

**SB 78** is the Governor's Tax plan that keeps the state sales tax at 6.3% and eliminates both the mortgage interest deduction and the deduction from taxable income for property taxes paid on homes. This last item on property tax deductions was not highlighted in the Governor's Budget and raises \$68.5 million in 2014.

**HB 2047** would force cities to hold an election to spend any extra revenues gained by higher property tax valuations. So – the mill levy is the same or lower but more revenue comes in as housing values continue to improve so a vote would be required.

**HB 2054** would strengthen regulations on sexually oriented businesses such as strip clubs. Patterned on a recent Missouri law, regulations will limit alcohol, operating hours and distance between dancer and patron. Last year the Senate stopped this bill.

**HB 2072** and **HB 2074** deal with solid waste collections and disposal.

The 2013 Kansas Legislative regular session will end on April 6 – the 74<sup>th</sup> day of the session. The veto session will begin on May 7 with a limit of 6 days if needed.

## TAX BATTLES

The tax issues will have to be settled first before final decisions can be made on state budgets. A number of legislators have promised they will not vote to raise any new revenues. In the Governor's two year budget, he has proposed keeping the state sales tax at 6.3% and eliminating the mortgage interest deduction along with home property tax deductions. In two years these changes raise \$853 million to balance the budget and provide a 7.5% ending balance of \$455 million. The Governor does lower the individual income tax brackets reducing revenues to

the State by \$166 million over two years. But in essence, revenues are going up by \$687 million to pay for the 'mega-income tax' bill signed by the Governor in 2012.

The realtors have started their campaign with full page ads in 11 newspapers statewide to stop the elimination of the mortgage interest deduction. To balance the 2013 budget and build a strong ending balance, \$200 million was taken from the State Highway Fund but promises were made this was the last time. In the proposed 2014/2015 budget, \$96 million is annually taken from the State Highway Fund to fund transportation costs in public education. The logic is that the Kansas Department of Transportation can assist with organizing more efficient bus routes and buying fuels in bulk for the school districts. Highway construction bids are coming in at much lower cost - \$1.7 Billion in projects came in at \$1.1 Billion in actual bids – so the State Highway Fund may be looked to for more transfers to other programs. If the Governor's proposed revenue increases are defeated, the ending balances will probably be lowered from \$455 million and the highway plan funded with more bonds and less state taxes.

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## Immigration Bills

### From the Wichita Eagle by Dion Lefler

*Kansas Secretary of State Kris Kobach said he expects four main immigration-law measures to emerge in the upcoming legislative session:*

- A bill to require state and local governments, and possibly private businesses, to vet employees through an electronic database of legal workers.
- A bill similar to what Kobach wrote for Arizona, requiring local law enforcement officers to check immigration status of people they come in contact with, if they suspect the person is here illegally.
- A bill that would prohibit any public benefits going to anyone here illegally. *[This is already part of the 1996 federal Welfare Reform Act.]*
- A bill to repeal the 2004 decision by the Legislature and Democratic Gov. Kathleen Sebelius to allow illegal students who graduate from Kansas high schools and have lived at least three years in the state to qualify to pay the lower in-state tuition at Kansas colleges and universities.

Those ideas have previously passed the conservative House but failed in the Senate, where until this year a more moderate brand of Republicanism held sway, Kobach said.

With the moderates swept out of power in the 2012 GOP primaries, "The logjam will break in 2013," Kobach predicted. "One or more of these bills will pass both houses."

And it's high time that happened, he said.

"You've seen Kansas sort of frozen in place on immigration issues," Kobach said. "States around us all have taken steps to discourage illegal immigration."

Meanwhile, Kansas encouraged it with the tuition bill, he said.

The result, he said, is “a growing realization (by illegal immigrants) that Kansas is the sanctuary state of the Midwest.”

Get illegal immigrants out of Kansas and “You would see jobs open up for the tens of thousands of Kansans who are now receiving unemployment benefits.”

Outgoing House Speaker, Mike O’Neal, now head of the Kansas Chamber of Commerce, said he felt would damage the economy, particularly in the agriculture-dominated western part of the state. The Chamber is part of a coalition of business groups opposed to forcing companies to shed some of their hardest-working employees because the system doesn’t provide a realistic path to legalize them.

“It turns good people into ones who will commit fraud to get a job and keep a job,” he said.

O’Neal said tough immigration laws would have a “chilling effect on our pro-jobs agenda,” a big part of which is to try to grow population and revitalize western Kansas.

Read more here: <http://www.kansas.com/2013/01/04/2624888/bills-to-crack-down-on-illegal.html#storylink=cpy>

The U.S. Supreme Court handed down its decision on June 25, 2012, in *Arizona v. United States*. At issue was whether federal law preempts the following provisions of Arizona’s omnibus immigration law (SB 1070), enacted in 2010:

- Section 2(B), requiring law enforcement to determine immigration status during a lawful stop. The Supreme Court upheld this provision. This provision authorized Arizona police to check immigration status of people they have stopped or arrested. The Court decided it was too early to tell whether this provision was valid or invalid, and that the ruling on its preemption status would ultimately depend on how it is applied.
- Section 3, creating a state crime for an alien’s failure to apply for or carry federally issued alien registration papers. The Court held this provision was preempted by federal law.
- Section 5(c), making it unlawful for an unauthorized alien to solicit, apply for, or perform work. The Court held this provision was preempted for interfering with the federal regulatory system.
- Section 6, authorizing the warrantless arrest of a person where there is probable cause to believe the person to have committed a public offense that makes the person removable from the United States. The Court held this provision was preempted because such determinations are reserved for the federal government.

**The U.S. Supreme Court ruled that immigration law is the prerogative of Congress and the executive branch, and states may not adopt laws or enforcement policies that conflict with federal law.**

<http://skyways.lib.ks.us/ksleg/KLRD/Publications/2013Briefs/2013/O-1-ImmigrationIssues.pdf>

## **KEPC UPDATE: Income tax, property tax, school efficiency**

### **Income tax surcharge?**

Several people at a Kansas Association of Counties program Thursday afternoon in Topeka heard the same thing. House Majority Leader Jean Vickrey (R-Louisburg) was discussing the possibility that Governor Brownback's proposals for raising revenue might not be successful.

Almost in passing, he said something about a 2-year income tax surcharge as a possible solution. He was not specific beyond that.

### **Brownback would eliminate home property tax deduction**

Speaking of surprises, legislators from both political parties were taken aback at a proposal to fill the big budget hole caused by last year's individual income tax cut which included eliminating the tax deduction for property taxes paid on homes.

It came as Budget Director Steve Anderson unveiled Governor Sam Brownback's plan for even more income tax cuts.

Eliminating the property tax deduction appeared to be new, coming a week after the Governor revealed his budget. It would raise \$68 million. Brownback had previously asked the lawmakers to eliminate the interest on home mortgages, which brings in \$162 million.

The Administration says the property tax deduction was always part of the Governor's plan and that people just didn't notice it. Brownback did not mention the deduction in his state of the state message.

The explanation has many at the Statehouse scratching their heads. In a lengthy January 16 appearance before the Senate Ways and Means Committee to explain the Governor's budget and tax plan, Anderson never mentioned the property tax deduction going away.

Here's the officially requested legislation by the administration, which includes a sort of trigger mechanism to lower income taxes in the future. Hearings are expected to begin next week on the proposal in the Senate Assessment and Taxation Committee.

Retain the state sales and use tax rate at 6.3% and distribute same amount of revenue from state sales and use tax receipts to the State Highway Fund as under current law;

Decrease the individual income tax lower bracket rate from 3.0% to 2.5% in Tax Year 2014 and from 2.5% to 1.9% in Tax Year 2016; decrease individual income tax upper bracket rate from 4.9% to 3.5% in Tax Year 2017.

Exclude from the Kansas itemized deduction residential interest and real property taxes effective Tax Year 2013; and

Provide that commencing in Fiscal Year 2015, state general fund growth from tax receipts in excess of 4% will be applied to reduce individual income tax rates in future tax years.

## School Efficiency Task Force Report released

This week in Topeka, the long awaited report by the Governor's School Efficiency Task Force was released. After three meetings to study K-12 education spending and "develop guidelines on how to get more funding into classrooms," these are the 12 recommendations in a nutshell.

These are summarized, and are mostly the exact language. We have changed some wording for clarity.

1. Establish a statutorily-required 2-year school funding cycle.
2. Place a priority emphasis on the timely transfer of state payments to school districts in June and January.
3. Conduct a study to reevaluate the state's open-ended obligation to equalization of school construction bond issues to provide the state a better visibility from a budgeting perspective.
4. Conduct a study on implementing a state data management and accounting system that is integrated with K-12 school systems and post-secondary institutions. The study says a lack of standardized data management system across all districts is resulting in an inconsistent and bifurcated process that is inherently more costly as each district defines and utilizes its own process. There were numerous examples provided to the Task Force where state-required reporting obligations imposed on districts were "cumbersome, inefficient, and time consuming."
5. Restructure the operating parameters associated with the Capital Outlay Fund.
6. Revise/narrow the Professional Negotiations Act to prevent it from hindering operational flexibility/resource assignment. Included with this item: review tenure; replace the salary schedule with a salary range based on criteria such as experience, education, area of expertise, etc.; narrow the number of mandatory negotiable items. Items such as work hours, amount of work, insurance benefits, etc "should be changed from mandatory to permissible items for negotiation."
7. Legislatively eliminate, reduce, and consolidate the statutory cash reserve accounts and separate fund accounts that currently exist, thereby ending the "use-it-or-lose-it" policy.
8. Authorize a study of school district administration personnel structures and positions. Develop a state plan for district-level administrative reorganization and alignment.
  - Investigate the regionalization of administration structures; and
  - Realign district geographical boundaries in order to facilitate administrative efficiencies. Administrative resource models exist in a non-standardized manner, resulting in staffing levels that are discretionary, unregulated and costly. The intended purpose of this recommendation is not for determining which schools students should attend, but rather is intended to cultivate efforts to combine/streamline administrative office functions and advance shared services (e.g., food service, counseling, etc.) in a more cost effective manner.

- Require that a university level finance/accounting/budget management course be included in the district leadership licensing requirements, if not already included.
- Form a task force of education, finance, and legislative members to establish a commonly-accepted definition of “instruction” spending and review the 65% public policy goal figure.
- Place a limitation on duration of due process proceedings for special education hearings.
- Conduct an efficiency study/audit of the Kansas State Department of Education.

**Heads Up, Action Needed – contact your legislators!**

**Merit Selection of Judges under fire**--Senate will be debating proposed constitutional amendment to change the merit selection (to governor-only selected with Senate stamp OK)

**Fight public employees' unionization**--Push to block public employees having union or association dues deducted from pay checks to make it more difficult for organizations representing teachers, state employees and other public service workers to participate in political advocacy. The House is expected to debate that measure this week.

**Thursday:**

9 a.m. Hearing on House Bill 2037, religious displays on public property, before House Federal and State Affairs Committee, room 346-South.

9 a.m. Presentation on climate science before House Energy and Environment Committee, room 582-North.

Here is our Douglas County Legislative Delegation contact information:

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