



Legislative Update

Your League of Women Voters of Kansas e-Report from the 2016 Kansas Legislature by Paul Johnson

2016 KANSAS LEGISLATIVE E-REPORT #5

Paul Johnson – February 5, 2016

WATER BATTLES

The Kansas Legislature has taken the first step to open a water battle with surrounding states by making it easier to appropriate surface water leaving the state. The Senate Natural Resources committee passed out Senate Bill 322 by stuffing SB 322 into House Bill 2509 that passed the House last session. This is fundamental water policy that deserves the widest debate and discussion but stuffing it into a passed House bill can short circuit the widest debate. The agribusiness forces controlling the water debate hope to abscond with water from downstream states rather than develop a strategic, dynamic, sustainable conservation plan.

The Kansas Department of Agriculture (KDA) opposed this bill because the application fees to appropriate millions of gallons of 'surface water that otherwise leaves the state' grossly undercompensates the work required to evaluate such an application. Under the current fee structure, the application to appropriate water from the Missouri River could require a filing fee of up to \$1 million depending on the quantity applied. Under HB 2509, the filing fee for four million acre-feet would be \$5,600. Given the tighter budgets experienced by all state agencies, KDA is struggling to deal with the existing 32,000 water right appropriations and requested water right changes. KDA recommended that first a summit be held with the Missouri River states to collaborate on river management prior to consideration of legislative changes.

The Governor's blue ribbon task force held its first meeting on January 29. This sixteen member task force is imbalanced with agribusiness proponents. 85% of the water used in Kansas is for crop irrigation. There will be little discussion of assessing a fair fee on the use of irreplaceable irrigation water. Kansas has over three million acres under irrigation. On just 77,000 acres, Kansas could produce 100% of the primary fruits and vegetables consumed in the state but today only 4% of the fruits and vegetables

consumed by Kansans are grown in Kansas. The conundrum facing Kansas is that while the citizens of Kansas own the water, vested water rights -by statute - has been over appropriated to 11,000 water right holders. These water right appropriations guarantee the decline and draining of the Ogallala aquifer. By law, these water rights are considered property rights and cannot be mandatorily reduced without compensation. That could cost billions of dollars while the Kansas' budget is virtually broke.

NOXIOUS WEED LAW UPDATE

The legislative push to increase the number of noxious weeds and expand the use of more toxic chemicals has slowed down for now. The House Agriculture and Natural Resources committee created a sub-committee to discuss amendments to House Bill 2479. There were several substantive amendments proposed to HB 2479 so the Chairwoman decided a smaller sub-committee could process those amendments and bring an amended bill back to the full committee by February 15. The debate may not be over on scraping existing law - where the Legislature puts noxious weeds in statute – and giving this authority in rule and regulation to the Secretary of Agriculture. Other amendments would define a 'risk assessment' to list a noxious weed and alter the make-up of the advisory committee that makes recommendations to the Secretary.

OPEN RECORDS AND OPEN MEETINGS

Senate Bill 361 proposes to amend the Kansas Open Records Act (KORA) to apply it to otherwise public records on the private email accounts of state employees. Communications technology has evolved faster than the law. KORA no longer works today when public employees might use private email accounts to do their public jobs. The Legislature needs to amend KORA to apply its original purpose of openness in government records to modern communications realities. Under existing KORA law, the Governor's budget director sent copies of the proposed 2016 budget via private emails to individuals, state employees and lobbyists. These private emails do not qualify as 'public records'. The Senate Judiciary committee held a hearing on SB 361 and requested all proponents to settle on acceptable language. This bill will move forward.

Senate Bill 360 would clarify conditions under which public bodies and agencies may move from an open meeting to an executive session. Existing law - that addresses closed or executive meetings - calls for a statement of the justification for closing a meeting, the subjects to be discussed, and the time and place at which the open meeting shall resume. 'Justification' and 'subjects' are undefined resulting in confusion. In Dr. Alan Cowles' excellent study of the 10 largest cities and 10 largest counties in

Kansas, he has shown that almost all of these governmental bodies conduct some of their business without disclosing any meaningful information about the subjects and issues they were to discuss. 88% of closed sessions were conducted without giving the public any meaningful information about the subjects and issues they were to discuss. In contrast, the Manhattan City Commission showed that it didn't have to conduct any governmental business in secrecy. The Senate Judiciary committee held a hearing on SB 360 and requested all parties find common ground to help move this bill forward.

REHABILITATION OF ABANDONED CITY PROPERTY

Senate Bill 338 gives cities a quicker response option to save abandoned houses and maintain the value, aesthetics and safety of neighborhoods. These houses become abandoned for many reasons, including owners passing away without heirs, out-of-state landlords difficult to track down, bankruptcy, pending foreclosure actions, owners simply moving away and lenders who refuse to foreclose on properties. Under current law, the only recourse would be to wait for three years of unpaid property taxes and foreclose on the property. After three years of abandonment, most houses would be virtually uninhabitable and beyond repair. SB 338 would change current law regarding abandoned property and revising the definition of 'blighting influence'.

This issue has been debated in the Capitol for the last five years. The city will have to go before a district court to start this process and prove this house has been unoccupied continuously for 365 days. The last known property owners and/or interest owners are accorded due process and are allowed at all times to appear before the district court. SB 338 would give cities the same ability to deal with abandoned and blighted real estate as they now have when dealing with dangerous structures. For example, Wyandotte County has an estimated 7,000 abandoned housing with code violations and vacant lots which are creating blight and depressing home values for neighbors. Wichita has an estimated 17,600 vacant properties. The goal of SB 338 is to save these homes and return them to the market as properties which can again be lived in thus helping citizens, neighborhoods and the city at-large. SB 338 should be worked in the Senate Commerce committee next week.

JUDICIAL SELECTION

A bi-partisan group of Kansas House members voted down **HCR 5005** that would have changed the selection of Kansas Supreme Court justices from the existing voter approved judicial selection committee to selection by the Governor and confirmation by the Kansas Senate. To change the Kansas constitution, it requires a two-thirds vote in

the Kansas House (84 members) but only 68 voted in favor. Lawmakers were threatened that a no vote could cost them their seat. Thousands of dollars of 'dark money' will be raised to unseat certain House members in the fall elections. The constitutional amendment to establish the judicial selection committee came about in 1958 and has worked well for several decades giving Kansas a highly praised judicial system. Recent rulings on school finance, abortion and the death penalty have riled the conservatives to try to take control of the judicial branch as they have with the executive and legislative branch. 5 of the 7 Kansas Supreme Court justices and 6 of the 14 Kansas Court of Appeals justices will be up for retention votes this fall. More 'dark money' will be spent to smear and try to unseat these justices.

BALLOT QUESTION INFORMATION

Senate Bill 368 – requested by the Secretary of State – would prohibit local governments and school boards from providing information – not campaign advocacy - about important ballot questions affecting the public. SB 368 prohibits government funds to distribute any brochure, flier, political fact sheet or other document regarding a ballot measure. This prohibition is arguably unconstitutional given the U.S. Supreme Court's ruling in *Citizens United v. FEC* that specifies the First Amendment's general prohibition against suppressing 'political speech based on the speaker's identity'. Further, *Citizens United*, clarified that limiting a corporation's capacity to spend money effectively limits the ability of its members to speak on political issues. The hearing on SB 368 was held before the Senate Ethics and Elections committee last Thursday. This bill raised many questions so its future is uncertain.

PUBLIC SCHOOL LEGISLATION

On Monday – February 8 – at 1:30 PM in Room 112-N, House Education committee will discuss and have possible action on **HB 2486** and **HB 2457**. HB 2486 creates the school district bond review board. HB 2486 would restore a state aid program to assist lower wealth districts at a much lower rate than the previous law. State aid would be limited to the percentage of the building utilized for direct instruction - but direct instruction is not defined. Portions of the buildings for counselors, libraries, lunchrooms, and possibly auditoriums would be excluded from state aid. HB 2457 expands the tax credit for low income student scholarships attending private schools. Private schools are not required to provide any means of public accountability for student learning or success. This bill directs state funding to schools that are not required to admit all students or use a random process of admission. The annual cost of this bill increases from \$10 million to \$12.5 million at a time of revenue uncertainty to the State.