



**Kentucky Legislative Report
February 26, 2019 - Regular Session Update**

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The 2019 Legislative Session has been rocking right along. With all the new faces and new legislative energy this was not unexpected. We have passed the half way point of the Session and the bill filling deadlines have passed. The result is that we are looking at all the possible (non-sleight of hand) legislation that could be considered this Session. There have been 264 Senate Bills and 525 House Bills filed. That's a lot to be considered for a 30-day Session.

The Cabinet did a masterful job of refocusing SB 28. At one time it was going to have County Judges being notified about any RCRA violations in their county. Now the Bill applies to contained landfills operating as municipal waste disposal facilities.

The Petroleum Storage Tank Fund is getting an overhaul this session. The fund is being expanded to cover orphan well reclamation. There are no provisions for funding found in the proposed legislation. The Legislature and Cabinet will allocate funding for the agency at a later date. The Bill also contains provisions for bonding and permitting for the oil & gas industry.

Net metering was a hot potato last session. It continues to be this session as well. It appears that it is headed to Conference Committee later in the session. Its ultimate fate is unknown.

I've included information in this review beyond environmental issues because I thought they may be of interest to you. The sports wagering bill as well as some ideas on taxes, workplace pregnancy accommodations and medical marijuana all of which can impact the workplace can be found below.

Check out the transportation funding bill below, HB 517. The bill is intended to provide new money to be used for infrastructure improvement. There are some interesting ideas there to get more of your money including a transportation "user fee".

Stay tuned. This session appears to have a lot more twists and turns in store for us.

Environmental Issues

AN ACT relating to notice of environmental incidents- [SB 28](#) has been changed significantly from what was originally filed. Currently the Bill clarifies that required local notification of the issuance of a notice of violation applies to contained landfills operating as municipal waste disposal facility; the Bill clarifies that the relevant notices of violation are for noncompliance with a condition of a permit issued by the Division of Waste Management. This Bill passed out of

the Senate 37-0 and has been posted to the House Natural Resources & Energy Committee. This one looks like it is moving fast.

Air Quality Permit Fees - [HB 165](#) was passed out of the House with a vote of 95-3. The bill would grant the authority to the KY Cabinet for Energy and Environment to evaluate and possibly amend how the Cabinet assesses fees for Title V air quality permits. The good news from the Cabinet's testimony is that air quality has improved across the Commonwealth, thus lowering the amount of fees paid to the Cabinet. However, the Cabinet's administrative fees, including their large pension costs, continue to rise. The goal of the Cabinet is to remain revenue neutral, but to spread the costs across all businesses who receive a Title V permit from the Cabinet. This Bill has not been called to the Senate Committee yet. I don't think it has run into problems. We should hear something this week.

Brownfields – Rep. Jason Nemes filed [HB 276](#) to expand the “voluntary environmental remediation,” also known as brownfields, tax credit to \$10 million for any project which is over \$30 million in value, is at least a half mile from an existing TIF district or is located in a census tract that qualified for use of the KY New Market Development Program. This is a new tax credit in a non-budget year, so the odds of this bill moving this legislative session are slim - but watch for this bill to move next Session.

Solid Waste Management-[HB 222](#) requires the Cabinet to make quarterly reports to the solid waste coordinator for a solid waste management area on complaints, investigations and actions; requires the enforcement officer to submit a copy of the report to the county fiscal court of every county located in the solid waste management area. The bill was sent to the House Natural Resource and Energy Committee on 2/6/19 but has not moved.

Oil & Gas/Petroleum Storage Tank Fund- [HB 199](#) contains significant changes to oil and gas permitting and bonding as well as expanding the role of the Ky Underground Tank Fund. It changes the name of the Kentucky abandoned storage tank reclamation fund to the Kentucky abandoned storage tank and orphan well reclamation fund. The Bill authorizes the Cabinet to take actions to address improperly abandoned wells as currently allowed for abandoned storage tank facilities. The Bill also changes bonding requirements for wells; established procedures for well operator transfers; established procedures for well closure orders; established eligibility requirements for permit issuance or transfers. There's a lot contained in this Bill. I worked on the work group that framed the legislation. Lot's of stakeholder input. That's why it passed the House last week 99-0.

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Plastic Waste- [HB 183](#) prohibits the intentional release of more than 25 plastic balloons, bans plastic, single use carryout bags by July 2, 2014, bans plastic straws by retail food and beverage establishments by July 1, 2022 and established a civil penalty of \$100 per day for violation of bans. Don't look for this Bill to go anywhere but I think it does give us some comic relief.

Energy

Net Metering – [SB 100](#) sponsored by Sen. Brandon Smith, would continue to require the utility to take excess power generated by private net metering customers but would ensure all customers pay their fair share of utility service by authorizing the Public Service Commission (PSC) to determine the value of excess electricity. The PSC regulates retail electric service throughout most of the state.

The amended version of SB 100 passed the Senate 2/13. Another amended version was passed by the House 2/15. It was sent back to the Senate where they refused to concur with the House floor amendment. The Bill appears to be headed for the Conference Committee, later in the session, where the details might get worked out. Stay tuned.

Workplace Issues

Pregnancy Accommodation Bill-Renamed Pregnancy Related Accommodations- [SB 18](#) addresses pregnancy accommodation in the workplace. The bill could create issues for small businesses and goes above and beyond existing federal law which provides pregnancy accommodation. SB 18 was passed out of the Senate Judiciary Committee on Thursday. Look for a floor amendment to address some of the business community's concerns in the bill.

Economic Development

Open Records Request – Rep. Jason Petrie filed [HB 387](#) to address recent court decisions related to disclosure requirements of the Open Records Requests and economic development projects

Other Legislation

Sports Wagering

[HB 175](#) would legalize sports wagering in Kentucky, including sports betting, online poker and fantasy sports. The bill includes betting on both professional and collegiate sports, with an exception for schools within Kentucky. 95% of the proceeds generated by this will go into a fund for the public pension system, with the remaining 5% going to addiction services and administration expenses. Dedicating funding to pension will generate support from many legislators who demand to “find funding first” as it relates to the public pension crisis. The Bill had a Committee Substitute attached during its Committee hearing. It appears to be moving. I expect to see some activity on the Bill this week.

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Medical Marijuana - Senator Steve West filed a version of the legalization of medical marijuana, [SB 170](#) in the Senate. [HB 136](#) is awaiting a hearing before House Judiciary Committee. The business community has had positive conversations with the bill sponsors regarding including language to ensure employer legal liability needs are met.

Tax Modernization and Clean Up

The House passed out two tax related bills. [HB 354](#) is the tax cleanup bill which addresses many concerns raised after the 2018 tax modernization bill. The sales tax exemption was extended not only for 501c3 organizations but all other types of nonprofit civic, governmental or other nonprofit organizations. There is new language in the Bill to provide a “resale certificate” for all business to business transactions which were being double taxed. This is an issue for landscapers and dry cleaners, among a few others. New language was provided to clarify and define what is a “marketplace provider.” This is needed after the Wayfair legal case which now allows for the collection of taxes via online transactions.

Watch out for [HB 268](#). This Bill could be used as a vehicle later in the Session to add new potential revenue measures (taxes) the Legislature has in store for us this session. The Bill was approved by the House last week by a 93-6 vote and appropriated money to the Department of Parks, Economic Development Cabinet, KY. State University and the KY Community and Technical College, the University of KY and the University of Louisville.

Funding Transportation

[HKB 517](#) increases the supplemental tax on gasoline and special fuels by increasing the existing rate from five cents per gallon (cpg) on gasoline and two cpg on special fuels to eight and a half cpg for both and setting that as the minimum rate; provide a mechanism for annual adjustment of the supplemental motor fuel tax based on changes in the National Highway Construction Cost Index 2.0; allow the supplemental tax to increase or decrease no more than 10 percent from one year to the next, subject to the statutory minimum; create a new section of KRS Chapter 186 to establish a base highway user fee for nonhybrid electric vehicles; require the fee to be adjusted with any increase or decrease in the gasoline tax established in KRS 138.228 and Section 3 of the Act; establish an annual highway preservation fee of \$5-\$20 on all noncommercial vehicles based on the EPA mileage rating of the make model and year of the vehicle; require collection of both fees at the time of registration; require that both fees collected under this section be transferred to the road fund; amend KRS 186.010 to define "nonhybrid electric vehicle"; amend KRS 186.018 to increase the fee for a driving history record from \$3 dollars to \$6 dollars; amend KRS 186.020 to eliminate the requirement to present a vehicle's registration receipt when renewing the vehicle registration and allow mail or online

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registration renewal with no additional fee; amend KRS 186.040 to eliminate the \$30 county clerk fee for motor carrier registrations on vehicles in excess of 44,000 pounds; increase the county clerk fee for motor vehicle registrations from \$6 to \$7; amend KRS 186.050 to increase to state fee for motor vehicle registrations from \$11.50 to \$22; require payment of the highway user fees for electric vehicles and the highway preservation fees at the time of registration or renewal; provide for the \$10 late charge for vehicle registrations not renewed within 30 days of expiration; set the fee for an initial title at \$25, the fee for a duplicate or replacement title at \$10, and the fee for a speed title at \$40, and adjust the distribution of fees between the Cabinet and the county clerk; amend KRS 189.574 to increase to fee for state traffic school from \$15 to \$50.

This is by no means an all-encompassing list of bills. Don't hesitate to contact me if you want me to add additional issues, need copies of the proposed legislation or have questions about these or other bills you've heard about.

**QUESTIONS, COMMENTS, ADDITIONAL INFORMATION
DO YOU KNOW SOMEONE WHO WANTS TO RECEIVE THESE UPDATES?**

Send this to a colleague and tell them to write us at scottr.smith@smithmanage.com if they want to receive notice when these postings are updated.

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