



**Kentucky Legislative Report  
March 4, 2019 - Regular Session Update**

**Prepared by  
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The biggest surprise for me last week was how both parties embraced Senator Brandon Smith's littering bill, [SB 236](#). The Bill came out of Committee without a dissenting vote and went on to be passed by the Senate 35-1. It was obvious from the discussions that our elected officials are fed up with littering across the Commonwealth. The Bill allows fines to be assessed and points removed from drivers' licenses. If the Bill doesn't get through the House this session, look for more in-depth discussions in preparation for next session. We could see serious consideration for banning plastic bags and plastic straws and taking other measures that will reduce littering. This issue, at least last week, had some real pop.

Two Bills appear heading for the Governor's office. [HB 165](#), Air Quality Permit Fees and [HB 199](#) Oil & Gas/Petroleum Storage Tank Fund. Both Bills have a common denominator, they were extensively vetted with stakeholders prior to the session.

A Bill to watch through the interim and next session is Senator Tom Buford's [SB 151](#). The Bill was heard for information purposes last week in the Senate Natural Resources and Energy Committee. This Bill is a work in progress. Modifications are expected to be made through the interim. The Bill has the potential to have some unintended consequences if it is not monitored and suggestions provided to the Senator. The Bill, at this time, requires each vessel owner to keep a record of the dates and times that the vessel utilized a sewage pump out facility and requires each marina owner to keep a record of the vessels that used the marina's sewage pump out facilities. Once every 24 months the Department of Fish and Wildlife Resources would be required to conduct inspections of marine sanitation devices on each vessel that has a marine toilet.

This week will mark days 23-26 of this 30-day session. There will be lots of scrambling to get bills moving and ultimately passed. If you are an observer, this is the fun part of the session. It's like watching a good horse race with several horses in contention moving toward the finish line.

Concurrence days for Bills that have passed the House and Senate but have different language (Net Metering) is scheduled for March 12 and 13. Veto days are scheduled for March 14-March 25. The last day of the session is scheduled for March 29. As you can see, this session is rapidly concluding. These dates can be fluid depending on the timing needed to get some things done, so stay tuned, as you know anything can happen.

### 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; the Cabinet must notify the county/judge executive when an environmental emergency exists. This Bill passed out of the Senate 37-0 and has been posted to the House Natural Resources & Energy Committee. This Bill should move out of the House Committee this week and onto the floor.

**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. The Bill passed through the Senate Natural Resources & Energy without a dissenting vote. It passed the Senate 36-0. The Bill should be heading to the Governor's desk soon.

**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. I am pronouncing this Bill dead for this session. This idea will be interesting to see if it gets much discussion during the interim session this summer and fall.

**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. This Bill is still not moving. I don't think it stands much of a chance this session.

**Littering-** [SB 236](#) requires the Energy & Environment Cabinet to create a website and mobile app for anonymous reporting of litterers and authorize the Cabinet to send warning letters and

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fine litterers. Points for littering drives can be assessed by state trooper's and officers of the Department of Fish and wildlife. The Bill passed the Senate 35-1 and was sent to the House 3/1. This Bill could move quickly this week. There are a considerable number of members of both houses and parties that are tired of littering. This one will be interesting to see if it can get through the House with the limited time available.

**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 Kentucky 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. There are no funding provisions in this bill. I was on the work group that framed the legislation. Lot's of stakeholder input. This Bill should clear the Senate early this week and be off to the governor's office.

**Plastic Waste-** [HB 183](#) prohibits the intentional release of more than 25 plastic balloons, bans plastic, single use carryout bags by July 2, 2024, 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. While this Bill won't move this session, look for a lot of discussion regarding littering and improved waste management during the interim. There appears to be a lot of sentiment regarding this issue with both parties in the House and Senate.

### 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 (3/12 & 3/13), where the details might get worked out. Stay tuned.

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## Workplace Issues

**An Act Relating To Pregnancy 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. Passed in the Senate with a Committee Substitute, a floor amendment and a Title Change 25-7. The Bill was sent to the House Judiciary Committee 3/1. This one could go down to the wire to get to the House Floor because there will probably be several other Bills being rushed to the House floor prior to time running out on this Session. It will just depend on how much of a priority House leadership places on it. There have been several changes to this Bill as it has move along. You need to review the current version in order to see how it might impact you.

## 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. This Bill has a lot of hurdles to clear to get through this Session. Passage appears doubtful but it could happen, we'll just have to watch and wait.

## 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.

**Medical Marijuana** - [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. This Bill has gone nowhere. It hasn't even had a hearing before the House Judiciary. This idea will be discussed during the interim session and could get some traction with involvement of the business community and others.

## 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

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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. The Bill passed the House on 2/21 and appears to be in the Senate Appropriations & Revenue Committee. Because of the numerous changes you need to review the Bill and see how it impacts your business.

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. This Bill is currently in the Senate Appropriations & Revenue Committee. It appears to be ready to move to the Senate floor this week depending on how leadership views it.

### **Funding Transportation**

[HB 517](#) will be heard on Tuesday March 4 in the regularly scheduled House Appropriations and Revenue meeting. It is not known at this point if it will be heard for discussion only or if there appears to be enough votes to clear the Committee. The Bill 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 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

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\$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. I don't see this Bill getting through this session. Rep. Santoro's ideas will be the topic of considerable discussion during the interim session.

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](mailto:scottr.smith@smithmanage.com) if they want to receive notice when these postings are updated.

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