

NEWSLETTERS



KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | JANUARY 6, 2023

LEGISLATIVE SESSION OPENS MONDAY

The 2023 Legislative session will be preceded by inaugural activities this weekend. On Saturday, Jan. 7, Lt. Governor-elect David Toland will hold a day of service at various locations around the state. Gov. Laura Kelly's Inaugural Ball will be Sunday night. The governor and other statewide officials will be sworn in at noon. The session opens on Monday, Jan. 9, 2023, at 2:00 pm with the swearing in of House members and several new Senators. Gov. Kelly's annual State of the State Address will be Wednesday, Jan. 11 at 6:30 p.m. Chief Justice Marla Luckert will deliver the State of the Judiciary on Jan. 11 at 1:30 pm.

Dec. 31, 2022, marked the halfway mark for Fiscal Year 2023, which started July 1, 2022. The December Kansas revenue numbers were strong, exceeding the monthly estimate by \$140 million or 15%. The Kansas Department of Revenue noted revenues have exceeded estimates for 28 consecutive months. Next week, the Kansas Legislature arrives with a State Treasury balance of \$2 billion, providing the opportunity to cut taxes and address unmet needs. There will be no shortage of ideas on how to cut taxes and how to spend the surplus. We have prepared in this issue an overview of some of the important financial needs discussed by interim committees this summer and fall.

Regarding taxes, Gov. Kelly initiated the annual tax debate in December by announcing a \$500 million tax cut package for the 2023 session to consider. Gov. Kelly proposes to eliminate the remaining 4% on the state sales tax on food by July 1, 2023. Currently, elimination of the 6.5% food sales tax is phased out over three years with a 2.5% reduction effective Jan. 1, 2023. Gov. Kelly also advocates increasing the state income tax exemption on Social Security benefits from \$75,000 to \$100,000. The third proposal is a four-day sales tax holiday on back-to-school supplies and clothing annually in August. Neighboring states with sales tax holidays on school supplies have placed Kansas retailers in border counties at a disadvantage.

NEW HOUSE COMMITTEES

In early December, Speaker-elect Dan Hawkins, R-Wichita, announced the House Committee Chairs and Vice Chairs for the next two years. Due primarily to retirements and re-election defeats, there are more new committee chairs than usual. There are still experienced chairs handling many of the key committees. Notably, Rep. Troy

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Waymaster, R-Russell, returns as House Appropriations Committee Chair and Rep. Adam Smith, R-Weskan, continues as the House Tax Committee chair.

Speaker-elect Hawkins also restructured some of the House Committees. He added two new committees: the Legislative Modernization Committee, chaired by Rep. Barb Wasinger, R-Hays, and the Welfare Reform Committee, chaired by Rep. Francis Averkamp, R-St. Marys. The Children & Seniors Committee has been renamed the Child Welfare and Foster Care Committee to focus on those two areas. These changes indicate some of the legislative priorities for the House Republican leadership. The interim discussions on child welfare and foster care have been contentious at times. We have provided a link to the 2023 House Committee members.

JANUARY/DECEMBER RESIGNATIONS

There will be three new Senators and a new State Representative this session, due to resignations from the Legislature in the last month. In the December KLI, we mentioned the resignation of Sen. Gene Suellentrop, R-Wichita. Republican Officials in District 27 have selected Chase Blasi to serve the remaining two years of Sen. Suellentrop's term. Blasi worked for Senate Presidents Susan Wagle and Ty Masterson before joining Evergy last summer. Sen. Tom Hawk, D-Manhattan, announced his resignation shortly before Christmas and his successor in District 22 is Usha Reddi, D-Manhattan. She is a Manhattan City Council member and former mayor. She defeated Riley County Democrat Chair Katie Allen 24-19.

Sen. Richard Hilderbrand, R-Baxter Springs, announced his resignation from the Kansas Senate effective Jan. 4. He cited business and family health concerns for his resignation. Among the potential candidates for the seat is former House Speaker Tim Shallenberger. Sen. Hilderbrand chaired the Senate Public Health and Welfare Committee. He will be replaced by Sen. Beverly Gossage as chair with Sen. Renee Erickson serving as vice chair. On Wednesday, Senate President Ty Masterson also announced that he was shuffling two Senate Committee Chairs. Sen. Mike Thompson leaves Senate Utilities and moves to chair the Senate Federal and State Committee. Current Senate Federal and State Affairs Committee chair Sen. Rob Olson will return as chair of the Senate Utilities Committee. During the interim, Sen. Olson chaired the Special Committee on Medical Marijuana as the Senate Federal State and Affairs Committee chair. Medical marijuana advocates have expressed concern the last-minute shuffle of committee chairs could hurt the chances for Senate passage.

In early December, Rep. Joe Newland, R-Neodesha, resigned from the Legislature after he was elected President of the Kansas Farm Bureau (KFB). Under KFB bylaws, the president cannot be a public elected official. House District 13 Republican precinct officials have elected Dr. Duane Droge, Eureka, as his successor. He is a retired veterinarian.

INTERIM COMMITTEE INSIGHTS

To provide Foulston readers with insights into some of the key topics driving policy debates this session, we are highlighting some of the issues identified by interim committees and joint committees. There are several striking observations to note in these overviews. First, Kansas has significant workforce challenges to recruit staff to provide basic state services from childcare, the correctional system, foster care, law enforcement, judiciary, and even chemists for the state laboratory. We should note that other states are facing similar challenges. The second observation is the potential costs of addressing a wide range of needs from aging infrastructure to the state employees' pay plan. Potential requests already discussed during the interim exceed \$2 billion.

Child Welfare

In September, the Joint Committee on Child Welfare Oversight approved introducing a bill legalizing "Baby Boxes" in Kansas for women choosing to give up their infants. The proposed bill would eliminate the current law

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requirement that parents who want to surrender their children must physically hand them to hospital workers or firefighters. The committee was informed this change would reduce the chances that parents would anonymously abandon unwanted babies in unsafe conditions. A silent alarm would alert health care workers and firefighters immediately if a baby bed was used.

During the interim meetings, the Joint Committee had a day-long executive session addressing concerns with the Kansas Department for Children and Families (DCF). There have been contentious hearings. Contractors have not been meeting performance metrics established by a court settlement. Missing foster children, runaways, and children waiting overnight in contractors' offices are among the long list of issues discussed. One DCF contractor in the Kansas privatized system is under scrutiny after former leaders were indicted on federal wire fraud and money-laundering charges. The committee discussed drafting a bill requiring pediatricians to take specialized training to determine whether injuries or illnesses of foster care children are the result of abuse. The foster care contracts with the three contractors expire on June 30, 2023, and the rebidding process is under scrutiny as well.

Corrections

The state corrections system needs massive updates to its facilities. The highest priority is the Hutchinson correctional facility, which has one building dating back to the 1890s. There are no longer options to update it and it needs to be replaced as soon as feasible. Staffing issues continue to be a challenge.

KPERS

In December, the Joint Committee on Pensions, Investments, and Benefits received an update on KPERS from Executive Director Alan Conroy. The presentation included updates on the actuarial valuation, asset valuations, and Pension Obligations Bonds proceeds. The KPERS Board requested legislation to allow the Board of Trustees to set the percentage of alternative investments within the KPERS Trust Fund. Currently, Kansas law limits the sum of alternative investment to no more than 15%. There was also brief discussion about another large payment to KPERS of more than \$500 million if the budget allows.

Mental Health Beds

The shortage of mental health beds prompted local governments and hospital to seek funding for more beds. Larned State Hospital is the largest psychiatric facility in the state and used by the western two-thirds of Kansas. The shortage of beds at Larned has forced community hospitals and jails in western Kansas to house mentally unstable patients without state reimbursement. State leaders are looking at building a 50-bed facility in Wichita. One Wichita hospital is considering adding 20 beds for mental health care. Even if new facilities are built, the ongoing shortage of mental health professionals makes staffing them challenging. In September, Sedgwick County Sheriff Jeff Easter urged lawmakers to build more mental health beds. The county had 36 inmates waiting for a mental health facility with an average wait time of more than five months.

Finney County Commissioner Lon Pishny noted the struggles to address inmate mental health needs, with limited resources and a shortage of 12 officers in their jail. Inmates were waiting three to nine months for mental health evaluations or to transfer to a facility. He noted the hidden staff morale problems created by mental health patients spitting on staff, urinating on staff, and physically injuring jail employees with no mental health training.

Kansas Hospital Association Vice President Audrey Dunkel asked the lawmakers to allocate \$5 million annually to pay hospitals, law enforcement, and local governments for the costs of behavioral health patients. Understaffed

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hospitals are being drained by assigning staff to mental health patients.

Medical Marijuana

In 2021, the Kansas House approved medical marijuana legislation permitting cultivation, distribution, processing, dispensing, and purchase of marijuana and paraphernalia. The bill died in a Senate Committee last session. The Special Committee on Medical Marijuana heard testimony from more than 60 witnesses during the interim and was inundated with volumes of research. The complexity of the issues was readily apparent in trying to balance the diverse interests of patients desperately seeking pain relief for their children to the challenges presented to law enforcement and the challenges to the doctor-patient relationship. In October, law enforcement argued that medical marijuana would make most of the office's drug K-9 operations ineffective, as dogs are trained to detect marijuana. They objected to allowing medical marijuana usage in correctional facilities and jails for medical reasons. In December, the committee did not reach agreement on a specific bill. Both chambers will introduce their own version. The last-minute shuffling of Senate chairs on the Senate Federal and State Affairs Committee may impact potential passage in the Senate. In addition, Sen. Hilderbrand was vice-chair of the Senate Federal and State Affairs Committee.

Nursing Homes

The Joint Committee on Home and Community Based Services heard testimony about the shortage of medical support workers across the state. Patients are being sent from rehabilitation services to nursing homes due to the lack of available care. One brain injury rehabilitation organization CEO noted the lack of attendant care was a growing problem for patients. Nursing homes are continuing to struggle to fill staff positions as well. Last June, there were approximately 1,650 fewer beds than before the pandemic, with facilities experiencing partial or complete closure. LeadingAge Kansas also found that full-time staffing and hours in nursing and residential care had decreased 10% and 15% since the start of the pandemic. Last April, Gov. Kelly's administration started addressing the shortages with an incentive program with \$2,000 bonuses using federal COVID funding. Funds were to be distributed by the end of March 2023.

Taxation

In November, the Special Committee on Taxes concentrated on finding ways to lower the state's taxation of Social Security benefits. The Kansas Department of Revenue projects eliminating the tax on Social Security benefits would be \$150 million the first year and \$120 million annually thereafter. The other priority is lowering taxes on residential properties. The committee did not have a recommendation on accelerating the elimination of the food sales tax.

Unemployment Compensation

On Sept. 7, the Unemployment Compensation Modernization/Improvement Council grilled the Secretary of Labor about the \$400 million in fraudulent unemployment compensation payments. Committee members expressed concern about the impact on Kansans whose identities were stolen to apply for jobless benefits. Committee Chair Rep. Sean Tarwater, R-Stilwell, noted that Kansans whose identities were stolen were now having their state tax refunds seized by the state for under-reporting income. Tarwater noted victims of identity theft were essentially paying the taxes on the stolen money. The Council recommended spending \$128 million to replace unemployment compensation paid on fraudulent claims.

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On Dec. 30, the Legislative Coordinating Council (LLC) unanimously appropriated a \$108 million payment to the Unemployment Trust Fund. Last session, \$250 million was approved by the Legislature to rebuild the fund after \$292 million was paid for fraudulent jobless benefit claims. The \$108 million is in addition to the \$250 million in federal COVID relief funds already transferred to the Department of Labor.

In addition, the LLC addressed steps to strongly encourage the contractor hired to update and replace the Kansas Department of Labor unemployment computer to accelerate the process of replacement.

Water

The Joint Committee on Water has held two days of informational hearings on the status of water issues. The committee, chaired by Sen. Dan Kerschen (R-Garden Plain), received presentations from multiple state boards and agencies with jurisdiction over surface and groundwater and from a professor employed by the Washburn University School of Law. The topics discussed included the drought, storage available in state reservoirs, the loss of water in the Ogallala Aquifer, the state water plan, nitrate levels in the ground and surface water, and water conservation practices. There have been no legislative proposals to date.

Wind Turbine Lighting

On Oct. 27, the Senate Select Committee on Wind Turbine Lighting heard testimony on issues related to potential state regulations related to reducing the frequency and the amount of lighting associated with commercial scale wind farms. The Senate Select Committee was chaired by Sen. Elaine Bowers (R-Concordia) and the committee heard testimony concerning the breadth of topics surrounding this issue such as (but not limited to): 1) the history of the Kansas Electric Transmission Authority; 2) the role and importance of counties as a part of this issue; 3) the technology available for light-detection systems; 4) a briefing from the FAA; 5) testimony on behalf of the developer community; and 6) presentations by legislators from Colorado and North Dakota on legislation of this type recently passed in their respective states. Three key takeaways are follows. First, the FAA is the key decision maker, and any regulations must be consistent with federal policy. Second, counties must maintain control in their jurisdictions. Third, there are challenges to drafting legislation on a retroactive basis on existing commercial-scale wind farms. The Select Committee's report is expected to propose two bills to the 2023 Legislature: one that is prospective; and one that is retroactive.

Kansas Legislative Insights is a publication developed by the Governmental Affairs & Public Policy Law practice group of Foulston Siefkin LLP. It is designed to inform business executives, human resources and governmental relations professionals, and general counsel about current developments occurring in current Kansas legislation. Published regularly during the Kansas legislative session, it focuses on issues involving Healthcare, Insurance, public finance, Taxation, financial institutions, business & economic development, Energy, Real Estate & Construction, environmental, Agribusiness, employment, and workers compensation. Bill summaries are by necessity brief, however, for additional information on any issue before the Kansas Legislature, contact Foulston Siefkin's Governmental Affairs & Public Policy Law practice group leader, James P. Rankin at 785.233.3600 or jrankin@foulston.com. Learn more about the authors below:

James (Jim) P. Rankin

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Co-Editor and Governmental Affairs & Public Policy Law Team Leader

785.233.3600

jrankin@foulston.com | [View Bio](#)

As a partner at Foulston Siefkin, Jim's practice focuses on employee benefits law relating to public, private, governmental, and tax-exempt organizations. A large part of his work involves Insurance Regulatory and compliance issues in many industries, including Healthcare. Jim has been selected by his peers for inclusion in *The Best Lawyers in America*® and the *Missouri & Kansas Super Lawyers*® list. He is the firm's representative with State Law Resources, Inc., a national network of independent law firms selected for their expertise in administrative, regulatory, and governmental relations at the state and federal level.

Gary L. Robbins

Co-Editor and Governmental Affairs Consultant

785.640.2651

garyrobbinsconsulting@gmail.com | [View bio](#)

Gary, a governmental affairs consultant to Foulston Siefkin's Governmental Affairs & Public Policy practice group, provides legislative monitoring and lobbying services for Foulston's governmental relations clients. He holds a bachelor of science degree in history and political science from Southwestern College and a master's degree in labor economics from Wichita State University. Throughout his extensive career, Gary has served as CLE Director to the Kansas Bar Association and as Executive Director of the Kansas Optometric Association.

Eric L. Sexton, PhD

Contributing Author and Governmental Affairs Consultant

316.371.7553

esexton@foulston.com | [View bio](#)

Eric, a governmental affairs consultant to Foulston Siefkin's Governmental Affairs & Public Policy practice group, has nearly 30 years' experience providing strategic direction and governmental relations services. As Wichita State University's governmental relations leader for 18 years, Eric developed lasting relationships at the local, state, and federal Government level around Kansas. Eric holds a doctorate in political science from the University of Kansas and a masters in public administration from Wichita State University, complementing his undergraduate business degree from Wichita State.

C. Edward Watson, II

Contributing Author and Governmental Affairs & Public Policy Law Partner

316.291.9589

cewatson@foulston.com | [View Bio](#)

As a partner at Foulston Siefkin, Eddie represents clients in matters before state regulatory commissions, courts, and local governmental bodies. He has built and maintained relationships with key individuals – including lobbyists, elected and appointed officials, and staff members – that prove valuable in advancing clients' interests and issues. Drawing on his experience as a regional governmental affairs attorney for AT&T in Chicago, he helps clients navigate the maze of federal policies and agencies, advises on how processes work in Washington, and provides introductions to those who can help them accomplish their goals.

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