



KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | MARCH 2, 2018

THE CALM BEFORE THE STORM

Week 8 of the legislative session was both brief and quiet. Monday and Tuesday were the last two days of the “turn-around” recess and today’s session was *pro forma* to allow the Democrats to start their annual Washington Days celebration. A few committee hearings were held on Wednesday and Thursday and the House debated two bills on the floor yesterday, but the Senate opted to forgo floor debates altogether.

These halcyon days will likely come to an abrupt halt when the first of the school-finance reports is presented to legislators on March 15. With more than 50% of the State General Fund (SGF) expenditures devoted to support of the state’s nearly 300 school districts, it is a given that from mid-March until April 30, the school finance issue will dominate the legislative process.

If the preview hearing held last Friday with one of the school finance experts retained to analyze and recommend a new or revised finance formula was any indication, it will be very difficult to reach a quick consensus on a plan to submit to the Kansas Supreme Court by the end of April. Comments at the hearing indicated some legislators believe current expenditures are adequate, while others think additional funds of \$600 million or more will be necessary to get the Court’s approval.

An interesting hearing related directly to school finance will be held next Tuesday, March 6, in the House Taxation Committee, where **HB 2740** will be considered. That bill would increase the current statewide mill levy for schools from 20 mills to 38 mills over a three-year period. Are Kansas taxpayers willing to pay sharply increased property taxes to support schools, or will a new formula have to rely mostly on other revenue sources, such as income and/or sales tax?

Some good economic news came out yesterday when the Department of Revenue announced that state tax receipts – almost all of which flow to the State General Fund – for the month of February exceeded estimates by \$24 million. For the fiscal year to date (7/1/17 to 2/28/18), those receipts have exceeded estimates by more than \$270 million. However, there is uncertainty as to how December prepayments of state income taxes and the impact of the new federal tax laws on state tax laws will affect SGF revenues between now and the end of the fiscal year on June 30.

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Listed below are bills which were acted on last week and this week. Additional information on any of the bills can be accessed by clicking on the bill number.

AGRIBUSINESS

SB 263 - Creates the Alternative Crop Research Act, allowing the Kansas Department of Agriculture, in conjunction with a Kansas institution of higher learning, to do research and cultivate industrial hemp as an alternative crop. Grants the Department authority to promulgate rules and regulations by 12/31/18 to carry out the provisions of the Act. Requires individuals in the test program to be licensed and such license must be carried at all times.

Eliminates any possible references to industrial hemp as marijuana or a cannabinoid. A program for growing and selling industrial hemp must be forwarded by the Department to the legislature by 1/12/19. *(Passed by the Senate on a vote of 36-3. Referred to the House Committee on Agriculture, Rep. Kyle Hoffman, Chair)*

SB 405 – Establishes the “animal unit conversion factor” for chicken facilities that use a dry manure waste system calculation. Requires operators of a chicken facility to obtain a federal permit if 125,000 or more broilers or 82,000 or more laying hens are confined. *(Passed by the Senate on a vote of 29-10. Referred to the House Committee on Agriculture, Rep. Kyle Hoffman, Chair)*

BUSINESS AND ECONOMIC DEVELOPMENT

HB 2701 – Establishes a 23-member Statewide Broadband Expansion Task Force composed of legislators and representatives of various statewide organizations and associations with interest in greater broadband availability throughout the rural areas of Kansas. *(Passed by the House on a vote of 117-0. Referred separately to the Senate Committee on Commerce, Sen. Julia Lynn, Chair, and to the Senate Committee on Utilities, Sen. Rob Olson, Chair)*

HB 2482 – Amends the period of time when the sale of alcoholic liquor is prohibited in any public venue, club, or drinking establishment to be from 2:00 a.m. to 6:00 a.m. Currently, that period is from 2:00 a.m. to 9:00 a.m. Also allows farm wineries, microbreweries, and micro-distilleries to sell between 6:00 a.m. and midnight on any day. *(Passed by the Senate on a vote of 35-5. Placed in a House/Senate conference committee, Rep. John Barker, Chair)*

ENERGY AND NATURAL RESOURCES

SB 279 – Makes numerous definitional changes to the Gas Safety Reliability Policy Act and allows natural gas public utilities to recover costs for specified infrastructure system investments. Also raises the cap on the monthly gas safety reliability surcharges (GSRS) for residential customers. *(Passed by the Senate on a vote of 32-6. Referred to the House Committee on Energy, Utilities and Telecommunications)*

HEALTH CARE

SB 351 – Introduced by the Senate Committee on Public Health and Welfare at the request of the Kansas Pharmacists Association (KPhA). The KPhA supported the bill, arguing that it provides protections for patients related to the cost of medications, medication alternatives, and choice of pharmacy provider; eliminates practices that impede cost transparency and restrict the patient’s choice of provider; and allows pharmacists to have the ability to discuss lower-cost medication alternatives with their patients. Opponents, generally pharmacy-benefit providers (PBMs), argued the bill interferes with the contractual relationship between PBMs and pharmacies and unnecessarily expands oversight by the Kansas Insurance Department to include civil fines. They also expressed concern with language related to mail pharmacy services. The Senate Committee amended the bill to address certain concerns expressed by PBMs and the Senate Committee of the Whole amended the bill to exempt supplemental insurance policies from coverage under the Act. The bill, as amended, would create the Kansas Pharmacy Patients Fair Practices Act (Act). A pharmacy or pharmacist would have the right to provide a covered person with information regarding the amount of the covered person’s cost share for a prescription drug. Further,

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the bill would specify neither a pharmacy nor a pharmacist would be proscribed by a PBM from discussing any such information or selling a more affordable alternative to the covered person, if such alternative is available. *(The bill passed on Senate on final action: Yeas:39; Nays:0. Now the bill is referred to the House Committee on Insurance, Rep. Jene Vickery, Chair, with a hearing scheduled on March 8, 2018.)*

HB 2232 – Originally introduced during the 2017 Legislature, as amended, the bill would now allow a resident of an adult care home, or a resident’s guardian or legal representative, to conduct authorized electronic monitoring in the resident’s room, subject to requirements set out in the bill. The bill would define applicable terms and establish guidelines for monitoring. Authorized electronic monitoring means the placement of one or more electronic monitoring devices in the room of an adult care home resident and making recordings with such devices after notifying the adult care home of the resident’s intent to conduct electronic monitoring. *(Passed by the Senate on a vote of 38-0. Placed in a House/Senate conference committee, Rep. Dan Hawkins, Chair)*

HB 2496 – Reported on in our January 19, 2018, issue, the bill as amended would enact the Nurse Licensure Compact (Compact) and amend the Kansas Nurse Practice Act (Act) to enable the Board of Nursing (Board) to carry out the provisions of the Compact and establish the duties of registered nurses (RNs) and licensed practical nurses (LPNs) under the Compact. The Compact would allow RNs and LPNs to have one multi-state license, with the privilege to practice in the home state of Kansas and in other Compact states physically, electronically, and/or telephonically. The bill would take effect from and after January 1, 2018, and its publication in the statute book. *(Passed by the House as amended, Yea:16; Nay:1, now referred to the Senate Committee on Public Health and Welfare, Sen. Vicki Schmidt, Chair)*

HB 2472 – Introduced by the House Committee on Health and Human Services. The bill proponents argued there is a need to encourage organ donation. The proponents also stated the bill would simplify the method of declaring an intent to be an organ, eye, or tissue donor and have that intent indicated on a driver’s license or state-issued identification card. The House Committee amended the bill to clarify that an applicant would be authorizing the placement of his or her name in the Registry as an organ, eye, and tissue donor and remove language prohibiting a parent or guardian from revoking a decedent minor’s anatomical gift if a document of gift is present or available. As amended, the bill would include on a driver’s license application a question as to an individual’s willingness to act as a donor. The bill would require the word “Donor” be placed on the front of the driver’s license or identification card of an individual who provides authorization. Further, the bill would amend the Act regarding the persons authorized to make an anatomical gift upon a decedent’s death, add a definition for health care provider, and provide an exemption from liability for such providers if they act in good faith under the new law. *(The bill has passed as amended on final action in the House, Yea:117; Nay:0, now awaiting a March 6 hearing date in the Senate Committee on Public Health and Welfare, Sen. Vicki Schmidt, Chair)*

HB 2457 – The bill was introduced by the House Committee on Judiciary at the request of the Kansas Chamber, and we reported on in our January 12, 2018, issue. The bill, as amended by the House Committee, would enact the Asbestos Trust Claims Transparency Act, which would apply to all asbestos claims (as defined in the Silica and Asbestos Claims Act) filed on or after July 1, 2018. The bill would require the plaintiff to provide certain statements and materials no later than 30 days prior to the date the court establishes for the completion of all fact discovery. *(The bill was passed by the House on emergency final action February 22, 2018; Yea:77, Nay:40. Referred by the Senate Committee on Public Health and Welfare, Sen. Vicki Schmidt, Chair)*

HB 2590 – Introduced in the House Committee on Health and Human Services at the request of Kansas Department of Aging and Disability Services (KDADS). We reported on the bill in our February 2, 2018, issue. Proponents argued the bill would update the Kansas Ombudsman Act and align Kansas statutes with applicable federal laws. Opponents objected to language providing volunteer ombudsmen with broad access to facility records. The bill, as amended, would change Kansas law related to the State Long-Term Care Ombudsman (Ombudsman) and the State Long-Term Care Ombudsman Program (Program). As amended, the bill adds

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additional eligibility requirements to qualify as an Ombudsman. *(The bill, as amended, has passed the House, Yea:117; Nay:0. Now the bill, as amended, has been introduced in the Senate. The Committee on Public Health and Welfare, Sen. Vicki Schmidt, Chair. A Committee hearing is scheduled for March 8, 2018.)*

HB 2674 – Introduced by the House Committee on Health and Human Services. We reported on in our February 9, 2018, issue. Proponents argued the bill would provide greater access to care for Kansans, especially those residing in rural communities. Opponents were concerned with the bill's abortion language. The House Committee worked two bills on the subject of telemedicine, HB 2512 and HB 2674, but took no action on HB 2512. As amended, the bill would establish the Kansas Telemedicine Act (Act). Per the House Committee amendment, the bill provides nothing in the Act would be construed to authorize the delivery of any abortion procedure via telemedicine. *(The bill passed the House: Yea:110; Nay:0, and has been referred to the Senate Committee on Public Health and Welfare, Sen. Vicki Schmidt, Chair.)*

INSURANCE

SB 410 – Introduced by the Senate Committee on Financial Institutions and Insurance at the request of the Kansas Insurance Commissioner. We reported on the bill in our February 9, 2018, issue. The Commissioner has argued that many other states have updated or are updating their captive insurance company laws, and the bill would provide economic development benefits to Kansas because captives would remain in Kansas instead of moving their business to another state or offshore jurisdiction offering updated captive laws. The Senate Committee made technical amendments to the bill. As amended, the bill would create the Captive Insurance Act (Act) under the Kansas Insurance Code by amending and creating laws related to captive insurance companies. The bill would create two new captive insurance company types – branch captive insurance companies and special purpose captive insurance company. The bill would specify the regulatory structure for each company type. *(The bill passed final action in the Senate: Yea:38; Nay:0. The bill has been referred to the House Committee on Insurance, Rep. Jene Vickery, Chair. A hearing is scheduled for March 8, 2018.)*

REAL ESTATE AND CONSTRUCTION

SB 435 – Amends the Real Estate Brokers' and Salespersons' License Act by redefining the term "rebate". Also requires disclosure of the acceptance of a rebate or a referral fee. (Referred to the Senate Committee on Commerce, Senator Julia Lynn, Chair)

STATE GOVERNMENT

HB 2362 – A carry-over bill from the 2017 session which establishes the Alcoholic Beverage Control Modernization Fee of \$30 for each new license application and \$10 for license renewals. Also establishes a modernization fund where all modernization fees must be deposited. Eliminates the 2022 sunset provision for the modernization fee, thus making it a permanent fee. *(Passed by the Senate on a vote of 37-3. Placed in a House/Senate conference committee, Rep. John Barker, Chair)*

TAXES

SB 303 – Allows businesses paying taxes through the individual income tax code certain expensing deductions as are currently available to those businesses paying through the corporate tax code or the financial institutions privilege tax. *(Passed by the Senate on a vote of 31-8. Referred to the House Committee on Taxation, Rep. Steve Johnson, Chair)*

SB 432 – Creates a 3-person STAR Bond Underwriting Commission appointed by the legislative leadership and the Secretary of Commerce. Each Commission member would serve a three-year term and would be responsible for approving or denying applications for STAR bond projects. All project applicants would be required to pay a fee not to exceed \$300 for each application. Requires the Secretary of Commerce to issue detailed monthly reports, with

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certain exceptions, on all STAR bond applications. Final approval of any project must be made by the Commission and the Secretary. Specifies who is and is not eligible to submit a project application. Grants control and oversight authority for feasibility studies to the Secretary and requires the Secretary to prepare three and five-year progress reports on all STAR bond projects with outstanding bonds. (Referred to the Senate Committee on Assessment and Taxation, Senator Caryn Tyson, Chair)

HB 2755 – Waives the requirement for a special election by a city or county when property taxes exceed statutory limits if all or part of the budget increase was due to the city or county absorbing the responsibilities of a dissolved taxing unit. (Referred to the House Committee on Taxation, Rep. Steve Johnson, Chair)

HB 2756 – Creates the Kansas Main Street Parity Act which imposes the state sales and use taxes on internet sales. Defines what constitutes an “internet retailer”, “marketplace facilitator”, “marketplace seller”, “online marketplace facilitator”, and a “Referrer”. Sets a threshold when the collection and payment of sales and use taxes on internet transactions must begin. (Referred to the House Committee on Taxation, Rep. Steve Johnson, Chair)

HB 2761 – Starting in tax year 2018, an individual could elect to deduct the Kansas itemized deduction in lieu of the Kansas standard deduction “regardless of whether or not such individual’s federal taxable income is determined by itemizing deductions from such individual’s federal adjusted gross income.” (Referred to the House Committee on Taxation, Rep. Steve Johnson, Chair)

Kansas Legislative Insights is a publication developed by the Governmental Relations & 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 health care, 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 Relations & Public Policy Law practice group leader, James P. Rankin at 785.233.3600 or jrankin@foulston.com.

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