



KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | FEBRUARY 4, 2022

February 4, 2022

WINTER STORM DISRUPTS THE SESSION

The big stories of week four at the Legislature were the weather, House Commerce Committee discussions on the APEX bill, budget deliberations, and Gov. Laura Kelly's expected veto of the Congressional map. With a winter storm approaching, the Kansas Senate adjourned Tuesday until Monday, Feb. 10, after debating and passing three measures. Senate committee meetings were cancelled for the remainder of the week and Gov. Kelly closed state offices in Shawnee County on Wednesday. Key House committees resumed meeting on Thursday and Friday while many other committees were cancelled.

The focal point of week four was the APEX economic development legislation passed by the Senate last week 32-7. On Monday, SB 347 met strong headwinds from the House Commerce, Labor and Economic Development Committee. The committee had questions about the cost of the measure and questioned numerous sections in the bill. House members described the bill as a "train-wreck," "rushed through the process," and "without checks and balances." On Thursday, Feb. 3, House Commerce, Labor and Economic Development met to hear proposed amendments before consideration on Monday. Rep. Blaine Finch introduced a balloon amendment addressing many concerns raised by House members early in the week. He noted that discussions between the Governor's Office and House leaders did not produce an agreement on all of the changes to SB 347. House Commerce Chair Rep. Sean Tarwater asked members to explain their amendments that will be offered on Monday. Chair Rep. Tarwater announced his committee would meet on Monday, Feb. 7 to consider the balloon and other amendments. We are looking at a conference committee should the amended version be passed by the House next week. The bill is facing a tight schedule for the Kansas bid to be considered by the unnamed company.

This week, the Kansas Department of Revenue released the January income and excise tax collections, which were up \$118 million or 14.4% above the estimate. Compared with January 2021, this is 18.7% higher. The positive revenue numbers increase the chances for tax cuts this session.

On Thursday, Gov. Kelly vetoed the Congressional redistricting map, as expected. She stated in her veto message that the map violated the Constitution and even the lawmakers' own criteria on how to draw constitutional maps.

FOULSTON

ATTORNEYS AT LAW

Republican leaders believe they have the necessary votes to override the veto.

BUDGETS, KDHE LAB, AND AUTONOMOUS VEHICLES

This week, each chamber started working on reviewing and approving budgets for nearly 40 agencies. The budgets cover a wide range of agencies, including licensing boards, Governor's Office, the Legislature, higher education and the State Fair Board. Many of the licensing boards are self-sustaining with fees from those they regulate.

The Joint Committee on State Building Construction (composed of five Senators and five Representatives) started hearings on the annual capital-improvement budget bill with requests from 28 state agencies. Ten of the budgets were from higher-education institutions. On Monday, the Joint Committee approved the recommendation to build the new Kansas Department of Health and Environment Laboratory for \$65 million. It would be located on what is now parking lot 4 of the capitol complex south of the Docking Building. The joint committee added three caveats: vigorously pursue federal funding, avoid incurring additional state debt, if unnecessary, and if bonding is necessary, those bonds will have no penalty for early payment. The \$65 million for the KDHE laboratory is in the Governor's budget proposal with no bonding.

On Tuesday, the Senate Transportation Committee heard SB 379, legalizing use of autonomous vehicles (driverless vehicles) in Kansas. The bill limits the use of driverless vehicles to fixed business-to-business routes and preempts cities and counties from establishing ordinances to block their use. The bill was requested by Walmart and autonomous vehicle developer Gatik. Forty-four states have already approved a framework for regulation of autonomous vehicles. Gatik was founded in 2017 and noted its vehicles have a 100% safety record. Walmart noted that advances in technology, current supply-chain challenges, and the shortage of truck drivers makes this proposal worth approving. If the bill is approved, Walmart would use electric trucks in Kansas. This week's weather forced cancellation of the second day of hearings.

BILL INTRODUCTIONS

TAXATION

HB 2569 – Would establish a new income tax credit for renovation of structures which are at least 50 years old. Also, would amend the existing historic-structures tax credit law. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

HB 2480 – As recommended by the House Committee on Water, Rep. Ron Highland, Chair, would allow financing from the Public Water Supply Loan Fund for public water-supply projects that acquire water through a water transfer and would amend the definition of "project" by removing the restriction that project does not include any project related to the diversion or transportation of water acquired through a water transfer. See also SB 358.

SB 430 – Would amend certain income taxation rules relating to net operating losses and allow a net operating loss carryback from sales of certain historic hotels, as defined within the bill. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

REAL ESTATE

HB 2568 – Would amend the Kansas Mortgage Business Act in order to, among other things, remove the requirement that mortgage companies hold branch licenses and would allow the employees of mortgage companies to work remotely. Referred to the House Committee on Financial Institutions and Rural Development, Rep. Jim Kelly, Chair.

COURTS, LAWS, AND REGULATIONS

SB 400 – Would revise existing trust law. The bill would modify the Uniform Trust Code to update the requirements and conditions applicable to the creation, modification and termination of trusts. Also, the bill proposes to modify the

FOULSTON

ATTORNEYS AT LAW

definition of “resident trust.” Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair. A hearing has been scheduled on the matter for Feb. 8, 2022.

SB 409 – Would prohibit government from restricting freedom of worship. Referred to the Senate Committee on Judiciary, Sen. Kellie Warren, Chair.

SB 411 – Would prohibit government from imposing certain restrictions on private businesses, provided the business is properly licensed. The bill would also limit the disaster emergency powers of the governor and related powers of other governmental entities. Referred to the Senate Committee on Judiciary, Sen. Kellie Warren, Chair.

SB 417 – Would establish minimum and maximum permit renewal fees for solid waste disposal areas and processing facilities. Referred to the Senate Committee on Agriculture and Natural Resources, Sen. Dan Kerschen, Chair. A hearing has been scheduled on the matter for Feb. 11, 2022.

SB 332 – As amended by the Senate Committee on Transportation, Sen. Mike Petersen, Chair, would prohibit the use of hand-held mobile telephones for drivers in construction zones when workers are present or in school zones at times when an established reduced speed limit is enforced, and any use by drivers under 18 years of age. However, the prohibition would not apply to: (i) law enforcement or emergency service personnel acting within the scope of employment; (ii) a person operating a motor vehicle while such vehicle is lawfully parked; or (iii) a mobile telephone used with a hands-free device, and (iv) in certain other circumstances.

SB 300 – As recommended by the Senate Committee on Judiciary, Sen. Kellie Warren, Chair, would amend definitions in the Kansas Racketeer Influenced and Corrupt Organization Act (Kansas RICO Act).

SB 422 – Would set appropriations and procedures for fiscal years ending June 30, of 2023, 2024, and 2025 for state agencies. Referred to the Senate Committee on Ways and Means, Sen. Rick Billinger, Chair. See also HB 2592 and HB 2588.

SB 340 – Would create the Kansas Promise Scholarship Program and enact procedures and responsibilities of the State Board of Regents under the program. Referred to the Senate Committee on Education, Sen. Molly Baumgardner, Chair. The Committee has recommended the bill be passed as amended.

SB 181 – Would create the Elevator Safety Act relating to safety standards and inspection requirements for elevators within the State. Referred to the Senate Committee on Federal and State Affairs, Sen. Robert Olson, Chair. The Senate Committee of the Whole passed the bill, as amended, on final action: Yea, 32; Nay, 7. It was then referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair. The House Committee has recommended the bill be passed as amended.

HB 2590 – Would repeal the authority of the State Finance Council to approve an expenditure request of federal government funds for coronavirus relief while the legislature is in session. Referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

HB 2589 – Would repeal the approval of the State Finance Council for the renovation of the Docking state office building. Referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

HB 2587 – Would create the School Sports Head Injury Prevention Act, which would, among other things, require schools to establish concussion-management teams and sets forth certain standards of care and safety protocols. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

HB 2586 – Would enact the Kansas Work and Save Program Act, allowing certain individuals to contribute to individual retirement accounts and providing administrative duties and powers of the State Treasurer regarding such program. Referred to the House Committee on Insurance and Pensions, Rep. Steven Johnson, Chair. A hearing on the matter has been scheduled for Feb. 7, 2022.

FOULSTON

ATTORNEYS AT LAW

HB 2583 – Would amend laws relating to KPERS by providing an annual KPERS cost-of-living adjustment on the occurrence of certain investment returns and increases to the consumer price index as certified by the KPERS board or executive director as designated by the board. Referred to the House Committee on Insurance and Pensions, Rep. Steven Johnson, Chair.

SB 437 – Would prohibit certain acts by business entities, governmental entities or public officials based upon a person's vaccination status or possession of an immunity passport; would also amend the Kansas Act Against Discrimination to define unlawful employment practices related to vaccination status or possession of an immunity passport. Referred to the Senate Committee on Public Health and Welfare, Sen. Richard Hilderbrand, Chair.

AGRICULTURE

HB 2563 – Would clarify the Kansas plants and seeds laws relative to the hemp-growing industry. Referred to the House Committee on Agriculture, Rep. Ken Rahjes, Chair. A hearing on the matter has been scheduled for Feb. 10, 2022.

HB 2566 – Would create a micro-winery license to manufacture and sell wine and would require farm winery licensees to engage in farm-related activity. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

SB 346 – As amended by the Senate Committee on Agriculture and Natural Resources, Sen. Dan Kerschen, Chair, would allow for the on-farm retail sale of milk or milk products and would, among other things, regulate the labeling and advertising of such products.

HEALTHCARE

SB 399 – Would add maternity centers to the definition of healthcare provider for purposes of the Healthcare Insurance Provider Availability Act. Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair.

SB 436 – Would amend laws relating to responses to infectious or contagious diseases, including but not limited to, ensuring a right to in-person visitation at medical care facilities and adult care homes, prohibiting certain public health orders related to isolation and quarantine, stay-at-home orders, curfews and face masks, and limiting state-of-disaster emergency powers of the governor and state-of-disaster local emergency powers of counties and cities related to stay-at-home orders, curfews and face masks. Referred to the Senate Committee on Public Health and Welfare, Sen. Richard Hilderbrand, Chair.

TRANSPORTATION

HB 2596 – Would authorize school boards to contract with transportation network companies to provide certain transportation services. Referred to the House Committee on Transportation, Rep. Richard Proehl, Chair. A hearing on the matter has been scheduled for Feb. 9, 2022.

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

FOULSTON

ATTORNEYS AT LAW

jrankin@foulston.com. Learn more about the authors below:

James (Jim) P. Rankin

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

785.806.3600

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 government relations at the state and federal level.

Gary L. Robbins

Co-Editor and Governmental Affairs Consultant

785.640.2651

garyrobbinsconsulting@gmail.com

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

Eric, a governmental affairs consultant to Foulston Siefkin's Governmental Affairs & Public Policy practice group, has nearly 30 years' experience providing strategic direction and government relations services. As Wichita State University's government 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.

FOULSTON

ATTORNEYS AT LAW

This update has been prepared by Foulston Siefkin LLP for informational purposes only. It is not a legal opinion; it does not provide legal advice for any purpose; and it neither creates nor constitutes evidence of an attorney-client relationship.

PRACTICE AREAS

- Governmental Affairs & Public Policy Law