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NEWSLETTERS



KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | JANUARY 27, 2023

WEEK THREE

This week, the Statehouse saw more visitors with school children tours, special events, and more organizations hosting advocacy days. On Tuesday, the annual Walk for Life by abortion opponents had an estimated 1,000 supporters rallying on the south steps of the Statehouse. The theme was restoring a culture of life.

The first significant floor action of the session began in the House. On Wednesday, debate centered on the concurrent resolutions for the House Rules and the Joint Rules. The House Republicans added the Pay-Go provision to the House Rules. It prohibits floor amendments from expanding the cost of appropriations bills without somewhere reducing the budget by an equal amount. Democrats complained it gave too much power to the 23-member House Appropriations Committee. A proposed amendment to stop House sessions at midnight was defeated by Republicans. A provision was added to the House Rules so Republican and Democratic leadership would not violate the Kansas Open Meetings Act when communicating by group text during caucus, committee meetings, or on the floor. The new rules prohibit anyone from serving as House Speaker for more than four years. An amendment to limit the number of bills bundled together was rejected. On Thursday, both concurrent resolutions for the permanent House and Joint Rules passed largely along party lines.

STATE OF THE STATE ADDRESS

On Tuesday, Gov. Laura Kelly's State of the State address sounded familiar themes from the gubernatorial campaign. The governor encouraged the Republican controlled Legislature to use a bipartisan approach to education, healthcare, and taxes while delivering a budget that is fiscally responsible. She urged the Legislature to consider her \$500-million tax program to eliminate the state sales tax on food this session, create a state tax holiday on school supplies, and address shielding Social Security income from the state income tax.

Gov. Kelly also urged the Legislature to avoid injecting politics into public education, expand Medicaid, legalize medical marijuana, address meaningful water policy, and find answers to the rural housing crisis. Senate President Ty Masterson gave the pre-recorded Republican response. He indicated that Medicaid expansion and legalization of medical marijuana were not likely to pass.

SENATE RETURNS TO 40 MEMBERS

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Sen. Richard Hilderbrand's replacement is a familiar face around the Statehouse. On Sunday, former House Speaker Tim Shallenburger defeated retired pastor Dan Muter by an 87-42 margin. Senate District 13 Republican officials from Bourbon, Cherokee, and Crawford counties made the selection. He will complete the remaining two years of Hilderbrand's term. The former House Speaker was sworn into office on Monday. Shallenburger served in the House from 1987 to 1998. He also served as the Kansas GOP Chair and ran unsuccessfully for governor. He also worked for Gov. Sam Brownback as his legislative director.

Sen. Hilderbrand's resignation also left a vacancy for the Majority Whip leadership position. On Thursday, the Senate Republican caucus elected Sen. Rick Kloos, R-Berryton, as the new Majority Whip. He defeated Sen. Kellie Warren by a 17-9 vote.

COMMITTEE HEARINGS

On Monday, the House Judiciary Committee heard healthcare professionals advocating for a bill increasing the penalties for violence against healthcare workers and creating new crimes for interfering with a hospital delivering care. Violence against healthcare workers was escalating prior to the pandemic and was even more prevalent during the pandemic. A similar bill was vetoed last year by Gov. Kelly when it was amended into a broader civil liability protections bill for businesses due to COVID-19.

On Tuesday, the House Elections Committee held a hearing on a bill that would require run-off elections for statewide office in a general election if the winner did not receive at least 50% of the vote. Two states, Georgia and Louisiana, have similar laws for a general election, while some other states have runoffs after primaries. The bill met with strong opposition from county clerks and others. It was estimated it would cost counties between \$5-6 million. One opponent noted that December runoff elections have lower voter turnout.

Tuesday, the House K-12 Education Budget Committee heard HB 2030, allowing virtual and homeschooled students to join public school athletic teams and activities. The proposal generated considerable discussion. Last session, a similar bill passed in committee, subject to school district proximity conditions. The homeschooled students would have to live within the school district boundaries. Wednesday, the House K-12 Education Budget Committee debated increasing the state income tax credit program for contributions to private schools. The proposal would increase to 100% from the existing 70% Kansas income tax credit program for private schools designed for low-income students to attend private schools. The fiscal impact could be at least \$10 million more next year compared with \$5 million last year.

On Monday, the Senate Education Committee heard SB 13, permitting certain local broadcasters to provide broadcast services for a school's postseason activities, notwithstanding if the state high school activities association enters into an exclusive broadcast agreement for postseason activities. This bill gained considerable support.

The Senate Financial Institutions and Insurance Committee was busy hearing six bills this week. SB 24 would change the required number of employees in the definitions of "large employer" and "small employer" for purposes of coverage for autism spectrum disorder. SB 26 would specify certain requirements necessary to demonstrate fiscal soundness for health maintenance organizations and Medicare provider organizations applying for certificates of authority.

Wednesday and Thursday of this week, the Senate Utilities Committee had hearings on SB 46 and SB 49, which would require wind farms to install light mitigation technologies under certain circumstances. SB 49 would require the installation of these light mitigation systems on all new projects within 24 months following the approval by the Federal Aviation Administration ("FAA"). SB 46 would require the installation of light mitigation systems on any existing wind turbines (that do not already have it installed) if approved by the FAA. The bills had no opposition. The industry supports both bills, with some amendments to clarify and clean up some conflicting language and dates. The committee intends to work these bills in the coming weeks.

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NEXT WEEK

The House Elections Committee will be hearing two bills on the use of remote ballot boxes for the return of advance voting ballots. In addition, the Committee will have hearings on expanding the elections crime of corrupt political advertising to be consistent with the Campaign Finance Act.

House Education Committee will hear a number of bills, including HB 2143, establishing the requirements for school district bullying policies and procedures for investigating complaints. Other measures scheduled for hearing would allow students in a virtual school to take virtual state assessments and would create the crime of abuse of a sports official.

The House Transportation Committee will hear HB 2146, proposing to increase penalties for operating a vehicle at a speed in excess of 30 miles per hour over the speed limit. The Committee will also hear HB 2004, which would establish the EV energy equity road repair tax act and provide for a road repair tax on electricity distributed from a public charging station for electric vehicles.

The House Taxation Committee will hear seven bills next week. These include HB 2108, providing a back-to-school sales tax holiday for school supplies, computers, and clothing, and HB 2135, establishing an income, privilege, and premium tax credit for contributions to eligible charitable organizations operating pregnancy centers or residential maternity facilities. The Senate Assessment and Taxation Committee will also be hearing the Senate version of HB 2135 (SB 96) next week.

In the Senate, the Local Government Committee will hear SB 86, requiring local government officials to disclose substantial interests in the construction and operation of a wind or solar energy conversion system and to abstain from all local governmental actions relating to such matters. Next Thursday, the Senate Commerce Committee will be hearing legislation creating the Kansas film and digital media industry production development act, providing a tax credit, sales tax exemption, and loans and grants to incentivize film, video, and digital media production in Kansas.

The Senate Ways and Means Committee may have an interesting hearing on SB 67, which proposes to transfer \$1,000,000,000 from the state general fund to the budget stabilization fund of the department of administration during the fiscal year ending June 30, 2023.

BILL INTRODUCTIONS

COURTS, LAWS, AND REGULATIONS

HB 2105 – Would enact the Kansas Earned Wage Access Services Act and establish the administration of such act by the Office of the State Bank Commissioner, providing for registration, bond requirements, duties, prohibited acts, reports, records retention, orders, civil fines, penalties and fees. Referred to the House Committee on Financial Institutions and Pensions, Rep. Nick Hoheisel, Chair.

HB 2123 – Would establish the Office of Entrepreneurship within the Department of Commerce so as to encourage that 5% of state contracts and certain incentive funding go toward Kansas businesses that have been in operation for less than five years and would eliminate first-year business fees. Referred to the House Committee on Commerce, Labor and Economic Development, Rep. Sean Tarwater, Chair.

HB 2124 – Would allow businesses to sell cereal malt beverage by the drink on Sundays without requiring that 30% of such businesses' gross receipts be derived from the sale of food. Referred to the House Committee on Federal and State Affairs, Rep. Will Carpenter, Chair.

HB 2130 – Would make multiple revisions to the Kansas probate code by, among other things, increasing certain dollar amounts applicable to allowance to spouse and minor children; transfers within two years of death; homestead or homestead allowances; payment of benefits to certain relatives; small estates affidavit for personal

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property; remission of court costs for small estates; exhibition of demands and allowance without a hearing; refusal to grant letters of administration; appealable orders and bond; and requests for transfer from magistrate to district judge. Referred to the House Committee on Judiciary, Rep. Fred Patton, Chair.

HB 2140 – Would increase the age range of able-bodied adults without dependents required to complete an employment and training program to receive food assistance. Referred to the House Committee on Welfare Reform, Rep. Francis Awerkamp, Chair.

HB 2141 – Would require cooperation with child support to determine food assistance eligibility for custodial and non-custodial parents and would disqualify such parents from food assistance when delinquent in child support payments. Referred to the House Committee on Welfare Reform, Rep. Francis Awerkamp, Chair.

HB 2144 – Would authorize modification of a noncharitable irrevocable trust to provide that the rule against perpetuities is inapplicable and provide that the Kansas Uniform Statutory Rule Against Perpetuities is inapplicable to trusts and under certain circumstances. Referred to the House Committee on Judiciary, Rep. Fred Patton, Chair.

HB 2161 – Would enact the Patient Right to Visitation Act applicable to hospitals, adult care homes and hospice facilities, requiring in-person visitation in certain circumstances. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

HB 2170 – Would relate to spirits distributors, wine distributors, and cereal malt beverage distributors by regulating sample sizes. Referred to House Committee on Federal and State Affairs, Rep. Will Carpenter, Chair.

HB 2172 – Would enact the Uniform Trust Decanting Act, which relates to the power of an authorized fiduciary to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust. Referred to the House Committee on Judiciary, Rep. Fred Patton, Chair.

HB 2183 – Would remove the cap on the amount of damages that may be awarded in wrongful-death civil actions. Referred to the House Committee on Judiciary, Rep. Fred Patton, Chair.

SB 77 – Would authorize the removal of unlawfully discriminatory restrictive covenants. Referred to the Senate Committee on Federal and State Affairs, Sen. Mike Thompson, Chair.

SB 86 – Would require local governmental officials and candidates for local office to disclose substantial interests in a renewable energy system and would prohibit local governmental officials who have a substantial interest from acting on matters relating to the renewable energy system. Referred to the Senate Committee on Local Government, Sen. Carolyn McGinn, Chair.

SB 91 – Would enact the Kansas Film and Digital Media Production Development Act, establishing an income tax credit, sales tax exemption, and loan and grant program to be administered by the Secretary of Commerce for the purpose of developing film, video, or digital production in Kansas. Referred to the Senate Committee on Commerce, Sen. Renee Erickson, Chair. See also HB 2182.

SB 93 – Would create the Constitution and Federalism Defense Act; and establish a Joint Commission on Federalism to evaluate the constitutionality of federal mandates; plus create the Constitution and Federalism Defense Fund. Referred to the Senate Committee on Federal and State Affairs, Sen. Mike Thompson, Chair.

SB 100 – Would prohibit the conveyance of title to certain real property to foreign individuals and entities. Referred to the Senate Committee on Judiciary, Sen. Kellie Warren, Chair.

TAXATION

HB 2106 – Would provide for a sales tax exemption for sales of property and services used in the provision of communications services. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

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HB 2107 – Would increase the income limit to qualify for the subtraction modification for Social Security income. (Also introduced as HB 2109.) Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

HB 2108 – Would provide a sales tax exemption for sales of certain school supplies, computers, and clothing during an annual sales-tax holiday. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

HB 2110 – Would allow single sales factor apportionment for certain taxpayers. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

HB 2111 – Would provide an exemption for sales of children's diapers and feminine hygiene products, establish the STAR Bonds Food Sales Tax Revenue Replacement Fund and provide certain transfers thereto. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

HB 2134 – Would relate to motor vehicles, providing for a deduction for calculating tax owed when selling a recently purchased vehicle that is a wrecked or damaged vehicle and purchasing a subsequent vehicle. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

HB 2135 – Would relate to income, privilege, and premium tax credits by establishing a tax credit for contributions to eligible charitable organizations operating pregnancy centers or residential maternity facilities. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

HB 2136 – Would relate to the determination of Kansas adjusted gross income by providing a subtraction modification for sales of property subject to eminent domain. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

SB 61 – Would provide a 5% tax rate for individuals and corporations and providing that future tax rate decreases be contingent on exceeding revenue estimates. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

SB 79 – Would authorize counties to impose an earnings tax. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

SB 80 – Would relate to homestead property tax refund claims; excluding Social Security payments from household income for eligibility of seniors and disabled veterans related to increased property tax claims. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

SB 81 – Would provide a subtraction modification for the Federal Work Opportunity tax credit and the Employee Retention Credit disallowances; amending K.S.A. 2022 Supp. 79-32, 117 and repealing the existing section. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

SB 96 – Would establish a tax credit for contributions to eligible charitable organizations operating pregnancy centers or residential maternity facilities. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

SB 97 – Would increase the extent of exemption for residential property from the statewide school levy. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

UTILITIES

HB 2154 – Would provide for the statewide election of Kansas Public Utility commissioners and establish an election schedule for the election of such commissioners; authorizing the gubernatorial appointments until commissioners are elected. The attorney general would represent and protect the collective interests of utility customers in utility rate-related proceedings before the commission and in any other judicial or administrative proceeding and establish the utilities regulation division within the office of the attorney general. See also SB 88. Referred to the House Committee on Energy, Utilities and Telecommunications, Rep. Leo Delperdang, Chair.

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HB 2155 – Would require the commission to evaluate the regional rate competitiveness of an electric utility's rates in rate proceedings. Referred to the House Committee on Energy, Utilities and Telecommunications, Rep. Leo Delperdang, Chair.

SB 68 – Would provide incumbent electric transmission owners a right of first refusal on construction upgrades. Referred to the Senate Committee on Utilities, Sen. Robert Olson, Chair.

SB 78 – Would require the Kansas Corporation Commission to evaluate the regional rate competitiveness of an electric utility's rates in rate proceedings. Referred to the Senate Committee on Utilities, Sen. Robert Olson, Chair.

AGRICULTURE

HB 2159 – Would, among other things, provide for additional sources of revenue for the Water Program Management Fund and authorize the Secretary of Health and Environment to establish additional fees for the regulation of underground injection control wells. Referred to the House Committee on Agriculture and Natural Resources, Rep. Ken Rahjes, Chair.

HB 2168 – Would, among other things, add hemp grain to the definition of grain and authorize the Secretary of Agriculture to utilize performance-based sampling when inspecting industrial hemp. Referred to the House Committee on Agriculture and Natural Resources, Rep. Ken Rahjes, Chair.

REAL ESTATE

HB 2083 – Would create the Kansas Vacant Property Act and prohibit municipalities from imposing certain fees and other requirements on vacant property. Referred to the House Committee on Local Government, Rep. Emil Bergquist, Chair.

HB 2084 – Would prohibit the preparation, distribution, and sale of adulterated or contaminated kratom products and establish related fines and penalties. Referred to the House Committee on Federal and State Affairs, Rep. Will Carpenter, Chair.

HB 2101 – Would regulate contract for deed transactions and make certain deceptive actions violations of the Consumer Protection Act. Referred to the House Committee on Financial Institutions and Pensions, Rep. Nick Hoheisel, Chair.

BANKING AND INSURANCE

HB 2094 – Would specify certain requirements necessary to demonstrate fiscal soundness for health maintenance organizations and Medicare provider organizations applying for a certificate of authority. Referred to the House Committee on Insurance, Rep. William Sutton, Chair.

HB 2133 – Would relate to payments made with credit and debit cards by allowing a surcharge for use of such cards. Referred to the House Committee on Financial Institutions and Pension, Rep. Nick Hoheisel, Chair.

SB 62 – Would enact the Protect Vulnerable Adults From Financial Exploitation Act and require reporting of instances of suspected financial exploitation under certain circumstances and provide civil and administrative immunity to individuals who report such instances. Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair.

SB 85 – Would relate to the licensing and registration of limited lines travel insurance producers and travel retailers and enact the Kansas Travel Insurance Act and establish a premium tax for travel insurers. Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair.

EDUCATION

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SB 102 – Would establish residency criteria for students of technical colleges. Referred to the Senate Committee on Education, Sen. Molly Baumgardner, Chair.

HEALTHCARE

HB 2171 – Would modify rules applicable to health care provider peer review by providing that privilege does not apply to factual information. Referred to House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

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:

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