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NEWSLETTERS

KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | MARCH 24, 2023

WEEK 11

Today (Friday), committees are completing their consideration of non-exempt bills for the 2023 legislative session. This week witnessed emotional moments during committee hearings and floor debates. Both chambers debated major policy issues on the floor. The House and Senate debated resolutions calling for a Convention of the States to add a constitutional amendment on term limits for members of Congress. Neither chamber was able to garner the necessary 2/3 vote for approval. The House debated the education budget, Born Alive Infants Protection Act, campaign finance and ESG. The Born Alive Infants Protection Act debate saw an unsuccessful effort to amend Medicaid expansion into the bill.

FLOOR ACTION

Tuesday, the Senate passed its version of the budget by a narrow 23-12 margin. There were two members present and passing. In addition, three Senators were not voting or were absent. The Senate bill trimmed \$600 million recommended by Governor Laura Kelly.

Wednesday, the House debated K-12 funding. House Sub. for SB 113 makes appropriations for the Kansas State Department of Education (KSDE) for FY 2023, FY 2024, and FY 2025; adjusts the Kansas School Equity and Enhancement Act (KSEEA); and amends various provisions of law related to K-12 education. The bill was approved 75-48.

Wednesday, the House debated HB 2436, concerning environmental, social, and governance (ESG) criteria involving public contracts and investments; enacting the Kansas Public Investments and Contracts Protection Act; prohibiting the state or a political subdivision from giving preferential treatment to or discriminating against companies based on environmental, social, and governance criteria in procuring or letting contracts. It requires fiduciaries of the Kansas Public Employees Retirement System to act solely in the financial interest of participants and beneficiaries of the system. Thursday, the bill passed on final action 85-38.

Wednesday, the Senate debated Senate Sub for HB 2344, establishing child-care licensing requirements relating to license capacity and staff-to-child ratios, eliminating certain license fees and training requirements. The bill relates to child-care facility availability and capacity by relaxing some current child-care licensing requirements. It was

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supported by the Kansas Chamber to address both the shortage of child-care and workforce issues. Concerns were raised on the Senate floor about the impact of deregulation on child safety. Thursday, the measure passed 21-17.

HOUSE TAX PLAN CLEARS COMMITTEE

Thursday, the House Taxation Committee met to finalize a mega tax bill. The committee had to trim the original \$2.1 billion price tag over the next three years. The key elements of the House tax plan are now a single state tax rate of 5.25% (originally 4.95%) while exempting income up to \$6,150 for individuals and \$12,300 for married couples filing jointly and the elimination of the state sales tax on groceries on July 1 instead of phasing it out by 2025. The bill does not apply to local sales taxes. The standard deduction for single taxpayers would increase to \$4,000 from \$3,500 and \$12,300 for married couples filing jointly along with cost-of-living adjustments starting in 2024.

The bill increases the property-tax exemption for the 20-mill levy for public schools from \$40,000 of valuation to \$65,000, along with future increases. The mega bill addresses the Social Security cliff by increasing the threshold from \$75,000 to \$100,000. The final price tag is roughly \$1.37 billion for all state funds from 2024 to 2026. The House bill is projected to save Kansans \$500 million in taxes next year. It will be debated on the House floor next week. The differences between the chambers will be addressed in conference committee.

COMMITTEES

Tuesday, the House Ethics Committee approved a compromise bill addressing the Kansas Governmental Ethics Commission administrative procedures. Legislators praised the Ethics Commission, governor's office, and attorney Josh Ney for negotiating the compromise. The compromise was inserted into a Senate bill banning remote ballot boxes. The compromise was approved unanimously by the committee and passed the House 119-3.

Tuesday, the Senate Public Health and Welfare Committee heard SB 315, requiring child-care facilities, elementary, secondary, and postsecondary educational institutions, and employers to grant exemptions from vaccine requirements without inquiring into the sincerity of the request and repealing the meningitis vaccine requirement to live in student housing. During the emotional hearing, one conferee verbally attacked a senator who opposed the bill, who then requested security come into the hearing. Thursday, the Senate Public Health and Welfare Committee killed SB 315; however, Friday, the bill was revived and passed.

Wednesday, the Senate Federal and State Affairs Committee reworked SB 291 (ESG) after it was re-referred to the committee. The re-referral was intended to remove controversial language objected to by the Kansas Bankers Association and others. The objectionable language would have required private financial advisers to get client consent acknowledging that ESG guidelines had been followed in making investment decisions. The consent requirement was removed by the committee.

Thursday afternoon, the Senate Assessment and Taxation Committee approved \$5,000 tax credits for parents who remove their children from public schools or have them taught in private or home schools. The new bill is called the Ad Astra Opportunity Tax Credit. The price tag is projected to be \$128 million.

?House Energy, Utilities, and Telecommunications held its last meeting for the 2023 legislative session. During this meeting, the committee unanimously recommended approval of SB 49 without amendment. Once approved by the full House of Representatives and because the bill is identical to the Senate version, it will go to Gov. Kelly for her approval. SB 49 requires wind turbines of a certain number and height to have light-mitigation technology installed subject to FAA approval. The mitigation technology would be required on future projects and retroactively on existing projects after Jan. 1, 2026, where the utility has entered into a new power purchase agreement.

NEXT WEEK

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Both chambers will be on the floor debating bills for three days. Wed., March 29, is the deadline to consider non-exempt bills from the other chamber. First adjournment is scheduled for April 6.

BILL INTRODUCTIONS AND NOTABLE DEVELOPMENTS

COURTS, LAWS, AND REGULATIONS

HB 2015 – As amended by the Senate Committee of the Whole, would modify the law governing court-ordered infectious disease testing. The bill passed on final action as amended; Yea: 33, Nay: 5.

S Sub for HB 2016 – As recommended by the Senate Committee on Judiciary, Sen. Kellie Warren, Chair, would enact the Act Against Abusive Access Litigation to create a civil action for determining whether litigation that alleges any access violation under the federal Americans with Disabilities Act or similar law constitutes abusive litigation.

HB 2019 – As amended by the Senate Committee on Transportation, Sen. Mike Petersen, Chair, would establish conditions in the Kansas Transportation Network Company Services Act for when a driver for a transportation network company is an independent contractor.

HB 2027 – As amended by the Senate Committee on Judiciary, Sen. Kellie Warren, Chair, would amend the “slayer rule” in the Kansas Probate Code to create a procedure to prevent the distribution of estate assets until the resolution of criminal proceedings involving a person who has interest in the estate and who has been arrested or charged with the felonious killing of the decedent.

HB 2042 – As amended by both houses, would affect self-service storage facilities by authorizing the operators of such facilities to tow motor vehicles, watercraft, or trailers if the occupant is in default for more than 60 days. Referred to the Senate Committee on Commerce, Sen. Renee Erickson, Chair. The Senate Committee of the Whole passed the bill on final action as amended; Yea: 38, Nay: 0.

HB 2130 – As amended by the Senate Committee on Judiciary, Sen. Kellie Warren, Chair, would amend law in the Kansas Probate Code concerning certain dollar amount limits and thresholds referenced in the Code, transfer-on-death deeds, and publication of notice of probate hearings and sales of probate real estate. The Senate Committee of the Whole passed the bill on final action as amended; Yea: 38, Nay: 0.

HB 2147 – As amended by the Senate Committee on Transportation, Sen. Mike Petersen, Chair, would create law to require, beginning Jan. 1, 2024, a public agency or towing or wrecking service lawfully selling an abandoned or towed motor vehicle to provide a certification to the purchaser that statutory recovery, storage, notification, and verification requirements associated with the abandoned or towed vehicles have been satisfied, and that vehicle identification number inspection requirements have been met.

HB 2160 – As amended by the Senate Committee on Transportation, Sen. Mike Petersen, Chair, would amend secured load requirements for trucks, trailers, and semitrailers hauling cotton bales under certain conditions. The bill would clarify the cotton bales could be transported by the cotton producer intrastate from the place of production or storage to a market, place of storage, or place of use if: (1) the cotton bales are fully loaded from front to back in a single layer; and (2) the truck, trailer or semitrailer is equipped with cradles, and stakes, sideboards, or side posts that are no less than 12 inches high.

HB 2173 – As amended by the Senate Committee on Commerce, Sen. Renee Erickson, Chair, would prohibit any state agency or local unit of government from prohibiting or restricting the use of any refrigerant approved for use under federal Safe Alternatives Policy (42 U.S. Code Section 7671k) or its enacting regulations when the refrigerant is installed and used in accordance with federal law.

HB 2236 – As amended by the Senate Committee on Education, Sen. Molly Baumgardner, Chair, would state that a parent has a right to direct the education, upbringing, and moral or religious training of his or her children. The bill

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would also direct local boards of education to adopt policies and procedures to guarantee the free exercise of these rights and establish a means by which parents could remove their child from a lesson or class based upon objections to the course material.

HB 2326 – As amended by the Senate Committee on Judiciary, Sen. Kellie Warren, Chair, would extend the sunset date on the Scrap Metal Theft Reduction Act from July 1, 2023, to July 1, 2028, and would specify “regulated scrap metal” under the Act includes catalytic converters, as defined by the bill.

HB 2335 – As amended by the Senate Committee on Transportation, Sen. Mike Petersen, Chair, would authorize the Rail Service Improvements Fund to be used for qualified track maintenance and would increase transfers from the State Highway Fund to the Rail Service Improvement Fund from \$5.0 million to \$10.0 million annually, starting July 1, 2023. Continuing law authorizes use of these funds for financing, acquisition, or rehabilitation of railroad and rolling stock.

HB 2336 – As amended by the Senate Committee on Commerce, Sen. Renee Erickson, Chair, would amend law pertaining to the issuance of general obligation bonds by the board of directors of airport authorities enacted under the Surplus Property and Public Airport Authority Act.

HB 2388 – As amended by the House Committee of the Whole, would require licensing bodies to provide verified electronic credentials, in addition to paper-based credentials, to all credential holders and utilize a centralized electronic credential data management system. The Committee passed the bill on emergency final action as amended; Yea: 121, Nay: 0. The bill has been referred to the Senate Committee on Commerce, Sen. Renee Erickson, Chair.

HB 2401 – As amended by the House Committee on Commerce, Labor and Economic Development, Rep. Sean Tarwater, Chair, would make various amendments to law related to unemployment compensation.

HB 2438 – As amended by the House Committee on Federal and State Affairs, Rep. Will Carpenter, Chair, would remove references in current emergency medical services (EMS) statutes to persons holding the instructor-coordinator designation.

HB 2446 – As amended by the House Committee on Federal and State Affairs, Rep. Will Carpenter, Chair, would prohibit municipalities from adopting or enforcing an ordinance, resolution, or regulation that restricts taxes, imposes a fee upon, prohibits, or regulates the use of auxiliary containers such as straws, bags, and cups.

HB 2447 – As amended by the House Committee on Commerce, Labor and Economic Development, Rep. Sean Tarwater, Chair, would prohibit cities, counties, and unified city-county governments from prohibiting the sale of any product or service that is otherwise permitted under state law. The prohibition would not apply to: (1) setting reasonable standards for the regulation of alcohol possession; (2) regulating consumer merchandise to the extent necessary to comply with local building or fire codes; or (3) requiring the licensing or permitting of any business entity. This prohibition could not be construed to prohibit or restrict zoning authority.

HB 2455 – As recommended by the House Committee on Judiciary, Rep. Fred Patton, Chair, would create a new section of law and substantially update various articles of the Kansas General Corporation Code and also repeal several statutes.

H Sub for SB 116 – As recommended by the House Committee on Federal and State Affairs, Rep. Will Carpenter, Chair, would amend various provisions of the Kansas Liquor Control Act (KLCA), Kansas Cereal Malt Beverage (CMB) Act and Club and Drinking Establishment Act (CDEA) concerning remittance of gallonage taxes, samples, Sunday sales, the food sales requirement, and common consumption areas.

Sub SB 155 – As amended by the Senate Committee of the Whole, would provide appropriations for the fiscal years ending June 30, 2023, June 30, 2024, June 30, 2025, and June 30, 2026, for state agencies. The Senate

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Committee of the Whole passed the substitute bill on final action as amended; Yea: 23, Nay: 12. The bill has been referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

SB 205 – As amended by the House Committee on Water, Rep. Jim Minnix, Chair, would amend law concerning water rights, the establishment of multi-year flex accounts, and participation in a water bank.

SB 301 – As amended by the Senate Committee on Transparency and Ethics, Sen. Elaine Bowers, Chair, would require elected and appointed officers of a governmental subdivision to file annual statements of substantial interest with the office where declarations of candidacy are required to be filed. Upon receipt of a statement of substantial interest, the receiving office would be required to submit a copy of such statement to the Secretary of State.

TAXATION

HB 2292 – As amended in the Senate and the House, would enact the Kansas Apprenticeship Act by establishing a tax credit and grant incentive for apprenticeships offered by Kansas businesses, nonprofit organizations, healthcare organizations and teacher apprentices for school districts. Referred to the Senate Committee on Commerce, Sen. Renee Erickson, Chair. The Committee recommended the bill be passed as amended.

HB 2465 – Would modify the SALT Parity Act by clarifying the determination of taxable income of an electing pass-through entity and provide for the passing through of tax credits to electing pass-through entity owners. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

SB 91 – As amended by the House Committee on Taxation, Rep. Adam Smith, Chair, would enact the Kansas Film and Digital Media Production Development Act. The Act would create a sales tax exemption and nonrefundable income tax credits for qualifying film production activities and establish educational and economic development programs to incentivize and promote the growth of film and digital media production and industry in Kansas.

SB 263 – As amended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would require appraiser directives be established by rules and regulations.

SB 300 – As recommended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would reduce tax rates for the financial institutions privilege tax for banks, trust companies, and savings and loan associations.

INSURANCE

HB 2094 – Would specify certain requirements applicable to health maintenance organizations and Medicare provider organizations necessary to demonstrate fiscal soundness, amending K.S.A. 40-3203, and repealing the existing section. Referred to the Senate Committee on Financial Situations and Insurance, Sen. Jeff Longbine, Chair. The Senate Committee of the Whole passed the bill on final action as amended; Yea: 38, Nay: 0.

SB 85 – As amended by the House Committee on Insurance, Rep. William Sutton, Chair, would enact the Kansas Travel Insurance Act as part of the Kansas Insurance Act. The bill would address the licensure and registration of limited lines travel insurance producers (travel insurance producers) and travel retailers, establish a premium tax for travel insurers, regulate the sale and marketing of travel insurance and travel protection plans, provide for travel administrators, and establish standards for travel insurance policies.

HEALTHCARE

SB 180 – As amended by the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair, would establish the Women's Bill of Rights and provide a meaning of biological sex for purposes of statutory construction. The bill would set intermediate constitutional scrutiny as the standard of judicial review to be applied with regard to laws and rules and regulations that distinguish between the sexes and would identify those areas where distinction between the sexes would be related to important governmental objectives. The bill also would

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require certain entities that collect vital statistics for the purposes outlined in the bill to identify each individual who is part of the collected data set as either male or female at birth. The bill would include that individuals born with a medically verifiable diagnosis of disorder/differences in sex development would receive available federal and state legal protections.

SB 287 – As amended by the Senate Committee on Public Health and Welfare, Sen. Beverly Gossage, Chair, would expand current provisions to permit the issuance of a silver alert for a missing person 18 years of age or older who has dementia, a developmental disability such as autism spectrum disorder, or a cognitive impairment.

SB 320 – Would provide legal protections for infants born alive and require certain standards of care by healthcare providers for infants who are born alive and provide criminal penalties and civil liability for violations of the act. Referred to the Senate Committee on Public Health and Welfare, Sen. Beverly Gossage, Chair.

AGRICULTURE

HB 2279 – As amended by the Senate Committee on Agriculture and Natural Resources, Sen. Dan Kerschen, Chair, would add sections to the Kansas Groundwater Management District Act to require groundwater management districts (GMDs) to submit annual reports to the Legislature and conservation and stabilization action plans to the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture.

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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