

NEWSLETTERS



KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | MAY 22, 2020

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OVERVIEW

Sine Die is a Latin term meaning, “without day.” More simply and in plain English, the end. Traditionally, *Sine Die* adjournment is largely ceremonial marking the end of each legislative session. The COVID-19 pandemic made the 2020 legislative adjournment historic with high unemployment claims, shuttered businesses, declining state revenues, and debate over various Emergency Orders. The pandemic has dramatically altered how the Legislature approached adjournment. Over the last 10 days, key House Committees met by Zoom meetings before the session. The Senate Committees, which are much smaller, met in person in the Old Supreme Courtroom on the third floor of the Capitol. Legislative leaders had to project how many issues could realistically be handled procedurally in one day. Both chambers started Thursday at 8:00 a.m. The 125 members of the House of Representatives were asked to record their attendance between 7:30-8:00 a.m. and return to their offices. Generally, only House leadership and key committee leaders were on the floor while in session. Any member wishing to speak could notify leadership to be recognized in order to leave their office to speak. During voting, 20 members were allowed to leave their offices to vote. Following their votes, House members returned to their offices. Procedurally, this limited how many issues could be debated. Even motions routinely handled by voice votes required roll call votes, 20 members at a time. Obviously, the process was cumbersome. Both chambers were able to handle multiple issues by bundling bills, provided the selected proposals had strong support in one or the other chamber. This allowed the other House to “concur” if they supported the legislation. Late Wednesday evening, the House and Senate Tax Conference Committee reached an agreement on key tax proposals.

KANSAS ECONOMIC LOAN RECOVERY PROGRAM

Late last Friday, the Senate Financial Institutions and Insurance Committee approved a \$60 million low- interest account for lenders to use to make loans to farmers and small businesses impacted by the coronavirus pandemic. The proposed Kansas Economic Loan Recovery Program would provide lenders access to low-cost money from the Pooled Money Investment Board. The \$60 million will be redirected from a little used low-income housing

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program offered by the state. The Senate Committee also bundled House Bills requested by the Kansas Insurance Department.

On Friday, the House Appropriations Committee recommended an expanded Joint House-Senate Budget Committee to assist with reviewing the governor's recommendations for spending COVID-19 federal funds before the approval by the State Finance Council. The governor's plan for spending federal funds to help local units of government finance pandemic expenditures includes creating a 15-member executive committee. The executive committee would review requests from local units of government and allocate money to the applicants.

JUDICIARY COMMITTEES

On Monday, the House Judiciary Committee asked Attorney General Derek Schmidt whether Gov. Kelly can issue a new emergency declaration on May 26 or whether the Legislature is going to have to specifically grant her authority for extensions. Attorney General Derek Schmidt shared he was still researching the issue, and he wasn't ready to opine whether the governor can continuously re-issue a State of Emergency. But if there is no extension, all those executive orders go away. Gov. Kelly's Chief of Staff Will Lawrence told the House committee his office does not have a firm plan for what might happen on May 26 if the governor's emergency declaration expires.

The Senate Judiciary Committee met Monday, Tuesday, and Wednesday to address COVID-19-related lawsuits, constitutional questions relative to executive powers, and other judicial issues. On Monday, the Chief Justice of the Kansas Supreme Court testified in favor of changing how two-way electronic audio-visual communication is used in courts. The committee also heard testimony on COVID-19 liability concerns from the business community and medical providers. The Kansas Chamber offered a specific proposal to address the concerns of the business community. The Kansas Medical Society proposed a bill addressing the concerns of the health providers. During the Wednesday Senate Judiciary Committee meeting, the proposals were amended into one bill.

On Tuesday, the Senate Judiciary Committee heard testimony from the attorney general and governor's office on executive powers and emergency disaster statutes. On Wednesday, the committee approved a bill clarifying the emergency powers of the governor.

ADJOURNMENT

When the Legislature adjourned in March, unresolved issues were left for future debate and possible action. At the March adjournment, the Legislature had only passed a handful of bills. The COVID pandemic trimmed more than 20 days off the legislative session. Trying to compress 20 days of missed committee and floor debate on outstanding matters plus address policy issues arising directly because of the pandemic into a one-day wrap-up session was a herculean task.

Each session is unique, but the COVID-19 pandemic makes the 2020 session adjournment historic and without precedent. Both chambers gaveled into session at 8:00 a.m. on Thursday. On Friday morning, the Senate adjourned around 6:45 a.m., and the House gaveled out at 7:55 a.m. *sine die* ending the 2020 Legislature. Initially, its agenda indicated the Senate planned to debate and pass 12 bills, and the House of Representatives could simply pass by concurring with the Senate amendments. However, this plan was derailed by minority party questions and concerns. The response from the Senate Majority Leader was to "call the question" on several amendments and bills in an effort to limit debate. Interestingly, there was an attempt to amend Medicaid expansion into an unrelated bill, but predictably, the maneuver was ruled "not germane" to the bill's subject on a vote of 26-14.

The House was relatively quiet until the afternoon when the Senate sent over several bills. Much of the afternoon was devoted to conference committees and waiting. By early evening, only two bills had been passed by both houses and no Conference Committee Reports (CCRs) had been produced. Ultimately, the lack of progress forced the House Leadership to move to suspend the midnight rule allowing them to meet past midnight, which triggered

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an emotional debate. The vote was close with 66 voting in favor (only three more than the 63 votes needed). The question was raised as to whether any actions taken after midnight would be constitutional since the Legislature was meeting beyond their announced date.

Unraveling the final language in the various conference committee reports will take a few days. The conferees worked hard and combined a number of important issues together. The Tax Conference Committee addressed several tax issues in the CCR on HB 2160. The highest profile language required marketplace facilitators (internet sellers) to collect and remit sales tax. The Tax Conference Committee had another CCR, bundling a series of property tax relief bills into one omnibus piece of legislation. The combination included deferral of penalties and interest for property taxes from May 10 to August 10.

The Education Conference Committee CCR combined a series of education bills, including the Kansas Promise Act, allowing high school graduates to obtain a scholarship to a community college or technical school.

The budget conference committee combined a wide variety of state agency related issues, including the KU Cancer Center designation, WSU bonding, the hospital provider assessment, and a series of bills related to the Kansas Insurance Department.

The last item of business in both chambers, and the most controversial, were the COVID-related issues bundled into the Judiciary CCR in Senate Substitute for HB 2054. The Substitute bill proposes to limit the governor's emergency management powers and the governor's ability to close businesses, restrict social activities, and impede religious proceedings. The CCR includes a broad range of important COVID issues: business and medical liability immunity, extensions of the executive order provision on unemployment benefits, electronic court proceedings, authority for telemedicine, legislative oversight of the federal CARES Act funding, and all EO extensions set to expire on January 26, 2021. The governor will have 10 business days to decide whether or not to sign or veto HB 2054.

Now, the Legislature is finally adjourned with no opportunity to override the governor if she vetoes the bill. Where do we go if the governor can't accept the limitations and decides to veto the bill? Where is Kansas after the emergency declaration expires on May 26?

WHAT'S NEXT

Sine Die adjournment allows legislators to start soliciting contributions from lobbyists and political action committees. Noon, June 1, is the filing deadline for candidates wishing to run for the Legislature. All 165 members of the House and Senate are up for re-election. It will be interesting to observe if the pandemic alters election campaigning tactics and how elections are conducted.

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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