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Legislative & Political Update

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The Kansas Legislature reached the halfway point of the 2018 session on Thursday, February 22 and is in recess until Wednesday, February 28 when the second half of the session gets underway.

The House of Origin, or turnaround as it is often called marks the date in which nonexempt legislation must clear the chamber in which it is introduced, or it is considered dead for the remainder of the session. The House moved a number of bills around before they adjourned to keep them alive (e.g., move from committee or the calendar to an exempt committee), while the Senate was much stingier with that parliamentary maneuver. In the legislative process, there is always a way go bring an issue or bill back to life, if enough support exists through introduction of a new bill through an exempt committee or a committee or floor amendment to an existing bill of similar subject matter. That said, the House of Origin deadline does weed out a good number of bills and issues that have not achieved enough support to advance.

Still the biggest issue of the session, unresolved, is school finance. The Kansas Supreme Court has deemed the state's school finance formula unconstitutional on standards of both equity and adequacy. Plaintiffs in the case suggest an additional \$600 million in K-12 funding should do the trick and meet the Court's mandate, while House and Senate leaders say not so fast.

The Legislature, led by Republican leadership, retained legal counsel for each chamber and retained the services of a consultant from Texas to review and make recommendations to the Legislature as to what level of funding is appropriate to meet constitutional muster.

There is a timeline on this work product, as the Kansas Supreme Court has given the Legislature until April 30 to address their decision. The Legislature is scheduled to reach First Adjournment on Friday, April 6, meaning they will have to consider and enact any legislation prior to that date. Critics and skeptics of the study suggest that is not enough time to consider the results of a comprehensive study and rewrite the state's school finance formula. Legislative leaders say they will get the job done.

On Friday, February 23, the education consultants hired by the State presented an overview of their process for review and a glimpse into how they would evaluate the state's school finance formula and make recommendations for funding.

Media reports indicate the consultants will drill down into each of the state's 286 school districts and evaluate such cost drivers as labor, housing, teacher pay, student needs, economic wealth of the district and operational costs overlaid with data related to student performance.

Proponents of the study route are hopeful the financial recommendations will come in much lower than \$600 million and provide a workable solution (defense) to the school finance case that will allow for the State to extricate itself from school finance litigation for at least a few years. Critics of the study cite a judge's negative comments on the experts hired by the State from a school finance case in Texas and suggest Republicans are simply seeking to hire someone to tell them what they want to hear with an "expert" stamp on the report.

The report to the Legislature is due March 15, which will give the Legislature about three weeks to consider the recommendations, craft a revised school finance formula and get it to the Governor if they are to adjourn in a timely manner.

General Legislative Matters.

The session seems quieter than in recent years, with few major issues percolating to the House and Senate floor. However, labeling an issue to be major or substantive depends upon whether one is interested in the subject or not.

Here are highlights of some of the more substantive issues of the session to date:

Utilities Legislation.

For those who spend time in the Senate Committee on Utilities and the House Energy, Utilities and Telecommunications Committee, it has been a rather busy year with a number of substantive bills considered by both committees.

SB 323 clarifies how service territory disputes will be handled between municipal utilities and electric cooperatives. The bill also included provisions of **SB 293** to clarify Kansas Corporation Commission jurisdiction over municipal utilities and **SB 355** allowing for KCC jurisdiction in certain transmission line proceedings. The bill is on its way to the governor.

SB 279 updates the Gas Safety and Reliability Policy Act by increasing the allowable surcharge a natural gas utility could recover through a Gas Safety & Reliability Surcharge (GSRS) filing from a maximum of .40 cents per residential customer per month to .80 cents and expanding the items recoverable in such filing with the KCC. Investments must be related to safety, system integrity or public right of way expenses. The Senate approved the bill this past week and it will be considered by the House during the second half of the session.

In late 2017, Congress approved major changes to Federal tax laws which impact public utilities. Accordingly, each state's public utility regulator has or will open a docket or proceeding to determine how a utility's rates should be adjusted to reflect a lower Federal tax rate. The KCC has already initiated this process, but there have also been hearings and a bill to require the return of this windfall to consumers in a timely manner. **SB 396** was one of such bills. However, the KCC appeared in opposition and indicated their own internal process would be more expedient than what was being suggested in legislation. The bill did not advance. In addition, both the Senate Committee on Utilities and the Senate Committee on Assessment and Taxation held informational hearings on the subject.

We have also seen legislation that would order the KCC to investigate why electric rates in Kansas are higher than surrounding states. Those bills have not advanced, but we could see a resolution considered during the second half of the session to urge the KCC to open a docket to review electric rates in Kansas as compared to surrounding states.

Both the House and Senate have considered legislation or held discussions on how to enhance the delivery of broadband services to rural Kansas. No specific legislation will be passed this year regarding recommendations that were part of a number of bills introduced in the House. However, the House has approved **HB 2701**, which would establish the 17-member Statewide Broadband Expansion Task Force to review the broadband needs of Kansas citizens, business, industries, institutions and organizations with recommendations due to the Legislature on or before January 31, 2019.

Taxes.

We have not seen any major rewrites of the State's tax laws given serious consideration yet this session. There does not appear to be much of an appetite for considering major tax bills after passage of legislation last year unwinding much of Governor Brownback's signature tax policy adopted in 2012 through an override of Governor Brownback's veto of legislation projected to increase state revenues by approximately \$590 million in FY 2018 and \$630 million in FY 2019.

The Senate did pass a bill to allow for the expensing of certain tangible personal property and software in the year of investment for LLC's, partnerships, sole proprietorships and others (e.g., non-corporate tax filers). When the tax bill of 2017 was passed, corporations were given the ability to claim this expensing deduction, but those paying taxes at the individual level were not. **SB 303** addresses that issue.

We have seen proposals to reduce or eliminate the sales tax on food, but nothing has advanced. We expect to see additional bills in this area before the end of the session as well (e.g., repeal certain sales tax exemptions to fund a reduction in the sales tax on food). With state and local sales taxes applied, Kansas has one of the highest sales taxes on food in the country.

For entertainment value, here are a couple of tax bills of possible interest:

HB 2656 doubles the property tax on recreational vehicles with a selling price in excess of \$100,000.

HB 2659 doubles the state sales tax rate (6.5 percent to 13 percent) on a motor vehicle with a selling price of more than \$100,000.

These bills propose the additional revenue the state receives could be used to fund schools. And no, they won't get to the governor's desk.

Liquor Issues.

It wouldn't be a legislative session without a few liquor bills to consider. **HB 2502** is the so-called "trailer bill" introduced to address a few lingering issues from the strong beer bill of 2017 that will enable CMB retailers (e.g., grocery and C-stores) to sell beer up to 6% alcohol by volume starting April 1, 2019. The bill addresses tax and enforcement issues. A question unresolved last year was whether this new class of beer should be subject to the state's 8% enforcement tax or state and local sales taxes. Consensus is the latter. The bill also clarifies enforcement powers of the Division of Alcoholic Beverage Control in local jurisdictions, among a couple of other matters. The House passed this measure and it is scheduled for a hearing next week before the Senate Committee on Federal and State Affairs.

HB 2482 will allow for the sale of alcoholic beverages on premise starting at 6:00 a.m., rather than current law of 9:00 a.m. The bill was amended to include farm wineries and to allow for the sale of wine by the glass at a farm winery outlet. The bill has passed both the House and Senate and will likely be further considered in a House/Senate Conference Committee (although the House could simply concur to the Senate amendments).

A couple of other liquor-related bills that have passed their chamber of introduction are **HB 2470** (microbreweries; contract brewing), **HB 2476** (candy with alcohol and liquor content for microbreweries) and **HB 2482** increasing certain fees and licenses to help fund modernization of the ABC.

HB 2731 would allow a manufacturer of a liquor product (e.g., wine, spirits, beer) to also hold a drinking establishment license. The bill was only recently introduced but has yet to be scheduled for a hearing. It is exempt from the House of Origin deadline as a House Federal and State Affairs bill.

Judicial Issues.

For the past several years, the Legislature has considered proposals to amend or restrict asset forfeiture actions of law enforcement agencies. Critics of current law argue the civil actions are used when criminal convictions are not obtained and have become a source of local funding for law enforcement agencies, which unduly motivates such agencies to aggressively seek such actions. After hearings in 2017, the issue was referred to the Kansas Judicial Council for review and recommendations. The result of that study is **HB 2459**, which creates the Kansas Asset Seizure and Forfeiture Repository.

The Act will require the Kansas Bureau of Investigation to track forfeiture actions from around the state, including the jurisdiction, items seized, values and the initiating act that led to the seizure. The Act also imposes additional requirements for seizure actions and provides claimants with additional rights for seeking recovery of assets.

Several high-profile state and national shooting cases has led to legislation being introduced to mandate how body camera film footage is viewed, when available. **HB 2571** would amend existing law to require disclosure of body camera recordings to certain parties within 20 days of the request. Parties allowed to make the request include heirs, attorneys for heirs as well as estate executors and other parties.

The Judicial Branch has made requests of the Governor and Legislature for the past few years to increase the salaries of both judges and nonjudicial personnel. The Office of Judicial Administration has cited studies indicating Kansas judges are the lowest paid jurists in the country and noting the majority of their nonjudicial employees begin work with salaries placing them below the poverty level and adding that many have second jobs to make ends meet. Concerns for professionalism, lack of qualified judicial candidates and significant vacancies for nonjudicial positions all have a negative impact on the delivery of judicial services and added funding is critical to the provision of access to the courts.

The courts have critics in the judicial process who do not have sympathy for judges making six-figure salaries, although there is some support for increasing nonjudicial salaries. The shadow of the school finance case hanging over the budget process does not help make the case for the judicial branch that additional funding is needed.

Gaming.

Bills to allow for slot machines at pari-mutuel tracks and lower the tax rate paid at such facilities has been introduced in both the House and Senate. We have also seen two bills relating to sports betting introduced in the House Federal and State Affairs Committee, although no hearings have been held to date. Proponents of sports book are watching a U.S. Supreme Court case that may legalize intrastate sports book gambling. The case should be decided later this year. The Kansas Lottery is also proposing legislation to allow for self-serve lottery ticket kiosks be placed at lottery retailers. This bill has been around a few years and legislation containing this authority was vetoed by Governor Brownback in 2017.

Transportation.

The State has adopted three major transportation programs in the past 30 years: 1989, 1999 and 2010 was the latest with the passage of the T-WORKS comprehensive transportation program. As T-WORKS nears the end (not completion, as more than \$2 billion has been diverted from KDOT revenues for non-transportation expenditures), proponents of transportation investment requested introduction of SB 285 creating a task force to study transportation needs of Kansas and make recommendations to 2019 Legislature. The Senate approved the measure and the bill has been referred to the House Transportation Committee for further consideration during the second half of the session.

The House Transportation and Safety Budget Committee has recommended the state no longer transfer more than \$100 million from the State Transportation Fund to finance education transportation. Should such a proposal pass, that would be a helpful increase in available funds for transportation. The Senate has a similar bill that has not been considered. Eventually the budget is likely to meet head on with reality and that is the fact the State cannot afford to halt these transfers at this time.

The Senate approved revisions to the Dealers and Manufacturers Licensing Act that governs contracts between automobile manufacturers and dealers (**SB 324**). All fifty states have these kinds of agreements in one form or another, which provide protections to dealers against contracts of adhesion (take it or leave it) from manufacturers.

Among this year's revisions, which are similar to laws found in a number of other states are protections from requirements to make major facility upgrades more often than every ten years, compensation for same line used vehicles required to be parked for a safety recall when replacement parts are not available, alteration of performance standards considered for termination and denial of a franchise purchase by a dealer and allowing a dealer to purchase manufacturer-mandated building improvement materials from other than designated sources, if of "substantially similar materials" at a lower cost.

Telemedicine Act.

HB 2674 would establish the Kansas Telemedicine Act and was approved unanimously by the House last week. The bill would establish definitions of the Act, includes patient privacy provisions, standards of practice and apply to Kansas individual or group health insurance policies, plans and contracts of health care providers. The premise of the bill is to require insurance companies to reimburse for services at the same level they would pay for regular physician visits if provided through telemedicine.

Abandoned Housing.

For the past 6-7 years, the Legislature has considered legislation to provide cities with a tool to address the unique situation where a residential property is simply abandoned by the lawful owner and cannot be located to require them to address back due taxes, code violations and public safety issues. In 2016, a bill was passed by the Legislature, but vetoed by Governor Brownback. Since that time, proponents have continued to work on improving the base bill to address concerns expressed in the governor's veto message and comments from opponents. The House passed HB 2506 on a vote of 90-32 and sent the bill to the Senate for further consideration.

The bill would allow for an action to be commenced by a city for certain residential properties that are delinquent in property taxes for a period of two years, unoccupied continuously for the preceding 15 months and that has a blighting influence on surrounding properties. Significant protections are provided to the property owner under the bill including district court review and local government approval required before an action can be initiated.

Hunting/Outdoor Legislation.

Several bills have been introduced that impact Kansas hunting laws with one moving forward and two not. Not yet, anyway.

HB 2558 would extend the controlled shooting area season from ending on March 31 to April 30, starting with the 2019 season. CSA licensees are allowed to place propagated birds out for hunting under current law from September 1 through March 31. The bill was approved unanimously in the House and is now in the Senate Committee on Agriculture and Natural Resources for further consideration.

HB 2743 would allow landowners to purchase and sell additional deer tags for hunting on their property. The Kansas Department of Wildlife, Parks and Tourism has opposed these kind of bills for years and suggest the state's deer herd is being managed effectively as evidenced by the interest in out-of-state hunters wanting to come to Kansas to shoot big deer. The bill was not advanced out of the House Agriculture Committee.

SB 301 would require those who hold themselves out as a hunting guide or outfitter to register with the Kansas Department of Wildlife, Parks and Tourism. A related topic came up during committee consideration, which was guides and outfitters providing services on public lands to the detriment or exclusion of others (e.g., interfering or otherwise operating in a manner that makes it difficult for the public to access these areas). The bill did not advance out of the Senate Committee on Agriculture and Natural Resources. WP&T indicated they have addressed the outfitter/guide issue with a prohibition in their regulations.

At the hearings on both HB 2743 and SB 301, a representative of the Kansas Outfitters Association appeared and urged the Committee to enact an outfitter's license program to bring responsibility and accountability to the hunting profession in Kansas. The State had such a licensure program a number of years ago but repealed it after complaints overcame any perceived usefulness of the act.

Firearms.

The House considered a bill on the floor earlier this year granting 18-21-year-olds with valid concealed carry permits from reciprocal states to carry legally in Kansas, clarifying a law passed last year. The bill, **HB 2042**, was amended to allow Kansas residents age 18-21 to carry with a concealed carry license and was also amended to requiring anyone carrying a firearm on a college campus to have a concealed carry permit. The amendment applies to students, instructors, visitors and anyone else entering public college and university property. Current law allows for non-permit carry concealed on college campuses. Several years ago, Kansas passed "open carry" which allows anyone 21 and older to carry concealed with or without a permit unless the college or university can provide for the safety of all who enter (e.g., closed point entrance, security, metal detectors, etc.).

The State has had reciprocity language that allowed those from other states with concealed carry laws to carry in Kansas, which was often necessary for Kansas concealed carry permit holders to have reciprocity to carry in other states. HB 2042 was originally introduced to clean up that area of law.

HB 2145 was a lot less controversial than HB 2042 and passed the House unanimously. The bill requested by the Kansas Attorney General's office would expand the crime of "criminal use of weapons" and give the state more tools to deal with those unlawfully possessing a firearm for use, particularly when Federal law enforcement officials fail to bring an action or lack jurisdiction in certain cases involving possession of firearms. The bill also updates certain definitions in existing law with the bill related to domestic violence.

A bill to ban so-called "bump stocks" was introduced in the House Federal and State Affairs Committee but has not been scheduled for a hearing.

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Closing Comment.

This report provided you with a cross section review of just some of the bills considered by the 2018 Legislature and a glimpse into the second half of the session. If you have questions over issues highlighted in this report or other matters under consideration by the Kansas Legislature, please do not hesitate to contact me.

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