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## **First Adjournment Report** April 8, 2018

The Kansas Legislature reached First Adjournment during the first few minutes of Sunday morning, April 8 after coming to agreement on an education funding package and will return to the statehouse on Thursday, April 26 for the Veto Session.

The latter hours of the session were not without some drama as a hard deadline of midnight approached by when the House needed to pass an adjournment resolution and the Senate seemed to be filibustering both a tax debate and consideration of the House education plan. However, in the end the session was brought to a conclusion within the accorded timeframes.

Historically the Veto Session was a time when legislators returned to Topeka for 2-3 days to consider veto messages from the governor. Over the past 15-20 years, the length and substance of issues of considered has grown in length and could last anywhere from 3-4 days or a couple of weeks and the name has evolved into the Wrap-up Session. Issues left for consideration during the Veto Session include the budget and most likely a tax bill, among remaining conference committee reports and perhaps even a few bills to be run on General Orders.

Legislative leaders would rather not bring bills up for floor debate that are subject to amendment (General Orders) and prefer agreements worked out on conference committees to be brought to the floor for up or down votes. We will see how that works out.

When the 2018 session began on January 8, the #1 issue facing the Legislature was school finance and how members would address a Kansas Supreme Court decision holding the state's school finance formula unconstitutional on grounds of both equity and adequacy. The Court gave the Legislature until April 30 to respond (e.g., pass a new school finance plan and/or increase funding under the existing formula). Estimates from plaintiffs in the case suggested the State needed to increase funding by \$700+ million to bring the existing formula into constitutional compliance. Attorney General Derek Schmidt urged lawmakers to move expeditiously on a new funding plan to give his attorneys more time to prepare a brief and develop oral arguments for the April 30 hearing. Although he would have liked more time, public comments by Attorney General Schmidt seemed to suggest a plan by First Adjournment would allow for enough time to prepare the State's case.

The final package approved was approximately \$500 million in additional money for K-12 education over the next five years, which is close to the House version passed last week. The Senate version passed last week was approximately \$275. The Senate had hoped to add a number of policy measures into the package. However, once House/Senate negotiations broke down on Thursday of last week, the House essentially moved their package into a Senate bill and once passed, returned it to the Senate for an up or down vote that was not subject to amendment (Motion to Concur or Motion to Non-concur). The motion to non-concur failed and the Senate ultimately passed the House-heavy bill by the bare constitutional margin of 21-19. The House vote margin was also the bare minimum required for passage: 63-56, although six House members were absent when the final vote was taken.

One goal of House and Senate leaders was to pass a school finance bill that did not require a tax increase. With state revenues running ahead of estimates (\$325 million fiscal year-to-date), proponents believe the increased school funding is affordable over the five-year phase-in period. Governor Colyer expressed support for the package, while Democrats suggested the Court would find the proposal lacking and require a special session of the Legislature later this summer.

Representative Larry Hibbard, R-Toronto, a rural legislator known for supporting schools and for his homespun commentary made this comment during explanations of vote on SB 423, the education bill:

(To paraphrase): “I think the Kansas Supreme Court will like this bill and if they don’t and we are back here in July or August, bring that constitutional amendment with you and we’ll take a look at it.”

Rep. Hibbard was referencing HCR 5029, which advanced out of the House Judiciary Committee last week but was not scheduled for floor debate before First Adjournment.

HCR 5029 would “declare the power to appropriate funding for education is exclusively a legislative power and not subject to judicial review.”

With the passage of an education package before First Adjournment, it is likely any consideration of HCR 5029 or a similar amendment to the Kansas Constitution would wait until after a decision by the Kansas Supreme Court on the work product of the 2018 Legislature (e.g., during a Special Session, if required by a Court decision).

### **State Revenues.**

Revenues for the month of March were \$43.4 million ahead of estimates, bringing the total fiscal year to date number to \$313.7 million above estimates (July 1, 2017 – March 31, 2018), with three more months in this fiscal year. The State is also anticipated to receive a bump of approximately \$137 million because of passage of the Federal tax law in December 2017. However, the Federal windfall is projected to be one-time money to the State and some questions exist as to whether the State will receive the entire amount due to matters beyond the control of the State (e.g., repatriation of money, taxpayer litigation, etc.).

The Consensus Revenue Estimating Group (CREG) will meet during the legislative break and revise its fiscal forecast (on or before April 20). The CREG numbers will be used by the Legislature to finalize its 2018-19 budget during the Veto Session. The Legislature should also gain the benefit of seeing April revenues released on May 1, unless final adjournment occurs prior to that date.

## **Tax Issues.**

HB 2228 was assembled and passed by the Senate Committee on Assessment and Taxation late in the session and debated on the Senate floor on the final day of the Regular Session for more than three hours. Although the State has an education bill to pay for, proponents of HB 2228 were using numbers from a likely “state windfall” courtesy of the Federal tax bill passed in December. Some estimate the State could receive upwards of \$137 million from the Federal tax changes, which will flow to the State with a few technical changes to state tax policy. During floor debate, concerns were raised that the state’s windfall is not guaranteed and may not materialize at all, which would put the state in a difficult position of having passed tax cuts that were to be paid for by money that doesn’t flow to the state.

Key components of HB 2228 as passed by the Senate are:

- Allow individual income taxpayers to itemize deductions even if they do not itemize on their Federal return;
- Accelerate restoration of certain Federal itemized deductions for state income tax purposes (e.g., medical expenses, mortgage interest and property taxes);
- Increase the standard deduction amount by 25 percent; and
- Allow deductions for certain tangible personal property and computer software;
- Changes to state tax law to allow the state to benefit from repatriation of foreign funds.

SB 367 eliminates the sales tax on manufacturer’s cash rebates on motor vehicles. The Senate approved the measure on a vote of 38-0 and the House Taxation Committee held hearings on the bill during the final week of the Regular Session. The Kansas Department of Revenue indicates the bill would have a fiscal impact of approximately \$5.9 million for FY 2019 if passed.

A House/Senate Tax Conference Committee will meet during the Veto Session and consider these issues and others and craft a tax package for consideration by both chambers.

## **Transportation Issues.**

### **New Motor Vehicle Dealer Franchise Law Legislation.**

The Kansas Dealers and Manufacturers Licensing Act regulates the relationship between automobile manufacturers and dealers and is similar to franchise laws found in all 50 states.

Major changes to the Act under SB 324 are:

- **Facility Upgrades** - Prohibits manufacturers from requiring a dealer to remodel his or her facility within 10 years of the most recently manufacturer-required remodel. The 10 years runs from the date of the later of the manufacturer or local approval and includes the dealers’ possible successors. However, this provision does not change present law allowing the dealer and manufacturer to agree to participate in such facility programs.

- **Vendor Choice/Signage** – Promotes balance in the relationship of the various parties and promotes other local businesses by prohibiting a manufacturer from requiring a dealer to purchase building improvement materials from a manufacturer-designated vendor, provided the dealer can find a vendor that can provide “substantially similar materials” at a lower cost. Permits a manufacturer to require a specific vendor if the manufacturer reimburses the dealer for the increased cost of the materials. Also, requires a manufacturer that leases signage and other image and design elements to dealers to give the dealer the option to purchase similar items from a vendor selected by the dealer, unless the manufacturer incurs the cost.
- **Sales Performance Standards** - Requires manufacturers, when evaluating a dealer’s sales performance to consider local economic factors regarding cancelling, terminating or non-renewal of a franchise agreement or when evaluating buy/sell agreements.
- **Recall Requirements** – In recent years tens of millions of motor vehicles have been recalled for defective air bag inflators and other problems that pose the risk of serious injury or death. Under current law, new motor vehicle dealers are not being compensated by their manufacturers for used vehicles in their inventories that they cannot sell due to unresolved recalls primarily due to a lack of parts. This creates an unfair added expense to dealers due to floor plan interest, insurance, storage, and vehicle depreciation associated with being unable to perform the repair.

The proposal essentially supplements federal law by closing a gap on payment between new vehicles and applying it to used vehicles, thus requiring manufacturers to compensate their same line dealers for those used vehicles with serious safety or emissions problems as determined by the National Highway Traffic Safety Administration (NHTSA) or auto manufacturers.

- Covers vehicles with “Do-Not-Drive” orders by NHTSA (about 6% of total recalled vehicles) and “Stop-Sale” orders issued by the manufacturers;
- Covers vehicles in inventory of in-kind dealer (i.e. a used Chevrolet owned by a Chevrolet dealer, not a used Chevrolet in the inventory of a Ford dealer);
- Reasonable compensation for labor and parts if parts are not available to make repairs within 30 days of initial notice of recall;
- Compensation rate of at least 1% per month of trade-in value.

SB 324 was presented to the Governor for consideration on April 6.

### **Transportation Study Commission.**

Kansas has adopted three major transportation plans during the past 30 years: 1989, 1999 and 2010 (T-WORKS). When the State developed those plans, local meetings with stakeholders were held around the State and local communities developed transportation priorities working in collaboration with KDOT and transportation stakeholders. With the ten-year T-WORKS plan nearing an end, many believed the earlier model for development of a transportation plan needed revision.

The Senate introduced a bill with a study commission composed of legislators and named stakeholders (e.g., Heavy Constructors, Kansas Contractors Association, labor representatives, League of Kansas Municipalities, Kansas Association of Counties, etc.). When the bill got to the House, they had another plan, which included more legislators and subcommittees drawn from a pool of interested organizations.

At this writing, a House Transportation/Senate Ways & Means Conference Committee is negotiating over House/Senate differences. From what has been discussed to date, we expect to see more legislators added to the study commission along with stakeholders rather than a subcommittee-heavy process. We would anticipate agreement on a bill will be reached during the Veto Session.

### **K-12 Transportation Funding.**

Both the House and Senate budget committees have had positions to return responsibility for K-12 transportation funding to the State General Fund, rather than the State Highway Fund. The \$100 +/- million price tag may be unaffordable now with the passage of the education bill and the transfer will likely be dependent on consensus revenue estimates and final budget numbers.

### **Utilities.**

2018 has been an interesting year regarding legislation relating to electric rates. We have seen a number of bills designed to require or request the Kansas Corporation Commission to “do all that is legally possible” and other terms of art to reduce electric rates to a level comparable to our surrounding states. Several proposals have come from the Kansas Industrial Consumers Group, an association of large commercial electric users. The bills haven’t gotten very far in the process, but an alternative strategy to seek passage of resolutions encouraging certain action by the KCC have gotten a little more traction. However, as of First Adjournment, nothing appears likely to pass.

We do anticipate some kind of amendment from the Climate & Energy coalition to be offered to the House budget bill along these lines. C&E is a green energy group that requested introduction of legislation this year to roll back changes to the net metering law adopted in 2014 and require utilities to implement energy efficiency programs. Neither advanced out of the Senate Committee on Utilities. C&E is concerned demand charges to solar users will slow adoption of solar technology for residential and commercial electric users. The electric companies worked with C&E in 2014 to craft standards that promoted solar deployment, but at the same time protected ratepayers from having to subsidize solar users who still need access to the electric grid and power when their generation systems are not producing electricity. C&E supporters offered an amendment to the budget bill in the House Appropriations Committee, but that was rejected with concerns expressed that the amendment was policy-related, not appropriations-related. Since there are likely to be few, if any other bills on the House floor subject to amendment, C&E is expected to seek an amendment on the floor when the budget is debated. However, to date they have not shared language with interested parties (e.g., electric companies).

Other energy and utility-related bills that have passed this session include:

- SB 279 expands the Gas Safety & Reliability Safety Act by expanding the items that can be included in a GSRS surcharge to include cyber and physical security expenses, meters and obsolete pipe. The maximum monthly surcharge on a residential customer is increased from .40 cents to .80 cents. Governor Colyer signed SB 279 into law on April 5 and the law becomes effective January 1, 2019.

- SB 323 incorporates into statute how service territory disputes between municipal electric providers and electric cooperatives are handled. The bill was introduced following several years of dispute between the City of Garden City and a rural electric cooperative fighting over customers and stranded costs due to a municipal annexation. The final package also included provisions of SB 293, the bill that KMU brought forth to exclude its members from KCC jurisdiction and provisions of SB 355, allowing KCC jurisdiction in certain transmission line proceedings of a regional transmission organization that has its rates approved by FERC. The bill was signed into law March 5.
- HB 2701 creates the Statewide Broadband Expansion Planning Task Force to study how broadband services can be provided to unserved and underserved areas of Kansas. The 19-member task force is charged with presenting its findings to the 2019 Legislature. The measure was approved before First Adjournment and is heading to the Governor for consideration.

### **Kansas Corporation Commission.**

Governor Colyer recently announced a replacement for KCC Commissioner Pat Apple, who chose to not seek reappointment to the Commission. Dwight Keen, a Winfield attorney was named by Colyer on March 30. Keen is a former Kansas Securities Commissioner and spent four years on the Board of Tax Appeals and is a former chair of the Kansas Independent Oil & Gas Association. Outsiders consider Mr. Keen to be an “oil & gas appointment.” The Kansas Senate confirmed the appointment of Mr. Keen on a 40-0 vote before First Adjournment.

### **Gaming.**

The Kansas Legislature passed legislation allowing for the development of state-owned and operated casinos and slots-at-tracks in 2007. That legislation, SB 66, allowed for the development of four regional casinos and slot machines at each of the state’s three pari-mutuel tracks, subject to local voter approval. The state has licensed four casinos, but the pari-mutuel tracks have failed to operate under the law and have instead brought legislation every year since in efforts to achieve a more lucrative tax rate on par with the casinos. To date nothing has reached the governor’s desk, although this year both the House and Senate have advanced bills to the floor for possible floor debate. At this writing, it is not believed there are sufficient votes to pass either measure in either chamber. However, proponents are likely to attempt to maneuver a floor vote during the Veto Session.

The gaming issue that has received the most attention (and bill introductions) this session is sports wagering. The U.S. Supreme Court is expected to rule on a New Jersey case that could open the door to states to allow sports wagering. There are several models being promoted, including one version that would give major league sports a piece of the action (e.g., NFL, MLB, NBA, etc.). The Kansas Lottery appears supportive of a model that would allow any of their lottery retailers to offer sports wagering, while the casinos and pari-mutuel track owners suggest a Nevada model would work best: License only brick & mortar establishments. Several states are making progress with enabling legislation in anticipation of a Supreme Court decision and none to date have any kind of fees for major league sports and trend towards a Nevada model favored by the Kansas-based casinos and track owners.

It appears unlikely the Legislature will pass a sports wagering bill this year.

## **Alcohol Issues.**

HB 2502 is called the “trailer bill” in reference to being a clean up bill of sorts to the strong beer bill passed in 2017. Last year the Legislature approved a bill paving the way for cereal malt beverage retailers to sell strong beer (up to 6% alcohol by volume) starting April 1, 2019. One issue left open was the tax rate for such beer products. Under current law, CMB is subject to a gallonage tax, as is strong beer, but also subject to state and local sales taxes, while strong beer is assessed an 8% enforcement tax. Under the trailer bill, all beer products sold by non-liquor retailers will collect state and local sales taxes rather than enforcement taxes. The bill also clarified state enforcement powers for the Division of Alcoholic Beverage Control over local sales at CMB licensed establishments.

House and Senate conference committee members have also agreed on a package of bills that would allow for the lawful sale of candy with alcohol content, change hours of operation for on-premise establishments to 6:00 a.m. to 2:00 p.m. (instead of 9:00 a.m.) and the use of self-service beer dispensers.

## **Outdoor Law.**

Governor Colyer signed HB 2558 into law on April 4, extending the hunting season on controlled shooting areas from ending on March 31 to April 30. The law, applicable to the 2018-19 hunting season and beyond will allow CSA’s to provision gamebirds on their licensed property for an additional month beginning next year. Gamebirds allowed to be taken on CSA land include pheasant, quail, partridge, hand-raised mallard duck and chukar. Less than 3% of all land in Kansas is publicly owned, which makes controlled shooting areas an integral part of the Kansas rural economy creating hunting opportunities for both residents and nonresidents alike.

Proposals to expand a landowner’s ability to obtain and sell additional deer tags failed to advance this session (HB 2743). Proponents argued a landowner should be able to lawfully obtain additional deer tags and transfer or sell to interested parties, including residents and nonresidents. The Kansas Department of Wildlife, Parks and Tourism opposed HB 2743 this year and has consistently opposed similar proposals in the past.

## **Miscellaneous Legislation.**

- Senate Substitute for HB 2028 would establish the Kansas Telemedicine Act and begin the process of requiring insurance companies to reimburse for certain medical services provided through electronic means as they do for in-person consultations. The House failed to adopt the conference committee report, so the issue will carry over to the Veto Session.
- Legislation to give cities additional authority to deal with abandoned housing was tabled in the Senate Committee on Ethics, Elections and Local Government after passing the House on a vote of 90-32 (HB 2506). Similar legislation has been considered by the Legislature for the past decade and made it to the governor’s desk in 2016, only to be vetoed. It is possible the issue could be revisited during the Veto Session.
- SB 56 creates the Kansas Cyber Security Act and establishes the position of Executive Branch Chief Information Security Officer. The intent of the Act is to provide a leader for coordinating state agency cyber security efforts for executive branch agencies. The House approved the conference committee report before First Adjournment, but the Senate will have to take the measure up during the Veto Session.

- The Judicial Branch has made a strong case this year for increasing salaries for both judicial and non-judicial employees. While the salaries of Kansas judges have fallen behind their Midwest counterparts, it is the low pay for non-judicial employees that has garnered the most attention and sympathy. Most entry level positions are at wages below the poverty level and have resulted in vacancies and early departures of new employees who find better paying positions elsewhere, such as Wal-Mart. We anticipate some attention will be given this issue during the Veto Session with some salary increases possible for judicial branch employees.
- HB 2042 is in a House/Senate conference committee but should be considered during the Veto Session. The bill will allow anyone with a lawful concealed carry license from another state to carry in Kansas. The bill will also allow anyone 18 years and older to obtain a concealed carry permit. Current law requires a person to be 21 years of age to apply for a concealed carry permit.
- HB 2145 was brought forth by Kansas Attorney General Derek Schmidt and would criminalize certain uses of firearms by fugitives from justice, those in the U.S. illegally, certain people convicted of domestic violence in the preceding 5 years and those subject to court orders relating to harassment, stalking or threatening an intimate partner, child or child of an intimate partner. HB 2145 is headed to the governor for consideration.
- HB 2459 creates the Kansas Asset Seizure and Forfeiture Repository and Related Reporting Requirements. After several years of critics arguing for reforms in asset seizure laws (or lack thereof), a Kansas Judicial Council study in 2017 led to introduction of reform legislation this year that was signed into law on April 2. The Act requires the Kansas Bureau of Investigation to develop a repository for information relating to asset forfeiture actions by state and local law enforcement agencies. Criteria to be filed includes the location/jurisdiction, items seized, value, whether criminal charges were filed, case disposition, costs of forfeiture action and related information. The intent of the act is to provide more transparency regarding such actions and provide certain rights for action by the aggrieved party as well as clarify how and when seized items can be disposed of.

### **Closing Comments.**

For more information on issues highlighted in this report or other matters considered by the 2018 Legislature to date, you can visit the official website of the Kansas Legislature:

[www.kslegislature.org/li](http://www.kslegislature.org/li)

From that site you can find bills, summaries, votes and related information as well as legislative contacts. In addition, the Kansas Legislative Research Department will post up three reports summarizing all bills passed during the session.

The first one is already available: *2018 Preliminary Summary of Legislation*

Feel free to contact me for additional information as well.

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