

Bright and Carpenter Consulting, Inc.



825 S. Kansas Avenue, Suite 502C Topeka, KS 66612, www.brightcarpenter.com

February 1, 2019 Legislative Update

This week started off slow on Monday but quickly picked up pace surrounding two headliner issues of the 2019 Legislative Session. The Senate is now on its way to debate the “federal windfall” tax bill, and the Governor’s Medicaid expansion and budget bills have officially been introduced into committees.

Budget

The House and Senate continue their gradual build up to budget action. Both budget committees are holding informational hearings on varying topics

The House Appropriations Committee held hearings on the current state of the Kansas Lottery and the state-owned casinos. The discussion centered on the revenue that the Lottery and the casinos are generating currently.

The Appropriations Committee also heard from the Department of Corrections. The new Secretary of Corrections recently said that his department is under stress, and he talked about their difficulties in recruiting and retaining Correctional staff. The department also outlined the status of the construction of the new prison in Lansing.

The Appropriations Committee also heard an update on the state hospitals. The state hospitals and the prison system will be major topics of consideration during the budget process.

The Senate Ways and Means committee held informational hearings, notably on the State’s Psychiatric Residential Treatment Facilities and cyber security for state agencies.

The Ways and Means Committee took action on, and passed out, a Senate bill that makes a \$115 million payment to the Kansas Employees Retirement System (KERS). This payment is becoming a political issue because Governor Kelly has another plan to deal with KERS payments. The GOP leadership of the Legislature have come out strongly against the Governor’s Plan, saying it will cost more than it saves. The Governor’s KERS Plan is part of her process to fund her budget proposal. As with many big budget issues, they become political issues quickly.

Next week the Senate will start their budget subcommittee process, these subcommittees deal with state agency budgets in detail. The House is expected to begin hearing budgets soon.

Federal Tax Decoupling Bill Passes Senate Committee

The new Senate Select Committee on Federal Tax Code Implementation held three days of hearings this week before passing [Senate Bill 22](#), which returns roughly \$192 million back to taxpayers this fiscal year as a result of federal tax changes enacted in 2017.

Because Congress raised the standard deduction to \$24,000 for families and \$12,000 for individuals, fewer people are likely to itemize on their taxes this year. Currently, Kansans are not allowed to itemize on their state tax return unless they itemize on the federal level. And because Kansas is a rolling conformity state, SB 22 is needed to decouple from the Federal Tax Cuts and Jobs Act to allow Kansans the option to itemize.

But what garnered the uptick of media attention this week is the provision in the bill that would also decouple Kansas from the federal tax code allowing multinational corporations to bring home income earned overseas without being taxed. Kansas companies like Cargill, Seaboard, and Spirit AeroSystems testified that SB 22 would incentivize them to return foreign dollars that have remained overseas for decades to reinvest in jobs for more Kansans.

Because the Kansas Department of Revenue is still unsure of the fiscal impact to their revenue estimates from last year, some lawmakers – including Governor Kelly – are opposed to moving forward with any significant tax bill this early in the Session.

The full Senate is expected to debate and potentially vote on SB 22 next Wednesday. The key will be whether or not it can receive the 27 votes needed to override an anticipated veto by the Governor.

As far as the “standing” Senate Tax Committee whose room and time slot were taken over by this special panel, expect to see them return to their original programming. The Committee has several property tax briefings on their agenda next week. We also expect Senator Caryn Tyson, Parker-R to resume as chair of the committee.

Internet Sales Tax Projected Revenue Deflated

The House Tax Committee on Monday held an informational briefing by the Kansas Department of Revenue regarding the fiscal impact on collecting sales tax on internet transactions in Kansas. Interim Secretary Mark Beshears testified before the committee that prior estimates of up to \$75 million in additional revenue to the state are now more like \$30-\$40 million, generously.

After the Supreme Court’s ruling in *Wayfair vs. South Dakota* this summer, states are now looking to pass laws requiring internet retailers to collect and remit sales tax if they have a physical, economic, or sales presence in a particular state.

Beshears gave the committee several recommendations of provisions that the Tax Committee should include in their legislation to likely establish constitutionality with the courts. Those include setting a de minimis threshold on the number of transactions, making the law prospective not retroactive, and requiring retailers to be members of the streamline sales tax agreement. It was also determined that a separate bill would be required to capture sales tax on 3rd party marketplace facilitators like Amazon and eBay, which would be the bulk of the estimated revenue projection.

Medicaid Expansion Bills Introduced

Governor Kelly’s Medicaid expansion bills were officially introduced in both the House and Senate on Tuesday. [Senate Bill 54](#) and [House Bill 2101](#) would expand the state’s Medicaid system, KanCare, to roughly 150,000 Kansans under the age of 65 and below 133% of the federal poverty level. The Administration’s bills are similar to the legislation passed by the Legislature but overridden by Governor Brownback in 2017.

Both House and Senate leadership are outspoken in opposition to expanding Medicaid in Kansas, arguing that any current federal funding is likely to drop off and leave the state with a huge financial

burden in future budget years. Attempts to move expansion bills through the committee process have never been easy, and this year is no exception. Even with a Democrat Governor strongly advocating for it.

SB 54 is in front of the Senate Committee on Public Health and Welfare, while HB 2101 was referred to the House Appropriations Committee. Neither bill has a scheduled hearing date at this time.

Association Health Plan Bills Heard

The House Insurance and Senate Financial Institutions and Insurance Committees held hearings on ten bills dealing with Association Health Plans (AHPs) this week. As previously reported, because AHPs were recently approved by the federal government under the Affordable Care Act, states are now looking at creating these small group programs for people either not eligible for health insurance by their employer or as another alternative outside of the federal exchange. The Kansas Insurance Department testified as neutral during the hearings, but business advocates led by the Kansas Chamber of Commerce are supportive of the plans as way to help reduce costs for small business.

Below is a running list of AHP bills being considered this year and their current status:

- [Senate Bill 32](#) – [Adds the Kansas Farm Bureau to the list of exempted associations from insurance regulations. SB 32 was heard on Tuesday and Wednesday and is expected to be worked next week.](#)
- [House Bill 2056](#) and [Senate Bill 34](#) – Exempting AHPs from Small Employer laws. HB 2056 was heard on Wednesday. SB 34 is scheduled for a hearing next Tuesday.
- [House Bill 2053](#) and [Senate Bill 35](#) – Short term, limited duration health plans. HB 2053 is scheduled for a hearing next Monday. SB 35 is scheduled for a hearing next Wednesday.
- [House Bill 2055](#) and [Senate Bill 36](#) – AHPs subject to certain Kansas Insurance Department (KID) jurisdiction. HB 2055 was heard on Monday. SB 36 was heard on Wednesday.
- [House Bill 2057](#) and [Senate Bill 33](#) – Small Employer laws. HB 2057 was heard on Wednesday. SB 33 was heard on Thursday.
- [House Bill 2054](#) and [Senate Bill 29](#) – Requirements of fully-insured AHPs. HB 2054 was heard on Monday. SB 29 was heard on Wednesday.
- [House Bill 2058](#) and [Senate Bill 30](#) – Small Employer Health Plan. HB 2058 was heard on Wednesday. SB 30 was heard on Thursday.

Sports Betting Subcommittee Named

On Wednesday, the House Federal and State Affairs Committee held two informational hearings regarding sports betting in Kansas. [House Bill 2068](#) creates the Sports Wagering Act, and [House Bill 2032](#) would require that sports gaming be operated and managed solely by racetrack gaming facilities. Chairman John Barker (R-Abilene) appointed a panel to study the issue, with hopes of bringing all interested parties together on compromise legislation.

Economic Incentive Programs to be Reviewed

The House Committee on Commerce, Labor and Economic Development received an informational briefing on Monday from the Interim Secretary of Commerce, David Tolland, regarding economic development incentives currently available to businesses in Kansas. These include: Sales Tax as Revenue (STAR) Bonds, the High-Performance Incentive Program (HPIP), the Promoting Employment

Across Kansas (PEAK) program, Rural Opportunity Zones (ROZ), the Angel Investor Tax Credit, and the Job Creation Fund.

Governor Kelly has charged the Department of Commerce (DOC) to complete a thorough review and analysis of these economic development programs this year. Tolland reported to the committee that Kansas saw \$1.7 billion in total investment from business recruitment and expansion programs in 2018. He also stated that due to agency budget restraints, there is a three to four-month backlog on reviewing applications to Kansas' incentive programs.

The Committee also held a hearing on [House Bill 2006](#) on Thursday, which would require the DOC to collect data on state economic development initiative benefit recipients, of \$50,000 or more annually, and place that information on a public database. In addition to economic development programs, such reportable benefits would also include tax credits and property tax exemptions.

The intent of the bill is to provide the public the ability to see how and where these tax dollars are used, and the total return on the investment. The website would not include information that was deemed confidential under the economic development programs. Chairman indicated that he'd like to work the bill soon.

The House Taxation Committee also heard [HB 2043](#) on Wednesday which would create an annual by Ks Department of Commerce, Ks Insurance Department and Ks Department of Revenue of incentives programs in 2020 by Feb 1st and require legislative committees report findings of the effectiveness of the programs and make recommendations for any changes or elimination of programs not performing as promised by March 1st. HB 2043 is model from recommendations made by The Pew Charitable Trust to Kansas lawmakers in 2017 who noted Kansas is lagging other states in its lookback at its effectiveness of its incentive programs.

Utility Study Discussions Continue

The Senate Utilities and House Energy, Utilities and Telecommunications Committees held informational briefings on Tuesday, hearing from representatives of Kansas City Power & Light (KCP&L) and Westar – now merged as Evergy – on a rate study they conducted comparing Kansas' rising energy costs with surrounding states.

Chuck Caisley, Senior Vice President, Marketing and Public Affairs for Evergy, reported that energy costs were flat between 2000 and 2007 and then ballooned through 2017. But while rates have indeed increased in recent years, annual growth has been below the rate of inflation during periods of no utility infrastructure investment, and Westar has one of the lowest Return on Equity (ROE) rates in the country at 9.3 percent.

Agricultural

Two bills of interest were introduced in the House Agricultural Committee this week. [House Bill 2114](#) would allow counties to impose a \$1/ton severance tax on limestone produced and transported. The bill was referred to the House Tax Committee. No hearing date has been scheduled.

The Kansas Department of Agriculture also introduced on Thursday their "fix" to last year's industrial hemp legislation that passed and was enacted into law this summer. No bill number has been assigned yet, but it would align Kansas law with the provisions just recently approved in the federal Farm Bill in regard to research and growing of industrial hemp crops in Kansas.

Next Week

Expect the pace to begin to pick up as committees begin to hold more bill hearings and floor action is taken on the bills moving forward.

