

This Week **in Topeka**

Overland Park Chamber

*Business, Economic Development & Local Government News
from the Legislative Session Week of January 16-20, 2017*

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The second week of the 2017 Legislative Session began with a day off for the celebration of Martin Luther King Day, but the rest of the week was relatively busy for early in a session. Committees were busy with bill introductions, more issue briefings and hearings on bills, setting the tone for what promises to be an active and full session.

LLC Loophole. The House Taxation Committee held a hearing on HB2023, the bill that would repeal, retroactively to January 1, 2017, what is now commonly referred to as the LLC loophole; i.e., the piece of the 2012 tax cut package that exempts income earned by pass-through business entities, such as LLCs, Subchapter S corporations, partnerships and sole proprietorships, from state income tax.

With proponents and opponents of the bill lined up to provide testimony, the hearing began with Secretary Sam Williams, Kansas Department of Revenue, offering an overview followed by the Department's opposition to the bill. The Secretary's comments got off to a rocky start as he backtracked from a fiscal note issued earlier in the day that claimed the repeal would have a much smaller impact on state revenues than the \$250 million per year than had been generally understood; the note said revenue that could be realized by a repeal would be about \$178 million in FY2018 and \$139 million in FY2019. Secretary Williams assured the committee that he and his staff would be working over the weekend to correct the calculations and have a new fiscal note on Monday. After that, he reiterated the idea that the tax cut package was intended to create a more business friendly environment in Kansas and facilitate the formation of new small businesses and job growth and claimed the LLC exemption was doing just that. That mantra was generally repeated as opponents of the repeal offered personal experiences, statistics, graphs and other claims that the tax policy changes were doing just what had been intended when passed in 2012, although possibly a bit more slowly than originally anticipated.

The Secretary's suggestion that business growth in Kansas City, Kansas, was a good example of the success of the tax policy was quickly rebutted by Rep. Wolf-Moore (D-Kansas City) who said she did not believe the tax policy, and more particularly the pass-through income exemption, had much, if anything to do with economic development in Kansas City, attributing that growth rather to individual efforts coupled with economic development incentives available to business owners.

Proponents of the repeal emphasized the basic unfairness of a tax policy that allows business owners to avoid paying their share of the cost of operating state government to provide basic services and amenities the citizens of Kansas value highly. So far, business owners making more than \$500,000 have accounted for 40% of the tax savings but make up less than 1% of the eligible businesses. Conferees also disputed the claims of success, saying there is little real evidence the tax changes are the reason for a boost in the economy and job growth. For example, in its October 4, 2016, Final Recommendations, the Governor's Consensus Revenue Estimating Working Group addressed its "task three," which was to determine the effect of tax policy on the state's consensus revenue estimating, by answering one of its primary questions, whether the number of pass-through entities is growing due to the implementation of the tax policy by stating that the "growth in pass through entities after the tax policy was implemented is consistent with the growth prior to the tax policy change." That conclusion was drawn from an analysis of the change in both the number of entities and the growth wages created by those entities on a year-to-year basis from 2007 through 2014. After nearly five hours of testimony, Chairman Johnson adjourned the meeting until Monday, January 23, when the remaining conferees will be heard. I will be offering oral testimony in support of the repeal on behalf of the Overland Park Chamber.

Besides the obvious and stated arguments in opposition to the repeal, another hurdle faced by proponents is the desire of many legislators to vote on a single comprehensive tax reform bill rather than having to cast several votes to raise taxes on a piecemeal basis, an understandable goal. However, there are at least a couple of good reasons to move HB2023 along now, while continuing to work on a package of increases to address the long-term, structural fix needed for the state's budgetary health. One, HB2023 would make the repeal retroactive to the beginning of 2017, allowing the state to avoid the lag in realizing revenue resulting from a typical income tax increase. With the state facing a budget deficit of at least \$580 million in FY2018 which begins on July 1 of this year, speed is important. And, two, in order to avoid as much of the hassle for business owners stemming from retroactivity, the repeal needs to be passed as early in the session as possible.

KanCare/Medicaid. There were two events last week in the KanCare/Medicaid arena. One involves expansion and the other extension of Kansas' program. Rep. Concannon (R-Beloit) introduced a bill, HB2064, to expand the state Medicaid program under KanCare. The bill would expand eligibility to adults under age 65 with incomes up to 133% of the federal poverty level (\$26,720 for a family of three). The bill does not include an individual work requirement to be eligible, but it would allow KDHE to refer adults who are either unemployed or working less than 20 hours per week to a workforce training program or other employment resources.

The second issue regarding KanCare is the denial by CMS of the state's request to extend the program to December 2018, one year beyond its scheduled expiration at the end of this year. In a letter to the state dated January 13, CMS notified Kansas that its KanCare operation is "substantively out of compliance with Federal statutes and regulations...." That notice was followed with one dated January 17 that included the denial of the requested extension and advised that the state must prepare a corrective action plan by February 17. Legislators on both sides of the aisle reacted quickly, complaining that they had been blindsided by CMS and the administration by the notices received from CMS. There will be more to come soon as work begins to correct the issues.

Guns. Two bills dealing with limiting concealed carry were introduced this week thanks to work by Rep. Stephanie Clayton and Sen. Barbara Bollier. As you may know, the exemption from the law that allows concealed carry of weapons on institutions of higher education, public hospitals (e.g., KU Medical Center) and community mental health centers will expire as of July 1 of this year. In response to the strong objections of school administrators, students and faculty; and hospital and mental health center administrators, providers, staff, patients and visitors, HB2113 and HB2114 would permanently exclude institutions of higher education and KUMC and community mental health centers, respectively, from the sunset of the exemption, allowing each entity to make its own determination regarding the permissibility of having concealed carry on its premises.

Other items of interest:

STAR Bonds. The statutory authorization for the economic development tool known as STAR bonds is set to expire July 1, 2017. After asking around last week, it appears no one has taken the lead on preparing a bill that would reauthorize the bonds. It is a little surprising that neither the Governor's office (remember all the effort he put in to secure the American Royal's move to Kansas City, Kansas, which includes STAR bond financing) nor the Department of Commerce has been heard from regarding this important economic

development incentive, although I have been assured that Commerce is supportive of the bonds and an extension.

Congressional Vacancies. Last week I mentioned the House had passed HB2017 that would update Kansas law dictating how Congressional vacancies are filled. The bill was passed by the Senate and signed into law by the Governor on January 18. Besides bringing Kansas into compliance with federal law, which will allow the prompt replacement of Congressman Pompeo should he be confirmed by the Senate as the new Director of the CIA, the new law includes:

- Reducing the number of signatures needed on a petition to place an independent candidate on the ballot from 17,000 to 3,000, and
- Extending the time period for the selection process from 60 to 90 days.

Personal Income Tax. Rep. Tom Sawyer (D-Wichita) introduced a conceptual bill that would raise personal state income tax rates. There are no specifics to report yet, as Rep. Sawyer is still working with the Office of the Revisor to flesh out the details of his proposal.

Bathroom Bill. A bill introduced by Rep. John Whitmer (R-Wichita) would change current law by requiring public school students to use restrooms, locker rooms and other facilities that correspond to each student's gender at birth and also would require public schools to provide gender neutral restrooms. Similar bills have previously been introduced in Kansas (but without action) and in other states where passage has resulted in a very negative economic and business impact. Again, final language of the bill is still a work in progress.

K-12 School Finance. And in case you were wondering, there is still no decision from the Kansas Supreme Court on the adequacy portion of *Gannon*. The countdown and speculation continues, not to mention the fact that the lack of a decision impedes progress on several legislative fronts, including budget, possible tax policy changes and K-12 funding and formula.

Legislative Breakfast Series. The first breakfast in the **Johnson County Public Policy Council's series** was on Saturday and was deemed a successful return after a year off. We had a great turnout, including many members of our Johnson County Delegation, with a special thanks to those legislators who participated on the panel sharing their insights on the activity at the Capitol thus far: Sen. John Skubal; and Representatives Shelee Brim, Joy Koesten, Cindy Neighbor and Melissa Rooker.

Other JCPPC breakfasts will be **February 18** and **March 25** at the DoubleTree Hotel. Registration information can be found at www.opchamber.org.