This Week in Topeka
Overland Park Chamber

Business, Economic Development & Local Government News
from the Legislative Session Week of May 1-5, 2017

The 2017 Veto Session began on Monday, May 1, with a lot of work remaining, including resolving the next two fiscal years' budgets; passing a comprehensive tax plan; and developing, passing and funding a new K-12 school finance plan. I would like to be able to report success, or at least significant progress, on one or more of those major issues, but, as is often the case with veto sessions, this one got off to a rather typical slow start. As the Veto Session began, legislators were told to plan on working straight through, including all day Saturdays and Sunday afternoons, until the work was finished. However, as the first week was coming to a close, realization that not a lot positive would be gained by spending the weekend in Topeka while continuing to accomplish little, so both the House and Senate adjourned for the weekend around lunchtime on Friday. We will see what happens next weekend since not only is Mother's Day on Sunday, but graduation ceremonies also will be taking place at KU, K-State, Wichita State and many high schools. Holding legislators at the Capitol might make sense if they are on the verge of getting something done – you don't want to lose momentum, especially at this time of year – but having the majority of members having little work to do does not seem to be the most popular or efficient plan.

Not all was lost, however; as work was done in committees as well as informally to see just what may be the best approach to take to resolve those big issues.

Income Taxes. On Monday, the tax conference committee had agreed on a plan very much like the one passed earlier in the session and vetoed by the Governor. Estimates were that this plan would raise about $425 million-$460 million in each of FY18 and FY19, a bit short of what is needed to balance the budgets currently being considered and not providing any additional money for K-12 funding. Among the key provisions were phasing in three tax brackets in hopes of allaying the objections to a retroactive effective date and repealing the pass-through business non-wage income exemption (the LLC loophole) and the so-called "march to zero" state personal income tax. This plan would have been considered first by the Senate, but it fell apart before hitting the Senate floor on Tuesday morning due to an apparent lack of votes in that chamber.

After meeting again on Tuesday, the tax conference committee came to agreement on a slightly different plan put into a Senate shell to be sent to the House first this time. This version was almost identical to the one from the previous day with slight increases in the tax rates in the three brackets, resulting in revenue estimates of approximately $500 million in FY18 and $550 million in FY19. Once again, the scheduled House debate was postponed on Wednesday morning due to lack of votes, largely from the Democrats who expressed a continuing preference to finish the new K-12 school finance formula so that they would know just how much money was needed there in addition to the rest of the state budget.

With things having ground to a standstill insofar as efforts by the tax conference committee were concerned, the Senate Assessment and Taxation Committee held several meetings trying to put together its own plan. After its meeting on Friday morning, there remained a lot of uncertainty about just what some of the offered elements of the plan were intended to do. Among the elements of the plan are:

- Repeal of the "march to zero"
- Two tax brackets, 0% on income less than $6,300 (single filers) and $12,600 (married joint filers) and 4.4% on income over those amounts (This looks a whole lot like a flat tax, a concept that just recently received only 3 votes in the Senate. It is also one area of confusion in that it's was not clear whether the bottom "bracket" represented a true bracket or a low-income exclusion.)
- Kansas standard deductions would be the same as the federal deductions
- Board of Regents retirees' pensions would be subject to income tax just like those of KPERS retirees
- Sales tax on groceries would be reduced from 6.5% to 5.5%
- That portion of the annual business filing fee paid in to the state general fund would be increased from $40 to $75
- The itemized deduction for medical expenses and property taxes would be restored to 100%
- The effective date of all of the foregoing changes would be January 1, 2018
- Repeal of the pass through business non-wage income exemption (the LLC loophole) would be effective retroactively to January 1, 2017 (The Committee has asked for additional data to determine the fiscal impacts of phasing in the elimination of this exemption and of retaining an exemption for a specified amount of income earned by those affected business entities; e.g., the first $50,000, while taxing the rest.)
- Increasing the itemized deduction for mortgage interest paid from 50% to 75% effective in 2020 and to 100% in 2021

A second meeting of the Committee on Friday afternoon was canceled, presumably to allow the Revisor's office to draft the language reflecting the plan's provisions in order for the Committee members to better understand, and then debate, them. The guess here is that this bill needs some substantial work, particularly insofar as the "brackets" are concerned before it goes anywhere.

Look for another attempt by the tax conference committee to come up with a different proposal that at least warrants a vote. There are other revenue sources still available for discussion, including increases in cigarette and alcohol taxes that have been proposed and had committee hearings this session and even adding a fourth income tax bracket. It may also end up being the case that school finance needs to be finished before a final vote on income tax increases occurs, as many legislators want that vote to be for a truly comprehensive plan that provides the "solution" in one bill with one vote.

K-12 School Finance. While we had hoped the school finance formula bill, HB2410, would be ready for a quick meeting of the K-12 Budget Committee upon the start of the Veto Session on Monday; that proved not to be the case. No meeting was held on Monday. On Tuesday, the Committee received a quick review of the new language put into the bill for the final amendments passed right before the legislature's break in April. Wednesday was devoted to a discussion by the Committee of the desire, or lack thereof, of including actual funding in HB2410. Thursday was used for a presentation by former Senator Jeff King, the attorney hired by the legislature to provide counsel regarding the constitutionality of the bill in light of the Supreme Court's decision in *Gannon.* And there was no meeting on Friday. It appears that the Committee will work the bill on Monday (it has been stated on several occasions during Committee meetings that there are still some amendments that will be offered on the bill, although they are expected to be largely of a technical nature) and, hopefully, send it to the full House for debate no later than mid-week.

Sen. King's legal analysis of the K-12 formula proposal vis a vis *Gannon* included:

- The more money the legislature puts in to school funding, the more likely it is that the plan will be deemed to be constitutional by the Supreme Court
- The legislature must make good on its promise; the Court will look for the funds and a funding stream in place for the future
- Whatever the legislature does now creates new constitutional standards for the future
- The Court will look for special targeting of the underperforming students that comprise the lower quartile statewide, but would likely not look favorably at a plan that simply shifts funds from the top 75% to the lower 25%

- Red flags for the Court include unequalized weightings in the formula; i.e., cost of living weighting, ancillary facilities weighting, and declining enrollment weightings
- Finally, the legislature will not be able to offer poor economic conditions or an adverse impact on other budget areas as acceptable reasons for not adequately funding K-12

Also in the area of school finance, SB146 that was passed by the Senate to affect the regular 2-year renewal of the 20 mill statewide property tax levy for K-12 funding has been referred to the House Taxation Committee. The bill also continues the exemption of the first $20,000 of assessed value of a residential property from the 20 mill tax. The Senate added a provision that beginning in school year 2017-18, new property tax exemptions granted for property financed by industrial revenue bonds or for constitutionally recognized economic development incentive programs would no longer apply to the statewide 20 mill levy.

Guns. On Thursday, the Senate Ways and Means Committee sent Senate Sub for HB2278 to the full Senate. The bill would exempt state or municipally owned medical care facilities and adult care homes, community mental health centers, indigent health care clinics, and the University of Kansas Medical Center from the impending requirement that carrying concealed handguns cannot be prohibited unless "adequate security measures" are in place in those facilities. Without this or similar legislative action, the existing exemption for those facilities expires on July 1, 2017.

Economic Development. On a vote of 112-11, the House passed HB2184 extending the sunset date for STAR bonds for five years, from July 1, 2017 to July 1, 2022. The bill was sent to the Senate where it was referred to the Commerce Committee. After work by the Senate, a good guess is that the sunset will end up being extended for a year to July 1, 2018 to give the legislature a chance to study the STAR bond incentive program in an interim committee and make some recommendations for consideration during the 2018 legislative session.

Please note: Due to the continuing Veto Session, the previously scheduled Public Policy & Advocacy Committee on Friday, May 12, has been cancelled.