

This Week **in Topeka**

Overland Park Chamber

*Business, Economic Development & Local Government News
from the Legislative Veto Session Wrap-Up April 30-May 4, 2018*

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The 2018 legislative session reached a crescendo this last week then closed with somewhat of a thud. While the House was busy debating and voting on several conference committee reports (CCR) sent over from the Senate and a couple of issues remaining on its agenda, the Senate completed its work and adjourned, *sine die*, leaving on the table a couple of CCRs being worked in the House, thus effectively ending any further work for the session. The House, with nowhere to send its last approved CCR's was left with no option but to adjourn, *sine die*, as well.

The Budget. As you know, Kansas is on a two-year budget cycle. With a new budget having been passed during the 2017 legislative session, **H Sub for SB109**, as contained in a CCR, set forth the adjustments in the state budget for the rest of the current fiscal year (FY18, ending on June 30, 2018) and for the next fiscal year (FY19, July 1, 2018-June 30, 2019). The CCR passed the House first on a vote of 98-23; it then was passed 26-14 by the Senate and sent to, and signed by, Governor Colyer.

The budget calls for State General Fund spending of approximately \$6.7 billion in FY18 and about \$7.0 billion in FY19, with projected ending balances of \$447.5 million and \$375.4 million, respectively, for those two fiscal years.

Some of the highlights contained in the budget are:

- \$15 million for higher education toward restoration of a part of the cuts imposed in 2017;
- Raises for most state employees - 5% for those employees who did not receive raises last year and 2.5% for those who did, 2% for judges, and a 5% adjustment for the state's correctional staff;
- \$100 million for social service caseload needs; and

- Approximately \$58 million to address at least some of the 23 KDOT projects included in T-Works that have been on hold for lack of state funding.

K-12 School Finance. Legislators returned to the Capitol for the Veto Session knowing a trailer bill was necessary to “fix” the language contained in the school finance plan passed in **H Sub for SB423** right before First Adjournment that left total funding about \$80 million short of what it was thought to be. That fix ended up being worked in the House Appropriations Committee with the result, **H Sub for SB61**, being sent to the full House where it was passed by a vote of 92-27. The bill then went to the Senate where a motion to concur in the House amendments was in order (while this procedure allowed debate on the substitute bill, it prohibited any amendments) and carried 31-8. It was signed into law by Governor Colyer on May 7.

The trailer bill addresses the error that led to the \$80 million funding shortfall under **H Sub for SB423** by repealing much of the new language regarding changes to the LOB contained in **H Sub for SB423**, for the most part effectively returning to previous LOB law; however, a statement of public policy of the State of Kansas that all school districts must have an LOB of at least 15% of that district’s total foundation aid was then included in the trailer bill, thereby reinstating that requirement. The public policy statement goes on to provide that the funds received by each district pursuant to this minimum LOB should be included as state aid for purposes of determining constitutional adequacy of state effort. While sound arguments can be made supporting or opposing that idea, after all, the ultimate source of all funds is the taxpayer, the Supreme Court has previously cast doubt as to whether it would agree with that proposition and deem the required LOB funding to be state effort for purposes of adequacy.

Among key provisions of the combination of **H Sub for SB423** and **H Sub for SB61** are the following:

- The addition of approximately \$534 million to K-12 funding over the next five fiscal years (in addition to almost \$300 million added by the legislature in the 2017 session), bringing the total amount of new school funding to about \$823 million over that period; thereafter, annual funding increases would be tied to the increase in the CPI for such year over the average increase for the preceding three years;
- With the funding increases described above, the new BASE amounts would be:
 - \$4,165 for school year 2018-19
 - \$4,302 for school year 2019-20
 - \$4,439 for school year 2020-21
 - \$4,756 for school year 2012-22

- \$4,713 for school year 2022-23;
- Funding for special education is increased by \$44 million in FY2019, with an additional \$7.5 million added in each of the next four fiscal years;
- Adds \$500,000 to help fund a teacher mentoring program;
- Adds \$2.8 million to pay the cost for all students throughout the state to take the ACT and ACT Workkeys assessments;
- Allows districts to expand their 4-year old at-risk childhood education programs to include 3-year old children;
- Adds \$10 million to fund the new Mental Health Intervention Team pilot program between certain selected districts and their respective community mental health centers for FY19;
- Provides a schedule of required performance audits to be performed by Legislative Post Audit over the next six years;
- Makes the following changes to address the Supreme Court’s stated equity concerns
 - Voids resolutions adopted by local school boards increasing the district’s LOB over 30% that were not approved by voters;
 - Repeals the 10% minimum at-risk funding floor;
 - Repeals including utility costs and hazard insurance premiums as permitted uses for capital outlay funds; and
 - Requires LOBs to be calculated using percentages from the current year instead of the prior year.

The combination of school finance bills, **H Sub for SB423** and **H Sub for SB61** will now go to the Supreme Court for consideration in connection with their ruling in *Gannon V*. Both sides have submitted their briefs in the case and oral arguments are scheduled for Tuesday, May 22, with the Court having set June 30 as the deadline for issuing its ruling as to the constitutionality of the new plan. What are the questions remaining? First, will the Court consider the additional money enough to satisfy the adequacy part of the legislature’s constitutional responsibility to fund K-12 education? No one knows for sure. The proposal seems to be a good faith effort on the part of the legislature, especially when taken in full context of its responsibilities to appropriately fund all aspects of state government and the fact that revenues, while improving, are not unlimited. In response to public opinion supporting the need for undoing the 2012 tax cuts and increasing the state’s income, the 2017 legislature passed a significant tax increase to improve the state’s financial condition and have more money available for funding schools as well as other services and amenities provided by the state, many of which were short-changed over the last few years. It does seem unlikely that the Court will give much, if any, weight to the policy statement by the

legislature that the funds generated by the newly required 15% minimum LOB will be deemed to be part of state effort for purposes of meeting the adequacy requirement. In prior opinions in *Gannon*, the Court has given a rather strong indication it will not. Hopefully, the Court will see the overall funding effort as one that considers the many demands upon the state and allow the new K-12 plan to go forward.

Second, will the Court see the several changes in the plan as appropriately addressing the equity issues it identified in *Gannon V*? Again, no one knows for sure, but the four changes noted above seem to do just that.

The new plan, however, does include a couple of new issues that may be problematic insofar as equity is concerned. One, even though the 15% minimum LOB is required of all districts, and, it should be noted that all districts in the state currently have an LOB that meets (in fact, exceeds) that requirement, the Court has stated that LOB funding is inconsistent in the funding it raises statewide (inequitable?) even though equalized, The Court also has voiced concern regarding the lack of uniform ability of districts to successfully meet the requirement of a protest petition vote to increase the LOB above the 30% level. And, two, the new plan requires that each district direct the LOB funds it receives toward at-risk and English language learners (ELL) programs in the same proportion as its overall weightings for those student categories. This means a significantly higher percentage of LOB funding for those districts with higher percentages of at-risk and ELL students have less flexibility to determine the best use of funds than do districts with a lower number of students in those specific categories, creating what the Court sees as a wealth-based disparity. Once again, no one knows for sure how the Court will view that provision of the new plan.

Finally, this new plan passed by the legislature does not include a non-severability clause as have previous plans. This means the Court may strike down any individual provision it finds contributes to a lack of adequacy or creates inequity among the districts and is, therefore, unconstitutional, without having to reject the entire plan. This leaves the door open to the possibility the Court could find the majority of the plan is constitutional with only a specific piece or two contrary to the constitutional guidelines it has established and allow the legislature to remedy those aspects in the 2019 session. It's wait and see time, but it does appear from here that considerable progress was made this session.

Taxation. As discussed previously, **S Sub for HB2228** was a tax cut bill that passed the Senate, but did not pass the House and ended up in a conference committee. The bill proposed changes to Kansas individual and business income tax laws, largely in response to

changes in the federal tax code (IRC) contained in the Tax Cuts and Jobs Act (Act) passed by Congress last December.

Key business income tax provisions in the bill included decoupling from the federal tax code (Kansas is one of many states whose tax laws are automatically conformed to the federal code absent an affirmative action not to do so) in the following areas:

- Repatriation. For tax year 2017 and after, Kansas would continue its policy of not taxing deferred foreign income, as defined in IRC Section 965(a) – certain repatriation income. Kansas has not historically taxed foreign income, but with changes to the federal tax code, at least a portion of that income would be subject to Kansas income tax without this proposed decoupling.
- Global Intangible Low-Taxed Income (GILTI). For tax year 2018 only, GILTI, as defined in IRC Section 250(b)(1), would not be subject to Kansas income tax. Federal law uses foreign tax credits to accomplish this low tax category; however, Kansas does not currently apply foreign tax credits, so failure to decouple could result in taxing more than income earned in low-tax jurisdictions.
- Interest expense. For tax year 2018 only, certain disallowed business interest under IRC Section 163(j) of the federal tax code in effect prior to passage of the Act.
- Capital contributions. For tax year 2018 only, certain capital contributions under IRC Section 118 would be excluded from Kansas income tax liability.
- FDIC premiums. For tax year 2018 only, amounts attributable to the disallowance of FDIC premiums paid by certain financial institutions would be excluded from Kansas income tax liability.

The major individual income tax provisions included the following:

- Beginning in tax year 2018 and thereafter, allow taxpayers to elect to itemize deductions on their state income tax returns even if they take the standard deduction on their federal return. Under current state law, taxpayers are prohibited from itemizing deductions on their state return unless they also itemize on their federal return. With the significant increase in the federal standard deduction under the Act, it is expected more taxpayers will not itemize (current estimates put the percentage of taxpayers who itemize deductions at around 20%), thus closing that option on the state returns for more taxpayers.
- Accelerating the timeline for restoring certain itemized deductions eliminated or reduced in 2017. Under current law, deductions for medical expenses, mortgage interest and property taxes paid are allowed up to 50% of the permitted federal amounts in tax year 2018, increasing to 75% in tax year 2019 and 100% in tax year

2020. Under this bill, those percentages would be changed to 75% in tax year 2018 and 100% in tax year 2019.

- Effective for tax year 2018, certain individual taxpayers (e.g., those owning pass-through businesses, such as LLCs, subchapter S corporations, partnerships and sole proprietorships) would become eligible to claim the expensing deduction for the costs of placing certain tangible property and computer software into service in the state; this is essentially the expensing option currently available for C corporations and was lost under the state tax cuts enacted in 2012.

While the business income tax changes, primarily decoupling from the federal tax code with respect to these several provisions, seem to make sense, the federal tax code changes prompting those proposals are so new it is nearly impossible to determine the exact cost to the state of moving forward now. Even though three of the four business-related changes would have sunset after one tax year to allow the 2019 legislature an opportunity to review their impact, together with the fact that these changes were coupled with the more expensive proposed individual tax changes (estimates varied, but, if passed, the bill was predicted to reduce state tax revenue by \$85-100 million in the upcoming fiscal year), there was enough opposition to **S Sub for HB2228** that it failed to pass both houses (the bill passed the Senate 21-19, but was killed by the House on a tie vote of 59-59). Many legislators just believed it was prudent to wait until next session to make material adjustments in state tax policy, allowing time for the impacts of the Act as well as the 2017 state tax changes to become better understood and to have the opinion of the Supreme Court in *Gannon V.*

What else passed at the end of the session.

SB284, The Adoption Protection Act. This bill updated several provisions of existing Kansas law in the Kansas Adoption and Relinquishment Act and created the Adoption Protection Act, a provision that stirred controversy as many legislators believed it could be used to promote discrimination by CPAs that received state funds, directly or indirectly.

The Adoption Protection Act provides that, to the extent allowed by federal law, no child placement agency ((CPA) will be required to perform or participate in the placement of a child for foster care or adoption if the proposed placement would violate the CPA's sincerely held religious beliefs. It prohibits taking any of the following actions against the CPA, if taken solely because of the CPA's objection to providing services on the grounds of such religious beliefs:

- Denial, revocation or non-renewal of a CPA's license or other authorization;

- Denial of participation in any program operated by the Department of Children and Families (DCF) in which CPA's may participate; and
- Denial of reimbursement for performing foster care or adoption services on behalf of an entity that has a contract with DCF as a case management contractor.

The bill passed the Senate and House on votes of 24-15 and 63-58, respectively.

H Sub for SB391, Joint Legislative Transportation Vision Task Force (Task Force). This bill, supported by the Chamber, establishes the Task Force consisting of 31 voting and 4 ex officio, non-voting members. The voting members would include 12 legislators, 12 Kansas residents appointed by legislative leadership, three residents appointed by Kansas Economic Lifelines, two by the League of Kansas Municipalities (one from a city with a population of more than 25,000 and one from a city with a population of less than or equal to 25,000), and two county commissioners appointed by the Kansas Association of Counties (one from a county with a population of more than 40,000 and one from a county with a population less than or equal to 40,000). All appointed members are required to be affiliated with a specified list of interested stakeholders.

The mission of the Task Force is to make and submit reports to the legislature by January 31, 2019 on the following work to be conducted by the Task Force:

- Evaluate the progress of T-Works to date;
- Evaluate the current system condition of the state transportation system;
- Solicit local input on uncompleted and future projects at eight public meetings, including one in each KDOT district and in the Wichita and Kansas City metro areas;
- Evaluate current uses of State Highway Fund dollars;
- Evaluate current transportation funding in Kansas to determine whether it is sufficient to maintain the transportation system in its current state and to ensure that it serves the state's future transportation needs;
- Identify additional necessary transportation projects;
- Make recommendations regarding the needs of the transportation system over the next ten years and beyond; and
- Make recommendations on the future structure of the State Highway Fund as it relates to maintaining the state's infrastructure system.

The bill was passed 38-1 in the Senate and 120-1 in the House; Governor Colyer signed the bill into law on Wednesday, May 16.

S Sub for HB2028, the Kansas Telemedicine Act. In short, beginning January 1, 2019, this bill expands access to health care by requiring health insurance companies to pay for health

care services provided via telemedicine if those same services are covered in the traditional face-to-face visit with physicians. The bill was nearly derailed by a provision that forbids prescribing abortion-inducing drugs via telemedicine; that language was ultimately included in the bill that passed the Senate on a vote of 32-6 and the House by 107-13.

HB2280, Economic Impact of State Rules and Regulations. This bill revises the Rules and Regulations Filing Act, requiring that an economic impact statement be submitted to the Director of the Budget (Director) for approval regarding a proposed rule or regulation (Rule). The economic impact statement would contain a cost-benefit analysis using several factors, including the following:

- The extent to which the Rule would enhance or restrict business activities and growth;
- The economic effect on the Kansas economy, including specific businesses, business sectors, public utility ratepayers, individuals and local units of government;
- The businesses that would be directly affected by the Rule;
- The benefits compared to the cost; and
- An estimate of the annual and overall total implementation and compliance costs, as a single dollar amount, to be absorbed by businesses, local units and individuals.

The bill was passed by the Senate on a vote of 23-11 and by the House by 98-21.

HB2539, Qualifications of Candidates for Certain Statewide Offices. Effective January 1, 2019, the bill (provisions originally contained in HB2333 and H Sub for SB264 as well as HB2539 were included in this CCR) will require every candidate for Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, or Insurance Commissioner to be a qualified elector of Kansas (i.e., a resident of Kansas who is at least 18 years of age) by the filing deadline for such office. It also requires that candidates for Governor and Lieutenant Governor be age 25 or older, and that every candidate for Attorney General be licensed to practice law in Kansas.

The CCR was adopted by the Senate on a vote of 32-4 and the House on a vote of 70-52.

What didn't pass.

SB296, Economic Development Incentive Programs. After much wrangling and negotiation in a conference committee, the committee combined three bills into SB296, and submitted its CCR for approval. Included in the bill were the following:

- An extension of the period in which earned income tax credits under the High Performance Incentive Program (HPIP) could be taken. Currently those tax credits earned through a company's investment in Kansas must be used within 16 years

after qualifying for them. The proposed change, originally contained in SB430 and strongly supported by the Chamber, would have extended 25% of the unused HPIP tax credits for an additional 9 years for those companies that claimed the credit before January 1, 2018, with the amount of such credits used in any year limited to 10% of the reduced amount.

- Creation of the Ad Astra Jobs Act (as originally proposed in and passed by the House in 2017 as HB2168), an economic development incentive program that would have provided nonrefundable tax credits to taxpayers who contribute capital to an approved investment company to fund a rural business concern in Kansas.
- An amendment to the Sales Tax and Revenue Bond Financing Act (STAR bond). The proposal would have reduced the state's maximum contribution to STAR bond project districts submitted for approval by the Secretary of Commerce on and after January 1, 2019 from 100% to 85% of the state sales tax rate (currently 6.5%).

As mentioned above, the House took up the CCR on the last afternoon of the session, May 4, and approved the report on a vote of 83-36; however, this is one of the CCRs that ended up dying when the Senate decided to adjourn without considering it. It's unfortunate an important piece of economic development legislation (i.e., the extension of the claim period under HPIP), apparently got caught up in politics and was allowed to die at a time when it seems particularly important to show our businesses we recognize their value and want to work with them not only to promote job growth, but to keep good jobs already here in Kansas.

SB449, Creation of an Economic Development Incentives Database. This bill (originally the contents of HB2572 submitted as a CCR) would have required the Department of Commerce to establish a database for disclosing information on economic development incentive programs providing more than \$50,000 in annual incentives and make such information available on the Internet to the public in a digital and searchable format.

The House adopted the CCR on a vote of 119-0; unfortunately, this was another of the CCRs that died when the Senate adjourned, *sine die*, without considering it.

HB2042, Concealed Carry Licensure Amendments. This bill contained several proposed changes to the Personal and Family Protection Act and passed the House 76-44. It subsequently was amended by the Senate and passed there on a vote of 25-15, sending the amended bill to a conference committee where it died peacefully. The provision of greatest concern to the Chamber would have reduced the age required to obtain a concealed carry permit in Kansas to 18 years of age.

Upcoming Events. The next meeting of the **Public Policy and Advocacy Committee** will be noon-1:30 p.m. on **Friday, June 8** at the Chamber. **Registration information** for the meeting can be found at www.opchamber.org.

The fourth and final breakfast in the Johnson County Public Policy Council's **legislative breakfast series** is 7:30-9:00 a.m. **this Saturday, May 19** at the DoubleTree by Hilton. Guest legislators scheduled are Senators Molly Baumgardner and Barbara Bollier and Representatives Stephanie Clayton, Tom Cox, Nancy Lusk and Melissa Rooker. **To register, [click here](#).**