

This Week **in Topeka**

Overland Park Chamber

*Business, Economic Development & Local Government News
from the Legislative Session Week of March 7-11, 2016*

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The first full week after Turnaround was full of debate in the Capitol. There is a lot of work to be done between now and First Adjournment on March 25, including dealing with the continuing revenue shortfalls and with K-12 school funding. Our own version of March Madness.

Property Tax Lid. One of the issues drawing a lot of attention this week was the property tax lid passed at the end of the 2015 legislative session and set to take effect on January 1, 2018. This is the change in law that limits local units of government from receiving increased property tax revenues in excess of the CPI increase over the prior year. There are two bills that contain proposed changes to this new law, both of which had hearings this week.

Conceptually, the proponents object to calling this law a property tax lid, insisting that it is not a lid on property taxes since it allows an increase over the established benchmark of the CPI; they prefer the term “voter empowerment,” and laud it as the “ultimate in local control.” First of all, it is a lid. While it does provide a mechanism for increases in property taxes in excess of the CPI by requiring a public vote to approve any such increase (i.e., removing the lid), in fact, it does establish a maximum amount of property tax revenue that local officials may raise property taxes without such a vote (i.e., placing a limit, or lid, on the taxing authority otherwise granted to local officials doing the job for which they were elected which is the essence of a republic form of government established by both federal and state constitutions). When asked by opponents of the law to distinguish this infringement on local control by state legislators from similar mandates and restrictions from the federal government and so hated and opposed by state legislators, too few are available to address it and or even acknowledge that a contradiction exists.

SB316 was up first in the Senate Assessment and Taxation Committee, with proponents testifying on Tuesday and opponents following on Wednesday. **SB316** proposes to accelerate

the effective date of the new law from January 1, 2018 to July 1, 2016 and would also eliminate several of the exemptions built into the current law.

Proponents of the bill (e.g., Americans for Prosperity, the Kansas Chamber of Commerce, the Kansas Policy Institute, and the Kansas Association of Realtors) argue that having an effective date of January 1, 2018 simply gives greedy local governments more opportunity to increase property taxes (whether by increasing mill levies or just taking advantage of increased property valuations) before they are required to submit such increases to a popular vote. Opponents (e.g., local government officials and many chambers of commerce and economic development organizations across the state, including the Overland Park Chamber) pointed out how difficult, if not impossible, it would be to coordinate the several deadlines in the local budgeting process with the need to submit a property tax increase to a public vote. Many also noted the cost of such an election. For example, it would cost Johnson County approximately \$800,000 for a mail ballot vote and approximately \$1 million for a regular election.

The argument regarding the exemptions made by the bill's proponents could be summed up by saying that they simply provide ways to circumvent the basic premise of the lid, while the opponents of the bill believe the exemptions provide greater ability for local elected officials to do their jobs and respond to additional costs over which they have little or no control.

The House Taxation Committee held hearings on its property tax lid bill, **HB2609**, on Wednesday (for proponents) and Thursday (for opponents). For proponents (essentially those who opposed **SB316** in the Senate hearings), supporting the House bill presented a bit of a dilemma. On the one hand, they oppose tax lids as a general principle that conflict with our republic form of government and local control. However, on the other hand, most recognize the practical side of things – we now have a property tax lid in current law and the chances of repealing it are nil. **HB2609** would make improvements in an objectionable law, while **SB316** makes it worse.

HB2609 proposes to retain the January 1, 2018 effective date as is in current law and switches the index used to determine the revenue lid from the CPI to the Municipal Cost Index (a composite of three U.S. Department of Labor indices - the CPI, the producer price index for industrial commodities, and the construction price index) as representing a more accurate rate of inflation of municipal costs of providing government services. The bill also adds some additional property tax revenue uses that are exempted from the lid consideration, and it eliminates the automatic requirement for voter approval of property tax revenue increases, instead providing a protest petition process whereby voters, if they chose to do so, could trigger the election requirement. Finally, in recognition of the fundamental concept of local

control, the bill permits a local unit of government to opt out of the lid through the existing “home rule” process.

The best guess is that both bills will be tweaked some by the tax committees, passed by their respective chambers, and a compromise hammered out by a conference committee to change the current law.

The LLC Loophole. As expected, **HB2444** will be heard by the House Taxation Committee on Tuesday afternoon, March 15. As it is drafted, this bill repeals the 2012 exemption of the business income of owners of LLC’s, sub-chapter S corporations, partnerships, and sole proprietorships from state income tax (often referred to as the “LLC loophole”). This exemption means that more than 330,000 business owners are paying no state income tax on the earnings of their businesses. The bill also proposes to use the additional tax revenue generated by the repeal, estimated to be as much as \$250 million, to pay for reducing the state sales tax rate on food from 6.5% to 2.6% (the cost of each one cent reduction in the food sales tax is about \$66 million).

The Chamber will support this bill, although with a caveat that the nearly 4% sales tax reduction, while laudable, simply goes too far, too fast, a reduction of closer to 1% would be a more responsible and affordable cut and leave a significant amount of the new income revenue available to the state general fund for use in balancing the budget.

Two additional bills were introduced this week that also address the LLC loophole. **SB508**, whose primary sponsors are Sens. Jeff King, Jim Denning and Greg Smith (Denning and Smith being members of our Johnson County legislative delegation), and they propose to modify the LLC loophole by taxing 70% of the non-wage income of LLC’s, etc. beginning this year.

The other bill was introduced in concept in the House Taxation Committee. Drafting of the bill has not yet been completed and made available, but it would apparently set a \$100,000 limit on the LLC loophole; more details on this approach to come next week.

K-12 School Finance. On Friday, two new K-12 school funding proposals were released, one from the Senate side and the other from the House. These proposals are in response to the most recent ruling by the Kansas Supreme Court in *Gannon* that the legislature’s current approach to K-12 financing did not satisfy its constitutional obligations insofar as equity is concerned, giving the legislature until June 30, 2016 to “fix” the funding issue. Again, the drafting and release of these bills will not be completed until next week. However, the Senate bill does not add any new money, but simply redistributes some of the funds already

allocated for the block grant in hopes of addressing the equity aspects of the local option budget (LOB) and capital outlay funds.

The House proposal would apparently add approximately \$20 million of new money plus use the \$17 million currently in the newly established extraordinary needs fund in connection with the block grants, thus putting \$37 million of additional money into new supplemental funds to be used in equalizing the LOB and capital outlay funding.

Expect these proposals to get a lot of attention over the next couple of weeks prior to first adjournment in hopes of settling on a bill that will pass the legislature for consideration by the Supreme Court to determine if it passes constitutional muster. If not, can you say “special session”?

Upcoming Events. The next **Public Policy and Advocacy Committee** (formerly the Government Affairs Committee) meeting will be on April 8 from noon to 1:30 pm at the Chamber. Please register by 5:00 p.m. on Tuesday, April 5 – [click here](#). Partners and Sponsors may register with Julie Hakan at jhakan@opchamber.org.

We are finalizing the details of the Legislative Breakfast on Friday, April 22, during the veto session. More details will be available soon, but keep that date open for breakfast at the DoubleTree Hotel from 7:30 – 9:00 a.m.