



# WHITNEY B. DAMRON, P.A.

[wbdamron@gmail.com](mailto:wbdamron@gmail.com)  
919 South Kansas Avenue  
Topeka, Kansas 66612  
(785) 224-6666

## Legislative & Political Update March 16, 2018

The Kansas Legislature is ten weeks in to the 2018 session with all eyes focused on a school finance study report made public today. The report comes out three weeks in front of First Adjournment, scheduled for April 6. Legislative leaders indicate First Adjournment will not occur before an education plan is passed, so the date could slip if agreement cannot be reached.

The week of March 19 will be the last week for most committee meetings, with the Legislature working bills on the floor all day beginning the week of March 26. Thursday, March 29 is the Second House of Origin deadline, with all nonexempt bills being required to be advanced out of the second chamber from which originally introduced. Theoretically, First Adjournment on April 6 would mean only appropriations and vetoed bills could be considered after that date (e.g., during the Veto Session). However, history suggests we will see a handful of bills considered in both chambers during the Veto Session in addition to appropriations bills and veto messages. The Veto Session is scheduled to begin on Thursday, April 26.

### **School Finance.**

As previously reported, the Kansas Legislature retained the services of a Texas-based consultant to review the State's K-12 school finance formula as a response to a decision from the Kansas Supreme Court holding the formula unconstitutional on grounds of adequacy and equity. The Court has cited earlier studies or funding requests from the Kansas Department of Education to lead plaintiffs to claim \$600 million is needed to meet the Court's ruling, even after the Legislature added \$300 million in new money in 2017.

The thought behind the Texas consultants is to craft an additional study that can be used to counter previous (and dated) studies the Court has considered and cited in its rulings.

The Kansas Supreme Court gave the Legislature until April 30 to address their decision, which made for a tight timeframe for consideration of the report being made public today, craft a bill incorporating the study's findings and getting it to the Governor's desk in advance of the April 30 date.

Based upon early media reports, the topline number suggests, at a minimum, \$500 million in additional spending is needed over the next five years. To meet what is termed "college-ready goals" the number is \$2.1 billion over the same timeframe. As of this writing, it is too early to tell if critics of the study will soften their opposition, as the new dollars suggested approaches what the plaintiff's attorneys suggest is needed (\$600 million, at a minimum). The number is also close to what former governor Sam Brownback suggested in his State of the State address (\$600 million over five years), which has been picked up by his successor, Governor Colyer as well.

The report is likely to undermine opinions of some legislators that schools are adequately funded at current levels, particularly since the Legislature commissioned the study and placed high hopes on the results before the study was completed.

Plan B, so to speak, is to seek a constitutional amendment to take away from the Supreme Court its ability to rule on "adequacy" and leave their ability to consider challenges to educational "equity". This report would also likely undermine the ability to achieve a 2/3 vote in the House and Senate chambers as required to advance a constitutional proposal to the voters.

It is too early to tell legislative leadership reaction to the report, but the weekend news will most certainly fill the gap.

For informational purposes, the study is:

*Estimating the Costs Associated with Reaching Student Achievement Expectations for Kansas Public Education Students*

Prepared by WestEd

- Dr. Lori L. Taylor, Consultant to WestEd
- Jason Willis, Alex Berg-Jacobson, Karina Jaquet, Ruth Caparas

March 15, 2018

Prepared for The Kansas Legislature

**Comment:**

On March 1, the Kansas Department of Revenue released revenue numbers for the month of February, which noted the State received \$24 million more in revenues than projected. For the fiscal year, July 1, 2017 – February 28, 2018, the State is approximately \$270 million above projections. It is conceivable the State could use some of its revenue excess to meet a portion of an integrated plan to increase school funding, at least for FY 2019 (July 1, 2018 – June 30, 2019). However, some legislators involved with the budget process suggest such expenditures are not sustainable in the out years without additional revenue or significant budget cuts. Legislators are very hesitant to consider additional income tax increases after passing a \$600 million increase in 2017. However, a repeal of sales tax exemptions or revisiting increases in excise taxes (e.g., cigarettes, tobacco, liquor and motor fuels) is not out of the question.

Also, as of this writing, there are only a few general reviews by the leading media outlets. However, comments on Twitter suggest the study has a number of mistakes that will have to be corrected before the authors of the study make their presentation on Monday, March 19. Discussions today over the report were led by attorneys for the Legislature, based upon their review of the report.

## **Update on Various Legislative Issues.**

### **Utilities Legislation.**

**SB 323** clarifies how service territory disputes will be handled between municipal utilities and electric cooperatives. The bill also included provisions of **SB 293** to clarify Kansas Corporation Commission jurisdiction over municipal utilities and **SB 355** allowing for KCC jurisdiction in certain transmission line proceedings. Approved by Governor Colyer on March 5.

**SB 279** updates the Gas Safety and Reliability Policy Act by increasing the allowable surcharge a natural gas utility could recover through a Gas Safety & Reliability Surcharge (GSRS) filing from a maximum of .40 cents per residential customer per month to .80 cents and expanding the items recoverable in such filing with the KCC. Investments must be related to safety, system integrity or public right of way expenses. The Senate approved the bill on a vote of 32-6 on February 22. The House Energy, Utilities and Telecommunications Committee held hearings on the bill on Wednesday, March 14 and committee action is scheduled for Wednesday, March 21.

**SCR 1612** urges the Kansas Corporation Commission to “take all lawful action to promptly set rates for retail electric service in the state of Kansas at regionally competitive rates.” The measure was introduced after a handful of bills with the same intent, albeit with the force of law behind them, failed to advance. Several organizations have been pushing for legislation designed to either lower electric rates for all or at least for selected classes of users. We have seen legislation to require the KCC to perform a rate class study and determine whether classes are being properly assessed or if there is cross-class subsidization (e.g., commercial and industrial customers subsidizing residential ratepayers). Other proposals would require the unbundling of utility bills, so consumers can see what various components of a bill cost. The intent behind this proposal would appear to be to isolate generation and transmission costs with the likely endgame be to allow large consumers to contract for these components outside of their electric provider. We also saw bills that would force utilities to set aside funds for repayment to customers of any windfall obtained from changes to Federal tax laws. The KCC indicated in hearings they can handle this matter without legislation and any bill passed would likely delay ratepayer relief. SCR 1612 was referred to the Senate Committee on Commerce, rather than the Senate Committee on Utilities as proponents attempt to make certain utility-related issues an economic development issue rather than a utility issue. SCR 1612 was signed onto by 31 of 40 senators at introduction. The Senate Committee on Commerce advanced the nonbinding measure to the floor this week and the full Senate is likely to take the concurrent resolution up sometime before First Adjournment.

A late comer to the electric rate discussion was introduced earlier this week but has yet to show up in print. A representative from the Kansas Chamber requested introduction of a bill to direct the KCC to study rate classes and allocate costs within classes (e.g., eliminate any cross-class subsidization). The bill has been around in one form or another for a few years, but never advanced. At this writing, it is not believed that the Kansas Chamber is pushing for consideration this session.

**HB 2701**, establishing a 16-member committee to study ways to increase broadband deployment in underserved areas of Kansas continues to advance in the legislative process. The House approved legislation establishing the Statewide Broadband Expansion Task Force 117-0 on February 22 and the bill was referred separately to the Senate Committee on Commerce and the Senate Committee on Utilities for consideration in the Senate. A double-referral is unique, but not unheard of. The Senate Committee on Commerce held hearings and when they advanced the bill out of Committee on March 15 and hearings in the Senate Committee on Utilities will begin the week of March 19.

## **Taxes.**

In 2017 the Legislature passed a \$600 +/- tax increase package to close the gap between revenues and expenditures. In previous years dating back to passage of former Governor Brownback's signature tax reform package of 2012, the budget had been balanced by increasing the state sales tax (including eliminating a scheduled reduction of the state sales tax), borrowing funds from the state's public employee retirement system, social services cuts and making sizeable withdrawals from the State Bank of KDOT (money from state transportation funds). Those sources of money, often 1-time transfers, were running out and legislators finally had little alternative than to increase taxes.

Absent a school finance case, the State would probably be in good shape to get through the session without consideration of any substantive tax increase. The school finance issue, particularly given the results of the study highlighted earlier in this report make the possibility of a tax increase more likely.

Hearings were held this week in the House Taxation Committee on a proposal to increase cigarette taxes by \$1.50 a pack and increase the excise tax on Other Tobacco Products (smokeless tobacco, cigars, pipe tobacco, etc.), from ten percent of the wholesale price to 65% of the wholesale price. The bill would raise an estimated \$90 million a year. The Senate will consider a similar bill next week. At this writing, passage of these bills are not considered likely. That all could change as we approach the end of the session if the Legislature does not have firm answer for the school finance case.

An interesting bill to watch will be HB 2421 that exempts certain currency, coins and bullion from state sales tax. The House is scheduled to debate that bill on General Orders on Monday, March 19. It is believed that any number of amendments will be offered, including proposals to reduce the sales tax on food and another one or two to repeal a handful of state sales tax exemptions.

Last session an amendment to a similarly-nondescript tax bill was amended with a sales tax exemption repeal that included the following services:

- Motor vehicle towing;
- Mini-warehouse and self-storage;
- Collection agencies;
- Security guards and patrol;
- Security systems (excluding locksmiths);
- Certain non-residential cleaning; and,
- Certain pet care (excluding veterinarians).

## **Liquor Issues.**

It wouldn't be a legislative session without a few liquor bills to consider. **HB 2502** is the so-called "trailer bill" introduced to address a few lingering issues from the strong beer bill of 2017 that will enable CMB retailers (e.g., grocery and C-stores) to sell beer up to 6% alcohol by volume starting April 1, 2019. The bill addresses tax and enforcement issues. A question unresolved last year was whether this new class of beer should be subject to the state's 8% enforcement tax or state and local sales taxes. Consensus is the latter. The bill also clarifies enforcement powers of the Division of Alcoholic Beverage Control in local jurisdictions, among a couple of other matters. Governor Colyer signed HB 2502 into law on March 15.

**HB 2482** will allow for the sale of alcoholic beverages on premise starting at 6:00 a.m., rather than current law of 9:00 a.m. The bill was amended to include farm wineries and to allow for the sale of wine by the glass at a farm winery outlet. The bill has passed both the House and Senate and has been referred to a House/Senate conference committee for further consideration.

**HB 2470** relating to microbreweries and contract brewing is in a House/Senate conference committee.

**HB 2476** relating to candy with alcohol and liquor content for microbrewery products is up for a motion to concur in the House or non-concur and refer the bill to a conference committee).

**HB 2362**, the Alcoholic Beverage Control Modernization Fee legislation is on the governor's desk for consideration.

**HB 2731** would allow a manufacturer of a liquor product (e.g., wine, spirits, beer) to also hold a drinking establishment license. The bill was scheduled for a hearing before the House Federal and State Affairs Committee, but later canceled. Certain liquor interests are opposed to this legislation as a blurring of the three-tier system of liquor control (manufacturer, wholesaler and retailer) and their pressure/opposition likely led to the cancellation of the hearing.

**SB 433/HB 2766** would allow for self-service beer operations like previously enacted legislation allowing for self-service wine dispensing machines. A Topeka-based company won an entrepreneurial award of \$100,000.00 backed by a number of local businessmen and investors to help start a brew business – Brew Bank – and their model includes selling 20 or more regional beers through self-service cards and taps, which is contrary to state law. The Senate Committee on Federal and State Affairs passed the bill out of committee and the Senate is expected to take the bill up next week. The House Federal and State Affairs Committee likely waits for the Senate bill rather than take up its own proposal.

## **Judicial Funding.**

The Senate Committee on Ways and Means took up a subcommittee report on the judicial branch funding proposal for FY 2019. The subcommittee had separated out proposed increases in judicial and nonjudicial salary increases proposed by the Judicial branch to bring judges and justices to some degree of pay parity with their regional counterparts and increase the pay for nonjudicial employees, particularly entry level positions. The Committee moved to delay consideration of the additional funding request until after the April Consensus Revenue Estimates and final budget numbers are known.

The House Appropriations Committee was scheduled to consider HB 2689 making appropriations for the Judicial Branch, including salary enhancements for judges and justices as well as nonjudicial personnel on Thursday of this week, but the hearing was cancelled.

### **Gaming.**

Bills to allow for slot machines at pari-mutuel tracks and lower the tax rate paid at such facilities has been introduced in both the House and Senate. The House Federal and State Affairs Committee held hearings on **HB 2545**, which effectively lowers the tax rate at pari-mutuel facilities to the same rate of taxation at the state-owned and operated casinos. Similar legislation has been introduced every year since the passage of SB 66 in 2007, which authorized the state-owned casinos and slots-at-tracks. The bill was advanced to the floor but has yet to be scheduled for floor debate.

Two bills authorizing the state to get into the sports wagering business if a U.S. Supreme Court decision overrules existing prohibitions comes down favorably. The first introduced was a rather simple bill (1 page, 17 lines) essentially authorizing the Kansas Lottery to create a regulatory framework for sports wagering (**HB 2533**), while a second bill, which was held for informational hearings is much more extensive (**HB 2572**). The latter bill is 37 pages long. Critics of HB 2572 point out it is heavily influenced by major league sports (e.g., Major League Baseball, National Basketball Association to name two) and includes many onerous provisions not found in Nevada sports wagering or anywhere else in the world, where sports wagering is legal and popular. A third bill is expected to be in print shortly, which will not contain such provisions, including a so-called “integrity fee” sought by major league sports. The third bill is based upon legislation recently passed in West Virginia.

### **Transportation.**

The State has adopted three major transportation programs in the past 30 years: 1989, 1999 and 2010 was the latest with the passage of the T-WORKS comprehensive transportation program. As T-WORKS nears the end (not completion, as more than \$2 billion has been diverted from KDOT revenues for non-transportation expenditures and 23 projects were shelved), proponents of transportation investment requested introduction of **SB 285** creating a task force to study transportation needs of Kansas and make recommendations to 2019 Legislature. The Senate approved the measure and the bill was referred to the House Transportation Committee for further consideration. Rather than take up SB 285, the House introduced a new study committee bill, HB 2775, which includes a 23-member committee with selected legislators appointing additional members from a list of interest groups, including the Heavy Constructors Association, Kansas Contractors Association, the Greater Kansas City Building and Construction Trades Council, railroads, engineers, cement and asphalt associations, among others.

### **Abandoned Housing.**

The House passed the 2018 version of the abandoned housing bill, HB 2506 on a vote of 90-32 and sent the bill to the Senate for further consideration. At hearings held this week before the Senate Committee on Ethics, Elections and Local Government, proponents again made the case for providing cities with a tool to deal with the unique issue of a residential property that has been abandoned by its lawful owner. Americans for Prosperity offered several amendments during neutral testimony, which upon review are acceptable to the proponents. The Committee is expected to consider the bill and any amendments next week.

## **Hunting/Outdoor Legislation.**

**HB 2558** would extend the controlled shooting area season from ending on March 31 to April 30, starting with the 2019 season. CSA licensees can place propagated birds out for hunting under current law from September 1 through March 31. The bill was approved unanimously in the House and after hearings before the Senate Committee on Agriculture and Natural Resources earlier this week, was passed and placed on the Senate Consent Calendar, where it will be advanced to final action if no senator objects after three days. During hearings on HB 2558, the Kansas Department of Wildlife, Parks and Tourism requested an amendment to allow the Department to purchase 400 acres of land in Kingman County. The Committee rejected this request and asked the Department to introduce a bill that could be considered on its own merits, rather than amending into HB 2558. Land purchase proposals by WP&T have not been well-received by the Legislature in recent years. The WP&T bill is **SB 447**.

**HB 2743** would allow landowners to purchase and sell additional deer tags for hunting on their property. The Kansas Department of Wildlife, Parks and Tourism has opposed these kind of bills for years and suggest the state's deer herd is being managed effectively as evidenced by the interest in out-of-state hunters wanting to come to Kansas to shoot big deer. The bill was not advanced out of the House Agriculture Committee.

**SB 301** would require those who hold themselves out as a hunting guide or outfitter to register with the Kansas Department of Wildlife, Parks and Tourism. The Senate Committee on Agriculture and Natural Resources amended the bill to exempt landowners guiding on their own land and controlled shooting areas from the Act and advanced the bill to the floor for further consideration.

## **Firearms.**

The House considered a bill on the floor earlier this year granting 18-21-year-olds with valid concealed carry permits from reciprocal states to carry legally in Kansas, clarifying a law passed last year. The bill, **HB 2042**, was amended to allow Kansas residents age 18-21 to carry with a concealed carry license and was also amended to requiring anyone carrying a firearm on a college campus to have a concealed carry permit. The amendment applies to students, instructors, visitors and anyone else entering public college and university property. Current law allows for non-permit carry concealed on college campuses. Several years ago, Kansas passed "open carry" which allows anyone 21 and older to carry concealed with or without a permit unless the college or university can provide for the safety of all who enter (e.g., closed point entrance, security, metal detectors, etc.).

The Senate Committee on Federal and State Affairs stripped out the House floor amendments and advanced the bill to the floor for consideration. Attempts to amend the bill with a variety of amendments failed, including:

- Prohibiting rifle purchases for people under 21;
- 3-day waiting period on the sale of certain firearms;
- Allow public colleges to decide whether to allow concealed weapons;
- Prohibition of bump stocks.

The State has had reciprocity language that allowed those from other states with concealed carry laws to carry in Kansas, which was often necessary for Kansas concealed carry permit holders to have reciprocity to carry in other states. HB 2042 was originally introduced to clean up that area of law. The Senate passed the bill 25-15 and most likely a House/Senate Conference Committee will take the bill up to consider differences in each chamber's version of the bill.

HB **2145** was a lot less controversial than HB 2042 and passed the House unanimously. The bill requested by the Kansas Attorney General's office would expand the crime of "criminal use of weapons" and give the state more tools to deal with those unlawfully possessing a firearm for use, particularly when Federal law enforcement officials fail to bring an action or lack jurisdiction in certain cases involving possession of firearms. The bill also updates certain definitions in existing law with the bill related to domestic violence. The Senate passed the bill unanimously (40-0) earlier today.

A bill to ban so-called "bump stocks" was introduced in the House Federal and State Affairs Committee but has not been scheduled for a hearing.

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**Closing Comment.**

We are nearing the end of committee work, with most committees prohibited from meeting after March 23. The House and Senate will be working bills on the floor with breaks for conference committees to meet for the duration of the session, ending with First Adjournment scheduled for April 6.

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