

LEGISLATIVE UPDATE



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INSIDE THIS ISSUE:

State's budget outlook	1-2
Kansas uncorked?	2
State highway fund	3
School finance	3
Election bills	4
Unemployment insurance	4
Tax plans: Rural vs. urban	5
Immigration debate in Kansas	6
Raffles legal in Kansas	7
Non-licensed concealed carry	7
Legislative deadlines	7

STATE'S BUDGET OUTLOOK



The Legislature has cleared its midpoint, and legislators are focusing on building the state budget for FY 2016 and FY 2017. FY 2016 will begin July 1 with a projected shortfall of nearly \$600 million. One question that is left unanswered is how to handle the state's future tax schedule and whether to heed the Governor's call to eliminate the state's school finance formula and give local districts "block grants" instead. Aid to public schools is the biggest item in the budget, consuming more than half the state's tax revenue. Republican leaders are also planning to unveil a school funding bill in the very near future.

Expect a lot more to occur on the budget in the next few weeks when a full spending blueprint for the next fiscal year and for the next year are supposed to come together and pass the respective chambers. Legislators typically plan to have most of the budget approved by early April, before they begin their annual spring break and make adjustments to the budget when they return in late April to wrap up business.

Legislators will also spend the next month looking at ways to raise revenues. The House Tax Committee held hearings this week on the Governor's income tax proposals. And, others are calling to look at a number of other revenue proposals. There is an overall consensus from legislators that they want to wait to vote on tax proposals until they see whether spending can be tightened and whether tax collections are stronger than anticipated.

The state received some good news about state revenue. Revenue numbers were slightly above estimates in February, marking the first time in seven months incoming state revenue has met or exceeded projections. The state remains \$37 million below estimates for the fiscal year with four months remaining. While the Governor and the legislature have cut more than \$300 million from state agencies and public education already this fiscal year, the state still faces a budget shortfall of more than \$600 million next year.

Below are a few highlights of the state budget thus far:

Kansas Department of Transportation

The Governor's budget recommendation included a \$280 million transfer from KDOT to the State General Fund. After much debate the subcommittee included that transfer in the budget to shore up the State General Fund balance.

...Continued on page 2

STATE'S BUDGET OUTLOOK

...Continued from page 1

Since 2011, about \$1.3 billion has been drawn from the highway fund to pay for other expenses, including mental health grants, debt on the statehouse renovations and busing students. Under the Governor's budget plan, that amount would grow to \$2.1 billion by FY 2017. However, KDOT Secretary has already announced he is also seeking an increase in bonding authority so that projects may be completed on schedule for the near future. The bonding cap change is necessary for KDOT to bond \$250 million in FY 2016. KDOT leaders have already announced plans to delay \$300 million in unspecified road maintenance projects because of transfers proposed by the Governor.

Affordable Airfares

Funding for Affordable Airfares program has been a discussion point. The Governor had recommended funding the program for \$4 million in FY 2016 and \$3 million for FY 2017. However, supporters of the program requested \$5 million for FY 2016. The House Appropriations Committee has appropriated the full \$5 million in FY 2016, but the program will cease by FY 2017 (no funding was appropriated for FY 2017). The Senate Ways and Means Committee adopted the Governor's recommendation.

Higher education

Having already lost 2% of their budget for FY 2015 by the Governor's allotments, the Regents' institutions are facing additional cuts for FY 2016 & 2017. The Senate Ways and Means Committee will review a budget proposal by the budget subcommittee on the Board of Regents that cuts \$9.4 million from KU and provides a \$7.4 million to a KU Med Center academic expansion program in Sedgwick County. The goal of the Wichita program is to train more physicians to fill service gaps. Also the budget proposal includes holding harmless Wichita State University and Fort Hays State University. It also removes \$2.5 million in FY 2016 and 2017 each at Kansas State University, and Pittsburg State University will gain \$1 million in each fiscal year. In the House, the full House Appropriations Committee adopted a proposal that does not include any funding for enhanced budget requests from the state's six Regents universities. It did reinstate \$1.5 million that the Governor had proposed eliminating for an incentive program that pays school districts \$1,000 for each student who graduates with an industry-recognized job training certificate.

KANSAS UNCORKED?

HB 2200 is known as the Uncork Kansas bill, which would allow grocery stores to sell wine, liquor and full-strength beer starting in July 2018. An exempt bill, it currently appears on the House General Orders, a level it has never reached before.

After years of hearings and attempts to move the bill out of committee, the measure was approved by the House Commerce, Labor and Economic Development Committee the Monday prior to Turnaround. It would also allow convenience stores to sell full-strength beer in 2018. The committee approved it on a vote of 10-7. Grocery and convenience stores currently can sell what's known as cereal malt beverage, or weak beer. Only liquor stores can sell other packaged alcoholic beverages. Supporters of this change argue it would make the market freer while opponents say it will close small businesses—the mom-and-pop-owned liquor stores—and make it harder to prevent alcohol sales to underage buyers.

The question is now whether this bill will come up for a vote on the House floor.



STATE HIGHWAY FUND



According to federal data, Kansas had the biggest decade-long decline in per-person spending on highways of any state. The Governor has faced bipartisan criticism for proposals to divert \$858 million over three years, ending in June 2017, which would allow the state to cover spending on education, social services, prisons and other programs while sustaining personal income tax cuts that Brownback championed.

The state's per capita spending on highways already was 29% lower during its 2013 fiscal year than in fiscal 2003, according to data by the Federal Highway Administration. It was nearly \$695 million in 2003 and \$490 million in 2013; Kansas ranked fifth in per capita spending in 2003 and dropped to 28th a decade later.

State and local officials and national surveys have regularly touted Kansas' highways as among the nation's best - and cited commitments to multi-year transportation programs over the past 25 years. But the revenues raised for such programs are a tempting target when the state faces budget problems, and the diversion of funds has been common enough that legislators talk about tapping "the Bank of KDOT."

The Kansas Department of Transportation has announced that it will delay some smaller, as-yet-unidentified road resurfacing and bridge repair projects if Brownback's proposals are adopted. It does not plan to cancel any larger projects already promised into 2020, and KDOT's leaders don't expect the state highway system to deteriorate. But legislators and local officials still worry, particularly in rural areas.

Meanwhile, the data shows that the money available from the federal Highway Trust Fund peaked during its 2010 fiscal year and has declined since. Kansas received \$131 per resident for highways from that source for 2013, or 10% less than the nearly \$146 it received for 2008.

KDOT officials say that for all the questions about ongoing funding of projects, almost all of Kansas' interstate highway miles and more than 80% of its non-interstate miles and bridges are in good condition. And Deputy Transportation Secretary Jerry Younger said a 1999-2008 transportation program put more emphasis on large highway and interchange projects than the current program, started in 2010. KDOT has also said the overall budget for the statewide program had been pegged for several years at \$7.8 billion, down from the original \$8 billion blueprint. The budget for major construction under T-Works has been condensed by \$700 million to \$6.1 billion. The original T-Works legislation stipulated a minimum of \$8 million would be spent in each of Kansas' 105 counties, and Younger said the agency intended to honor the mandate.

SCHOOL FINANCE

House and Senate budget chairs announced this week the block grant program for state school districts will increase funding by \$300 million over the next two school years, but most of that increase will be the state taking credit for KPERs payments that it now makes. They also said their block grant bill will eliminate virtually all restrictions on district spending save for bond and interest, special education and some administrative retirement funds. This proposal will cost a little more than the Governor budgeted, but apparently not much. Districts will get to continue to levy Local Option Budget and some specialized mill levies at current rates, and the plan includes some new and unexplained proportional equalization of LOB monies by the state. It will give districts broad new authority to shuffle money to meet student needs. The plan does include a roughly \$4 million-a-year "extraordinary need fund" for districts with unanticipated costs during the two-year block grant period. Districts would make their case for money from that fund by petitioning the State Finance Council.

Hearings will be held on this bill in Senate Education Committee next week.

ELECTION BILLS

There have been several major bills impacting elections that have passed the chamber of origin and moved to the second chamber by Turnaround, all of which will impact future elections in Kansas.



- SB 34 gives the Secretary of State the authority to prosecute election crimes from his office. It passed on final action vote in the Senate on a vote of 23-17, and now moves to the House. SB 34 also creates a separate crime of voting more than once and imposes hefty fines on those who commit such crimes. Additionally, SB 34 amends the election bribery statute by exempting organizations that provide a product worth less than \$3.00 to voters, and also increases the crime level for those who tamper with an election or commit voter fraud by voting more than once. SB 34 passed with a vote of 23-17.
- The House approved HB 2104 on a vote of 69-54. This bill was also sought by Secretary of State Kobach that would prohibit candidates for public office from having their names removed from the general election ballot unless they died. This is also known as the “Chad Taylor bill” to address the issues raised in Taylor’s U.S. Senate bid. It will have a hearing in the Senate Ethics and Elections Committee on Wednesday.
- SB 171 passed the Senate on a narrow vote, 21-18. A controversial bill, it would change when city and school elections are held. The bill moves city and school elections to the fall in odd-numbered years. It does allow the elections to remain nonpartisan, a controversial provision with opponents of the original bill. In an amendment on the Senate floor, it now includes a provision that would prevent future special elections on local tax or bond issues, requiring them to be held at regularly scheduled elections. The House Elections Committee will now take up the bill next week. The Chair stated this week he intends to put local office and school elections in even-numbered year fall elections and put city and school district and other local elections at the top of the ballot. He does intend to keep those local government and school races nonpartisan. A bill to move local elections to

UNEMPLOYMENT INSURANCE

SB 154 changes how the unemployment insurance tax rates are determined for employers. It passed out of the Senate on a final vote of 35-4 and now heads to the House. It will have a hearing in House Commerce Committee next week.

This bill would set a maximum weekly benefit for unemployment insurance benefits, capping it at the current level of \$474 until December 31, 2017. By January 1, 2017, the Secretary would recommend a new maximum weekly benefit amount.

It changes how the tax rates for employers are determined, moving from an arrayed system to a fixed rate system. For new employers who have an insufficient employment history to qualify for an experience rating and who are not engaged in the construction industry, the contribution rate would decrease from 4.0% to 2.7%. Starting in rate year 2016, employers with positive experience ratings would be distributed amongst 27 rate groups. Employers with negative experience ratings would be distributed amongst 11 rate groups.

Also starting in rate year 2016, the planned yield, which is the estimated amount of employer contributions necessary to finance UI for the year, would no longer be utilized. Instead, a solvency adjustment would be added to the standard employer contribution rates for both positive and negative classified employers.

TAX PLANS: RURAL VS. URBAN



Will farmers see a property tax increase? That is the question many are asking in the Statehouse as legislators look for revenue enhancements for the next fiscal year budget. SB 178 increases property taxes on agricultural land. Farm groups are fighting the change, saying it will devastate the industry and rural communities. The current system uses an eight-year average to determine value of tax purposes, as well as net income. It changes that to a five-year average, based solely on cash rental rates. SB 178 was introduced by Johnson County Senator Jeff Melcher.

The Kansas Department of Revenue estimates the state would collect an additional \$173 million in property taxes, while counties, school districts and local communities would take in an additional \$717 million, a total annual increase on agricultural land of \$890 million. Increases would vary county to county and by the type of land, and owners would see an average statewide property tax increase of 569% on each irrigated acre.

This week the House Agriculture and Natural Resources Committee held informational meetings on the use value appraisal of agricultural land by staff from the Kansas Department of Revenue.

The Secretary of Agriculture, Jackie McClaskey, sent a letter to newspapers stating she opposes the tax increase. Her letter states, "These proposals would have a significant and devastating impact on our state's largest industry...The proposed changes would have far reaching and devastating impact not only on farmers and ranchers, but on rural communities and related industries supported by agricultural production. In addition, a number of proposals would dramatically increase taxes paid by rural citizens and devastate rural communities." She also wrote the Governor does not support this legislation.

In response, Rep. Don Hineman, who is a farmer, proposed a bill concerning intangibles tax. An intangibles tax is an annual tax assessed mostly by state governments on the current market value of certain assets, including securities. The theory is that some people invest their money in property and have to pay property taxes while others invest their money in "intangible property" such as stocks and bonds. In Kansas, it's a local tax collected by the state and levied on gross earnings received from intangible property such as savings accounts, stocks, bonds, accounts receivable, and mortgages. It's up to the local government to determine if they want to levy it. Counties, cities, and mostly townships impose it and the tax rate is usually 2.25%. This bill will most likely not gain any traction.

The one bill that could gain movement is a bill introduced by the Senate Tax Committee, SB 260. It appears to tax the "passive income" of businesses. Passive income is income received on regular basis with little effort required to maintain it. It is apparently closely related to the concept of unearned income. The IRS defines passive income as coming from rental activity or "trade or business activities in which you do not materially participate." Some examples of passive income could include: any kind of property income; earnings from a business that does not require direct involvement from the owner or merchant; rent from property; interest from a bank account; royalties from publishing a book or from licensing a patent or other form of intellectual property; and earnings from internet advertising. While the bill does not specifically define passive income, it states net profit from business continues to be exempt from Kansas income tax, "but not including net passive income..." Continue to watch as to how this bill plays out. There is no fiscal note yet available.

Here are a few other policy options that have been introduced:

- Half of the Governor's tax plan adjusts current income tax rates, provides a tax amnesty, creates a budget stabilization fund, speeds up the reduction of tax exemptions, and sets up how future income tax rates will be determined.
- The Governor proposed increasing taxes on cigarettes, tobacco products and alcoholic beverages in HB 2306.
- Legislators are also looking at what exemptions to eliminate--farm machinery and equipment sales tax; property tax wind generation; and eliminating the sales tax exemption on utilities.

IMMIGRATION DEBATE IN KANSAS

Those in the Statehouse are closely watching the immigration debate on the federal level and determining what, if any, action needs to be taken on a state level. Several conservative legislators have introduced legislation that would implement harsh immigration policy in Kansas under the principle of not wanting to reward anyone or any business for violating the larger law of people violating the country's borders and entering illegally. Many legislators, led by Secretary of State Kris Kobach, are looking at efforts to challenge the President's controversial executive order stopping the deportation of nearly 5 million illegal immigrants.



Secretary of State Kobach authored SB 166, a bill that declares the President's executive order unconstitutional. It would bar businesses that hire illegal immigrants from deducting those employees' wages as a business expense from state income taxes. It would also prevent illegal immigrants who benefit from the President's order from getting driver's licenses or state identification cards. A companion bill is in the House, HB 2384. The bills are intended to make clear that Kansas will continue treating illegal immigrants as being in the U.S. illegally because "the President stepped outside his authority when he signed the executive order," according to Secretary of State Kobach.

His platform of immigration proposals include:

- HB 2139 bans state colleges and universities from charging in-state tuition for illegal immigrants who have attended Kansas high schools for three years, graduated from a Kansas high school, and sign an affidavit that states they are seeking citizenship. This is a 10-year old policy. Rep. John Rubin states existing policy violates federal immigration laws. However, the Kansas Board of Regents, attorneys and school boards testified against the bill, saying it has been upheld in court and the policy only affects 651 students this year. It currently sits in the House Education Committee following a hearing prior to Turnaround.
- HB 2994 requires contractors doing more than \$5,000 worth of business with the state to enroll in E-Verify. It would also apply to private businesses with more than four employees. If found in violation, they would be barred from deducting wages of the illegal immigrant as a business expense on their income taxes.

The business coalition on immigration believes the immigration issue is best left to the federal government.

Lawsuits have already been filed against the President's action in various jurisdictions. Kansas is among 25 states that challenged the executive order in federal court in Texas. Last month, the federal judge in that case heard oral arguments. The states allege that the President overstepped his constitutional limits on presidential power. Judge Andrew Hanen in the case ruled on Monday that the Department of Homeland Security did not allow public comment on its rules implementing the President's executive action. He issued a preliminary injunction blocking the administration from implementing the deferred deportation program. Judge Hanen did make clear his ruling does not apply to the Deferred Action for Childhood Arrivals, or DACA, which has granted legal status to the almost 700,000 teenagers and young adults born outside the U.S.

In a case in Pennsylvania, a federal judge already opined that the President could not constitutionally delay the deportation of illegal immigrants. The judge's opinion, however, was limited to the Pennsylvania case and did not direct the government to take any action.

In Washington, D.C., another federal judge has upheld the President's actions. The Justice Department will appeal the Texas decision. The appeal will be heard in the 5th Circuit Court of Appeals in New Orleans.

RAFFLES LEGAL IN KANSAS

Last year a constitutional amendment was passed in Kansas to allow for charitable raffles. This will allow non-profits to engage in raffles to raise money for their organizations. Legislation is needed this session to provide guidance and enforcement over these raffles.

In the House Federal and State Affairs Committee, a subcommittee was formed and hearings were held on charitable raffles. A measure was finally proposed in HB 2383 (formerly HB 2291) that would create the Kansas charitable raffle act, to ensure statute reflects the legislative intent of the constitutional amendment allowing Kansas charities to conduct raffles. The Kansas Department of Revenue latched on to this permission and set up an intricate infrastructure of red tape, including licenses to run raffles, fees, and other obstructions to the good work of Kansas charities. This bill does require a raffle license if profits exceed \$25,000, but that license can be requested retroactively. It passed out of committee last week and now sits on General Orders in the House.

Another bill was introduced in the Senate to provide this framework. The Senate anticipates holding hearings on the bill the week of March 9th.

NON-LICENSED CONCEALED CARRY



The Senate passed its non-licensed concealed carry bill prior to Turnaround on a vote of 31-7. It now goes to the House for hearings.

This bill, SB 45, would allow adults to carry concealed handguns without a permit – or any kind of safety instruction.

Current law allows the open carry of firearms without a permit. But the measure would not change the concealed-carry permitting system already in place. Individuals would still be able to seek concealed-carry permits and would need a permit to conceal-carry in other states. This measure is sometimes referred to as “constitutional carry.”

Sen. Jake LaTurner, a sponsor of the bill, stated “Citizens have a right to defend themselves without going through the permitting process.”

The bill specifies carrying of a concealed handgun couldn’t be prohibited in any building in the state unless the structure was posted in accordance with state rules and regulations.

Legislative Deadlines

March 25—Last day to consider bills not in House of origin, except for exempt committees.

April 3—Drop Dead Day & First Adjournment: No bills considered after this date except bills vetoed by Governor, omnibus appropriations act and omnibus reconciliations spending limit bill.

April 27—Veto session begins.

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