



KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | JANUARY 28, 2022

January 28, 2022

WEEKLY OVERVIEW

This week, the Legislature focused on the high-profile issues of economic development, Congressional reapportionment, identity theft, and the food sales tax. Monday, the House Redistricting Committee passed the Ad Astra 2 map approved by the Senate last Friday. Tuesday, the Congressional map was debated on the House floor for four hours. Wednesday, the map passed the House on final action 79-37. We expect Gov. Laura Kelly will veto the Ad Astra 2 bill. The key to any veto override effort will be the availability of legislators. Recently, illness has caused 7 to 10 House members to miss floor votes. The required number of votes in the Kansas Senate is 27 and 84 in the Kansas House of Representatives. The leaders in both chambers are optimistic they will have enough votes to override a gubernatorial veto.

A catchy new acronym has originated from the 2022 session. "APEX" is the new term. It refers to the mega-economic-development bill named Attracting Powerful Economic Expansion Act. On Tuesday afternoon, the Senate Commerce Committee heard that Kansas is one of two states in contention for a potential \$4 billion manufacturing plant projected to generate 4,000 jobs. The Department of Commerce has advised the Legislature that the state's final bid would need to be submitted in early February with the necessary tax incentives to win the bid. Kansas Chamber of Commerce lobbyist Eric Stafford expressed support for the bill, noting the Kansas gross domestic product is lagging behind other states. Stafford also notes that Kansas continues to lose young adults moving to other states for job opportunities. The Chamber believes the bill is a potential catalyst to reverse these trends. The unnamed company is projected to add \$2.5 billion annually to the Kansas economy. Tuesday evening, the Senate Commerce Committee passed the APEX bill. Thursday afternoon, the Kansas Senate debated and approved the bill 32-7.

Tuesday, the House Taxation Committee conducted hearings on two tax measures cutting the sales tax on food. HB 2484 exempts food and food ingredients, including products sold at restaurants, from sales and compensating use tax effective Jan. 1, 2023. The fiscal impact on state revenue is projected to be \$319 million in 2023, rising to

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nearly \$800 million in fiscal year 2025. HB 2352 would exempt the food sales tax effective July 1, 2022. Prepared food would still be subject to sales tax, but HB 2478 exempts sales tax on farm products sold at farmers' markets. This bill's fiscal note projects a 2023 state revenue loss of \$442.9 million and \$501.6 million in 2025. The impact on local sales tax was an issue during the hearings. HB 2484 leaves the local sale tax unchanged. HB 2487 would decrease local sales tax revenue. The cities and counties urged the committee to not reduce the local sales tax to avoid shifting the tax burden to property taxes.

COMMITTEE HEARINGS

Wednesday, the Senate Judiciary Committee addressed the ongoing issue of identity theft by hearing SB 300. SB 300 would amend the Kansas Racketeer Influenced and Corrupt Organization Act (RICO) to redefine "racketeering activity" to include identity theft or identity fraud, recruiting criminal gang membership, and criminal gang intimidation. Sen. Mike Petersen testified that SB 300 would allow law enforcement to investigate individuals who may be financing and/or organizing identity theft and fraud but not actually committing the crime themselves. Those convicted could be subject to a sentence of 2-5 years.

Wednesday, the Senate Utilities Committee heard SB 323, establishing requirements for instruments that convey a wind or solar lease or easement. In addition, the bill would require certain disclosures be provided to landowners regarding these leases or easements. Thursday, the committee heard SB 324, establishing procedures to void or terminate leases or easements for electricity generation using wind or solar energy resources.

In addition, this week the Senate Local Government Committee heard testimony from proponents and opponents on SB 325. SB 325 provides that within 90 days after the county has approved a resolution rezoning a parcel of property for the purpose of building a wind or solar facility, 10% or more of the qualified electors of the rezoned property may submit a protest petition of the rezoning.

Tuesday and Wednesday, the Senate Public Health and Welfare Committee considered SB 381. The proposed bill would require pharmacists to dispense medications prescribed for the prevention and treatment of COVID-19 infections, including but not limited to hydroxychloroquine sulfate (FDA-approved to treat malaria) and ivermectin (typically used against parasites in animals). The bill would also create a civil-liability waiver for healthcare providers and pharmacists dispensing medications and prohibit the Board of Pharmacy from taking disciplinary action against a pharmacist for complying with such dispensing. The waiver for civil liability would be retroactive to the beginning of the pandemic (March 12, 2020). The bill would require licensing boards for prescribers and pharmacists to go back and review all disciplinary actions for acts occurring from March 12, 2020.

During Wednesday's hearing, Sen. Mark Steffen, MD, revealed that he is under investigation by the Board of Healing Arts after prescribing ivermectin to COVID patients. He is seeking authority to allow doctors the ability to treat COVID patients by prescribing ivermectin and hydroxychloroquine without fear of reprimand. The bill requires pharmacists to fill prescriptions for the off-label use of ivermectin and hydroxychloroquine even though the FDA says the drugs are ineffective in treating COVID and could be harmful.

Testifying medical directors from across the state pointed out risks and concerns if the bill passed.

NEXT WEEK

State agency budget proposals will be heard and voted on by standing committees and budget subcommittees next week. Monday, Jan. 31, 2022, is the deadline for legislators to request individual bills be drafted. Next week's Senate calendar includes hearings on the regulation of autonomous motor vehicles, Senate food sales tax-cut proposals, a 4.75% flat income tax for individuals, year-round fireworks sales, and a racetrack gaming bill. The House Commerce, Labor, and Economic Development Committee has scheduled three days of hearings on the House version of APEX (HB 2497). The House Taxation Committee will hear SB 318, providing sales-tax

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exemption for reconstruction fencing supplies used to repair wildfire damage.

The House Health and Human Services Committee will vote on HB 2463, prohibiting changes to the medical-assistance program and requiring extension of the current medical-assistance program. HB 2463 would also prevent any state agency from making any substantive or material change to the medical-assistance program. The current program would be extended through Dec. 31, 2025. The bill requires the Kansas Department of Health and Environment (KDHE) to negotiate and take actions necessary to extend contracts with current managed-care organizations through Dec. 31, 2025.

BILL INTRODUCTIONS

HEALTHCARE

SB 381 – Would permit the prescribing and dispensing of medications for off-label use to prevent or treat COVID-19 infections. Referred to the Senate Committee on Public Health and Welfare, Sen. Richard Hilderbrand, Chair.

HB 2544 – Would exclude credentialed nutritionists from regulation under the Kansas Dietitian's law. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

HB 2552 – Would make revisions to the Kansas Telemedicine Act, including establishment of a standard of care. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

HB 2545 – Would exclude from dental insurance coverage any services or materials provided at a nominal or de minimis rate. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

HB 2546 – Would require health-benefit plans providing dental services to publish certain relevant information via website to dentists and insureds and accept certain claims and not reduce benefits under certain circumstances. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

TAXATION

SB 375 – Would enact the Kansas Housing Investor Tax Credit Act and expand housing programs intended to facilitate development of residential housing for underserved rural and urban areas in support of business growth. Referred to the Senate Committee on Federal and State Affairs, Sen. Robert Olson, Chair.

SB 384 – Would create Kansas state income-tax credit for a certain level of local ad valorem property taxes levied against a homestead. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

INSURANCE

HB 2562 – Would impose certain insurance-coverage requirements for breast-cancer screening and diagnostics. Referred to the House Committee on Insurance and Pensions, Rep. Steven Johnson, Chair.

HB 2537 – Would require the Kansas Commissioner of Insurance to hold hearings under the rules of the Kansas Administrative Procedures Act on matters where the Kansas Insurance Department issues an order. Referred to the House Committee on Judiciary, Rep. Fred Patton, Chair. A hearing on the matter is scheduled for Feb. 1, 2022.

REAL ESTATE

SB 376 – Would expand Kansas housing programs to allow the use of bond proceeds for the construction of residential dwellings and buildings, including in the City of Topeka, so as to increase moderate-income housing. Referred to the Senate Committee on Federal and State Affairs, Sen. Robert Olson, Chair.

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SB 382 – Would apply real-estate brokers' and salespersons' licensure provisions to trusts and would authorize the Kansas Real Estate Commission to issue cease-and-desist orders. Referred to the Senate Committee on Commerce, Sen. Renee Erickson, Chair.

SB 395 – Would protect private property from unauthorized access or surveillance by employees of the Kansas Department of Wildlife and Parks. Referred to the Senate Committee on Judiciary, Sen. Kellie Warren, Chair.

COURTS, LAWS, AND REGULATIONS

HB 2530 – Would amend food-labeling law by prohibiting the use of “identifiable meat term[s]” on the label of “meat analogs” when such labels do not contain language indicating such products do not contain meat. Referred to the Senate Committee on Agriculture, Rep. Ken Rahjes, Chair.

HB 2005 – As amended by the Senate Committee on Federal and State Affairs, Sen. Robert Olson, Chair, would amend provisions of law related to the Boiler Safety Act. The Committee recommended the bill be passed as amended.

SB 396 – Would create the Constitution and Federalism Defense Act. The Act provides for creation of a joint legislative commission which would be tasked with evaluating the constitutionality of federal mandates. Referred to the Senate Committee on Federal and State Affairs, Sen. Robert Olson, Chair.

SB 386 – Would limit fees and copy time under the Kansas Open Records Act. Referred to the Senate Committee on Transparency and Ethics, Sen. Elaine Bowers, Chair.

SB 347 – As amended by the Senate Committee on Commerce, Sen. Renee Erickson, Chair, would enact the Attracting Powerful Economic Expansion Act (APEX). The Act would establish new economic-development incentives targeted at specific industries to firms that agree to invest at least \$1.0 billion within the State of Kansas and at their suppliers. The Senate Committee of the Whole passed the bill, as amended, on emergency final action: Yea, 32; Nay, 7.

HB 2543 – Would expand the Kansas Welfare law to include residents under 60 for benefits under the Kansas Senior Act with a showing of younger-onset Alzheimer's disease. Referred to the House Committee on Children and Seniors, Rep. Susan Concannon, Chair.

HB 2548 – Would implement additional governmental reporting requirements regarding information-technology projects. Also, additional security training and status reports would be required. Oversight would be provided by a Joint Legislative Committee. Referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair. A hearing on the matter has been set for Feb. 2, 2022.

AGRICULTURE

HB 2559 – Would create a Kansas cotton boll weevil program requiring the program to levy an assessment on Kansas-produced cotton in order to monitor and mitigate the risk of boll weevils. Referred to the House Committee on Agriculture, Rep. Ken Rahjes, Chair. A hearing on the matter has been set for Feb. 3, 2022.

UTILITIES

SB 374 – Would discontinue the property-tax exemption for certain renewable facilities. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

SB 379 – Would provide for the manner of use and regulation of autonomous motor vehicles. The bill prohibits cities and counties from enacting any ordinance or regulation prohibiting the use of an autonomous motor vehicle. Referred to the Senate Committee on Transportation, Sen. Mike Petersen, Chair. A hearing has been set on the matter for Feb. 1, 2022.

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SB 383 – Would enact the Kansas Property Value Protection Act providing for compensation to nonparticipating landowners for diminution in property value due to noise and light pollution, and negative impacts on aesthetics, visual landscape, and natural resources, as well as the loss of quiet enjoyment caused by nearby development. Referred to the Senate Committee on Utilities, Sen. Mike Thompson, Chair.

HB 2531 – Would provide that upon approval of the Board of County Commissioners, a person engaged in agriculture activities may construct, maintain, and operate in pursuit of the agriculture activity a pipeline along, upon, under and across the right-of-way of any county or township road. Referred to the House Committee on Agriculture, Rep. Ken Rahjes, Chair.

Kansas Legislative Insights is a publication developed by the Governmental Affairs & Public Policy Law practice group of Foulston Siefkin LLP. It is designed to inform business executives, human resources and governmental relations professionals, and general counsel about current developments occurring in current Kansas legislation. Published regularly during the Kansas legislative session, it focuses on issues involving healthcare, insurance, public finance, taxation, financial institutions, business & economic development, energy, real estate & construction, environmental, agribusiness, employment, and workers compensation. Bill summaries are by necessity brief, however, for additional information on any issue before the Kansas Legislature, contact Foulston Siefkin's Governmental Affairs & Public Policy Law practice group leader, James P. Rankin at 785.233.3600 or jrankin@foulston.com. Learn more about the authors below:

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As a partner at Foulston Siefkin, Eddie represents clients in matters before state regulatory commissions, courts, and local governmental bodies. He has built and maintained relationships with key individuals – including lobbyists, elected and appointed officials, and staff members – that prove valuable in advancing clients' interests and issues. Drawing on his experience as a regional governmental affairs attorney for AT&T in Chicago, he helps clients navigate the maze of federal policies and agencies, advises on how processes work in Washington, and provides introductions to those who can help them accomplish their goals.

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PRACTICE AREAS

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