

NEWSLETTERS



KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | FEBRUARY 11, 2022

February 11, 2022

WEEK FIVE RECAP

The Kansas House and Senate successfully overrode Gov. Laura Kelly's veto of the Ad Astra 2 Congressional map. Both chambers also passed the APEX bill (SB 347) before time ran out for Kansas to submit a bid for the \$4 billion economic-development project. Opposition emerged to the autonomous vehicle bill, anti-vaccination bills moved forward, and budget committees churned through appropriations for more than 30 state agencies. On Thursday, the Senate Tax Committee approved a food sales-tax bill, effective Jan. 1, 2024, which will likely become a magnet for other tax cuts. Late Thursday afternoon, Lt. Gov. David Toland briefed the State Finance Council on his offer to the unnamed company for the \$4 billion economic development project. After the meeting, Senate President Ty Masterson and Senate Minority Leader Dinah Sykes said Kansas is making a strong and attractive offer today.

VETO OVERRIDE

The Senate and House override of Gov. Kelly's veto of the Congressional map not surprisingly produced some heated rhetoric and charges of gerrymandering. The Senate needed two attempts to override, and the House required a one-hour call of the House to muster the needed votes. Republican holdouts in both chambers sought consideration of their personal agendas before switching their votes. After three hours on Monday afternoon, the Senate failed to override the Governor's veto with never more than 25 of the 27 votes needed. Finally, Senate President Ty Masterson, R-Andover, made a motion to adjourn for the day, which passed 26-13 (the adjournment motion only needed a simple majority). On Tuesday afternoon, the Senate successfully overrode the veto 27-11. Sen. Mark Steffen, MD, R-Hutchinson, was one of the senators who switched his vote to "yes." Earlier in the day, the Senate Public Health and Welfare Committee passed to the full Senate a bill prohibiting the State Board of Healing Arts from disciplining Sen. Steffen and other physicians for prescribing non-FDA-approved medications to treat or prevent COVID-19. More details are included in the committee activity article.

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On Wednesday, the House of Representatives voted 85-37 to override Gov. Laura Kelly's veto after more than an hour of debate. Rep. Tom Burroughs, D-Kansas City, decried the 3rd District map, saying it "will divide and dilute minority voices." Initially, Republicans only had 81 votes, with three members switching votes seeking after consideration of their personal priorities. There was a one-hour call of the House before the necessary 84 votes were garnered.

The map now goes to the federal court for judicial review and then the expected litigation. It is hoped that addressing the Congressional map early in the session will prevent delaying the June 1 filing deadline for candidates. A decade ago, the filing deadline was delayed by a week due to litigation.

On Thursday, Senate President Ty Masterson stripped two Republican senators from their committee vice-chair positions, with a third removed from two of his committees for withholding support of the congressional map on Monday. Sen. Mark Steffen, R-Hutchinson, was removed as vice-chair of the Senate Commerce Committee but retains a seat on the committee. He was also removed from the powerful Senate Tax Committee. Sen. Alicia Straub, R-Ellinwood, is no longer vice-chair of the Senate Agriculture and Natural Resources Committee, although still a member. She was also removed from the Transparency and Ethics Committee and the Local Government Committee. Sen. Dennis Pyle was removed from the Transportation and Local Government Committees. "To maintain unity in the caucus," Sen. Masterson said, "these changes were necessary."

GOVERNOR SIGNS ECONOMIC DEVELOPMENT BILL AND THE KANSAS BID SUBMITTED

On Monday afternoon, the House Commerce Committee spent two hours approving significant amendments to Senate Bill 347 by trimming the incentives and adding oversight by the State Finance Council to the \$1.2 billion economic-development bill. The House stayed open Monday evening in pro forma session to allow the Commerce Committee report with the heavily amended bill to be formally read into the House record to expedite the process.

On Tuesday, the Kansas House of Representatives debated APEX (Attracting Powerful Economic Expansion Act) for more than an hour. Many concerns were voiced about the secrecy surrounding the bidding process along with the potential \$1.2 billion cost to the state. However, the potential to attract a company willing to invest \$4 billion and provide 4,000 job opportunities prevailed as the bill passed 80-41 with bipartisan support.

Generally, the Senate would appoint a conference committee to review and negotiate on a heavily amended bill, but time was of the essence to submit the bid. On Wednesday, the bill was sent to the Governor for her signature after the Senate approved the House changes 31-9 without going to a conference committee. After Gov. Laura Kelly signed the APEX bill Thursday, she noted: "This positions Kansas to potentially land a once-in-a-generation opportunity that could transform our economy."

After conferring with the State Finance Council on Thursday afternoon, Lt. Gov. and Commerce Secretary David Toland submitted the Kansas bid to the undisclosed company.

COMMITTEE UPDATES

This week the Senate Transportation Committee heard two days of neutral and opposition testimony on Senate Bill 379 (autonomous vehicles). Neutral testimony was provided by the Kansas Department of Transportation (KDOT) and law-enforcement organizations. KDOT and law enforcement voiced concerns and suggestions, such as a pilot period and concern about a lack of oversight and liability questions. Opponents included Ford Motor Company, which supports a federal approach to assure consistency in all states. The Teamsters expressed concerns about safety. The League of Kansas Municipalities indicated it could not regulate construction and school zones nor ticket the vehicles. The Alliance for Automotive Innovations was concerned about the bill limiting innovation and its potential inconsistency with national AV policy. The Autonomous Vehicle Industry Association voiced similar concerns. Senate Transportation Committee Chair Mike Petersen asked the proponents and opponents to work

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together on solutions.

On Tuesday, the Senate Public Health and Welfare Committee voted on SB 381, blocking the Kansas Board of Healing Arts from taking action against doctors who prescribe ivermectin or hydroxychloroquine for off-label uses. Before a crowded room of anti-vaccination supporters, the committee added the contents of SB 398, sponsored by Dr. Mark Steffen, on childhood vaccine requirements. Several Democratic Senators and one Republican Senator voiced concerns about adding SB 398 without a hearing and receiving input from the medical community. SB 398 would allow parents to claim religious exemptions to avoid childhood immunizations to attend a childcare facility or school. The committee proceeded to use House Bill 2280 relating to pharmacy for a gut-and-go procedure by inserting the contents of SB 381 and SB 398 into the bill. If the new version of House Bill 2280 passes the Senate, the House could concur with the Senate changes without a House committee hearing.

KEY DEADLINES PASS

Two key legislative deadlines passed this week for the introduction of individual bills on Wednesday and the introduction of committee bills today, Feb. 11. After today, there are only two full weeks for committees to consider non-exempt bills in their chambers. The turnaround day for non-exempt bills to pass in their chamber of origin is Feb. 24.

BILL INTRODUCTIONS

AGRICULTURE

HB 2604 – Would amend Kansas law on hemp production so as to prohibit final hemp products intended for food, seed, seed meal, and seed oil for consumption from containing any tetrahydrocannabinol. Referred to the House Committee on Agriculture, Rep. Ken Rahjes, Chair.

HB 2605 – Would modify Kansas law relative to veterinary training and veterinary placement in rural areas. Referred to the House Committee on Agriculture, Rep. Ken. Rahjes, Chair.

HEALTHCARE

SB 200 – As amended by the Senate Committee on Public Health and Welfare, Sen. Richard Hilderbrand, Chair, would amend the Pharmacy Act of the State of Kansas to include point-of-care testing for and treatment of certain health conditions. The bill would authorize a pharmacist to initiate therapy within the framework of new statewide protocols for the flu, strep throat, and urinary tract infections.

SB 440 – Would establish ground rules for when an occupational therapist may treat a patient without a physician referral and would require such therapists to maintain professional liability insurance. Referred to the Senate Committee on Public Health and Welfare, Sen. Richard Hilderbrand, Chair. A hearing has been scheduled for this matter on Feb. 17, 2022.

SB 441 – Would enact the Biological Laboratory Accident Transparency Act. Referred to the Senate Committee on Public Health and Welfare, Sen. Richard Hilderbrand, Chair. A hearing has been scheduled for this matter on Feb. 16, 2022.

SB 454 – Would amend the advanced practice registered nurses' authorized scope of practice to permit the prescribing of controlled substances without a supervising physician. Referred to the Senate Committee on Public Health and Welfare, Sen. Richard Hilderbrand, Chair.

SB 453 – Would require unlicensed employees of adult care homes who take certain training courses to complete such courses and would require licensed nurses to teach and evaluate such courses. Referred to the Senate Committee on Public Health and Welfare, Sen. Richard Hilderbrand, Chair.

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HB 2663 – Would require the Secretary of Aging and Disability Services to base nursing facility reimbursement rates on actual costs. Referred to the House Committee on Appropriations, Rep. Troy Waymaster, Chair.

HB 2675 – Would expand medical assistance eligibility and would direct unemployed adults to a work referral program. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair.

SB 343 – As amended by the Senate Committee on Public Health and Welfare, Sen. Richard Hilderbrand, Chair, would replace statutory references to “hearing impairment” and similar terms with “hard of hearing,” “hearing loss,” or “deaf.” The bill would also make technical amendments.

SB 348 – As recommended by the Senate Committee on Public Health and Welfare, Sen. Richard Hilderbrand, Chair, would exempt threading from the definition of cosmetology in law related to the licensure of cosmetologists.

Sub. For HB 2280 – Would authorize prescribing and dispensing certain medications for off-label use to prevent and treat COVID-19 infections. The bill became a “gut-and-go” vehicle for the COVID medication measure as well as a measure to permit parents claims of religious exemption from school or daycare vaccine requirements. Originally, HB 2280 covered only proposed amendments to the Kansas Pharmacy Act. Referred to the House Committee on Health and Human Services, Rep. Brenda Landwehr, Chair. The House Committee of the Whole passed the bill, as amended, on final action: Yea: 116, Nay: 8. Then referred to the Senate Committee on Public Health and Welfare, Sen. Richard Hilderbrand, Chair. The Committee recommended the bill be passed as amended and substituted.

TAXATION

SB 326 – As amended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would create an income tax credit for any Class II or Class III railroad or any owner or lessee of rail siding located on or adjacent to a Class II or Class III railroad for tax years 2022 through 2031 equal to 50 percent of the qualified track maintenance expenditures paid or incurred during the taxable year for track located in the State of Kansas.

SB 327 – As recommended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would exclude delivery charges that are separately stated on an invoice or similar document from the sales price for purposes of calculating the retail sales and compensating use tax.

SB 354 – As amended by the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair, would exclude manufacturer’s coupons from the sales price for purposes of retail sales and compensating use tax.

HB 2618 – Would create a five-year property tax exemption for city, county, and township property used for business incubator purposes in counties with a population of 40,000 or less. Referred to the House Committee on Taxation, Rep. Adam Smith, Chair.

SCR 1619 – Urges the Legislature to adopt the conclusions and recommendations of the 2021 Special Committee on Taxation regarding the fiscal future of Kansas. The Resolution calls attention to growing problems and inconsistencies in the Kansas tax code. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

SB 464 – Would discontinue state-level property tax levies to support certain state funds. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

SB 463 – Would provide a limited remittance credit to retailers for the collection of sales and use taxes. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

SB 462 – Would provide a homestead property tax refund to certain persons based on the increase in property tax over base-year property tax amounts. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair.

ECONOMIC DEVELOPMENT

Sub. For SB 347 – As amended by the House Committee of the Whole, would enact the Attracting Powerful Economic Expansion Act. 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.

COURTS, LAWS, AND REGULATIONS

HB 2611 – Would authorize the delivery of alcoholic liquor and cereal malt beverage by licensed retailers and third-party delivery services to patrons. Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair.

SB 392 – As recommended by the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair, would amend and repeal provisions in the Kansas Uniform Securities Act that require a transfer of unencumbered funds in excess of \$50,000 to the State General Fund (SGF), from the Securities Act Fee Fund of the Kansas Insurance Department, on the last day of each fiscal year.

HB 2622 – Would enact the Motor Vehicle Financial Protection Products Act. The bill would establish procedures for offering consumer products such as debt waivers and value-protection contracts. Referred to the House Committee on Financial Institutions and Rural Development, Rep. Jim Kelly, Chair. A hearing has been scheduled for this matter on Feb. 14, 2022.

SB 442 – Would require wireless communication providers to push-notify a parent's device when their minor child's device downloads an application, including social media applications. Referred to the Senate Committee on Federal and State Affairs, Sen. Robert Olson, Chair.

HB 2623 – Would enact the Rural Remote Worker Incentive Act, providing incentives to be administered by the Secretary of Commerce. Referred to the House Committee on Financial Institutions and Rural Development, Rep. Jim Kelly, Chair. A hearing has been scheduled for this matter on Feb. 14, 2022.

HB 2664 – Would prohibit banks and other businesses from discriminating against customers based on factors such as social media posts, political affiliations, and other similar value-based criteria. Referred to the House Committee on Financial Institutions and Rural Development, Rep. Jim Kelly, Chair.

HB 2652 – Would continue the governmental response to the COVID-19 pandemic by extending the expanded use of telemedicine and other consistent measures. Referred to the House Committee on Judiciary, Sen. Fred Patton, Chair. A hearing has been scheduled on this matter for Feb. 14, 2022.

HB 2680 – Would establish the Kansas Employee Emergency Savings Account (KEESA) program. The proposed would allow employers subject to Kansas income and privilege taxes employing not more than 250 employees to establish KEESA accounts in order to assist recruitment and retention. Referred to the House Committee on Commerce, Labor and Economic Development, Rep. Sean Tarwater, Chair.

HB 2679 – Would limit certain restrictions on private businesses by governmental entities and public officials. Referred to the House Committee on Judiciary, Rep. Fred Patton, Chair.

HB 2670 – Would prohibit certain acts by businesses and governments based on a person's vaccination status. The Kansas Act Against Discrimination would be amended to modify the definition of unlawful employment practices. Referred to the House Committee on Judiciary, Rep. Fred Patton, Chair.

HB 2231 – As amended by the Senate Committee on Judiciary, Sen. Kellie Warren, Chair, would exclude from the definition of the crime of conducting a pyramid promotional scheme plans and operations in which participants give consideration in return for the right to receive compensation based upon purchases provided that the plan or operation does not cause "inventory loading."

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HB 2568 – As recommended by the House Committee on Financial Institutions and Rural Development, Rep. Jim Kelly, Chair, would update the Kansas Mortgage Business Act (KMBA) to allow certain mortgage business to be conducted remotely and make changes to definitions and branch licensure and other registration requirements for mortgage companies.

HB 2537 – As recommended by the House Committee on Judiciary, Sen. Fred Patton, Chair, would amend a statute governing hearings by the Commissioner of Insurance to add a provision allowing a person subject to any order, as defined in the Kansas Administrative Procedure Act (KAPA), issued by the Commissioner to request a hearing on such order. If such a request is made, the bill would require the Commissioner to conduct a hearing in accordance with KAPA provisions.

INSURANCE

SB 335 – As recommended by the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair, would exempt certain qualified trade, merchant, retail, and professional associations, and business leagues in the state that provide health benefits through a self-funded health plan subject to the federal Employee Retirement Income Security Act of 1974 (ERISA), and not subject to the jurisdiction of the Kansas Insurance Department, from payment of the annual premium tax to the Kansas Insurance Department.

SB 336 – As recommended by the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair, would amend certain investment limitation requirements to increase the permissible investment options in equity interests and preferred stock for Kansas-domiciled life insurance companies.

SB 448 – Would adopt the National Association of Insurance Commissioner's (NAIC) proposed amendments to the Unfair Trade Practices Act and the Kansas insurance code. The Unfair Trade Practices provision prohibits, among other things, producers providing rebates on other inducements to purchase insurance products. The amendment would exclude offerings of commercial property and casualty insurance except in the case of commission reductions not filed with the Kansas Insurance Department. Also, the existing law's exceptions to rebating would be clarified. Referred to the Senate Committee on Financial Institutions and Insurance, Sen. Jeff Longbine, Chair. See also HB 2635.

HB 2638 – Would add auto windshield repair and replacement to services covered by service contracts. Referred to the House Committee on Insurance and Pensions, Rep. Steven Johnson, Chair.

HB 2637 – Would establish an exemption for certain providers from certain HMO preauthorization requirements. Referred to the House Committee on Insurance and Pensions, Rep. Steven Johnson, Chair.

UTILITIES

SB 476 – Would amend law and cap the amount of fees that can be included on a utility bill. Referred to the Committee on Utilities, Sen. Mike Thompson, Chair.

SB 477 – Would require the Corporation Commission to provide a residential or small commercial customer of a board of public utilities established pursuant to Kansas law certain information pertaining to any rule, charge, practice, or procedure of such board of public utilities. Referred to the Committee on Utilities, Sen. Mike Thompson, Chair.

SB 478 – Would require developers of wind energy conversion systems to equip such systems with light-mitigating technology systems that comply with federal aviation regulations and empowers the board of county commissioners to determine the type of light-mitigation technology system that will be used. Referred to the Committee on Utilities, Sen. Mike Thompson, Chair.

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SB 480 – Would prohibit electric, natural gas, and water utilities from recovery through customer rates of dues, donations, or contributions made to charitable and social organizations. Referred to the Committee on Utilities, Sen. Mike Thompson, Chair.

SB 481 – Would create the Commercial-Scale and Limited-Scale Solar Energy Conversion System Facility Health and Safety Standards Act, which would regulate the construction of commercial-scale and limited-scale solar energy systems requiring approval by county commissions prior to construction and establishing siting notification and health and safety requirements for such solar energy systems. Referred to the Committee on Utilities, Sen. Mike Thompson, 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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PRACTICE AREAS

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