

NEWSLETTERS



KANSAS LEGISLATIVE INSIGHTS NEWSLETTER | MARCH 23, 2018

ROUGH ROAD AHEAD

Legislators and other interested parties who had hoped the long-awaited study on school finance would provide them with a clear road to creating a new – and constitutional – school finance plan were sorely disappointed when the study was fully released earlier this week. Rather than a clear way forward, the road now looks more bumpy and twisted than ever.

Most stunning was the recommendation by Dr. Lori Taylor, principal architect of the study, that the Legislature should put anywhere from \$481 million to \$2.2 billion additional dollars into Kansas schools over the next five years. The House and Senate leadership had clearly hoped for a much smaller number to use in their upcoming battle with the Kansas Supreme Court over school finance. Instead, it appears the Court can now use the study to show their demand for a more “adequate” plan, i.e., more dollars, was right all along.

In her testimony before a joint session of House and Senate education committee members, Dr. Taylor did indicate that the infusion of any additional state funds should be at a deliberate pace. She was also complimentary of how Kansas school districts handle the \$4.6 billion in current aid supplied by the state.

Before the House or Senate members can start discussing details of a school finance bill, the data in the report will need to be restructured so that legislators can get an idea of how Dr. Taylor’s recommendations would impact schools in their districts. That information may be available early next week.

What they won’t have anytime soon is a workable plan of how to fund a major increase in state aid to schools. Will the funding come through increases in income tax, property tax, sales tax, big budget cuts, or a combination of these possibilities? Discussions in a Senate education committee yesterday left little doubt that raising property taxes would not be a popular funding mechanism.

BILL SUMMARIES

Listed below are bills that were introduced, acted on in the House and Senate, or were signed by Governor Colyer. Additional information on these bills can be accessed by clicking on the bill number.

FOULSTON

ATTORNEYS AT LAW

AGRIBUSINESS

SB 405 – Establishes requirements for building or expansion of a confined animal feeding facility (CAFO). Requires registration with the Kansas Department of Health and Environment (KDHE) if the facility has an animal unit capacity of 300 or more. Also establishes an animal unit-measurement calculation for chicken facilities and requires operators of a chicken facility using a dry-manure waste system to obtain a federal permit if 125,000 or more broilers or 82,000 or more laying hens are confined. (*Signed by the Governor and becomes effective on 7/1/18*)

SB 452 – Requires a record to be kept on all pesticide applications on property larger than 20 acres. Specifies what must be contained in the record, which must be kept for at least two years. Also requires the Department of Agriculture to develop plans which make pesticide applications safer. Such plans must be forwarded to the legislature by 1/14/19. (Referred to the Senate Committee on Agriculture and Natural Resources, Sen. Dan Kerschen, Chair)

BUSINESS AND ECONOMIC DEVELOPMENT

HB 2785 – Reduces the unemployment benefits period of disqualification from five to two years when it involves a false statement or representation or if it involves a failure to disclose a material fact. (Referred to the House Committee on General Government Budget, Rep. Bill Sutton, Chair)

ENERGY AND NATURAL RESOURCES

HB 2786 – Creates an injection-well safety advisory task force consisting of 13 members: four legislators selected by legislative leadership, the chairperson of the State Corporation Commission (SCC), the director of the Kansas Geological Survey, and seven other members chosen by various industry and environmental groups. Requires the task force to review statutory and regulatory requirements relating to disposal wells, determine how the disposal-well process can be improved, make recommendations as to how citizens and communities would benefit by the creation of a consumer protection board, and finally, make the disposal-well process more transparent. A task force report must be completed and forwarded to the Legislature by 1/31/19. (Referred to the House Committee on Federal and State Affairs, Rep. John Barker, Chair)

HEALTH CARE

SB 282 – As amended by the House Committee on Health and Human Services, SB 282 would amend the Uniformed Controlled Substances Act and certain statutes pertaining to crimes involving controlled substances. The bill would amend the definition of “marijuana” and authorize the sale of certain cannabidiol (CBD) products provided they meet the appropriate THC dry-weight test. The bill would add several synthetic opioid fentanyl compounds and an opioid analgesic drug to Schedule I; update several cannabinoid classes in Schedule I to include new synthetics and substitutes; and add oral solutions containing certain chemical precursors to fentanyl to Schedule II. Also, the bill updates the list of anabolic steroids in Schedule III. We first reported on this measure in our February 2, 2018, issue. Proponents argue drug schedules must be updated for public safety reasons, and have supported adding a drug known as kratom to Schedule I. The House Committee on Health and Human Services, Rep. Daniel Hawkins, Chair, amended the bill to delete kratom. The House Committee heard testimony indicating kratom has benefits in managing addiction to more serious drugs. (The amended bill, prior to amendment in the House Committee, passed the Senate on emergency final action – Yea 36, Nay 0. Now the House Committee recommends passage of the amended bill by the whole House.)

SB 348 – SB 348, as amended, would amend the Electronic Notice and Document Act under the Insurance Code. The bill would authorize health benefit plans subject to prior notification to the recipient to utilize electronic delivery as the standard method of delivery for explanation of benefits and policy, including the federally required summary of benefits and coverage documents to a party. The bill would require a plan to deliver paper documents via U.S. mail to a party if the party notifies the plan of a desire to receive the documents in such a manner. Basically, the bill

FOULSTON

ATTORNEYS AT LAW

is designed to reduce operating costs for health and dental insurers. We reported on this bill in our February 2, 2018, issue. (The bill was amended by the Senate Committee on Financial Institutions and Insurance and passed the Senate on final action vote – Yea 39, Nay 0. Now, the bill, as further amended by the House Committee on Insurance to make technical adjustments, is recommended for passage by the whole House.)

SB 386 – The bill would liberalize the Professional Counselor's Act. Under current law, an individual may be licensed as a professional counselor or clinical professional counselor through the Behavioral Sciences Regulatory Board upon meeting certain requirements that include obtaining a graduate degree in counselling from a college or university approved by the Board. The bill would modify this requirement so that licensees may obtain a graduate degree in Counselling or a related field. The bill clarifies that the degree must include 45 graduate semester hours of counselling coursework. We reported on the bill in our February 9, 2018, issue. (The bill passed the Senate on a final action vote – Yea 39, Nay 0 – and is now recommended for passage by the whole House by the House Committee on Health and Human Services, Rep. Daniel Hawkins, Chair.)

SB 410 – Would create the Captive Insurance Act (Act) under the Insurance Code by amending existing law related to captive insurance companies. This bill, as amended, represents major and needed modernization of Kansas insurance law. A captive is an insurance company created and wholly owned by one or more non-insurance companies and designed to insure the risks of its owner or owners. The bill would create two new captive insurance types: branch captive insurance companies and special purpose insurance captives. The bill would specify the regulatory structure for each. The bill was introduced in the Senate and we first reported on the measure in our February 9, 2018, issue. The Senate Committee on Financial Institutions and Insurance amended the bill and it passed the Senate – Yea 38, Nay 0. The House Committee on Insurance has also amended the bill. (Now, the House Committee on Insurance has filed its report on the amended bill, recommending passage by the whole House.)

HB 2106 – Was originally introduced during the 2017 Legislature. Now, as amended, the bill would authorize the Secretary of Aging and Disability Services (Secretary) to grant a treatment facility licensed by the Secretary under the Alcohol or Other Drug Addiction Treatment Act and also accredited by the Commission on Accreditation of Rehabilitation Services, The Joint Commission, the Council on Accreditation, or another national accrediting body approved by the Kansas Department for Aging and Disability Services (KDADS), a license renewal based on such accreditation. The Secretary's grants would be referred to as "deemed status." An accredited treatment facility which loses accreditation would be required to notify KDADS immediately. The bill also provides for inspection of accredited treatment facilities to determine compliance. (***Signed by the Governor and becomes effective on 7/1/18***)

HB 2590 – As amended, would revise the laws related to the State Long-Term Care Ombudsman and the State Long-Term Ombudsman Program. We reported on the bill in our March 2, 2018, issue. The bill would update the Kansas Long-Term Care Ombudsman Act and align Kansas statutes with federal law and regulation. Opponents of the legislation have expressed concerns about volunteer ombudsmen having broad access to facility records. Given the concerns expressed, the House Committee amended the bill to remove certain language related to volunteer ombudsmen; clarify the records, policies, and documents an ombudsman or volunteer ombudsman would have access to; and make technical corrections. (The bill passed the House – Yea 117, Nay 0 – and the Senate Committee on Public Health and Welfare, Sen. Vicki Schmidt, Chair, recommends the bill be passed by the Senate.)

Senate Sub for HB 2600 – Would amend the Nuclear Energy Development and Radiation Control Act and provide for the study and investigation of maternal deaths by the Secretary of Health and Environment (KDHE Secretary). First, the bill would increase license charges for noncontiguous sites holding radioactive material. Second, the bill would provide for the study and investigation of maternal deaths by the KDHE Secretary, and provide for access to records related to maternal deaths. The bill contains the contents of HB 2600, as amended by the Senate

FOULSTON

ATTORNEYS AT LAW

Committee on Public Health and Welfare, and the contents of HB 2573, as amended by the House Committee on Health and Human Services. HB 2543 was introduced in the House Committee on Health and Human Services at the request of the Kansas Section of the American Congress of Obstetricians and Gynecologists (ACOG). The OB/GYNs who spoke to the Committee agree that maternal deaths in the United States are increasing, and an estimated half of these deaths could be prevented. Potential causes should be the subject of a statewide study. (The bill, including only its nuclear energy component, passed the House on final action – Yea 106, Nay 16. The Senate Committee on Public Health and Welfare has substituted in the maternal death component and now recommends passage of the substitute bill by the Senate.)

HB 2676 – As amended by the House Committee on Federal and State Affairs, HB 2676 would create a law allowing the Secretary for Aging and Disability Services to issue correction orders to community-service providers when a provider is found to be in non-compliance with the Developmental Disabilities Reform Act and such noncompliance is likely to adversely impact the health, safety, nutrition, or sanitation of consumers or the public. The amended bill provides for civil penalties and, if necessary, in the case of licensure revocation, development of an orderly transition plan for moving all consumers currently receiving services from the licensee to another licensed provider. (The bill, as amended, has passed the Committee with a recommendation that it be passed by the whole House.)

HB 2688 – HB 2688, as amended, would establish the Behavioral Health Task Force to study the behavioral health systems in the State. The Task Force would be comprised of fourteen members, including six from the Legislature and two non-voting members. The Task Force would be required to study behavioral health systems in Kansas by convening working groups addressing the Kansas Department for Aging and Disability Services general administration and oversight of the behavioral health system and related matters. The Task Force would sunset June 30, 2020. (The House Committee on Appropriations, Rep. Troy Waymaster, Chair, recommends the bill for passage by the whole House.)

STATE GOVERNMENT

HB 2362 – A carry-over bill from the 2017 session, which establishes the Alcoholic Beverage Control Modernization Fee of \$30 for each new license application and \$10 for license renewals. Also establishes a modernization fund where all modernization fees must be deposited. Eliminates the 2022 sunset provision for the modernization fee, thus making it a permanent fee. (*Signed by the Governor and becomes effective on 7/1/18*)

TAXES

SB 453 – Starting in tax year 2018, an individual could elect to use the Kansas itemized deduction in lieu of the Kansas standard deduction “regardless of whether or not such individual’s federal taxable income is determined by itemizing deductions from such individual’s federal adjusted gross income.” (Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair)

HB 2489 – Makes several clarifications as to the relationship of the Multi-State Tax Compact and the Kansas Income Tax Act. Specifies that if conflicts exist between the Compact and the Kansas Income Tax Act involving the definition of business income for corporation income tax purposes, the latter would prevail. (*Passed by the House on a vote of 110-8. Referred to the Senate Committee on Assessment and Taxation, Sen. Caryn Tyson, Chair*)

HB 2755 – Waives the requirement for a special election by a city or county when property taxes exceed statutory limits if all or part of the budget increase was due to the city or county absorbing the responsibilities of a dissolved taxing unit. (*Passed by the House on a vote of 120-3. Awaiting action by the Governor*)

HB 2788 – Adds two new tax brackets to the Kansas income tax code. The first is for taxable income between \$30,000 and \$50,000 and the second is for taxable income over \$50,000. The amount of tax is determined by a formula that applies only to those two brackets. (Referred to the House Committee on Taxation, Rep. Steve

FOULSTON

ATTORNEYS AT LAW

Johnson, Chair)

Kansas Legislative Insights is a publication developed by the Governmental Relations & 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 health care, 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 Relations & Public Policy Law practice group leader, James P. Rankin at 785.233.3600 or jrankin@foulston.com.

KANSAS LEGISLATIVE INSIGHTS EDITORS



Jim Maag

jmaag1@cox.net
785.806.3472



James P. Rankin

jrankin@foulston.com | View Bio
785.233.3600

Jim Maag and James P. "Jim" Rankin are co-editors of Foulston Siefkin's Kansas Legislative Insights. Jim Maag, a non-lawyer Governmental Affairs Consultant to Foulston Siefkin's Governmental Relations & Public Policy Practice Group, provides legislative monitoring and lobbying services for our governmental relations clients. Mr. Maag has had a distinguished career in governmental matters and banking, most recently serving as President of the Kansas Bankers Association. He has been involved in the Kansas legislative process for more than four decades as a legislator, administrator or lobbyist. As a partner at Foulston Siefkin, Mr. Rankin's practice focuses on employee benefits law relating to public, private, governmental, and tax-exempt organizations. A large part of his work involves insurance regulatory and compliance issues in many industries, including health care. Mr. Rankin has been selected by peers for inclusion in *The Best Lawyers in America*® and the Missouri & Kansas *Super Lawyers*® list. He is the firm's representative with State Law Resources, Inc., a national network of independent law firms selected for their expertise in administrative, regulatory, and government relations at the state and federal level.

This update has been prepared by Foulston Siefkin LLP for informational purposes only. It is not a legal opinion; it does not provide legal advice for any purpose; and it neither creates nor constitutes evidence of an attorney-client relationship.

PRACTICE AREAS

- Government Affairs & Public Policy Law