

Legislative Bulletin

2022 Kansas Legislature moves past half-way point

The 2022 Kansas legislative session reached “turnaround” on Wednesday, Feb. 23, a day earlier than originally scheduled. The start of this session stands in sharp contrast to last year’s session when action was seen on a wide variety of bills which were moved quickly through the legislative process from the get-go. The primary reason for that is because review and action on the so-called Mega Project bill consumed the lion’s share of the Legislature’s time and attention during the session’s first month. The remaining primary issues to be dealt with in the coming weeks involve sales, property and income tax cuts, reapportionment of the House and Senate, expansion of parents’ rights to know what their children are being taught in public schools and, of course, appropriations. Following are brief summaries of bills of specific interest to our industry.

Mega project bill passed and approved by governor

After protracted review, debate and amendment, [House Substitute for Senate Bill 347](#) was passed by the House (80-41) on Feb. 8, the Senate concurred with House amendments (31-9) on the 9th and the bill was signed into law the following day. The “Attracting Powerful Economic Expansion Act” is intended to give the state a competitive advantage in its attempt to reach agreement with a very large unnamed company which plans to invest \$4 billion in the construction and operation of an expansive advanced manufacturing plant at a location yet to be determined. Among other things, the act provides a refundable tax credit of up to 15% to be paid back over ten years, payroll reimbursement of up to 7.5% and a relocation incentive fund. The House reinstated the refundable tax credit which had been dropped by the Senate and cut the state corporate income tax rate of 4% by 0.5%. It also inserted a \$10 million fund to assist with employee relocation to Kansas and a claw back provision should the company leave within a specified period of time. Provisions providing for oversight by the State Finance Council before any agreement or any payout rates are amended were also included. Estimates from nonpartisan legislative staff indicate the package would cost well over \$1 billion, but an analysis by Wichita State University indicated the measure could eventually generate \$2.5 billion annually in new economic activity.

This proposal was quietly developed by the Kansas Department of Commerce and essentially sprung on the legislature with great emphasis on the need to move very quickly or lose the opportunity for the project. Administration officials and lawmakers who signed non-disclosure agreements consistently touted the project as potentially transformative for Kansas and its economy. Consideration of the proposal was slowed somewhat, however, and made complex because there was no fiscal note to help gauge

the actual cost of the program and to measure the potential economic benefit to the state. Legislators criticized the bill as originally introduced because it would have given the administration almost total control of the project and because it was said to represent corporate welfare for big business. In the end, amendments were made in the House to provide for legislative oversight and to spread some benefit to all businesses in the state.

It is speculated that the mystery company looking to build and operate this large production facility is Panasonic and the competition is now between the states of Kansas and Oklahoma. Panasonic, which has agreements to build batteries to power electric vehicles for both Tesla and Toyota, would likely locate at the abandoned Sunflower Army Ammunition site just south of De Soto if Kansas wins the project. The Army has been working for years to clean up the site and it is being prepared for its first round of private redevelopment.

Legislative oversight of executive branch actions

It goes without saying that federal and state agencies and the bureaucracies within them have gained more and more power and control over private business over the years. That is especially true at the federal level where it is virtually impossible to discipline negative behavior or terminate employment, but it can be a problem at the state level too. [House Concurrent Resolution 5014](#) attempts to address this growing problem in Kansas by amending Article 1 of the constitution of the state of Kansas as follows: "§ 17. Legislative oversight of administrative rules and regulations. Whenever the legislature by law has authorized any officer or agency within the executive branch of government to adopt rules and regulations that have the force and effect of law, the legislature may provide by law for the revocation or suspension of any such rule and regulation, or any portion thereof, upon a vote of a majority of the members then elected or appointed and qualified in each house." This proposed constitutional amendment must be passed by two-thirds majorities of both the House and Senate and approved by voters to become law. On Feb. 17, HCR 5014 failed (80-33) to be adopted by the required two-thirds majority (84 votes needed) but after the adoption of a motion to reconsider was approved on Feb. 21 the resolution was adopted (85-39) and referred to the Senate. Republicans are motivated primarily by a recent decision by the Kansas Department of Labor to add or amend six regulations regarding workers' compensation.

Unemployment compensation clean-up bill

[House Bill 2703](#) was passed (j121-0) by the House on Feb. 23 and will be heard in the Senate Commerce Committee on March 10. A cleanup bill from last year's major legislation, it would require that the My Reemployment Plan Program be mandatory for those receiving unemployment insurance benefits. The only exceptions from this requirement would be for those who are exempt from work search requirements and those no longer residing in Kansas. The bill would also make several modifications to the current program, including requiring the Secretary of Labor, instead of the Secretary of Commerce, to request that claimants upload or create a complete resume in the KANSASWORKS Workforce system, and complete a job search plan that includes a skills assessment component. The Secretary of Commerce would be allowed to require

claimants to participate in reemployment services and claimants would have 14 days to respond to the Secretary. The bill would specify that the educational institution, instead of the Secretary of Commerce, would be responsible for establishing and monitoring attendance and progress requirements for the program. It would also amend the solvency and credit rate schedules for the Employment Security Fund.

Prevailing wage and minimum wage bills die in committee

[Senate Bill 470](#) has died in the Senate Commerce Committee having failed to meet the deadline for consideration of bills in their house of origin. Among other things, this bill would have required that workers employed by a state agency or by an employer on behalf of a state agency and engaged in the construction of a public works project with a value of \$75,000 or greater shall be paid at least the prevailing wage applicable to the worker's occupation category, as determined by the secretary of labor. The bill would have required workers who work on a Sunday or on a state holiday to be paid at least twice the prevailing wage and those who work overtime to be paid at least one and one-half times the prevailing wage if obligated to work overtime by the contract with the state agency. The bill provided that employers may use entry-level workers at a specified ratio and apprentices for on-the-job training periods at a rate equal to 50% of the applicable prevailing wage rate. Other provisions of the bill provided for civil and criminal penalties for failure to pay the prevailing wages and for allowing permitting cities and counties to require a prevailing wage as well. [Senate Bill 467](#) also failed to meet the turnaround deadline and died in Senate Commerce. This measure would have incrementally increased the minimum wage in Kansas from \$7.25 per hour prior to Jan. 1, 2023, to \$16.00 per hour by Jan. 1, 2026.

Work-based learning and Kansas promise scholarship program

A carry-over bill from the 2021 session, [House Substitute for Senate Bill 91](#) was passed by the Senate (34-5) on March 3, 2021, and was amended and passed (123-0) by the House on April 8, 2021, but the Senate non-concurred with amendments and conferees were appointed. While time ran out for final action on the bill last year it is likely that this bill will be worked in conference committee this session. H Sub for SB 91 would exempt businesses from certain liability claims arising from a secondary student engaged in a "work-based learning program," as defined by the bill. The bill provides that if the school district of the secondary student has purchased the applicable insurance coverage, a business would not be subject to claims arising from the student's negligent act or omission or for claims arising for bodily injury to the student or sickness or death by accident of the student during the student's participation in a work-based learning program. The school district would be solely responsible for a student's loss due to bodily injury, sickness, or death caused by accident due to a negligent act or omission caused by the student or business. The bill would not provide immunity for the student or business for gross negligence or willful misconduct. The bill would further broaden the concept of school-sponsored activity to include transportation to and from a work-based learning program, which would then grant discretion to the school district to purchase liability insurance.

[Senate Bill 340](#) has not seen action to date but was withdrawn the Education Committee and referred to the turnaround deadline exempt Ways and Means Committee indicating a desire to work the bill yet this session. SB 340 would amend the Kansas Promise Scholarship Program Act to create a scholarship application and process that would include identifying promise eligible academic programs; publicizing the scholarship program; disbursing funds to eligible postsecondary education institutions; requesting information from postsecondary education institutions and other agencies as needed to administer the program; creating and enforcing agreements with scholarship recipients; tracking scholarship recipients for two years following completion of the program to ensure they are working and living in Kansas; collecting any monies repaid by recipients who do not fulfill the program requirements; and, annually evaluating the program and submitting a report to the Legislature.

Economic development bills

The provisions of [Senate Bill 375](#) and [Senate Bill 369](#) were placed in [Senate Substitute for HB 2212](#) and passed out of the Senate Federal and State Affairs Committee on Feb. 17. SB 375 would establish the Kansas Housing Investor Credit Act which would provide an income tax or privilege tax credit for the development of residential dwelling and apartment building in underserved rural and urban communities to accommodate new employees and facilitate business growth. SB 369 would enact the Kansas Affordable Housing Tax Credit Act and provide a new tax credit for qualified low-income housing projects located in Kansas and determined by the Kansas Housing Resources Corporation (KHRC) to be eligible for the federal low-income housing tax credit beginning in tax year 2023. Another bill, [Senate Bill 376](#), would amend the Rural Housing Incentive District Act (Act) to expand the use of bond proceeds and expand availability of loans or grants for moderate income housing. The bill would add the City of Topeka, regardless of population, to the definition of "city" in the Act. It would amend the Act to authorize the issuance of special obligation bonds to fund renovation or construction of single-family residential dwellings, multi-family residential dwellings, or buildings or other structures exclusively for residential use in any city or county with an established Rural Housing Incentive District. Such projects would have to be located on existing lots with infrastructure including, at a minimum, streets and sewer, water and electrical utilities with such infrastructure having been in place for at least ten years. [House Bill 2701](#) has been recommended "do pass" by the House Commerce, Labor and Economic Development Committee and subsequently withdrawn from that committee and referred to the deadline-exempt Committee on Appropriations. This measure would amend the Kansas Rural Housing Incentive District Act to allow use of bond proceeds for residential vertical development and renovation of certain buildings within economically distressed urban areas. A "qualified census tract" would be defined to mean an economically distressed urban area that is a qualified census tract as defined and designated by the United States Department of Housing and Urban Development.

Workers compensation bills

Workers compensation bills have seen little action to date. That said, those that have been introduced are still alive by virtue of either being introduced by or referred to a

turnaround deadline exempt committee. [Senate Bill 361](#) would eliminate the \$155,000 cap on permanent total disability in the Workers Compensation Act. The bill would allow an injured worker who is determined to be permanently totally disabled to receive weekly benefits at the rate of the employee's average weekly wage in effect on the date of the injury for which compensation is being made, starting from the date of maximum medical improvement and continuing for life, or for the duration of the disability. The bill was scheduled for hearing on March 8. [Senate Bill 504](#) provides that worker's compensation benefit reductions due to retirement benefits funded by the employer shall apply to retirement benefits that the employee begins receiving after the injury to reduce permanent disability benefits and exempting benefits under the federal social security act. [House Bill 2704](#) would, among other things, specify that an employer or the employer's insurance carrier would not be required to notify an injured worker of any change or termination of medical or disability benefits for a workers compensation injury. The employer or insurance carrier would not be prohibited from making notification at their discretion. The bill would also establish that an employee's patient privilege would be waived for certain medical records when they file a workers compensation claim. All related treatment records would be required to be provided to the employer or insurance carrier without any medical release. Employers and insurance carriers would be able to communicate with healthcare providers without notice to the employee and communications would not need to be memorialized, though they could be at the employer or insurance carrier's discretion.

Other bills of interest

Construction of permanent gold star memorial

[Senate Bill 330](#) was passed (40-0) by the Senate on Feb. 1 and referred to the House Committee on Veterans and Military. SB 330 would require the Capitol Preservation Committee to approve plans to place a permanent memorial honoring Kansas Gold Star Families on the state Capitol grounds. The Secretary of Administration would be authorized to receive donations as specified in the bill. All donations would be credited to the Kansas Gold Star Families Memorial Fund, which the bill would establish. Expenditures from the Kansas Gold Star Families Memorial Fund would be for the creation and construction of the memorial. The bill would prohibit public funding from being expended to finance the creation or construction of the memorial. The companion House bill, [House Bill 2540](#), was passed (113-0) on Feb. 17, referred to the Senate Federal and State Affairs Committee and scheduled for hearing on March 8.

Sales tax exemption for certain projects

[Senate Bill 526](#) remains alive in the Senate Committee on Assessment and Taxation although no hearing has been scheduled yet. This bill would provide an exemption for purchases for the construction or repair of buildings used for human habitation by the Kansas state school for the blind and the Kansas state school for the deaf.

Sales tax exemption for certain projects

[Senate Bill 509](#) also remains alive in Assessment and Taxation but has yet to be heard. This measure would provide a refund of state tax paid on certain purchases to reconstruct, repair or replace buildings and improvements damaged by certain disasters.

Carry-over C-PACE bill dies in committee

[House Bill 2320](#), a carryover bill from 2021 has died in the House Committee on Financial Institutions and Rural Development. This bill would have created the Commercial Property Assessed Clean Energy Act (C-PACE) which would provide financing for certain energy, water, air, health, and renewable energy efficiency improvements through assessment contracts between C-PACE lenders and property owners. The Department of Commerce would adopt rules and regulations to administer the Act, including requiring projects to meet certain energy, water, or air efficiency, quality or renewable energy standards. It would have imposed an additional layer of administrative review of construction projects conducted in the state. Each C-PACE lender would have to file an annual report for the proceeding calendar year no later than each March 1 with the Secretary of State and the Department of Commerce. The bill would have established certain rights, duties, and responsibilities for mortgage lenders regarding C-PACE assessments. It further provided that annual special assessments agreed to under a C-PACE financing assessment contract shall be a lien on the qualifying property against which it is assessed on behalf of the applicable C-PACE lender from the date that each annual assessment under the assessment contract becomes due until such special assessment is paid in full. Such special assessments shall be collected by the C-PACE lender directly from the owner of the qualifying property in the same manner and with the same priority as ad valorem real property taxes and other special assessments and charges.
