Review of the 2023 Kansas legislative session

The Kansas Legislature adjourned its three-day veto session on April 28 after a flurry of activity involving veto overrides and approval of education funding. Governor Kelly set the stage for that activity by breaking her own record for most vetoes in a session and vetoing 15 bills concerning a variety of social and fiscal issues plus a slew of line-item vetoes in the general budget bill. The legislature overturned seven of Kelly's vetoed bills including HB 2264 requiring doctors to notify women about ways to reverse drug-induced abortions; HB 2313 requiring doctors to care for an infant born alive after a failed abortion; HB 2350 creating the crime of human smuggling and aggravated human smuggling; HB 2238 creating the fairness in women's sports act; plus a line-item veto providing additional resources that promote alternatives to abortion. The Senate failed by one vote to override the governor's veto of the flat-rate income tax bill (H Sub for SB 169).

Legislative leaders and the governor all touted the need for tax cuts going into the session with a general fund surplus over $2 billion, but there were no substantial tax cuts made, and no efforts to resuscitate vetoed tax cuts on the last day of the session. The budget bill as approved 91-29 in the House and 29-10 in the Senate is estimated to produce an ending balance for the upcoming fiscal year of about $2.6 billion (the largest in Kansas history) and a $1.7 billion "rainy day fund" in case of an emergency. Following are brief summaries of legislation of interest to our industry. All bills adopted by the legislature and signed by the governor become effective July 1, 2023, unless otherwise noted.

Special session possibility

Governor Kelly was left with a decision to make by May 18 as to whether to sign H Sub for SB 113 which fully funds K-12 schools in Kansas but ignores her request for enhanced special education funding and expands a tax credit scholarship program for private schools. Public education advocates have called on her to veto the policy and call a special session on school funding. However, requiring Kansas lawmakers to return to Topeka and take another stab at education funding would not guarantee a desirable result for the governor and her allies. It would also give the Republican-controlled Legislature a fresh opportunity to pursue other policies that Kelly will oppose. The governor's decision has not been made at the time of this writing. If signed, this act would take effect and be in force from and after its publication in the *Kansas Register*.

New e-verify requirements on public projects

PASSED

Included in the general budget bill (House Bill 2184) signed by the governor on April 24 were provisions (Sections 143-144, pp. 203-204) requiring that no state agency shall award a public works contract having a value of at least $50,000 to a bidder, contractor or employer unless such bidder, contractor or employer verifies the employment eligibility of the employees of such bidder, contractor or employer through e-verify. In addition, no state agency shall authorize a bidder, contractor or employer to receive a contract prior to ensuring that any subcontractor used by the bidder, contractor or employer certifies the employment eligibility of the employees of such subcontractor through e-verify. In our conversations with proponents of this amendment to the original bill it was confirmed that it is the intent of this amendment to require each individual contractor and subcontractor to certify the employment eligibility of his or her own employee through e-verify. "E-verify" is defined to mean an electronic system jointly administered by the United States Department of Homeland Security and the Social Security Administration or its successor program, pursuant to 8 U.S.C. § 1324a, that is used to verify the employment authorization of employees. This act became effective upon its May 8 publication in the *Kansas Register*.

Attempt to extend and expand existing mega project law fails

DID NOT PASS

You will recall that a major achievement of last year's session was the early adoption of "Attracting Powerful Economic Expansion Act" (APEX) legislation which was designed to give the state a competitive advantage in its attempt to reach agreement with a very large then-unnamed company that planned to build and operate a $4 billion advanced manufacturing facility and Kansas was said to be on the short list of locations for it. This incentive package included, among other things, a refundable tax credit, payroll reimbursement of up to 7.5%, a relocation incentive fund and reduction of the state corporate income tax rate by 0.5% and was intended to attract other "mega projects" as well. In July of last year that legislation resulted in the state being awarded the $4 billion, 4,000-job Panasonic electric vehicle battery manufacturing facility being built near DeSoto. That said, many legislators had already voiced regret at the extent of incentives already provided in the original APEX Act prior to consideration of proposed changes this year. House Bill 2334 would have extended the deadline for project agreements under the act from Dec. 31, 2023, to Dec. 31, 2024, and provided that the secretary of commerce shall not enter into an agreement with more than one qualified firm in calendar year 2024 and shall not enter into an agreement with any qualified supplier after May 1, 2025. Incentives for qualified suppliers included providing for up to 10% of refundable tax credits for up to 10 years; increased training reimbursements to up to $500,000 per year for 5 years; a new employee relocation reimbursement of up to $250,000 per supplier; limiting the corporate income tax rate reduction; and permitting qualified firms and qualified suppliers to participate in other economic development programs for new projects. HB 2334 was heard in the Committee on Commerce, Labor and Economic Development on Feb. 14, but no further action was taken on the bill.

Changes made to the Kansas Underground Utility Damage Prevention Act

PASSED

House Bill 2226 was approved (121-0) by the House upon emergency final action on Feb. 23, approved (40-0) by the Senate on March 28, and signed by Governor Kelly on April 7. HB 2226 amends the Kansas Underground Utility Damage Prevention Act by, among other things, updating the definition of "whitelining" to allow for virtual whitelining with the use of technology, making several changes to notification and location requirements including extending the maximum allowable number of days for notice of intent to excavate from 15 to 20 days, and requiring immediate notification of contact or damage to underground facilities. The bill changes the definition of "tolerance zone" to mean not more than 24 inches outside the dimensions of an underground facility for facilities in which a larger tolerance zone has not been established in rules and regulations by the Kansas Corporation Commission (KCC) or not more than 60 inches outside the dimensions of an underground water or wastewater facility. The bill also changes the two-working-day notification requirement for providing tolerance zone locations to a determination made by the KCC in rules and regulations and no longer requires an operator, after notification from an excavator, to re-identify tolerance zones whose physical identifiers have been improperly removed or altered within one day of notification from the notification center. The bill also changes the notification threshold for civil action when there is a failure of an operator to inform the excavator of the tolerance zone of the underground facility from two working days to prior to the excavation start date.

Local control of wages and benefits on construction projects

DID NOT PASS

As previously reported, House Bill 2348 failed to meet the Feb. 24 "turnaround" deadline and died in the House Commerce Committee. HB 2348 would have repealed current law that provides that "no city, county or local government unit shall enact or administer any ordinance, resolution or law that requires, nor shall any city, county or local government discriminate against, favor, prefer or base any ordinance, law, policy, economic development program, agreement, grant or incentive on, an employer providing or not providing:

1. Any leave from work, either with or without pay, unless such leave is required by state or federal law.
2. Compensation for any leave from work, unless payment of compensation for such leave is required by state or federal law.
3. Compensation or wages at any rate higher than the minimum wage, unless the payment of higher compensation or wages is required by state or federal law.
4. Any employee benefit other than those required by state or federal law."

STAR bond legislation falters

DID NOT PASS

House Bill 2387 was passed as amended upon emergency final action (72-49) by the House on Feb. 23, but the bill died in the Senate Commerce Committee without a hearing. This bill would have provided for state revenue to replace lost sales tax proceeds attributable to reductions in the state sales tax rate on food, expanded eligible uses of STAR bonds to historic theaters and major amusement parks, extended the deadline for the submission of the annual STAR bonds report, and increased the maximum amount of project costs that may be financed in certain rural redevelopment projects without the issuance of special obligation bonds from $10 million per project to $25 million per project. Permissible project costs for historic theaters would have included costs connected to construction or renovation of historic theaters, and permissible project costs for major amusement parks would have included costs connected to the construction or purchase of amusement rides, including rides within a building or buildings and with capital improvements of at least $100 million in the state.

Right-to-Start Act would have encouraged set asides and preferences

DID NOT PASS

House Bill 2123 was heard in the House Commerce Committee on Feb. 1 and later referred to the turnaround deadline-exempt Appropriations Committee, but no further action was taken on the bill. HB 2123 would have enacted the Right-to-Start Act and created the Office of Entrepreneurship within the Department of Commerce. The bill provided that the State of Kansas would encourage that:

1. Five percent of state contracts would be awarded to business in operation for less than five years whose principal place of business is in Kansas.

2. Five percent of workforce development funding would go toward supporting organizations or programs for individuals starting new businesses or businesses in operation within the previous five years whose principal place of business is in Kansas.
3. Five percent of funding budgeted for economic development programs, including community development block grants, would be allocated for supporting individuals starting new businesses or to organizations or programs that provide services to businesses established within the previous five years and whose principal place of business is in Kansas.
4. Elimination of all first-year business license and registration fees for any new business or person establishing a new business whose principal place of business is in Kansas.

The committee was advised that, while encouragement to award 5% of contracts to new Kansas businesses is technically not a mandated "set aside" or hard preference requirement, it may be treated as such, and the state and taxpayers are far better served by free enterprise and open competitive bidding where appropriate. The Builders, a chapter of the AGC has also historically opposed preference laws because most states have adopted "reciprocal" laws and, consequently, preference laws adopted in any given state put that state's contractors at a competitive disadvantage when bidding on work in other states.

New Kansas Apprenticeship Act and engineering graduate incentive grants

PASSED

The conference committee report on House Bill 2292 was approved (32-6) by the Senate and the House (110-11) on April 6 and signed into law by the governor on April 24. HB 2292 creates the Kansas Apprenticeship Act which establishes a tax credit and grant incentive programs for apprenticeships and creates a matching grant program within the Department of Commerce to provide grants to eligible institutions of higher education based on the number of engineering program graduates of the institution. An eligible employer that employs an apprentice under a registered apprenticeship agreement would be eligible for a tax credit of up to $2,500 per apprentice in tax year 2023, tax year 2024, and tax year 2025. An employer may claim up to 20 apprentices that are employed in each taxable year. The Secretary of Revenue, in consultation with the Secretary of Commerce, shall establish a scale reflecting ranges of wages and other expenditures an eligible employer has invested in an apprentice and a corresponding tax credit amount, and the tax credit will be awarded according to that scale. The bill stipulates that participation of an employee with an apprenticeship program under the act and registration with the Secretary does not constitute union affiliation, unless the employee expressly elects to affiliate with a union.

Airport authority bonding and public project thresholds bill approved

PASSED

The conference committee report on House Bill 2336 was adopted (31-7) by the Senate and by the House (117-6) on April 6 and approved by the governor on April 18. HB 2336 amends law pertaining to the issuance of general obligation bonds by airport authorities enacted under the Surplus Property and Public Airport Authority Act and increase the cost thresholds under which a negotiating committee must be convened for state construction projects. The bill increases the amount of general obligation bonds that may be issued by such boards without approval from $1.0 million to $10.0 million and require amounts in excess of $10.0 million be approved by the relevant board of county commissioners, rather than by general election. The bill permits a board of county commissioners to approve the issuance of such bonds in an amount in excess of 1.85% of the assessed valuation of tangible personal property within the county. The bill further specifies any issuance of bonds subject to approval by a board of county commissioners can be petitioned by qualified electors of the county to be submitted to a general election in the manner provided for in continuing law. Additionally, the bill contains Kansas Board of Regents supported language formerly found in House Bill 2234 which increases the cost thresholds for state building projects at which a negotiating committee must be convened for the selection of architectural, engineering, or land surveying services to $1.5 million and provide for future increases to the thresholds that will begin in FY 2025 and be based upon increases in the consumer price index for all urban consumers as published by the Bureau of Labor Statistics of the U.S. Department of Labor. Current law sets the cost threshold at $1.0 million for the Department of Administration and $500,000 for all other state agencies. The bill also limits the costs applying to the thresholds from the total project costs to the construction costs of the project.

Bill enacting the Kansas Campus Restoration Act dies in committee

DID NOT PASS

Senate Bill 203 received extended consideration by the Senate Ways and Means Committee in mid-February, but the bill ultimately died in that committee. SB 203 would have enacted the Kansas Campus Restoration Act for the purpose of reducing deferred maintenance of educational mission-critical facilities at state educational institutions and to bring the facilities to a state of good repair. The bill would have established in the State Treasury the Kansas Campus Restoration Fund to be administered by the Kansas Board of Regents, which would receive a one-time transfer of $350 million from the State General Fund on July 1, 2024. The fund would earn interest based on the average daily balance and net earnings. Accounts of the fund would have been established for each state educational institution for the purpose of making capital improvement expenditures, subject to appropriation, with a match of non-state funds on a $1-for-

$1 basis from either the state educational institution or private funds. The bill required each institution to develop and submit to the Board of Regents a plan for the purpose of rehabilitating, remodeling, or renovating existing facilities or building new facilities that are educational mission-critical and to bring the facilities to a state of good repair.

Credits not approved for restoration of older commercial structures

DID NOT PASS

House Bill 2233 was referred to the deadline-exempt House Committee on Taxation on Jan. 31 and remained in that committee when the legislative session ended. Under current law, tax credits for the restoration and preservation of certain commercial structures and the installation of fire suppression materials or equipment under the Historic Kansas Act are capped at $10.0 million each tax year. HB 2233 would have removed this cap retroactively beginning in tax year 2022. The Department of Revenue's Property Valuation Division indicated that there are currently 77,354 commercial buildings in the State of Kansas which are over 50 years of age which could qualify for the tax credit.

Bill to end tax levies for Kansas educational and buildings funds dies

DID NOT PASS

The Senate Committee on Assessment and Taxation recommended Senate Bill 94 be passed on Feb. 8, but no further action was taken on the bill. SB 94 would have eliminated the statewide mill levies of 1.0 mills for state educational buildings and 0.5 mills for state institutions buildings and would have created revenue transfers from the State General Fund to the Kansas Educational Building Fund (EBF) and to the State Institutions Building Fund (SIBF). The transfer amounts would have been set at $41.8 million to the EBF and $20.9 million to the SIBF in fiscal year 2025 and would be scheduled to increase by 2.0% in each future year. The Board of Regents opposed this proposal because it would reduce the stability and certainty of the revenue for the EBF and because it had the potential to provide less funding for the EBF that would be used to fund deferred maintenance projects at the state universities. According to the Board, the estimated renewal cost to bring all mission critical buildings to a "state of good repair" is estimated at just over $1.2 billion in FY 2022. We supported the Regent's position.

Proposed exemptions for construction of certain state buildings fail

DID NOT PASS

Under current law, the sales tax exemption for construction materials at educational institutions does not apply to the erection, construction, repair, enlargement, or equipment of buildings used primarily for human habitation. Senate Bill 4 would have allowed this sales tax exemption to apply to buildings used primarily for human habitation at the Kansas State School for the Blind and the Kansas State School for the Deaf. SB 4 was heard in the deadline-exempt Senate Committee on Assessment and Taxation on Jan. 19, but the bill remained in committee as the session ended.

Proposed C-PACE legislation dies in committee

DID NOT PASS

As previously reported, House Bill 2320 was referred to the House Committee on Financial Institutions and Pensions on Feb. 7 and died in that committee for failure to meet the turnaround deadline. HB 2320 would have enacted the commercial property assessed capital enhancement or C-PACE Act relating to financing for energy efficiency, water conservation, water quality, air quality, health and renewable energy improvements on certain qualifying properties. Among other things the bill would have required the Department of Commerce to designate or establish a C-PACE board; authorized the powers, duties and rules and regulations of such board; provided for assessment contracts between C-PACE lenders and property owners; and established rights, duties and responsibilities of mortgage lenders.