

## Turnaround reached in the 2023 Kansas legislative session

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The “turnaround” date is the deadline for consideration of bills in their house of origin unless the bills have been referred to a few designated deadline-exempt committees in each house. The Kansas Legislature met its Feb. 24 turnaround deadline a day early and headed home for a brief break before returning to work on March 1. Most of the action was in the Senate which passed legislation ([SB 169](#)) that would eliminate the state’s three income tax brackets in favor of a flat 4.75% tax rate. Another Senate-approved measure ([SB 33](#)) would exempt Social Security benefits from the income base of all Kansans and included an amendment to expand pension deductibility to all retirement plans rather than just Social Security. The Senate also approved legislation ([SB 248](#)) that would eliminate the sales tax on groceries beginning Jan. 1, 2024, and legislation ([SB 96](#)) that would allow tax credits of up to \$10 million per year for charitable donors to health-care facilities that do not perform abortions. On the House side, a bill ([HB 2236](#)) was approved that will give parents more information on what their children are taught in public schools and allow for the removal of children from the discussion of subject matter that their parents find objectionable. The House also passed (82-40) a bill ([HB 2238](#)) that would prohibit male-at-birth children from participating in girls’ sports events at public schools. Similar legislation was vetoed by Governor Laura Kelly last year and an override attempt came up short of the 84 votes needed. Following are brief summaries of 2023 Kansas legislation of particular interest to the construction industry.

### Extension and expansion of existing mega project law

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. In recent weeks Wichita-based Integra Technologies, which assembles and tests computer chips, announced it will build its new combined headquarters and production facility in nearby Bel Aire. This expansion will create more than 2,500 high-paying jobs and more than \$2 billion in capital investment in the first five years. The State Finance Council awarded Integra its

APEX application which is capped at 1,994 jobs and a \$1.8 billion capital investment on Feb. 2. Integra needs U.S. Department of Commerce for CHIPS and Science Act funding to proceed. Even more recently, on Feb. 20, it was announced that EMP Shield, an industry leader in protecting electronic devices from destructive magnetic pulses, plans to invest \$1.9 billion in a computer chip manufacturing facility in Burlington. The facility will create more than 1,200 jobs averaging \$66,000 annually. The company will be joined by six out-of-state suppliers, resulting in an additional 1,000 jobs created in Coffey County.

This session's [House Bill 2334](#) would extend the deadline for project agreements under the act from Dec. 31, 2023, to Dec. 31, 2024, provide 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 include providing for up to 10% of refundable tax credits for up to 10 years; increasing the training reimbursement to up to \$500,000 per year for 5 years; adding an employee relocation reimbursement of up to \$250,000 per supplier; limiting the corporate income tax rate reduction to two; 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 (hereafter House Commerce Committee) on Feb. 14 and withdrawn from that committee and referred to the turnaround deadline-exempt Appropriations Committee in order to keep the bill alive for further action.

## **Right-to-start act would encourage setting aside 5% of state contracts**

[House Bill 2123](#) was heard in the House Commerce Committee on Feb. 1 and was later referred to the deadline-exempt Appropriations Committee to keep it alive. This bill would enact the Right-to-Start Act and create the Office of Entrepreneurship within the Department of Commerce. The bill provides that, beginning July 1, 2023, the State of Kansas would encourage:

1. Five percent of state contracts would be awarded to businesses 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.

## Local control of wages and benefits on construction projects

[House Bill 2348](#) failed to meet the turnaround deadline and has 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

[House Bill 2387](#) was heard by the House Commerce Committee on Feb. 16 and passed as amended upon emergency final action (72-49) by the House on Feb. 23. The bill would provide for state revenue to replace lost sales tax proceeds attributable to reductions in the state sales tax rate on food, expand eligible uses of STAR bonds to historic theaters and major amusement parks, extend the deadline for the submission of the annual STAR bonds report, and increase 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 include costs connected to construction or renovation of historic theaters, and permissible project costs for major

amusement parks would include 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.

## **Kansas campus restoration act**

[Senate Bill 203](#) received extended consideration by the Senate Ways and Means Committee in mid-February. SB 203 would enact 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 establish 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 be 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. Each institution would be required 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.

## **Discontinuing tax levies for Kansas educational and buildings funds**

The deadline-exempt Senate Committee on Assessment and Taxation recommended [Senate Bill 94](#) be passed on Feb. 8. SB 94 would eliminate the statewide mill levies of 1.0 mills for state educational buildings and 0.5 mills for state institutions buildings and would create 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 be 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 percent in each future year. The Board of Regents opposes this proposal because it would reduce the stability and certainty of the revenue for the EBF and because it has 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 support the Regent's position.

## Training related bills

**Apprenticeship Tax Credits** - [House Bill 2292](#) was amended and approved by the House Commerce Committee on Feb. 13 and was further amended and passed (115-7) by the full House on Feb. 23. HB 2292 would enact the Kansas Apprenticeship Tax Credit Act. 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. The apprentice would be required to be employed for at least seven consecutive months during the calendar year preceding the taxable year that the employer claims the tax credit. An employer could claim up to 20 apprentices that are employed in each taxable year. The Secretary of Revenue, in consultation with the Secretary of Commerce, would 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 would be awarded according to that scale. The participation of an employee in an apprenticeship program and registration with the Secretary of Commerce would not constitute union affiliation unless the employee expressly elects to affiliate with a union. The Department of Revenue and the Department of Commerce would both have the authority to write rules and regulations to implement the bill.

**Career Technical Education** - [House Bill 2138](#) was amended and adopted by the House Committee on Education on Feb. 17 and further amended and passed (121-0) by the full House on Feb. 23. HB 2138 would create the Career Technical Education Credential and Transition Incentive for Employment Success Act. Subject to appropriations, the bill would allow the State Board of Education to distribute state aid to school districts that offer career technical education and have students who obtained approved “industry-sought” career technical education credentials.

**Training Center District** - [Senate Bill 163](#) was withdrawn from the Senate Local Government and referred to the deadline-exempt Ways and Means Committee on Feb. 23 in order to keep the bill alive. HB 163 would create the Dwayne Peaslee Technical Training Center (DPTTC) District Act. The bill would require the Douglas County Board of County Commissioners to submit to the voters of the county the question of establishing the Dwayne Peaslee Technical Training Center District and authorizing the district to levy a tax not to exceed 0.5 mills on all taxable tangible property located in the district to fund the budget of the training center as determined by the board of directors of the district. The new district would have its own taxing authority for the territory located in Douglas County resulting in a more stable source of funding.

## Sales tax exemptions for construction of certain state buildings

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 allow 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 and the bill remains in that committee at this time.

## C-PACE legislation dies in committee

[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.

## Tax credits for restoration of certain commercial structures

[House Bill 2233](#) was referred to the deadline-exempt House Committee on Taxation on Jan. 31 and it remains in that committee at this time. HB 2233 would eliminate the current \$10 million annual cap on tax credits that may be claimed for the restoration and preservation of certain commercial structures at least 50 years old under the historic Kansas act.

## Negotiating committees on state building projects

[House Bill 2234](#) was amended and approved by the House Commerce Committee on Feb. 10 and further amended by the full House and passed (116-4) on Feb. 16. HB 2234, as amended, would increase 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 to begin in FY 2025 based upon increases in the consumer price index. 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 would also limit the costs applying to the thresholds from the total project costs to the construction costs of the project. The bill was introduced by the Commerce Committee at the request of the Kansas Board of Regents. Proponents generally stated that enactment of the bill would reduce administrative costs of building projects and would bring the previously enacted thresholds in line with inflation since their enactment. The bill is now in the Senate Commerce Committee.

## Modifications to the Kansas underground utility damage prevention act

[House Bill 2226](#) was approved by the House Committee on Energy, Utilities and Telecommunication on Feb. 16 and passed (121-0) by the full House upon emergency final action on Feb. 23. HB 2226 would amend 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.

## Planning and zoning outside a city

[Senate Bill 273](#) was introduced by the deadline-exempt Senate Committee on Assessment and Taxation, referred to the Senate Committee on Local Government the following day and scheduled for hearing on March 2. SB 273 would repeal the zoning and planning authority for cities in the three-mile area extending from the city boundaries, giving county planning commissions the authority to regulate such areas instead.