



May 31, 2011

Community Bankers Association of Kansas Legislative Update

Overview

The full Legislature returned to Topeka for the veto session on Wednesday, April 27 and concluded their work at 6:00 AM on Friday, May 13. Perhaps the biggest struggle was resolution of the massive budget problems. The end of the session also produced a variety of changes in tax legislation. There were no additional changes to the financial institutions policy after the end of regular session. The Legislature will return on June 1 for the ceremonial one-day wrap-up session.

Budget

Budget negotiations between the House and Senate Budget Committees began on April 18 and finally concluded late Wednesday evening on May 11. The House and Senate fought about how high of an ending balance to leave for the State during the FY 2012 fiscal year. The House and the Governor wanted an ending balance of around \$50 million. Their final agreement has a \$71.8 million ending balance. There were many challenges in the House where many Republicans wanted to see a higher ending balance. Eventually, it appeared there would not be enough votes to further cut the budget. Resolution of the budget this year suggests there will be continued problems next year.

- Budget cuts \$500 million in State General Fund expenditures
- Budget uses \$200 million from the State Highway Fund
- K-12 education was cut \$107 million
- All state agencies have to make additional budget reductions
 - A 1.193 percent State General Fund reduction (\$25 million statewide)
 - Each state agency will have to make a proportional reduction of \$5.9 million in administrative costs
 - Each agency will have to make a 5 percent IT reduction

Taxes and Economic Development Issues

The 2011 legislature passed a few economic development initiatives and changes that are designed to promote economic recovery.

Bills passed and sent to the Governor during the Veto Session

Senate Bill 196. Governor's Expensing Bill. Bill supported by the Governor. The expensing bill allows Kansas businesses that make a capital investment to take a deduction against state income tax for the depreciation of the investment and allows for an immediate deduction of the full investment amount instead of requiring a prescribed schedule of smaller deductions over multiple years. The bill also creates a "deal closer" fund to be used to help clinch those businesses interested in moving to Kansas or

retain those businesses contemplating moving out of the state. SB 196 also eliminates the machinery and equipment tax credits (previously available for M&E purchased before 2006) and changes the High Performance Incentive Program (HPIP) thresholds from \$50,000 to \$1 million for the six urban counties.

Senate Bill 193. Economic Development – HPIP Extension and PEAK. This bill has two major economic development components within it (HPIP carry forward extension and PEAK) that are instrumental to the continued success of job recruitment and retention efforts by our county and state. A coalition of business organizations and company representatives, lobbied heavily this session for this bill's passage. This bill further enhances the Promoting Employment Across Kansas (PEAK) program by:

- Adding a retention component for TY2013-2014 to be used only until the Governor's proposed "deal closing fund" has sufficient funds to take over retention needs;
- Creating additional opportunities for existing Kansas companies by increasing the \$4.8 million cap for in-state expansions to \$6 million;
- Forgiving 95% of personal income tax liabilities for owners of new LLCs and Sub-S companies that move businesses to Kansas; and
- Allowing non-profit corporations to be eligible for PEAK.
- The bill also affects HPIP by extending the carry-forward period of the HPIP tax credits from 10 years to 16 years and by making the recertification process much easier. This bill does NOT include the five-year phase-in of the unitary treatment that several companies had requested, but the House and Senate Tax chairs have stated that they will request an interim hearing on the subject for the fall.

Senate Bill 10. Sales Tax Exemption Claims. SB 10 changes the statute of limitations for taxpayers to claim sales tax exemptions from one year back to three years. Many business organizations believed that one-year was too short a time period for many companies to compile all necessary paper work in order to take advantage of the exemptions. The bill is currently awaiting the Governor's signature.

House Bill 2194. Kansas Public Employees Retirement System (KPERs)

This bill is a first step toward eliminating the almost \$8 billion shortfall facing Kansas' public pension system, and it is on its way to Governor Brownback for his signature. The measure boosts the state's annual contributions to KPERs starting in July 2013, phasing in a \$28 million annual increase over four years. It also will require public employees to choose between paying more of their salaries toward their retirement benefits and having their future benefits cut. It establishes a commission to study whether the state should move toward a 401(k)-style plan.

House Bill 2135. Misclassification. HB 2135 was approved by the Governor on May 12. This bill revises the procedures used to determine if employees have been misclassified as independent contractors. It gives the Kansas Secretary of the Department of Labor (KDOL), or the Secretary's designee, the responsibility to make all determinations regarding the classification of a worker as being an employee or an independent contractor.

Additional bills passed, signed by the Governor:

- SB 198 Rural Opportunity Zones. The bill includes incentives to promote rural development in 55 counties that have lost at least 10 percent of their population since the 2000 census. The proposal will offer an income tax rebate for a period of five years to residents who move from

out-of- state into Kansas Rural Opportunity Zone. It will also make available state-county partnerships for paying down student loans of residents who move to a participating Rural Opportunity Zone from out of state.

- Worker Compensation reform: Chambers and business groups, and organized labor supported reform bill. Includes a higher threshold for WC eligibility and reversed Supreme Court decisions more than offset cost of increased benefit caps. Thus it is more stringent to make a WC claim, but the compensation for legitimate claims was raised. Business and labor both believe they will benefit from this change
- SB 229. Reduces funded agencies 20% payment of fee funds to the State General Fund to 10 percent and caps payment at \$100,000. This bill, signed by the Governor, will reduce the amount of our fee funds the Office of State Bank Commissioner has to give up to the State.
- HB 2056 amends provisions in the Banking Code that outlines how the Bank Commissioner determines the amounts to assess banks and trust companies for examination and administrative expenses. (The assessments fund a portion of the activities of the Office.) The bill would require the Bank Commissioner to use the December 31 report submitted to the Federal Deposit Insurance Corporation, rather than the March 31 report as required by current law, as the basis for both determining assessments of the trust departments of banks and granting inactive status to a trust department that reports zero assets on its call report.

Issues that Did Not Pass, Likely to Come Up Next Session

House Bill 2372: Immigration Reform

Numerous trade associations, businesses and chambers of commerce formed the Kansas Business Coalition, which was successful this year in stopping the passage of an immigration reform bill that included harsh business penalties and provisions.

The bill would have mandated the use of E-Verify, an electronic federal program used to verify employment eligibility of workers, by all public employers (state agencies, local municipalities, school districts, conservation districts, etc.). Most worrisome to the business community was the provision that also mandated E-Verify use by businesses employing more than one person and awarded a contract or grant over \$5,000 from a state or any municipality. The definition of contract and grant was very broad and would have included economic development incentives accepted by a company. Should the bill have passed, violation of this enrollment mandate and good faith participation in the program could have resulted in a company's permanent disbarment from being able to do business in the state and a liquidated damages charge up to 25 percent of the contract or grant amount.

The main objection to the bill was based on the belief that immigration issues are the domain of the federal government and should be dealt with by the elected federal delegation. Adoption of this legislation would have placed another layer of regulation on business and doubled the tab to taxpayers.

House Bill 2091: Sales Tax Repeal

Last year's increase raised the sales tax rate from 5.3 percent to 6.3 percent beginning on July 1, 2010, with revenues from the increase directed to the state general fund. The sales tax was then to be reduced to 5.7 percent on June 30, 2013, with 0.4 percent of those revenues to be sent to the state highway fund to help finance the ten-year comprehensive transportation plan (TWORKS) passed by the Legislature last session.

Opposition to the repeal came from business groups who feared repeal would have decimated the primary funding source supporting the implementation of TWORKS, and repeal also would have created an additional \$300+ million gap in our state budget, a budget already stressed at the beginning of session with a \$500+ million deficit.

Senate Bill 1: March to Economic Growth Bill

Most expect the MEGA bill come back with full force next year after it passed the House but was not acted upon by the Senate. The MEGA bill proposes to buy-down corporate and personal income tax by utilizing a formula to correlate increases in state tax receipts with a deduction in income taxes, all based on a selected actual state general fund receipts computation.

The bill would reduce future personal and corporate taxes but opposition arose from many sectors that believe the bill would shift our state's tax structure and affect the revenue streams and quality of our state's largest budgetary items including K-12 education, social services and KPERS funding.

Senate Bill 98: Fair Tax Bill

This bill, introduced by Senator Dick Kelsey, would have eliminated the corporate income tax, eliminated the sales tax on food, reduced the individual income tax, and reduced the state sales tax by 1.0 percent. The bill would have also applied a sales tax on professional services, including banking services, and eliminated almost all existing tax exemptions in order to pay for the measure.