

Lenexa Chamber of Commerce

2011 State Legislative Agenda—Results!

June 17, 2011

Maintain Tax Policies that Promote Growth

The Chamber strongly supports maintaining tax exemptions key to economic growth and opposes extending sales tax to professional services. The Chamber also supports a comprehensive study of state tax structure and policies.

OUTCOME:** A number of bills broadly repealing business sales tax exemptions and/or imposing sales tax on certain services (such as SB 98 and HB 2165) **did not advance out of committee – success!

HB 2160**, which establishes a committee on simplified state tax structure to study the overall tax structure and policy in Kansas, **failed on a motion to advance it from House committee.

In other tax action:

***SB 10**, which includes extending the period for businesses to claim sales tax refunds from 1 year to 3 years, **was signed into law.** The refund period was limited to one year under a 2009 law but the Department of Revenue found the shortened time benefited neither the State nor taxpayers; this bill also extends the deadline retroactively upon enactment.*

SB 1**, which phases down individual and corporate income tax rates by the percentage by which total state revenue growth in a particular year exceeds FY2010 revenues, known as the March to Economic Growth Act (MEGA), **passed the House but stalled in Senate committee.

HB 2091**, which repeals the 1-cent state sales tax increase enacted in 2010, **failed in the House to advance to final action.

Revisit the Workers Compensation System

In light of significant judicial action impacting both employers and employees, the Chamber strongly supports revisiting the integrity and affordability of the workers compensation system.

OUTCOME:** **Success.

***HB 2134**, which revises important portions of the Workers Compensation Act, **was signed into law.** This employer-labor negotiated compromise comprehensively reformed the Workers Compensation Act for the first time in nearly two decades, addressing many employer concerns and reinserting integrity and affordability back into the workers compensation system following years of erosion. Impacted provisions in the Workers Compensation Act include its definitions, exclusions from benefits, notice requirements, drug testing, administrative hearings, preexisting conditions, permanent total and temporary total disabilities, wage calculations, benefit caps, and employers' obligation to provide future medical treatment.*

Revise the K-12 Education Funding Formula

Recognizing the distinct connection between quality K-12 public education and statewide economic prosperity, the Chamber strongly supports revising the education funding formula to maximize fiscal resources by better correlating funding to actual costs, encouraging administrative consolidation, rewarding efficiency, and further expanding local flexibility and control over funding choices.

OUTCOME:** **A mixed bag.

*There were **no additional changes to Base State Aid Per Pupil for current FY2011** (school year 2010-2011). It will remain at \$3,937/pupil, **although that reflects a \$75/pupil allotment cut made in March** from the appropriation previously approved by the 2010 legislature of \$4,012/pupil.*

***For FY2012** (school year 2011-2012), **BSAPP funding will be reduced to \$3,780/pupil. That reflects a reduction of \$157/pupil from current FY2011** and a \$232/pupil reduction from the originally approved FY2011 appropriation. The House had sought larger cuts and the Senate had added \$6 per pupil, but in the end negotiators concurred with the Governor's recommendation.*

The budget bill adds \$21 million in current FY2011 for special education maintenance of effort (MOE), necessary to preserve an equal amount of federal special education funding, and the upcoming

FY2012 budget adds more than \$85 million in education funding to cover federal special education MOE requirements, offset federal stimulus fund reductions, increase KPERS contributions for K-12 employees, and for school district capital improvement aid.

No changes were made to the formula to significantly improve future funding for Johnson County schools – that issue is expected to be a focus of the 2012 legislative session.

HB 2015, which continues the Local Option Budget calculation at \$4,433/pupil for an additional two years regardless of the current BSAPP, **was signed into law**. The bill also included provisions of former HB 2251, which renewed the statewide 20-mill levy for schools and the \$20,000 homestead exemption.

SB 111, which allows districts to access for general operating expenses unencumbered money in certain budget funds for the 2011-12 school year in an amount equal to the difference between FY2012 BSAPP and the base state aid originally appropriated for FY2011 of \$4,012 (original HB 2395), **was signed into law**. The measure could potentially free up an estimated \$160 million in additional funds statewide (albeit spread unevenly depending on each district's financial profile.) The following funds would be considered the first priority for use: at-risk education, bilingual education, contingency reserves, driver training, parent education, preschool-aged at-risk, professional development, summer program, virtual school, and vocational education. The bill specifies that 65% of accessed funds must be spent in the classroom or for instruction.

A floor amendment added in the House that would have allowed school districts to levy a capital outlay tax for school year 2011-2012 for the specific purposes of utility and/or insurance costs, **was dropped from the final version of SB 111 by Conference Committee negotiators**. (School districts currently levying the maximum allowable capital outlay levy of eight mills would not have been eligible to use this provision.)

SB 21, which clarifies the formula on local vehicle property taxes to ensure the full amount of the tax is returned to school districts and authorizes districts to spend that revenue, **was signed into law**. The bill also included the provisions of former HB 2360, which enacted uniform accounting and reporting requirements. Those provisions also require the State Board of Education to create and maintain a centralized accounting system searchable by the public to increase public awareness and accountability.

House Concurrent Resolution 5019, which puts forth a resolution requesting a study and recommendations on administrative reorganization of school districts by the State Board of Education, **received a hearing but failed to advance from House committee**.

In other K-12 education funding action:

HB 2400, which changes the non-proficient at-risk weighting formula, **remains in House Appropriations Committee**. The bill would continue to use free/reduced lunch criteria for calculating at-risk pupils through the 3rd grade, but the non-proficient at-risk formula for 4th grade and above would be based on math and reading assessments (original HB 2193).

HB 2269, which revises the funding formula to require every district to have a Local Option Budget of at least 10% (mandatory--no longer optional) that would be included in the calculation of general state aid as "foundational funding" to inflate Base State Aid Per Pupil figures, **passed the House but did not receive a hearing in Senate committee**.

HB 2193, which would have authorized an equalized "Local Activities Budget" levy for up to 5 years if approved by school district voters to help fund non-required activities (original HB 2201), **failed to pass the House**. Funds could only have been used to support programs and activities not required by the state. The maximum amount would have been equal to approximately \$200 per student.

HB 2397, which attempts statutorily to define "suitable" education funding as all state money applied to pay the costs of instruction leading to a high school diploma or pre-college preparatory curriculum set by the Board of Regents, **remains in House Education Budget Committee**. Authored by the Speaker of the House, the bill would essentially compel any lawsuit challenging state education funding to prove state funding for these requirements is insufficient, shifting the burden of proof from the state as a defendant to schools or parents as plaintiffs.

Several bills to create education “scholarship” programs – essentially a voucher system – such as HB 2236, HB 2367, and HB 2375, **did not advance from committee.**

Preserve Transportation Program Funding

To grow the state’s economy and enhance safety and convenience, the Chamber strongly supports preserving current dedicated transportation funding levels to invest in infrastructure priorities that provide significant financial returns and maintain essential state assets.

OUTCOME: *The budget bill includes a one-time FY2012 transfer of \$205 million from the State Highway Fund to the State General Fund. Other than reducing preservation projects by \$22 million in both FY2011 and FY2012, KDOT stated this transfer is possible without delaying the TWORKS transportation program due in part to lower than expected bid prices and low inflation. At the time no bonds were scheduled to be issued for FY2012; KDOT has since advanced its bonding schedule and will now issue \$50 million in bonds for FY2012. It is unclear whether or how this may impact projects.*

Modernize Economic Development Efforts

The Chamber supports continuing to modernize state and local economic development efforts to promote private sector job growth, including continuing to improve the effectiveness and usability of state incentive programs and seeding a nationally-competitive “deal closing” contingency fund.

OUTCOME: *Success.*

SB 193, which expands the Promoting Employment Across Kansas (PEAK) economic development incentive program, was signed into law.

New provisions extend program eligibility to include consideration of non-profit organization headquarters.

Changes also will allow the program to be used for two years (1/1/2013 through 12/31/2014) to help retain companies currently within Kansas, with the maximum amount of benefits that could be awarded for retention capped at \$1.2 million in FY2013, \$2.4 million in FY 2014, and \$1.2 million in FY 2015.

The current \$4.8 million cap on awards that can be issued each fiscal year for expansion of companies currently within Kansas is increased to \$6 million starting in FY 2013.

There continues to be no cap on awards for relocation of new companies moving into Kansas.

The bill creates a 95% individual income tax exemption for certain Kansas source income received by Kansas resident owners of qualified companies who materially participate in the business’ activities. Exemption eligibility applies only to relocation of companies into Kansas and companies must have at least 10 employees beyond the number of qualifying Kansas resident owners.

The bill also extends the carry-forward period for tax credits earned under the High Performance Incentive Program from 10 years to 16 years. A requirement that taxpayers must be re-certified annually by the state as qualifying for the program in order to carry forward unused credits is eliminated and replaced by a requirement that taxpayers self-certify under oath. A provision that would allow the credits to be claimed within a corporate unitary group was ultimately not included by negotiators.

SB 196, which makes a number of changes in taxation and economic development policy proposed by the Governor, was signed into law. *Beginning tax year 2012, the bill creates the option of an accelerated depreciation deduction (known as “expensing”) available to all businesses on qualified capital investment or canned software located in Kansas.*

The bill also repeals the Kansas Economic Opportunity Initiatives Fund (KEOIF) and replaces it with a new “Job Creation Program Fund” (JCPF), a pot of money to be used to help attract and retain major projects that promote or preserve jobs and economic growth. Starting July 1, 2012, the JCPF is to be funded by the 2% of withholding taxes currently dedicated to the IMPACT program (less debt service & administrative costs) and by an anticipated annual appropriation equal to the net amount estimated to be “saved” by the repeal or modification of other economic development tax credits and exemptions as

outlined in the bill. The Fund will be administered by the Secretary of Commerce in consultation with the Governor and Secretary of Revenue.

To offset the costs of “expensing” and the JCPF, beginning tax year 2012 income tax credits and sales tax exemptions may no longer be earned under the Kansas Enterprise Zone Act, Job Expansion and Investment Credit Act, or the Business and Job Development program (although unused credits previously earned can be carried forward); the investment threshold in five metro counties for eligibility for the High Performance Incentive Program (HPIP) increases from \$50,000 up to \$1 million; and the income tax credit for property taxes paid on business machinery and equipment acquired prior to 2006 is repealed. The entire HPIP program must also be reviewed prior to January 1, 2017.

The approved **FY2012 budget includes a State General Fund expenditure increase of \$15 million for \$5 million grants each to the Cancer Center at KU Med Center, KSU animal health research, and the National Institute for Aviation Research (NIAR) in Wichita.**

HB 2054, which abolishes the Kansas Technology Enterprise Corporation (KTEC) and transfers its duties and responsibilities to the Department of Commerce and the Board of Regents, **was signed into law.** The position that KTEC appoints to the Kansas Bioscience Authority’s Board of Directors was abolished and instead the bill names the Secretary of Commerce an *ex officio* voting KBA board member.

SB 198, which creates “rural opportunity zones” offering certain tax benefits to new Kansas residents and businesses in 50 counties that have suffered severe population decline over the past two decades, **was signed into law.**

HB 2238, which provides a sales tax exemption for certain equipment and power used by commercial data centers, **did not advance from House committee.**

Recharge Unemployment Comp Funds with Care

The Chamber supports continuing to recharge the Unemployment Compensation Trust Fund by means that are fair, reasonable, and balanced and that do not unduly inhibit statewide economic recovery.

OUTCOME: Mostly success.

SB 77, which revises provisions related to unemployment insurance and unemployment benefits, **was signed into law.** These provisions include extending unemployment tax rate caps for positive balance employers for 3 more years through CY2014 (but the 90-day payment grace periods were not extended), setting up a framework to repay federal fund advances and interest, increasing the number of rate groups among negative balance employers from 10 to 20 and increasing negative balance surcharges, reinstating the mandatory “waiting week” before establishing benefit eligibility, and eliminating unemployment benefits for a non-military relocating (“trailing”) spouse.

An amendment by the Senate to phase up the taxable wage base over 3 years from the current \$8,000 up to \$11,000 in 2014 and thereafter **was dropped from the final version of the bill by Conference Committee negotiators.** No increase in the taxable wage base means an estimated additional \$45.8 million in 2012 and \$79.9 million in 2013 will have to be borrowed from the federal government, resulting in an additional \$3.9 million in interest and more positive-employer rate groups at the maximum tax rate of 5.4%.

Respect Employer-Employee Relations

Because employers and employees should remain empowered to decide employment issues based upon local circumstances, the Chamber opposes legislation that unreasonably intercedes in employer-employee relations, including mandating payment of prevailing wages or other benefits, imposing penalties for outsourcing work, or amending labor laws to facilitate union organizing.

OUTCOME: With legislators focused on workers compensation and unemployment compensation issues this year, there were few other major employment issues considered.

HB 2135, which revises the procedures used to determine whether employees have been misclassified as independent contractors and increasing the penalties for repeated misclassification violations, **was signed into law.**

SB 171, which requires payment of prevailing wages and a preference for Kansas workers on state public works projects, **failed to advance from committee.**

Promote Affordable Health Care Coverage

The Chamber supports a market-driven health care system that reduces costs and promotes greater efficiency and coordination, prevention, and quality of care, without imposing substantial new mandates or penalties.

***OUTCOME:** Several measures were introduced in response to federal health care/health insurance reform legislation, mostly focused on challenging the federal individual health care mandate.*

*The session's omnibus health care bill **HB 2182**, which includes statutory provisions affirming the individual right of Kansas residents to purchase or refuse to purchase health insurance, **was signed into law.** (NOTE: Whether the federal mandate supersedes this legislation will likely be determined as part of the federal legal challenge currently being waged against the mandate by 26 states including Kansas.)*

***Executive Reorganization Order (ERO) 35** abolishes the Kansas Health Policy Authority (KHPA) and establishes the **Division of Health Care Finance within the Kansas Department of Health & Environment (KDHE)** effective July 1, 2011. The ERO transfers all of the statutory powers, duties, and functions of the KHPA to the KDHE and the Division of Health Care Finance, as well as any power, duty or function relating to implementation of the federal health care acts (Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010).*

HB 2276**, which authorizes specially designed and less expensive mandate-lite health insurance plans, **failed to advance from House committee.

Retain Revenue and Spending Authority

To secure our elected representatives' ability to govern flexibly and effectively, the Chamber opposes the imposition of state or local tax and spending lids or "supermajority" 2/3 voting requirements to approve state or local tax increases.

OUTCOME:** Some bills and amendments were **introduced but did not advance.

HB 2342**, which requires local governments starting in 2022 to reduce their mill levy in proportion to any increase in assessed valuation, **failed to advance from House committee.

*A proposed hearing on **House Concurrent Resolution 5013**, which puts forth a state constitutional amendment to provide revenue, expenditure, and taxation limitations on state government, **was cancelled and not rescheduled.***

Maintain a Strong Higher Education System

Recognizing that higher education plays a vital role in producing and retaining a well-trained workforce and in promoting research and development, the Chamber strongly supports continued investment in higher education that preserves quality and affordability and adequately maintains important state assets.

OUTCOME:** The approved **FY2012 budget includes a State General Fund expenditure cut for higher education (the Board of Regents and state universities) of \$15 million (2.0%).

***SB 127**, which creates the University Engineering Initiative Act, **was signed into law.** The bill is intended to increase the number of engineering graduates to 1,365 graduates per year by 2021, and it charges the Department of Commerce, universities, and private industry to work together on a plan to ensure the engineering industry finds the necessary talent and training to fuel additional jobs and economic growth in Kansas. The bill also authorizes a specified amount of state gaming revenues to be used toward the construction, improvement, or equipping of engineering facilities at KSU, KU, and Wichita State University on a matching basis.*

***SB 143**, which establishes a new tiered funding formula for postsecondary technical education classes, **was signed into law.** There was no money appropriated for the formula this year, but if the tiered system is funded Johnson County Community College could possibly gain state aid for certain programs, particularly those that impact target industries critical to the Kansas economy.*

Preserve a Fair & Cost-Effective Legal System

The Chamber supports measures promoting a fair, efficient, and cost-effective legal system to resolve business disputes and opposes unreasonably increasing current award caps for non-economic damages.

***OUTCOME:** Mostly a non-issue this year.*

*A minimal number of bills and amendments were **introduced but none advanced.***

Foster a Responsibly Balanced Energy Plan

The Chamber supports continuing to foster a diverse long-term energy plan that responsibly balances environmental goals with ample statewide power and reasonable costs, including incentive-based measures that promote energy conservation and investment in energy efficiency, alternative technologies, and new infrastructure rather than imposing mandates, caps or penalties.

OUTCOME:** House Resolution 6008, which urges the U.S. Congress to adopt legislation prohibiting the Environmental Protection Agency (EPA) from regulating greenhouse gas emissions, imposing a moratorium on new air quality regulations by the EPA for at least 2 years except in cases of imminent emergency, and requiring the Administration to undertake a study of the cumulative impact of the EPA's current and proposed regulations on America's economic competitiveness, **passed the House.

*House Concurrent Resolution 5012, which establishes targets for energy development, consumption, and costs, **received a hearing in House committee but did not advance.***

Encourage a Federal Immigration Policy

To ensure consistency, the Chamber supports a balanced immigration policy created and enforced at the federal level. The Chamber opposes state action that creates additional costly or time-consuming mandates for employers or that imposes unreasonable penalties on employers who unintentionally hire undocumented workers.

***OUTCOME:** HB 2372, which would enact a broad spectrum of provisions relating to illegal immigration including new mandates, penalties, and criminal and civil considerations, **failed on a motion to advance it from House committee.** A subsequent motion to pull the bill from committee onto the House floor also failed.*

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