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2013 Kansas Legislative Newsletter 3

The Kansas Legislative Session has dragged on past the 80 day schedule the legislative leaders wanted, and the 90 days that we statutorily are authorized to meet. As in most years, the two contentious issues are the budget and taxes. This year is more difficult than most because of the large number of freshmen legislators, the cumulative impact of reducing state agency budgets over the past 4 years, and the impact of the income tax reform act of 2012.

This Newsletter will focus on some of the tax and spending proposals, addressing the components of the initiatives and the consequences, as well as a few other contentious matters.

Taxes: The Governor's "Path to Zero" for the state income tax resulted in a 2012 law that eliminated the tax bracket for the highest earning Kansans, reduced the other two tax rates from 3.5% and 6.25% to 3.0% and 4.9%, and eliminated income taxes for non-wage business income most LLCs, Sub S, and Sole Proprietor types of businesses. The result is an \$847+ million reduction in state revenues for fiscal year 2014. It is important to remember that the Governor proposed a reduction of itemized deductions in order to partially off-set the income tax rate decreases, but those changes were not approved by the Legislature.

The vast majority of people, dating back to the Boston Tea Party group protesting taxes on tea, believe taxes are too high. As Bob Dole noted in a recent Fox Network interview, the public supports reducing the size of government (which means services provided), but not the services that they individually receive.

The Governor proposed retaining the "temporary" 1 cent sales tax that was passed 3 years ago and is due to end on June 30, 2013, as a means of off-setting the income tax revenue reductions. A large number of legislators prefer to have the sales tax rate drop to 5.7% as is scheduled (the other .4% is dedicated to funding the Kansas Department of Transportation as a partial replacement for decreased motor fuel tax collections due to increased vehicle fuel efficiency). The inability to either maintain the sales tax at some percentage of its current level or slow/reduce the income tax rate decline has resulted in an impasse.

The Governor believes that if the income tax becomes zero, then businesses will expand and relocate to Kansas, thereby improving the employment and economic situations. If the state relies on sales and local governments rely on sales and property taxes to fund desired government services, the impact of recessions will have devastating impacts on revenues and during times of a booming economy, the pressure will be to avoid collecting “too much” taxes.

A recent New York Times real estate piece pointed out that a \$5 million home in Laguna, CA, has a property tax bill of \$35,000; a \$5 million home in Boston, MA, has a bill of \$32,000; and a \$5 million home in Texas (the state without an income tax) has a property tax bill of \$109,000. While not directly related to the lack of a state income tax, it is indicative of the need to be cautious about changing the reliance on a mix of income-sales-property taxes-and fees to responsively fund public services at the state and local levels.

Budget: As I have noted in previous Newsletters, K-12 education constitutes approximately 50% of State General Fund expenditures. Higher education receives 12-13%, social safety net programs about 20%. The remaining funds support state-funded agriculture, public health, aid to local governments, and other programs. Our Governor and a majority of Legislators are the most fiscally conservative in decades. Even so, the State General Fund budget remains at approximately \$6 billion per year, thus indicating a “base” budget.

That means that state revenues must approximate \$6 billion per year to balance income and expenditures. We have a state law, frequently waived, requiring a 7.5% projected ending balance (budget surplus) to avoid the state having to borrow money during the course of the year to pay bills. This 7.5% ending balance recognizes that revenues come to the state at different times than payments are made.

The Kansas Supreme Court will rule late this year on the Gannon Case (adequacy of state funding for K-12 education) and most observers expect the State to lose. This will necessitate increasing state aid to education by hundreds of millions of dollars in the next fiscal year. Other relevant budget considerations concern: state employee pay and the Kansas Public Employee Retirement System (KPERS) - state employees have not had a raise in 4-5 years and employee turnover is at an all-time high, and KPERS continues to have an \$8+ billion actuarial deficiency; bridge collapses in Minnesota and Washington State bring attention to the need to address the 350+ Kansas bridges with deficiencies; Medicaid and other case load costs increase every year; the state’s share of the federal NBAF animal health research center at KSU; and other anticipated spending increases necessitate either further substantial reductions in the state budget or sufficient revenues to include these items.

It is not enough just to balance spending and revenues for fiscal year 2014 that starts July 1, 2013. It is crucial that we prepare for obligations in future years that will substantially impact state and local government revenue needs. Remember, when the state reduces aid to local governments, those governments must either reduce their budgets/services delivered or increase local taxes. Tax and budget policies for school districts, cities, counties, and the state should be considered as a package.

Judicial Selection: The Governor proposed that the current system of selecting Supreme Court and Court of Appeals Judges be changed from 5 members of the Kansas Bar Association and 4 non-Bar Association representatives reviewing the applicants and recommending three names for each vacancy to the Governor to a system in which the Governor appoints a majority of candidate review members, makes an appointment from the recommended list, and those persons are then confirmed by the Kansas Senate. This essentially is the federal model.

Proponents argue that the Bar Association does not adequately consider more conservative applicants; opponents argue that the selection process will become more politicized because of control of the process by the Governor.

A majority of legislators sent the Governor a bill creating this new appointment process for the Court of Appeals. Because the Kansas Supreme Court is addressed in the State Constitution, it will take a 2/3 vote by members of both Legislative Chambers and a majority of state voters to change the selection method for Supreme Court Justices. A sufficient majority of legislators have not supported such a change. However, some legislators have suggested that state laws be changed to state that all civil lawsuit appeals would go to the Court of Appeals and only criminal lawsuit appeals would go to the Supreme Court. This proposal is largely fueled by dissatisfaction with the Supreme Court's rulings on education finance cases.

The Courts, Governor, and Legislature are all independent bodies that form the "checks and balances" government envisioned by our nation's Founding Fathers in the U.S. Constitution. Whether Court of Appeals and Supreme Court Judges would be more or less political under either selection process is an important consideration as an independent judiciary is a Constitutional foundation of Democracy. From a political perspective, it is important to remember that no Governor serves more than 8 years. So while an individual might be pleased with appointments made by a Governor Sebilus-type or Governor Brownback-type, it is important to realize that your "preferred" type of Governor may not always be in office. Thus, we must ask ourselves under which system is the State better off long-term?

Common Core: Several years ago the National Governors Association, comprised of all Republican and Democrat Governors, reached the conclusion that as a nation we were not adequately preparing our public school students for jobs in the new global economy or for college-level critical thinking. The Governors partnered with a group of education organizations to develop a Common Core curriculum to better prepare students. The Kansas State Board of Education, Lawrence School District, and most every school district across the country have been adopting and adapting the Common Core curriculum recommendations to local school district needs.

A group of Kansas legislators determined that Common Core Standards represent an effort by the Obama Administration to control the education of children and have worked diligently to strike all funding from state aid to local school districts that could be used to implement this curriculum. This has become a late session stumbling block to budget and tax negotiations as efforts are made to pass legislation prohibiting such funding.

There can always be questions about education standards, student performance, school district accountability, etc., but curriculum decisions are best made by the State Department and State Board of Education and local school districts, not the Legislature.

Tom's Actions: Based on my experience, knowledge, and the trust of others, I am part of the informal negotiations to find acceptable compromises on the contentious issues. Many hours each day I circulate between the Governor's staff, House leadership team, House Democrats, House Traditional Republicans, and other stakeholders suggesting ideas, conveying questions, and generally trying to engage in "shuttle" diplomacy identifying common perspectives and helping bridge differences.

I have used some of the time between meetings and House floor debate to write articles about energy policies published in Public Utilities Fortnightly, EnergyBiz, and the Council of State Governments' magazine. I also have been working on a presentation to an Assistant Secretary at the Department of Energy about the Interstate Electric Transmission Siting Compact that I helped develop. The goal is to improve the ability to construct high voltage transmission lines to move Kansas' wind energy to markets in other parts of the country, while preventing federal energy agencies from usurping state control of the process.

I have also used the time to promote legislative ideas that did not successfully make it through the process this year. For example, at the request of Lawrence Police Dept. officers I introduced a bill to make it easier for them to identify purchasers of pre-paid wireless communications devices that are used in conjunction with a crime. Some retailers of such phones objected to the amount of paper work that would be involved and I worked with them, the FBI, KBI, Lawrence officers, and others to make the process simpler and less expensive. Because the legislative session ended before the revised version could be considered, it has been referred to the Judicial Council for them to review and make recommendations to the 2014 Legislature. I prepared an explanation of the bill's origin, legislative path, and how the revised language meets the needs of law enforcement officers without being an undue burden on retailers.

I also was instrumental in securing funding from the State Historical Society for a new roof on Lecompton's Constitution Hall.

Summary of Legislation Forthcoming: As I have annually for 18 years, in July I will distribute through the Lawrence Journal World and on my website (www.tomsloan.org) a summary of legislative actions. If you do not subscribe to the Journal World, please check my website or contact me and I will send you a copy of the Legislative Summary Tabloid.

Thank you for your thoughtful consideration of the information contained in this Newsletter. Please contact me anytime you have a question about state government, my activities, or you need assistance. You may always reach me at tom.sloan@house.ks.gov or by calling our home at 841-1526.

