By Paul Johnson

GROCERY/FOOD SALES TAX FUTURE?

At the start of the 2022 legislative session, the Governor requested that the Kansas Legislature send her a clean, simple bill eliminating the 6.5% state sales tax on groceries. So far this has not happened. There are apparently too many political games being played to honor the request of the Governor that would benefit all households statewide in Kansas.

The House Taxation and Senate Taxation committees held hearings on the Governor’s proposal for just groceries and the Republicans’ broader request for elimination of sales tax on food that would include restaurants. The fiscal cost for the Governor’s grocery sales tax elimination bill would be $500 million annually. The Republicans’ bill for all food would be just under $800 million annually. Consideration of the tax reduction comes amid great uncertainty over the fiscal situation with the Kansas budget in terms of only one-time federal pandemic relief funds and a large tax break offered to a $4 billion mystery business to locate in Kansas.

**SB 339** passed out of committee on February 15. Before it was voted out, sales tax cuts were added for certain utilities, movie theaters and delivery services. Food and food ingredients would include bottled water, candy, dietary supplements, food sold through vending machines, prepared food, and soft drinks.

The House Taxation committee has taken up a new food sales tax bill – **HB 2711** – that would reduce the state food sales tax rate from 6.5% to 3.5% starting July 1, 2022. The Legislature has created a rainy-day fund known as the Budget Stabilization Fund. If the balance in this Fund is greater than $100 million on July 1, 2023, the food sales tax rate would decline an additional 1.2%. This process could be repeated until the food sales tax rate is 0%.

Food and food ingredients in this bill would not include alcoholic beverages, bottled water, candy, dietary supplements, food sold through vending machines, soft drinks, tobacco, or certain prepared food (generally food sold at restaurants). The bill would make the food sales tax credit for Kansas residents (with qualifying income of $30,615 or less plus older than 55, blind, disabled or has a dependent child under 18) refundable. The fiscal cost for 2024 would be $437.8
It will take the month of March to sort out the fiscal picture for the State. Several tax reduction bills have been proposed that cover household deductions to lowering school property taxes to providing sales tax relief to select industries or non-profit entities. It seems certain that an amalgam of tax reductions may be put into a tax relief package.

While the State General Fund (SGF) ending balance in 2022 was $2.89 Billion and the estimated ending balance for 2023 is $3.775 Billion, revenues over expenditures for 2023 are just $883 million, so there is limited opportunity to drastically cut taxes without experiencing future budgetary challenges. The other basic economic reality is that inflation of 6-7% is real and operating expenses for state programs will be impacted. The Consensus Estimating Revenue Group will meet mid-April to determine a revenue forecast for the remainder of 2022 and 2023 that must be used to finalize the State Budget.

Final budgetary and taxation issues may not be determined until the Kansas Legislature reconvenes for the veto session that begins late April and runs into May.

WATER LEGISLATION DISMEMBERMENT

The mega-water bill – **HB 2686** – was gutted by a substitute bill offered in the House Water committee on Tuesday March 1. The new bill – **Sub HB 2686** – retreats from the fundamental water program reorganization proposed in the original bill. The question of water policy and future water vision is pushed down the road one more time. While the original bill was not perfect, it did elevate water to a cabinet level position similar to agriculture, labor, transportation, or health and environment, etc. The fate of the substitute bill is uncertain as is how or whether a substantive ‘future of water’ debate proceeds?

The original bill – **HB 2686** – drew significant opposition from major farm organizations and commodity groups as well as the Groundwater Management Districts (GMDs). The Chairman of the House Water committee – Rep. Ron Highland – offered a substantive
amendment to narrow the proposed new Department of Water and Environment to just the Department of Water and leave the Division of Environment in the existing Kansas Department of Health and Environment. (See testimony for original bill here: http://www.kslegislature.org/li/b2021_22/measures/HB2686/testimony)

In terms of the GMDs, the proposed changes to governance and eligibility of non-water right holders to serve on GMD boards was withdrawn. The GMD requirement to file annual usage and conservation reports was retained. The increase from 3 cents to 5 cents per 1,000 gallons for municipal, commercial and agriculture water users was scrapped. (The 3 cents per gallon water protection fee has not changed in years.) Highland’s amendment did include a portion of the existing state sales tax ($43 million) that would be controlled by the new ‘Water Management Board’ created under the original bill. This amendment still included moving the Division of Water Resources (that controls water rights in Kansas) from the Kansas Department of Agriculture (KDA) to this new Department of Water.

But the major farm organizations supported the substitute bill to gut the original bill to make no organizational change. This after the House Water Committee spent two years studying water issues and agency responsibilities across the state. They determined that 16 state agencies muddied the water and left no one actually advocating for water in a cabinet level position.

Sub HB 2686 (that gutted the original bill) still requires some new reporting by the GMDs so the legislature can better understand their programs and progress with conservation. The substitute also rejected the proposed fee structure increase and instead takes the recommendation from the 2017 Governor’s Blue Ribbon Water Task Force to direct one-tenth of one percent of the existing 6.5% state sales tax which would add $49 million to the State Water Plan Fund. This would raise the State Water Plan Fund from about $20 million to $70 million annually if this substitute bill becomes law. The Kansas Water Authority in conjunction with KDA, the Kansas Water Office, and KDHE would still make water program funding recommendations to the Governor and the Kansas Legislature annually for approval as is done now. Kansas Water Office planning has shown that to address the water issues that need addressing the amount should be at least $55 to $60 million annually.

Water policy in Kansas is clearly controlled by agricultural interest groups, who do not want the boat rocked even though the primary source of irrigation water is the declining Ogallala Aquifer. Some regions estimate only 10 to 20 years of water use left.

85% of water use in Kansas is crop irrigation. These water users pay very few fees for this water. If they are within a GMD boundary, they pay a user fee or tax to provide for GMD functions, but if an irrigator is outside GMD boundaries, they pay no fee. Farmers do pay into the SWP fund through fertilizer and pesticide fees. The rest of us, unless we have a private well, pay for water through a water protection fee ($0.03/1000 gallons) in our municipal or rural water bills. Under the substitute bill, we will also pay an extra share for irrigation water use via a statewide sales tax which will fall largely upon the urban populated areas of the state. The original bill attempted to make funding more equitable across uses.

In 2017 (according to the USDA Agricultural Census) Kansas had 58,569 farms and 2,881 (5% of all farms) accounted for 75% of all farm sales. In 2017 Kansas had 2.5 million acres under irrigation on 5,141 farms out of 21.8 million harvested acres. In terms of Farm Bill commodity payments (for wheat, corn, soybeans and sorghum) in Kansas, 74% of these payments have gone to 10% of the recipients since 1995. Until the federal government fundamentally alters farm programs that subsidize (via commodity payments and crop insurance) certain select crops such as corn, water overuse and the continual decline of the Ogallala is inevitable.
Hard to tell if the Kansas Legislature and the Governor have the vision and political courage to challenge the existing paradigm of consolidated agriculture? While existing water law states clearly that the waters of Kansas are the property of the residents and to be used for the most beneficial use, over appropriated water rights - particularly in Western Kansas – assure a shortening span of time for ‘beneficial use’.

Elections can and should provide the opportunity for serious priority discussions on the future of Kansas and its natural resources. 2022 has a Gubernatorial, U.S. Senate and Congressional races in Kansas to provide that policy opportunity.

See the Legislative Research Department’s supplemental note explaining the substitute bill: http://www.kslegislature.org/li/b2021_22/measures/documents/supp_note_hb2686_01_0000.pdf

For KWA 2022 Report to Governor & Legislature click Here.

For more read: https://kansasreflector.com/2022/03/01/shooting-themselves-in-the-foot-committee-guts-kansas-bill-to-protect-water/

ADMINISTRATIVE RULES AND REGULATIONS PROPOSED CHANGES:
CONSTITUTIONAL EXPLAINER

The Kansas House has passed a Concurrent Resolution- HCR 5014 - calling for a constitutional amendment that would give the State Legislature authority to veto or delay executive branch administrative rules and regulations by a simple majority vote in each chamber. This proposed amendment comes in response to a 1984 Kansas Supreme Court ruling in a case, involving the state attorney general, drawing a bright line between the legislature legislating and the executive branch administering the law.

The resolution adds a new section to Article 1 concerning legislative oversight of administrative rules and regulations. If HCR 5014 passes the Kansas Senate - with a vote of 27 Senators - it will be on the November 2022 general election ballot requiring a simple majority vote of the electors for this constitutional change.

Under current law, the Kansas Legislature cannot simply veto proposed administrative rules and regulations from the executive agencies. Once the Kansas Legislature passes a law instructing executive agencies to implement a given policy by rule and regulation, the Legislature cannot simply revoke or suspend the rule and regulation but must pass new legislation clarifying the Legislature’s intent more precisely.

Presently the executive agency develops proposed rules and regulations in accordance with the new law. These proposed rules are first checked for any fiscal impact by the Division of Budget. The second check is with the Attorney General to determine if there are any constitutional issues. The third check comes at the Secretary of State’s office for a technical and proper form assessment. Once these three mandatory steps are completed, the proposed rules and regulations are printed in the Kansas Register and a mandatory public hearing set for final adoption.

The Kansas Legislature has a joint House/Senate Committee on Administrative Rules and Regulations that works with the rule making agency to hold a committee hearing between the time the rules are published in the Kansas Register and the date of the scheduled public
hearing. This Joint Committee discusses with the agency the rules and the alignment with the intent of the Legislature. If concerns are raised by the Joint Committee, the agency will attempt to reconcile the issues. What the Joint Committee cannot do at this time is simply veto the proposed rules. The Kansas Legislature has other tools such as the budget to address the implementation/enforcement of the proposed rules or pass a ‘clean-up’ bill in the next legislative session clarifying specific intent.

Make no mistake about it, this is another political power play by a super-majority in the Kansas Legislature to control the executive branch agencies and take authority away from the Kansas Supreme Court. This amendment would further erode the separation between Legislative, Executive and Judicial branches of government, and consolidate power in the Legislative branch. This is a common pattern with the Kansas Legislature as they hate federal government overreach but have no problems with controlling other branches of State government and certainly local units of government.

The Kansas Legislature has passed numerous restrictions on county and city governments in terms of restricting higher minimum wages, guns, taxes and the siting of large confined animal feeding operations for public health concerns. With – **HCR 5014** – the Kansas Legislature could continually question and rescind the implementation of passed laws by redefining the ‘effect of law’ with simple majorities.

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**CALENDAR Highlights Week of March 7**

*Note: Calendars are set by committee chair discretion so are subject to change. Check the daily calendar at [http://kslegislature.org/li/b2021_22/chamber/calendars/](http://kslegislature.org/li/b2021_22/chamber/calendars/).*  
*Hearings are also available remotely. See [http://www.kslegislature.org/li/](http://www.kslegislature.org/li/) Go to Audio/Video broadcast box on right side of page.*

**House Agriculture Committee 3:30 p.m. Room 112-N**  
Monday March 7 SB 346 Allowing for the on-farm retail sale of milk and milk products, authorizing the secretary of agriculture to declare an imminent health hazard, extending certain milk and dairy license fees and establishing certain standards for milk.

**Tuesday March 8 HB 2530 Prohibiting the use of identifiable meat terms** on the labels of meat analogs when such labels do not include proper qualifying language to indicate that such products do not contain meat.

**House Energy & Utilities 9 a.m. Room 582-N**  
Tues. March 8 Presentation on: Mineral and Property Rights, Right-of-Way, & Land Use  
Professor Burke Griggs, Washburn University Law School

**House Commerce, Labor & Economic Development 1:30 p.m. Room 346-S**  
SB 493 — Prohibiting cities and counties from regulating plastic and other containers designed for the consumption, transportation or protection of merchandise, food or beverages.

**Senate Utilities 1:30 p.m. Room 548-S**  
Wed. March 9 SB 478 (Proponents) — Establishing requirements for wind energy conversion system obstruction lighting to mitigate the visual impact of such lighting systems.  
Thursday March 10 SB 478 (Neutral & Opponents)

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**LEGISLATIVE DEADLINES**

Thursday, February 24th (Turnaround Day) Last day to consider non-exempt bills in house of origin.

Wednesday, March 23rd (Second Chamber Consideration) Last day to consider non-exempt bills
Friday, April 1st (First Adjournment) No bills considered after this date except bills vetoed by governor, omnibus appropriations act and omnibus reconciliations spending limit bill.

Veto session is anticipated to begin on April 25th. *********

Exempt committees: House and Senate Federal and State Affairs, Senate Ways and Means, Senate Assessment and Taxation, House committees on Calendar and Printing, Appropriations, Taxation or select committees of either house when so authorized.

Contributors to KRC are automatically on the Policy Watch e-list, if they provide an e-mail address. KRC provides Updates to the sponsoring organizations including League of Women Voters of Kansas, Kansas Natural Resource Council, Kansas Farmers Union, Climate and Energy Project, Audubon of Kansas, and Friends of the Kaw, who make the Updates available to their memberships.

If you are receiving KRC Policy Watch through one of these organizations and have questions, contact the organization directly.

If you wish to be removed from the KRC list, contact info@kansasruralcenter.org

For questions about Policy Watch content, contact Paul Johnson at pdjohnson@centurylink.net or Mary Fund at ksrc@rainbowtel.net

Kansas Rural Center | 9350 E Corporate Hills Drive, #781057, Wichita, KS 67278

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