LEGISLATIVE SESSION NEARING END; REDISTRICTING QUESTIONS REMAIN; Official Adjournment to Follow Final Veto Session in May

By Paul Johnson

The 2022 Legislative Session ended late Thursday night with most of the major issues resolved. But the Legislature is scheduled to return on May 23. They may have to address the Kansas Supreme Court decision on the Congressional redistricting map and possibly the State Legislative and State Board of Education maps. There may also be more vetoes from the Governor to consider in May.

The Congressional redistricting map passed by the Legislature was found unconstitutional by the Wyandotte County District Court and now goes before the State Supreme Court who will determine if the Legislature has to redraw the map. See article below for details. The Kansas Legislative redistricting maps go before the state Supreme Court on May 16 who must validate or invalidate them. If deemed invalid, these too must go back before the Legislature to redraw.

The official close of the session will follow the May reconvening, possibly in early June if they need to redraw the redistricting maps.

Next week’s Policy Watch will cover the final education legislation passed and the status of vetoes sustained or overridden. Following the final veto session session in late May, we will provide a summary of the session.

GROCERY SALES TAX PHASED REDUCTION Passes; Governor Will Sign

HB 2106 phases down the state sales tax on groceries over three years starting January 1, 2023 when the state sales tax is reduced from 6.5% to 4%. The fiscal cost is $77 million. On January 1, 2024, this grocery tax is reduced to 2% with a fiscal cost of $252 million. On January 1, 2025, the grocery tax goes to 0% with a fiscal cost of $411 million. Groceries include bottled water, candy, soft drinks and food through vending machines but not prepared food. This legislation does not alter local grocery sales tax at the county or city level. The vote in the Senate was 39 to 0 while in the House the vote was 114 to 3.

The Governor’s proposal to zero out the state grocery sales tax on July 1, 2022 was soundly rejected by Republican leadership in the House and Senate. The Governor has stated that she will sign this legislation.

OMNIBUS BUDGET LEGISLATION

The final portion of the State budget (not including public education) was passed with very little floor debate. Since it was a conference committee report it was not subject to any amendment only to be sent back to conference for another version. This bill passed the House 95 to 22 while passing the Senate 33 to 7.

The final budget pays off several hundred million dollars in bond debt, adds $500 million to the budget stabilization (rainy day) fund, adds $12.5 million in higher education, and disburses federal pandemic funds in a variety of areas (nursing homes, community colleges, economic development projects). When including the spending on public education (which passed in a separate bill) the ending balance for the State General Fund in 2023 would be $1.6 Billion (a 12.6% ending balance).

HOUSING LEGISLATION PASSES

The Kansas legislature has passed the conference committee report for HB 2237 that has affordable housing tax credits, housing investor tax credits, historic structures tax credits and child day care assistance tax credits. This legislation passed the Senate on a 34 to 3 vote and the House 109 to 12. It is now on the way to the Governor’s desk where it should be readily signed.

The housing investor tax credit would be available in 98 counties and decrease state revenues by $13 million annually. The affordable housing tax credit is the Kansas version of the federal low-income housing tax credit program where state tax credits will match the federal credits for ‘qualified developments’. These credits last 10 years and annually cost $14.4 million until leveling off at $144 million in the tenth year. The older historic tax credits would reduce state revenues $10 million annually while the historic structures tax credit modifications would reduce state revenues $1.3 million.

KANSAS CONGRESSIONAL MAP SCRAMBLE

On April 25, Wyandotte County District Court Judge Bill Klapper ruled that the Republican led Kansas Legislature violated the state constitution by targeting residents based on politics and race when drawing new congressional districts. Attorney General Derek Schmidt immediately appealed to the Kansas Supreme Court. Judge Klapper’s order blocks the state from preparing for the congressional election until a new map is drawn. Judge Klapper ordered the Legislature to come up with a ‘remedial plan’ as soon as possible. This is the first time a gerrymandering case has been litigated in Kansas courts.

The Kansas Supreme Court tasked Judge Klapper with determining whether the Kansas Constitution contains protections against dividing communities of color and partisan gerrymandering. A U.S. Supreme Court decision in 2019 determined federal courts should have no say on the topic. Judge Klapper ruled lawmakers produced a congressional map that “intentionally and effectively dilutes minority votes in violation of the Kansas Constitution’s
guarantee of equal protection”.

Now the question of timing and pending candidate filing deadlines in early June come into play. Expedited hearings for the congressional map will probably be held next week. Since the Kansas Constitution Article 10 – Apportionment of the Legislature – does not reference congressional maps, what procedure will the Kansas Supreme Court follow?

For state legislative district maps, the Attorney General petitions the Kansas Supreme Court 15 days after publication. The Attorney General did that on April 25 and the Kansas Supreme Court has 30 days to declare the maps valid or invalid. If judged invalid, the Legislature has 15 days to enact legislative districts in compliance with the direction of and conforming to the mandate of the supreme court. The Court scheduled oral arguments of the legislative maps on May 16. April 29 is the deadline for motions to intervene and May 9 for written statements from any interested party.

Regarding the Congressional map, will the Kansas Supreme Court mandate a new map from the Kansas Legislature or produce its own map? In 2012, three federal district court justices drew the Congressional and State legislative districts relying on the various maps that had been proposed but never adopted by the Kansas legislature. Defining ‘valid’ is somewhat unclear and what constitutes equal protection? Judge Klapper was critical of the statewide congressional reapportionment listening tour last year where opponents to the maps were not treated well.

Are the House and Senate reapportionment guidelines - adopted by the respective redistricting committees - just ‘guidelines’ or actual rules to draw compact districts and safeguard ‘communities of interest’? Will the U.S. Supreme Court play any role in the Kansas Congressional map by possibly delaying a final decision on racial gerrymandering to next year and stating that existing congressional districts must be utilized for the 2022 congressional election (as was done for Alabama)? It is uncharted judicial waters for Kansas now.

REDISTRICTING OPTIONS FOR THE FUTURE

Given the debacle of redistricting in 2012 in Kansas when the Kansas Legislature was unable to agree on any redistricting maps, the responsibility fell to three federal judges to assess the maps that had been presented and settle on compromise maps with districts more compact and no concern over placing incumbents in the same district.

Now come to 2022 and the Kansas Legislature has passed a congressional map (now before the Kansas Supreme Court) that may well be judged too partisan and racially gerrymandered. Kansas deserves better. Kansas needs to take the rest of this decade to study our options and establish a non-partisan commission that serves all the residents of Kansas in a fair and civic-minded manner.

Kansas has many commission models to examine from several states. According to the National Conference on State Legislatures (NCSL), there are 10 states that have established commissions with the primary responsibility of drawing congressional maps. 5 states have established advisory commissions. 3 states have established ‘back-up’ commissions that come into play if their lawmaker’s dead lock. Iowa has their own unique system established in 1980 that utilizes non-partisan legislative research staff to draw congressional and legislative districts without any regard to partisan registration or incumbency. These maps are taken to the Iowa General Assembly for an up or down vote. If rejected, a second map is produced and if that fails a third map is drawn that is then subject to amendments by the General Assembly. There have been four rounds of this process and a first or second map has been accepted. The Iowa plan is simply in statute so it can be changed.

Several commissions have been created through constitutional amendments via citizen petitions. Kansas does not have the referendum or initiative process for such constitutional change. (Source: https://www.ncsl.org/research/redistricting/redistricting-commissions-congressional-plans.aspx#Advisory)

Public education is clearly needed to convince lawmakers of the opportunity to improve
redistricting in Kansas. The League of Women Voters of Kansas along with the A.C.L.U. and Loud Light - plus other groups - developed a congressional district map along with Senate and House district maps. These maps adhered to devising compact districts and preserving communities of interest without regard to party affiliation numbers or incumbents put in the same district.

These maps should serve as a model of drawing fair and understandable districts. They should be compared to the final maps that will be adopted and the differences highlighted. This is a teaching moment for all Kansans and especially the lawmakers who now control redistricting. Depending on the decisions by the Kansas Supreme Court on both the congressional map and legislative district maps, there may finally be a clearer constitutional definition of a ‘valid’ map that meets an equal protection standard.