



GACHES, BRADEN & ASSOCIATES

Government Relations & Association Management

825 S. Kansas Avenue, Suite 500 ♦ Topeka, Kansas 66612 ♦ Phone: (785) 233-4512 ♦ Fax: (785) 233-2206

2012 Kansas Legislative Preview

The 2012 Kansas Legislative Session started Monday, January 9th at 2 p.m. as both the House and Senate convened for the first time this year. Each session begins with a mix of anticipation and anxiety, and this year is no exception. The typical tax and spend issues will consume much of legislators' time, but election year politics (all 40 senate seats and 125 house seats are up this year) and the challenges associated with redistricting promise to make it an unusually contentious session.

With a year under his belt, it is the first opportunity for Governor Sam Brownback to bring a full agenda to the statehouse and he has exceeded expectations. On the Governor's list are reductions in income taxes, passage of a new school finance formula, transformation of the state's Medicaid program into a managed care system and approval of a 401(k) style public employees' retirement system for new KPERS eligible employees. Any one of these initiatives would be considered a heavy lift for a typical legislative session. Together they represent a transformational effort to control the future costs of state government. Added to these major issues will be a series of "repealer" bills proposing to eliminate unnecessary statutes and regulations and major changes in water rights law. This is not an agenda for the squeamish or underachievers.

Following is a brief summary of the top issues and the politics that will influence them:

Tax Policy - After talking about income tax reduction for two years, it will surprise no one when the Governor recommends reducing marginal rates and the number of brackets for individual income taxes. Although several organizations are calling for elimination of income taxes, including the Kansas Chamber and the newly formed Kansans for No Income Taxes (financed in part by a Saint Louis billionaire), Brownback's target is to be directly competitive with Colorado which has a 4.5% top individual income tax rate. Slowly growing state general fund revenues give the Governor a chance to deal here, and the one cent sales tax increase approved in 2010 is set to partially lapse July 1, 2013. Many conservatives who were originally opposed to the sales tax increase now support leaving in place the 0.6 of a cent set to lapse and using the revenue for further income tax reduction. Reducing taxes has become a beacon call for most Republicans interested in improving the business climate, but there will be competing uses for those revenues proposed by some legislators, setting up a political debate over the progressivity, fairness and stability of our tax system.

Major changes in the state sales tax will also be in play, though apparently not a priority for the Governor. Senator Dick Kelsey of Sedgwick County has a proposal to eliminate most state sales tax exemptions and use the new revenue for further income tax reductions. The Fair Tax Kansas City organization is promoting elimination of all federal and state income taxes and replacing the lost revenue with a higher sales tax. While they are unknown

throughout most of the state, they have promised to be more active in Topeka this session. Senate Ways and Means Committee Chair Carolyn McGinn made both the income and sales tax debates more interesting in December when she announced her proposal to roll back six months early the 0.6 of a cent sales tax scheduled to phase out in July 2013. McGinn makes the argument that legislators promised the six-tenths would be temporary and should roll it back early since state revenues are recovering rather than use the revenue to reduce income taxes.

In an effort to balance the debate on tax policy (the House will follow the Governor's lead and try to push him further to the right) Senate President Steve Morris has appointed his own Tax Policy Study Group comprised of five moderate-to-centrist/conservative senators and seven non-legislators with little Kansas Chamber influence. Morris is expected to use the Study Group to screen the Governor's proposals and tax bills that come over from the House, giving moderate Senators some political cover when they slow play conservatives' tax cuts. Needless to say, this will be a very interesting year for tax policy.

School Finance – A popular Topeka urban myth is that when Deputy Education Commissioner Dale Dennis finally retires there will be no one in the Statehouse who can explain to legislators how the school finance formula really works. Certainly the formula has many moving parts, most of which are designed to provide equitable distribution of funds to ensure an equal opportunity for a public education as required by the state constitution. Adequacy of funding and the equity of distribution of state dollars have been topics of litigation in recent years with school districts prevailing on most of their issues. Many conservative policy makers, already critical of public schools for an assortment of reasons, offer little support for steady increases required to satisfy the courts and are hopeful Brownback's plan will shift more of the burden for future funding to local school districts. This issue cuts across the state in many different ways. Wealthy districts may look favorably on the opportunity to increase local school support (which has been capped by law) while poor districts may question whether the new formula fulfills the state's constitutional burden to provide for an adequate education.

Medicaid Transformation – The fastest growing portion of the state's budget has been Medicaid. More Kansans are becoming eligible for Medicaid coverage and the costs for Medicaid services has increased at near double digits rates for several years. In a bold move to control costs and improve the coordination and quality of care the Brownback administration is proposing to move away from the traditional fee-for-service model and to a new managed care system with three "managed care organizations" (MCO) competing statewide for the business of Medicaid participants. While the proposal has generated some criticism, most loudly from those representing the developmentally disabled community, more than 75% of all Medicaid participants nationwide are already covered by MCOs. Brownback has pledged that the plan will not be designed to cut provider reimbursements or reduce the level of coverage. While the Administration probably has the authority needed to make these changes unilaterally, look for legislators to increase their scrutiny of the plan as it is implemented the end of this year.

KPERS Reform – The sleeping giant of budget problems is the unfunded liability of KPERS, the Kansas Public Employees Retirement System, conservatively estimated at \$8.3 billion. A KPERS Study Commission that met the past six months has proposed eliminating the “defined benefits” style retirement program for new employees eligible for KPERS benefits and putting them into a hybrid plan that combines elements of the old plan with a new “defined contributions” style component. The benefit to the state is reduced risk on future unfunded liabilities. The disadvantage for new beneficiaries will be accepting much of the investment risk associated with their future pension funds, similar to what most private sector employees experience now. Because so many other issues are on deck this session and the unfunded liability issue is long-term in nature, this is an issue that may get kicked down the road if time runs short at the end of the session.

Redistricting – No issue impacts the likelihood of reelection more than legislative district boundaries, so it is understandable that most legislators put great importance on passing a redistricting map that benefits their prospects as much as possible. Unfortunately, there are always some losers in this process. Due to the ongoing shift of population out of rural counties and into our urban centers, there will likely be a reduction of 3-5 house seats and 1-2 senate seats in rural areas. Johnson County will pick up most of the new seats. But population shifts will impact almost every district in the state, creating many opportunities for legislators to horse trade district changes for favorable consideration on other issues. Conversely, some legislators may be punished by their respective chambers for behaving badly on issues important to leadership.

A complicating factor this year is the ongoing split between the conservative led House and moderate led Senate over the role and direction of the Republican dominated legislature. Traditionally, the House has acquiesced to the Senate’s map for senators and the Senate has agreed to the House’s map for representatives. That hands-off attitude will probably be tested this year. Several incumbent conservative House Republicans are challenging moderate Republican Senators for their seats and relatively modest changes in district boundaries could be influential in the outcome of these primary races. More significantly, a challenger could be redistricted out of the Senate district altogether. Democrats in both Houses should expect efforts to further consolidate their numbers into fewer districts, leaving the state with a small number of heavily democratic districts and relatively few districts that are competitive in the November general elections.

Redistricting is always a contentious issue. Many statehouse watchers are expecting this year’s process to be among the most difficult of all time. Don’t be surprised if the outcome of almost every other major issue is delayed until after the redistricting negotiations are completed and maps are on their way to the Governor.

The 2012 Elections and Leadership Races – The outcomes of all major issues and redistricting will impact the primary and general elections and eventually the selection of new legislative leadership that will occur in December of this year for the 2013 session. It

is hard for most citizens to see the connectivity of votes taken in March or April with the results of a hotly contested election later, but issues matter to most voters and races will be won or lost based on the ability of an incumbent to read the mood of their constituency and explain their votes to a cynical voter base.

Conservatives want desperately to win control of the Senate to open the door for a more conservative agenda and moderates want just as desperately to retain control and provide a backstop to more conservative ideas from the House. One of the newest election trends is for special interest groups to become actively involved in supporting or opposing candidates solely for the purpose of influencing the next leadership elections. The Kansas Chamber and Americans for Prosperity are openly supporting conservatives running against Senate moderates for that purpose, and the education community and social services interests will largely line up on the other side.

Legislative races are becoming increasingly expensive, at least by Kansas standards. It's no longer unusual for an incumbent legislator to raise more than \$100,000 for their reelection campaign and for challengers to match or exceed that number. The introduction of third party money in campaigns through 527 organizations is also having an influence. Immune from all reporting requirements and unrestricted in the amounts of money they can receive or spend, 527 groups are taking an active role in many of the conservative vs. moderate campaigns across the state. Their impact during the last election cycle was inconsistent at best. Most Kansas legislative districts are sufficiently small that voters know their legislators pretty well and aren't greatly influenced by some of the more misleading claims lodged by various interest groups. Still, their sophistication is increasing rapidly and their ability to tap into deep pockets to impact targeted races can't be underestimated.