

A review of the 2022 Kansas legislative session

The 2022 Kansas legislative session stands in sharp contrast to last year's session when the legislature got off to a brisk start and never really faltered in spite of pandemic protocols at the statehouse. There was no brisk start on most proposals in 2022 and far fewer bills were passed than last session as the legislature was focused squarely on the proposed "Mega Project" bill for the initial weeks of the 2022 session. Kansas was said to be a finalist for a tantalizing but secret \$4 billion advanced manufacturing facility and pressure to move quickly on the Mega Project legislation was intense as Governor Kelly and administration officials pressed the need to pass legislation before the project was awarded to another state. That legislation was passed and is outlined immediately below. Following also are brief summaries of a number of bills of interest to the commercial and industrial building construction industry. Bills passed by the legislature and signed into law by the Governor take effect on July 1, 2022, unless otherwise noted.

Mega project bill passed and approved by governor

PASSED

House Substitute for Senate Bill 347 was passed by the House (80-41) on Feb. 8, the Senate concurred with House amendments (31-9) on the 9th and the bill was signed into law and became effective the following day. The "Attracting Powerful Economic Expansion Act" is intended to give the state a competitive advantage in its attempt to reach agreement with a very large unnamed company that plans to invest \$4 billion in the construction and operation of an expansive advanced manufacturing plant at a location yet to be determined. Among other things, the act provides a refundable tax credit of up to 15% to be paid back over ten years, payroll reimbursement of up to 7.5% and a relocation incentive fund. The House reinstated the refundable tax credit which had been dropped by the Senate and cut the state corporate income tax rate of 4% by 0.5%. It also inserted a \$10 million fund to assist with employee relocation to Kansas and a claw back provision should the company leave within a specified period of time. Provisions providing for oversight by the State Finance Council before any agreement or any payout rates are amended were also included. Estimates from nonpartisan legislative staff indicate the package would cost well over \$1 billion, but an analysis by Wichita State University indicated the measure could eventually generate \$2.5 billion annually in new economic activity.

This proposal was quietly developed by the Kansas Department of Commerce and essentially sprung on the legislature with great emphasis on the need to move very quickly or lose the opportunity for the project. Administration officials and lawmakers who signed non-disclosure agreements consistently touted the project as potentially transformative for Kansas and its economy. Consideration of the proposal was slowed somewhat, however,

and made complex because there was no fiscal note to help gauge the actual cost of the program and to measure the potential economic benefit to the state. Legislators criticized the bill as originally introduced because it would have given the administration almost total control of the project and because it was said to represent corporate welfare for big business. In the end, amendments were made in the House to provide for legislative oversight and to spread some benefit to all businesses in the state.

It is speculated that the mystery company looking to build and operate this large production facility is Panasonic and the competition is now between the states of Kansas and Oklahoma. Panasonic, which has agreements to build batteries to power electric vehicles for both Tesla and Toyota, would likely locate at the abandoned Sunflower Army Ammunition site just south of De Soto if Kansas wins the project. The Army has been working for years to clean up the site and it is being prepared for its first round of private redevelopment. At the time of this writing, it is reported that Japan's Panasonic Holdings Corp is still evaluating which state it will choose as the site. The Builders' Association and Kansas City Chapter, AGC supported this legislation.

Legislative oversight of executive branch actions

PASSED

There is no question that federal and state agencies and the bureaucracies within them have gained ever-increasing power and control over private business over the years. [House Concurrent Resolution 5014](#) attempts to address this growing problem in Kansas by amending Article 1 of the Kansas Constitution with the following proposed amendment: "*§ 17. Legislative oversight of administrative rules and regulations. Whenever the legislature by law has authorized any officer or agency within the executive branch of government to adopt rules and regulations that have the force and effect of law, the legislature may provide by law for the revocation or suspension of any such rule and regulation, or any portion thereof, upon a vote of a majority of the members then elected or appointed and qualified in each house.*" This proposed amendment was passed by two-thirds majorities of both the House (85-39) and Senate (27-12) and now must be approved by voters in order to become part of the constitution of the state of Kansas. The proposed amendment will appear on the Nov. 8, 2022, general election ballot.

Economic development bill becomes law

PASSED

The conference committee report on [House Bill 2237](#) was adopted by the Senate (34-3) on April 25, adopted by the House (109-12) the next day and signed into law on May 5. Among other things, this bill creates several acts and amends law pertaining to economic development to address rural housing, home loans, historic structures, appraisals of property in rural counties, urban development, and child day care services. The bill enacts

the Kansas Housing Investor Tax Credit Act (HITCA) and states the purpose of HITCA is to bring housing investment dollars to communities lacking adequate housing and that development of housing will complement economic development of rural and urban areas. The HITCA is established within the Kansas Housing Resources Corporation (KHRC), to be administered by the Director. The Director is authorized to issue tax credits to qualified investors who make cash investments in qualified housing projects, and to project builders and developers. Upon approval of an application, the Director will enter into an agreement with the project builder or developer prior to issuing any tax credits. The agreement sets forth the amount of tax credits to be issued, the requirements for a cash investment, and the requirements for issuance of tax credits. The also bill establishes the Kansas Affordable Housing Tax Credit Act (AHTCA) and creates the Historic Kansas Act, which modifies and establishes certain tax credits for older commercial structures in the state. It establishes, for all taxable years starting after Dec. 31, 2021, a tax credit against a tax liability imposed upon a taxpayer by the Kansas Income Tax Act, the financial institutions privilege tax, or the premium tax, of 10 percent of costs and expenses incurred for the restoration and preservation of a commercial structure at least 50 years old that does not receive the continuing Historic Structures Tax Credit. The bill enacts the Kansas Rural Home Loan Guarantee Act (Act) to be administered by the KHRC and loan transactions eligible for a guarantee will include the construction or renovation of a single-family home in a rural county. The total amount of loans guaranteed under the Act will be limited to \$2 million. The loan amount to be guaranteed cannot exceed \$100,000 per unit. The bill also amends the Kansas Rural Housing Incentive District Act (RHID Act) to expand the use of bond proceeds and other funds under the Act to include residential renovation of the second or higher floors of buildings more than 25 years old within economically distressed urban areas, regardless of the population of the city or county containing the economically distressed urban area.

Immunity from civil liability for work-based learning program

PASSED

The conference committee report on [House Substitute for Senate Bill 91](#) was adopted by the House (116-0) on March 31, adopted by the Senate (37-2) on April 1 and signed by the governor on April 13. H Sub for SB 91 provides that a business that accepts a secondary student in a work-based learning program shall not be subject to civil liability for any claim arising from the student's negligent act or omission during the student's participation in the work-based learning program at the business or worksite. A business that accepts a secondary student in a work-based learning program shall not be subject to civil liability for any claim for bodily injury to the student or sickness or death by accident of the student arising from the business' negligent act or omission during the student's participation in the work-based learning program at the business or worksite. The school district shall be solely responsible for any loss to a student resulting from bodily injury or sickness or death by

accident arising from any negligent act or omission on the part of the school district or business during the student's participation in the work-based learning program at the business or worksite. There shall be no immunity, however, for the student or business for civil liability arising from gross negligence or willful misconduct. This measure is a carryover bill from the 2021 session.

Prevailing wage and minimum wage bills die in committee

DID NOT PASS

As previously reported, [Senate Bill 470](#) died in the Senate Commerce Committee having failed to meet the deadline for consideration of bills in their house of origin. Among other things, this bill would have required that workers employed by a state agency or by an employer on behalf of a state agency and engaged in the construction of a public works project with a value of \$75,000 or greater shall be paid at least the prevailing wage applicable to the worker's occupation category, as determined by the secretary of labor. The bill would have required workers who work on a Sunday or on a state holiday to be paid at least twice the prevailing wage and those who work overtime to be paid at least one and one-half times the prevailing wage if obligated to work overtime by the contract with the state agency. The bill provided that employers may use entry-level workers at a specified ratio and apprentices for on-the-job training periods at a rate equal to 50% of the applicable prevailing wage rate. Other provisions of the bill provided for civil and criminal penalties for failure to pay the prevailing wages and for allowing permitting cities and counties to require a prevailing wage as well. [Senate Bill 467](#) also failed to meet the turnaround deadline and died in Senate Commerce. This measure would have incrementally increased the minimum wage in Kansas from \$7.25 per hour prior to Jan. 1, 2023, to \$16.00 per hour by Jan. 1, 2026.

Unemployment compensation

PASSED

The conference committee report on [House Bill 2703](#) was adopted by both the House (110-3) and Senate (39-0) on March 31 and was signed into law by Governor Kelly on April 18. A cleanup bill from last session's major UC legislation, HB 2703 creates the Kansas Targeted Employment Act, which establishes a tax credit for businesses that employ individuals who are Kansas residents with developmental disabilities, and amends law related to unemployment compensation regarding out-of-state reimbursing employers, fund control tables, solvency and credit rate schedules and the My Reemployment Plan program. With regards to My Reemployment Plan program, the bill expands the list of unemployment compensation claimants not required to participate in the program and changes the requirement to participate in the program to claimants claiming three or more weeks of benefits in the current benefit year. The obligation to request claimants provide a

resume shifts to the Secretary of Labor and the resume must be uploaded in the Kansasworks system. The amount of time for claimants to respond is extended from 7 to 14 days. The Secretary of Commerce is required to monitor claimants who participate in the program and participate in training managed by workforce centers to ensure compliance. The Secretary of Commerce has the responsibility for monitoring participation in work skills training and retraining programs and for reporting non-compliant claimants to the Department of Labor.

Workers' compensation bills see little action this year

DID NOT PASS

Workers' compensation bills saw very little action this session. [Senate Bill 361](#) which would have eliminated the \$155,000 cap on permanent total disability and would have allowed an injured worker who is determined to be permanently totally disabled to receive weekly benefits at the rate of the employee's average weekly wage in effect on the date of the injury for which compensation is being made, starting from the date of maximum medical improvement and continuing for life, or for the duration of the disability had a hearing in Senate Commerce on March 8, but the bill died in committee. [Senate Bill 504](#) which provided that worker's compensation benefit reductions due to retirement benefits funded by the employer shall apply to retirement benefits that the employee begins receiving after the injury to reduce permanent disability benefits and exempting benefits under the federal social security act died in Senate Commerce without a hearing. [House Bill 2704](#) died in the House Commerce, Labor and Economic Development Committee without being heard. That bill would have, among other things, specified that an employer or the employer's insurance carrier would not be required to notify an injured worker of any change or termination of medical or disability benefits for a workers compensation injury. The employer or insurance carrier would not be prohibited from making notification at their discretion. The bill would have established that an employee's patient privilege would be waived for certain medical records when they file a workers compensation claim. All related treatment records would be required to be provided to the employer or insurance carrier without any medical release. Employers and insurance carriers would be able to communicate with healthcare providers without notice to the employee and communications would not need to be memorialized, though they could be at the employer or insurance carrier's discretion.

Other bills of interest

PASSED

Construction of permanent gold star memorial

[Senate Bill 330](#) was passed by the Senate (40-0) on Feb. 1, approved by the House (122-0) on March 31 and signed into law on April 1. This bill became effective on April 14. SB 330

requires the Capitol Preservation Committee to approve plans for placing a permanent memorial honoring Kansas Gold Star families (families who have lost a family member in the line of military duty) on the state Capitol grounds. The bill authorizes the Secretary of Administration to receive and expend moneys for the purpose of financing the creation and construction of the memorial and to remit all moneys received for such purpose to the State Treasurer. It establishes the Kansas Gold Star Families Memorial Fund and authorizes the State Treasurer to deposit funds received for the purpose of financing the creation and construction of the memorial in the State Treasury to the credit of the Fund. Expenditures from the Fund are authorized for the creation and construction of the memorial and for other purposes as may be required by the grantor or donor. The bill prohibits the expenditure of public funds for the creation or construction of the memorial.

DID NOT PASS

Sales tax exemption for certain projects

[Senate Bill 526](#) died in the Senate Committee on Assessment and Taxation without a hearing. This bill would have provided an exemption for purchases for the construction or repair of buildings used for human habitation by the Kansas state school for the blind and the Kansas state school for the deaf.

DID NOT PASS

State tax refund on certain projects

[Senate Bill 509](#) was passed by the Senate Assessment and Taxation Committee but died on the Senate Calendar. This measure would have provided a refund of state tax paid on certain purchases to reconstruct, repair or replace buildings and improvements damaged by certain disasters.

DID NOT PASS

C-pace bill dies in committee

[House Bill 2320](#), a carryover bill from 2021, died in the House Committee on Financial Institutions and Rural Development. This bill would have created the Commercial Property Assessed Clean Energy Act (C-PACE) which would provide financing for certain energy, water, air, health, and renewable energy efficiency improvements through assessment contracts between C-PACE lenders and property owners. The Department of Commerce would adopt rules and regulations to administer the Act, including requiring projects to meet certain energy, water, or air efficiency, quality or renewable energy standards. It would have imposed an additional layer of administrative review of construction projects conducted in the state. Each C-PACE lender would have to file an annual report for the proceeding calendar year no later than each March 1 with the Secretary of State and the

Department of Commerce. The bill would have established certain rights, duties, and responsibilities for mortgage lenders regarding C-PACE assessments. It further provided that annual special assessments agreed to under a C-PACE financing assessment contract shall be a lien on the qualifying property against which it is assessed on behalf of the applicable C-PACE lender from the date that each annual assessment under the assessment contract becomes due until such special assessment is paid in full. Such special assessments shall be collected by the C-PACE lender directly from the owner of the qualifying property in the same manner and with the same priority as ad valorem real property taxes and other special assessments and charges.