



Memorandum

Date: May 22, 2020

Re: Sine die Summary

Overview

A more detailed legislative wrap-up report will be forthcoming as we sort out all the action of the final twenty-four-hour legislative session.

The 2020 legislative session concluded Friday morning, May 22. The Senate adjourned about 6:00 AM and the House adjourned about 8:00 AM. Both chambers began the final wrap up session at 8:00 AM on Thursday, May 21st and worked around the clock for twenty-four hours to address a number of issues:

- Amended the Governor's powers under the Kansas Emergency Management Act by inserting legislative committee oversight and veto power over current and future emergency response processes.
- Created a legislative oversight and approval role to manage federal COVID-19 pandemic response and recovery funding (CARES Act and other federal funding).
- Amended tax policy to ease or codify some income and property tax burdens during the current economic crisis; repeal the local government tax lid and replace it with a public hearing and notification process. Otherwise, they made no changes on a variety of outstanding tax issues such as internet sales and use tax collection.
- Made no reductions or adjustments to the budget approved before the conclusion of the regular session.
- A small number of other bills have been sent to the Governor on topics such as cable company right-of-way access; financial institutions and credit unions; and some minor education policy adjustments.

Barring a special session, the Legislature will not return until January 2021. It is possible and likely the Governor could exercise her veto authority to veto the limitations on her emergency response powers and the creation of legislative oversight over the COVID-19 funding. Both issues are combined in Senate Sub. for House Bill 2054 and any veto could not be overridden because the Legislature will not return. Also keep in mind that all legislation not passed during the 2019 and 2020 legislative sessions is dead. If there is a special legislative session before January 2020, no legislation is still alive, and any bills must begin as new legislation.

Going forward, depending on the Governor's decision on any vetoes, the Governor will be responsible for managing the ongoing pandemic response and the budget shortfall due to the economic recession until the Legislature returns in January 2021.

Healthcare Issues

The Legislature addressed several healthcare issues related to COVID-19: business and medical liability protections; limiting the Governor's authority during states of emergency while providing counties more discretion to handle crises at the local level; extending a number of

executive orders (EOs) related to healthcare providers. There was a brief and failed attempt in the Senate to amend Medicaid expansion to one bill, but the action was determined to be out of order and the issue did not arise again.

COVID-19 Response

- There are 2 main elements to the Legislature's actions regarding COVID response: limitations to the Governor's authority under the Emergency Management Act and establishing liability protections for businesses and healthcare providers.
- Conference Committee brief can be found here:
http://www.kslegislature.org/li/b2019_20/measures/documents/ccrb_hb2054_02_000_0.pdf

Governor's Authority

- Shifts oversight of federal and state COVID relief funds from the Governor to the Legislative Coordinating Council (LCC), made up of House and Senate leadership. The Legislative Budget Committee first makes recommendations to the LCC, who then has final approval.
- Governor must seek approval from the State Finance Council (SFC) before extending, or issuing a new, state of disaster emergency. The SFC is made up of House and Senate leadership and is chaired by the Governor.
- Authority of Local Officials:
 - Orders issued by a county health officer must be approved by the county commission.
 - Allows county commissioners to issue orders related to public health that contain provisions that are less stringent than a statewide executive order. A commission would have to justify their less stringent order, based upon advice from the local health officer or other local health officials, and that the statewide order is not necessary to protect the public health and safety of the county.
- First Responder Notifications: County health officer must share with law enforcement/first responders information including where an individual who has tested positive/quarantined for COVID resides. This is only to be used by law enforcement so they know to use PPE and follow proper safety guidelines in these situations.

Executive Orders

- Extends the EO regarding telemedicine to January 26th, 2021, or until the federal disaster declaration expires.
- Extends the EO regarding healthcare provider licensure. Allows PAs, APRNs, LPNs to provide appropriate healthcare services. Allows RNs and LPNs to practice with expired licenses to support COVID-19 response. Allows out-of-state healthcare providers to practice in Kansas. Allows nursing/medical students to practice as appropriate in response to COVID-19. In effect until January 26, 2021.

Liability Protections

- Includes both the language from Kansas Medical Society and Kansas Chamber providing liability protections for healthcare providers and businesses directly related to COVID-19.

- Healthcare providers are immune from civil liability for damages/penalties for acts, omissions, decisions, or the rendering/not rendering of healthcare services as a result of the COVID-19 state of emergency.
- Immunity does not apply for gross negligence or willful, wanton, or reckless conduct.
- Does not include premises owner liability provisions.

Hospitals

- Allows hospitals to use non-hospital space, including off-campus space, in the event they must accommodate a surge of COVID-19 patients.

The COVID response bill Senate Sub. for House Bill 2054 was written as a conference committee report rather than as a bill. Prior to the wrap-up session, several committees met and discussed various issues. Senate leadership drafted the proposal and it was not debated or subject to amendment in either chamber. The one-day wrap-up session limited the nature of debate that was allowed.

The Governor is considering a veto of the bill, which cannot be overridden because the 2020 legislature is adjourned. If the Governor vetoes the bill, the on-going management of some crisis management provisions (another proclamation beyond May 26th for example), may be limited by the Kansas Emergency Management Act.

Wrap Up

Interim Committee activities may begin to be discussed in a few weeks and any follow up to the Governor's actions on pending legislation will follow as needed.