

SESSION OF 2020

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2702**

As Agreed to May 21, 2020

Brief*

HB 2702, as amended, would establish new notice and public hearing requirements for certain taxing subdivisions, prohibit certain real property valuation increases, and provide a one-time delay in the deadline for payment of property taxes, enact the Taxpayer Protection Act, extend certain income and privilege tax filing and payment deadlines, authorize county treasurers to establish partial payments and establish payment plans for all property taxes, and provide for county discretion in handling *de minimis* property tax penalty charges.

The bill would be in effect upon publication in the *Kansas Register*.

Notice and Public Hearing Requirements

The bill would establish, beginning in 2021, new notice and public hearing requirements for certain taxing subdivisions prior to property tax increases above a revenue-neutral rate. The bill would not apply to school districts or to any taxing subdivisions receiving less than \$5,000 annually in property taxes.

On or before June 15 of each year, beginning in 2021, the bill would require county clerks to submit the revenue-

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neutral rate to all other taxing subdivisions at the same time estimated assessed valuation information is provided. "Revenue-neutral rate" would be defined to mean the tax rate for the current tax year that would generate the same property tax revenue as levied the previous tax year using the current tax year's total assessed valuation. The bill would require the Director of Accounts and Reports to modify budget information forms to show the revenue-neutral rate.

The taxing subdivisions affected by the bill would be prohibited from levying rates that exceed the revenue-neutral rates unless the taxing subdivisions have published notice on their websites of the proposed intent to exceed such rates and announcing a public hearing on such action. On or before July 15, the bill would also require governing bodies to notify county clerks of their intent to exceed revenue-neutral rates. County clerks subsequently would be required to notify each taxpayer with property in taxing subdivisions seeking to exceed such rates of the public hearings at least 10 days in advance of the hearings. The bill would require county clerks to send consolidated notifications for all taxing subdivisions relevant to a parcel of property *via* mail unless taxpayers and county clerks both have consented to service by electronic means. The bill would require all costs associated with notification requirements to be borne by taxing subdivisions seeking to exceed their revenue-neutral rates, with payment for such costs due to county clerks by December 31.

The bill would require, at public hearings required to be held on or before September 10, governing bodies to provide interested taxpayers an opportunity to present oral testimony within reasonable time limits and without unreasonable restriction on the number of individuals allowed to make public comment. At the conclusion of the public hearings, the bill would require a majority vote of governing bodies adopting resolutions or ordinances that approve exceeding the revenue-neutral rates, prior to adoption of proposed budgets resulting in a tax rate that exceeds the revenue-neutral rates.

The public hearings could be conducted in conjunction with other required budget hearings of the taxing subdivisions. Governing bodies taking such action would be required to submit on or before September 20 to each county clerk the amount of property taxes to be levied. Taxing subdivisions not complying with the notification and public hearing requirements outlined in the bill would be required to refund to taxpayers any over-collected property taxes.

The bill also would repeal, beginning in 2021, the current property tax lid law applicable to cities and counties (KSA 79-2925c).

Prohibited Valuation Increases

The bill would prohibit an increase in the appraised valuation of real property solely as a result of normal repair, replacement, or maintenance of existing improvements on the property.

Property Tax Payment Delay

The bill would prohibit interest from accruing on unpaid property tax for tax year 2019 from May 10, 2020, through August 10, 2020. The tax would not be considered delinquent for that time and counties would be required to waive any costs related to delinquent property tax collection charged to taxpayers prior to August 11, 2020.

The bill would also delay, for tax year 2019 only, the preparation of a list of real estate subject to sale due to delinquent taxes until after August 10, 2020, and the publication deadline of such list would be delayed until September 1, 2020. Real estate sales of property as a result of delinquent taxes in 2020 otherwise scheduled to occur on the first Tuesday of September would be scheduled to occur on or before the fourth Monday of October.

Taxpayer Protection Act

The bill would, on and after January 1, 2021, require paid tax return preparers to sign any income tax return prepared by or substantially prepared by the preparer and to include the preparer's federal preparer tax identification number on any such return. Any failure to do so would subject the preparer to a civil penalty of \$50 per return with a maximum of \$25,000 in civil penalties per preparer per year. Any civil penalties assessed could be appealed pursuant to the Kansas Administrative Procedure Act. Any penalties collected would be deposited in the State General Fund.

The bill would authorize the Secretary of Revenue (Secretary) to enjoin any person from acting as a paid tax preparer by seeking a temporary or permanent order from a court of competent jurisdiction enjoining such conduct. Under the bill, an injunction could be issued by a court if the preparer has engaged in any of the following conduct:

- Prepared a return that understates the taxpayer's liability due to an "unreasonable position," as that term is defined in the Internal Revenue Code;
- Prepared a return that understates the taxpayer's liability due to "willful or reckless conduct," as that term is defined in the Internal Revenue Code;
- Fails to, when required, furnish a signed copy of the return including the preparer's federal preparer tax identification number, retain a copy of the return, or be diligent in determining eligibility for tax benefits;
- Negotiates a check issued to the taxpayer by the Kansas Department of Revenue (KDOR) without the permission of the taxpayer;

- Engages in any conduct subject to any criminal penalty provided for in Chapter 79 of the *Kansas Statutes Annotated* or amendments thereto;
- Misrepresents the preparer's education, experience, or eligibility to practice tax preparation;
- Guarantees the payment of any tax refund or the allowance of any tax credit; or
- Engages in any other fraudulent or deceptive conduct that substantially interferes with proper administration of Kansas tax laws.

The bill would allow the Secretary to seek the assistance of the Attorney General or the Attorney General's designee in pursuing such injunctions, and the Secretary would be required to publish an annual report concerning such injunctions on the website of the KDOR.

Further, the bill would provide that any person, whether or not a resident of Kansas, submits to the jurisdiction of the courts of the State of Kansas for purposes of such injunctions by engaging in any conduct that could give rise to a cause of action under the Taxpayer Protection Act. The bill would provide that legal actions brought under the Act would be brought in the district court of Shawnee County. The Secretary would be permitted to enter into consent judgments with respect to violations of the Act in lieu of actions seeking injunctions.

Finally, the bill would authorize the Secretary to promulgate rules and regulations necessary to carry out the provisions of the Taxpayer Protection Act.

Filing and Payment Extension

The bill would extend, for tax year 2019, the deadline for filing income and privilege tax returns otherwise due April 15,

2020, through July 15, 2020, to July 15, 2020. The bill would also prohibit the imposition of penalty or interest associated with such returns if the liability is paid on or before July 15, 2020.

Property Tax Payment Plans and Partial Payments

The bill would authorize county treasurers to establish partial payments and establish payment plans for all property taxes. Current law grants treasurers authority to accept partial payment for delinquent property taxes.

County Discretion Concerning De Minimis Property Tax Penalty Charges

The bill would provide that counties have discretion in refunding, crediting, or retaining any penalties and interest charged to taxpayers between May 11, 2020, and the effective date of the bill that are rendered void by this act up to the amount of \$25.

Conference Committee Action

The Second Conference Committee agreed to:

- Remove the contents of HB 2702, as amended by the Senate Committee on Commerce;
- Insert the contents of HB 2466, as amended by the Senate Committee on Assessment and Taxation;
- Insert the contents of Senate Sub. for HB 2118, as recommended by the Senate Committee on Assessment and Taxation;

- Insert the contents of Sub. for HB 2607, as recommended by the House Committee on Taxation; and
- Insert provisions providing for county discretion concerning certain *de minimis* payments of charged property tax penalties.

Background

HB 2702, as amended by the Senate Committee on Commerce, would have decoupled the High Performance Incentive Program from the Kansas Industrial Training and Kansas Industrial Retraining programs.

HB 2466 (Taxpayer Protection Act; Filing and Payment Extension)

The bill was requested for introduction by Representative Gartner on behalf of H&R Block. In the House Committee on Taxation (House Committee) hearing on January 27, 2020, a representative of H&R Block provided proponent testimony. No other testimony was provided.

On February 3, 2020, the House Committee recommended the bill be placed on the Consent Calendar.

At the Senate Committee on Assessment and Taxation (Senate Committee) hearing, a representative of H&R Block provided proponent testimony. No other testimony was provided.

The Senate Committee amended the bill to insert the filing and payment extension provisions.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced (including only the Taxpayer Protection Act), the KDOR indicates the bill would

be expected to increase State General Fund receipts by a positive but indeterminate amount as a result of the fines. The KDOR also indicates any costs associated with implementation could be absorbed within existing resources. Both the Office of Judicial Administration and the Office of the Attorney General indicate the bill has the potential to increase court activity and litigation costs, but the agencies are unable to provide estimates on such impacts.

A fiscal note on the filing and payment extension provisions was not immediately available.

Any fiscal effect associated with enactment of HB 2466 is not reflected in *The FY 2021 Governor's Budget Report*.

Senate Sub. for HB 2118 (Notice and Public Hearing Requirements; Prohibited Valuation Increases; Property Tax Payment Delay)

The bill, as introduced, would have created income tax credits related to the aviation and aerospace industries. The Senate Committee on May 13, 2020, removed the contents of the bill; inserted the contents of SB 294 (as amended by the Senate Committee of the Whole), the contents of SB 295, and provisions delaying interest and fees for payments of real and personal property taxes; and created a substitute bill. The Senate Committee further amended the contents of SB 294 by changing the latest allowed date of the public hearing from September 15 to September 10, requiring consolidated notices from county clerks, and adopting technical amendments. Background information for SB 294 and SB 295 is provided below.

A fiscal note on the provisions of the bill delaying property tax interest and fees was not immediately available.

SB 294 (Notice and Public Hearing Requirements)

The bill was introduced by Senators Tyson, Alley, Braun, Estes, Goddard, Hilderbrand, Kerschen, Longbine, Lynn, Masterson, Olson, Petersen, Thompson, Wagle, and Wilborn.

In the Senate Committee hearing on February 7, 2020, representatives of Americans for Prosperity, Kansas Association of Realtors, Kansas Chamber, Kansas Farm Bureau, and Kansas Policy Institute, and a Linn County Commissioner, appeared as proponents. Proponents stated the bill's provisions would improve property tax transparency and accountability and noted the legislation generally was patterned after a Utah law that has been in place since the 1980s.

Representatives of the City of Lenexa, Kansas Association of Chiefs of Police, Kansas Association of Counties (KAC), Kansas Association of School Boards, Kansas Sheriffs Association, League of Kansas Municipalities (LKM), and Unified Government of Wyandotte County and Kansas City, Kansas, appeared in opposition. Opponents also included the Andover Fire Chief, Andover City Council President, Atchison Director of Administration Service, McPherson Police Chief, McPherson Fire Chief, Riley County Counselor, and Shawnee County Counselor. Opponents cited several concerns with the bill, including the potential costs that could be incurred by the affected taxing subdivisions.

Additional written-only testimony was submitted by several proponents, opponents, and neutral parties.

On February 13, 2020, the Senate Committee amended the bill to delay its implementation until 2021 while clarifying the revenue-neutral levy computation and a number of statutory timelines local officials would be required to follow, increase from \$5,000 to \$20,000 the level of annual property taxes below which taxing subdivisions would not be required to be subject to the bill's provisions, exclude school districts from the bill's provisions, and repeal the current tax lid law.

On February 25, 2020, the Senate Committee of the Whole amended the bill to clarify that county clerks be reimbursed for notification costs by December 31 of each year from those taxing subdivisions seeking to exceed revenue-neutral rates, to decrease from \$20,000 to \$5,000 the level of taxes below which taxing subdivisions would not be subject to the bill's provisions, and to remove a requirement for notice in official county newspapers.

A fiscal note on SB 294, as amended, was not immediately available.

SB 295 (Prohibited Valuation Increases)

The bill was introduced by Senators Tyson, Alley, Braun, Estes, Goddard, Hilderbrand, Longbine, Lynn, Masterson, Olson, Petersen, Thompson, Wagle, and Wilborn.

In the Senate Committee hearing, testimony in support of the bill was offered by a representative of the Kansas Policy Institute. Written-only proponent testimony was offered by the Kansas Agribusiness Retailers Association, Kansas Association of Wheat Growers, Kansas Grain and Feed Association, Kansas Soybean Association, and Renew Kansas Biofuels Association. Opponent testimony was provided by representatives of the KAC and the LKM. Neutral testimony was provided by representatives of the Property Valuation Division of the KDOR and the Kansas County Appraisers Association.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the KDOR estimates enactment of the bill has the potential to decrease property tax revenues by a negligible amount. The KAC and the LKM indicate enactment of the bill has the potential to reduce the amount of local property tax revenues collected, but they are unable to make a precise estimate of the fiscal effect on local governments. Any fiscal effect associated with enactment of

SB 295 is not reflected in *The FY 2021 Governor's Budget Report*.

Sub. for HB 2607 (Property Tax Payment Plans and Partial Payments)

The bill was introduced by the House Committee at the request of Representative Kelly on behalf of the cities in Montgomery County. As introduced, the bill would have established specific guidelines for counties seeking to authorize installment payment plans for residential property

In the House Committee hearing on February 20, Representative Kelly appeared as a proponent, as did a representative of the League of Kansas Municipalities and the Caney City Administrator. A representative of the KAC and the Riley County Treasurer appeared in opposition. Written-only testimony in opposition was submitted by the Kansas County Treasurers Association. No neutral testimony was provided.

On February 24, 2020, the House Committee amended the bill to remove its original provisions and to expand the authority of county treasurers in current law to allow for property tax partial payments and payment plans. The House Committee recommended a substitute bill be created.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the KDOR indicates the agency does not anticipate any impact on the amount of property taxes collected but noted that the timing could be affected.

County Discretion Concerning De Minimis Property Tax Penalty Charges

The language concerning county discretion related to *de minimis* property tax penalty charges was presented to the

Conference Committee by Representative Johnson, who indicated that several counties had requested such discretion. Senator Tyson noted that counties had requested such discretion to her.

taxation; property tax; income tax

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