

Committee Reports to the 2018 Kansas Legislature



Supplement

**Kansas Legislative Research Department
February 2018**

2017 Legislative Coordinating Council

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Supplement

Special Committee on Commerce
Special Committee on Elections
Special Committee on Natural Resources



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Foreword

This publication is the supplement to the *Committee Reports to the 2018 Legislature*. It contains the reports of the following committees: Special Committee on Commerce, Special Committee on Elections, and Special Committee on Natural Resources.

This publication is available in electronic format at <http://www.kslegresearch.org/KLRD-web/Publications.html>.

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Summary of Conclusions and Recommendations

Special Committee on Commerce

The Committee recommended Sales Tax and Revenue (STAR) Bonds be further studied. Any new legislation should be focused towards reforming the program so it returns to its original goal: increase economic development with an emphasis on major, destination tourism.

The Committee concluded the State must determine whether initiatives and incentives, specifically tax expenditures, are accomplishing their intended goals. The Committee recommended the Senate Committee on Commerce and the House Committee on Commerce, Labor and Economic Development meet jointly to further discuss the matter of evaluations. The Committee further recommended a joint subcommittee be appointed to develop legislation that will allow for a routine, regular evaluation of initiatives and incentives. Finally, the Committee recommended the resources and technical expertise of The Pew Charitable Trusts be used to develop a new evaluation policy.

Special Committee on Elections

The Committee recommended no changes be made to Kansas law to implement a ranked choice voting system.

Special Committee on Natural Resources

The Committee recommended the Legislature fully fund the \$8.0 million statutory transfer to the State Water Plan Fund, including \$6.0 million from the State General Fund and \$2.0 million from the Economic Development Initiatives Fund. In addition, the Committee recommended the introduction of legislation calling for a legal study of the water laws of the state.

Report of the Special Committee on Commerce to the 2018 Kansas Legislature

CHAIRPERSON: Senator Julia Lynn

VICE-CHAIRPERSON: Representative Les Mason

OTHER MEMBERS: Senators Tom Holland and Gene Suellentrop; and Representatives J. R. Claeys, Bradley Ralph, and Jerry Stogsdill

STUDY TOPIC

The Committee is to study the effectiveness of the Sales Tax and Revenue (STAR) Bond Financing Act and other incentive programs with a similar purpose, as identified by the Committee, and may make any recommendations to ensure Kansas continues to provide a framework for future economic growth.

Special Committee on Commerce

REPORT

Conclusions and Recommendations

The Committee recommends STAR Bonds be further studied. Any new legislation should be focused towards reforming the program so that it returns to its original goal: increase economic development geared towards major, destination tourism. Other non-retail sources of revenue may have to be utilized to finance future STAR Bonds.

The Committee concludes the State must determine whether initiatives and incentives, specifically tax expenditures, are accomplishing their intended goals. It is important for the State to set up a process for regular evaluation of economic development initiatives and tax incentives. The Committee recommends the Senate Committee on Commerce and the House Committee on Commerce, Labor and Economic Development meet jointly to further discuss the matter of evaluations. The Committee further recommends a joint subcommittee be appointed to develop legislation that will allow for a routine, regular evaluation of initiatives and incentives. An outline for the proposed legislation is detailed in this report. Finally, the Committee recommends the resources and technical expertise of the Pew Charitable Trusts be used to develop a new evaluation policy.

Proposed Legislation: None

BACKGROUND

The Legislative Coordinating Council appointed a Special Committee on Commerce and charged it to study the effectiveness of the Sales Tax and Revenue (STAR) Bond Financing Act and other incentive programs, as identified by the Committee, and to make any recommendations to ensure Kansas continues to provide a framework for future economic growth. The Committee was granted two meeting days.

COMMITTEE ACTIVITIES

The Committee met on December 5 and 6, 2017, to discuss STAR Bonds, community improvement districts (CIDs), transportation development districts (TDDs), and the evaluation of tax expenditures and economic development incentives.

STAR Bonds

Staff from the Kansas Legislative Research Department (KLRD) and the Office of Revisor of Statutes briefed the Committee on STAR Bonds, which is a form of tax increment financing (TIF) that allows city governments to issue special revenue bonds that are repaid by the revenues received by the city or county from incremental increases in transient guest taxes, local sales taxes, and use taxes collected from taxpayers doing business within the designated portion of the city's STAR Bond district. Unlike traditional TIF financing, which does not involve state resources, all or a portion of the increased state sales and use tax revenue also may be used to repay the bonds, which typically have a 20-year repayment period.

The following types of projects may use STAR Bond financing:

- A project with at least \$50.0 million in capital investment and \$50.0 million in projected gross annual sales;
- A project located outside of a metropolitan statistical area that has been found by the Secretary of Commerce (Secretary) to be eligible under TIF law and of regional or statewide importance;
- A major commercial entertainment and tourism area as determined by the Secretary;
- Auto racetrack facilities, multi-sport athletic complexes, river walk canal facilities, historic theaters, the Manhattan Discovery Center, the Wyandotte County Schlitterbahn project, museum facilities, or a major motorsports complex in Shawnee County; or
- A project involving buildings 65 years old or older and including contiguous lots that are vacant or condemned.
- Concerning cannibalism by retail in the STAR Bond district, a restriction on “box stores” or “anchor stores” locating within a specified mile radius of the STAR Bond district;
- Concerning project costs, remove landscaping from the list of allowable STAR Bond expenses;
- Concerning the need for the definition of a “tourist,” a “tourist” is a person traveling for pleasure, culture, or for regional sports competition. For cities with over 50,000 population, a tourist must travel over 100 miles. For cities with under 50,000 population, a tourist must be from over 50 miles. This would encourage a larger fiscal benefit with probable overnight stays. Smaller communities would need different thresholds;
- Concerning feasibility and market studies, consideration be given for the studies to be commissioned by the Department of Commerce (Department) but paid for by the developer;

The law allows the governing body of a city to establish one or more special bond districts with the written approval of the Secretary, based on a feasibility study.

Reauthorized in 2017, the authority to issue debt pursuant to the STAR Bond Financing Act will sunset on July 1, 2020. During FY 2018, there is a 12-month moratorium on the approval of new STAR Bond districts, but cities with existing districts may continue to develop projects.

Administration of STAR Bonds

Representatives from the departments of Commerce and Revenue briefed the Committee on their roles in the administration of STAR Bonds. The Interim Secretary of Commerce, explaining that the program remains a valuable tool to metropolitan areas and rural communities, suggested a series of reforms that could address several expressed concerns:

- Concerning the statutory list of eligible projects, current approved projects should be grandfathered in, but future projects must fit the definitions of a tourist destination to qualify;
- Concerning local input, the Department could require a letter of support (or non-support) from the local tourism marketing organization, stating whether the project is a tourist destination. This could be done by Department policy or statute; and
- Concerning proportional fiscal commitment from the State and community, if a community pledged a portion of sales tax or transient guest tax to STAR Bonds, then the State would offer the same proportion, which could be accomplished by Department policy or statute.

Once bonds have been approved, the Kansas Department of Revenue (KDOR) administers the collections of pledged taxes based on the tax distribution agreement (TDA) approved by the municipality, trustee, State Treasurer, and the escrow agent. The TDA specifies the tax revenues committed to the project by the municipality, the tax baseline amount (if any), and the time periods established for collection. If a district contains existing businesses, a tax baseline will need to be established. KDOR works with the city to determine the businesses located within the district during the baseline period. Historic sales tax returns are utilized to determine the amount of sales taxes collected during the baseline period by the identified businesses. The base year is considered to be the 12-month period immediately prior to the month in which the STAR bond district was approved by the Secretary. Certification of the state and local baseline amounts are included in the TDA. For all projects with a baseline, the base amount must be paid to the State each year, with the year beginning January 1, before applicable state and local taxes will be set aside for payment of bonds. Publication of a new STAR Bond district follows the same time table as a local sales tax. Sales tax rates can be imposed, changed, or repealed on the first day of each calendar quarter: January 1, April 1, July 1, and October 1. Ninety-day prior notification is required for all sales tax rate or addressing changes, with the changes published at least 60 days prior to change.

KDOR currently administers 11 active STAR Bond projects. In the most recently completed fiscal year, FY 2017, the State remitted over \$35.0 million in sales and use tax revenues back to communities. Since the inception of STAR Bonds, the State has distributed \$557.4 million.

History of Sales Tax Revenue, FY 1997-FY 2017

Staff from KLRD briefed the Committee on the history of sales and use tax revenue over the past 20 years from FY 1997 through FY 2017. Twenty years ago, sales and use tax collections were normally expected to grow by 3.0 percent or greater; in the past five years, however, annual revenue growth has averaged approximately 2.6 percent. Twenty years ago, sales and use tax collections accounted for approximately 39.0

percent of the revenues to the State General Fund; now they provide nearly 46.0 percent of the revenues.

Newly Proposed STAR Bond Districts or Projects

A representative of the City of Atchison provided an overview of Atchison's proposed STAR Bond project, which includes \$2.0 million in proposed STAR Bond financing that will support the development of a tourist attraction, the last remaining Lockheed Electra L-10E aircraft, the same model Amelia Earhart flew on her final flight. The plane was the catalyst for pursuing STAR Bond funding to develop an aviation museum at the Amelia Earhart Airport. In addition to showcasing the plane, the museum will offer displays and exhibits focused on history, aviation, and Amelia Earhart. The museum will provide programming in science, technology, engineering, and math education, creating a regional draw for school groups. The draft feasibility study estimates the museum will draw 11,500 visitors annually, and increase the visitors to Atchison's other attractions by 25.0 percent. Although the \$10.5 million project is considerably smaller than any existing STAR Bond project, the total planned district investment of nearly \$21.0 million will impact the community, and economic benefits will be experienced across the state.

Atchison's STAR Bond project also includes installation of shelters at the Atchison Farmer's Market and other downtown improvements, which will capitalize on both the new visitors generated by the museum and the growing agritourism opportunities in the region. The shelters will make the market a regional attraction, extend the market's season to nine months, attract more vendors, and allow the market to host more events.

The draft feasibility study estimates the three primary sources of STAR Bond debt repayment (a hotel, restaurant, and museum) should generate \$73.0 million in taxable sales and provide \$5.95 million in revenues available for debt repayment over 20 years. The construction and annual operation of these investments will have a substantial impact on both the state and local economies. The study estimates \$25.0 million in economic output, 166 full-time equivalent jobs,

and \$7.5 million in additional earnings during the construction phase. The state economic impact of annual operations is estimated at \$6.0 million in additional economic output, \$1.7 million in additional earnings, and 57 new full-time jobs.

Community Improvement Districts and Transportation Development Districts

Staff from KLRD and the Office of Revisor of Statutes briefed the Committee on the CID Act, which is designed to promote and support economic development, including tourism and cultural activities, and the TDD Act, which provides financing for transportation-related projects.

The CID Act provides authority for a local sales tax of up to 2.0 percent to be imposed on the sales by retail businesses located within those districts in order to fund the costs for commercial development or redevelopment projects in the district. The total number of CIDs has grown to 123, and likely will continue to grow as this program is popular with municipalities and developers. In FY 2017, KDOR distributed over \$11.8 million in CID sales tax revenues to finance CID projects. The law allows 2.0 percent of the CID taxes collected, up to \$200,000 per fiscal year, to be used by KDOR to defray administration and enforcement expenses.

The TDD Act provides authority to municipalities for a 1.0 percent local sales tax. Currently, there are 36 TDDs. During FY 2017, almost \$10.0 million in TDD sales tax revenue was distributed to finance TDD projects. Since the creation of the CID Act, creation of new CIDs has outpaced the creation of new TDDs.

KDOR administers the collection of sales taxes for CIDs and TDDs. The notification process of a new CID or TDD follows the same publication time table as local sales tax rates. Sales tax rates can be imposed, changed, or repealed on the first day of each calendar quarter: January 1, April 1, July 1, and October 1. Prior notification of 90 days is required for all sales tax rate or addressing changes, with the changes published at least 60 days prior to the change.

KDOR works with a city to identify the address range encompassing a district. Once the district's addressing has been determined, a unique five-character jurisdiction code is assigned to the district by KDOR so the collected taxes can be properly distributed. Jurisdiction codes are included on all sales tax returns to indicate where the tax was collected. KDOR's Accounting Division further breaks down the jurisdiction code into new entity codes for the district and incorporates them into the accounting system so all funds are distributed correctly. Existing businesses in the district are identified, and KDOR Customer Relations labels the business' sales tax account with the new jurisdiction code to assist in determining if the businesses are remitting sales tax collections to the proper jurisdiction. KDOR's online address directory system is updated so businesses and consumers can obtain the correct sales tax rate and code for the district. Streamlined sales tax systems are updated so that businesses using the streamlined system are reporting correctly. The KDOR website and Customer Service Center must be updated to provide notification of the new rates. Once the district is established, the KDOR Accounting Division processes distributions for the district on a monthly basis.

A representative of KDOR noted a CID, in a few instances, has encompassed a single business establishment. Often times once a STAR Bond district is created, overlapping CIDs or TDDs are created. There are 17 CIDs and TDDs that overlap STAR Bond districts.

Evaluation of Tax Credits

Staff with the Legislative Division of Post Audit (LPA) briefed the Committee on a recently completed audit focused on the evaluation of Kansas tax credits and exemptions compared to other states. The State forgoes about \$6.0 billion each year through tax credits and exemptions. Most of this forgone revenue stems from exemptions and credits required by federal law or the *Kansas Constitution*, or to avoid double taxation. However, many tax credits and exemptions are policy choices intended to influence taxpayer behavior. Two agencies are primarily responsible for administering the State's tax credits and exemptions. KDOR administers

nearly all tax credits in Kansas, estimates the value of sales tax exemptions, and collects property tax exemption data. The Kansas Insurance Department tracks information on tax credits that are claimed by insurance companies.

According to The Pew Charitable Trusts (Pew), Kansas trails other states in following best practices for evaluating tax incentives. A Pew report, published in May 2017, identified best practices for state tax incentive evaluation, which included formal evaluation policies, evaluations that address economic impact, and lawmaker review of evaluation results. Pew compared each state's tax incentive evaluation process to these best practices and determined Kansas was in the lowest performance category.

Between KDOR and the Kansas Insurance Department, the State has a comprehensive inventory of all available tax credits and exemptions. However, Kansas does not have a formal policy to require any state agency to routinely evaluate the State's major tax incentives. The limited evaluations that are conducted do not necessarily address the cost or economic impact of tax incentives. At least three agencies—the State Historical Society, KDOR, and LPA—conduct limited or *ad hoc* assessments related to tax incentives. Kansas does not have formal processes to ensure lawmakers consider the results of tax incentive evaluations. However, KDOR does provide basic tax incentive information to the Legislature, and legislative committees receive LPA reports on tax incentives. Several other states, including Kansas' neighbors, meet many of Pew's best practices. According to the Pew report, Indiana, Iowa, Nebraska, Oklahoma, and Washington are "leading" states, while Colorado and Missouri are classified as "making progress." Each of these states has formal policies that require regular, systematic evaluation of all major tax credits and exemptions, and most regularly evaluate the costs and economic impacts of tax incentives. Most of these states have formal processes in place to ensure lawmakers consider the results of tax incentive evaluations.

A representative of Pew Trusts, which is a public charity that provides research and technical assistance to governments at the local, state, and federal levels, said lawmakers across the country are looking for ways to create jobs, raise wages,

and help the local economy thrive long-term. Tax incentives are one of the primary tools that states and communities use to achieve these goals. These incentives also cost state and local governments an estimated \$45.0 billion, annually.

In many states, incentives were created as permanent parts of state law. While lawmakers regularly debate spending for government functions, incentives often have not been part of the conversation. Since the start of 2012, more than 20 states have enacted laws either requiring evaluation of tax incentives or improving existing evaluation requirements. In 2015 and 2016, 13 states approved such laws.

In Pew's recent report, "How States Are Improving Tax Incentives for Jobs and Growth," it found ten states had well-designed plans for regular reviews, experience producing quality evaluations, and a process for informing policy choices. An additional 17 states and the District of Columbia are making progress in this area. Many of these states have approved laws requiring evaluation and are working on implementation.

Pew has identified key considerations and promising practices for evaluating tax incentives effectively. There are three steps a state can take, which makes it more likely that lawmakers will have consistent high-quality information that they will use to improve the effectiveness of those programs. At a minimum, states should evaluate all major economic development tax incentives. The first step is to make a plan. The second step is to measure the impact of incentives. The third step is to inform policy choices. It is also important to set a review schedule. Next, it is important to determine who will conduct the analyses. The ideal evaluation office has several key traits: it has a non-partisan independent perspective, relevant expertise, and the authority to make recommendations about policy. The most common approach is to use legislative evaluation or audit functions.

Once a plan is in place, the next step is for the evaluations themselves to measure the impact of incentives. Evaluations typically include information on the results of incentives on both state budgets and economies. Evaluations explain the findings and place them in context. By

carefully examining the design and administration of incentive programs, along with the economic results, states have drawn valuable conclusions about what is and what is not working.

Once conclusions are drawn, the final step is to connect the findings to the policy-making process. Tools and approaches for accomplishing this goal include: legislative hearings, sunset dates, and executive recommendations. A common approach among states that regularly evaluate incentives is to designate a specific legislative committee to hold hearings and determine whether policy changes are needed.

Other Conferees

The Committee received testimony from economic development professionals and business executives who spoke predominantly about STAR Bonds. A key concern for bond investors is the timeliness of the completion of the project and the reliability of the tenants. Institutional investors understand the risks and are willing to accept them due to higher interest rate expectations. It is common for bond financing to take place at the end of the completion of the project or after the project has been open for a period of time to determine its viability. There is value in having the developer purchase some of the bonds as it provides an incentive for the developer to have a successful project.

The retail trade is changing at a pace faster than ever before. Brick-and-mortar retail development and redevelopment is slowing and cannot be expected to drive sales taxes and property taxes in the future. As sales decline, so does a retailer's ability to pay rent. Retailers budget for new stores so that their first business year will be their best, and sales will decline slightly every year thereafter. It is difficult to redevelop older retail centers due to the cost of meeting new building codes. New development projects will need to be mixed use, including retail, entertainment, offices, or apartments.

Another developer noted that if the right destination is created, it can draw visitors from all over the nation. The future of retail is to create unique experiences for customers, especially young people.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends STAR Bonds be further studied. Any new legislation should be focused towards reforming the program so that it returns to its original goal: increasing economic development geared towards major, destination tourism. Unlike the past 20 years, where retail tourism has served as the economic engine that financed the payment of STAR Bonds, the Committee believes the evolution from brick-and-mortar stores to online retail will continue to diminish state sales and use tax revenues. They will grow at a slower pace and may not be as reliable in the future to finance STAR Bonds. Other non-retail sources of revenue may have to be utilized to finance STAR Bonds.

The STAR Bond Financing Act is just one facet of the economic development initiatives and incentives of the State. The Committee concludes it is necessary for the State to determine whether initiatives and incentives, specifically tax expenditures, are accomplishing their intended goals. It is important for the State to set up a process for regular evaluation of economic development initiatives and tax incentives. Evaluations can provide information about the fiscal and economic impacts, including whether the policy is successfully influencing economic behavior. These studies can also uncover flaws in the design or administration of those policies, recommending improvements that that can help promote economic growth.

The Committee recommends the Senate Committee on Commerce and the House Committee on Commerce, Labor and Economic Development meet jointly to further discuss the matter of evaluations. The Committee further recommends a joint subcommittee be appointed to develop legislation that will allow for a routine, regular evaluation of initiatives and incentives. That proposed legislation should:

- Identify major economic development initiatives and tax credits and exemptions that would be reviewed on a predetermined multi-year schedule;
- Assign one or more state agencies to conduct the evaluations;

- Compare the impacts of the initiatives and incentives on the economy and taxpayer behavior to the public costs; and
- Require appropriate legislative committees to consider evaluation results as part of their policy decisions.

Finally, the Committee recommends the resources and technical expertise of the Pew Charitable Trusts be used to develop a new evaluation policy.

Report of the Special Committee on Elections to the 2018 Kansas Legislature

CHAIRPERSON: Representative Keith Esau

VICE-CHAIRPERSON: Senator Elaine Bowers

OTHER MEMBERS: Senators Oletha Faust-Goudeau and Steve Fitzgerald; and Representatives Vic Miller, Jack Thimesch, and John Whitmer

STUDY TOPIC

Study and Make Recommendation Regarding Ranked Choice Voting

The Committee is to study, review, and make recommendations regarding the implementation of a ranked choice voting system, in which the winner of the election must receive a majority (not just a plurality) of the votes.

Special Committee on Elections

REPORT

Conclusions and Recommendations

The Committee recommends that no changes be made to Kansas law concerning the implementation of a ranked choice voting system.

Proposed Legislation: None

BACKGROUND

The Legislative Coordinating Council (LCC) directed the Committee to study, review, and make recommendations regarding the implementation of a ranked choice voting system, where the winner of the election must receive a majority (not just a plurality) of the votes.

The Committee was granted one meeting day by the LCC and met on October 26, 2017, at the Statehouse.

COMMITTEE ACTIVITIES

The Committee held an all-day meeting on October 26, 2017. During the meeting, the Committee heard testimony from a variety of interested parties and asked questions of conferees concerning the topic of ranked choice voting. Major topics from the testimony are described below.

How Ranked Choice Voting Works

A staff member of the National Conference of State Legislatures (NCSL) explained the basic principle behind ranked choice voting (RCV) is voters rank all of the candidates for an office on a single ballot. Once the initial first-choice votes are tabulated, if none of the candidates receives a majority (more than 50.0 percent) of the vote, the candidate with the lowest number of votes is eliminated. Another round of vote counting

follows, and any ballots selecting the eliminated candidate as a first choice are now counted based on the voter's second choice candidate. This process is repeated until one candidate receives a majority of the votes. A representative of the Ranked Choice Voting Resource Center (RCVRC) added that ballots are not discarded or "exhausted" unless the voter stops ranking candidates. For example, if a voter selected only a first choice candidate, that ballot would be exhausted after the first round vote tabulation if that first-choice candidate received the lowest number of votes and was eliminated.

Current Uses of RCV

Conferees appearing before the Committee indicated jurisdictions using RCV chose to do so for reasons listed below as potential benefits.

The conferees stated RCV is currently used in 11 cities in the United States, including Oakland and San Francisco, California; Portland, Maine; Cambridge, Massachusetts; and Minneapolis and St. Paul, Minnesota. RCV is also used in certain elections in Australia, India, and Ireland.

Several conferees also noted RCV could be especially helpful for overseas military ballots in runoff elections. Allowing those voters to rank candidates on one ballot ensures their votes are received by election officials within the short time frame of runoff elections. (*Note:* Kansas does not hold runoff elections.)

A representative of FairVote indicated RCV can also be used in elections with more than one winner, such as city council or board elections, to ensure a majority of votes elect a majority of the open seats.

Potential Benefits of RCV

Conferees generally stated the following benefits of RCV:

- Promoting fairness in elections and election results by ensuring elected officials have the support of the majority of voters;
- Reducing election costs by combining the primary and general election into a single election, eliminating the primary;
- Shortening campaign time by eliminating primary campaigns;
- Increasing voter turnout by eliminating primary elections;
- Eliminating political division caused by the traditional primary election campaign process;
- Providing more choices for voters on election ballots;
- Addressing concerns about fair ballot access for minority party candidates;
- Encouraging civil and positive elections by reducing divisive campaign tactics;
- Forcing candidates, parties, and political action committees (PACs) to engage all voters;
- Making elections more focused on issues than on polling data;
- Empowering voters to express their true preferences without fear of the spoiler effect;

- Providing more accountability and transparency in election results, as tabulation data can be reviewed and sorted easily;
- Ensuring the overseas military ballots are counted;
- Requiring voters go to the polls once and elect a candidate at every election;
- Allowing voters' preferences to be considered, even after their first choice candidate is eliminated;
- Increasing competition in elections;
- Providing more choices for voters, particularly minority party voters;
- Increasing voters' happiness with the choices they make; and
- Empowering people to vote.

Potential Challenges of RCV

Conferees generally stated the following challenges for RCV:

- There can be some difficulty in understanding RCV ballots;
- There can be a lack of understanding of controversial or surprising outcomes, where a less-favored candidate wins an election;
- Due to the compressed timeline of RCV, voters might change their minds about a candidate after casting their votes, in response to new information or opinions;
- Most voting machines are not currently equipped with software to process RCV ballots and there would be a cost to update voting infrastructure to be compatible with RCV;

- There would be a cost to election clerks and poll workers to help voters with a new voting system;
- RCV could potentially increase voting time and depress voter turnout;
- RCV is more complex than traditional voting methods;
- Voters would not immediately know the results of elections if multiple rounds of tabulation were required;
- RCV increases the chance of tie votes, resulting in litigation;
- RCV increases the chances of spoiled ballots, ballot mistakes, and incomplete ballots, but ballot errors have not been found to increase significantly with RCV; and
- RCV could make determining voter intent more difficult.

Maine’s 2017 Attempt to Implement RCV

Several conferees provided information about RCV in Maine.

Maine has a history of multiple candidates running for a single office and electing officials with only a plurality of votes, and, as a result, the State has considered the topic of RCV for many years. The first bill on RCV was introduced in 2001 and similar legislation has been introduced almost every biennium since. Between 2003 and 2012, support for RCV grew, and more detailed RCV legislation was proposed and considered. In 2008, the League of Women Voters in Maine looked at ways to handle the large number of candidates running for single offices and ultimately endorsed RCV. More recently, a grassroots movement presented a petition to enact RCV to the voters in 2014, and 40,000 signatures were collected.

RCV was implemented by the voters during the 2016 Legislative Session, receiving 53 percent of the vote. Constitutional issues were raised, and the Maine Supreme Court offered an opinion stating RCV was not in compliance with the *Maine Constitution*, which specifically states statewide officials can be elected by a plurality of votes. More recently, questions have arisen concerning constitutional provisions requiring votes to be counted publicly in the district where they were cast, and other questions about what happens in the event of a tie vote.

A Special Session was held in October 2017, where a bill delaying implementation of RCV until 2021 was passed by the Legislature. This was to allow time for consideration of a constitutional amendment to allow RCV. In Maine, constitutional amendments are allowed only through legislative initiative, not by petition. If the Legislature fails to pass a constitutional amendment, then, according to the October 2017 legislation, the original law will be repealed.

Alternatives to RCV

The NCSL staff member explained, and other conferees discussed, four alternative voting methods: approval voting, proportional voting, primary runoff elections, and top-two primaries.

Approval Voting

Approval voting involves compiling a list of all candidates and having voters select those candidates of which they approve. The winner or winners of the election would be those with the most approval votes.

Proportional Voting

Proportional voting uses multi-member districts, and elects several people, rather than a single individual, to represent each district. Seats in these multi-member districts are divided among the parties according to the proportion of votes received by the various parties or groups running candidates. There are several variations of proportional representation, but none is widely used in the United States.

Primary Runoff Elections

Primary runoff elections are a second primary election held when none of the candidates in the first primary election receives a majority of votes. Ten states use primary runoff elections. The details and format of these elections varies widely from state to state.

Top-two Primaries

In top-two primaries, all of the candidates, no matter their party affiliation, are listed on a single ballot. The two candidates who receive the most votes then go on to the general election, regardless of their party affiliation. This system would allow

two candidates from the same party to go on to the general election.

CONCLUSIONS AND RECOMMENDATIONS

The Committee members noted no changes to law would be needed to allow municipalities to implement RCV for their non-partisan elections.

Following discussion, the Committee recommended no changes be made to Kansas law concerning the implementation of a ranked choice voting system.

Report of the Special Committee on Natural Resources to the 2018 Kansas Legislature

CHAIRPERSON: Representative Tom Sloan

VICE-CHAIRPERSON: Senator Dan Kerschen

OTHER MEMBERS: Senators Rick Billinger (replacing Bud Estes) and Marci Francisco; and Representatives Doug Blex, Ken Rahjes, and Ponka-We Victors

STUDY TOPIC

Study and Make Recommendations Regarding the Funding of the State Water Plan Fund

The Committee is directed to:

- Review current and historical State Water Plan funding, projects, and recommendations of the Governor's Blue-Ribbon Water Funding Task Force;
- Discuss possible funding options based on statewide needs, priorities, and realistic funding options with agency officials, stakeholders, and interested members of the public; and
- Propose introduction of legislation for the 2018 Session.

Special Committee on Natural Resources

REPORT

Conclusions and Recommendations

The Committee recommends the Legislature fully fund the \$8.0 million statutory transfer to the State Water Plan Fund, including \$6.0 million from the State General Fund and \$2.0 million from the Economic Development Initiatives Fund.

Proposed Legislation: The Committee recommends the introduction of legislation calling for a legal study of the water laws of the state.

BACKGROUND

The Legislative Coordinating Council (LCC) appointed a Special Committee on Natural Resources, comprised of seven members. The Committee was tasked by the LCC to study and make recommendations regarding the funding of the State Water Plan Fund. The Committee was directed to:

- Review current and historical State Water Plan funding, projects, and recommendations of the Governor's Blue-Ribbon Water Funding Task Force;
- Discuss possible funding options based on statewide needs, priorities, and realistic funding options with agency officials, stakeholders, and interested members of the public; and
- Propose introduction of legislation for the 2018 Session.

The Committee was granted two meeting days by the LCC.

COMMITTEE ACTIVITIES

The Committee held all-day meetings on October 31 and November 13, 2017, at the Statehouse.

October 31, 2017

Kansas Water Law and Water Rights

The Committee received an overview of the legal history of water rights in Kansas by an Associate Professor of Law at Washburn University. The Professor explained that, prior to 1945, groundwater in Kansas was relatively unimportant and water law was based on English and American common law and the Prior Appropriation doctrine. In the 1940s, however, the U.S. Supreme Court and Kansas Supreme Court heard several cases that made clear Kansas water law was not sufficient to regulate groundwater pumping, which was becoming prevalent.

In response to the courts' rulings, a committee was formed to recommend reforms to Kansas water law. Those recommendations became the Kansas Water Appropriation Act (KWAA). The KWAA dedicates the waters of the State to the public; outlines jurisdiction and power of the Chief Engineer; and provides for the Water Law Doctrine, including how new water rights are granted, how to change existing water rights, and how to administer rights in times of shortage.

The Professor explained a Kansas water right is a vested right or an appropriation right under which a person may lawfully divert and use water. In Kansas, a water right is a real property right. In addition, the Professor detailed the attributes of a

Kansas water right, including priority, authorized quantities, place of use, point of diversion, and the type of use made of water.

The Professor reviewed laws enacted since 1972 that have attempted to address the problem of groundwater depletion, including the Groundwater Management District Act; Intensive Groundwater Use Control Areas; Local Enhanced Management Areas; Multi-year Flex Accounts; and Water Conservation Areas. The Professor also highlighted the State Water Plan Storage Act and Water Assurance Program Act, which allow for storage capacity in federal reservoirs.

The presentation to the Committee concluded with several questions posed to the Committee, including:

- Should the Legislature impose upon the Division of Water Resources, Kansas Department of Agriculture, and the Chief Engineer the explicit duty to preserve and conserve, or both, the water resources in Kansas?;
- Should the State reconsider the public and private value of water stored in federal reservoirs?; and
- Should the State commission another legal study of Kansas water law and its problems, as occurred in 1945, 1957, and 1978?

Presentations by State Agencies

Kansas Water Office

The Assistant Director, Kansas Water Office (KWO), provided an overview on the agency's funding and reported on the recommendations from the Governor's Blue-Ribbon Task Force. The Assistant Director explained agency funding includes local, state, and federal sources from a variety of entities; however, the State is not carrying its fair share, an assertion he illustrated with various data and statistics. The Assistant Director also discussed the relationships and coordination among different agency programs regarding water. Finally, he detailed the future use storage in U.S. Army Corps of Engineers

reservoirs in the State and the estimated cost to call this storage into use in 2017.

The Executive Director, KWO, explained how the wise use of data and technologies helps monitor water use and measure the economic impact of water conservation initiatives. He explained it is difficult to implement strategies in the State with such varied stakeholder interests and that the key is to establish priorities through coordination and collaboration. In addition, the Executive Director stated the KWO is considering future-use storage policies if unused reservoir storage needs to be called into service.

Kansas Department of Health and Environment

The Director, Bureau of Water, Kansas Department of Health and Environment (KDHE), provided the agency's water quality projects and programs in order of priority for budget enhancement funding, including the Harmful Algal Bloom Program (pilot program); Kansas Watershed Restoration and Protection Strategy program (existing); streambank stabilization (existing); Drinking Water Protection Program (existing); Total Maximum Daily Load (TMDL) – Harmful Algal Bloom Response Program (existing); contamination remediation (existing); lead and copper testing assistance for schools and daycare facilities (new); Small Community Infrastructure Program (pilot program); on-site wastewater financial assistance (new); and Livestock Waste Closure Program (new). The Director also reviewed groundwater research and implementation coordination strategies between the water-related state agencies.

Kansas Biological Survey

The State Biologist and Director of the Kansas Biological Survey (KBS) outlined the areas in which the KBS can contribute to the State's water vision, including continuing work with the KWO bathymetrically mapping federal and state reservoirs, particularly ones that provide drinking water supply or those identified by Kansas Department of Wildlife, Parks and Tourism that may be of concern; increased coring of sediment deposits in select federal and state reservoirs; continued work on harmful-algal blooms (HABs) to determine the cause of occurrence, develop and

test HAB management solutions, and work with KDHE to seek effective management actions; work with the Kansas Geological Survey (KGS) and with KWO to examine stream channel erosion and restoration; and other challenges for Kansas surface water supply.

Kansas Geological Survey

The Director of the KGS presented a priority list of programs and projects for which additional funding would be necessary, including continuation and expansion of the Ogallala-High Plains Aquifer Assessment Program, continuation and expansion of the Index Well Program, hydrostratigraphic survey of the Ogallala Aquifer in Western Kansas, Aquifer Modeling Maintenance Project, Observation Well Network in the Kansas River Alluvial Aquifer, development of a groundwater model of the Kansas River Alluvial Aquifer, and assessment of the effectiveness of streambank stabilization projects.

Presentations by Organizations and Stakeholders

Water Advocacy Team

A representative of the Water Advocacy Team stated, for water to be sustainable, there must be balance among the following four types of factors: environmental, social-cultural, economic, and political. The representative encouraged the Committee to advocate for water legislation; coordinate with local, state, and federal agencies and officials; and support fees and increased revenue for water conservation and sustainability.

Kansas Center for Agricultural Resources and the Environment and the Kansas Water Resources Institute, Kansas State University

The Director of the Kansas Center for Agricultural Resources and the Environment and the Kansas Water Resources Institute discussed how the value of research improves agency program effectiveness, and he indicated a complete understanding of problems and issues helps people determine the most cost-effective methods of sustaining water resources while minimizing adverse economic impacts. The Director then outlined the two research programs on which his two institutions are focused.

The first program is research to sustain the Ogallala-High Plains Aquifer and the economy of Kansas, which includes emphasis on enhanced research efforts with grain sorghum; increased research in wheat breeding and genomics; development, evaluation, and implementation of new irrigation technologies; and research into advanced dryland production systems and conversion from irrigated to limited or dryland agriculture. The second program is research to develop and implement practices to improve and sustain water quality, with an emphasis on research to develop and validate new crop management practices that reduce the impact on surface water and groundwater quality.

Kansas Farm Bureau

The Director of Public Policy for Kansas Farm Bureau (KFB) stated the organization supports the State's water planning process by regional advisory committees that make recommendations to the Kansas Water Authority, which then makes recommendations to the Governor and Legislature. The Director stated KFB policy identifies and prioritizes the following programs and projects: prevention of groundwater and surface water contamination, developing crop and livestock management practices that protect natural resources, implementing TMDL requirements, installing stream buffers, treating highly erodible lands, plugging abandoned wells, upgrading rural septic systems, and promoting conservation of water by all users. In addition, he stated the KFB supports fully funding the State Water Plan Fund as statutorily required.

Kansas Livestock Association

The Vice President of Legal and Governmental Affairs for the Kansas Livestock Association (KLA) stated the organization supports the Kansas water planning process, but if the Legislature were to discuss increasing funding to the State Water Plan Fund, the increases should come from a broad-based revenue stream and not from increased water user fees, such as the stockwater, pesticide, and fertilizer fees that are assessed on the agriculture sector. He added the KLA would be against the creation of a fee on irrigation users. The Vice President stated the KLA supports the existing fee structure for the State

Water Plan Fund and supports fully funding the State Water Plan Fund as statutorily required.

The League of Kansas Municipalities

The Executive Director of the League of Kansas Municipalities (LKM) testified the LKM supports fully funding the State Water Plan Fund as statutorily required. He stated significant issues exist with both water quality and quantity in Kansas and priorities and solutions vary across the state; however, the State must first fully fund the State Water Plan Fund before increasing any fees upon municipalities that use no more than 15.0 percent of the water in the State.

November 13, 2017

Presentations by Organizations and Stakeholders

Arkansas River Research Study

The Committee received testimony from a Professor of Geology, University of Kansas, who spoke about the Governor's Water Conference that was held the week prior to the Committee meeting. She updated the Committee on a research project she is conducting regarding the Arkansas River. The Professor stated, although extensive data traces back 60 years, the data has not been collated effectively to give stakeholders a broader understanding of Arkansas River issues. She stated that by using data and interactive visualization, one can trace the effects of groundwater pumping, streamflow, changes in groundwater levels and wet and dry periods. She cited for the Committee key hydrological points from 1954-forward. The Professor stated, using the data from this project, knowledge can be expanded to help understand hydrology, HABs, and reservoir sedimentation.

Kansas River Water Assurance District #1

A representative of the Kansas River Water Assurance District #1 provided the Committee with background and history of water assurance districts, stating the Water Assurance Program Act was passed by the Legislature in 1986. The Act enables municipal and industrial water appropriation right holders on regulated rivers and streams to organize for the purpose of supplying

water from reservoir storage to the members of the organization in times of drought. The representative also identified the three water assurance districts that are organized and in operation: Kansas River Water Assurance District #1, Marais des Cygne River Water Assurance District #2, and Cottonwood and Neosho Rivers Water Assurance District #3. He then discussed the differences between water assurance districts and water marketing contracts.

Follow-up Information

The Committee received follow-up information from representatives of the KBS, KDHE, KGS, KWO, the Associate Professor of Law from Washburn University, and committee staff.

In addition, the Secretary of Agriculture was recognized to provide information on various questions from the October meeting and the Secretary also provided information regarding a joint letter that was sent in October to the Kansas congressional delegation from the Secretary, the Executive Director of the KWO, the Commissioner of the Colorado Department of Agriculture, the State Engineer of the Colorado Division of Water Resources, and the Director of the Nebraska Department of Natural Resources. The letter detailed the three states' interstate water issues and agreements, concerns about the Conservation Reserve Program, funding and support of the Conservation Technical Assistance Program, support for water conservation and management technology and programs, and consultation with states on water management actions.

CONCLUSION AND RECOMMENDATIONS

The Committee discussed the information it had received during the two meetings and came to the following conclusions:

- The Committee recommends the Legislature fully fund the \$8.0 million statutory transfer to the State Water Plan Fund (SWPF), including \$6.0 million from the State General Fund and \$2.0 million from the Economic Development Initiatives Fund (EDIF). The Committee

notes, since FY 2008, a total of \$72.0 million in statutory transfers from the SGF and EDIF to the SWPF have not been made. The Committee believes that by fully funding the SWPF in the coming fiscal years, current water programs and projects will be able to expand their efforts, along with funding valuable research projects that will provide data and information. This data and information will allow state agencies to select the most cost-effective projects and programs that will help with water quantity and quality issues across the State.

- The Committee recommends introduction of legislation that calls for a legal study covering the following topics:
 - A review of the KWAA, as it has been amended since 1945, with particular focus on the problem of permanent water supply depletion;
 - A review of the Groundwater Management District Act, both on its own and in regards to its relationship with the KWAA;
 - A review of the principal acts concerning the storage of water in federal reservoirs: the State Water Plan Storage Act and the Water Assurance Program Act;
 - A review of the Kansas Water Transfer Act;
 - An examination of every statutory section of the above-listed acts to unearth and bring attention to the many ambiguities and other textual problems that have arisen since 1957;

- Changes in federal water law since 1957 that affect the protection and enforcement of Kansas water rights, including Kansas' rights to interstate water resources, such as its interstate streams, rivers, and aquifers;
- Changes in federal and state environmental law, most notably the Endangered Species Act and other legislation that have substantially complicated western states' water law regimes;
- An analysis of takings issues under Kansas water law; and
- An analysis of whether Kansas should consider conducting water rights adjudication proceedings throughout the State.

In addition, the legislation should contain recommendations on who should serve as principal investigators or auditors and who should serve on a planning and review committee:

- Principal investigators or auditors should include three legal experts on Kansas water law; and
- The planning and review committee should include the Chief Engineer, the Executive Director of the KWO, an assistant or special assistant Attorney General knowledgeable in water law, one lawyer with experience representing one or more groundwater management districts, one lawyer from the U.S. Department of Interior Office of the Solicitor, and one lawyer from the Kansas Legislative Research Department.