

SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2106

As Agreed to March 31, 2022

Brief*

HB 2106 would amend law related to food sales tax.

Food Sales Tax Rate

Beginning January 1, 2023, the bill would reduce the state sales and compensating use tax rate on food and food ingredients from 6.5 percent to 4.0 percent. The rate would be further reduced to 2.0 percent on January 1, 2024, and to 0.0 percent on January 1, 2025.

“Food and food ingredients” would be defined to include bottled water, candy, dietary supplements, soft drinks, and food sold through vending machines and to exclude alcoholic beverages, tobacco, and most prepared foods.

Local Sales Tax on Food

The bill would provide that sales of food and food ingredients would be subject to sales taxes imposed by cities and counties and that all sales subject to sales taxes imposed by cities and counties would be subject to sales taxes imposed by Washburn University.

Distribution of Sales Tax Revenue

The bill would change the percentage of sales tax revenue distribution to provide the State Highway Fund with 17.0 percent of sales and use tax receipts beginning January 1, 2023, and 18.0 percent of sales and use tax receipts beginning January 1, 2024.

Food Sales Tax Credit

The bill would sunset the food sales tax credit at the end of tax year 2024.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kIRD>

Conference Committee Action

The second Conference Committee agreed to remove the contents of HB 2106, as amended by the Senate Committee of the Whole, regarding income tax, and insert the provisions described above.

Background

During the 2022 session, the House Committee on Taxation recommended HB 2711, as amended (concerning sales tax and sales tax on food), be passed and the Senate Committee on Assessment and Taxation recommended SB 339, as amended (concerning sales tax on food and other sales tax items), be passed. The background for both bills is provided below.

[*Note:* The second Conference Committee did not agree to the specific provisions of either HB 2711 or SB 339, but the information here is provided as background information on the topic of food sales tax.]

HB 2711

The bill was introduced by the House Committee on Taxation at the request of Representative Adam Smith.

House Committee on Taxation

In the House Committee hearing, **proponent** testimony was provided by representatives of the Kansas Action for Children, Kansas Council of Chapters of Military Officers Association of America, Kansas Food and Farm Coalition, and KC Healthy Kids. Proponents generally stated the bill would reduce the food sales tax and general sales tax burden on taxpayers without imperiling the provisions of government services. Written-only proponent testimony was provided by representatives of the Association of Kansas Food Banks, El Centro, Greater Kansas City Chamber of Commerce, Overland Park Chamber of Commerce, and United Community Services of Johnson County.

Written-only opponent testimony was provided by representatives of the Kansas Department of Transportation, Kansas Farm Bureau, and Kansas Restaurant and Hospitality Association.

Neutral testimony was provided by representatives of the Kansas Appleseed Center for Law and Justice, Kansas Contractors Association, and Economic Lifelines. Written-only neutral testimony was provided by representatives of the American Council of Engineering Companies of Kansas, Fuel True Independent Energy and Convenience, Kansas Beverage Association, Kansas Chamber of Commerce, Kansas Policy Institute, Kansas Society of Professional Engineers, and League of Kansas Municipalities, and by a private citizen.

The House Committee amended the bill to include certain items in the definition of food and food ingredients and to change the State Highway Fund distribution percentage.

SB 339

The bill was introduced by the Senate Committee on Assessment and Taxation at the request of Senator Tyson.

Senate Committee on Assessment and Taxation

In the Senate Committee hearing, **proponent** testimony was offered by representatives of AARP of Kansas, Fuel True Independent Energy & Convenience, Kansas Association of Counties, Kansas Interfaith Action, Kansas Restaurant and Hospitality Association, Retail Grocers Association of Kansas and Missouri, and Sisters of Charity of Leavenworth. Proponents stated the bill would reduce the sales tax burden on those least able to pay and would treat all food equally. Written-only proponent testimony was provided by the City of Topeka, El Centro, the Greater Kansas City Chamber of Commerce, Greater KC Food Policy Coalition, Harvesters, Health Forward Foundation, Kansas Aggregate Producers Association, Kansas Association of Local Health Departments, Kansas National Education Association, Kansas Ready Mix Concrete Association, and a private citizen.

Neutral testimony was provided by representatives of Economic Lifelines, Kansas Action for Children, Kansas Coalition Against Sexual and Domestic Violence, Kansas Contractor's Association, League of Kansas Municipalities, Tobacco Free Kansas Coalition, and Washburn University. Written-only neutral testimony was provided by representatives of American Council of Engineering Companies of Kansas, Americans for Prosperity-Kansas, Kansas Appleseed Center for Law and Justice, Kansas Chamber of Commerce, Kansas Policy Institute, Kansas Society of Professional Engineers, and a private citizen.

Opponent testimony was provided by a representative of Kansas Farm Bureau, stating the bill would erode the state's retail sales tax base. Written-only opponent testimony was provided by the Kansas Department of Transportation.

The Senate Committee amended the bill by:

- Changing the effective date of the sales tax on food rate reduction from January 1, 2023, to January 1, 2024;
- Giving cities and counties the authority to exempt food from sales tax;
- Expressly providing for food and food ingredients to be subject to the sales tax imposed by Washburn University; and
- Inserting contents from SB 228 (movie theaters), SB 327 (delivery charges), and SB 359 (utilities).

[*Note:* The second Conference Committee report contains no provisions related to sales tax regarding movie theaters, delivery charges, or utilities.]

Fiscal Information

The Department of Revenue estimates enactment of the bill as agreed to by the second Conference Committee would reduce state revenues by \$77.4 million in FY 2023, \$252.4 million in FY 2024, \$411.5 million in FY 2025, and \$500.8 million in FY 2026.

Of those amounts, State General Fund receipts would be expected to be reduced by \$82.0 million in FY 2023, \$246.2 million in FY 2024, \$414.5 million in FY 2025, and \$494.4 million in FY 2026.

State Highway Fund receipts would be expected to increase by \$4.6 million in FY 2023, decrease by \$6.2 million in FY 2024, increase by \$3.0 million in FY 2025, and decrease by \$6.4 million in FY 2026.

Note: Following adoption of the Conference Committee Report, the Department of Revenue provided an updated fiscal estimate for the bill. The information contained in this CCRB reflects the estimates provided at the time of action. For updated estimates, please see the bill summary.

Taxation; sales tax; food sales tax; food sales tax credit

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