

# State Representative

# Don Hineman

## Don's Legislative Update

January 21, 2012

### State of the State, Taxes and Budget

The 2013 session of the Kansas Legislature convened on Monday, January 14. On Tuesday January 15, Governor Brownback gave the State of the State address, outlining his priorities for 2013, including increasing student reading proficiency, leveraging economic growth, and advancing government efficiency.

Possibly the biggest news was his proposal to cut income taxes further and continue on a path to zero state income tax. Although we legislators have not yet seen the details of these proposed cuts, it will certainly be difficult to manage while we dealing with the large tax cut that was enacted in early 2012.

On Wednesday Governor Brownback's staff released his recommended budget for Fiscal Year 2014. It is certainly not an extravagant budget. While some will call it responsible others might use the term "austere". It reflects the fact that the state is facing a funding shortfall as a result of the large tax cut that was enacted last spring. Additionally, in order to make revenues and expenditures match, Governor Brownback is proposing two new revenue sources:

1. Permanent extension of the temporary sales tax increase that was enacted in 2010 and is scheduled to end on July 1 of this year.
2. Elimination of the home mortgage interest deduction on Kansas tax returns.

This budget sets up some very difficult choices. If we in the legislature agree to extend the sales tax increase we are making a conscious decision to abandon the "three legged stool" concept of financing government in our state by an equal reliance on sales, income, and property tax. That system has been lauded in the past as being a system that is broad-based and provides stability and equity. All three are frequently praised by economists as desirable characteristics for a state taxing system. An economist with the Kansas City Federal Reserve cited Kansas a few years back as having the least volatile tax revenues of all the states in the 10<sup>th</sup> District over the past 40 years. So are we prepared to abandon the concept of fairness for Kansas citizens in hopes that the economic theory that lower taxes will produce explosive economic growth really proves to be true? That is far from being accepted economic theory at this point, and even Governor Brownback has termed the tax cut a "real live experiment". No one can be sure of the result. What is the cost to both taxpayer and government of moving to a system that is less stable and predictable? These are very serious questions.



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### Useful Phone Numbers

Department On Aging  
800-432-3535

Child/Adult Abuse Hotline  
800-922-5330

Child & Family Services  
888-369-4777

Consumer Protection  
800-423-2310

Crime Tip Hotline  
800-252-8477

Crime Victim Assistance  
800-828-9745

On the other hand, eliminating the mortgage interest deduction is not as important as it was before the 2012 tax cut. Because tax rates have been reduced, the deduction has less value to any taxpayer. Additionally, the 2012 tax cut bill provided for expanding the standard deduction from \$4,500 to \$9,000. The result will be that many more Kansas taxpayers will not have enough deductions to itemize and will end up taking the standard deduction. For those folks, losing the mortgage interest deduction will not matter. Of course, the deduction will still be available on federal tax returns, and the deduction is a much more important item there. It is hard to imagine that losing the deduction on their Kansas tax returns would be an important enough matter to alter Kansans' home buying plans. And one could argue that if that deduction were the turning point on whether someone buys a home or not, then they were probably trying to buy a home they couldn't afford.

But here is the other part of the hard equation: if we in the legislature cannot agree to extend the sales tax and eliminate the home mortgage interest deduction, then we will have created a \$425 million hole in the governor's budget. Without additional revenue we will be forced to make very significant cuts to state budgets and we will have to push some portion of the cost back to the local level in the form of higher property taxes. Keep in mind that over \$1 billion has already been wrung out of the state budget in recent years, and the easy cuts are long gone. If additional efficiencies can be achieved I am confident this administration will find them. If we are forced down the road of cutting budgets further, the pain to Kansas citizens and the harm to Kansas' infrastructure will be significant. With decisions of this magnitude facing us, it is bound to be a very interesting session!

This link will take you to the Department of Administration's website for a full review of the Governor's budget. <http://budget.ks.gov/gbr.htm>

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## **School Finance... déjà vu all over again**

A few days before the start of the 2013 Legislature, a three judge panel in Shawnee County District Court ruled in the *Gannon v. State* case. The plaintiffs, a group of unified school districts, filed suit against the State of Kansas, alleging that the state violated the Kansas constitution by failing to "make suitable provision for finance of the education interests of the state." The district court ruled in favor of the plaintiffs and Attorney General Derek Schmidt has already stated his intent to appeal the decision.

This case comes on the heels of the *Montoy* series of Kansas Supreme Court opinions. The *Montoy* case was filed in December 1999, alleging the same deficiency: that the Kansas Legislature failed to "make suitable provision for finance." This set in motion a lengthy court battle which led to a special session of the legislature in the summer of 2005 to address the issue.

When the Legislature returned in January 2006, they approved a three-year school finance plan that increased school funding substantially, resulting in Base State Aid Per Pupil in 2008-2009 of \$4,400. However since then, as allotments were made and the economy worsened, that number was lowered. The current Base State Aid Per Pupil is \$3,838, which is about \$440 million below the level that satisfied the courts originally.

The only thing that is certain at this point is that Attorney General Schmidt will appeal the decision on behalf of the state. It is anyone's guess how long

**Gov- Brownback**  
800-748-4408

**Highway Road Conditions**  
511 (in Kansas)

**Housing Hotline**  
800-752-4422

**KanCare Assistance**  
866-305-5147

**Kansas Lottery**  
800-544-9467

**Legislative Hotline**  
800-432-3924

**Mental Health Services**  
888-582-3759

**School Safety Hotline**  
877-626-8203

**Social Security**  
800-772-1213

**Taxpayer Assistance**  
785-368-8222

**Tax Refund Status**  
800-894-0318

**Unclaimed Property**  
800-432-0386

**Unemployment Insurance**  
800-292-6333

**Vital Statistics**  
785-296-1400

**Voter Registration**  
800-262-8683

**Welfare Fraud Hotline**  
800-432-3913

**Worker's Comp**  
800-332-0353

it might take to receive a ruling from the Kansas Supreme Court. Not only do we not know how the court might rule, we also don't know what remedy, if any, they might require. Also unknown is what the response might be from the legislature. Some are now considering a constitutional amendment that would either remove the "suitable provision" or clarify that the Legislature alone is in charge of school finance. I am very leery of either proposal, as I see grave risk to continued adequate funding for Kansas' rural schools in both ideas.

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## **Judicial Selection**

As part of his State of the State address Governor Brownback urged the legislature to alter the method of selection of appellate and supreme court judges. The current system is a "merit system," which allows the Governor to choose from three finalists chosen by a nominating commission. The commission is comprised of nine people, five lawyers selected by the Kansas Bar Association and four non-lawyers selected by the governor. Governor Brownback would prefer a more open and democratic process. However I would ask you to reflect on your experience in the election booth last fall when you got to the part of the ballot dealing with the retention of judges. Did you feel qualified to intelligently and responsibly mark your ballot for each judge? I certainly didn't because I don't know those folks or their abilities. My guess is that most of you felt the same way. Attorneys, on the other hand, know the other members of their profession and can more accurately identify those qualified to serve on the bench.

It is also important to remind ourselves of how we came to have a judicial selection commission in Kansas. Prior to 1956 Supreme Court justices were appointed by the Governor. In that year Governor Fred Hall was defeated in the Republican primary and in November the Democratic candidate, George Docking was elected governor. But Hall did not step down graciously. In the final days of his lame-duck term he hatched a plan to have himself appointed to the Supreme Court. The sitting Chief Justice of the Supreme Court was gravely ill, and Governor Hall convinced him to resign. The Chief Justice did so on December 31, 1956, and Governor Hall next resigned himself on January 3, 1957. Following that, the current Lieutenant Governor, John McCuish, was sworn in as governor. McCuish only had a few days to serve before he would be replaced by the newly-elected Docking, but he made the most of this opportunity. He completed the "Kansas Triple Play" by appointing Hall to the Supreme Court, and this was the only official act of McCuish's eleven-day tenure.

Kansas residents were outraged by this sequence of events and set out to prevent it ever happening again. In 1958 the Kansas Constitution was amended by a resounding vote of Kansas residents, creating the Supreme Court Nominating Commission and establishing merit selection of judges.

Consensus is building to make some change to that system, but I would caution against reverting to a system that would blur the separation of power between the equal branches of government and politicize the process of judicial selection. I am hopeful that a reasonable middle ground can be reached.

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## **Big District**

While doing some research on my district we stumbled across this nugget of information: the 118<sup>th</sup> District, which includes all of Wichita, Scott, Lane, Logan, Gove, Trego and Sheridan Counties and large portions of Thomas and Graham Counties, contains 7,568 square miles of real estate. To put that into perspective, the 118<sup>th</sup> District is larger than Rhode Island, Delaware, Connecticut or Hawaii!

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## Legislative Pages Wanted

Do you know a junior high or high school student who would like to serve as a legislative page for a day? Each legislator may sponsor up to eight pages during the session, and these spots typically fill up very quickly. My available dates are February 4 and March 11, both Mondays for ease of travel for Western Kansas people. Please contact me soon if you or someone you know would like to participate.

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## Cowboy Logic

“No one gives advice with more enthusiasm than the uninformed.”

## Quote of the Week

“Most of us ask for advice when we know the answer but want a different one” – Ivern Ball

## Sermon in a Sentence

Advice is like castor oil, easy enough to give but hard to take.

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Newsletter Paid for by Hineman For Kansas - Derek Martin, Treasurer