

October 23, 2023

Good morning!

While things continue to remain pretty quiet around the Capitol and on High Street's political lane, there was a substantial amount of committee and meeting activity last week.

The Joint Committee on Administrative Rules (JCAR) convened to hear testimony about ongoing regulation issues in the state's cannabis program within the Division of Cannabis Regulation, the Substance Abuse Prevention and Treatment Task Force met to hear testimony about services being provided to Missourians with substance abuse disorders, the Task Force on Distributed Energy Resources and Net Metering convened to hear testimony about its Distributed Energy Resource Meta Study and the Missouri Highway and Transportation Commission held a public meeting to hear updates about the I-70 improvement project. The Missouri State Board of Education also had its monthly meeting. Wow.

A full recap of the week's happenings and all that committee and meeting activity is below. Bill filing starts December 1. The next weeks are all about housekeeping and getting organized. Feel free to reach out if things are still coming together with your legislative priorities for 2024. That's what we are here for!

Thanks and we hope you have a great week!

A quick P.S. Shout out to Cass for help keeping SCC's eyes on the ball last week. We love ya.

Tidbits

- On October 1, new local taxes on recreational marijuana took effect in many parts of Missouri. This week, two lawsuits were filed in Buchanan and St. Louis counties, challenging that some of those taxes are illegal. The constitutional amendment that legalized recreational cannabis sales included a 6% statewide excise tax and authorized local governments to charge a sales tax of up to 3%. The question now before the courts is whether the local taxes can be "stacked," meaning a dispensary within the boundaries of an incorporated city must collect both a county-imposed tax and a tax authorized by a vote in the municipality, or if only the city tax applies.
- Missouri House Speaker Dean Plocher fired his chief of staff, Kenny Ross, on Tuesday and shortly after Plocher's decision to fire his top aide became public, Senate President Pro Tem Caleb Rowden announced Ross would be joining his office as director of strategic initiatives.
- Senior citizens living in St. Louis County will see a tax freeze on their property taxes starting next year. County council members voted to approve the freeze Tuesday evening, with certain conditions attached to the bill. Some of those compromises include a \$550,000 cap, raising the age for eligible seniors to 67, and adding a sunset clause to the bill, meaning the council can decide to change the bill at any point. Another concern discussed during the meeting is how the bill will affect schools and first responders. Councilman Dennis Hancock said schools and first responders will not see a cut in their tax revenue. The county said around 46,000 properties out of more than 440,000 in the county are eligible to apply for the freeze.
- This past Wednesday was Missouri Day! To celebrate, St. Louis University partnered with YouGov to create a poll, asking one of the most debated questions in the Show Me State, "how do you pronounce the name of the state?" The poll found that only 9.5 percent of Missourians say they live in Missouri-uh and more than 90 percent of those polled say they live in Missouri-ee.

Committee and Meeting Activity

JCAR

The Joint Committee on Administrative Rules (JCAR) held a three-hour public hearing Wednesday morning to discuss whether the Division of Cannabis Regulation's (DCR) use of guidance statements and waivers constitute rulemaking, that should have been promulgated pursuant through the official rulemaking process.

Over the past several months, the Department has issued various guidance documents and different waivers to license holders and the issue is, rather if the Departments use of these documents equate to rulemaking under Missouri Law and rather if the departments use of rulemaking was done correctly. Amy Moore, the Director of the Division of Cannabis Regulation and Ben Terrell, the Legislative Director for the Department appeared before the committee to clarify some of the issues and respond to the intent of the various guidance letters.

The committee started off their discussions reviewing current rules that prohibit any labels and packaging to include “shapes of humans”. The Department has recently released a guidance letter to expand that to include “aliens and robots”. According to Amy Moore, the various guidance’s the Department has issued is, simply answering questions that have been submitted to the Department and stated that various license holders continue to question if they are in compliance. Based off of the continual questions and concerns submitted to the Department, Moore stated that the division has gone through all of the rules and has provided “guidance” to help provide clarification and help with the interpretation of the current rules.

While there is some confusion between “rules” and “guidance”, Moore stated that any violations that have been given to license holders, those violations would have been given for violation of the rules, not violation of the departments guidance/waivers that have been released. She specifically stated, the guidance does not establish new rules or requirements, they simply just provide clarifications, and she concluded her statement by referencing a Supreme Court decision (*159 S.W.3d 361 (Mo. 2005)*) that states an agency’s discussion through FAQs of what they believe a rule means, is not a rule promulgation.

Committee Chairman Nick Schroer (R-St. Charles) also questioned if the Department requires compliance with the FDA’s Food and Labeling Guide and Moore stated her answer is the same as above and the Department is simply stating what can and cannot be compliant.

Additionally, the committee dedicated time discussing the guidance the Department has submitted regarding product package coloring, labeling designs, QR codes, and the Departments approval process. Moore kept with her default statement, that the guidance that was published is simply explaining compliance with the rules, while the Chairman rebutted that some of the Department’s requirements like item approval checklists, the mandates to submit documents of each PDF for labeling, and the certification of child safe packaging are not in current rules and the Department’s requirements are an expansion of the rules.

Additionally, the Chairman highlighted a letter that was submitted to the committee and to the Department by Lowell Pearson with Husch Blackwell, highlighting the significant legal issues with the new packaging and labeling requirements imposed by the Missouri Department of Health and Senior Services’ Division of Cannabis Regulation.

Eric Walter, with Armstrong Teasdale, also provided informational testimony to the committee regarding the pre-approval process for packaging and highlighted how the Department is creating a situation that will stop the programs process and activities from progressing.

Typically, the Joint Committee on Administrative Rules concludes a hearing by voting on a Committee’s proposed rule, however today Chairman Schroer concluded the hearing by making a motion, to require the Director of JCAR to draft a report for the committee’s approval, stating or finding that it is of the opinion of the committee, that the Department has issued guidelines that are statements of general implacability, without engaging in the rule-making process and those guidelines have no legal effect. More specifically, the guidelines within the committee’s report shall include: prohibiting the use of aliens and robots on packaging; the guidance of the use of a primary color; guidance on QR codes; guidance that require the item approval guidance checklist; and guidance on new products.

After some discussion, the committee did not have a quorum to approve the Chair’s motion and it was stated the committee will reconvene at a later date to approve the motion. However, we anticipate the Report to be completed within the next 2-3 weeks.

Substance Abuse Disorders

The Substance Abuse Prevention and Treatment Task Force convened Wednesday morning for a marathon hearing to receive public testimony from over 25 organizations who provide services and/or treatment to clients. It should be noted the hearing experienced technical difficulties and this created some time constraints toward the end of the hearing and some providers simply submitted written testimony and stated the organization they represented.

First was Dr. Doug Burgess from the University of Missouri Kansas City who testified about the services provided through UMKC and how identifying and applying for grant funding has become burdensome for providers. He asked that some of the regulatory duplications be removed to allow providers an easier path to receive funding to continue to provide services. He also answered committee questions regarding the use of evidence based treatment protocols and how these protocols are developed and followed.

Next was Janet Thompson on behalf of the Missouri Association of Counties who testified regarding treatments provided at the local level. It was noted that county jails are the largest mental health providers in the state, with ERs and Public Administrators being the other top two providers. The use of a sequential interceptor model is used frequently at the county level to focus on reducing recidivism rates for those with substance abuse disorders.

Committee members learned that numerous county jails utilize mental health navigators for inmates to help them search for services and providers in their immediate area. Finally, it was noted services need to be funded more at the local level as local providers are best able to identify the correct services that clients may need and the lack of funds at the state level means the financial burden is falling to the local governments.

PreventED testified they provide support to community coalitions and noted the strategies for combating substance abuse disorders has dramatically changed in the last 25 years. They also stated they would like to see equitable distribution of any grant or federal funds to providers across the state.

The Missouri Primary Care Association and Central Ozarks Medical Center provided informational testimony regarding the difference between community health centers and federally qualified health centers. It was noted over 225,000 patients sought out substance abuse services from community health centers and this is overwhelming to many of the smaller counties.

The Missouri State Public Defender testified they would like to see the number of cases regarding substance abuse decrease rather than request funding for more attorneys to provide defense for clients. It was also stated they would like to see a collaboration between the department of mental health to allow attorneys to guide clients to services and would like to have social workers on staff to help bridge the gap of services for clients.

The American Cancer Society and Cancer Action Network testified Missouri has the 5th largest number of deaths due to smoking and more needs to be done to combat smoking deaths. It was stated smoking costs the state \$69.2 million in Medicaid costs annually and Missouri receives \$139 million from the Tobacco Master Settlement. The Missouri Hospital Association provided information regarding a variety of Substance Abuse disorder treatments available to patients and stated this information is available to the general public quarterly.

Finally, several substance abuse disorder patients and their families provided personal stories regarding the services they use and those they applied for but are still waiting to receive.

Also submitting electronic testimony were Missouri Coalition of Recovery Support Providers, Richland Medical Center, Aspire Advocates for Behavioral Health, Prevention Consultants of Missouri, Healing House, EPICC – Engaging Patients in Care Coordination and FCC Behavioral Health Substance Use Prevention Resource Center.

Chairman John Black asked each person testifying to submit any additional thoughts or funding amounts they would like to see added for the upcoming legislative session to his office as soon as possible.

Net Metering

The Task Force on Distributed Energy Resources and Net Metering convened Thursday afternoon to conduct a public hearing to receive an update from the Division of Energy within the Department of Natural Resources regarding the status of the Distributed Energy Resource Meta Study, discuss the development of the task force's final report and to receive public testimony from interested stakeholders. The Division of Energy testified they researched Energy Resource Meta studies from Arkansas, Indiana, Illinois, Minnesota and Michigan as these states have completed a meta study. No other surrounding states for Missouri have completed a meta study. The consensus is that Indiana has the closest regulatory framework to Missouri and found general consensus that high-roof solar adoption and EV charging stations led to initial higher costs for providers but did allow for a capture of revenue in the future. The other states studied did not all include solar in their meta studies.

Next, the committee received public testimony from the various stakeholders. Ultimately, testimony fell into two categories with solar industry stakeholders on one side and utilities and co-ops on the other. First was Artisan Solar which asked the committee to expand solar access for small businesses across the state as the larger utility companies have access to differing rate methodologies and this can make it harder for smaller solar companies to compete. Also testifying was a private engineer who informed the committee that undertaking a full meta study in the future is futile as energy costs and usage changes vastly from year to year. He also stated subsidies for solar companies does not present a significant impact to local utilities. Solar Energy testified they too would like to see a consumer bill of rights if a regulatory consensus cannot be found. He would also like to see friendlier collaboration between solar and utility companies. The Missouri Energy Industry Association (MOSEIA) testified they have developed a code of ethics which members are required to sign, are developing some suggested consumer protections and would like to see more collaboration with utilities. A private citizen provided testimony regarding the use of a solar system on their home and how it has helped save on utility costs for their family.

Rolla Municipal Utilities and Independence Power and Light provided testimony stating utilities are not anti-solar but would like the task force to consider developing a consumer bill of rights as many solar clients often do not see a return on their solar investment. They testified there are solar companies who do not follow up with consumers after

installation of solar systems and this creates problems for consumers. They would like to see more collaboration between solar companies and current cost-saving measures that utilities offer. It was also stated solar needs stricter regulatory safeguards for consumers. The Hannibal Board of Public Works testified the subsidies provided to solar consumers needs to be right sized as the subsidies are not as substantial for low-income families. Ozark Electric Cooperative provided testimony regarding the safety of utilities and how changes to solar applications may impact worker safety. Fulton Utilities testified they would like to find comparable regulations from other states to balance out the influx of solar systems being installed across Missouri. TriCounty Electric Cooperative and COMO Connect testified they have numerous solar accounts on their grid at present and expressed concerns over the amount of energy required from the grid when solar systems fail or do not perform at promised levels.

Finally, Chairman Bishop Davidson announced no further task force meetings will be scheduled before the end of the year and members should submit any final items they would like to see included in the report to his office.

Transportation Update

The Missouri Highway and Transportation Commission convened last Thursday morning for their monthly public meeting to receive an update regarding the improvement of I-70, high priority unfunded needs, the issuance of bonds for debt management and vote on the creation of two new port authorities. The commission was informed the full I-70 improvement team has been formed and the full environmental study is nearing completion. The commission learned the INFRA/MEGA/Rural grant application for additional federal funds was submitted on August 21st and over \$299 million has been requested to supplement the \$2.8 billion for I-70. Finally, the first project of I-70 has released an RFP on October 6th on the Columbia to Kingdom City route and is expected to begin construction by summer 2024 and construction will be completed by late 2027. There was also a brief discussion and decision made on the issuance of the bonds for the I-70 improvement projects and these will include a rapid amortization issuance of bonds that hits the \$136 million appropriation cap but is estimated to reduce the debt service by \$345,700,000 and reduces the debt service from 20 years to 12.

Next, the commission received a presentation regarding the \$1.1 billion in unfunded transportation needs. These included \$125 million to improve bridge conditions, \$70 million to improve road conditions, \$115 million for fleet maintenance and operations, \$330 million to invest in projects that increase economic growth and improve safety, \$360 million for major interstate reconstruction and \$100 million to improve multimodal transportation options. To date, there is currently over \$1 billion in multimodal funding requests and to fully repair all of the high-priority roads and bridges would cost over \$2.1 billion. Many of the unfunded needs are found in Kansas City, northeast areas and southwest rural areas. It was noted public comment will begin again on unfunded needs during the next STIP cycle.

Finally, the commission voted in favor of the creation of two new port authorities. The first port is located in the Greater Montgomery County area. The port authority will be a key instrument in the development of the Montgomery County Mega-Site, which is a planned 2,800-acre large-scale, heavy manufacturing industrial park located near I-70 that will have the capacity to attract large scale manufacturing, good paying jobs, and significant private investments to the region. The other port is in the Northeast Missouri Region, in Clark County. The Clark County Commission and the City of Alexandria have publicly discussed creation of an agriculture-focused port authority since 2015, gaining momentum beginning in 2018.

The next public meeting will be conducted on November 1st.

Education

The Missouri State Board of Education convened for their monthly meeting on Tuesday. Surprising many, Commissioner Margie Vandeven announced her resignation would take place June 30, 2024. This will allow the board almost a full year to find a replacement. She stated the priorities for her final months include the Success Ready Student Network, a competency-based learning program, the Blue Ribbon Commission's study of teacher recruitment and retention. Next, the board voted to complete the transition back to local governance for the Normandy Schools Collaborative and the Riverview Gardens School District. With this action, the Normandy Joint Executive Governing Board (JEGB) and the Riverview Gardens Special Administrative Board (SAB) are dissolved and will now be referred to as local boards of education in each respective district. Voters will have the opportunity in the April 2024 election to elect three new board members in Normandy and two new board members in Riverview Gardens. Members elected in April 2024 will join the local board members that were elected in April 2022 and April 2023.

Finally, the board then moved on to adopt their legislative priorities for the upcoming 2024 legislative session. The following legislative priorities were adopted:

- Amending Missouri Statute 163.172 to raise the minimum starting teacher salary to at least \$38,000 and to require an annual review by the Joint Committee on Education to ensure teacher salaries remain appropriate and competitive.
- Asking the legislature continue to appropriate state funding to support Grow Your Own programs, the Teacher Baseline Salary Grant, and the Career Ladder Program.
- Asking the legislature to establish a state fund to support LEAs in paying for both the increased minimum starting salary and for more competitive salaries overall.
- Creation of legislation to expand the allowable uses of Career Ladder funds to include certain extra duties performed during standard contract hours.
- Implementation of strategies aimed at providing immediate support for classroom management, improving the flexibility and professional growth opportunities within the teaching profession, and expanding training for local school leaders on cultivating a positive school climate and culture.
- Supporting ongoing efforts that reinforce positive student behavior thereby allowing educators to focus on providing instruction in a respectful, engaging classroom environment.
- Asking for continued funding of literacy initiatives aimed at supporting the Science of Reading.
- Supporting access to voluntary high-quality early learning opportunities for all Missouri children. We support phasing in a plan to allow LEAs to count 100 percent of 4-5 year old in early learning programs in their calculation of Average Daily Attendance in the Foundation Formula.
- Asking for continued full funding of the Foundation Formula, the school transportation formula, and adjustments to student weightings in the Foundation Formula to ensure student needs are fully supported with appropriate funding.
- Asking the legislature to modify and fully fund the Urban Flight and Rural Needs Scholarship Program Fund established in Missouri Statute 173.232.
- Suggesting that DESE work with stakeholders to examine best practices for voluntary public school open enrollment.

The next board meeting is scheduled for December 5, 2023.

Key Upcoming Dates

December 1, 2023 – First day of bill filing

January 3, 2024 – First day of the 2024 Legislative session

March 1, 2024 – Last day of bill filing

March 18-14, 2024 - Legislative Spring Break

May 17, 2024 – Last Day of the 2024 Legislative session