

Kentucky General Assembly kicks off 2022 Session: Here's what to expect

Joe Sonka, Louisville Courier Journal (published Dec. 30, 2021 / updated Jan. 3, 2022)

The Kentucky General Assembly kicks off its 2022 legislative session Tuesday, which is expected to produce the first two-year state budget since 2018.

State budgets are typically produced in the 60-day sessions of even-numbered years in Kentucky, but the COVID-19 pandemic threw a wrench in the 2020 session — with legislators instead passing a one-year budget in a shortened session, and then doing the same in 2021.

Pandemic and COVID variant-willing, legislators are likely to not only have the time and economic certainty to craft a state budget for the next two fiscal years, but a windfall of funds to appropriate from federal legislation, budget surpluses and projected revenue increases in the coming years.

Crafting and passing a budget will comprise a significant portion of the upcoming session scheduled to end in mid-April, though the first week is expected to be dominated by another constitutional requirement — passing redistricting bills to create new legislative and congressional maps that account for population shifts over the past decade.

This is also an election year, with Jan. 7 — just four days into the new session — the current deadline for legislative and congressional candidates to file for office. This means legislators will have to quickly push back that deadline while they pass new district maps.

While Democratic Gov. Andy Beshear will first propose a state budget in January, the 2022 session will remain firmly in the control of the Republican supermajority, which owns at least 75% of the seats in each chamber and can easily override any gubernatorial veto.

Here's a look at some of the top issues and legislation likely to come up in the 2022 session of the Kentucky General Assembly:

Budget

Unlike most budget years since the Great Recession, Kentucky legislators may not be looking at which allotments of state government funding to cut or keep flat, but instead, which areas to increase spending and worker pay.

Building off a \$1.1 billion budget surplus in the fiscal year ending in July and a record-high total in the state's rainy day fund, Kentucky is also set to receive another \$1.1 billion in federal American Rescue Plan Act funds in May.

Additionally, the Consensus Forecasting Group recently estimated the state would end the current fiscal year with another surplus nearing \$2 billion, with projected General Fund revenues in the each of next two fiscal years roughly \$2 billion above the \$12 billion appropriated this year.

On top of that, the bipartisan infrastructure bill recently passed by Congress will send roughly \$5 billion to Kentucky over the next five years — mostly going to repairing roads and bridges, but also for water systems and broadband deployment.

The big debate ahead is where Kentucky should invest these funds, and how much it should choose to set aside in the rainy day fund.

Beshear has already signaled several areas of state government that his proposed budget will beef up with these funds, particularly the salary of state workers, which have remained largely flat over the past decade.

In addition to a pay bump for teachers and staff at public K-12 schools — which the governor proposed and the legislature rejected for the past two years — Beshear has called for:

- Extending the 10% raise he gave to all state social workers in December, plus additional funds to hire 300 more employees for the understaffed Department for Community Based Services and for a loan forgiveness program.
- Giving a 15,000 raise to all Kentucky State Police troopers and an \$8,000 raise to KSP dispatchers, plus \$12.2 million for all of the agency's troopers to be equipped with body cameras for the first time.
- Using \$400 million from the next round of ARPA funds to give bonuses or "hero pay" to certain essential workers employed throughout the first two years of the pandemic. It's expected to include at least health care workers and first responders, but it could also include social workers and others in the private sector.
- Giving a \$10 million appropriation for the westward expansion of Waterfront Park in Louisville.

Republicans rebuffed Beshear's budget proposals the last two years to give raises to state workers, citing economic uncertainty related to the pandemic, as they instead beefed up the state's rainy day fund.

However, the current workforce crisis with social workers, police and other areas of state government will be a strong pull in favor of raises — even while the price tag of fully funding state pensions is expected to increase by hundreds of millions of dollars.

Republicans have also spoken favorably of using ARPA funds to give essential worker bonuses — though the Senate GOP has favored limiting them to workers in the health care field, which Senate President Robert Stivers tried to get Beshear to address in the September special session.

Kentucky State University's request for \$23 million in emergency funding amid its recent financial crisis has received mixed reviews among the GOP caucus, while Senate Majority Floor Leader Damon Thayer has called for \$75 million of ARPA funds to help prop up the state's tourism industry.

A school funding task force over the interim did not recommend an increase to the state's per-pupil SEEK formula for K-12 education spending, though it did recommend continuing funding for full-day kindergarten and covering the transportation costs of local districts.

There will also be an expected effort to increase funding for child care, early childhood education, public defenders and drug addiction treatment — but the newest push will address the deadly tornadoes that devastated much of Western Kentucky in December.

Beshear said he hopes the General Assembly passes legislation in the first week to assist cities and counties with cost-sharing on FEMA payments, education and public buildings that were destroyed.

Stivers said he has been in discussions with the governor's office about "potential options" to help with relief funding once the session begins.

Taxes

While specific details remain hidden, House Republicans have been discussing the potential for major tax reform in the 2022 session.

Following Republicans full takeover of the legislature in 2017, only the 2018 session netted a major tax reform bill, lowering the top individual and corporate income tax rate from 6% to 5% and making certain services subject to the state sales tax.

This follows the general principles of tax reform sought out by Republicans and other groups like the Kentucky Chamber of Commerce, who favor increasing the proportion of taxes on consumption, as opposed to income or productivity.

Elsewhere on tax policy, there will be another push to legalize and tax sports wagering, a popular revenue-producing measure that was blocked in the 2020 session because of insufficient support among social conservatives in the House GOP caucus.

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There will also be an effort to significantly increase the tax rate on historical horse racing — the devices resembling slot machines that have been a cash cow for the horse racing industry over the past decade.

The General Assembly narrowly legalized such machines as pari-mutuel wagering in the 2021 session, following assurance from Churchill Downs that it would work to increase the tax rate on HHR going forward.

While there is bipartisan support for more than doubling the current HHR tax rate, a recent legislative task force led by industry supporters favored keeping the same rate, with proposed legislation expected to instead raise the rate for other pari-mutuel wagering.

A bipartisan effort supported by the state Chamber of Commerce has failed in recent years to pass a bill raising the gas tax and modernizing state road funding with a fee on electric vehicles.

The odds of the same bill making it through the legislature this session appear even tougher, as gas prices have risen and Kentucky is now awash in federal funds from the bipartisan infrastructure bill passed by Congress this fall.

Republicans are expected to also make a push to pass new tax breaks for data centers and remote workers moving to Kentucky. The legislature passed a bill to do so in the 2021 session, but it was vetoed by Beshear without any chance of an override.

Redistricting

The General Assembly will have to scramble to avoid electoral chaos in its first week in session. As it stands, candidates for the state legislature and U.S. House of Representatives have to file to run for office by Jan. 7, but they won't yet know the boundaries of their new districts.

Stivers and Senate Republicans have indicated they will seek to waive the required number of readings for a bill to push back the filing deadline at least a week. They and the House intend to introduce and pass their redistricting plans and send them to the governor's desk by Jan. 11.

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How far back into January the candidate filing deadline needs to be pushed will be dependent on what Beshear does with the redistricting bills the Republicans pass, as the governor could either quickly sign or veto them, or hold onto them for 10 days before doing so

Matters could be further complicated if lawsuits are filed by Democrats or other groups challenging the constitutionality of the redistricting maps, which is exactly what delayed redistricting by a year a decade ago.

While definite friction could arise between Democrats and Republicans over the GOP-drawn maps, another factor to watch could be inter-GOP squabbling in the House — as it will be difficult to make all 75 members of the caucus happy with many of their districts losing population.

Education

Besides the aforementioned question of education funding in the state budget, the 2022 session is also expected to tackle several hot-button issues related to K-12 schools.

Despite 2019 and 2020 legislation requiring all schools be assigned armed police officers, many across the state still do not have them — but House Republicans from Louisville have prefiled a bill to make officers mandatory inside each school by August, whether funded or not.

Amid an election year, there is also sure to be a push to pass legislation banning schools from teaching what is often falsely referred to as "critical race theory," and several bills to do so have been prefiled by Republicans.

While a Franklin Circuit Court ruling has for now blocked part of the 2021 legislation creating education opportunity accounts in Kentucky's eight most-populous counties, school choice advocates are expected to make a push for expanding these tax credits statewide for private school tuition donations.

Within the context of the state budget, these same advocates may take another crack at funding for charter schools, which have failed to gain a funding stream since the legislature legalized them in 2017.

An effort to ban corporal punishment in Kentucky classrooms will continue — the House passed a bill to do so in 2020, which later died in the Senate — while a section of the GOP caucus will attempt to advance bills banning local school districts from requiring COVID-19 vaccines or masks.

Abortion

Republicans are expected to continue their annual tradition of passing bills restricting abortion since gaining the majority in each chamber, this year pushing an "omnibus" bill with several items from their agenda.

In an October committee meeting, Rep. Nancy Tate, R-Brandenburg, previewed that her bill for the 2022 session would increase regulations on parental consent requirements, medication abortions and fetal remains for abortion providers in the state.

Tate's bill may directly seek to ban abortion medications being received by mail in the wake of an FDA rule change, while abortion opponents may also seek a bill mimicking one recently passed in Texas — which bans abortion about six weeks into a pregnancy and allows citizens to sue anyone who helps a woman receive an abortion.

Pro-choice Democrats are outnumbered as they seek to codify the U.S. Supreme Court's 48-year old Roe v. Wade decision into state law — all while the high court may reverse the decision this year, leading to an immediate ban on the procedure in Kentucky.

Criminal justice reform

Kentucky Smart on Crime — a criminal justice reform coalition made up of groups on the ideological left and right — hopes to again push several bills to passage to reduce the state's prison population, reduce recidivism and ease former felons' transition back into the workforce.

The coalition is gathering support for bills to lower first and second offenses for drug possession from a Class D felony to Class A misdemeanor, expand KEES scholarship eligibility to those with a felony record and expand eligibility for felony expungement — including to those with certain Class D convictions and allowing expungement three years after finishing a sentence instead of five years.

The ACLU of Kentucky also hopes to amend Kentucky's persistent felony offender statute and supports Rep. Nima Kulkarni's bill to decriminalize marijuana possession, though these bills would face greater odds.

On the flip side, several House Republicans said in a November interim committee that they are working on legislation targeting organizations that raise funds to bail people out of jail — such as the Louisville Bail Project — arguing some they have bailed out went on to commit violent crimes.

Medical marijuana

Kentucky is one of just 14 states to not have legalized medical marijuana, but advocates are hopeful this will finally be the year.

A medical marijuana bill from Rep. Jason Nemes, R-Louisville, passed the House in 2020 but died in the Senate, where GOP leadership has long expressed skepticism of its value.

However, Senate Judiciary Chairman Whitney Westerfield, R-Crofton, has been working with Nemes over the interim on changes to his bill that could improve its chances among the GOP in that chamber. The legislation would need to get a thumbs up from the majority of that Senate GOP caucus to have a chance at a successful floor vote, where Democrats overwhelmingly support the bill.

Others to watch

- Name, image and likeness (NIL) bill: A bipartisan effort is underway to codify under law Beshear's executive order allowing college student-athletes to profit from their name, image and likeness, along with additional protections.
- A faction of the House Republican caucus led by Rep. Savannah Maddox, R-Dry Ridge, is pushing legislation to prohibit private employers from requiring employees or customers to receive a COVID-19 vaccine, which GOP leadership opposed in the September special session.
- A legislative task force and the Kentucky Chamber of Commerce are recommending unemployment insurance reform in Kentucky, including strengthening the job search requirement for recipients.
- Rep. Ryan Dotson, R-Winchester, has prefiled a bill to prohibit transgender women from playing women's sports in public K-12 schools and colleges. Past efforts by Republicans to target transgender individuals have not advanced in recent sessions.

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