

# 2010 Legislative Wrap-Up

presented by  
**Don Moler, Executive Director**  
**League of Kansas Municipalities**

authored by: Kim Winn, League of Kansas Municipalities

The following is a summary of the key legislation of municipal interest considered during the 2010 Legislative Session. To get copies of any of the bills, go to <http://www.kslegislature.org/legsrv-legisportal/index.do> and type the bill number in the box entitled "Full Text of Bills."

## Public Health

- **Smoking Legislation.** The Kansas Clean Air Act was passed in **HB 2221**. This legislation makes it unlawful to smoke in any enclosed area or any place of employment. Exceptions include outdoor areas, private homes (except when used as a day care), up to 20% of hotel or motel rooms, casino gaming floors, certain designated areas in adult care homes and medical facilities, tobacco shops, certain fraternal and private clubs in existence as of January 1, 2009, and certain outdoor recreation clubs in areas where minors are prohibited.

The law establishes a 10 ft. smoke-free area around all "access points" to a building, but specifically exempts outdoor patio areas. All employers, including local governments, must adopt written smoking policies which must be communicated to all current employees within one week of adoption and all new employees upon hiring. HB 2221 also regulates and restricts cigarette and tobacco vending machines in areas that are accessible to the public.

Cities may adopt local ordinances that mirror state law or are more restrictive. Cities may not adopt ordinances that are less restrictive. The 2010 Uniform Public Offense Code (UPOC), which will be published in July, will include the new anti-smoking provisions so there is no need to adopt a separate local ordinance if your city plans to adopt the UPOC.

For more information, see the guidance documents prepared by the Kansas Department of Health & Environment at [www.kssmokefree.org](http://www.kssmokefree.org).

## Utilities & Environment

- **Annexation and Rural Water Districts.** HB 2283 establishes new processes for the annexation of territory that is served by a rural water district. A city must provide a 60-day notice of intent to annex to a rural water district. Then, the city and the rural water district must enter into negotiations regarding the service provider for the annexed area and compensation, if any, that may be due. If an agreement cannot be reached, the parties must engage in mediation and no change in water service supplier can occur until at least 120 days after delivery of the notice of intent to change water suppliers. The bill also provides a number of factors that must be considered with regard to the compensation that is due to a rural water district when the city opts to change service suppliers in an annexed area.

Following the procedural hurdles and determination of compensation, the city retains the authority to annex the property and to determine what entity will provide water service. The Regional Economic Area Partnership (REAP) has developed a guidance document to help cities and rural water districts work through the issues surrounding annexation. This document can be found at [http://www.reap-ks.org/images/content/files/final\\_rwd\\_guidelines\\_wlogos.pdf](http://www.reap-ks.org/images/content/files/final_rwd_guidelines_wlogos.pdf).

- **Water Rights.** K.S.A. 82a-718 was amended by **H Sub for SB 316** to allow the nonuse of water rights without the loss of the right in areas that have been closed to new appropriations.
- **Solid Waste.** Again this year, there was an attempt to limit the authority of cities with regard to the regulation of solid waste collection in their communities. While no legislation has passed to date, the interested parties have been asked to meet during the interim and this issue will likely be considered again next year.

## General Local Government

- **Sprinklers.** **HB 2472** establishes a one-year moratorium on the imposition of local ordinances, codes, and rules that require sprinkler systems in residential homes. The issue arose because the most recent version of the International Residential Code included such a requirement. Interested parties are meeting during the interim before the next legislative session to see if a compromise can be reached on this issue.

- **Voter Disqualification. SCR 1622** proposes a state constitutional amendment that would remove “mental illness” as a disqualification to vote in Kansas. Look for that on the ballot in the fall.
- **Medical Gas Installers. H Sub for SB 449** expands the plumbers licensing statutes to include medical gas installers requiring that cities and counties who license plumbers also license medical gas installers. These provisions do not apply in cities or counties where building codes require a certified individual to inspect prior to an occupancy permit being issued.
- **Kansas Open Records Act (KORA). SB 369** made two significant changes to KORA. First, it allows public agencies to deny the request of an individual to electronically make copies of public records by allowing a person to attach an electronic device to the computer or other device of the public agency. Second, this legislation allows a public agency to withhold an individual’s email address, cell phone number, or other contact information which has been given for the purpose of agency notifications or communications which are widely distributed to the public. In other words, if the city maintains an email newsletter or distribution system, you do not have to provide the list of the names and emails of the individuals who receive this communication from the city.
- **Annexation.** The annexation authority of cities was challenged in a number of different pieces of legislation this year. Only one of those, **H Sub for SB 214** was adopted. This legislation limits a city from annexing a “narrow corridor” of land to gain access to noncontiguous land. If a city annexes a corridor of land, it must have a tangible value and purpose other than for enhancing future annexations. This legislation was aimed at a particular annexation and is very limited in scope and application.
- **Cemetery Corporations. H Sub for SB 75** specifically authorizes the Attorney General at the request of the Secretary of State to initiate an accounting of certain cemetery funds.
- **Military Installations.** Pursuant to **HB 2445**, those municipalities with military installations nearby are required to work with military officials and provide certain notices regarding regulations and development in a mutually agreed upon “critical area” around the installation. The bill requires annual meetings between the municipality and the military installation and establishes factors to be considered when regulating or developing a “critical area.”
- **Consolidation. SB 75** originally contained the provisions of the authorizing language to enable cities and counties to initiate

consolidations. This bill has passed the Senate numerous times over the past several years, but has failed to get any traction in the House.

- **Elections.** A couple of election proposals were considered and rejected this year. First, there were bills introduced and heard that would have changed city and school district elections from the Spring to Fall. City and school groups opposed this legislation as it would insert local elections into a partisan election process and would have the potential of lessening the attention paid to local elections when other statewide positions are on the ballot as well.

There was also an attempt to require filings for city office to be with the county election officer. Cities opposed this change with the argument that individuals seeking city office ought to be able to file for office at city hall.

## **Transportation and Traffic**

- **Primary Seat Belts.** Pursuant to **HB 2130**, it is now unlawful to operate or ride anywhere in a vehicle without a proper safety restraint. In addition, not wearing a seat belt is now a “primary” offense for which a vehicle may be stopped and a ticket issued. Until June 30, 2010, officers shall issue a warning. After July 1, 2010, the state fine for such violations shall be \$5 (plus court costs). From July 1, 2011 and thereafter, the state fine shall be \$10 (plus court costs). Individuals between 14 and 18 years of age who are ticketed with not wearing a seat belt are to be fined \$60 (plus court costs). Cities may adopt regulations and fines that are greater than the state law, but may not be less restrictive or reduce the fines that are specified under state law.
- **Texting.** Effective January 1, 2011, the 2010 Legislature has also restricted text messaging while operating a motor vehicle. **H Sub for SB 300** prohibits using a wireless communications device to “write, send or read a written communication.” There are exemptions for law enforcement personnel, persons who are stopped on the side of the road, emergency, traffic, or weather alert messages, messages related to navigation of the vehicle.

The restrictions also do not apply to persons who are reporting current or ongoing illegal activity to law enforcement; preventing imminent injury to a person or property; or relaying information between transit or for-hire operators and the dispatcher where the device is permanently affixed to the vehicle. Prior to January 1, 2011, officers shall issue a warning citation. There is no preemption in this bill so cities may be more restrictive than state law with regard to these regulations.

- **Motorcycles.** Pursuant to **H Sub for SB 300**, individuals under 18 are now required to wear helmets and appropriate eye protection when operating or riding as a passenger on a motorcycle. The eye protection restriction applies both to the person under 18 and to the operator of the motorcycle.
- **DUI. SB 368** provides for the opportunity for individuals that have had their license suspended for one year for an alcohol or drug-related conviction to apply to the division of motor vehicles for a restricted license after 45 days of the suspension. If the individual violates the terms of the restrictions, their driving privileges shall be suspended for an additional year beyond the original suspension.
- **Comprehensive Transportation Plan.** Since the expiration of the Comprehensive Transportation Plan in 2009, the creation of a new plan has been a legislative priority for the League of Kansas Municipalities and a variety of other interested parties. **S Sub for S sub for HB 2650** establishes the Transportation Works for Kansas (T-Works) program. KDOT has estimated that over the next 10 years, the program will have approximately \$8.2 billion, with about \$2.7 billion being new monies. The program is funded by existing revenue sources such as the motor fuels money, an increase in a variety of registration fees, and a portion of the new 1% state sales tax that is dedicated to this purpose. The bill also expands KDOT's bonding authority, continues the transportation revolving fund for municipalities, and authorizes the Secretary of Transportation to consider a feasibility study for a new toll or turnpike project.
- **Drivers' Licenses. HB 2482** made a number of changes with regard to drivers' licenses. First, it authorizes renewal by mail for service people who are out of the country at the time the renewal comes due. The bill requires the division of motor vehicles to include a written explanation of substantial changes to traffic regulations enacted by the Legislature, but does away with the requirement of a written exam upon renewal. The bill also amends K.S.A. 8-296 to 16 year olds with restricted permits to drive to or from any religious worship service. Finally, this bill also prohibits diversion agreements for holders of commercial drivers licenses (CDLs) even if the individual subsequently relinquishes the CDL.
- **Traffic Fines.** In **S Sub for HB 2226**, the traffic fine schedule has been increased by \$15 across the board with portions of the money being used for the criminal justice information system (CJIS) line fund. This fund is designed to connect all Kansas counties into the CJIS system.

- **Recreational Off-Highway Vehicles.** In addition to authorizing three new custom license plates (the Boy Scouts of America, veterans of the Vietnam war, and "I'm pet friendly"), **HB 2660** defines Recreational Off-Highway Vehicles and authorizes cities to allow them on city streets, at the city's option.
- **Transit Busses.** **HB 2561** grants the Secretary of Transportation the authority to develop rules and regs to allow transit busses to operate on the right shoulder of city connecting links and other highways in the state highway system in Johnson County when the traffic has slowed to 35 miles per hour.
- **Interstate Rail Compact.** **HB 2552** establishes Kansas as a member of the Midwest Interstate Passenger Rail Compact. This compact creates a commission whose purpose is to promote joint and cooperative efforts to work to ensure coordination with various entities have an interest in passenger rail service.
- **Rail Service Revolving Fund.** The passenger rail service revolving fund was established by the passage of **SB 409**. No particular funding mechanism was included in the legislation, but the Secretary of Transportation is authorized to establish a program to provide for railroad main lines and other facilities, rail economic development projects and other costs associated with the initiation, operation, and maintenance of passenger rail service.

## Finance and Taxation

- **Bonds and Investments.** **SB 415** includes obligations of the federal home loan mortgage corporation and the government national mortgage association as authorized investments. This bill also extends the time limitation for the maximum stated rate of interest to June 30, 2012 and increases interest percentages from 5-6% if the interest is excluded from gross income for federal tax purposes or from 6-7% if interest is included. Finally, this bill also authorizes municipalities to invest in municipal bonds from other Kansas municipalities.

**SB 451** makes an additional change to municipal bond law to allow municipalities the option of accepting the good faith deposit in cash, including cash deposited via electronic fund transfer. Under current law, the deposit can only be made in the form of a certified or cashier's check or surety bond.

- **Debit Cards.** In **SB 410**, the Legislature clarified the law with regard to surcharges placed on purchases made using credit cards. The term "debit" is now specifically included to make it clear that credit cards and debit cards are to be treated the same. Private businesses are generally prohibited from passing on a surcharge when an individual uses a credit or debit card. The state and most political subdivisions are authorized to pass on such surcharges.
- **Retainage.** The Kansas Fairness in Public Construction Act was amended by **H Sub for SB 377**. This bill requires that the public entity shall not withhold more than a 5% retainage unless the entity determines that up to 10% is required to ensure performance of the contract. All retainage on any undisputed payment due to the contractor must be paid within 30 days after substantial completion of the project. A project is deemed to be substantially completed where it is sufficient that the public entity can use the completed portion for its intended use. Also, public entities may not withhold more than 150% of the value of incomplete work, provided that the incomplete work is due to the fault of the contractor. Any amounts retained for incomplete work shall be paid within 45 days after completion of the work. A general contractor or subcontractor may request an alternate security in lieu of retainage, the decision to accept such alternate security and the form of such security is left to the public entity. The Kansas Fairness in Private Construction Act was also amended by this bill to mirror similar provisions in the private sector.
- **Property Taxes.** **SB 464** amends Kansas property tax law to clarify that the 2<sup>nd</sup> half of property tax payments are now due the 10<sup>th</sup> day of May. Also, **H Sub for SB 312** allows for loans to be issued from the Pooled Money Investment Board (PMIB) in certain cases where a taxpayer is due a property tax refund and the property involved exceeds 5% of the total county assessed valuation.
- **Sales Taxes.** **SB 255** makes several changes in the state sales tax law. First, it authorizes Kingman County and Pottawatomie to impose sales taxes for specified purposes and not to share those taxes with the cities in those counties. The bill further allows that when a city or county has passed an ordinance pledging the future use of sales tax revenue, such pledge is not subject to the state cash basis law.

**S Sub for HB 2360** provides that the state sales tax will go from 5.3% to 6.3% on July 1, 2010. On July 1, 2013, that rate is scheduled to drop to 5.7% with the increase of .4% going to the state highway fund.

- **Recovery Zone Bonds.** The Department of Commerce is authorized pursuant to **HB 2551** to set up recovery zone bonds and energy conservation bonds for counties and large municipalities (over 100,000) under the American Recovery and Reinvestment Act that Congress passed in 2009.
- **Historic Preservation Income Tax Credits.** **SB 430** corrected an error from last year's budget that inadvertently placed a \$3.7 million cap on historic preservation income tax credits.
- **Intangibles Taxes.** Also pursuant to **SB 430**, the Kansas Department of Revenue will no longer be collecting the intangibles taxes. They will be collected by county clerks.
- **Enterprise Zones.** **HB 2553** updates the enterprise zone statutes to change the references from the "standard industrial classification codes" to the North American Industry Classification System.

## Public Safety

- **Electronic Citations.** **SB 533** amends current law regarding traffic, municipal courts, and county code enforcement to allow for the use of an electronic citation system to issue citations, complaints, and notices to appear. The bill also authorizes electronic signatures as the intent to sign the record.
- **Criminal Code.** The entire Kansas Criminal Code was recodified in **HB 2668**. It provides for language clarifications, statute reorganization and reordering, and repeal of statutes that are no longer used.
- **Concealed Carry.** **H Sub for SB 306** amends the concealed carry law to use the term "handgun" rather than "weapon." In addition, it clarifies that it is not a criminal use of weapons to violate the requirement that one carry their concealed license on their person and to present such identification to law enforcement. The bill also amends a variety of provisions in order to make it easier to obtain a concealed carry permit or renewal and reduces the fees for doing so. The specific locations where concealed carry is not allowed pursuant to state law have been limited. Cities and counties may restrict concealed carry in their buildings so long as the proper posting is in place. The Attorney General has been charged with developing new sign regulations that must be posted at eye level of adults at all exterior entrances.



Further, SB 306 provides that it is no longer a crime to carry a concealed weapon under the influence of alcohol or drugs unless it is "to such a degree as to render such licensee incapable of safely operating a handgun." Further, an officer will only have probable cause to believe that the licensee used or attempted to use the concealed handgun under the influence if there was death or serious injury to a person. Without first obtaining a search warrant, any testing to determine impairment must be done under the voluntary consent of the licensee (no implied consent).

- **Criminal Use and Possession.** K.S.A. 21-4201 was amended by **SB 306** to clarify that possession of a pocketknife that has a spring device which creates a bias towards closure of the blade is not included within the criminal use of a weapon statutes. Also, criminal possession of a firearm in K.S.A. 21-4204 was amended by **SB 67** to include prior convictions for attempt (K.S.A. 21-3301); conspiracy (K.S.A. 21-3302); and criminal solicitation (K.S.A. 21-3303).
- **911.** In **S Sub for HB 2582**, the current funding stream with regard to enhanced wireless 911, which was set to change July 1, 2010, was extended through July 1, 2011. In addition, the use of wireless enhanced 911 fees cannot be used to purchase or pay for subscriber radio equipment. Finally, PSAPs will be required to provide certain revenue and expense reports to the Local Collection Point Administrator at the end of the year.
- **Use of Force.** In response to a ruling last year in *State v. Hendrix*, 289 Kan. 859 (2009), that a self-defense instruction to the jury was inappropriate when use of force was merely threatened and no actual force was used, the Legislature adopted **H Sub for SB 381** and applied it retroactively in order to overturn the case. Under the new law, a self-defense instruction will be allowed when there is a threat of use of force. In addition, the possible locations where a use of force in self-defense is allowable were expanded to include places of work.
- **Municipal Courts.** A variety of bills made changes to laws affecting municipal courts. First, **HB 2661** amended K.S.A. 12-4104 to clarify that there is municipal court jurisdiction with regard to the possession of marijuana. **SB 434** raises the fee that municipal courts must send to the state from \$19 to \$20. And, **SB 373** clarifies that the violation of all municipal ordinances requires the state assessment in municipal court.
- **Domestic Violence.** **HB 2517** made numerous changes to the domestic violence laws in the state. This bill allows for a "DV" designation on the criminal case numbers identifying such cases and makes a number of

definitional changes with regard to the Act. This bill also requires a number of specific changes to local written policies. Your city attorney should review your existing policies to make sure that they comply with the new law.

- **Work Release. HB 2604** authorizes courts to use daytime work release programs in certain circumstances.
- **Kelsey Smith Act. HB 2652** amends K.S.A. 22-4615 to require that all wireless carriers provide their emergency contact information to the Kansas Bureau of Investigation (KBI). The KBI is required to maintain a database of this information and share it as necessary with Public Safety Answering Points.

- Juveniles ≠ minors*
- \* • **Minors in Possession. SB 452** provides that ~~minors~~ juveniles who are cited with possessing alcohol or cereal malt beverage cannot be jailed or detained.

- **Video Testimony.** In response to a previous case that disallowed video testimony for forensic experts, **SB 386** was adopted to specifically allow for two-way interactive video technology to be used in district and municipal courts.
- **Emergency Medical Services. H Sub for SB 262** makes a number of changes with regard to emergency medical services. Titles for various attendants are defined and changed and the bill establishes a scope of practice for the professions by rules and regulations established by the Kansas Board of Emergency Medical Services. The professions will have to complete a course of instruction as approved by the Board and be specifically authorized to perform certain activities.