

Approved: February 15, 2011

Date

## MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Steve Huebert at 3:30 p. m. on January 18, 2011, in Room 144-S of the Capitol.

All members were present except:  
Representative Sloan - excused

Committee staff present:  
Martha Dorsey, Kansas Legislative Research Department  
Reed Holwegner, Kansas Legislative Research Department  
Mike Heim, Office of Revisor of Statutes  
Eunice Peters, Office of Revisor of Statutes  
Florence Deeter, Committee Assistant

Others attending:  
See attached list.

The Chairman opened the meeting, welcomed members, and invited members to introduce themselves with information as to the district they serve. He reviewed the Rules of the Committee, then opened the meeting for bill introductions.

The Chairman read a request by Representative Kinzer from the 2009-2010 legislative session for the re-introduction of **HB 2675** - Certain city annexation of fire district territory.

Representative Mah requested the introduction of a bill requiring county commissions to review annexations and reduce the amount of time required from five years to a period of two years. A second bill request would be to remove residency requirements for pawnbrokers and precious metals dealers.

Representative Otto requested the committee consider a bill to require a dual majority vote when consolidation of city and county governments has been proposed.

Representative Seiwert requested a bill addressing a dispute review process for townships.

The Chair said that without opposition, all requested bills be introduced as proposed.

The Chair requested staff provide the committee information on the Kansas Advisory Council on Intergovernmental Relations. Discussion and coordination with the Senate is recommended.

Referencing fire sprinklers and cemeteries, members discussed consideration of the issues from the 2009-2010 legislative session. A briefing and update from the Secretary of State's office on cemeteries will be tentatively scheduled for the meeting next Tuesday.

Staff Martha Dorsey, Kansas Legislative Research Department, introduced other staff members. She reviewed the status of bills assigned to the Local Government Committee in the 2009-2010 session (Attachment 1). Ms. Dorsey provided two documents with summaries of bills from the last session (Attachments 2 and 3). She called attention to a section of the Kansas Legislator Briefing Book for 2011, which gives information related to annexation (Attachment 4).

Ms. Dorsey said the staff is available to answer any questions and will provide information on upcoming legislation.

The meeting was closed at 4:05 p.m. The next meeting is scheduled for Tuesday, January 25, 2011, at 3:30 p.m.

## HOUSE LOCAL GOVERNMENT

## GUEST LIST

DATE: Tuesday 1/18/2011

[illegible]

## STATUS OF SELECTED BILLS ASSIGNED TO HOUSE-LOCAL GOVERNMENT

### 2009 LEGISLATIVE SESSION

Final Action Taken	Bill No.	Short Title/Brief Description
Approved by Governor	S.Sub. HB 2032	KS Surface Owner Notice Act (WAS: annexation bill)
	HB 2092	Prohibiting certain transfer fee covenants (re-referred to Fin. Inst.)
	HB 2155	Land banks
	HB 2157	Topeka/Shawnee County Riverfront Authority Act
	SB 35	Bonds; interest rates; bond revenue sources
	SB 38	Linn County hospital district
	H.Sub. SB 91	Community planning; placement of sexually violent predators; zoning; vesting of development rights
	SB 253	Zoning re: counties declared urban areas
	H. Sub. SB 257	Cities; public improvements outside city limits
Vetoed by Governor	H.Sub. SB 51	Annexation - amalgamation of several bills on the subject (NOTE: Not assigned to House - Local Government but became a Local Government bill)

### 2010 LEGISLATIVE SESSION

Approved by Governor	HB 2125	Registers of Deeds - duties regarding plats
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HB 2472	(1) Uniform Common Interest Owners (homeowners' associations) Bill of Rights Act; (2) temporary prohibition against municipality's ability to require installation of multi-purpose sprinkler system in a residential structure; (3) modification of statutes re: abandoned housing; (4) county land bank authority expanded from just Wyandotte to all counties
HB 2698	Authorize Secretary of State to grant an easement to City of Ogden (Riley County)
H.Sub. SB 75	Cemetery corporations; providing for certain enforcement actions by the Secretary of State
SB 357	Beloit Juvenile Correctional Facility; authorize Secretary of Administration to convey tract of real estate for and on behalf of the Juvenile Justice Authority
SB 451	Municipal bonds - good faith deposit authorized in the form of cash
SB 463	County bond debt limits - adds Norton County to those counties (Franklin, Wyandotte) authorized to have a bonded indebtedness limit of 30 percent (all others - 3 percent)
SB 464	Technical - clarifies the "second half" property tax payment deadline date in three statutes to conform with legislation passed in a previous year

Vetoed by Governor      None      n/a



## Bill Summary

Click on the bill number for more information					
Track	Bill #	Date Introduced	Current Status and Last Action	Bill Subject	Principal Bill Sponsor
	Sub for HB 2029	02/17/2009	In Senate Local Government  03/15/2010 - Senate: Scheduled Continued Hearing: Tuesday, 3/16/2010, 9:30 AM, Rm 144-S	Cities; relating to annexation	House Local Government Committee  (original bill by Special Committee on Eminent Domain in Condemnation of Water Rights)
	HB 2030	01/20/2009	In House Local Government  01/28/2009 - House: Scheduled Hearing: Thursday, 2/5/2009, 3:30 PM, Rm 446-N	Cities; relating to annexation	Special Committee on Eminent Domain in Condemnation of Water Rights
	HB 2031	01/20/2009	In House Local Government  01/28/2009 - House: Scheduled Hearing: Thursday, 2/5/2009, 3:30 PM, Rm 446-N	Annexation of territory by cities	Special Committee on Eminent Domain in Condemnation of Water Rights
	S Sub for HB 2032	04/02/2009	Approved by Governor  05/15/2009: Approved by Governor Mark Parkinson	Enacting the Kansas Surface Owner Notice Act; relating to oil and gas operations; State Corporation Commission	Senate Natural Resources Committee  (original bill by House Local Government Committee)
	HB 2083	01/26/2009	In House Local Government  02/24/2009 - House: Withdrawn from Appropriations; rereferred to Local Government	Historic preservation; pertaining to environs review	House Local Government Committee
	HB 2084	01/26/2009	In Senate Judiciary  03/17/2009 - Senate: Referred to Judiciary	Cities; relating to annexation of territory	Vincent Wetta, D-80th
	HB 2092	01/27/2009	Approved by Governor  03/26/2009: Approved by Governor Kathleen Sebelius	Real property; prohibiting certain transfer fee covenants	House Financial Institutions Committee
	HB 2124	01/28/2009	In House Local Government  02/17/2009 - House: Withdrawn from Federal and State Affairs; referred to Local Government	Planning and zoning; dealing with certain easements	House Local Government Committee

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	HB 2125	01/28/2009	Approved by Governor  02/18/2010: Approved by Governor Mark Parkinson	Registers of Deeds; pertaining to duties regarding plats	House Local Government Committee
	HB 2155	01/29/2009	Approved by Governor  04/23/2009: Approved by Governor Kathleen Sebelius	Land banks; relating to the establishment of land banks by cities	House Local Government Committee
	HB 2157	01/29/2009	Approved by Governor  03/27/2009: Approved by Governor Kathleen Sebelius	Topeka/Shawnee County Riverfront Authority Act	House Local Government Committee
	HB 2247	02/04/2009	In House Local Government  02/25/2009 - House: Scheduled Hearing: Thursday, 3/5/2009, 3:30 PM, Rm 446-N	Cities; relating to rehabilitation of abandoned houses	House Taxation Committee
	HB 2253	02/04/2009	In House Local Government  03/25/2009 - House: Withdrawn from Calendar; referred to Local Government	Homeowners' associations and associations of apartment owners; relating to certain duties, required procedures, attorney fees, dispute resolution and duties of the Attorney General	House Local Government Committee
	HB 2282	02/05/2009	In House Local Government  02/18/2009 - House: Withdrawn from Appropriations; rereferred to Local Government	Water districts; relating to lands annexed by cities	House Energy and Utilities Committee
	SB 35	01/15/2009	Approved by Governor  04/17/2009: Approved by Governor Kathleen Sebelius	Bonds; pertaining to interest rates; pertaining to bond revenue sources	Senate Commerce Committee
	SB 38	01/15/2009	Approved by Governor  04/06/2009: Approved by Governor Kathleen Sebelius	Hospital districts; relating to the formation of a hospital district in Linn County	Senate Ethics and Elections Committee
	H Sub for SB 75	03/19/2010	Approved by Governor  04/08/2010: Approved by Governor Mark Parkinson	Cemetery corporations; providing for certain enforcement actions by the Secretary of State	House Local Government Committee  (original bill by Senate Federal and State Affairs Committee)
	H Sub for SB 91	03/11/2009	Approved by Governor  04/13/2009:	Community planning; relating to placement of sexually violent predators; zoning; dealing with vesting of development rights	House Commerce and Labor Committee  (original bill by Senate



			Approved by Governor Kathleen Sebelius		Local Government Committee)
	H Sub for SB 118	03/19/2010	Rejected by House  03/29/2010 - House: Stricken from Calendar, House Rule 1507	Cities; relating to annexation	House Local Government Committee  (original bill by Senate Ethics and Elections Committee)
	SB 253	02/09/2009	Approved by Governor  04/10/2009: Approved by Governor Kathleen Sebelius	Zoning; relating to counties declared urban areas	Senate Ways and Means Committee
	H Sub for SB 254	03/20/2009	In Conference Committee  03/31/2009 - House: Acceded; appointed Schwartz, M. Holmes and Garcia	Relating to annexation	House Agriculture and Natural Resources Committee  (original bill by Senate Ways and Means Committee)
	H Sub for SB 257	03/24/2009	Approved by Governor  04/23/2009: Approved by Governor Kathleen Sebelius	Cities; relating to public improvements outside the city limits	House Local Government Committee  (original bill by Senate Federal and State Affairs Committee)

## LOCAL GOVERNMENT

### Issuance of Bonds

**SB 35** makes substantive revisions and technical corrections regarding bonds issued by local units of government.

#### *Interest Rates on Bonds Issued by Local Governments*

The bill increases temporarily the cap on interest rates that is placed upon bonds issued by municipalities and other local taxing subdivisions of the state. The statute otherwise prohibits the interest rate on bonds issued by a municipality or a local taxing subdivision from exceeding the daily yield for ten-year treasury bonds, plus 3.0 percent if the interest is not taxable or 4.0 percent if it is taxable. The bill increases the caps from the Act's publication date in the *Kansas Register* until June 30, 2010, to be the daily yield for ten-year treasury bonds, plus:

- 5.0 percent if the interest is not taxable; or
- 6.0 percent if the interest is taxable.

#### *STAR Bond Clarifications*

The bill makes technical corrections and clarifications regarding the usage of Sales Tax and Revenue (STAR) bonds. Since STAR bonds utilize funding from sales tax instead of property taxes, the bill also repeals the requirement that the county appraiser annually certify the increase in assessed value of real and personal property in the STAR bond district to the county clerk. The bill clarifies that the Secretary of Commerce is to set a limit on the total amount of bonds issued by a city or county when the funding comes from the incremental revenue received from any state sales tax. Previously, the law referred to the setting of such a limit only when a county pledged 100.0 percent of the incremental revenue from a county sales tax.

### Hospital District in Linn County

**SB 38** provides two options for holding an election to establish a hospital district in Linn County's Mound City and Paris townships. It also sets requirements for any hospital board established.

The bill requires the Board of County Commissioners to call for an election if at least 10 percent of the two townships' qualified electors sign and file a petition requesting the



formation of a hospital district. Alternatively, it allows the Board of County Commissioners to submit the proposition to the two townships' voters on the Board's own motion.

If the hospital district is approved by a majority of those voting in such an election, the Board then must establish the hospital district and establish the original hospital district board, as provided for in law, which includes holding a public meeting for the purpose of electing the first board.

The bill permits the hospital board, once established, to levy an annual tax of not more than two mills for operating, equipping, maintaining and improving the hospital. It permits the hospital board to exceed the two-mill limitation if (a) the hospital board adopts a resolution to increase the levy above two mills; and (b) no petition in opposition of the increase, signed by at least five percent of the qualified voters, is filed as required by law. If such a petition is filed, an election must be held, and only if a majority of those voting approve of the increase would the increase be permitted.

### **Vesting of Development Rights; Placement of Sexually Violent Predators**

**House Sub. for SB 91** makes changes to the statute dealing with the vesting of development rights in residential developments. Specifically, the bill:

- Allows the statute's application to single-family residential developments to include those development rights vested prior to July 1, 2009; and
- Expands the statute's application regarding residential development to include single-family housing; multiple-family housing, such as apartments, duplexes, townhomes and similar configurations; condominiums; and manufactured and modular homes. A ten-year time frame will apply between recording the plat and beginning construction; substantial work must be completed or development rights could expire.

These provisions apply to development rights vested after July 1, 2009.

### **Placement of Sexually Violent Predators**

The bill contains a provision whereby no more than eight sexually violent predators may be placed in any one county on transitional release or conditional release. The Secretary of Social and Rehabilitation Services is required to issue an annual report to the Governor and Legislature detailing activities regarding transitional and conditional release of sexually violent predators. Such details include the following:

- The number of such predators;

- The location of such predators;
- The number of predators who have been returned to treatment at Larned State Hospital and the reasons for the return; and
- Any plans for the development of additional transitional or conditional release facilities.

## **Rezoning Related to Mining Operations**

**SB 253** addresses modification of zoning regulations in cities and counties (*i.e.*, rezoning).

### ***Rezoning in All Cities and Counties***

In laws applicable to all cities and counties, the bill exempts rezoning related to mining operations, subject to the Surface-Mining Land Conservation and Reclamation Act (KSA 49-601 *et seq.*), from any super-majority vote requirement of the city or county governing body. Specific details of these sections follow.

- Prior to enactment of this bill, the law required the same procedure for rezoning proposals as is required for consideration and adoption of the original zoning regulations. The planning commission must recommend by simple majority vote approval or disapproval of the rezoning proposal to the governing body (inaction presumes disapproval), and the governing body may override the planning commission's recommendation only by a 2/3 majority vote. The bill exempts mining operation rezoning proposals from this 2/3 majority vote requirement. The bill requires instead only a simple majority vote of the governing body on these rezoning proposals.
- Prior to enactment of this bill, the law provided for a protest petition process which, if the protest petition conditions were met, prohibited the governing body from approving a rezoning amendment unless 3/4 of the governing body members voted in favor of the proposed zoning change. The bill exempts mining operation rezoning proposals from this 3/4 majority vote requirement. The bill requires instead only a simple majority vote of the governing body on these rezoning proposals.
- The bill also prohibits a city or county from establishing procedures regarding the adoption of special use or conditional use permits for mining operations that require the approval of more than a majority of governing body members.



**Rezoning in Johnson County**

The bill also addresses the issue of rezoning in Johnson County's unincorporated areas. The section of the bill dealing only with Johnson County exempts rezoning related to mining operations, subject to the Surface-Mining Land Conservation and Reclamation Act (KSA 49-601 *et seq.*), from the super-majority vote requirement of the Board of County Commissioners.

Under current law, the Board of County Commissioners requires the Johnson County Planning Commission to make recommendations regarding zoning classifications which are uniform by zoning class. All zoning classifications, including conditional use permits which may provide exceptions to these uniform regulations, must adhere to the same notice, hearing and voting requirements. The law provides for a protest petition process which, if the protest petition conditions are met, prohibits the governing body from approving a rezoning amendment unless 4/5 of the members of the Board of County Commissioners vote in favor of the proposed zoning change. The bill exempts mining operation rezoning proposals from this 4/5 majority vote requirement. The bill requires instead only a simple majority vote of the Board on these rezoning proposals.

**City Improvements in Unincorporated Areas**

**House Sub. for SB 257** deals with city improvements in unincorporated areas. The bill provides two additional conditions, each of which would allow a city to make improvements in unincorporated areas within three miles of their corporate limits. Current law allows these improvements only if the city has adopted regulations governing the subdivision of land in the unincorporated area; the bill retains this option and adds two more conditions, requiring only one of the three to be met:

- The city has obtained the county's consent to making the improvements;  
or
- One hundred percent of the property owners outside the city who will benefit have signed a petition requesting the improvements be made.

**Land Banks**

**HB 2155** authorizes the creation of a land bank in any city. The provisions are as follows:

- The bill grants authority for the city's governing body to establish or dissolve a city land bank by adoption of an ordinance. The city also may advance operating funds to the land bank.

- The land bank is subject to fiscal and budgetary requirements such as the cash-basis law, must make investments in accordance with state law, and must publish annual reports.
- The land bank must be governed by a board of trustees, whose meetings are subject to state open meetings laws. The board is allowed to have employees.
- The city, the county, another city, or another taxing subdivision in the county may transfer property to the land bank, which may refuse to accept any property offered. The transfer of property to the land bank is not subject to any bidding requirement and is exempt from any provision of law requiring a public sale.
- The board's duties include managing its property, keeping an inventory of such property, and selling or otherwise disposing of the property. The bill allows the board to sell property without competitive bidding under terms necessary or appropriate to assure the property's effective reutilization.
- The land bank is exempt from property taxes and, except for special assessments levied by a municipality, the county treasurer is required to remove from the tax rolls all taxes and other charges due on the property when it is acquired by the board.
- The board will retain moneys from the sale of properties, except that the board may use proceeds to reimburse any municipality for delinquent special assessments due on such property.
- The board may establish and consult with advisory committees.

#### **Topeka/Shawnee County Riverfront Authority**

**HB 2157** amends state law to allow the Topeka/Shawnee County Riverfront Authority to meet quarterly, or more often if called by the chairperson, rather than monthly as is required under the original law.



## BILLS VETOED BY THE GOVERNOR

### House Sub. for SB 51

The bill would have amended several annexation statutes by doing the following: **Unilateral and Bilateral Annexation** – (1) Service plan-related review and possible deannexation: The bill would have reduced the total time contained in the two-part time frame relating to the review of whether the city has provided the services outlined on the annexation service plan by the city's stated deadlines before deannexation procedures may begin. (2) Restriction related to unplatted agricultural land: The bill would have prohibited the bilateral annexation (i.e., via approval by the board of county commissioners) of any portion of any unplatted agricultural land of more than 65 acres without the written consent of the landowner. (3) Property tax proceeds: The bill would have limited the expenditure of the revenue from the property taxes levied against the annexed land for one year from the date of annexation to provision of municipal infrastructure and municipal services, other than police and fire services, to the annexed area. (4) Narrow corridor annexations: The bill would have prohibited any city from utilizing the unilateral and consent annexation statute beginning July 1, 2009, to annex a narrow corridor of land to gain access to noncontiguous land. **Rural Water District Annexation and Release of District Lands** – (1) The bill would have required a city to give written notice to a rural water district not less than 60 days before the effective date of any ordinance proposing to annex land into the city. If the city designated a different supplier, the city would have been required to purchase the property, facilities, improvements, and going concern value of the rural water district located in the annexed territory. A mediation process would have been established for instances when the agreement for purchase is not executed within 90 days. If mediation was not successful, the bill would have provided for an appraisal process. (2) The bill would have required the rural water district governing body to consider additional factors when reviewing a petition for a release of lands from the district, including whether the lands requested to be released cannot economically or adequately be serviced. If the governing body denied the petition, a process would have been established to determine the compensation sufficient to enable adequate compensation through an appraisal process. (3) The bill also would have amended the definition of "participating member" in the rural water district law to include those individuals, firms, partnerships, associations or corporations which own land located within a district which is charged a franchise fee for water service which is paid, either directly or indirectly through another water provider, to the district.

**Bill Summary**

Click on the bill number for more information					
Track	Bill #	Date Introduced	Current Status and Last Action	Bill Subject	Principal Bill Sponsor
	HB 2450	01/14/2010	In House Local Government  01/15/2010 - House: Referred to Local Government	Beloit juvenile correctional facility; authorizing the Secretary of the Department of Administration to convey a certain tract of real estate for and on behalf of the Juvenile Justice Authority	Clay Aurand, R-109th
	HB 2470	01/19/2010	In House Local Government  01/20/2010 - House: Referred to Local Government	Cities; relating to annexation	House Local Government Committee
	HB 2471	01/19/2010	In Senate Local Government  03/03/2010 - Senate: Scheduled Possible Cont'd Hearing, Discussion and Possible Action: Monday, 3/8/2010, 9:30 AM, Rm 144-S	Cities; relating to annexation of territory	House Local Government Committee
	HB 2472	01/19/2010	Approved by Governor  04/15/2010: Approved by Governor Mark Parkinson	Housing	House Local Government Committee
	HB 2478	01/19/2010	In Senate Local Government  03/03/2010 - Senate: Scheduled Hearing: Monday, 3/8/2010, 9:30 AM, Rm 144-S; Possible Cont'd Hearing, Discussion and Action: Tuesday, 3/9/2010, 9:30 AM, Rm 144-S	Cities; relating to annexation	House Local Government Committee
	HB 2479	01/20/2010	In House Federal and State Affairs  02/15/2010 - House: Withdrawn from Local Government; referred to Federal and State Affairs	Cities; relating to changes in the form of government	Bill Otto, R-9th
	HB 2487	01/20/2010	In House Local Government  01/21/2010 - House: Referred to Local Government	Land use; relating to military installations and adjacent areas	House Local Government Committee

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	HB 2497	01/21/2010	Stricken from Calendar  02/23/2010 - House: Stricken from Calendar, House Rule 1507	Unclaimed property; regarding tax information; disclosure of information to the State Treasurer for the purpose of locating unclaimed property owners	House Local Government Committee
	HB 2515	01/21/2010	Killed in House  02/19/2010 - House: Final Action: Not passed; Yeas 60, Nays 62	Cities and counties; relating to residential fire protection sprinkler systems	House Commerce and Labor Committee
	HB 2524	01/25/2010	In House Local Government  02/03/2010 - House: Scheduled Hearing: Thursday, 2/11/2010, 3:30 PM, Rm 144-S	Townships; prohibiting certain townships from employing board members	House Local Government Committee
	HB 2548	01/27/2010	In Senate Ways and Means  03/24/2010 - Senate: Withdrawn from Natural Resources; referred to Ways and Means	Drainage District No. 2 of Finney County, Kansas; pertaining to the election of directors	Larry Powell, R-117th
	HB 2562	01/28/2010	In House Local Government  01/29/2010 - House: Referred to Local Government	Certain legal notice publications	House Local Government Committee
	HB 2675	02/09/2010	In House Local Government  04/30/2010 - House: Scheduled Possible Committee Action: Monday, 5/3/2010, 2:00 PM, Rm 144-S	Certain city annexation of fire district territory	House Federal and State Affairs Committee
	HB 2679	02/09/2010	In House Local Government  03/03/2010 - House: Scheduled Hearing: Tuesday, 3/9/2010, 3:30 PM, Rm 144-S	Cemeteries	House Appropriations Committee
	HB 2698	02/12/2010	Approved by Governor  04/06/2010: Approved by Governor Mark Parkinson	Authorizing the Secretary of State to grant an easement to the city of Ogden in Riley County, Kansas	House Taxation Committee
	HB 2701	02/17/2010	In House Local Government  03/04/2010 - House: Scheduled Hearing: Thursday, 3/11/2010, 3:30	Municipalities; establishing the Organized Solid Waste Collection Service act	House Federal and State Affairs Committee



			PM, Rm 144-S		
	SB 357	01/12/2010	Approved by Governor  03/01/2010: Approved by Governor Mark Parkinson	The Beloit juvenile correctional facility; authorizing the Secretary of the Department of Administration to convey a certain tract of real estate for and on behalf of the Juvenile Justice Authority	Janis Lee, D-36th
	SB 451	01/26/2010	Approved by Governor  03/24/2010: Approved by Governor Mark Parkinson	Municipal bonds	Senate Local Government Committee
	SB 463	01/26/2010	Approved by Governor  03/24/2010: Approved by Governor Mark Parkinson	County bonded debt limits	Senate Local Government Committee
	SB 464	01/26/2010	Approved by Governor  03/24/2010: Approved by Governor Mark Parkinson	Payment of taxes	Senate Local Government Committee
	H Sub for SB 561	05/04/2010	On General Orders in House  05/04/2010 - House: Committee Report: Substitute be passed by Local Government	Cities; relating to annexation	House Local Government Committee  (original bill by Senate Ways and Means Committee)



## LOCAL GOVERNMENT

### Prohibition of Narrow Corridor Annexation

**House Sub. for Sub. for SB 214** prohibits a city from annexing unilaterally, or by consent, a narrow corridor of land to gain access to noncontiguous land. The bill further requires the corridor of land to have a tangible value and purpose other than for enhancing future annexations.

### Municipal Investments, Investment of Bond Proceeds

**SB 415** amends provisions applying to the investment of certain bond proceeds by governing bodies of certain municipalities.

Among the modifications:

- **General Bond Law (KSA 10-131)** – The bill amends the law that applies to taxing subdivisions that have the power to issue general obligation bonds to allow for authorized investments to include the Government National Mortgage Association. (These investments are commonly referred to as Ginnie Maes, pools of mortgage funds guaranteed by the GNMA.)
- **Revenue Bond Law (KSA 2009 Supp. 10-1009)** – The bill also amends the law governing the power granted to municipalities to issue revenue bonds to extend the time limitation specified for the maximum stated rate of interest which may be fixed on fixed- or variable-rate bonds issued by a municipality or taxing subdivision (of the State of Kansas) from June 30, 2010 to June 30, 2012. Under existing law, the specified maximum stated interest rate is to be determined on the day the bonds are sold and shall not exceed the daily yield for the ten-year treasury bonds published by the Bond Buyer in New York, New York, plus a certain interest percentage. Specifically, the bill increases the interest percentages from 5 to 6 percent (if the interest on the bonds is excluded from gross income for federal tax purposes) or from 6 to 7 percent (if interest is included).
- **Investment of Idle Funds (KSA 2009 Supp. 12-1675)** – The bill amends one of the investment types (idle funds) permitted by existing law to include investments in savings deposits.

The bill allows the investment in general obligation bonds of any Kansas municipality. This investment is subject to the provision in law that first requires a municipality to offer

its idle funds to eligible financial institutions (institution given the ability to offer to match the PMIB-published investment rate in KSA 2009 Supp. 121675(a)).

### **Municipal Bonds—Good Faith Deposit in Cash**

**SB 451** makes a change to the municipal bond law. The bill allows municipalities the option of accepting the good faith deposit for a municipal bond in the form of cash, including cash deposited via electronic fund transfer. Previously, the good faith deposit could be made only in the form of a certified or cashier's check or surety bond.

If the good faith deposit is made by wire transfer into a municipality's account, the bill will alter the deadline by which the deposit must be furnished. Previously, the law required the deposit to be furnished at or prior to the time of sale by each bidder; the bill allows the option of changing that deadline, for wire transfers, to any time prior to the time the municipality's governing body accepts the bid from the bond purchaser.

### **Bond Debt Limit Increase for Norton County**

**SB 463** adds Norton County to those counties authorized to have a bonded indebtedness limit of 30 percent of the assessed value of all tangible taxable property. Previous law limited all counties to a 3 percent bonded indebtedness level, except Franklin and Wyandotte counties, for which the limit was 30 percent.

### **Registers of Deeds—Plats or Replats of Certain Surveys**

**HB 2125** amends state law to require a register of deeds to obtain a receipt showing that all past and current real estate taxes due have been paid before the register of deeds could record any replat or plat of survey pursuant to the Apartment Ownership Act or the Townhouse Ownership Act. This proof of tax payment previously had been required only before any plat was recorded.

The bill amends the dates regarding such tax payments to conform with dates real estate taxes must be paid.

The bill also adds to the Apartment Ownership Act and to the Townhouse Ownership Act the requirement that the register of deeds cannot record any plat of survey unless the plat is accompanied by a receipt from the county treasurer showing real estate taxes have been paid.

## **Kansas Uniform Common Interest Owners Bill of Rights Act; Prohibition of Requirement to Install Residential Sprinkler Systems; Rehabilitation of Abandoned Houses; Expansion of County Land Banks**

**HB 2472** relates to several local government issues. The bill (1) establishes a new act entitled the Kansas Uniform Common Interest Owners Bill of Rights Act; (2) temporarily prohibits a municipality from requiring the installation of a multi-purpose sprinkler system in a residential structure; (3) modifies several statutes dealing with rehabilitation of abandoned houses; and (4) expands the authority to establish a county land bank from only Wyandotte County to any county.

### ***Kansas Uniform Common Interest Owners Bill of Rights Act***

Effective January 1, 2011, the bill sets uniform powers, duties and limitations for all common interest communities and their associations, bylaws, unit owners, boards of directors, meetings, records, and related items.

According to the bill, the purposes of the Act are to establish uniform rules of law to clarify the rights and duties of unit owners and associations in all forms of common interest communities; provide for the effective operation of common interest communities in the interest of their owners and their residents; and address current and potential areas of conflict and tension between unit owners and associations, boards and managers in a comprehensive and balanced manner.

Definitions—The bill defines a number of terms. Among them, “common interest communities” means real estate described in a common interest community declaration regarding which unit owners are obligated to pay for a share of real estate taxes, insurance premiums, maintenance, improvements, or services related to common portions of the real estate described in the declaration. Other terms defined by the bill include “declarant,” “declaration,” “association,” “board of directors,” and “common elements.”

Application Limited to Certain Common Interest Communities—The bill limits the Act's application to communities that contain 12 or more units used for residential purposes, as follows:

- All such communities created in Kansas after the Act's effective date; and
- All such communities created in Kansas before the Act's effective date, but the Act does not apply with respect to actions or decisions of a community's association or board of directors concerning events and circumstances occurring before the Act's effective date.



The bill also specifies certain arrangements to which the Act does not apply, such as an arrangement between the associations for two or more common interest communities to share certain costs, or an arrangement between an association and the owner of real estate not included in the common interest community to share certain costs.

Powers and Duties of the Association—The bill establishes a number of powers and duties of the unit owners association, including:

- (The association) shall adopt and may amend bylaws; may adopt and amend rules;
- Shall adopt and may amend budgets;
- Shall have the power to require that disputes between the association and unit owners or between two or more unit owners regarding the common interest community be submitted to nonbinding alternative dispute resolution as a prerequisite to court proceeding; and
- Shall have the power to suspend any right or privilege of a unit owner who fails to pay an assessment, with limitations – may not deny access to the owner's unit; may not suspend the right to vote except on issues involving assessments and fees; and may not withhold services if doing so would endanger the health, safety or property of any person.

Powers and Duties of the Board of Directors—The authority and responsibilities established in the bill include that the board:

- Shall exercise the degree of care and loyalty required of a trustee, if appointed by the declarant;
- Shall exercise the degree of care and loyalty required of an officer or director of a corporation, if not appointed by the declarant;
- May **not** amend the declaration, except as provided by other statutes;
- May **not** amend the bylaws;
- May **not** terminate the common interest community;
- May **not** elect members of the board, but may fill vacancies for the unexpired term or until the next election, whichever is earlier; and

- May not determine qualifications, powers, duties or terms of office of board members.

What the Bylaws Must Do—Among other things, the bill requires that the bylaws provide for the number of members of the directors and for election of officers by the board.

Meeting Requirements—The bill allows for an annual meeting of the association, as well as special meetings under certain circumstances. During the period of declarant control, the board is required to meet two times annually. After the declarant control period is terminated, meetings must be held in a convenient location unless the bylaws are amended to vary meeting locations. A special meeting is required if the board president, a majority of board members or at least 25 percent (or lower percentage specified in the bylaws) of the association's voting members request a meeting.

"Open Meetings" and "Open Records" Requirements—The bill provides for a form of open meetings requirements related to meetings of the board of directors and association committees, and open records requirements for materials distributed in board meetings. The bill also requires the association retain for five years a number of association records, including the following:

- Detailed receipt and expenditure records;
- Minutes of all meetings of unit owners and boards of directors other than executive sessions;
- The names of unit owners and their addresses, with stipulations;
- Original or restated organizational documents, with stipulations, bylaws, and current rules;
- Financial statements and tax returns; and
- Several other types of records as specified in the bill.

The records required to be retained also must be made available for inspection and copying by a unit owner or the owner's agent, subject to a reasonable fee.

The bill also repeals KSA58-3830, which required all meetings of nonprofit homeowner's association boards to be open to all homeowners, required the association to adopt an

**Kansas Uniform Common Interest Owners Bill of Rights Act; Prohibition of Requirement to Install Residential Sprinkler Systems; Rehabilitation of Abandoned Houses; Expansion of County Land Banks—HB 2472**

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annual budget, and required a copy of the budget be made available to any association member requesting a copy.

**Voting Provisions**—The bill authorizes unit owners to vote at a meeting in person, by absentee ballot, by proxy, by secret ballot, or by electronic or paper ballot when a vote is conducted without a meeting. Other voting provisions are established, including detail regarding proxy votes and the policy that a majority of votes cast determines the outcome of any action by an association unless otherwise required. As noted previously, an association would have the authority to suspend a unit owner's right to vote on issues involving assessments and fees.

**Budget Requirements**—The bill requires the board of directors to propose and adopt a budget at least annually. The bill establishes related notice and records availability requirements, and also requires that unit owners be given a reasonable opportunity to comment on the proposed budget prior to the board taking action. As noted previously, a statute related to budget requirements, KSA 58-3830, is repealed by the bill.

**Quorum Requirements**—The bill establishes a quorum of unit owners as persons entitled to cast 20 percent of the votes in the association. A quorum of the board of directors is established as a majority of those entitled to cast votes on the board.

**Removal of a Board Member**—The bill establishes a procedure for removal of a member of the board of directors.

**Authority to Bring Court Action**—The bill authorizes a declarant, association, unit owner, or any other person subject to the Act to bring an action to enforce a right granted or obligation imposed by the Act, the declaration, or the bylaws of an association. The bill authorizes the court to award reasonable attorney fees and costs. According to the bill, remedies provided by the Act are required to be "liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed."

**Other Legal Proceedings**—The bill requires an association to promptly provide notice of legal proceedings to unit owners when the association is a party to the proceeding, except when the proceedings involve enforcement of rules, covenants or declarations of restrictions, or recovering unpaid assessments.

**Delayed Effective Date**—The bill establishes January 1, 2011, as the Act's effective date.



***Multi-Purpose Sprinkler Systems***

The bill temporarily prohibits a municipality from requiring the installation of a multi-purpose sprinkler system in a residential structure. The term “residential structure” is defined in the bill as including a single-family dwelling, multi-family dwelling of two attached units or less, or any manufactured home. This provision would be repealed as of July 1, 2011.

***Rehabilitation of Abandoned Houses***

- The bill revises the definition of “abandoned property” to decrease, from 180 to 90, the number of consecutive days the residential real estate would have to be unoccupied by the owner before a city’s governing body has the authority to cause the property’s rehabilitation.
- The bill limits, to an additional 90 days, the time the court may extend the 90-day period which the defendant in a court case involving temporary possession of an abandoned property could be granted to bring the property into compliance with applicable fire, housing and building codes and pay all delinquent property taxes. Prior law authorized the court to extend the original 90-day compliance period by an unspecified amount of time.
- The bill reduces, from three years to two years, the amount of time a person must occupy a house when the person purchases the house from a nonprofit organization which has rehabilitated it.

***County Land Banks***

The bill expands the authority to establish a county land bank to any county in Kansas. Prior law allowed only Wyandotte County to do so.

***City of Ogden—Sanitary Sewer Easement***

**HB 2698** authorizes and directs the Secretary of State to grant a permanent sanitary sewer easement to the City of Ogden on state-owned land. The purpose of the easement is for construction and maintenance of the outfall pipe and a concrete headwall for the Ogden wastewater treatment facility, and the easement terminates if the land is no longer used for this purpose. The bill requires the easement to be conditioned on the facility assuming full responsibility of the easement and holding the State harmless.

The legal description of the tract of land that contains the easement is cited in the bill; however, the bill authorizes the Secretary of State to correct this description if it is found to be incorrect. The Attorney General is required to approve the deed conveying the easement, whether or not the legal description is changed.

75-105 and 75-106) which requires the approval of the Secretary of the Department of Administration.

The bill requires the Capitol Preservation Committee to develop plans for the placement of a mural in the State Capitol commemorating the United States Supreme Court decision in the case of *Brown v. Board of Education*. The bill prohibits public funds being used to pay the costs of creating and installing the mural.

### **Cemetery Corporation Audits**

**House Sub. for SB 75** deals with cemetery corporation accounting. The bill does the following for both the cemetery corporation permanent maintenance fund and the cemetery merchandise trust fund:

- Authorizes the Attorney General, at the request of the Secretary of State, to initiate an action for an accounting of either fund or its accounts;
- If it is determined that the fund is underfunded due to inadequate deposits or unauthorized distributions, authorizes the cemetery corporation to propose and implement a plan for correcting the fund's deficiencies, subject to the Secretary of State's approval; and
- Authorizes the Secretary of State to resolve equitably the results of an audit.

### **Rules and Regulations Filing Act Changes**

**House Sub. for SB 213** revises the Rules and Regulations Filing Act. The bill updates the Act by removing obsolete language and allows for future publication of the Kansas Administrative Rules and Regulations in paper or electronic form by the Secretary of State. In addition, the bill makes changes in the definitions used in the Act and the exclusion of certain rules and regulations not covered by the Act. Certain procedures to be followed in the rule-making process and procedures also are revised.

### **Personal and Family Protection Act**

**House Sub. for SB 306** amends the Personal and Family Protection Act, which established the concealed carry law. The proposed amendments remove and modify provisions in the existing law, adjust various fees associated with licensure, add several new provisions, and make technical amendments. The bill:

- Changes the term "weapon" to "handgun" in the Act;



## Local Government

### S-3

#### Boundary Changes: Annexation

#### Other Local Government reports available

### S-1

#### Home Rule

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#### Eminent Domain

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# Kansas Legislator Briefing Book 2011

## Local Government

### S-3 Boundary Changes: Annexation

#### Introduction

There are basically three ways a municipality can change its boundaries: annexation, consolidation, or detachment. This paper will discuss the first of these boundary change methods.

Annexation is defined as "... the territorial expansion of a municipal corporation through the addition of new land." Nationally, there are five major methods of annexation: (1) by state legislation; (2) by municipal ordinance or resolution; (3) by petition of the residents or landowners in the area to be annexed; (4) by judicial action; and (5) by boundary review commissions. Most states no longer use direct legislative action to provide for annexation; instead, most states have allowed for annexation by way of general, permissive laws. Many states, including Kansas, provide for multiple methods of annexation. (Source: Briffault, Richard and Laurie Reynolds, *State and Local Government Law*, 6 Ed., West Group Publishing, July 2004, p. 180)

#### Kansas: Current Law

Kansas law allows cities to annex land by several different methods, depending upon the circumstances. Unilateral annexation is permitted in Kansas for annexations that meet certain criteria. Also permitted are consent annexations (given other criteria) and annexations involving the approval of the board of county commissioners.

All unilateral and most consent annexations are addressed in one statute. KSA 12-520 sets out the conditions under which each of these may take place.

*Unilateral annexation* – Pursuant to KSA 12-520, subsection (a), a municipality may annex land unilaterally (*i.e.*, without obtaining landowner consent or voter approval) under any of the following circumstances:

- The land is platted, and some part of the land adjoins the city. KSA 12-520(a)(1).

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- The land lies within or mainly within the city and has a common perimeter with the city boundary of more than 50 percent. KSA 12-520(a)(4).
- Annexing the land will make the city's boundary line more harmonious (limit: 21 acres). KSA 12-520(a)(5).
- The tract is situated so that two-thirds of any boundary line adjoins the city (limit: 21 acres). KSA 12-520(a)(6).
- The land is owned by or held in trust for the city. KSA 12-520(a)(2).
- The land adjoins the city and is owned by another government (certain restrictions apply). KSA 12-520(a)(3).

(Note: KSA 12-520c allows for annexation, by consent, of land that does not adjoin a city if certain conditions are met. This is discussed later in this paper.)

A specific process must be followed for unilateral annexations. Public notification, notice to landowners within the area, and hearings are central to this process, but it is the city's governing body that makes the final decision to approve or reject the annexation. KSA 12-520a and 12-520b. Also, five years after annexation, the board of county commissioners is required to review and hold a hearing on the city's timetable for provision of services to the annexed area. If the board finds that the city has not provided the planned services, the property may be deannexed within 2 ½ years of the board's findings.

*Consent Annexation* – Cities may annex some properties without a public hearing process if certain other circumstances exist, including landowner consent:

- Adjoining land – A city may annex adjoining land if the landowner files a written petition for or consent to the annexation with the city. KSA 12-520(a)(7).
- Noncontiguous land – The governing body of any city may by ordinance annex land not adjoining the city if all of the following conditions exist. An aggrieved owner or city may appeal to the district court. KSA 12-520c.
  - The land is located in the same county;
  - The owners of the land petition for or consent in writing to the annexation; and
  - The board of county commissioners determines the annexation will not hinder or prevent the proper growth and development of the area or that of any other incorporated city located within such county.

*County Board as City Boundary Setter (KSA 12-521)* – The board of county commissioners may be petitioned to act as boundary setter for:

- Annexations of land not covered in KSA 12-520; or

- Annexations of land covered in KSA 12-520 but for which the city deems it advisable not to annex under the provisions of that statute.

The city's petition requirement is followed by publication, public notice, notice to landowners within the area, and hearing requirements in the statute.

*Annexation of Certain Lands Is Prohibited* – Certain annexations are prohibited under KSA 12-520. All of the following are prohibited from being annexed unilaterally, and one of the three is allowed only if the owner's written consent is received:

- Agricultural lands consisting of 21 acres or more, unless the owner's written consent is received. KSA 12-520(b).
- Improvement districts incorporated under KSA 19-2753 *et seq.* on or before January 1, 1987. KSA 12-520(c).
- Highway rights-of-way—unless the abutting property on one or both sides is annexed. KSA 12-520(f).

Other Kansas statutes forbid certain other annexations as follows:

- No city may annex via KSA 12-520 (*i.e.*, unilaterally or by the consent circumstances in that statute) a narrow corridor of land to gain access to noncontiguous tracts of land. The corridor of land must have a tangible value and purpose other than to enhance future annexations. KSA 12-520 (Laws 2010, Ch. 130, Sec. 1.).
- No city may annex unilaterally territory of improvement districts where the formation process for the district began on or before January 1, 1987.
- No city may annex any other incorporated city, in part or in its entirety. KSA 12-524.
- No city may annex any territory of a United States military reservation under control of the Department of the Army (applies to annexation proceedings that began after December 31, 1981). KSA 12-529.

*Additional Annexation Provisions* – Finally, specific provisions exist regarding compensation for annexations of water districts. Those are contained in KSA 12-527. Also see KSA 66-1,176 *et seq.* regarding city annexation and termination of rights to serve customers and retail electric suppliers.

## Recent Kansas Legislative History

Annexation continues to be a concern in the Kansas Legislature. During the past 10 years at least 24 bills have been introduced and debated in the Legislature. Of the 24 bills, seven passed both Legislative chambers. Of those seven, four were approved by the Governor and three were vetoed.

Furthermore, the number of bills considered each biennium generally has been increasing, with a significant increase in the 2009-2010 biennium. The following table shows the number of annexation bills considered in each biennium.

Biennium	Number of Bills
2001-2002	3
2003-2004	5
2005-2006	7
2007-2008	6
2009-2010	15

The bills have addressed several different aspects of annexation, both of general (statewide) applicability and of more limited applicability. Many bills have repeated the proposed provisions, either exactly or in similar fashion. Twenty of the bills dealt at least in part with unilateral annexation. The following table lists these unilateral annexation-related bills.

Biennium	Bills Containing Unilateral Annexation Provisions
2003-2004	HB 2043, HB 2654
2005-2006	HB 2185, HB 2229, HB 2230, <b>SB 24 (Approved)</b> , SB 492
2007-2008	<b>HB 2058 (Approved)</b> , HB 2917, HB 2978
2009-2010	HB 2084, HB 2471, HB 2478, <b>SB 51 (Vetoed)</b> , SB 204, <b>SB 214 (Approved)</b> , SB 254, SB 561

The following table lists the unilateral annexation-related topics and the bills in which they were contained:

Unilateral Annexation-Related Topics	Bills
Repeal outright	2005 HB 2185
Eliminate by requiring approval of board of county commissioners (BCC)	2003 HB 2043
Eliminate by requiring voter approval	2004 HB 2654; 2008 HB 2747
Prohibit unilateral unless BCC determines it will not have an adverse effect on county	2008 HB 2978; 2009 SB 118, SB 204, and SB 561; 2010 HB 2478
Limit unilateral annexation to cities with 100,000+ population	2006 SB 492
Prohibit annexation of county-owned land unless city receives BCC permission	<b>2007 HB 2058 - Approved</b>
Allow cities within 1/2 mile to challenge another city's unilateral annexation decisions	<b>2005 HB 24 - Approved</b>
Require cities to consider 16 factors when annexing unilaterally	<b>2005 SB 24 - Approved</b>

Another, more recent area of focus in the bills has been annexation *via* approval by the board of county commissioners (*i.e.*, county board as city boundary setter). During the 2007-2008 and 2009-2010



biennia, a total of 11 bills addressed this issue at least in part. The following table lists the topics related to this area and the bills in which they were contained:

Topic Re: Board of County Commissioner (BCC) Approval	Bills
Require voter approval of any BCC-approved annexation	2009 HB 2029, HB 2031; 2010 HB 2470
Prohibit BCC approval of the annexation of 21+ acres of unplanted agricultural land without landowner's consent	2009 HB 2029, HB 2030, and <b>SB 51-Veto</b> (65 acres); 2010 HB 2470
Prohibit annexation of county-owned land unless city receives BCC's permission	<b>2007 HB 2058-Approved</b>
Prohibit unilateral annexation unless BCC determines it will not have an adverse effect on county	2008 HB 2978; 2009 SB 118 and SB 204; 2010 HB 2478 and SB 561

Among other, more general annexation-related topics, a number have been considered in multiple bills. Following is a brief description of three such topics:

- Revising the timeline for service provisions related to annexations – Since 2004, a total of five bills have been introduced that would have shortened the timeline to determine whether promised services were provided to the annexed area before steps to deannex could begin. Although the specific time reductions were different in the bills, the issue was the same. One bill was introduced in 2004, one in 2008, two in 2009, and one was introduced in 2010. One bill, 2009 SB 51, passed both legislative chambers but was vetoed.
- Prohibiting “strip” annexation – This legislation has appeared in seven bills since 2008, and finally was approved in 2010 in SB 214.
- Expanding the scope of the court review regarding challenged annexations – This legislation appeared in four bills and finally was approved in 2005 SB 24.

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