

2010 Summary of Legislation



INTRODUCTION

This publication includes summaries of the legislation enacted by the 2010 Legislature.

During the 2010 Session, 592 bills were introduced: 248 in the Senate and 344 in the House. In addition, 248 Senate bills and 319 House bills were carried over from the 2009 Session, for a grand total of 1,159 bills that were alive during the 2010 Session. Of these 1,159 bills, 165 (14.2 percent) became law: 76 Senate bills and 89 House bills. Further, of the 165 bills becoming law, 149 (90.3 percent) were introduced by committees and 16 (9.7 percent) were introduced by individual legislators.

The Governor vetoed two bills and eleven line items. All vetoes were sustained. No bills will be carried over to the 2011 Session of the Legislature.

AGRICULTURE AND NATURAL RESOURCES

Water Rights—Cause for Nonuse

House Sub. for SB 316 permits those holding groundwater rights meeting certain criteria to claim due and sufficient cause for nonuse and, therefore, the rights are ineligible to be deemed abandoned by the Division of Water Resources. To meet the due and sufficient cause for nonuse criteria, the water right must have as its local supply an aquifer area that has been closed to new appropriations (by rule, regulation, or order of the Chief Engineer), and where means of diversion are available to put water to a beneficial use within a reasonable time.

Burning of the Flint Hills

SCR 1623 describes the Flint Hills region of Kansas as a unique ecosystem of historic significance, containing a large portion of the tallgrass prairie, providing habitat to certain declining species, providing unique pasture for cattle, and allowing the prevailing agricultural system to work in tandem with an ancestral native ecosystem. The resolution speaks to the necessity to manage this ecosystem by burning and how that practice should be considered a best management practice.

The resolution urges the United States Congress to require the United States Environmental Protection Agency (EPA) to exclude certain air monitoring data from use in determinations of exceedances and National Ambient Air Quality Standards violations where the emissions are from prairie burning in the tallgrass prairie in the Flint Hills, and to treat the data related to burning as exceptional events under 40 CFR Section 50.14.

The resolution was to be sent to the President of the United States, the Speaker of the United States House of Representatives, the Administrator of the EPA, each member of the Kansas Congressional Delegation, and the EPA Region VII Administrator.

Greenhouse Gases and EPA Regulations

SR 1809 says that the leaders of the State of Kansas urge the United States Environmental Protection Agency to withdraw its rule that declares greenhouse gases a “toxic pollutant” and further regulates these gases. The resolution further states that the leaders of Kansas urge that such lawmaking be done through the normal legislative process so that important economic concerns may be considered.

BUSINESS, COMMERCE, AND LABOR

Public and Private Construction Contracts

House Sub. for SB 377 amends the Kansas Fairness in Private Construction Act and the Kansas Fairness in Public Construction Act dealing with retainage and alternate security by requiring an owner, contractor or subcontractor to:

- Not withhold more than a five percent limit of the value of the contract or subcontract as retainage unless the owner or contractor determines that a higher rate of up to 10 percent of the contract as retainage is required to ensure performance of the contract. The bill would cap the retainage at 10 percent; and
- Release all remaining retainage on any undisputed payment due to the contractor on a construction project within 30 days after substantial completion of the project. If the contractor or subcontractor has not completed the project, an owner may withhold that portion of the retainage attributable to the work until 30 days after the work is completed. Substantial completion means the stage of a construction project, or a designated portion thereof, where the project is sufficiently complete, in accordance with the contract, so that the owner can use the completed portion for its intended use.

Under the bill, an owner may withhold not more than 150 percent of the value of incomplete work, provided that the incomplete work is due to the fault of a contractor. A contractor may withhold not more than 150 percent of the value of incomplete work, provided that the incomplete work is due to the fault of a subcontractor. Any amounts retained for incomplete work shall be paid within 45 days after completion of the work as part of the regular payment cycle. A subcontractor may withhold not more than 150 percent of the value of incomplete work that is the responsibility of another subcontractor, provided that the incomplete work is due to the fault of such other subcontractor.

Under the bill, a general contractor or subcontractor may request an alternate security in lieu of retainage. The bill defines “alternate security” as an irrevocable bank letter of credit, certificate of deposit, cash bond, or other type of asset or security of value equal to or exceeding the amount of the retained funds. Alternate security would not include a performance bond or a payment bond. If the owner or general contractor or subcontractor accepts an alternate security, that entity has the right to determine which type of alternate security shall be accepted.

The bill allows early release of retainage if it is determined by the owner, contractor, and architect that a subcontractor has completed the work satisfactorily and that the

subcontractor can be released prior to substantial completion of the project without additional costs.

The bill reconciles the language of the Kansas Fairness in Public Construction Act and the Kansas Fairness in Private Construction Act so that the portion of the acts dealing with retainage would be similar.

Kansas Real Estate Brokers' and Salespersons' License Act and the Brokerage Relationship in Real Estate Transaction Act

HB 2560 amends the Kansas Real Estate Brokers' and Salespersons' License Act and the Brokerage Relationship in Real Estate Transaction Act.

The bill expands the references to corporations, partnerships, and associations to include limited liability companies, limited liability partnerships, and professional corporations. These business entities are then covered by the Act's provisions.

The bill amends the restrictions of a license under the Act as follows:

- Provides a new list of violations that could result in restrictions or conditions being placed on a newly issued or renewed license;
- Provides the specific restrictions and conditions that may be placed on a license;
- Provides a list of restrictions or conditions that could be placed on a license if the applicant lacks the requisite experience or education; and
- Provides a list of violations that could result in the restrictions or conditions being placed on a license that already has been issued.

The bill requires that if an individual performs any acts of a broker, that a primary office be established with a designated broker.

The bill requires an applicant demonstrate a good reputation for honesty, integrity, trustworthiness, and competence to transact business in order to obtain a license after a previous license has been revoked or suspended.

The bill directs the Kansas Real Estate Commission on how to handle incomplete applications for licensure.

ECONOMIC DEVELOPMENT

Recovery Zone Bonds and Energy Conservation Bonds

HB 2551 authorizes the Department of Commerce to distribute two types of bonds called recovery zone bonds and energy conservation bonds to counties and large municipalities in Kansas pursuant to the allocation methods specified in §§ 1400U-1 and 54D(e)(1) of the federal Internal Revenue Code, respectively. The allocation formula for the recovery zone bonds is based upon unemployment rates in 2008, and for the energy conservation bonds the allocation is based upon total population. For the purposes of these two bonds, a large municipality is defined by federal statute to mean a city with a population greater than 100,000. The bill grants rule and regulation making authority to the Commerce Department to administer provisions of the act.

Recovery Zone Bonds

The bill directs the Department of Commerce to give notice to each county and large municipality of its allotment. These units of local government may waive their usage of these bonds at any time. However, the bonds' usage is deemed to be waived if, 60 days after the allocation notice, a local unit of government has not given the Department of Commerce written notice of intent to issue recovery zone bonds.

Recovery zone bonds also are deemed to be waived if a county or large municipality did not issue bonds by June 30, 2010, after which time any county or municipality may apply to the Department for the remaining recovery zone bonds. Recovery zone bonds may be used for one or more qualified economic development purposes which may include capital expenditures for property, public infrastructure, public facilities, and job training and educational programs.

Qualified Energy Conservation Bonds

The provisions and deadlines with regard to notice, the waiving of bond usage, and deadline for bond issuance are the same for qualified energy conservation bonds. Unlike recovery zone bonds, energy conservation bonds are allocated each year. After June 30 of each year, a county or municipality may apply to the Department for any unissued bonds. Qualified energy conservation bonds may be used for:

- Capital expenditures spent for energy reduction purposes;
- Research facilities and research grants for the study of alternative energy sources;

- Demonstration projects designed to promote the commercialization of alternative energy technologies; and
- Public education campaigns to promote energy efficiency.

Carbon Dioxide Reduction Act—Amendments

HB 2418 amends provisions of the Carbon Dioxide Reduction Act regarding the liability of the State. Under the bill, except as permitted by the Kansas Tort Claims Act, no provision of the Carbon Reduction Act shall impose on the Kansas Corporation Commission (KCC), any of its employees, or the State of Kansas any liability for the underground storage of KCC carbon dioxide or the maintenance of any carbon dioxide injection well or underground storage of carbon dioxide. In addition, the bill provides that the KCC is not prohibited from plugging, replugging, repairing, or remediation of any carbon dioxide injection well or underground storage in an emergency situation.

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.

STATE FINANCES

FY 2010 and FY 2011 State Budget

Senate Sub. for HB 2222 and House Sub. for SB 572 contain appropriations for: FY 2010 supplemental appropriations; FY 2011 operating expenditures; and multi-year capital improvements for state agencies.

The approved amount for FY 2010 decreases amounts approved by the 2009 Legislature by \$206.1 million from the State General Fund and increases amounts approved from all funding sources by \$1.34 billion. Approved FY 2010 State General Fund expenditures total \$5.407 billion, and expenditures from all funding sources total \$14.401 billion. The approved current year budget reflects State General Fund allotments made by the Governor in July and November of 2009 for FY 2010. These allotments, through a series of recommended revenue adjustments and expenditure reductions, were intended to increase the FY 2010 State General ending balance by \$391.6 million. Approximately \$95.0 million of the recommended adjustments required legislative authorization, and were subsequently approved by the 2010 Legislature.

For FY 2011, the approved amount is \$5.627 billion from the State General Fund and \$13.695 billion from all funding sources. The FY 2011 amount is \$204.8 million, or 3.5 percent, below the amount recommended by the Governor from the State General Fund and \$31.7 million, or 0.2 percent, below the amount recommended by the Governor from all funding sources. The approved number of full-time equivalent (FTE) positions totals 41,521.3, which is a decrease of 65.4 FTE positions below the revised FY 2010 number of 41,586.7 FTE positions.

The following table reflects the dollar and percentage change from FY 2009 actual to the currently approved FY 2011 amount.

FY 2010 and FY 2011 State Budget—Senate Sub. for HB 2222 and House Sub. for SB 572

State General Fund and All Funds Expenditures
FY 2009-FY 2011 (Legislative Approved)
(Amounts in Thousands)

	State General Fund	Change from Prior Year		All Funds	Change from Prior Year	
		\$	%		\$	%
FY 2009	\$6,064,360	(37,421)	(0.6)%	13,960,345	1,271,657	10.0%
FY 2010	5,406,828	(657,532)	(10.8)	14,401,340	440,995	3.1
FY 2011	5,627,310	220,482	4.1	13,694,931	(706,409)	(4.9)

Major items reflected in the currently approved FY 2011 budget include the following:

State General Fund expenditures for the Department of Education increase by \$133.4 million, or 4.7 percent. Base state aid per pupil is set at \$4,012, as compared to the FY 2010 amount of \$4,400. Of the increase, \$55.2 million was included for General State Aid and \$42.6 million for the local option budget to replace federal stimulus funding utilized in FY 2010. Funding for KPERs School increased \$35.6 million. Special education is funded at 86.2 percent of excess costs in FY 2011, as compared to 88.7 percent in FY 2010.

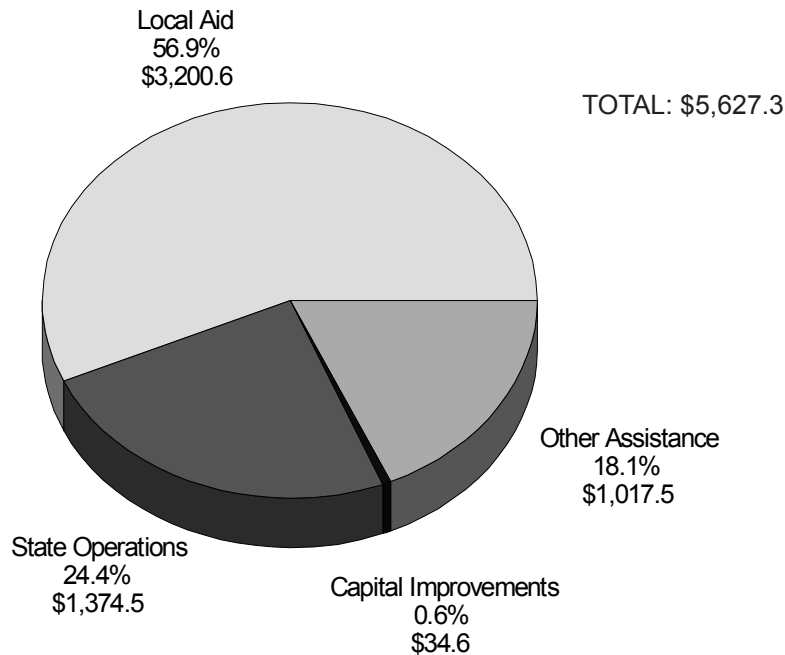
- State General Fund expenditures increase by a total of \$42.5 million for the Department of Social and Rehabilitation Services (\$23.8 million), the Health Policy Authority (\$13.1 million), the Department on Aging (\$5.6 million), largely reflecting increases in consensus caseloads. Other adjustments for these agencies include the following:
 - The approved FY 2011 budget reflects an increase of \$8.9 million for Home and Community Based Services for the Frail Elderly (\$2.0 million), and the Physically and Developmentally Disabled (\$6.9 million).
 - The approved budget for FY 2011 also reflects State General Fund reductions of \$131.0 million below the Governor's recommendations, offset by increased federal Medicaid funds, based on the proposed extension of the enhanced federal match rate for the Medicaid program from December 31, 2010 to June 30, 2011, and a State General Fund reduction of \$27.0 million, offset by special revenue funds, to reflect adjustments related to the implementation of the Health Care Cost Containment and Recovery Services (Medicaid recoveries) Pilot Project for FY 2011. In addition to State General Fund reductions in the budgets of the Department of Social and Rehabilitation Services (\$40.3 million), the Health Policy Authority (\$82.8 million), and the

Department on Aging (\$24.7 million), a total of \$435,816 is reduced from the budget of the Juvenile Justice Authority for FY 2011 for these two items.

- The approved FY 2011 budget includes \$101.0 million, including \$10.2 million from the State General Fund, for disaster relief payments in the budget of the Adjutant General.
- State General Fund expenditures for the Board of Regents and the Regents institutions increase by \$8.1 million, or 1.1 percent, and include \$7.9 million for debt service payments.
- The 2010 Legislature approved the addition of \$1.7 million, all from the State General Fund, and 32.0 FTE position, in the budget of Norton Correctional Facility for FY 2011, to reopen Stockton Correctional Facility, providing an additional 128 correctional facility beds.
- The Legislature approved a number of state employee pay adjustments for FY 2011 including:
 - A reduction of \$13.5 million, including \$5.2 million from the State General Fund, to capture savings by requiring state agencies, except the Judicial Branch, to self-fund state employee longevity bonus payments.
 - A reduction of \$12.9 million, including \$10.1 million from the State General Fund, to implement a moratorium on employer contributions to the Kansas Public Employees Retirement System Death and Disability Fund for the last quarter of FY 2011.
 - The Legislative approved budget includes funding of \$8.5 million, all from the State General Fund, for the third year of the state employee undermarket pay adjustment.
- The 2010 Legislature also provided for a tax amnesty program for all delinquent taxes received from September 1, 2010 to October 15, 2010. The amnesty applies to all delinquent tax liabilities for tax periods ending on or before December 31, 2008. The Department may waive penalty and interest during the amnesty period.
- The Legislature authorized the issuance of \$36.0 million in bonds for the second half of Phase V, the final phase of the Capitol restoration and renovation, in the budget of the Department of Administration for FY 2011.

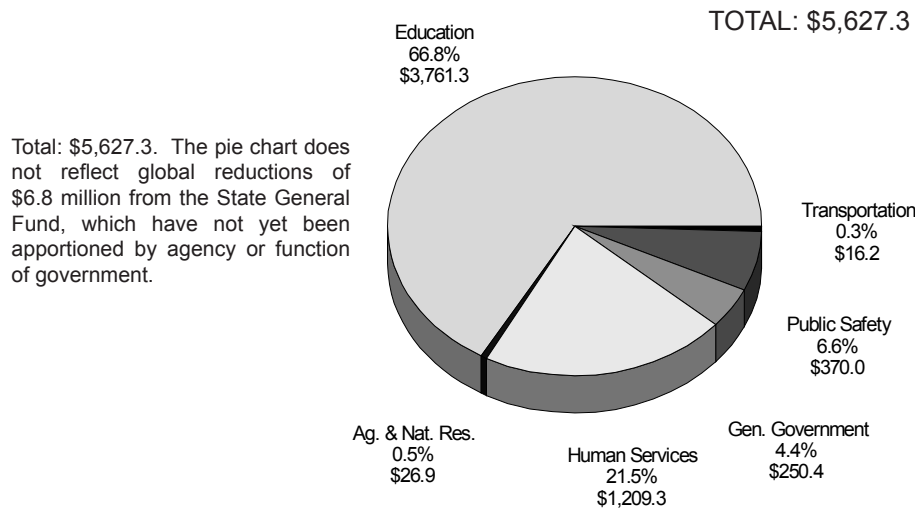
State General Fund Expenditures by Major Purpose. Of the approved FY 2011 State General Fund expenditures of \$5.627 billion, 56.9 percent or \$3.201 billion is for state aid payments to local units of government (mainly local school districts), 24.4 percent or \$1.375 billion is for state operations (the daily costs of operating state government, i.e., state employee salaries, rents, travel, communication, and other items), \$1.018 billion, or 18.1 percent, is for other assistance (payments to individuals such as public assistance benefits, and unemployment benefits), and \$34.6 million, or 0.6 percent, is for capital improvements. The following pie chart displays FY 2011 State General Fund expenditures by major purpose.

**FY 2011 STATE GENERAL FUND EXPENDITURES
By Major Purpose of Expenditure
As Approved by the 2010 Legislature
(In Millions)**



State General Fund Expenditures by Function of Government. Of the approved FY 2011 State General Fund expenditures, 66.8 percent or \$3.761 billion, is for education (local schools, community colleges, Regents institutions), 21.5 percent or \$1.209 billion, is for the human services (Department of Social and Rehabilitation Services and state hospitals, the Health Policy Authority, Department on Aging, Department of Human Resources, and others) function of government, and the remaining 11.7 percent, or \$663.5 million, is for public safety agencies, general government agencies, agriculture and natural resources agencies, and the Department of Transportation. In addition, the approved budget reflects net global reductions of \$6.83 million from the State General Fund which have not yet been apportioned by agency or function of government. The following pie chart displays the FY 2011 State General Fund expenditures by function of government, excluding those global reductions.

**FY 2011 STATE GENERAL FUND EXPENDITURES
By Function of Government
As Approved by the 2010 Legislature
(In Millions)**



State General Fund Profile. The following State General Fund profile reflects legislative action on the state budget. Based on the approved budget, the projected ending balance in the State General Fund at the end of FY 2011 will equal 0.2 percent of expenditures. Provisions of KSA 75-6702 require the projected State General Fund ending balance to equal 7.5 percent on passage of the Omnibus reconciliation spending limit bill. Language in the appropriations bill has exempted the budget from these provisions for FY 2011.

FY 2010 and FY 2011 State Budget—Senate Sub. for HB 2222 and House Sub. for SB 572

State General Fund Profile As Approved by the 2010 Legislature (In Millions)			
	Actual FY 2009	Approved FY 2010	Approved FY 2011
Beginning Balance	\$ 526.6	\$ 49.7	\$ (130.0)
Receipts (April 2010 Consensus)	5,587.4	5,254.3	5,094.7
Adjustments in Governor's Recommendation	0.0	38.6	652.2
Less Adjustments in Gov. Rec. requiring legislation	0.0	0.0	(377.6)
Less shortfall in receipts for April 2010	0.0	(65.3)	0.0
Revenue increases contained in 2010 Sub. for HB 2360	0.0	0.0	303.6
Other Legislative Receipt Adjustments	0.0	(0.5)	89.9
Adjusted Receipts	5,587.4	5,227.1	5,762.8
Total Available	\$ 6,114.0	\$ 5,276.8	\$ 5,632.8
Expenditures	6,064.4	5,406.8	5,627.3
Ending Balance	<u>\$ 49.7</u>	<u>\$ (130.0)</u>	<u>\$ 5.5</u>
Ending Balance as a % of Expenditures	0.8%	(2.4)%	0.1%
Adjusted Receipts in Excess of Expenditures			
% Change from Prior Year:			
Adjusted Revenues	(1.9)%	(6.4)%	10.2%
Expenditures	(0.6)%	(10.8)	4.1%

Tax Provisions—Sales and Use, Income, and Taxpayer Transparency

Senate Sub. for HB 2360 enacts a state sales tax increase, expands the food sales tax rebate program, expands the state earned income tax credit (EITC) program, and amends the Kansas Taxpayer Transparency Act.

Sales and Use Tax Provisions

The state sales and compensating use tax rate is increased from 5.3 to 6.3 percent, effective July 1, 2010. A grandfather clause provides that if contractors had entered into written binding contracts prior to May 1 for the original construction, reconstruction, restoration, remodeling, renovation, repair or replacement of a building, facility or residential structure, bridge or highway, the 5.3 percent rate will remain applicable to such contracts if proof is provided to the Department of Revenue prior to July 10.

The rate subsequently is reduced to 5.7 percent on July 1, 2013. Disposition of revenue provisions generally are adjusted to provide the State Highway Fund (SHF) with an estimated \$20.427 million of the additional revenue in FY 2011; \$21 million in each of FY 2012-2013; and all of the additional revenue above 5.3 percent once the rate returns to the 5.7 percent level. The balance of the additional receipts are to be deposited in the State General Fund (SGF), except for a small portion attributable to utility purchases within an intermodal facility district. Such receipts will be distributed temporarily to the SHF, but then may be transferred by the Secretary of Transportation to a new rail service improvement fund.

Income Tax Provisions

The food sales tax rebate program, which is administered through the income tax as a credit, is expanded such that the income eligibility ceiling is increased from the current \$31,900 to \$35,000 beginning in tax year 2010; the per capita refund amounts are increased from \$41 to \$45 in the upper-income tier of the program, and from \$84 to \$90 in the lower-income tier.

A second income tax provision increases the Kansas EITC from the current 17 percent of the federal EITC to 18 percent for tax years 2010-2012. The state EITC increase will then return to 17 percent of the federal credit in tax year 2013.

Taxpayer Transparency

Finally, the Kansas Taxpayer Transparency Act is amended to require the Secretary of Administration to include tax expenditure information provided by the Department of Revenue in addition to other information currently required to be provided on a searchable website pursuant to KSA 2009 Supp. 74-72,123.

The following table summarizes the estimated fiscal impact through FY 2015:

FISCAL IMPACT - SENATE SUBSTITUTE FOR HOUSE BILL 2360

(\$ in millions)

Sales/Use Tax Increase:

Increase Sales/Use Tax Rate from 5.3% to 6.3% on 7/1/10; Rate falls to 5.7% on 7/1/13; State Highway Fund receives \$19.3 million in FY 2011, and \$21.0 million for FY 2012 and FY 2013. State Highway Fund gets all of excess above 5.3% beginning in FY 2014.

State General Fund Diversion of Sales Tax Revenue for Intermodal	Expand Food Sales Tax Rebate Program to \$35,000 and Increase Refund Amounts to \$45/\$90	Expand Earned Income Tax Credit (EITC) from 17 to 18 percent of Federal EITC
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	State General Fund	State Highway Fund	Total	State General Fund	State General Fund	State General Fund	Total State General Fund	Total State Highway Fund	Grand Total All Funds
FY 2011	\$ 309.801	\$ 19.285	\$ 329.086	\$ (0.023)	\$(10.900)	\$ (4.100)	\$ 294.778	\$ 19.285	\$ 314.063
FY 2012	367.504	21.000	388.504	(0.083)	(11.445)	(3.900)	352.076	21.000	373.076
FY 2013	381.102	21.000	402.102	(0.208)	(12.017)	(4.000)	364.877	21.000	385.877
FY 2014	29.399	171.967	201.366	(0.387)	(12.618)	0.000	16.394	171.967	188.361
FY 2015	0.000	189.526	189.526	(0.538)	(13.249)	0.000	(13.787)	189.526	175.739
5-yr total	\$ 1,087.806	\$ 422.778	\$ 1,510.584	\$ (1.239)	\$(60.229)	\$ (12.000)	\$ 1,014.338	\$ 422.778	\$ 1,437.116

Inheritance Taxes

HB 2557 provides limitations on the liability of estates under the Kansas inheritance tax which, under the law, is eliminated in tax year 2010. The bill also removes various references to the inheritance tax.

TELECOMMUNICATIONS

Kelsey Smith Act—Submission of Emergency Contact Information

HB 2652 amends the Kelsey Smith Act to require all wireless telecommunications carriers registered to do business in the state and all resellers of wireless telecommunications services to submit emergency contact information to the Kansas Bureau of Investigation (KBI). Under prior law, the KBI was required to obtain the information from the carrier. Carriers are required to submit the information annually by June 15th or immediately upon any change in emergency contact information. The KBI is required to maintain a database containing the emergency contact information provided by the carriers and make the information immediately available upon request to public safety answering points in Kansas. The bill also extends the KBI's deadline to promulgate rules and regulations to fulfill the requirements of the bill from July 1, 2010, to July 1, 2011.

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