

2011 Summary of Legislation



Abolishing the Liquefied Petroleum Gas Advisory Board

SB 215 abolishes the Liquefied Petroleum Gas Advisory Board on July 1, 2011, and repeals KSA 55-1811, which is the statute that establishes the Board and provides for the Board's members and their terms of office.

ENERGY AND UTILITIES

Kansas 911 Act

Sub. for SB 50 enacts new law relating to 911. Provisions of the bill apply to all modes of service, including telephone, cell phone, Voice over Internet Protocol (VoIP), prepaid wireless, and other service capable of contacting a public safety answering point (PSAP). Major provisions of the bill are described below.

Many sections of the bill do not take effect until January 1, 2012.

Payment and Collection of 911 Fees (excluding prepaid wireless service)

- Imposes a 911 fee of \$0.53 per month per subscriber account, effective January 1, 2012. The 911 Coordinating Council, pursuant to rules and regulations, may lower the 911 fee or may raise it to not more than \$0.60 if it finds that moneys generated by the fee are in excess of or are below the cost required to operate a PSAP, based on expenditure information reported to the Council;
- Requires the fee to be paid by the service user (*e.g.*, owner of the phone), and collected by the service provider (*e.g.*, telephone company) monthly. The duty to collect fees begins January 1, 2012; and
- Requires service providers to remit fees to the local collection point administrator (LCPA) within 15 days of the end of the calendar month, along with a return for the preceding month, and to retain records of fee collections for three years.

Prepaid Wireless Service

- Imposes a prepaid wireless 911 fee of 1.06 percent per retail transaction which occurs in Kansas, with the fee to be paid by the consumer (*e.g.*, the purchaser of the prepaid card), effective January 1, 2012;
- Requires a proportionate increase or decrease in the prepaid wireless 911 fee if the subscriber monthly 911 fee is changed;
- Requires sellers to remit all prepaid wireless 911 fees collected to the Department of Revenue by electronic filing, at the same filing frequency as they remit sales tax;

- Requires the Department of Revenue to transfer all remitted prepaid wireless 911 fees to the LCPA within 30 days of receipt;
- Authorizes the Department of Revenue to audit a seller's prepaid wireless 911 fee compliance at the time of sales and use tax audits;
- Allows the Department to retain up to \$70,000 of remitted funds in fiscal year 2012 only, to pay for programming and other one-time costs for establishing a system for collecting the prepaid wireless 911 fee; and
- Requires that the prepaid wireless 911 fee be the only 911 funding obligation imposed on prepaid wireless service.

Distribution of Fee Moneys

- Requires the LCPA to distribute fees to PSAPs within 30 days of receipt. Each PSAP receives a percentage of the fees generated from its users. This amount varies based on the population of the county, which is as follows:

Population	Percent of Fees
80,000 or more	82 percent
65,000 - 79,999	85 percent
55,000 – 64,999	88 percent
45,000 – 54,999	91 percent
35,000 – 44,999	94 percent
25,000 – 34,999	97 percent
Less than 25,000	100 percent

- Provides that each county will receive a minimum distribution of \$50,000;
- Directs that all moneys remaining after distribution will be transferred to the 911 State Grant Fund, along with fees with no identifiable source; and
- Requires the LCPA to transfer up to \$2 million annually of fees collected on prepaid wireless service to the 911 State Grant Fund. Prepaid receipts in excess of \$2 million annually will be distributed to PSAPs according to the formula shown above.

Use of Fee Moneys

- Restricts the use of fees collected, including interest, to only necessary and reasonable costs incurred by PSAPs for the following uses:

- Implementation of 911 services;
 - Purchase of 911 equipment and upgrades;
 - Maintenance and license fees for 911 equipment;
 - Training of personnel;
 - Monthly recurring charges billed by service suppliers;
 - Installation, service establishment, and non-recurring start-up charges billed by the service supplier;
 - Charges for capital improvements and equipment or other physical enhancements to the 911 system; and
 - The original acquisition and installation of road signs designed to aid in the delivery of emergency service.
- Disallows expenditures from fee moneys to lease, construct, expand, acquire, remodel, renovate, repair, furnish, or make improvements to buildings or similar facilities. In addition, the bill disallows expenditures to purchase subscriber radio equipment;
 - Requires PSAPs to report their expenditures from 911 fee moneys annually to the 911 Coordinating Council and for the Council to include detailed reports of those expenditures in the Council's annual report to the Legislature's utilities committees; and
 - Requires PSAPs that are found to have spent 911 fee moneys on unauthorized uses to repay those funds plus 10 percent to the LCPA for deposit in the 911 State Grant Fund. The bill sets out due process protections for those PSAPs.

911 Coordinating Council

- Creates the 911 Coordinating Council to monitor the delivery of 911 services, develop strategies for future enhancements to the 911 system, and distribute grant funds to PSAPs. After January 1, 2012, the Council also will designate the LCPA subject to the consent of the Legislative Coordinating Council;
- Establishes membership requirements of the Council, to include 16 voting members (12 appointed by the Governor and four legislators appointed by legislative leadership) and 10 non-voting members appointed by the

Governor. Voting members are limited to no more than two three-year terms;

- Assigns duties to the Chairperson of the 911 Coordinating Council as listed below. The Chairperson, who must have extensive experience with 911 in Kansas, is appointed by and serves at the pleasure of the Governor. The Chairperson's duties include:
 - Coordinating Enhanced 911 and Next Generation 911 services in the state;
 - Implementing statewide 911 planning;
 - Ensuring that policies adopted by the 911 Coordinating Council are carried out;
 - Acting as a liaison between the LCPA and the Council;
 - Assisting in development of regulations; and
 - Administering the federal grant fund, and distributing federal grants as recommended by the Council.
- Limits contracts between the 911 Coordinating Council and the LCPA to no longer than two years with authority to extend to three years subject to processes set out in rule and regulations. Specifies that the LCPA is not a state agency, makes the LCPA subject to the Kansas Open Records and Open Meetings acts, and requires the LCPA to treat moneys received as public funds pursuant to the state Banking Code; and
- Designates the Department of Administration as the entity to provide staffing to the 911 Coordinating Council prior to January 1, 2012. After that date, the LCPA provides staffing to the Council.

Rules and Regulations, Immunity

- Authorizes the 911 Coordinating Council to adopt rules and regulations necessary to carry out the Act, including but not limited to:
 - Creating a uniform reporting form designating how moneys, including 911 fees, have been spent by the PSAPs;
 - Establishing procedures for determining whether 911 fees should be raised or lowered, within the specified limit, based on information provided on uniform reporting forms;

- Recommending standards for training of PSAP personnel;
 - Requiring service providers to notify the 911 Coordinating Council;
 - Setting standards for coordinating and purchasing equipment; and
 - Assessing civil penalties.
- Directs that rules and regulations necessary to begin administration of the act be adopted by December 31, 2011; and
 - Except as provided by the Kansas Tort Claims Act, and except for failure to use ordinary care, or for intentional acts, the LCPA and providers shall not be liable for payment of damages resulting directly or indirectly from the total or partial failure of any transmission to an emergency communication service or for damages resulting from the performance of installing, maintaining, or providing 911 service.

Audits and Reviews

- Requires yearly audits of the receipts and disbursements of the LCPA by a licensed municipal accountant or certified public accountant;
- Allows the LCPA to require an audit of any provider's books and records concerning collection and remittance of 911 fees, with the audit cost paid from the 911 State Grant Fund;
- Requires an audit of the 911 system by Legislative Post Audit on or before December 31, 2013, and at least once every three years thereafter. Audits are to be contracted, with the cost of the audit paid from the 911 State Grant Fund; and
- Mandates legislative review of the Act at the regular 2014 Legislative Session and every five years thereafter.

Cost Recovery

- Does not limit providers from recovering directly from their customers the costs associated with designing, developing, deploying and maintaining 911 service, as well as the providers' cost of collection and administration of the 911 fees.

911 State Grant Fund

- Directs the LCPA, upon advice and consent of the 911 Coordinating Council, to establish the 911 State Grant Fund, which is not part of the State Treasury; and
- The 911 Coordinating Council is responsible for ensuring that 911 State Grant Fund moneys are spent only for the following purposes:
 - Projects involving the development and implementation of Next Generation 911;
 - Costs associated with PSAP consolidation or cost-sharing projects;
 - Expenses related to the 911 Coordinating Council, up to 1.5 percent of the total receipts remitted by the providers and the Department of Revenue to the LCPA;
 - Audits of PSAPs conducted by Legislative Post Audit and audits of providers directed by the LCPA; and
 - Other costs incurred by PSAPs specified in the Use of Fee Moneys section of this document.

911 Federal Grant Fund

- Establishes the 911 Federal Grant Fund in the State Treasury to receive grant moneys from the federal government, and establishes related funds as needed for receipt of moneys from other sources effective January 1, 2012; and
- Sets out allowable uses for grant moneys.

Dissolution of Current Process

- Certifies all unobligated funds remaining in the Wireless Enhanced 911 Grant Fund on January 1, 2012, and transfers the funds to the LCPA for deposit in the 911 State Grant Fund;
- Discontinues the wireless and VoIP enhanced 911 local and grant fees on January 1, 2012; and
- Abolishes the Kansas Wireless Enhanced Advisory Board on January 1, 2012.

Other Provisions

- Requires information received by the Department of Revenue in compliance with this act to be confidential and not disclosed except in accordance with other provisions of law with respect to the enforcement and collection of tax;
- Allows the Secretary of Revenue to provide information to the LCPA from returns filed by sellers of prepaid wireless services for the purpose of verifying seller compliance with collection and remittance of such fees; and
- Creates an exemption to the Kansas Open Records Act for information provided by providers to the LCPA or to the 911 Coordinating Council, upon request of the party submitting the records.

Telecommunication Deregulation

Sub. for SB 72 amends existing telecommunications law to allow any price-cap regulated local exchange carrier that has deregulated a majority of its local exchange access lines to elect to be regulated as a telecommunications carrier rather than as a local exchange carrier. Under the bill, a local exchange carrier that elected to be regulated as a telecommunications carrier is referred to as an “electing carrier.”

The carrier must provide the Kansas Corporation Commission (KCC) with at least 90 days’ notice of its intention to be regulated as a telecommunications carrier, along with a verified statement that the majority of its access lines are deregulated and information about the number of access lines the carrier serves in each of its exchanges. The KCC is required to review the information. Unless the KCC determines within 45 days that the majority of the carrier’s access lines are not deregulated, the KCC is required to designate the carrier as an electing carrier.

The bill outlines the following rights and responsibilities of an electing carrier:

- An electing carrier is subject to price cap regulation for lifeline services, but otherwise is not subject to rate regulation by the KCC;
- An electing carrier is subject to no more regulation than other telecommunications carriers operating in Kansas (e.g., wireless carriers and cable companies), except that it remains subject to existing requirements regarding reasonable resale of its retail service, unbundling and interconnection obligations, intrastate access charges, and the Kansas Lifeline Service Program. In addition, an electing carrier remains eligible to receive funding from the Kansas Universal Service Fund (KUSF);

- An electing carrier can charge no more for single residential or business lines in its rural exchanges (exchanges with less than 6,000 local exchange access lines) than the average of its rates for those lines in its urban exchanges (exchanges with 75,000 or more local exchange access lines);
- An electing carrier could be relieved of its requirement to serve as carrier of last resort (COLR) in its urban exchanges by providing written notice to the KCC of the specific urban exchanges in which the carrier elects to be relieved of that obligation;
- Neither an electing carrier that chooses to be relieved of its COLR obligation in an urban exchange, nor any local exchange carrier that does not have COLR responsibility in an exchange, is eligible for KUSF funding for COLR obligations or for high cost support in that exchange. Such carriers remain eligible for KUSF support for the Kansas Lifeline Services Program;
- An electing carrier is required to offer single residential local exchange access lines in its exchanges;
- An electing carrier is required to allow interconnection by a telecommunications carrier to transmit and route voice traffic between the electing carrier and the telecommunications carrier, regardless of the technology used to originate and terminate the call;
- An electing carrier and all local exchange carriers are required to allow consumers to use a signed document called a “letter of agency” to satisfy the notification requirement when a consumer wishes to change telecommunications carriers; and
- The local service rates of electing carriers will not be included when determining the average of residential local service rates used to calculate KUSF support for rural telephone companies.

(Note: Currently, AT&T and CenturyLink are the only price-cap regulated local exchange carriers in Kansas, and only AT&T meets the criteria to become an electing carrier.)

The bill also modifies the statutory contents of the annual price deregulation report prepared by the KCC. Changes in rates for nonwireless basic local telecommunications service in deregulated exchanges still will be reported, but the KCC will no longer be required to make recommendations to the Governor and Legislature on changes needed in state law based on a specific analysis of those changes. New information required in the report for price deregulated exchanges includes the following:

- Current rates for services and services available in a deregulated exchange provided by all telecommunications carriers or other telecommunications service providers regardless of the technology used to provide service; and
- The number of competitors in a deregulated exchange including, but not limited to, facilities-based carriers, commercial mobile radio service, or broadband-based service providers.

Electric Supply and Demand Reports; Gas System Reliability Surcharge

SB 224 contains provisions related to electric supply and demand reports and to the gas system reliability surcharge.

Electric Supply and Demand Reports

The bill requires the Kansas Corporation Commission (KCC) to issue a biennial report on electric supply and demand for all electric utilities in Kansas, beginning February 1, 2013. The report shall include, but not be limited to, generation capacity needs, system peak capacity needs, and renewable generation needs associated with the 2009 Kansas renewable energy standards. The report will be submitted to the House Energy and Utilities Committee and the Senate Utilities Committee.

Gas System Reliability Surcharge

The bill allows a regulated natural gas company that collects a gas system reliability surcharge from its customers to request an extension of up to 12 months beyond the current 60-month requirement for a full rate review by the KCC. A motion requesting the extension must be filed with the KCC, which determines the reasonable or necessary length of the extension, up to 12 months.

The gas system reliability surcharge allows a natural gas utility to begin rate recovery of capital spent on certain types of projects prior to a full rate review by the KCC.

Severance of Wind and Solar Rights; Markings on Anemometer Towers

SB 227 addresses two property issues involving renewable energy: preventing the permanent severance of wind and solar rights from a tract of land, and establishing daylight marking requirements for anemometer towers. (Anemometers are instruments for measuring and recording wind speed.)

Severance of Wind and Solar Rights

The bill amends the law concerning conveyance of real estate. The bill allows only the surface owner of a tract of land to use the land to produce wind- or solar-generated energy, unless the owner has entered into a lease or easement for those rights for a definite period. The requirement does not apply to leases filed before July 1, 2011. In addition, the requirement does not affect any otherwise enforceable restriction on the use of the land for production of wind or solar energy, nor does it prohibit conservation easements.

The bill also requires any conveyance for solar resources to include the same types of information that must be included in an instrument conveying interest in wind resources.

Visibility Marking Requirements for Anemometer Towers

The bill requires specific daylight visibility markings for any anemometer tower that is at least 50 feet in height and that is located outside the corporate boundaries of a city, provided the appearance of the tower is not otherwise mandated by state or federal law.

The following markings are required at the time the tower is erected: the top one-third of the anemometer tower must be painted in equal, alternating bands of aviation orange and white; two marker balls must be attached to and evenly spaced on each outside guy wire; and one or more seven-foot safety sleeves must be placed at each anchor point.

The requirements apply to any anemometer tower erected on or after July 1, 2011. Towers erected before that date are required to be marked within two years of the effective date of the act. Failure by an owner of an anemometer tower to properly mark the tower is a class C nonperson misdemeanor.

National Broadband Plan

SR 1832 and HR 6027 urge the Federal Communications Commission (FCC) to make substantive change to the National Broadband Plan to ensure that rural areas have access to the same high-quality, affordable communication services that are available in urban areas. Currently, the Plan calls for access to broadband speeds at 100 megabits per second by 2020 in urban areas, and at four megabits per second in rural areas. Specifically, the FCC is urged to modify the Plan to develop a universal service support mechanism that would provide efficient and effective incentives for broadband network deployment and operation, and that would keep broadband service affordable. The members of the Kansas congressional delegation are urged to work with the FCC to ensure that commissioners understand the dramatic alterations needed to the Plan to ensure quality broadband service is available throughout Kansas and the country.

Environmental Protection Agency Regulations

HCR 5009 urges the Environmental Protection Agency to continue to allow state permit-writers the flexibility to evaluate power plants on a site-by-site basis when determining the best available technology for cooling water intake structures to minimize adverse environmental impacts. The resolution states that a one-size-fits-all approach mandating the use of cooling towers could cause more adverse environmental impacts (including increases in emissions of greenhouse gases and particulate matter, evaporative water loss and solid waste production) than it prevents (fish impingement and entrainment).

Environmental Train Wreck

HR 6008 expresses concern about the numerous new regulations proposed by the Environmental Protection Agency (EPA) particularly in the area of air quality and regulation of greenhouse gas emissions. The regulations are sometimes referred to as the “train wreck.” The resolution urges Congress to adopt legislation prohibiting the EPA from regulating greenhouse gas emissions, to impose a moratorium on new air quality regulation by the EPA for at least two years (except in the case of an imminent health or environmental emergency), and to require the Administration to undertake a comprehensive study of the cumulative effect of the proposed regulations on America’s economic competitiveness, including a cost-benefit analysis of all current and planned EPA regulations.

Regulation of Interstate Underground Gas Storage Fields

HR 6024 urges the Federal Energy Regulatory Commission, the U.S. Department of Transportation and the Kansas Corporation Commission to adopt legislation or policies that would provide Kansas, and other states, administrative jurisdiction to assure the safe operation of wellbores associated with the underground storage of natural gas that is in interstate transportation. A recent federal court ruling precludes state authorities from regulating the safety of underground storage of gas in interstate transportation.

Regulation of Hydraulic Fracturing

HR 6025 urges the U.S. Congress to preserve the primacy of the states to regulate hydraulic fracturing as a component of states’ regulatory programs for drilling, completion, operation, and plugging of oil and gas wells; and to maintain the exemption from the Safe Drinking Water Act for hydraulic fracturing.

Scrap Metal Dealer Registration

HB 2312 requires registration of scrap metal dealers. On or after January 1, 2012, in order to purchase regulated scrap metal, a business must be registered for each place of business. The bill requires a business to submit its application for registration to the city in which the business is located, or if it is not located within the corporate limits of a city, to the board of county commissioners in the county in which it is located. Pursuant to the bill, the initial registration fee would be not less than \$100 nor more than \$400. Registration would be valid for ten years. The fee for renewing registration is not less than \$25 nor

more than \$50. Purchasing scrap metal without being registered is a class A, nonperson misdemeanor.

Prior to granting registration to a scrap metal dealer, a board of county commissioners is required to give written notice of the filing of an application for registration to the clerk of the township where the applicant's business is located within ten days of registration or renewal. The governing body of a city and the board of county commissioners also must provide written notice of a filing to the sheriff, chief of police, or director of all law enforcement agencies in the county within ten days of registration or renewal.

The bill outlines the requirements for filing an application for registration, the factors prohibiting registration, and circumstances allowing or requiring the board of county commissioners or the city's governing board to suspend for up to thirty days or revoke registration.

"Value" is defined under the bill as the value of the property or the cost to restore the site of the theft of regulated scrap metal to its condition at the time immediately prior to the theft, whichever is greater. Further, scrap metal dealers are required to pay by check or use a system that photographs or videotapes the payment recipient. Finally, the bill modifies the list of scrap metal property for which the seller must provide proof of authority to sell.