

## MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chair Sharon Schwartz at 3:35 p.m. on March 9, 2010, in Room 144-S of the Capitol.

All members were present except:

Representative Lana Gordon, Excused  
Representative Michael Peterson, Absent

Committee staff present:

Kristen Kellems, Office of the Revisor of Statutes  
Martha Dorsey, Kansas Legislative Research Department  
Jill Shelley, Kansas Legislative Research Department  
Carol Bertram, Committee Assistant

Conferees appearing before the Committee:

Shawn Leisinger, Assistant Shawnee County Counselor and General Manager, Westlawn Memorial Gardens Cemetery  
Joe Grisolano, Crawford County Treasurer, Kansas County Treasurers Association  
Melissa A. Wangemann, General Counsel/Director of Legislative Services, Kansas Association of Counties  
Diane Minear, Deputy Assistant Secretary of State, Legal Counsel

Others attending:

See attached list.

Martha Dorsey, Legislative Research Department, explained **HB 2679**, stating that the bill would amend laws regarding abandoned cemetery property after a municipality takes possession. She pointed out that on page two of the bill there are specific requirements concerning potential buyers that must be met before the municipality could sell the property.

Questions and answers followed.

Chair Schwartz opened the hearing on **HB 2679 - Cemeteries; abandoned; sale by municipalities; conditions.**

Proponent:

Chair Schwartz recognized Shawn Leisinger, Assistant Shawnee County Counselor and General Manager, Westlawn Memorial Gardens Cemetery, who appeared before the Committee in support of **HB 2679 (Attachment #1)**. He stated this bill addresses a concern of Shawnee County that he said could become a concern of all county and city governments in Kansas. If this bill is adopted, it would allow any county or city in the State of Kansas that is ordered to assume responsibility for care of an abandoned cemetery to be able to sell it to responsible new owners to get it taken care of (to benefit the lot owners) and to get it put back on the tax rolls (to benefit the taxpayers) while it can still be run in a financially responsible manner. Mr. Leisinger sees this bill as a win/win situation for both the citizens affected and all counties and cities put into this situation statewide.

Questions and answers followed.

The Chair asked Kristen Kellems, Office of the Revisor of Statutes, to do research and report back to the Committee on what happens to private rights for people who own plots in private cemeteries when the cemetery changes ownership or is abandoned.

Melissa A. Wangemann, Kansas Association of Counties, stated the Association of Counties supports **HB 2679** and submitted written-only testimony following the hearing (Attachment #2).

Diane Minear, Deputy Assistant Secretary of State, stated the Secretary of State's Office holds a neutral position on **HB 2679** and submitted written-only testimony following the hearing (Attachment #3).

CONTINUATION SHEET

Minutes of the House Local Government Committee at 3:30 p.m. on March 9, 2010, in Room 144-S of the Capitol.

Chair Schwartz closed the hearing on **HB 2679**.

Chair Schwartz opened the hearing on **SB 464 - Payment of taxes; cleanup**.

Ms. Dorsey, Legislative Research Department, explained **SB 464**. She stated this bill would clarify the "second half" property tax payment deadline date in three statutes to conform with legislation passed in a previous year.

Questions and answers followed.

Chair Schwartz recognized Joe Grisolano, Crawford County Treasurer and Vice President of the Kansas County Treasurers Association, who appeared before the Committee in support of **SB 464 (Attachment #4)**. He stated several years ago the due date for the payment of second half property taxes was changed from June 20 to May 10. The dates in three statutes did not get adjusted to reflect this change, and the Treasurers Association is asking the Committee's support to correct the language in the three statutes.

Questions and answers followed.

Chair Schwartz closed the hearing on **SB 464**.

A motion was made by Representative Slattery and seconded by Representative Garcia that the Committee recommend **SB 464** favorably for passage and that it be placed on the Consent Calendar. The motion carried.

There being no further business, Chair Schwartz adjourned the meeting at 4:20 p.m.

The next meeting of the House Local Government Committee is scheduled for March 11, 2010.

*S.S.*

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Representative Sharon Schwartz, Chair

# HOUSE LOCAL GOVERNMENT COMMITTEE

DATE: *March 9, 2010*

NAME	REPRESENTING
Diane Minear	Sec of State
Shawn Weisinger	Shawnee County
Joe Grisolan	Crawford Co. Ks. Co. Treasurers Assoc.
Mack Smith	KS S & BA of Mortuary Arts

Please use black ink



## Shawnee County Office of County Counselor

RICHARD V. ECKERT  
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### LOCAL GOVERNMENT COMMITTEE OF THE HOUSE LEGISLATIVE SESSION – 2010

#### House Bill 2679

**Cemeteries; abandoned; sale by municipalities; conditions.**

**Tuesday, March 9, 2010 at 3:30 p.m. in Room 144 South**

Dear Chairperson Schwartz, Vice-chairperson Holmes, Members Goico, Gordon, Huebert, Otto, and Seiwert. Ranking Minority Member Garcia, Members Mah, Peterson, and Slattery:

I appreciate your time in reviewing and contemplating this bill. I am an attorney for Shawnee County, as well as the designated manager of Westlawn Memorial Gardens, a cemetery that Shawnee County has been awarded pursuant to abandoned cemetery statutes through action of the Kansas Attorney General and Secretary of State. I sought to have House Bill 2679 introduced to address a concern of Shawnee County that may well potentially become a concern of all county and city governments in Kansas in the foreseeable future. If the proposed bill is adopted it would allow any county or city in the State of Kansas that is ordered to assume responsibility for care of an abandoned cemetery to be able to sell it to responsible new owners to get it taken care of (to benefit the lot owners) and to get it put back on the tax rolls (to benefit the taxpayers) while it can still be run in a financially responsible manner. It would also require that any proceeds be put back into a perpetual care fund for whenever the cemetery comes back to the county or city for care down the road.

In the present case both the Westlawn Cemetery and Lawrence Memorial Park in Lawrence, Kansas could be prudently run and be back on the tax rolls for a good many years if put back into competent hands. Professional cemetery operators have expressed an interest and have demonstrated an ability to care for their cemeteries in our community in an impressive manner. (Notably Westlawn needs hundreds of thousands of dollars of work to recover from its abandonment by the former corporate owners who looted the prepaid merchandise and perpetual care funds both here in Kansas and a multitude of other states.)

I would be happy to answer any questions you might have and would be happy to work with anyone who might have an interest in this matter as well. I strongly believe that this is one of those rare bills that can be a win/win situation for both the citizens affected and all counties and cities put into this scenario statewide. Again, I appreciate your consideration and respectfully ask that you support House Bill 2679.

Shawn Leisinger  
Assistant Shawnee County Counselor  
General Manager Westlawn Memorial Gardens Cemetery  
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Local Government  
Date: 3-9-10  
Attachment # 1

Amended/Additional Language to be Added to K.S.A. 17-1367 by House Bill 2679

(b) In the event that a municipality, as defined by K.S.A. 17-1366, and amendments thereto, is ordered to take title pursuant to actions taken pursuant to subsection (a), and the municipality determines that the cemetery may potentially be operated in a financially viable manner by another private owner and that the interests of the lot owners will be served and the property may be returned to the tax rolls, the municipality may place the property up for sale in the same manner provided by law to dispose of other municipal property.

The sale shall be allowed to be completed and closed subject to the following requirements:

- (1) The potential buyer must demonstrate financial ability to operate the cemetery in the foreseeable future;
- (2) the potential buyer must demonstrate experience in successfully operating cemeteries in the past and an understanding and compliance with Kansas regulatory provisions related to private operations of cemeteries in Kansas; and
- (3) any proceeds from such sale, as may remain after payment of any expenses incurred by the municipality related to operation of the cemetery, either as a receiver or owner, shall be placed in a trust fund controlled by the municipality to be held for permanent maintenance of the cemetery at such future date if the cemetery is later placed in the municipality's care.

(c) Upon such sale, an accounting of any prepaid services or items shall be made by the municipality to the purchaser and the purchaser shall be required to place sufficient funds to cover 110% of the wholesale costs of the prepaid merchandise or services into an interest-bearing Kansas trust account. The purchaser shall be responsible for providing the merchandise or services at the time of need of the decedent and may withdraw the funds deposited to cover those expenses, specifically the wholesale cost thereof, upon provision of satisfactory documentation to the trustee that the items have been provided. In the event that the deposits and interest in the account are not sufficient to cover 110% of the costs of the outstanding services and merchandise at the end of any given year, the purchaser shall deposit sufficient funds to bring the trust account up to the level that such costs are covered. Any excess funds shall remain in the account until such time as all prepaid merchandise and services are provided and at that time any remainder shall be moved to the perpetual care fund for the cemetery.



TESTIMONY TO THE HOUSE LOCAL GOVERNMENT COMMITTEE  
ON HB 2679

MARCH 10, 2010

Thank you Madam Chairman and Members of the Committee for allowing the Kansas Association of Counties to submit written testimony on HB 2679 following its hearing.

We support the bill. The current law requiring counties to take over abandoned cemeteries represents a default position; because the owner has not performed his duties in accordance with Kansas law, the local governmental entity must take over the possession and functions of the cemetery. Managing a cemetery is not an essential governmental service that should be provided by local government. I believe our taxpayers would prefer that we use our tax monies to support the vital functions of government and not the handling of cemetery matters.

The bill allows a municipality to sell an abandoned cemetery that has fallen into the hands of the municipality. The typical process used by counties for selling property is employed under the bill.

We would expect this bill's provisions to be used infrequently, as very few abandoned cemeteries will attract a buyer. Still, if a viable alternative in the private realm exists for ownership of the abandoned cemetery, it seems the better policy is to return the cemetery to private hands than to place its operations with the county. I would note that a private entity is more likely to offer other services, such as selling merchandise. If local government remains the owner, it will likely maintain the cemetery at a minimum, such as just mowing the grass.

There was much talk on the committee about other concerns relating to cemeteries. This bill will not address all the concerns that arise about cemeteries. While funeral homes are regulated by state government, cemeteries are not. Thus, there are many unresolved issues relating to cemeteries that are not addressed by government. The Secretary of State has introduced a bill to address some concerns about cemeteries, and that bill may be the better avenue to discuss these bigger concerns.

I appreciate the committee's time and attention to HB 2679.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Melissa A. Wangemann".

Melissa A. Wangemann

General Counsel/Director of Legislative Services

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Local Government

Date: 3-9-10

Attachment # 2

TESTIMONY OF THE SECRETARY OF STATE  
ON HB 2679  
March 11, 2010

Madame Chair and Members of the Committee:

The secretary of state appreciates the opportunity to submit written testimony relating to HB 2679, a bill regarding cemeteries and a municipality's authority to sell a cemetery acquired by abandonment. The following is a list of observations and questions the secretary of state has with regards to the bill as submitted.

1. Is it the intent of Section 1(b) to cover the interests of the taxpayers and prepaid merchandise and service consumers prior to the sale?
2. Is it intended that the municipality will fully fund the permanent maintenance fund? Currently, K.S.A. 17-1312d provides a cemetery that has neglected to establish or maintain a permanent maintenance fund in accordance with the requirements of Kansas law forfeits its franchise. The Attorney General, upon request of the Secretary of State, shall then begin action for the appointment of a receiver for such cemetery corporation and to dissolve the same. This would not seem to be the intent of the municipality.
3. In Section (1) (c) the proposed merchandise funding language is inconsistent with current cemetery law as defined in K.S.A. 16-301 *et seq.* and 16-320 *et seq.* K.S.A. 16-301 requires services to be trusted at 100% of retail price. Also, in page 2, in lines 16 and 17, the bill refers to an "interest bearing Kansas trust account." K.S.A.16-301 requires funds to be deposited in a bank or savings and loan association which is authorized to do business in this state and insured by a federal agency. K.S.A. 16-322 requires funds to be deposited in a trust fund with a bank, trust company, or savings and loan association having trust powers.
4. This bill does not address any discrepancies or omissions in the "accounting of any prepaid services or items."
5. Does this bill address how consumers who were financially harmed during a previous transition from private ownership to the municipality will be compensated?
6. Would the proposed language be better placed in K.S.A. 17-1368? This statute permits a municipality to contract for the care, maintenance, and openings and closings of an acquired cemetery. The last sentence of 17-1368 prohibits a municipality from assigning or contracting its duties and responsibilities imposed under the provisions of the act.

Again, we appreciate the opportunity to share our suggestions.

Diane Minear,  
Deputy Assistant Secretary of State, Legal Counsel

Local Government  
Date: 3-9-10  
Attachment: 3

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House Committee on Local Government  
March 9, 2010

**Testimony in Support of SB 464**

Submitted by Joe Grisolano, Crawford County Treasurer  
Vice President, Kansas County Treasurers Association

Chairman Schwartz and Committee Members:

On behalf of the Kansas County Treasurers Association, I am here today to speak in favor of SB 464. This bill is being presented to correct the second half tax dates in three Kansas statutes; K.S.A. 24-623, 79-2301, and K.S.A. 2009 Supp. 8-173.

Several years ago, as you are all aware, the due date for the payment of second half property taxes was changed from June 20, to May 10. It appears that the dates in these three statutes did not get adjusted to reflect this change.

The Treasurers Association is asking for your support to correct the language in these statutes. Thank you for your consideration of this legislation and for the time to allow me to address you today. I would be happy to stand for questions.

Local Government

Date: 3-9-10

Attachment # 4