

Implementation Guide For 2024 House Bill 2754

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Preface

This Implementation Guide has been developed to assist Local Health Department (LHD) Administrators to assess the landscape of their community, and then based upon the conclusion from that process, make a proposal to their Board of County Commissioners (BOCC) to cease school inspections currently conducted by the local health officer pursuant to K.S.A. 65-202(c) as amended by 2024 House Bill 2754 (HB2754).

This document is provided to members of the Kansas Association of Local Health Departments (KALHD) for their use and should only be used to assess the viability of making a recommendation to the BOCC. Interpretations of the law by the BOCC, their Counsel, or other local officials must take precedence.

Local Landscape

Prior to making a recommendation to your BOCC on implementing any changes because of HB2754, it is recommended that the health department administrator (as, or with, the local health officer as applicable in each county) assess the practical and political landscape in your community. Determination of the following is recommended:

1. Define the amount of LHD resource currently being utilized to do school inspections.
 - You will want to be able to describe for stakeholders how many staff work hours are being utilized and any other expenses that are being incurred (travel, office supplies, etc.).
 - And if were to recommend a change, you will also want to be prepared to answer questions about any possible commensurate reduction in your health department budget or to make your case to retain those positions and funding to utilize them for other public health needs.
 - If your county did not do school inspections prior to the change in July of 2020, you should learn the history and be prepared to answer questions about any budget increase provided for that purpose, or if this additional work was done within existing resources.
2. Determine the view on school inspections by current school officials (in all USDs in the county).
 - Do they view these as necessary or beneficial and could oppose any changes you may recommend?
 - Or do they view them as unnecessary and might co-sponsor a recommendation or support in other ways a recommendation for the BOCC to apply their authority to exempt out of school inspections?
 - Their position should be known before you decide to make any recommendation.

Prior to HB2754 (July 1, 2020 to June 30, 2024) this provision read as follows: *Counties may not exempt from or effect changes in K.S.A. 65-201 and 65-202, and amendments thereto.*

This language in (a)(39) was newly created by the Legislature during the 2020 Special Session in House Bill 2016 and did not exist previously. Which meant, that the BOCC could exempt themselves under K.S.A. 19-101a from the requirements of any, or all, of K.S.A. 65-201 and 65-202, which includes the function for school inspections.

- K.S.A. 65-202(c)

This provision was amended and beginning July 1, 2024 now appears in a separately enumerated paragraph (c), as a structural change to align with the changes in K.S.A. 19-101a(a)(39). This now allows the BOCC to exempt from (c), but not from the requirements of K.S.A. 65-201 and 65-202(a), (b), (d) and (f). The actual verbiage remains the same and is included here simply for reference: *The local health officer shall upon the opening of the fall term of school, make a sanitary inspection of each school building and grounds, and shall make such additional inspections as are necessary to protect the public health of the students of the school.*

Prior to HB2754 (July 1, 2020 to June 30, 2024) the above verbiage was the same, however the verbiage was included in the last part of paragraph (b) of the statute.

This language was also amended by the Legislature during the 2020 Special Session in House Bill 2016. Prior to that amendment, the language was also contained in (b) and in applicable part read as follows: *Such officer shall upon the opening of the fall term of school, make a sanitary inspection of each school building and grounds, and shall make or have made such additional inspections thereof as are necessary to protect the public health of the students of the school.*

A key point to understand about this legislation is that the Legislature restored the BOCC ability to exempt from these inspections. This legislation does not reinstitute any Charter Resolution adopted prior to 2020 that exempted them from these inspections. A new Charter Resolution is required.

Testimony on HB2754

House Judiciary Committee

During the House Judiciary Committee hearing on HB2754 which was held on February 19, 2024, during the bill brief by staff of the Revisor of Statutes Office, a member of the Committee asked if this bill was to “fix something that we inadvertently changed in the last few years”? In response, staff advised that changes to the statue were made that did not appear to relate to school inspections. As this bill progressed through this hearing, and during the session, appearances are that the 2024 Legislature commonly accepted that the intent in the 2020 Special Session was to affect changes in other provisions of 65-201 and 65-202, and not to school inspections. But as the school inspection language appears in 65-202 it was impacted.

This bill was requested in the 2024 legislative session by Rep. Susan Humphries, Republican 99th District, Wichita, Ks. Proponents who testified (in person or written) in favor of the bill included:

- Sedgwick County Commissioner Ryan Baty and the Sedgwick County Commission (written, with verbal testimony by the county’s lobbyist)
- Dennis Kriesel Johnson County Health Dept.
- Jennifer Stewart, Wyandotte County Public Health
- Shalei Shea, McPherson County Health Dept.

- 1) A unanimous vote of all members of the BOCC. Followed by publication in the official county newspaper, once per week, for two consecutive weeks. After official publication, the Charter Resolution can take effect 60 days later. Unless, during that period, a petition is signed by the required number of voters. If so, it will not take effect and must be submitted for a referendum (vote of the people) .

Or

- 2) Prior to passage of the Charter Resolution, on a two-thirds vote of all members of the BOCC, submit the Charter Resolution for a referendum (vote of the people).

The statute defining this process is attached as well as an example that Butler County created in 2019.

Closing

By enacting HB2754, the Kansas Legislature has provided a means for individual counties to restore local practices related to school sanitary inspections to their status prior to the 2020 session. However, that will require passage of a new Charter Resolution. There isn't a provision in law to simply resume operations under any old Resolution or Charter Resolution that may have been in effect prior 2020.

Attachments:

- House Bill 2754 (how law will read on and after July 1, 2024)
- K.S.A. 19-101a (as exists prior to July 1, 2024)
- K.S.A. 19-101b
- Example/template of a Butler County Charter Resolution on this topic

HOUSE BILL No. 2754

An Act concerning counties; relating to public health; authorizing counties to exempt from the requirement to perform school safety inspections; amending K.S.A. 19-101a and K.S.A. 2023 Supp. 65-202 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 19-101a is hereby amended to read as follows: 19-101a. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

(1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.

(2) Counties may not affect the courts located therein.

(3) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.

(4) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.

(5) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271 - 74th congress, or amendments thereof.

(6) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.

(7) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 through 12-195, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.

(8) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.

(9) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.

(10) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.

(11) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.

(12) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.

(13) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto.

(14) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.

(15) Counties may not exempt from or effect changes in K.S.A. 19-15,139, 19-15,140 and 19-15,141, and amendments thereto.

(16) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provisions of K.S.A. 12-1260 through 12-1270 and 12-1276, and amendments thereto.

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19-101a. Home rule powers; limitations, restrictions and prohibitions; procedure. (a) The board of county commissioners may transact all county business and perform all powers of local legislation and administration it deems appropriate, subject only to the following limitations, restrictions or prohibitions:

- (1) Counties shall be subject to all acts of the legislature which apply uniformly to all counties.
- (2) Counties may not affect the courts located therein.
- (3) Counties shall be subject to acts of the legislature prescribing limits of indebtedness.
- (4) In the exercise of powers of local legislation and administration authorized under provisions of this section, the home rule power conferred on cities to determine their local affairs and government shall not be superseded or impaired without the consent of the governing body of each city within a county which may be affected.
- (5) Counties may not legislate on social welfare administered under state law enacted pursuant to or in conformity with public law No. 271 - 74th congress, or amendments thereof.
- (6) Counties shall be subject to all acts of the legislature concerning elections, election commissioners and officers and their duties as such officers and the election of county officers.
- (7) Counties shall be subject to the limitations and prohibitions imposed under K.S.A. 12-187 through 12-195, and amendments thereto, prescribing limitations upon the levy of retailers' sales taxes by counties.
- (8) Counties may not exempt from or effect changes in statutes made nonuniform in application solely by reason of authorizing exceptions for counties having adopted a charter for county government.
- (9) No county may levy ad valorem taxes under the authority of this section upon real property located within any redevelopment project area established under the authority of K.S.A. 12-1772, and amendments thereto, unless the resolution authorizing the same specifically authorized a portion of the proceeds of such levy to be used to pay the principal of and interest upon bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto.
- (10) Counties shall have no power under this section to exempt from any statute authorizing or requiring the levy of taxes and providing substitute and additional provisions on the same subject, unless the resolution authorizing the same specifically provides for a portion of the proceeds of such levy to be used to pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. 12-1774, and amendments thereto.
- (11) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4601 through 19-4625, and amendments thereto.
- (12) Except as otherwise specifically authorized by K.S.A. 12-1,101 through 12-1,109, and amendments thereto, counties may not levy and collect taxes on incomes from whatever source derived.
- (13) Counties may not exempt from or effect changes in K.S.A. 19-430, and amendments thereto.
- (14) Counties may not exempt from or effect changes in K.S.A. 19-302, 19-502b, 19-503, 19-805 or 19-1202, and amendments thereto.
- (15) Counties may not exempt from or effect changes in K.S.A. 19-15,139, 19-15,140 and 19-15,141, and amendments thereto.
- (16) Counties may not exempt from or effect changes in the provisions of K.S.A. 12-1223, 12-1225, 12-1225a, 12-1225b, 12-1225c and 12-1226, and amendments thereto, or the provisions of K.S.A. 12-1260 through 12-1270 and 12-1276, and amendments thereto.
- (17) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-211, and amendments thereto.
- (18) Counties may not exempt from or effect changes in the provisions of K.S.A. 19-4001 through 19-4015, and amendments thereto.
- (19) Counties may not regulate the production or drilling of any oil or gas well in any manner which would result in the duplication of regulation by the state corporation commission and the Kansas department of health and environment pursuant to chapter 55 and chapter 65 of the Kansas Statutes Annotated, and amendments thereto, and any rules and regulations adopted pursuant thereto. Counties may not require any license or permit for the drilling or production of oil and gas wells. Counties may not impose any fee or charge for the drilling or production of any oil or gas well.
- (20) Counties may not exempt from or effect changes in K.S.A. 79-41a04, and amendments thereto.
- (21) Counties may not exempt from or effect changes in K.S.A. 79-1611, and amendments thereto.
- (22) Counties may not exempt from or effect changes in K.S.A. 79-1494, and amendments thereto.
- (23) Counties may not exempt from or effect changes in K.S.A. 19-202(b), and amendments thereto.
- (24) Counties may not exempt from or effect changes in K.S.A. 19-204(b), and amendments thereto.
- (25) Counties may not levy or impose an excise, severance or any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water.
- (26) Counties may not exempt from or effect changes in K.S.A. 79-2017 or 79-2101, and amendments thereto.
- (27) Counties may not exempt from or effect changes in K.S.A. 2-3302, 2-3305, 2-3307, 2-3318, 17-5904, 17-5908, 47-1219, 65-171d, 65-1,178 through 65-1,199, 65-3001 through 65-3028, and amendments thereto.
- (28) Counties may not exempt from or effect changes in K.S.A. 80-121, and amendments thereto.
- (29) Counties may not exempt from or effect changes in K.S.A. 19-228, and amendments thereto.

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19-101b. Charter resolutions; exemption of county from acts of legislature; procedure; election. (a) Any county, by charter resolution, may elect in the manner prescribed in this section that the whole or any part of any act of the legislature applying to such county other than those acts concerned with those limitations, restrictions or prohibitions set forth in subsection (a) of K.S.A. 19-101a, and amendments thereto, shall not apply to such county.

(b) A charter resolution is a resolution which exempts a county from the whole or any part of an act of the legislature and which may provide substitute and additional provisions on the same subject. Such charter resolution shall be so titled, shall designate specifically the act of the legislature or part thereof made inapplicable to such county by the passage of the resolution and shall contain any substitute and additional provisions. Such charter resolution shall require the unanimous vote of all board members unless the board determines prior to passage it is to be submitted to a referendum in the manner hereinafter provided, in which event such resolution shall require a 2/3 vote of the board. In counties with five or seven county commissioners, such charter resolution shall require a 2/3 vote of all board members unless the board determines prior to passage it is to be submitted to a referendum in the manner hereinafter provided, in which event such resolution shall require a majority vote of the board. Every charter resolution shall be published once each week for two consecutive weeks in the official county newspaper. A charter resolution shall take effect 60 days after final publication unless it is submitted to a referendum in which event it shall take effect when approved by a majority of the electors voting thereon.

(c) If within 60 days of the final publication of a charter resolution, a petition signed by a number of electors of a county equal to not less than 2% of the number of electors who voted at the last preceding November general election or 100 electors, whichever is the greater, shall be filed in the office of the county election officer demanding that such resolution be submitted to a vote of the electors, it shall not take effect until submitted to a referendum and approved by the electors. An election if called, shall be called within 30 days and held within 90 days after the filing of the petition. The board, by resolution, shall call the election and fix the date. Such resolution shall be published once each week for three consecutive weeks in the official county newspaper, and the election shall be conducted in the same manner as are elections for officers of such county. The proposition shall be: "Shall charter resolution No. _____, entitled (title of resolution) take effect?" The board may submit any charter resolution to a referendum without petition in the same manner as charter resolutions are submitted upon petition, except elections shall be called within 30 days and held within 90 days after the first publication of the charter resolution. Each charter resolution which becomes effective shall be recorded by the county election officer in a book maintained for that purpose with a statement of the manner of adoption, and a certified copy shall be filed with the secretary of state, who shall keep an index of the same.

(d) Each charter resolution passed shall control and prevail over any prior or subsequent act of the board and may be repealed or amended only by charter resolution or by an act of the legislature uniformly applicable to all counties.

History: L. 1974, ch. 110, § 3; L. 1987, ch. 100, § 1; July 1.

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(First published in _____ on the ____ day of _____, 2024 and subsequently therein on the ____ day of _____, 2024)

CHARTER RESOLUTION NO. _____

A CHARTER RESOLUTION EXEMPTING _____ COUNTY, KANSAS FROM CERTAIN PROVISIONS OF K.S.A. 65-201 ET SEQ., SPECIFICALLY K.S.A. 65-202(c) REGARDING ANNUAL SANITARY INSPECTIONS OF SCHOOL BUILDINGS AND GROUNDS BY THE COUNTY HEALTH OFFICER.

WHEREAS, K.S.A. 19-101, et seq. provides that counties may exercise certain home rule powers, including adopting charter resolutions which exempt such counties from acts of the Kansas legislature, subject to certain restrictions contained in K.S.A. 19-101a;

WHEREAS, _____ County, Kansas is a County within the meaning of the provisions of K.S.A. 19-101 et seq.;

WHEREAS, K.S.A. 65-201 et seq. is not uniformly applicable to all counties within the state of Kansas; and

WHEREAS, the Board of County Commissioners of _____ County, Kansas desire by charter resolution, to exempt the County from certain provisions of K.S.A. 19-101 et seq., specifically K.S.A. 65-202(c) regarding annual sanitary inspections of school buildings and grounds.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF _____ COUNTY, KANSAS THAT:

SECTION I. _____ County, Kansas is hereby exempted from the specific provisions of K.S.A. 65-202(c) concerning the requirements of the County Health Officer, upon opening of the fall term of school, to make a sanitary inspection of each school building and grounds, and such additional inspections as are necessary to protect the to protect the public health of students at the school.

SECTION II. This charter resolution shall take effect and be in full force sixty (60) days following its final publication unless a sufficient petition for referendum is filed and referendum is held on the resolution as provided by K.S.A. 19-101b in which case the resolution shall become effective only when approved by a majority of the electors voting thereon.

SECTION III. The County Clerk is also directed to file a copy of the charter resolution with the County Election Officer and to file a certified copy with the Kansas Secretary of State.

Section IV. This charter resolution shall be published once each week for two consecutive weeks in the _____, the official newspaper of said County.