

New Legislation of Municipal Interest – The General Assembly passed several bills that impact Missouri municipalities in the recently-ended legislative session:

Municipal Courts, etc. (SB 5): Expected to gain the Governor's signature, SB5 places new limits on the prosecution of all municipal ordinances, including "minor traffic violations" (defined in the bill), and could greatly hamper the ability of a city to enforce its ordinances. Among other things, the bill mandates:

- **Prohibition of confinement for failure to pay a fine** – On minor traffic violations, the new law prohibits placing someone in confinement for failure to pay a fine unless such nonpayment violates terms of probation. However, Section 479.360 requires a municipal court to adopt procedures certifying that "defendants are not detained in order to coerce payment of fines and costs" on any municipal ordinance violation. This will make it very difficult for a city to obtain compliance with its ordinances, especially those for which there is no corresponding state statute. It comes very close to making payment of those court-ordered fines and costs voluntary. It also appears to be in contradiction to new Supreme Court Rule 37.65 (which sets out the procedure for holding a defendant in contempt of court and incarcerating him or her for nonpayment of fines, effective July 1, 2015), and to the express authorization for incarceration for nonpayment of fines contained in Missouri Constitution Art. I, § 11, which states, "That no person shall be imprisoned for debt, except for nonpayment of fines and penalties imposed by law." (emphasis added).
- **Apparent elimination of "failure to appear" violation** – The new law states that "No additional charge shall be issued for the failure to appear for a minor traffic violation." Unfortunately, the words "charge" and "issued" are susceptible to alternate meanings; but it is presumed that this is meant to eliminate the ability to separately cite a defendant for failure to appear on a minor traffic violation.
- **Fine limits** – Fines for minor traffic violations (including court costs) would also now be limited to \$300.00, and jail sentences or confinement would be prohibited for a minor traffic violation or for failure to pay a fine for a minor traffic violation, subject to certain exceptions.
- **New definition of annual general operating revenue** – Beginning August 28, 2015, a new definition of annual general operating revenue will change the annual accounting required to be filed with the State Auditor with your annual financial report. Any municipality filing such a report after August 28 needs to use the definition. Those with fiscal years ending in June may want to file prior to August 28 to use the old definition for 2014-15 traffic violations as there may be some difficulty in determining which tickets are minor traffic violations since that term did not exist at the time the tickets were issued.
- **New court revenue caps** – Commencing on the first day of your fiscal year in 2016, total court revenues attributable to fees, bond forfeitures, and court costs for minor traffic violations would be capped at a new lower percentage of a municipality's annual general operating revenue (12.5% for municipalities within St. Louis County, 20% for all other municipalities). **Note: the bill also changes how the "cap" is calculated and what violations constitute minor traffic violations, so even previously "safe" cities would need to closely review their revenues using the new formula.**

- **New requirements for annual municipal reports** with the State Auditor and new municipal court procedures.

- **For municipalities in St. Louis County** – new requirements as to enumerated "minimum standards" unrelated to municipal courts (balanced budgets, annual audits, adequate insurance, complete sets of ordinances, police department accreditation and policies, and construction code review).

- **Tax Refund Set-off** – If a person fails to pay court costs, fines, fees or other sums in excess of \$25, the municipal court may, but is not required to, report such delinquency to the Department of Revenue and request a setoff of any income tax refund to the person.

The enforcement mechanisms for failure to comply with the requirements of portions of the bill are stringent and could lead to a **vote for disincorporation** being placed on the ballot for municipalities that fail to comply. If it is signed by the Governor, all municipalities are advised to consult with their attorneys, municipal judge, prosecutor and Court Administrator to immediately begin preparing to meet the requirements of the bill. If you have further questions or need assistance you may also contact [Paul Rost \(Paul@municipalfirm.com\)](mailto:Paul.Rost@municipalfirm.com). Thank you to Eric Cunningham, Cape Girardeau, for his contributions to this article.

Minimum Wage and Bans on Plastic Bags (HB 722): This bill prohibits municipalities from establishing a citywide minimum wage that is higher than the state or federal minimum wage. It does not preempt any local law on the minimum wage already in effect on August 28, 2015. Additionally, this bill prohibits a political subdivision from banning, taxing, or placing a fee on the use of paper or plastic bags for packaging goods purchased.

Provisions Relating to Persons Seeking Public Office (HB 63): This bill re-enacts a statute that was unintentionally repealed last year exempting municipalities from the requirement to hold primary elections and candidates to file an affidavit with the Missouri Department of Revenue. In 2014, HB 1136 repealed § 115.305 RSMo. and § 115.308 RSMo. was enacted in this bill to fix the mistake.

Property Taxes (HB 613): This bill raised the threshold amount for a county to be eligible to collect fees at the rate of 2.5% for property taxes from \$2 million to \$3 million. Accordingly, the number of counties eligible to charge 2.5% on the first \$350,000 collected has now increased.

Urban Agricultural Zones (UAZ) (SB 12): This bill modified provisions of 2013's SB 228 regarding UAZs. UAZs promote local food production while creating new land use for blighted land. This act mandates that 50% of UAZ fund moneys shall be made available to school districts to be used for the development of curriculum on or the implementation of urban farming practices. Additionally, the remaining 50% of UAZ fund moneys shall be allocated to municipalities that have UAZs based upon the municipality's percentage of local sales tax revenues deposited into the fund. To learn more about UAZs you can visit Kansas City Missouri's Web page [here](#). KCMO adopted its UAZ ordinance in 2014.

This legislative summary is not exhaustive. Additional information can be found on the Missouri Municipal League's website.

Cities Challenge Class Action Counsel's 28% Attorneys' Fee Award – A group of 24 Missouri cities filed objections in late 2014 to class action attorney demands to receive what has resulted in a 28% attorneys' fee award from City tax funds owed by CenturyLink in *City of O'Fallon, et al. v. CenturyLink, et al.* After trial court approval of this fee payout, the fee award is now being appealed to the Missouri Court of Appeals. The appeal filed by the City of Butler challenges the \$2.8 million attorney fee payment as unreasonably high and an effective rate higher than all other similar telephone tax protest class action cases over the last decade. The attorneys' fee award was based in part on a claimed rate of \$700/hour (which has been reported to be "the highest billing rate in Missouri in 2014"), and was awarded even in light of a settlement process plagued with errors. In addition, the fee award was based on an agreement between class counsel and CenturyLink that included a suspect, potentially collusive provision in which CenturyLink agreed not to challenge the attorneys' fee amount that would be taken from the cities' taxes owed in the settlement. Given the potential impact on future city tax settlement funds, the City of Butler, through CVR as counsel, has filed this appeal to ensure that this and future fee awards are subject to a more fair and reasonable process and outcome.

Tax Protest Escrow Reminder – As a reminder, cities should check their records and accounts to see if they are still holding any protested tax escrows from the various dismissed telephone tax lawsuits or protests where there is no pending litigation. Any tax payment made under protest – **if it strictly meets the statutory requirements** – must be held in a city escrow account for 90 days and released thereafter only if a suit for collection is not filed within that time period. After 90 days has passed and no suit has been filed, or a suit has been settled or dismissed, cities can release the protested payments. A "protest" essentially is a payment made with an attached letter (sent contemporaneously, not days apart) explaining the reasons that the protested amount of tax is actually not due. There is no general authority under Missouri law to return taxpayer money that has not been properly protested or otherwise authorized to be returned under a specific statute, and so compliance by the taxpayer (and city) with the applicable protest statute is necessary even if the city desired to give back funds. **Many cities have found thousands of dollars for general fund use by doing this simple review. Please contact Dan Vogel or Maggie Eveker if you have questions as to the status of specific tax protest litigation matters.**

Another Good Reason Not to Have An Arbitration Clause – In *City of Chesterfield v. Frederich Construction, Inc., No. ED 101916 (Mo. App. Apr. 21, 2015)*, the Missouri Court of Appeals affirmed the trial court's determination that arbitrators did not exceed their authority in awarding attorneys' fees against a City even though the construction contract at issue had no provision authorizing attorney fee awards. The court concluded the arbitrator's award was within the scope of the parties' agreement because the contract expressly incorporated the Construction Industry Arbitration Rules of the American Arbitration Association (AAA), and those rules allow arbitrators to award attorneys' fees where all parties request them. Here, the arbitrators resolved disputes in favor of the construction company, ruled that both parties sought attorneys' fees, and therefore awarded attorneys' fees against the City as the losing party. The City appealed, arguing its prayer for relief was merely boilerplate and could not have constituted a request for attorneys' fees. The court held the City had specifically sought attorneys' fees in its prayer for relief. Additionally, the court held that the City's attorney acted as its agent in requesting relief through its pleadings and therefore could bind the City under the rule. **This case should serve as a reminder for cities of the possible risks that may be incorporated in an arbitration clause.**

Municipal Contracts Must be Specifically Authorized in Writing – Serving as a reminder that § 432.070 RSMo. is mandatory, the Missouri Court of Appeals recently rejected two fire district employees' attempts to enforce the severance package provisions of their employment contracts. Section 432.070 RSMo. requires that contracts made by municipalities be "authorized in writing." In *Ballman v. O'Fallon Fire Protection District*, fire district employees sued to enforce the severance packages in their employment contracts after the contracts were not renewed. The contracts were signed by the chairman of the board. Both the District and the employees agreed that they intended to be bound by the contracts. However, there was no formal vote of approval and the board did not authorize the chairman in writing to execute the contracts. This failed to satisfy § 432.070. Years later, the parties amended the contracts and the board approved the amendments through a formal vote, deeming them "in full force and effect." The employees argued that the formal vote saved the entire original contract, including the severance provisions. The court rejected that argument, however, because the only terms specifically discussed at the time of the § 432.070-compliant vote were position and salary, not severance.

Religious Rights in the Workplace Strengthened – The United States Supreme Court recently held, in *EEOC v. Abercrombie & Fitch Stores, Inc.*, that an employer violated Title VII of the Civil Rights Act of 1964 when it denied employment to a Muslim woman whose headscarf violated the employer's dress code. The manager interviewing the woman for the job suspected that the woman's headscarf was worn for religious reasons. The employer denied the woman's application because the headscarf did not comply with the dress code. The court held that the employer discriminated against the woman even though the employer did not have actual knowledge that the woman wore the headscarf because of her religion. Title VII requires employers to "reasonably accommodate" the religious practices of employees or job applicants. A decision not to hire an applicant based on even a mere suspicion that the applicant would need an accommodation from the dress code for religious reasons was a violation of federal law.

Presentations by CVR Attorneys – The following recent and upcoming educational presentations and resources from CVR attorneys are available for your review:

- [Deposit and Investment of Public Funds](#) (Municipal Officials Training Academy) – [Kim Diamond](#) and [Kristen Erickson](#)
- [Law Enforcement Records and the Sunshine Law](#) (Missouri Police Clerks Conference) – [David A. Streubel](#)
- [Preservation Letters and Subpoenas](#) (Missouri Police Clerks Conference) – [David A. Streubel](#)
- **UPCOMING** – [Municipal Procedures](#) (Municipal Officials Training Academy) – [Paul Rost](#)

Feedback – Please let us know how we are doing. If you have suggestions for improving these Municipal Issue Reports, please let us know at the contacts below.

If you need further assistance on any of these matters, please consult your City Attorney or Legal Department for particularized guidance or contact us at:

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Upcoming Dates & Deadlines for Missouri Municipalities*

Between 1 and 4 weeks before July City Council meeting (Third Class Cities) – Publish newspaper notice that bids for City depository will be received.

June 23 – Notify Dept. of Revenue of ordinance opting out of Back to School Sales Tax Holiday (at option of City).

July Meeting of City Council (Third Class Cities) – Select depository for one year term.

Mid-Late August – Conduct public hearing on property tax rate with 7-day newspaper notice (for Cities not in charter counties).

August 28 – New state statutes go into effect (unless passed as emergency legislation or later date is provided in statute).

September 1 – Set property tax levy (for Cities not in charter counties).

*This list is not exhaustive. For the complete **Calendar of Procedural Deadlines for Missouri Municipalities**, click below:

[Jan. 1–Dec. 31 Fiscal Year](#)

[July 1–June 30 Fiscal Year](#)

Also see CVR's [Annual Requirements for Missouri Municipal Special Purpose Entities](#)

Municipal Links

[Missouri Municipal League](#)

[St. Louis County Municipal League](#)

[Mid-America Regional Council \(KC Area\)](#)

[East-West Gateway Council of Governments](#)

For more, visit CVR's [Resources Page](#)