

SESSION OF 2011

SUPPLEMENTAL NOTE ON SENATE BILL NO. 40

As Amended by House Committee on
Appropriations

Brief*

SB 40 would make a number of changes related to local government, namely, regarding city incorporation and annexation, and allowing a county to make certain emergency repairs without choosing the lowest and best bid. Details of the bill follow.

Incorporation

The bill would:

- Reduce, from a minimum of 300 to a minimum of 250, the number of inhabitants in a territory required for such a territory to be eligible to be incorporated as a city.
- Remove outdated language regarding voter registration documents and signatures on petitions requesting incorporation of a city.

Annexation

The bill would do the following:

***Homestead Exemption Continuation after
Annexation***

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Require homestead rights attributable prior to annexation (unilateral, bilateral, or in most consent-annexation circumstances) to continue after annexation until the land is sold after the annexation.

Reviewing Service Provision; Possible Deannexation Proceedings

- Require a city proposing to annex land unilaterally or by most consent methods (*i.e.*, pursuant to KSA 12-520) to submit a copy of the city's plan, dealing with extending services to the area concerned, to the board of county commissioners at least 10 days prior to the required public hearing on the proposed annexation.
- Modify current law dealing with the review process for both unilateral and most consent annexations (KSA 12-520) and bilateral annexations (KSA 12-521) to determine whether municipal services were provided as stated in the relevant annexation plan, by reducing the total time that must elapse before deannexation procedures might begin. In detail, the bill would:
 - Reduce from five to three years the time that must elapse following the annexation of land (or related litigation) before the board of county commissioners is required to hold a hearing to consider whether the city has provided the services set forth in its annexation plan and timetable. If the board of county commissioners refuses to hold the hearing, a landowner would be permitted to bring a court action. The court would be required to award attorney fees and costs to the landowner if the court finds a hearing is required.

- Reduce from two and one-half years to one and one-half years the time that must elapse following the services hearing (or following the conclusion of litigation), when the city has not provided the municipal services stated in the plan, before a landowner may petition to the board of county commissioners to deannex the land in question. If the board of county commissioners refuses to hold the required deannexation hearing, a landowner would be permitted to bring a court action. The court would be required to award attorney fees and costs to the landowner if the court finds a hearing is required.

21-Acre Limitation on Bilateral Annexations

- Prohibit the annexation, *via* approval by the board of county commissioners, of any portion of any unplatted agricultural land of 21 acres or more without the written consent of the landowner. (This prohibition exists in the current unilateral-annexation statute; the bill would extend the prohibition to bilateral annexations.)

Election Required on Bilateral Annexations

- Require an election be held for any annexation proposed to be made *via* approval by the board of county commissioners, if voters reside in the proposed area. The election must be by mail ballot of the qualified voters residing in the area proposed to be annexed, if the area contains qualified voters. If a majority of those voting reject the annexation, the city would be prohibited from annexing the land and no further proposal to annex the proposed area could take place for at least four years from the election date, unless the proposed annexation is authorized based on one of the following conditions specified in KSA 12-520:

- The land is owned by or held in trust for the city;
- The land adjoins the city and is owned by or held in trust for any governmental unit other than another city (with restrictions); or
- The land adjoins the city and the landowner consents to the annexation.

Dual Taxation on Land within a Fire District, Annexed by a City

HB 2066 would provide redress for individuals who are paying ad valorem taxes to both a city and a fire district for fire service. The bill would deem a landowner, whose land which is located in a fire district is annexed by a city while still remaining part of a fire district, to be entitled to a refund of all ad valorem taxes paid for fire service from either the city or the fire district, whichever entity taxes for fire service but does not provide it. The tax refund would include any tax levy for bond and interest payments.

The bill further requires cities and fire districts to establish procedures for landowners to obtain these refunds.

County Bidding Exception

The bill would allow a county to repair any courthouse, jail, or other county building, or repair or replace its equipment, without requiring the county to choose the lowest and best bid when the county commission has declared an emergency based upon public health or safety. An “emergency” is defined as severe damage caused by any natural or man-made cause, including fire, flood, wind, storm, explosion, or terrorism. The bill would require that any such

damage be so severe that it prevents the building or equipment from being used for its intended function. Construction of a replacement building would remain subject to existing bidding requirements.

Background

SB 40, as amended by the House Committee on Local Government, dealt only with allowing a county to make certain emergency repairs without choosing the lowest and best bid. The House Committee on Appropriations amended the bill to add the contents of SB 150, as amended by the House Committee on Local Government but without the bill's Section 5, which would have required a board of county commissioners to determine whether a city's proposed unilateral annexation would have an adverse effect on the county within 30 days following the hearing on the proposed annexation. The Committee on Appropriations also added the contents of HB 2066, as recommended by the House Committee on Local Government, which would provide redress for individuals who are paying ad valorem taxes to both a city and a fire district for fire service upon a city's annexation of the land.

The original SB 40. The bill was introduced by Senator Reitz, Chairperson of the Senate Committee on Local Government. The Riley County counselor testified in favor of the bill, and the chairperson of the Riley County Commission and the Riley County assistant county engineer submitted written testimony. A representative of the Kansas Association of Counties also testified in favor of the bill.

SB 40 is similar to 2009 SB 271, which was opposed by the Association of General Contractors. However, the 2009 bill did not define an emergency or specify the severity of the damage required before the exception could be used. An Association representative told the Senate Committee on Local Government that the Association was satisfied with the changes in the bill and is neutral on SB 40.

The House Committee on Local Government amended the bill to eliminate public “welfare” as a basis upon which an emergency could be declared. The amendment also clarified that replacing an entire building still would be subject to existing bidding requirements.

SB 150. It originally addressed only the incorporation changes. The House Committee on Local Government amended the bill to include the contents of HB 2294 as amended by that committee, all of which related to annexation.

Senator Pat Apple testified in support of the original SB 150, as did a representative of a community in Linn County that wishes to incorporate as a city. There was no other testimony on the bill.

The Senate Committee on Local Government amended SB 150 to make technical changes.

As introduced, HB 2294 was requested by the Annexation Reform Coalition, a group of rural landowners whose land was annexed in 2008 by the City of Overland Park. With the exception of the Homestead provisions and one additional provision, the bill, as introduced, contained the provisions of 2009 House Sub. for SB 51 as recommended by the House Committee on Agriculture and Natural Resources. That bill contained the provisions of all three bills recommended by the 2008 Special Committee on Eminent Domain in Condemnation of Water Rights, which, in addition to its primary responsibility, was charged with examining the issue of local annexation. 2009 House Sub. for SB 51 (which was further amended by Conference Committee and ultimately contained other annexation provisions as well) was vetoed by then-Governor Sebelius.

Testifying in favor of HB 2294 were representatives of the Annexation Reform Coalition and Americans for Prosperity, as well as a private citizen. The proponents cited concern over annexations authorized under KSA 12-521,

which allows a city to seek approval by the board of county commissioners for a number of different types of annexations, as well as concern for private property rights. Proponents also explained the Homestead exemption change in the bill, noting the annexation of large tracts of unplatted farm land raises a question about the loss of Homestead Exemption rights. Article 15, Section 9 of the *Kansas Constitution* exempts 160 acres of farm land, or one acre within a city's limits, from forced sale for debt collection (with some exceptions). Concern was raised that the annexation of farm land could result in the reduction of a landowner's protection from 160 acres to one acre.

Opponents testifying on HB 2294 included city representatives for Olathe, Overland Park, and Topeka; the League of Kansas Municipalities, and the Overland Park Chamber of Commerce. The opponents cited a number of objections, including concern that the bill might restrict or result in unnatural growth of cities, as well as consideration for the larger population versus a small group. One conferee suggested the Legislature needed to consider the difference between voters' and landowners' rights, as the two groups are not necessarily the same.

The House Committee on Local Government amended HB 2294 as follows:

- Deleted language that would have made the extension of the Homestead provision retroactive to January 1, 2011.
- Added the contents of 2011 HB 2065 requested by Representative Ann Mah, which would require that the board of county commissioners review each proposed unilateral annexation to determine whether the annexation would have an adverse effect on the county.
- Deleted the requirement that the court award the landowner reasonable attorney fees and costs,

when a landowner aggrieved by the decision of the board of county commissioners prevails regarding an annexation ruled on by the board.

HB 2066. The bill was requested by Representative Lance Kinzer. Representative Kinzer and two private citizens testified in favor of HB 2066 indicating the bill's purpose was to provide for fairness in taxation. No opponents testified.

The bill is a repeat of 2010 HB 2675. That bill received a hearing late in the 2010 Legislative Session, but did not advance out of Committee.

Fiscal Note Information

The original SB 40. According to the fiscal note prepared by the Division of the Budget, the Kansas Association of Counties could cause counties to pay more for building repairs, since they would not be getting bids, and that the Association was unable to estimate this effect. The note says there would be no effect on state government.

SB 150. The fiscal note for the original SB 150 says that, according to the Kansas Association of Counties and the League of Kansas Municipalities (LKM), passage of the original SB 150 would have no fiscal effect on counties or municipalities in Kansas.

According to the fiscal note for the original HB 2294, (which was amended into SB 150), for which the LKM was consulted, passage of that bill would cause additional expense to counties and cities by adding the requirement to pay landowners' litigation costs. The fiscal note states cities also may encounter additional costs due to the accelerated timetables for service plans, potential litigation, the cost to conduct a mail ballot election, and costs incurred to prepare for and conduct additional hearings. Finally, the fiscal note

indicates concern on the part of the LKM that the bill could lead to reduced city growth which could affect economic development and tax base growth.

HB 2066. According to the fiscal note, passage of HB 2066 would have no fiscal effect.