

SESSION OF 2005

**SUPPLEMENTAL NOTE ON
HOUSE SUBSTITUTE FOR SENATE BILL NO. 24**

As Amended by House Committee of the Whole

Brief*

House Sub. for SB 24 would amend the city annexation law dealing with unilateral annexation to expand the scope of review that a court may make of these decisions and to require cities to consider 16 different factors when annexing land unilaterally.

The bill would give any city whose boundary line is located within one-half mile of the land being annexed and any owner of land annexed to the city (the latter provision is current law) the ability to challenge the annexation in district court.

The bill would require the court, when a unilateral annexation is challenged, to determine whether the annexation is reasonable and the service plan adequate, and the effect the annexation would have on future growth of any city challenging the annexation.

The bill also would reduce, from five to three years following an annexation or conclusion of related litigation, the length of time that must elapse before the board of county commissioners must call a hearing to consider whether the city has provided the services according to the established timetable.

Background

The House Committee deleted the contents of SB 24 and placed these provisions into SB 34. The House Committee inserted the contents of HB 2229 dealing with city annexation into SB 24 and added a provision allowing another city to challenge an 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>

SB 24, as introduced was recommended by the Joint Committee on Kansas Security. The bill would have amended the Kansas Open Records Act and the Kansas Open Meetings Act in regard to confidentiality of security measures. Senator Emler, past chairman of the committee, said 85 percent of the infrastructure in the United States is privately owned and that there was a reluctance on the part of private companies to divulge sensitive security information because public agencies could not maintain the secrecy of the information.

The Senate Committee of the Whole added provisions of SB 78 dealing with salaries and compensations under the personnel records exception of the Kansas Open Records Act.

The bill was supported by Representative Ann Mah, the Kansas Farm Bureau, and two residents of Atchison County.

The bill was opposed by the League of Kansas Municipalities, the cities of Topeka and Overland Park, and the Shawnee County Farm Bureau.

Fourteen of the 16 factors are currently a part of the separate annexation procedure utilized by cities by appearing before the board of county commissioners to seek county approval of an annexation which either the city cannot accomplish under its unilateral annexation powers or otherwise the city desires the board of county commissioners to decide the issue.

Under current law, city unilateral annexation decisions are considered legislative in nature and thus are subject to a very limited review by the courts. The ability to challenge these decisions in court is limited to:

- ! Arguing the land to be annexed does not fit the geographic criteria the law requires in order for a city to annex the land unilaterally; or
- ! There was a fatal flaw in the annexation proceedings.

The Kansas Supreme Court in *Clark v City of Wichita*, 218 Kan. 334 (1975), stated that a court when reviewing unilateral annexation decisions of cities "does not examine the wisdom, necessity or advisability of the annexation." Basically, this decision would be

changed by HB 2229 which requires that a court must determine the “reasonableness” of city unilateral annexation decisions.

The House Committee of the Whole amended the bill to:

- ! Require the court to determine whether the service plan is adequate when a unilateral annexation is challenged; and
- ! Reduce the length of time following an annexation that must elapse before the board of county commissioners must call a hearing to review the provision of services.

The bill has no fiscal effect on the state but may have a fiscal impact on cities.