

SESSION OF 2005

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2230

As Amended by House Committee of the Whole

Brief*

HB 2230 would amend the city unilateral annexation law by authorizing the establishment of local boundary commissions in cases where the annexation is protested; would require cities to consider 16 factors when annexing land unilaterally; would expand the scope of review by courts of city unilateral annexation decisions; and would require taxes imposed by cities on newly annexed areas to be used solely for the purpose of providing services and improvements to the annexed areas for the first five years following the annexation.

The bill would:

- ! Require cities planning to unilaterally annex any land located in a township to adopt a resolution stating its intent to do so.
 - " The resolution must be published at least once in a newspaper of general circulation within the city and in the area sought to be annexed.
- ! Require a city to obtain approval of the annexation by a boundary commission if, within 30 days after the resolution's publication, at least 50 percent of the landowners in the area sought to be annexed sign a petition requesting the appointment of a boundary commission. The petition must contain the names of the landowners who will serve as landowner representative members of the boundary commission.
- ! Require the mayor to convene a boundary commission composed of the following seven members:

*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>

- " Three appointed by the city's governing body;
 - " Three representing landowners in the area sought to be annexed and appointed by the board of county commissioners in the county; and
 - " One member appointed by the other six members.
- ! Require the boundary commission to determine whether the proposed annexation is in the public interest and in the best interest of the city, county, and other political subdivisions in the area sought to be annexed. The governing bodies of the city, county, and other involved political subdivisions must assist the boundary commission in making its decision and provide all relevant information and records requested by the boundary commission.
 - ! Specify a list of items the boundary commission must consider in making its determination, including population; assessed valuation; construction improvements, both past and possible; the city's geographical expansion needs and possibilities; and others.
 - ! Require the boundary commission to review the service extension plan of the city to determine its adequacy. The commission must review the annexation area's current services and the cost of providing such services. The city is authorized to annex the land in question to the extent the boundary commission approves its annexation after this review. The boundary commission must adopt a deannexation plan if services are not provided as proposed in the service extension plan.
 - ! Require the boundary commission to make its determination within 90 days of appointment of the first member. The commission must state specifically its reasons and findings, though specific data on each finding is not required. A copy of the determination must be filed with the mayor of the city seeking the annexation and with the board of county commissioners.
 - ! Require all costs incurred to be paid by the city if the annexation is not approved, by the landowners whose land is annexed if the boundary commission approves annexation, and shared proportion-

ately between the city if part, but not all, of the land sought to be annexed is approved for annexation.

- ! Provide that when a boundary commission decision is challenged a district court shall determine whether the annexation was reasonable.
- ! 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.
- ! Require that a court, when a unilateral annexation is challenged, to determine whether the annexation is reasonable and whether the proceedings were regular.

The House Committee of the Whole added provisions of HB 2229 which would expand the scope of review by courts of city unilateral annexation and which would add 16 factors for a city to consider when annexing land unilaterally.

Background

Representative Ann Mah appeared as a proponent of HB 2230, with a suggested amendment. A representative of the Kansas Farm Bureau testified in qualified support of the bill. Opponents included representatives of the League of Kansas Municipalities, the cities of Wichita, Topeka, and Overland Park, the Shawnee County Farm Bureau, and the Topeka Township and Shawnee Heights Fire District.

The House Committee on Governmental Organization and Elections amended the bill to:

- ! Require the three members representing the landowners be selected by the board of county commissioners in the county; and
- ! Require the seventh member be selected by the other six members.

HB 2229 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 bill has no fiscal effect on the state but may have a fiscal impact on cities.