

MINUTES OF THE HOUSE GOVERNMENTAL ORGANIZATION AND ELECTIONS COMMITTEE

The meeting was called to order by Chairman Jene Vickrey at 3:30 P.M. on February 3, 2005 in Room 519-S of the Capitol.

All members were present except:

Representative Sue Storm- excused

Committee staff present:

Mike Heim, Legislative Research Department
Martha Dorsey, Legislative Research Department
Theresa Kiernan, Revisor of Statutes Office
Maureen Stinson, Committee Secretary
Norm Furse, Revisor of Statutes Office

Conferees appearing before the committee:

Rep. Mah
Terry Holdren, Kansas Farm Bureau
Kim Botoroff
Julie Beehler
Eric Sartorius, City of Overland Park
Bob Haselwood
Don Moler, League of Kansas Municipalities
Scott Schneider, City of Wichita

Others attending:

See attached list.

Bill Introductions

Chairman Vickrey informed the committee that Rep. Newton has requested a committee bill that would require that any municipality authorized to impose user fees or charges conduct an audit that includes details of the costs directly related to the service for which the user fee or charge would be imposed.

Without objection, the request will be accepted as a committee bill.

Scott Schneider, City of Wichita, requested a committee bill addressing how the City reports its fire code inspections to the State.

Without objection, the request will be accepted as a committee bill.

Rep. Holland requested a committee bill relating to redistricting of legislative districts, state board of education districts and congressional districts.

Without objection, the request will be accepted as a committee bill.

Rep. Feuerborn requested a committee bill relating to annexation and mineral leaseholders. He is seeking to amend the statute that defines terms used in state annexation laws in order to provide protection for a lessee on that property.

Without objection, the request will be accepted as a committee bill.

Chairman Vickrey opened the hearing on:

HB 2229 **Cities; unilateral annexation; factors to consider prior to annexation**

HB 2230 **Unilateral annexation; boundary commission**

Rep. Ann Mah testified in support of **HB 2230** (Attachment 1). She said that the proposed legislation provides

CONTINUATION SHEET

MINUTES OF THE House Governmental Organization and Elections Committee at 3:30 P.M. on February 3, 2005 in Room 519-S of the Capitol.

a safety net for those parties being annexed to ensure that concerns of all parties are met and that the plan is in the public interest.

Terry Holdren, Kansas Farm Bureau, testified in support of **HB 2229 and HB 2230** (Attachment 2). He explained that **HB 2229** significantly increases the factors that a city must document before it moves forward with a proposed annexation. He said that **HB 2230** provides the residents in a proposed annexation area an avenue to participate in the process and offer their views in a meaningful and constructive manner.

Kim Botoroff testified in support of **HB 2229 and HB 2230** (Attachment 3). She spoke on behalf of 300 plus residents of Atchison County and explained that the current unilateral annexation laws are being used by city government to actively take county properties into the confines of the city limits without discussion, permission, or representation. She said that the county commissioners hands are tied by current statutes not including them in the process of unilateral annexation and that county residents have no representation nor rights in the unilateral annexation process.

Julie Beehler, resident of Atchison County, testified in support of **HB 2229 and HB 2230**. No written testimony was provided.

Eric Sartorius, City of Overland Park, testified in opposition to **HB 2229 and HB 2230** (Attachment 4). He explained that under both bills a district could be asked to determine whether the annexation was "reasonable." He said it is unclear in the proposed legislation what the court would review in order to judge the "reasonableness" of an annexation.

Bob Haselwood testified in opposition to **HB 2229 and HB 2230** (Attachment 5). He explained that he is a farmer, member of the Shawnee County Farm Bureau Board of Directors, Clerk of Topeka Township, and a board member of the Shawnee Heights Fire District. He said that members of the Shawnee County Farm Bureau Board of Directors feel that when annexation occurs, the remaining county residents will often times be forced to pay higher taxes just to maintain the services that they presently receive or pay higher taxes and receive substantially reduced services.

Don Moler, League of Kansas Municipalities, testified in opposition to **HB 2230** (Attachment 6). He said legislation is unwarranted and unnecessary. Mr. Moler also testified in a neutral position concerning **HB 2229** (Attachment 7). He said they are concerned with further amendments which are found in the bill and would be very concerned if additional amendments were added which would further limit the unilateral annexation authority of cities and hamper the ability of cities to grow in an orderly fashion.

Scott Schneider, City of Wichita, testified in opposition to **HB 2230** (Attachment 8). He testified they oppose the bill because it, ultimately, place the decision of Wichita's growth into the hands of one unelected, unaccountable appointee.

James McClinton, Mayor of Topeka, submitted written testimony (Attachment 9).

Chairman Vickrey closed the hearing on **HB 2229 and HB 2230**.

The Chairman adjourned the meeting.

Next meeting is scheduled for Tuesday, February 8, 2005.

ANN E. MAH

REPRESENTATIVE, 53RD DISTRICT
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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

EDUCATION
FEDERAL AND STATE AFFAIRS
WILDLIFE, PARKS AND TOURISM

Governmental Organization & Elections Testimony on HB 2230

Thank you for allowing me to testify today. I represent the 53rd House District. About 30 percent of my constituents live within the city of Topeka, and about 70 percent live outside of the city and in the rural parts of Douglas County. I have heard both sides of this issue. The interesting thing is that most people I talk to, whether inside or outside the city, complain about the annexation process. Most of my city constituents were annexed within the last 20 years and many felt that they were treated unfairly, with inadequate opportunity for input to the process and without a full hearing of their concerns.

I am not against annexation. Cities need an orderly way to grow. I am against unilateral annexation that ignores the concerns of the people being annexed. It is a question of fairness.

My constituents' annexation fears were borne out the last time the city of Topeka attempted an annexation in southeast Shawnee County. People felt that their concerns about the water district, fire district, and township in general were not adequately addressed. When the fiscal note was examined, we found that the proposal was even a net revenue loss for the city.

I support HB 2230 as it provides a safety net for those being annexed to ensure that concerns of all parties are met and that the plan is in the public interest. The seven-member board shows a balance of perspectives. The city has the opportunity to expand. My only concern is the 30 days allowed to get the signatures for a petition. That may not allow enough time for people to get organized. I suggest a 45-day petition period instead.

Again, thank you for your time. If you have questions, I can be reached at 296-7690.

House Gov. Org. & Elections
Date: 2-3-05
Attachment # 1

PUBLIC POLICY STATEMENT

HOUSE COMMITTEE ON GOVERNMENT ORGANIZATION AND
ELECTIONS

Re: HB 2229 & 2230--Annexation.

February 3, 2005
Topeka, Kansas

Testimony provided by:
Terry D. Holdren
Local Policy Director
KFB Governmental Relations

Chairman Vickery, and members of the House Committee on Government Organization and Elections, thank you for the opportunity to appear before you today. I am Terry Holdren and I serve as the Local Policy Director—Governmental Relations for Kansas Farm Bureau. As you know, KFB is the state's largest general farm organization representing more than 40,000 farm and ranch families through our 105 county Farm Bureau Associations.

For some time our members have expressed a great deal of concern regarding the practices of cities seeking to annex surrounding lands. These practices have numerous impacts, including the obvious financial impacts on homeowners who will undoubtedly face higher tax bills for services they may not receive benefits from. They also have significant impacts on rural water districts, fire districts, and townships, many of whom have developed, and bonded, infrastructure projects to provide services to the residents living within their boundaries. It's these units of government who will face extreme hardship in continuing to serve their remaining populations and in meeting

their financial commitments for the infrastructure improvements now under the control of the annexing authority.

HB 2229 significantly increases the factors that a city must document before it moves forward with a proposed annexation. Hopefully, this practice will add thoughtful reflection to what is often characterized as simply a city taking an opportunity to increase its tax base.

Ultimately, our member adopted policy favors annexation only after a majority vote of the residents of the area to be annexed. HB 2230 provides the next best thing to that vote. This concept will provide residents in an area proposed for annexation an avenue to participate in the process and offer their views in a meaningful and constructive manner. Again, hopefully, this process will result in annexations which facilitate smart growth of cities across the state.

Thank you, once again, for the opportunity to appear before you and share the views of our members. KFB stands ready to assist you as you seek solutions for these issues.

Thank you.

Kim Bottorff
17796 Country Club Road
Atchison, KS 66002
913-367-7174

Atchison Kansas Unilateral Annexation

I am representing 300+ Atchison Co. residents that are feeling the force of power that the Atchison City Commissioners have had placed in their hands by the state of Kansas allowing unilateral annexation. These laws are being upperhandedly used by our city government to actively take county properties into the confines of the city limits without discussion, permission, or representation.

County residents do not vote to place these commissioners in office, yet these commissioners have the power to impact residents of the county with excessive taxes and fees by this type of annexation. Unilateral annexation gives cities the power to enforce unconstitutional rights upon county residents.

Our group is mainly comprised of retired, disabled, and fixed income residents. Our group also represents approximately 7 businesses located outside the current city limits of Atchison. One business, currently employing 94 people has stood in front of the commission stating that if they annex their business into the city, they will no longer benefit from the community of Atchison. The increase in taxes will destroy the profit the business thrives on, and inevitably the business will close and 94 employees will lose their jobs.

The saying "taxation without representation" continues to come up, as we are being forced after annexation to the city to pay 44% higher property taxes. We will also be forced to pay monthly fees to our city for services such as refuse pickup, whether we choose to use the service or not. Each resident that is annexed into the city of Atchison will have an impact of approximately \$150.00 per month (\$1800.00 per year) in additional taxes and fees.

Our county commissioners hands are tied by current statutes not including them in the process of unilateral annexation. The county residents have no representation and have no rights in unilateral annexation.

The residents of Atchison Co. are being robbed. Theft is defined as an act of stealing. The city is stealing the rights of the homeowners of Atchison County, and there is nothing we can do about it. They are taking our freedom to live where we chose to purchase our homes. They are taking our ability to afford to live where we chose. They are taking the freedom we have as United States citizens. What happened to life, liberty and pursuit of happiness?

The residents of Atchison county are being treated like 2nd class citizens. We have no rights, no say, and no feelings when it comes to unilateral annexation. Our commissioners continue to state, that they have the right to proceed and the lawful right to take action with unilateral annexation, and to take from the residents of Atchison County everything they have strived for over the past years.



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Testimony Before The
House Governmental Organization and Elections Committee
Regarding
House Bill 2229 and House Bill 2230
February 3, 2005

The City of Overland Park appreciates the opportunity to share with the committee its opposition to House Bills 2229 and 2230. While both bills try constructively to address frustrations felt by some individuals with respect to unilateral annexation, the City believes that the bills continue to reach beyond the scope of such frustrations.

The unilateral annexation powers of cities have existed in some form for nearly 100 years, and are already very narrow. These powers allow a city to unilaterally annex land only in cases where it is undeniable that the area proposed to be annexed already is urban in its character and likely already enjoys the benefits of being in proximity to the city. Thus, it appears to the City of Overland Park that there already is enough protection in the existing statutes against cities' pre-mature unilateral annexation of land.

House Bill 2229 at first does appear to take a measured approach to the issue of unilateral annexation. The bill requires a city wishing to conduct a unilateral annexation to consider sixteen factors. The first fourteen factors are the same factors a board of county commissioners must consider when deciding to approve annexations that do not fall under the unilateral annexation statute. The two additional factors may be worthy of inclusion, depending how they are measured.

However, a provision in both HB 2229 and HB 2230 appears to greatly broaden the scope of judicial review. Under both bills, a district court could be asked to determine whether the annexation was "reasonable." Unclear in the bills is what the court would review to judge the "reasonableness" of an annexation.

House Bill 2230, meanwhile, is plagued by many of the same structural problems as legislation considered last year. It does not create a process that either cities or residents in an area under consideration for annexation would deem "fair." Of particular concern for all parties should be the appointment made by the local board of county commissioners. In the eyes of most people, this individual would essentially be the "tiebreaker" on the boundary commission. Placing such a burden on one person seems a great deal to ask, but the fact most disconcerting is that the person named to this position would not even necessarily be an elected official.

Unilateral annexation powers have served the State and its municipalities well. The City of Overland Park has responsibly used those powers since its incorporation in 1960 to achieve the long-term public interest of the entire community in which it exists. We respectfully request that the committee not recommend House Bill 2229 and House Bill 2230 favorably for passage.

House Gov. Org. & Elections
Date: 2-3-05
Attachment # 4

Shawnee County Farm Bureau -

Submitted
by: Bob
Haselwood

HB 2229

HB 2230

February 3, 2005

Chairman Vickery, members of the committee, I would like to thank you for the opportunity to speak before you today in opposition to House Bills 2229 and 2230.

My Name is Bob Haselwood and I am a farmer and a member of the Shawnee County Farm Bureau board of directors.

The board of directors of the Shawnee County Farm Bureau is generally opposed to unilateral annexation. Many of our farmer and rancher members live in and get services from water districts, fire districts, and townships that are threaten with annexation.

Our board feels that when annexation occurs in these areas the remaining residents will often times be forced to pay higher taxes just to maintain the services that they presently receive or pay higher taxes and receive substantially reduced services. While these two bills do require the city to consider the effects of the annexation on water districts, townships, and fire districts, there are no guidelines as to when the annexation should not be allowed to occur.

We especially find it troubling that in HB 2229, page 4, lines 32 thru 35, the city shall consider the extent to which residents are directly or indirectly dependent upon the city for social, economic, employment, cultural and recreational opportunities and resources. We thought the city would like for us to come and spend our dollars and pay into their city sales tax. But based on this section, you just might as well allow Topeka to annex half of Jackson, Jefferson and Osage Counties.

In HB 2230 we do like the new section that would allow for the appointment of a boundary commission. We do feel that this provision will help insure that all factors will be considered during an annexation procedure. But we are concerned that when being faced with the possibility

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Attachment # 5

of paying for the costs of the boundary commission, many residents in the proposed annexation area might be reluctant to request the formation of such boundary commission.

Once again I would like to thank you for the opportunity to speak to you today.

A handwritten signature in cursive script that reads "Bob Haselwood". The signature is written in black ink and is positioned above the printed name.

Bob Haselwood

Submitted by:
Bob Haselwood

HB 2229

HB 2230

February 3, 2005

Chairman Vickrey, members of the committee, I would like to thank you for the opportunity to speak before you today in opposition to House Bills 2229 and 2230.

My name is Bob Haselwood and I am clerk of Topeka Township and a board member of the newly formed Shawnee Heights Fire District, both of which are located in Shawnee County.

The fire district encompasses the area Topeka, Tecumseh, and Monmoth townships, and contracts services with Williamsport Township. I say the district is newly formed only because Monmoth joined the Topeka-Tecumseh Fire district on Jan. 1st. The district covers most of the south east quarter of the county.

I have served as a board member for almost 20 years. During that period I have seen the population and valuation of the district grow. We have added services based on the requests of our patrons over the years. The number of alarms have tripled. We presently employ seven fulltime and 30 part time fire fighters.

The proposed area of annexation by the city of Topeka would take approximately 26% to 28% of the valuation of the district. Granted the number alarms would decrease some, our fixed costs would remain relatively the same if we were to try to maintain the same level of service to the remainder of the district. That would amount to 3 mill increase to make up that kind of short fall.

The Topeka Township would lose 37-38% of its valuation. Which would translate to approximately a 9 mill increase.

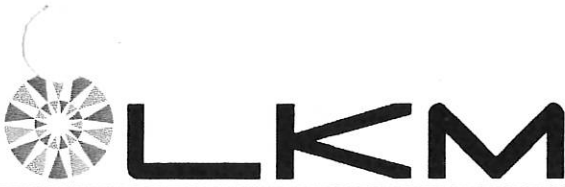
While these bills do require the city to look at the effects on local governments, there are no guidelines as to when annexation should not occur.

House Bill 2230 does allow for the formation of a boundary commission. I feel that this is a step is a step in the right direction. It will at least allow fire districts and townships to provide input into an annexation decision.

I would like to once again thank the committee for their time.

A handwritten signature in cursive script that reads "Bob Haselwood". The signature is written in dark ink and is positioned above the printed name.

Bob Haselwood



League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: House Local Government Committee
From: Don Moler, Executive Director
Re: Opposition to HB 2230
Date: February 3, 2005

First I would like to thank the Committee for allowing the League to appear today in opposition to HB 2230. The history of the Kansas annexation statutes is long and storied. I will not bore the Committee with all of the details and nuances of its development today. Suffice it to say, the annexation laws, as they are currently structured, are the result of a major conflict and compromise which occurred in the mid-1980's. The League was a major player in this struggle and worked with many interested parties to reach the eventual compromise which led to the current statutes we see today. As far as the League knows, the annexation statutes have worked well over the past 15 years and we believe they continue to work well.

The Committee should be aware that what is suggested by HB 2230 is a significant change in public policy and one which should not be undertaken lightly. There is always a natural tension involved between landowners and cities when cities are growing as a result of economic development, population changes, and the need for public services. We understand that landowners feel the need to be protected and that is why there are so many protections currently found in the Kansas annexation statutes. The simple reality is that to adopt the language found in HB 2230 would effectively obliterate all of the unilateral annexation statutes and completely reverse many years of public policy in this state.

HB 2230 would effectively eliminate unilateral annexations in Kansas. It is our understanding that this bill creates a seven-member boundary commission made up of three members appointed by the city (who would obviously vote in favor of the annexation), three members appointed by landowners in the area to be annexed (who would obviously vote in opposition to the annexation), and one member from the county commission (who would have the deciding vote on the issue). In effect, HB 2230 takes this decision away from the elected officials of the city and delegates it to a single individual at the county.

As a result, we would suggest that this bill is unwarranted and unnecessary. To undertake this type of significant change to an existing statute which is working well is not appropriate and we would strongly urge the Committee to reject this bill. I will be happy to answer any questions the Committee may have on this subject.



League of Kansas Municipalities

To: House Governmental Organization and Elections Committee
From: Don Moler, Executive Director
Re: Comments on HB 2229
Date: February 3, 2005

First I would like to thank the Committee for allowing the League to appear today in a neutral position concerning HB 2229. The history of the Kansas annexation statutes is long and storied. I will not bore the Committee with all of the details and nuances of its development today. Suffice it to say, the annexation laws, as they are currently structured, are the result of a major conflict and compromise which occurred in the mid-1980's. The League was a major player in this struggle and worked with many interested parties to reach the eventual compromise which led to the current statutes we see today. As far as the League knows, the annexation statutes have worked well over the past 15 years and we believe they continue to work well.

In my comments on HB 2229 I would like point out that creating factors for city governing bodies to consider when undertaking a unilateral annexation is not particularly a problem as we see it. Most of the factors enumerated in Subsection K.S.A. 12-520a(e) reflect those already found in the county annexation process in K.S.A. 12-521. We would like to point out to the Committee that the first 14 of these factors appear to be exactly the same as those found in K.S.A. 12-521 but that subsections (15) and (16) have been added to those criteria. We would suggest that either these two requirements should be removed in their entirety or that they be amended so as not to presuppose an outcome. Specifically in proposed subsection (15) the words "economic impact on the area" should be "economic impact on the city and the area." For subsection (16) we would suggest that "wasteful duplication of services" presupposes that it is wasteful and it should be deleted. We would suggest that services in the area are already covered in subsections (7) and (8).

Also it appears to the League that some language which should have been deleted as part of this amendment was inadvertently left in the bill. Looking once again at subsection K.S.A. 12-520a (e) on page 4, lines 38 and 39, we believe that the words "subject to the provisions of K.S.A. 12-521a and authority thereto" should be deleted. Also on page 3, line 42, the words "in a fire district" should be deleted as all other references to fire districts have already been deleted from this legislation.

Finally, as far as questions or issues with the bill, we would point to new Section 3 which essentially replicates language which was moved from K.S.A. 12-520(h). We would suggest that this Section, in its original form, meets the requirements necessary for judicial review and would urge that the words "whether the annexation was reasonable" be deleted as this potentially substitutes the decision making of the judiciary for the decision making of the elected representatives of the people.

House Gov. Org. & Elections
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Attachment #7

In a nutshell the League does not oppose the 14 factors, which are currently found in 12-521, being placed in 12-520a. We are concerned with further amendments which are found in the bill and would be very concerned if additional amendments were added which would further limit the unilateral annexation authority of cities and hamper the ability of cities to grow in an orderly fashion. I will be very happy to answer any questions the Committee may have on the subject.



Scott J. Schneider, J.D.
Government Relations Director

TESTIMONY

City of Wichita
455 N Main, Wichita, KS. 67202
Wichita Phone: 316.268.4351
sschneider@wichita.gov

Opposition Testimony House Bill 2230
House Governmental Organizations and Elections Committee
February 3, 2005

The City of Wichita opposes House Bill 2230. The City of Wichita believes that the current laws adequately protect the municipal power while balancing the interests of private citizens and surrounding communities. Eighty--three percent of our annexations are voluntary. In other words, people come to the City of Wichita asking to be annexed.

HB 2230 creates a boundary commission or an annexation commission. We oppose this bill in large part because it ultimately places the decision of Wichita's growth into the hands of one unelected, unaccountable appointee.

In Addition, the boundary commission is not required to make findings using specific data. The boundary commission only appears to be required to state they have considered the factors set out. The reason this is important is in the case of an appeal.

There currently exists a City--County comprehensive growth strategy for the City of Wichita and Sedgwick County. Planned growth keeps a city healthy and that is our desire. We understand annexation is often difficult, but it is also important to understand planned growth and the delivery of essential services to new members of our community is vital. HB 2230 would disproportionately interfere with our ability to comply with our comprehensive plan and impact our ability to thoughtfully deliver services while keeping costs under control.

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House Gov. Org. & Elections

Date: 2-3-05

Attachment # 8

Submitted by: Whitney Damron
Written only



CITY OF TOPEKA

James A. McClinton, Mayor
215 S.E. 7th Street, Room 352
Topeka, Kansas 66603
Phone 785-368-3895
Fax Number 785-368-3850

HOUSE COMMITTEE ON GOVERNMENTAL ORGANIZATION AND ELECTIONS

Re: HB 2185, 2230 and 2229

Committee Members:

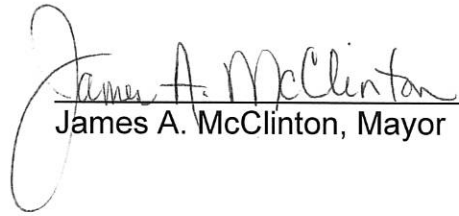
I am writing today to express my opposition to HB 2185, 2230 and 2229, each of which address the subject of annexation. These bills are the latest of what has recently become an annual effort to curb the ability of cities in this state to plan for their development and growth in an orderly fashion. I am concerned that the bills before you now emanate from the same source as the bills introduced in prior years: an emotional response to the possibility of annexation rather than a careful review of the history and laws governing annexation.

There is little or no evidence that non-city citizen's rights are not protected by current law. Many express concerns over the "threat" of annexation without seemingly ever looking at the statutory annexation process that provides all affected citizens with substantial due process rights and remedies. In general, unless a property owner wants to be annexed into a city, it can't be done without a careful and thorough study of the impact of annexation on both out of city and in city residents and government. Such a study is followed by a hearing process and deliberation by elected officials sitting in a quasi-judicial capacity. The decision on whether or not to annex must be based on the evidence presented in the annexation study and the subsequent hearings. Finally, the decision is subject to appeal and review by a district court judge.

Again, I am not aware of any evidence to suggest that this process doesn't work. Certainly, the history of annexation in Shawnee County doesn't provide a basis for change: Topeka hasn't conducted a non-consensual annexation in more than fifteen years. HB 2185, 2230 and 2229 are an attempt to fix problems that have not occurred and, in fact, probably couldn't occur given current law. No law of this significance should be changed without a thorough study of the problems in need of correction and the consequences of any proposed changes. I hope you will agree with me and, instead of approving any of these bills, authorize the study that will help us identify if, indeed, our annexation laws need to change.

House Gov. Org. & Elections
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Attachment # 9

I appreciate your consideration of my testimony as you discuss these matters.


James A. McClinton, Mayor