SESSION OF 2009

CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUB. FOR SENATE BILL NO. 51

As Agreed to May 8, 2009

Brief*

Unilateral and Bilateral Annexation

House Sub. for SB 51 would revise several annexation statutes by doing the following:

- Require a city proposing to annex land unilaterally (*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 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. Specifically, the bill would:

    - Reduce from five to four years the time that must elapse following the annexation of land (or related litigation), under either the unilateral or bilateral statutory provisions, 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,

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a landowner would be permitted to bring a court action. The court would be permitted to award attorney fees and costs to the prevailing party.

- Reduce from two and one-half years to two years the time that must elapse following this 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 permitted to award attorney fees and costs to the prevailing party.

- Prohibit the annexation, *via* approval by the board of county commissioners, of any portion of any unplatted agricultural land of more than 65 acres without the written consent of the landowner.

- Require any city that annexes land under either the unilateral and consent annexation statute (KSA 12-520) or the county commissioners approval statute (KSA 12-521) to spend all the proceeds from the property taxes levied against the land for one year from the date of annexation to provide municipal infrastructure and municipal services, other than police and fire services, to the annexed area.

- Add definitions of the terms “municipal services” and “municipal infrastructure” to the definitions statute relating to annexation (KSA 12-519).

- Prohibit any city from utilizing the unilateral and consent annexation statute (KSA 12-520) beginning July 1, 2009, to annex a narrow corridor of land to gain access to noncontiguous land. Any corridor of land annexed must have a tangible value and purpose other than for enhancing future annexations.

Annexation of Property Serviced by a Rural Water District

The bill would enact new law which would require a city to give written notice to a rural water district not less than 60 days before the effective date of any ordinance proposing to annex land into the city. The city would be permitted to contract with the rural water district for water service to allow portions of the annexed area. If the city designates a different supplier, the city would be required to purchase the property, facilities, improvements, and going concern value of the district located in the annexed territory. If the agreement for purchase is not executed within 90 days, the bill would require the city and rural water district to engage in mediation.

If the process of mediation does not reach an agreement of reasonable value within 120 days, the city and the rural water district will each appoint a qualified appraiser. Then these two appraisers would appoint a third appraiser. The three appraisers then would consider all elements of value of the property, facilities, improvements, and going concern value within the area to be annexed. The bill would establish factors in determining reasonable value, including the average increase in the number of benefit units in the area annexed for the three years immediately preceding the annexation. Once the appraisers make a determination, they would be required to make a written summary of findings and conclusions. If either the rural water district or the city is dissatisfied with the decision, an appeal may be made to the district court within 30 days. The compensation would be paid to the rural water district whether or not the city plans to use the facilities not later than 120 days after fair market value has been determined.

The bill also would permit rural water districts to maintain facilities within the annexed area for use in its active service territory provided that the district use those facilities to continue to supply water service to benefit units outside the city. The rural water district would not receive compensation for facilities

it elects to retain.

None of these provisions would limit the authority of a city to select water service suppliers or to limit the authority of the city to adopt and enforce regulations for operation of a water service supplier. The bill also would require the rural water district to continue to serve until the city gives notice of an alternative supply and would require the city and rural water district to cooperate to minimize inconvenience to water customers. Following the transfer of water service, the annexed land would be deleted from the territory of the rural water district and all benefit units attached to land located in the annexed area would be canceled without compensation. Notice of the action would be required to be provided to the county clerk and the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture.

Release of Lands from a Rural Water District

Currently, Kansas law allows landowners to petition the rural water district's board of directors for a release of lands from the district. Upon the successful filing of a petition, the district's board of directors is required to hold a hearing where the landowners' release request is considered.

The board would be required to make specific findings of fact and conclusions determining whether the lands requested to be released cannot economically or adequately be serviced. The board would need to determine if the release would be in the best interests of the landowner and the district, and the findings and conclusions would be based upon the preponderance of evidence.

In addition to the factors outlined in existing law, the bill would require the district's governing body to consider the following additional factors when determining whether or not lands should be released:

- Whether the cost of the benefit units or service or

equipment is unreasonable, excessive or confiscating so as to render service unavailable;

- The relating cost of obtaining service from an alternative source;

- Whether the release of lands would allow the district to yield more than adequate compensation;

- Whether the district establishes a rate for services or equipment that is disproportionate to the services rendered;

- Whether the release of lands would cause a loss of existing customers or supply new customers;

- Whether the district can provide a safe and adequate supply of water to customers in the district, and whether another provider could provide a greater level of service;

- Whether the board's refusal to release lands would result in any economic waste or hinder any economic development; and

- Whether duplicate water service lines would cause any economic or physical waste.

If the district denies the landowner's desire for release of lands because it would result in inadequate compensation, a process would be established to determine the compensation sufficient to enable adequate compensation. The bill would provide for the appointment of a qualified appraiser by both the district and the landowner. These two appraisers would appoint a third appraiser. The three appraisers would consider the following factors when determining reasonable value:

- Whether any property of the district is rendered useless or valueless to the district;

- The impact on the existing indebtedness of the district and such district's ability to repay;

- The value of the service facilities of the district located within the area in question;

- The amount of the district's contractual obligations allocable to the area in question;

- Any demonstrated impairment of service or increase of cost to consumers of the district;

- Any necessary and reasonable legal expenses and professional fees;

- Any factors relevant to maintaining the current financial integrity of the district; and

- Any other relevant factors.

The appraisers would hear evidence and make a written summary of findings and conclusions. At least two of the three appraisers need to agree and the landowners would be required to make the payment to the district for acceptance. If either the district or the landowner is dissatisfied with the decision of the appraisers, then the district or the landowner may appeal within 30 days to the district court.

Participating Members of Rural Water Districts

The bill also would amend the definition of "participating member" in the rural water district law to include those individuals, firms, partnerships, associations or corporations which own land located within a district which is charged a franchise fee for water service which is paid, either directly or indirectly through another water provider, to the district.

Conference Committee Action

The Conference Committee agreed to accept the House amendments to the bill, with the following changes and additions:

- Revise the bill's proposed changes to the time frame of hearings on the service plan (contained in KSA 12-531 and 12-532), as follows:

    - Change from three to four years the time that must elapse following the annexation of land before the board of county commissioners must hold a hearing to consider whether the city has provided the services set forth in its annexation plan and timetable. (Current law sets this deadline at five years.)

    - Change from one and one-half to two years the time that must elapse following this hearing, when the city has not provided the municipal services stated in the plan, before a landowner may petition to deannex the land in question. (Current law sets this deadline at two and one-half years.)

- Delete the requirement, in both of the above-referenced time frames related to potential deannexation of land, that the court award attorney fees to the landowner in certain circumstances. The Conference Committee revised this language to be permissive, allowing the court to award attorney fees to the prevailing party.

- Increase the acreage related to the prohibition against annexing unplatted agricultural land by approval of the board of county commissioners (KSA 12-521) without landowner consent. The bill proposed the prohibition of such annexations of 21 acres or more; the Conference Committee increased this to unplatted land tracts consisting of more than 65 acres.

- Delete the bill's requirement that an election be held for any annexation proposed to be made via board of county commissioners approval.

- Add the requirement related to spending tax proceeds levied against the land for one year from the date of annexation, and add the related definitions.

- Add and revise a portion of Sub. for SB 254, prohibiting the annexation of a narrow corridor of land to gain access to noncontiguous land. The revision was to make this provision prospective, rather than retroactive.

- Add the contents of HB 2283, as amended by the Senate Committee of the Whole, minus Section 7 of the bill related to Intensive Groundwater Use Control Areas (IGUCA).

Background

The original bill dealt with clothing requirements when hunting deer or elk. The House Committee on Agriculture and Natural Resources deleted the original contents and replaced them with the contents of HB 2029 as recommended by the House Committee on Local Government (*i.e.,* with an election requirement that would apply statewide).

As amended by the House Committee on Local Government, HB 2029 contains the provisions of all three annexation bills recommended by the 2008 Special Committee on Eminent Domain in Condemnation of Water Rights: HBs 2029, 2030 and 2031. The three bills were proposed in response to concerns raised at the Special Committee meetings regarding possible conflicts between unilateral or bilateral annexation and individual property owners' ability to influence annexation decisions.

HB 2029, as introduced, was supported by testimony from Representative Ann Mah. Opposing the bill were

representatives of Overland Park, Topeka, Basehor, and Lawrence. A Basehor resident testified his homeowners' association did not support the bill as written.

The House Local Government Committee amended the provisions of HB 2030 into HB 2029, dealing with the agricultural land restriction. Supporters of that bill included landowners and landowner organization representatives, the Kansas Farm Bureau and the Kansas Livestock Association. Testifying in opposition were representatives of the League of Kansas Municipalities, the cities of Overland Park, Topeka, Manhattan, Lawrence and Gardner and the Overland Park Chamber of Commerce.

The House Local Government Committee also amended the provisions of HB 2031 into HB 2029, dealing with the election requirement for certain annexation procedures, with two changes from the introduced version. The Committee changed the bill's definition of "qualified elector" to exclude nonresident landowners, since allowing nonresidents to vote is contrary to the *Kansas Constitution*. The Committee also clarified that the annexations in question are subject to election only if qualified electors reside in the area to be annexed. Supporters of the original HB 2031 included representatives of landowner organizations and the Kansas Farm Bureau. Opponents included the League of Kansas Municipalities, the cities of Overland Park, Topeka, Olathe, and Manhattan and the Overland Park Chamber of Commerce.

The House Committee of the Whole amended HB 2029 to make the election requirement applicable only in Johnson, Sedgwick, and Shawnee counties. (Note: This amendment is not included in the bill's provisions as adopted by the House Committee on Agriculture and Natural Resources.)

According to the fiscal notes on these three bills as introduced:

- Passage of the original HB 2029 – Cities would be required to meet accelerated timetables for service plans

and potential litigation. The potential would exist for counties to have additional costs from possible litigation and payment of landowner attorney fees. However, it is not possible to determine the precise fiscal effect on cities and counties.

- Passage of the original HB 2030 – A negligible fiscal effect would result for cities.

- Passage of the original HB 2031 – Both direct and indirect costs would result for cities. The cost of the mail ballot elections would be the direct effect; however, these costs could not be estimated. Indirect costs were not specified in the fiscal note.

Substitute for SB 254

The original SB 254 dealt with the issue of modifying zoning regulations in Johnson County's unincorporated areas. The House Committee on Agriculture and Natural Resources deleted these contents and replaced them with the contents of HB 2084, as recommended by the House Committee on Local Government. (Note: The House Committee on Agriculture and Natural Resources added the contents of SB 254 into SB 253.)

Testifying in favor of HB 2084 were Representatives Vince Wetta and Pete DeGraaf and the City Manager of Wellington. Opponents included representatives of the League of Kansas Municipalities and the cities of Overland Park and Mulvane.

According to the fiscal note, passage of HB 2084 would have an undetermined effect on cities.

HB 2283 was introduced by the House Committee on Energy and Utilities; then referred to the House Committee on Agriculture and Natural Resources. At the hearing, testimony in

support of the bill was provided by representatives of the Kansas Rural Water Association, the City of Eudora, and the City of Park City. No neutral or testimony opposing the bill was provided.

The fiscal note on the original bill indicates that passage of the bill would have no fiscal effect on the original bill.

At the Senate hearing on HB 2283, testimony in support of the bill was provided by representatives from the Kansas Rural Water Association and the Kansas Building Industry Association. No neutral or opposing testimony was provided.

The Senate Committee on Energy and Natural Resources amended the bill to clarify that when a board of directors of a rural water district considers the release of lands from a district that it needs to base its decision on written findings of fact. The board would need to determine whether the lands requested to be released could not be economically or adequately serviced by the facilities in the district. The Committee also amended the bill to require the findings and conclusions be based upon the preponderance of evidence. The Committee also added a process for the determination of adequate compensation when the petition for release of lands does not yield adequate compensation to the district.

Further, the Senate Committee on Natural Resources amended the bill by adding the provisions of SB 332 with further amendments. Those provisions address the process of determining compensation to a rural water district when a city annexes a portion of the district into the city. These new provisions are made supplemental to the rural water district act. The fiscal note on the original provisions of SB 332 indicates that the bill would not affect state revenues or expenditures.

When the Senate Committee on Natural Resources held a hearing on SB 332, testimony in support of the bill was provided by the representatives from Kansas Rural Water Association and the Kansas Building Industry Association. The League of Kansas Municipalities provided testimony opposing

the original provisions of the bill.

Additionally, the Senate Committee on Natural Resources amended the bill by modifying the definition of "participating member" as described above. This language was derived from HB 2318.

After recommending the bill favorably for passage, the Senate Committee on Natural Resources reconsidered its previous action. The Committee then further amended the bill to add IGUCA language (HB 2272 as amended by the House Committee of the Whole) and to change the annexation notice requirement from 30 days to 60 days. (Note: The Conference Committee did not include the amendments related to IGUCA.)

The Senate Committee of the Whole amended the bill to add an additional factor to be considered by the appraisers when determining the reasonable value of rural water district property prior to a city annexing territory located within the rural water district.

annexation; rural water districts