

## MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:40 a.m. on Thursday, March 3, 2005, in Room 313-S of the Capitol.

All members were present except:

Senator James Barnett (E)

Committee staff present:

Athena Andaya, Kansas Legislative Research Department

Dennis Hodgins, Kansas Legislative Research Department

Mary Ann Torrence, Revisor of Statutes Office

Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Mayor James McClinton, Topeka

David Thurbon, Director of Planning, Topeka

Don Moler, Executive Director, League of Kansas Municipalities

Randall Allen, Kansas Association of Counties

Allyn Lockner, Topeka resident

Ernest Mosher, Topeka resident

Terry Holdren, Kansas Farm Bureau

Paul Degener, Topeka resident

Randy Rogers, Kansas County Officials Association and Coffey County Sheriff (written)

Representative Harold Lane (written)

Vic Miller, Shawnee County Commissioner

Representative Ann Mah (written)

Others attending:

See attached list.

**SB 262 - City and county consolidation**

**HB 2083 - Consolidation of Topeka and Shawnee County**

Chairman Brungardt opened the hearings on **SB 262** and **HB 2083**. He asked the Revisor to give a brief overview of the two bills and explain the differences in the proposed legislation.

The Revisor explained that **SB 262** was a state-wide application, whereas **HB 2083** was limited to Topeka and Shawnee County; cities of Auburn, Rossville, Silver Lake and Willard were excluded. **SB 262** would enact the Efficiency in Local Government Act, which would allow the County Commissioners and governing body of a city to create a reorganization study committee to prepare a plan to address reorganization of the city and county. The voters of the county vote on the Joint Resolution; if approved by a majority of the voters countywide, the commission is formed as provided in the Joint Resolution. The study commission receives only expenses and may hire an executive director, and a tax not to exceed one mil may be levied to pay costs of the commission. The plan developed by the commission is submitted to the voters, and if approved by a majority of the voters countywide, the plan is adopted. If the voters of any city vote against the plan, that city is not part of the consolidation.

The Revisor said **HB 2083** would establish a five member consolidation commission for Topeka and Shawnee County, within ten days after the effective date of the act, to prepare a plan for the consolidation of all or part of city and county governmental functions. The commission receives compensation expenses and shall hire an executive director, who may hire staff. Before any plan of consolidation could be implemented, it must be approved by a dual majority of those voting within the City of Topeka and those living outside the city. It would also provide for a moratorium on the unilateral annexation powers of the City of Topeka pending the outcome of the consolidation election.

Senator Hensley asked the Revisor to clarify in **SB 262** how the commission would be appointed, and who makes those appointments. The Revisor responded that would be determined by the Joint Resolution that is adopted by the county and the city. It is not specified in the legislation, and they could in fact provide

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for the commission to be elected if that was the desire.

Senator Hensley inquired relative to the same question, how the appointments would be done in **HB 2083**. The Revisor said the **HB 2083** specifies who would be appointed to the Commission. The bill calls for the Governor, President and Minority Leader of the Senate, Speaker and Minority Leader of the House to each appoint a member to the Commission. The Governor's appointee would serve as Chair of the Commission. She added that there were some limitations such as not more than three members can be of the same political party, no elected or appointed official or paid employee of the cities in Shawnee County or the county itself shall serve on the Commission, and members of the commission must be Shawnee County residents.

Senator Hensley requested the Revisor to explain the annexation provision in **HB 2083**. The Revisor clarified that until the final plan is presented for approval by the voters, the city cannot initiate annexation prior to that time.

Senator Brownlee asked the Chairman if the Revisor could furnish the Committee a side-by-side comparison of the two bills. The Chairman requested the Revisor to develop a comparison of the two bills and the major points of each.

Chairman Brungardt announced that due to the large number of conferees appearing to speak on the two bills that there would be a limitation on time for each conferee, and requested the speakers to be mindful of their speaking time as well as being respectful to other conferee's time. He asked that the speakers be concise as possible in order to have some time for questions and answers.

Mayor James McClinton, Topeka, testified in support of both **SB 262** and **HB 2083** on behalf of the City of Topeka. He said the City of Topeka has been vocal with its concerns over several provisions of **HB 2083** including the dual majority voting which diminishes the voting status and power of Topeka voters. It greatly reduces the likelihood of a meaningful study and subsequent adoption of any type of consolidation in Shawnee County. He reminded the Committee that non-Topeka citizens of Shawnee county voted overwhelmingly last fall to not consider the consolidation legislation before the Committee. He stated that the City of Topeka dislikes the unilateral annexation moratorium provision of **HB 2083**, and pointed out that Topeka has not utilized non-consensual unilateral annexation in more than fifteen years. Topeka's growth has occurred primarily through developer requested annexations and some small county commission approved annexations. (Attachment 1)

Mayor McClinton stated that Topeka remained very concerned about the selection of the Consolidation Commission appointees. Since consolidation is a statewide concern, the City believes the Governor should appoint members to the Commission rather than local representatives. A consolidation study commission should do its work without local political influence or pressure. A successful precedent was established by the Governor in selecting the Wyandotte County Consolidation Commission, and the City of Topeka does not see the need to change that precedent. He added that over the past several decades the growth in Shawnee County has occurred not within the city limits or in the rural areas, but immediately adjacent to the city limits of Topeka. The 30,000 people living in urban environments located outside the city but within three miles of the Topeka city limits enjoy all the benefits of living near a city, but have almost none of the obligations that support those benefits.

Mayor McClinton concluded by stating the City of Topeka prefers the general consolidation language found in **SB 262**, as it provides a framework for the study and possible implementation of consolidation of government that stands the greatest chance of success. It is not handicapped by the political pressures and personalities of Shawnee county and Topeka. He introduced, David Thurbon, the City's Planning Director, to describe the situation which has been created by the increased growth of the surrounding urban areas of Topeka with the use of maps and diagrams. The visuals were attached to Mayor McClinton's written testimony.

Mr. Thurbon showed colored maps of current trends outlining the three mile boundary area surrounding the city limits of Topeka. The maps included, according to the 2000 Census, were by Median Household

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Income by Block Group, Median Value of Owner Occupied Houses by Block Group, Low-Moderate Income (LMI) Percentages by Block Group, and 1990-2004 Residential Building Permits and Demolitions. He explained the color coding as depicted on the maps, and said the maps demonstrate that the lower income in the central city area bears 70% of the city budget or is paid for by city property owners. The LMI map showed the percentages by Block Groups in the city, and determines what percent of the people living in the Block Groups meet the Housing and Urban Development criteria of low to moderate income. He talked about the Residential Building Permits and Demolitions map which clearly demonstrated the trend of moving out from the central city area. Mr. Thurbon showed a large map to the entire committee, which was not attached to the written testimony of the Mayor, which showed the area that would be eligible for annexing unilaterally right now and explained same.

Mayor McClinton stated in closing remarks that the people with the least ability to afford Shawnee County's budget are the ones bearing most of the burden, while the people on the edge of the city limits only produce 30% of that budget. He said the City of Topeka is asking for some tax equity, or the city will deteriorate. The situation needs to be corrected, and Topeka cannot continue to subsidize the continued growth on the peripheral of the city limits.

Senator Reitz asked if the city was prepared to give services immediately once the taxes change. The services should be there as soon as the first tax is taken by the city, i.e. the services for police, fire, etc. Mayor McClinton replied that the city is in the process of preparing a plan that will indicate what services the city needs to provide immediately. The plan might come back and tell the city that only a part is included and so it might be a little premature to develop totally until it is finalized as to what areas will be included in the plan.

Chairman Brungardt inquired as to what degree do the city and county currently have inter-local agreements to share services and cross-cover functions for the taxpayer. Mayor McClinton responded that there are some, but there are a lot of services the two do not share. He said there was not nearly enough to try to even the balance of the tax burden.

Senator Brownlee asked what the debt loads were for the City of Topeka and for Shawnee County.

Mayor McClinton said he did not know. Chairman Brungardt stated that would forthcoming in later testimony during the hearing.

Senator Hensley commented in regard to the appointment of the study commission and the difference between Shawnee County vs Wyandotte County. He explained that the delegation of Wyandotte was very much divided, some in favor and some opposed, and there was an outside effort to establish that the commission be appointed by the Governor. He said that this case is very different because the Shawnee County delegation is united in terms of **HB 2083**, and referred the Committee to the list of co-sponsors for the bill in the House including all democrats and republicans from Shawnee County. He stated the delegation from Shawnee County felt it was very important to have a say in who was on the commission since the Governor, the Minority Leader of the Senate, and the Speaker of the House reside in Shawnee County.

Mayor McClinton noted that the issue was making state-wide policy, and will the rest of the state be comfortable with the members appointed to the commission. He asked if those people in southeast Kansas want the same people appointed as members to their commission as the resources dry up across this state, and will the other people in other areas of the state want the same people making the appointments for their areas. He inquired if the people would be more comfortable having the Governor, who has the responsibility for the entire state, and who has made those appointments before for Wyandotte County's consolidated local governments.

Don Moler, League of Kansas Municipalities, testified in support of **SB 262** which he said was a virtual carbon copy with very few changes from **SB 238** which was passed by the Kansas Senate two years ago on a vote of 36 to 3. He reminded the Committee that this was legislation that is not new to the body, and in fact was overwhelmingly voted out of the Senate, but was assigned to the Local Government

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Committee in the House and at some point turned in to an agricultural bill, and subsequently died. He explained that **SB 262** provides that local governments and their electors get to decide whether or not there is a consolidation. This bill does not involve the State of Kansas, the State Legislature, the Governor, or anybody else. It is done at the local level by local citizens wishing to consolidate. Mr. Moler stated that the League supports **SB 262** as a mechanism which will allow the people of Kansas, in cities and counties across the state, to make choices about the structure and organization of their governments. (Attachment 2)

Randall Allen, Kansas Association of Counties (KAC), spoke in favor of **SB 262**, the Efficiency in Local Government Act provides. He stated that KAC has no position on **HB 2083**, and believes that it is a local matter and best determined by the citizens of Topeka and Shawnee County as was done in Wyandotte County. **SB 262** gives local governments an opportunity to devise a system of local government which best meets their needs without seeking legislative approval on a case by case basis. He said that KAC opposes mandatory consolidation of local government units and/or services. Mr. Allen explained that KAC supports legislative changes that remove statutory limitations to consolidation of functions and services. (Attachment 3)

Mr. Allen noted that new Section 7, on page 7, of **SB 262**, was unnecessary language because city and county always have the authority to tax and to appropriate moneys for any public purpose. There is no statutory limitations at this time, and suggested that this section be removed from the bill. He also talked about a provision of **HB 2094** which had a prohibition on the elimination of any elected offices at the city or county level in putting together the reorganization. He said this, in his opinion, "gutted" the bill, and asked that when this Committee works **SB 262**, consideration should be given to not inserting such a provision in the bill. Mr. Allen explained that when a city and county combine their governments, there will be some elimination of elected offices and thus having some kind of unified governing body. He added that the persons putting together the consolidation plan will determine whether or not there will be other elected officials, i.e. Register of Deeds, County Clerk, County Treasurer, etc. In some counties, they will remain elected, and other counties they may not remain as elected officials. Mr. Allen stated that it would be bad public policy for the Legislature to indicate the local governments could not take those actions in the plan should they choose to.

Mr. Lockner, Topeka resident, testified in favor of **SB 262** and in opposition to **HB 2083**. In speaking to **HB 2083**, he said if the language is left in regarding the moratorium on unilateral annexation and also the dual majority voting requirement it would really hamper the discretion of the commission itself which the bill asks to put together the consolidation plan. The commission needs to have wide discretion because there is going to be a lot of negotiation, a lot of exchange of information, etc. He stressed that when the commission has discretion to pursue alternatives, the chances are increased that it will reach consensus on a city-county reorganization plan that will be approved by a majority of voters in Shawnee county affected by the alternatives. The plan would address issues identified initially by the commission. (Attachment 4)

Mr. Lockner stated the reason he is in favor of the passage of **SB 262** would be to enhance the economic competitiveness of the Kansas capital metropolitan region. He said the bill rightly assumes that many complex and difficult issues crosscut local government boundaries and are more likely to be mitigated, if not resolved through short-term and long-term regional strategies. Passage of **SB 262** increases Topeka's chances of generating more jobs and higher paying jobs in the region so that a higher quality of life can be achieved. Mr. Lockner explained that for this to occur, governments in the metropolitan region must reorganize and more frequently collaborate and deliver municipal-type services to residents and to for-profit business and not-for-profit organizations with increased effectiveness, efficiency, timeliness, and equity, plus with increased public accountability over the long run. Mr. Lockner detailed the clarity questions that need to be addressed with **SB 262** in his written testimony. He stated that the bill should contain clear language that minimizes conflicting interpretations, court litigation and costly delays.

Ernest Mosher, Topeka resident, appeared in support of **SB 262** and **HB 2083** with some amendments. He spoke briefly on the historical structure of Kansas' present general governments, and that it made sense in the past with cities serving urban residents, townships serving rural farm areas, and the county providing basic functions needed throughout the whole county. He said the present "system", designed

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145 years ago, was intended to function in a different environment than what is in existence today. Mr. Mosher explained that the state has made many adaptations over the years, which explains the existence of the 3,887 different governments it has, including 1,533 special districts. (Attachment 5)

Mr. Mosher provided a proposed Senate Substitute bill that combines both bills into one, and the amendments were outlined and attached to his written testimony. He said the obvious reason for proposing a Substitute combining the two bills is practical politics, or the art of compromise, intended to achieve a new law relating to governmental consolidation and reorganization, rather than have two bills that each pass one chamber of the Legislature, but not the other. He noted that the amendments do not deal with some evident issues in **HB 2083**, relating to method of appointing the study commission, dual voting, or the moratorium on Topeka's annexation. Mr. Mosher felt that most of the proposed amendments are non-controversial, but explained the difference between proposing a functional consolidation approach ("offices, functions, services and operations") and proposing a governmental consolidation (a new city-county) by using wording from both original bills (Section 4 in **HB 2083** and Section 5 in **SB 262**).

Terry Holdren, Kansas Farm Bureau (KFB), testified in opposition to **SB 262**. He stated that the bill, as proposed, had many provisions which the KFB's member adopted policy directly supports including the requirements of multiple public hearings and specific representation from unincorporated areas on the study commission. He said KFB's policy also supports the provisions which define tax and bonding level limits for the consolidated. Mr. Holdren stated that KFB respectfully requests the Committee to consider the following changes: (1) The final consolidation plan should be approved by a majority of voters residing in the municipality in question, and a majority of voters in the unincorporated areas of the county; (2) At least one half of the members of the commission studying consolidation should represent unincorporated areas of the county; and (3) the commission should not have the authority to abolish elected positions and replace them with appointed positions. (Attachment 6)

Paul Degener, resident of suburban Shawnee County, spoke in opposition to **SB 262**. He stated his main objection to **SB 262** is that a citizen does not have a representative vote and makes government too large. He said that new Sec. 5, (b)(3) authorizes the election or appointment of officers under consolidation, and it does not specify which officers are to be appointed or elected. This could result in only the governing body being elected, and that is taking government out of the hands of the electorate. Mr. Degener testified that the present form of government provides a certain amount of checks and balances, and under consolidation the security of these checks and balances would be lost at the local level. (Attachment 7)

Mr. Degener stated that he supported **HB 2083** because of the ambitious annexation plan proposed by the City of Topeka in **SB 262**. He explained that the city's plan would decimate surrounding townships, and have an adverse impact on township residents plus result in higher taxes. He said that this bill would impose a moratorium on unilateral annexation, and those people being annexed into the city would have no representation which is unconstitutional.

Randy Rogers, Vice President of Kansas County Officials Association, and Coffey County Sheriff, submitted written testimony in opposition to **SB 262**. (Attachment 8)

Written testimony was submitted in support of **HB 2083** by Representative Harold Lane (Attachment 9) and Representative Ann Mah. (Attachment 10)

Senator Hensley pointed out that Representative Lane's submitted written testimony was on behalf of the Shawnee County Delegation of which Representative Lane is the Chairman. He explained that the Shawnee County Delegation met prior to the end of December last year and started drafting the provisions of **HB 2083**.

Vic Miller, Shawnee County Commissioner, testified in support of **HB 2083**. He stated that he had served eight years as a Topeka City Councilman and eight years as a Shawnee County Commissioner, and was convinced that duplication of costs and services does exist and could be eliminated through consolidation of the two governmental units. He said that Topeka and Shawnee County were not Kansas City or

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Wyandotte County, and what works there would not necessarily work in this situation. He stated he was confident that a body of five Shawnee Countians, the appointment of which is provided for in **HB 2083**, can devise a plan that will fit the needs of the community as well as receive the support of both a majority of Topeka residents and non-Topeka residents. He passed around a photo taken in the county showing road conditions from a recent snow storm with a sign posted "Township Maintenance Ends", and said it demonstrated clearly the different levels of service the people in the townships have grown accustomed to compared to what the City of Topeka provides for, in that one particular service.

Mr. Miller also provided copies as information of a *Topeka Capital Journal* editorial dated September 4, 1984, which talked about city-county consolidation which stated it "is a topic that needs to be explored seriously—and the sooner, the better." He stated that it hasn't happened yet, and there is no practical reason to believe that it will happen if the decision goes to the very units of government that have a vested interest in not seeing it through. (Attachment 11)

In response to Senator Brownlee's question regarding the debt loads, Mr. Miller distributed copies of a bar chart (copies attached to written testimony) depicting the City of Topeka's indebtedness from 2000 through 2004. He explained that the chart showed the debt had climbed in the last four years over 100%, and 33% in the last year. In 2001 it was \$209,433,083 and in 2004 it stood at \$306,635,587. The County's current debt level remains around \$50 million during the same four year time period. He stated that he understands and appreciates what the reasonable apprehensions of people outside the city are fearing with a consolidation of the two governments. Mr. Miller said that many county voters relish the thought of a consolidated government that would lead to the elimination of the current city government, and he was describing the environment and atmosphere that was present outside the city. He explained that the photograph that he passed around was a vivid illustration of what those people currently pay for and why they enjoy township services, and that the people fear they are going to lose those services under a consolidation. He noted that **HB 2083** does not call for the elimination of township government, and once that is understood within the county residents, there will be more converts to supporting this legislation.

Senator Hensley noted that there was a fiscal note on **HB 2083** which was prepared by the Director of the Budget. He read the last paragraph. "By way of example, \$150,000 was spent on the Kansas City, Kansas, and Wyandotte County consolidation from FY 1996 to FY 1998. The financing was provided in equal amounts of \$50,000 by the city, the county, and EDIF funds from the Department of Commerce and Housing. (Attachment 12) He asked both Mr. Miller, a County Commissioner, and Mayor McClinton if there would be an agreement to proceed with the study and whether the local units of government would help fund the study. Mayor McClinton acknowledged the City would be agreeable. Mr. Miller said the county reflected on that last August when the question was put on the ballot, by amending the County Resolution by striking the word "study" and inserting the word "plan." He stated that the County Commissioners have unanimously endorsed **HB 2083** since the time that his testimony was written in January, at which time he was testifying for himself.

Chairman Brungardt asked Mr. Miller, since he represents the entire county, to what extent the county provides funds or services within the city. Mr. Miller responded he would list the ways: the jail, the Health Department is a county-wide department paid for by everybody once, the whole tax assessment structure is what a county is in general, i.e. Register of Deeds, the County Appraiser, the County Clerk, the County Treasurer, etc. He stated that he constantly fights statements like the one made by the Mayor earlier that 70% of the county's budget comes from the city residents. This is not true. He clarified that 70% of the county's tax base is within the city limits, and a huge percentage of that tax base is commercial and industrial properties which many of those are owned by county residents or non-city. Mr. Miller added that when one really cuts down the percentage of taxes that the county gets from the city residents vs county residents, it is almost even and is a huge misnomer. He said he wanted to get down to one government because it would be a lot easier to explain than the two forms of local governments, and trying to clarify what each does and doesn't do.

Chairman Brungardt inquired as to what justification there would be in having equal representation of the people who happen to reside in the county and the city and those who happen to reside in the county

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outside the city in form of the vote. Mr. Miller said that was the only way the bill was going to escape the Kansas Legislature. It will not pass the Kansas House of Representatives, and it won't see the light of day if it does not provide for the dual majority if it will even pass the Senate. He reminded the members that when Shawnee County tried to spread the Topeka Public Library's mill levy county-wide, they were told that it could not be done. Mr. Miller explained the bill provided that it had to pass both city and county residents, and it did pass even though it was said it couldn't be done. Having served on both the City Counsel of Topeka and the Shawnee County Commission, Mr. Miller stated he believed a plan could be developed to mimic, not specifically, the Wyandotte County government, and present a plan to the Commission's constituents across the county that will illustrate that nobody had to get gored in order to obtain efficiencies.

Mayor McClinton offered a brief rebuttal regarding whether the city and county would split the cost of the plan. He stated the city would pay for it all if the Legislature could produce legislation that would convince all of those people within the three mile limit of the city that the plan is good for Shawnee County. He stated if dual majority remained in the current legislation, the plan will not happen. There is nothing to encourage these people to help support consolidation.

Chairman Brungardt announced that the hearing would continue on **SB 262** and **HB 2083** in Room 241-N at the next committee meeting.

The meeting was adjourned at 11:55 a.m. The next meeting scheduled is Tuesday, March 8, 2005, in Room 241-N.