Approved: March 9, 2010
Date

MINUTES OF THE SENATE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Roger Reitz at 9:30 a.m. on March 2, 2010, in Room 144-S of the Capitol. Senator Wagle moved to approve the minutes of February 15th and 16th. Senator Huntington seconded the motion. The motion carried.

All members were present.

Committee staff present:
Mike Heim, Office of the Revisor of Statutes
Sean Ostrow, Office of the Revisor of Statutes
Martha Dorsey, Kansas Legislative Research Department
Reed Holwegner, Kansas Legislative Research Department
Noell Memmott, Committee Assistant

Conferees appearing before the Committee:
Whitney Damron, On behalf of the City of Topeka
Don Mohler, League of Municipalities
Erik Sartorius, City of Overland Park
Ann Mah, Kansas Representative, District 53

Others attending:
See attached list.

The discussion on **HB 2472 - Kansas uniform common interest owners bill of rights act** continued. Senator Huntington reviewed the amendments proposed by the Kansas Building Industry. (Attachment 1) Mike Heim reviewed and explained the new amendments.

Senator Huelskamp moved to accept the Kansas Building Industry amendments to **HB 2472.** Senator Wagle seconded the motion. A discussion followed. Senator Wagle withdrew her second. Senator Wagle questioned how this legislation would affect existing homeowners covenants. Mike Heim, Revisor, explained the bill. Following discussion of the wording of the amendment, Senator Huntington moved to adopt the amendments to HB 2472. Senator Reitz seconded the motion. The motion failed.

The hearing opened on **HB 2471 - Cities; annexation; strip annexation restricted**. Mike Heim, revisor, gave the background and purpose of the bill.

Whitney Damron, On behalf of the City of Topeka (Attachment 2), Don Mohler, League of Municipalities (Attachment3), and Erik Sartorius, City of Overland Park (Attachment 4) all gave testimony in opposition to the bill. Written testimony in opposition to the bill was submitted by Jennifer Bruning, Vice President of Government Affairs with the Overland Park Chamber of Commerce (Attachment 5).

Ann Mah, Kansas Representative, District 53 (Attachment 6) testified in favor of **HB 2471.** Terry Holdren, Kansas Farm Bureau Government Relations submitted written testimony in favor of the bill (Attachment 7).

The hearing and discussion will continue.

The next meeting is scheduled for March 8, 2010.

The meeting was adjourned at 10:25 a.m.

LOCAL GOVERNMENT
GUEST LIST

DATE: March 2, 2010

NAME	REPRESENTING
Rocky Hamerl	Judicial Council
ERIK SARTORIUS	City of Overland Park
Mike Hutcheson	City of Mulvane
Kim Parker	2 H.O. assns.
Dan Moler	KAC
Whitney Damron	City Topeka
Melissa Wangemann	KAC

KBIA
KANSAS BUILDING INDUSTRY ASSOCIATION, INC.

To the Senate Local Government Committee:

We apologize for coming in at the last minute with recommendations on S.B. 470, but it has been reviewed by attorneys who work with homeowners' associations, and they had these 5 suggested amendments. We bring them to you as you prepare to work the bill, because we believe they would be clarifying amendments that would improve the bill and therefore require less amendment in the future.

Sincerely,

Chris

Chris Wilson, Executive Director
KS Building Industry Association

212 S.W. 8th Avenue, Suite 201
Topeka, KS 66603
785-232-2131 phone
785-232-3680 fax
785-844-0274 cell
chris@kansasbuilders.org

Senate Local Government
3-2-2010

Attachment 1-1

RECOMMENDED AMENDMENTS FOR S.B. 470, ENACTING THE KANSAS UNIFORM COMMON INTEREST OWNERS BILL OF RIGHTS ACT, FROM KANSAS BUILDING INDUSTRY ASSOCIATION

Amendment 1. In New Sec. 2: add a definition of "common elements" because this phrase is central to the definition of "common interest community."

"Common elements" means those portions of the property not owned individually by unit owners, but in which an indivisible interest is held by all unit owners, generally including the grounds, parking areas, and recreational facilities.

Amendment 2. On page 5, mend Sec. 9 to read on Lines 15-20:

"In the performance of their duties, officers and members of the board of directors shall exercise the degree of care and loyalty to the association required of an officer or director of a corporation organized, and . . ." (continue with existing language on line 21.)

Rationale for this amendment: Sec. 9 imposes an inappropriate standard of conduct on the members of the board during declarant control, and it will impair the ability of an association to function during that period and a declarant to find any willing homeowners to serve on the board during such period. It imposes the duty of a "trustee" on the board members and officers during the period of declarant control. During the development phase, each owner has potentially conflicting interests in the placement and development of all features, from driveways to amenities. Any decision to place or relocate any amenity, will please some homeowners while other homeowners will find the decision objectionable. Placing the directors and officers in the role of trustee creates a substantial burden, and their fiduciary obligations to the various affected unit owners can be in conflict.

Amendment 3. On page 5, New Sec. 10, beginning on line 40, should provide that the declarations establish when the termination of the period of declarant control occurs.

Insert a new subsection (a) as follows: **"The declarations shall establish when the period of declarant control is terminated."**

Amendment 4. On page 7, clarify Sec. 12: On line 33, subsection (c), begin with "Except as provided in subsection (i), during the period of declarant control . . .". In addition, the last two sentences of subsection (c) should be blended into a single sentence so that it is clear the requirement that all meetings be conducted at the community applies only after the transfer of control from declarant.

Amendment 5. Delete New Sec. 20(b). It conflicts with Sec. 8(a)(3) that permits the association to mandate mediation between owners and the association; it does not define "dispute"; and it somehow seeks to restrict the ability of the declarant to enter into ADR provisions when the declarant still has control.

Also on page 15, at line 34, remove the word "that."

TESTIMONY

TO: The Honorable Roger Reitz, Chair
And Members of the Senate Committee on Local Government

FROM: Whitney Damron
On behalf of the City of Topeka

RE: HB 2471 – An Act concerning cities; relating to annexation of territory.

DATE: March 2, 2010

Good morning Chairman Reitz and Members of the Senate Committee on Local Government. I am Whitney Damron and I appear before you today on behalf of the City of Topeka in opposition to HB 2471 that would restrict a city's ability to "annex narrow corridors of land to gain access to noncontiguous tracts of land" as outlined in Section 7 (h), as found on page two of the bill, beginning on line 31.

The City has historically opposed any further proposed restrictions on its ability to annex land. We believe current law has adequate checks and balances for all parties concerned.

Our concerns with the provisions of HB 2471 are two-fold:

- First of all, HB 2471 proposes to restrict or otherwise prohibit an annexation that is agreed upon by a property owner and the city. Historically, when a landowner desires to be annexed by a city, it is a relatively straightforward and simple process that has few, if any parties in opposition.

- Secondly, this bill prohibits strip annexations by consent or by unilateral authority and may have unintended consequences beyond what is intended to be prohibited under this bill.

Proponents of HB 2471 have expressed their opposition to strip annexations due to a specific set of facts that arose out of an annexation in Sumner County. However, there may be instances where strip annexation is appropriate and in the best interests of all concerned.

919 South Kansas Avenue ■ Topeka, Kansas 66612-121
(785) 354-1354 (O) ■ (785) 354-8092 (F) ■ (785) 224-6
www.wbdpa.com ■ wbdamron@aol.com

Senate Local Government
3-2-2010
Attachment 2-1

For example, there are occasions where a manufacturer or warehouse might need to be located outside the city limits due to the size of a parcel of land required to meet their needs, but the property owner may wish to receive city services or otherwise be a part of the city rather than the county. We have such a case in Topeka with the Target Distribution Center and there are certainly other examples in our state, such as industrial parks.

Rather than annex large blocks of land to bring in such a development, which necessarily includes all of the responsibilities of an annexation (i.e., extension of services), it might be more responsible and appropriate for a city to utilize a strip annexation in order to accommodate business and industry. Furthermore, when such an annexation is requested by a property owner, the owners of the parcels of land in between may not be interested in having their land annexed into the city, making strip annexation appropriate for all concerned. Accordingly, by prohibiting a strip annexation, the proponents of this legislation may actually force a city to annex more land that they need or is appropriate under the circumstances.

One set of circumstances or a bad fact pattern cannot sustain making a significant change in annexation policy that affects the entire state. Accordingly, we would urge the Legislature to not adopt HB 2471.

On behalf of the City of Topeka, we thank you for your consideration of our comments.

Whitney Damron

LKM
League of Kansas Municipalities

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

To: Senate Local Government Committee

From: Don Moler, Executive Director

Re: Opposition to HB 2471

Date: March 2, 2010

First I would like to thank the Committee for allowing the League to appear today in opposition to HB 2471. 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 23 years and we believe they continue to work well today.

The Committee should be aware that what is suggested by HB 2471 represents a significant change in public policy and one which should not be undertaken lightly. HB 2471 would amend the unilateral annexation statutes to prohibit that: *"(h) No city may utilize any provision of this section to annex a narrow corridor of land to gain access to noncontiguous tracts of land. The corridor of land must have a tangible value and purpose other than for enhancing future annexations of land by the city."* This language is a problem as it fouls up the unilateral annexation law, particularly as it applies to consensual annexations. Finally, the committee should be aware that this legislation is not really about annexation, but rather originated from a dispute between two cities in Kansas who are wrestling over which will get a destination gaming (gambling) facility in their community. It is the understanding of the League that litigation concerning this annexation remains in the appellate courts of Kansas. Therefore, we would urge the committee to allow the judicial process to be completed before considering any action on HB 2471.

Furthermore, we would suggest that this bill is unwarranted and unnecessary. To undertake this type of significant change to an existing statute, in an effort to resolve a dispute concerning the location of a gambling facility, is simply not appropriate. We would strongly urge the Committee to reject this legislation. I will be happy to answer any questions the Committee may have on this subject.

Senate Local Government
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Attachment 3-1

OVERLAND PARK
KANSAS

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Overland Park, Kansas 66212

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Testimony Before The
Senate Local Government Committee
Regarding House Bill 2478
By Erik Sartorius

March 2, 2010

The City of Overland Park appreciates the opportunity to appear in opposition to House Bill 2478. HB 2478 proposes a drastic change in the state's unilateral annexation laws, and it will create significant hardships for cities, counties and the state as whole.

The conditions that permit unilateral annexation under K.S.A. 12-520 have been in Kansas law in one form or another for over a hundred years.[1] For most of that time, cities have been able to annex land under the conditions set out in 12-520 without the approval of any other government or government agency. The reason is apparent—the conditions that permit these unilateral annexations are extremely narrow and restrictive and only permit unilateral annexation where it is undeniable that the land proposed to be annexed has a direct and immediate impact upon the city and is essentially a part of the city in all but name.

HB 2478 would require unilateral annexations to be ultimately approved by the board of county commissioners when there has been no consent to annexation. Thus, the bill applies to conditions 1, 4, 5 and 6 of K.S.A. 12-520(a). However, in order for a city to unilaterally annex land under these conditions, in every case, the land must first adjoin the city. In addition, the land must already be platted into lots and blocks, or be surrounded by or lie mainly within the city and have a common boundary with the city of at least 50%, or, if it is a single tract, have a boundary line, two-thirds of which abuts the city, or its annexation will make the city's boundary line straight or harmonious. The last two conditions are limited to areas of 21 acres or less.

In addition to the legislature creating very narrow conditions for unilateral annexations, the legislature also has imposed substantial procedural restrictions on cities that attempt unilateral annexations. A city that chooses to unilaterally annex land under K.S.A. 12-520 must adopt a resolution of intent to annex, give notice to affected property owners, hold a public

[1] *See*, 1907 Session Laws of Kansas, Ch. 114, Sec. 8: "Whenever any land adjoining or touching the limits of any city has been subdivided into blocks and lots, or whenever any unplatted piece of land lies within (or mainly within) any city, or any tract not exceeding twenty acres is so situated that two-thirds of any line or boundary thereof lies upon or touches the boundary-line of such city, said lands, platted or unplatted, may be added to, taken into and made a part of such city by ordinance duly passed...."

hearing, notify numerous area governments and then apply 16 criteria to determine if it should annex the land under consideration.

Beyond these requirements, the city must submit its proposed annexation to any planning commission that has jurisdiction over the area proposed to be annexed for a determination of the compatibility of the proposed annexation and land use plans for the area. The city also is required to prepare a service extension plan which forms the basis for the city's public hearing on the proposed annexation.

If a city works its way through these procedural requirements and annexes land under K.S.A. 12-520, any landowner who is annexed and certain cities may challenge the annexation in court. One wonders how we could make the unilateral annexation process any more difficult.

A year before the conditions for unilateral annexation were being incorporated into the 1967 annexation law that was applicable to all cities, the National League of Cities rejected the notion that the owners of land or residents on land in fringe areas of cities "should be given a veto power over the geographic, economic and governmental destiny of the city that is the source of the area's economy and whose proximity solely gives affected properties whatever tangible and intangible desirability they have as places of residence or economic activity."[2] Overland Park agrees with the National League of Cities. Under HB 2478, that veto power is given to the board of county commissioners even though the city has the greatest interest in whether the land is annexed or not.

The potential harm to cities from HB 2478 is great. First, cities can be significantly affected by the type of development that occurs on their doorstep. In nearly every case, a city has no power to limit what use is made of land that is outside of the city. Thus, where a county prohibits a unilateral annexation, there is a substantial likelihood of incompatible uses of land being established within or on the borders of the city. The potential for incompatible land uses can seriously stifle development within the city and affect the quality of life for city residents.

No one can seriously suggest that cities should not be able to expand their boundaries to accommodate increases in population and economic development. This is why Kansas cities have had the power to annex since the establishment of statehood. Cities provide the type of services that most citizens want from their governments, including police, fire, water, sewer, recreation and others. This is why 82 percent of Kansans live in cities.

The other obvious issue with HB 2478 is that it would promote tax inequities. A subdivision on the boundary of an existing city is functionally a part of that city, especially when it obtains water and/or sewer services from the city. The persons living in these subdivisions are virtually identical to persons living in the city except they do not pay city taxes. At the same time, these platted subdivisions impose costs upon county governments when they generally can be better served by city government.

The bill also would promote tax leakage. This occurs when businesses set up on the edges of cities and offer their products for sale without the need to collect the city sales tax. This can create a significant tax revenue loss. Of course, the city also loses the property tax revenue from the developed land.

HB 2478 would impose a significant burden on counties. In order to do its job under the bill, a board of county commissioners will need to review the record of the city's public hearing on the proposed annexation, the service extension plan and the determination of the relevant

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[2] *Adjusting Municipal Boundaries,* Department of Urban Studies, National League of Cities, p. 64 (December 1966).

planning commissions before it could render its determination. To do otherwise would be unlawful. This will create substantial work for counties, many without the staff to perform such a review. Moreover, all of the county's work needs to be done in 30 days.

HB 2478 has an additional significant flaw. The bill turns the annexation process into a purely political exercise. In 1974 and 1987, the legislature ensured that unilateral annexation decisions would be made based upon sound fiscal and land use planning by requiring the analysis of numerous criteria in the annexation approval process. HB 2478 abandons this important principle. Under HB 2478, the board of county commissioners may permit an annexation only if it determines "that the proposed annexation will not have an adverse effect on such county." Although the phrase is very vague, it appears that the board of county commissioners would consider how the proposed annexation affects the county, and it would not consider the interests of the city or the region taken as a whole. It is likely that the effect of HB 2478 would be to promote lawsuits against counties either by property owners who can now be annexed or by cities when annexations are denied.

HB 2478 is not needed. The current statute already imposes enormous burdens on cities that wish to annex under the statute. HB 2478 would turn the annexation process from a carefully considered planning decision into a purely political decision by the board of county commissioners.

Overland Park
Chamber of Commerce

Testimony in opposition to HB 2471

Submitted by Jennifer Bruning
On behalf of the Overland Park Chamber of Commerce

Senate Local Government Committee
Tuesday, March 2nd, 2010

Chairman Reitz and Committee Members:

My name is Jennifer Bruning, and I am Vice President of Government Affairs with the Overland Park Chamber of Commerce. I am submitting written testimony today in opposition to House Bill 2471 on behalf of our board of directors and our nearly 1,000 member companies.

Throughout our history of development and growth, annexation has been a tool used by area cities to successfully allow our area to grow. Planning for growth is a fundamental responsibility of cities, and we believe HB 2471 will severely impact that ability by prohibiting a city's ability to annex a narrow corridor of an individual's land to gain access to noncontiguous land, even with the landowner's consent. In this time of economic uncertainty, we must make it easier for cities and landowners to engage in economic development projects, especially when both are in full consent of the measure. We believe the process currently in place (without these prohibitions) has been shown to work well and is in the best interest of consenting landowners and the cities looking to annex their land.

Second, the imposed provision requiring that the narrow corridor of land have a "tangible value and purpose other than for enhancing future annexations" seems to be ambiguous at best. Who is to make the determination whether the corridor of land has "tangible value" or not? If a landowner owner has a small remnant of property with no inherent value, its only value might well come from selling it to an adjacent owner who can then have its property annexed by consent. We foresee this language creating a litigious environment of uncertainty, as well as being counterproductive to our city's efforts to make the process of annexation easier rather than harder.

Please vote "no" on HB 2471. Thank you very much.

9001 W. 110th Street • Suite 150

t: 91

Senate Local Government
3-2-2010

Attachment 5-1

ANN E. MAH
REPRESENTATIVE, 53RD DISTRICT
3351 SE MEADOWVIEW DR.
TOPEKA, KANSAS 66605
(785) 266-9434

CAPITOL BUILDING
TOPEKA, KANSAS 66612
(785) 296-7668

STATE OF KANSAS

TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS
EDUCATION
FEDERAL AND STATE AFFAIRS
GOVERNMENT EFFICIENCY AND
TECHNOLOGY

SENATE COMMITTEE ON LOCAL GOVERNMENT

TESTIMONY – HB 2471

Mr. Chair and Committee:

I am a poor substitute for Representatives Wetta and DeGraf, who sponsored this bill, but wanted to share some thoughts in support of HB 2471 in their absence. This bill limits the use of what we call "snake" annexation, such as was used to annex a strip of land outside of Mulvane. And whether or not you support gaming, this annexation clearly violates the spirit of the law and should be curtailed.

Opponents wrongly stated that this bill was a last minute thought last session and stuck into a conference committee report on SB 51. This same bill, in fact, was passed twice by the House and not heard in the Senate. It deserves a hearing and we appreciate your hearing it this year.

Further, when the Governor vetoed SB 51, he noted that he hoped the legislature would again address a city's ability to annex a narrow corridor of land to reach a noncontiguous tract of land this session. We hope you will agree with the House that it is time to limit snake annexation.

Senate Local Government
3-2-2010

Attachment 6-1

KANSAS FARM BUREAU
The Voice of Agriculture

2627 KFB Plaza, Manhattan, Kansas 66503-8508 • 785-587-6000 • Fax 785-587-6914 • www.kfb.org
800 SW Jackson St., Suite 1300, Topeka, Kansas 66612-1219 • 785-234-4535 • Fax 785-234-0278

PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON LOCAL GOVERNMENT

RE: HB 2471 & 2478; Restrictions on annexation

March 2, 2010

Submitted by:
Terry Holdren
KFB Government Relations

Chairman Reitz and members of the Senate Committee on Local Government, thank you for the opportunity to share the policy developed and adopted by our members. I am Terry Holdren, National Director – Government Relations at Kansas Farm Bureau. As you know KFB represents farmers, ranchers and rural residents totaling more than 110,000 who live and work in each of the states 105 counties.

KFB members continually express a great deal of concern regarding the practices of cities seeking to annex surrounding lands. These practices have numerous negative consequences for agricultural operations and rural landowners, including but certainly not limited to financial impacts on land values and homeowners who will undoubtedly face higher tax bills for services they may not receive benefits from.

Annexation has significant impacts on rural water districts, fire districts, electric cooperatives 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 that will face extreme hardship in continuing to serve their remaining populations and in meeting their financial commitments for infrastructure improvements.

Our member adopted policy favors annexation only after a majority vote of the residents of the area to be annexed. Our policy also supports the current law requiring cities to follow additional procedures and submit to a review of the reasonableness of their action. We also strongly support the prospect of ending the misguided practice of strip or snake

annexation, used primarily to allow cities to "reach" desirable or high-value properties and to add those parcels to their tax roles.

We would submit that there are reasonable restrictions that can be placed on cities to ensure that rural residents and service providers are protected in the annexation process. The proposal before you today in HB 2478 requiring County Commission review of some types of annexations provides an opportunity to strike that kind of balance and we also support that measure.

Thank you once again for the opportunity to comment on this issue. We respectfully ask for your favorable consideration of both of the bills before you today and stand ready to assist as you seek solutions for all Kansans.

For more information please contact:

Terry Holdren
Kansas Farm Bureau
800 SW Jackson, Suite 1300
Topeka, KS 66612
785.234.4535
holdrent@kfb.og

Kansas Farm Bureau represents grass roots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.