

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Steve Huebert at 3:30 p.m. on February 10, 2011, in Room 144-S of the Capitol.

All members were present except:

Representative Sloan - excused

Committee staff present:

Martha Dorsey, Kansas Legislative Research Department

Eunice Peters, Office of Revisor of Statutes

Florence Deeter, Committee Assistant

Conferees appearing before the Committee:

Representative Ann Mah, 53rd District

Kelly Parks, West Valley, Kansas

Arlyn Briggs, Olathe, Kansas

Forrest Walter, Mission Township, Topeka, Kansas

Don Moler, Executive Director, League of Kansas Municipalities

Whitney Damron, City of Topeka

Erik Sartorius, City of Overland Park

Marilyn Nichols, President, Kansas County Officials Association

Paul Degener, Topeka, Kansas

Marvin Smith, Topeka, Kansas

Kenneth Daniel, Chairman, Board of Midway Wholesale, Topeka, Kansas

Greg Dye, Wichita, Kansas

Others attending:

See attached list.

Hearing On: HB 2065 – Concerning cities relating to annexation.

The Chairman opened the hearing on **HB 2065**. Staff Eunice Peters, Office of Revisor of Statutes, briefed the committee, stating that the bill would amend the existing law concerning the annexation of land. She noted that current law grants a five-year period in which to determine validity of municipal services; this bill would change that time period to three years for review, and four years if litigation is involved. Ms. Peters said that if there is non-compliance, a provision is included allowing two years for review. She noted that if the board of county commissioners chooses not to hold a hearing for review, the landowner may bring action to compel the board to hold a hearing; the court then may award attorney fees and costs to the landowner.

Representative Ann Mah, 53rd District, spoke as a proponent of **HB 2065**, stating that the bill changes the law so that a proposed unilateral annexation may be reviewed by the county commission; thirty days is allowed to approve or disapprove the annexation. She noted that the bill also delineates the amount of time for holding hearings following litigation, which would facilitate providing municipal services in a timely manner. Representative Mah commented on the issue of unilateral annexation, directing attention to the map included in her testimony (Attachment 1). She requested the committee support the concepts of **HB 2065**.

Kelly Parks, West Valley, Kansas, speaking in support of **HB 2065**, indicated that living outside a city is an individual's right to choose and unilateral annexation infringes on those rights (Attachment 2).

Arlyn Briggs, Olathe, Kansas, provided additional information to clarify his testimony given on February 8, 2011, stating that the county commission issued bonds without holding an election after property was annexed into the city. He said a committee was formed to facilitate negotiation for services; however, the city seemed only interested in controlling provision of services through the township. Mr. Briggs provided only verbal testimony.

Forrest Walter, Mission Township, Topeka, Kansas, expressed concern for citizens within an annexation district who have limited provision of municipal services, such as fire, emergency medical or snow removal. He said **HB 2065** would provide land owners more representation in the annexation process (Attachment 3).

CONTINUATION SHEET

Minutes of the House Elections Committee at 3:30 p.m. on February 10, 2011, in Room 144-S of the Capitol.

Written testimony as a proponent of the bill was submitted by:

Edgar Peck, Treasurer, Tecumseh Township ([Attachment 4](#)).

Onis Lemon, Treasurer, Mission Township ([Attachment 5](#)).

Senator Anthony Hensley, District 19, Shawnee, Douglas and Osage Counties ([Attachment 6](#)).

Don Moler, Executive Director, League of Kansas Municipalities, spoke in opposition to **HB 2065**, stating that, if the language of this bill is adopted, it would obliterate the unilateral annexation statutes and reverse public policy ([Attachment 7](#)). He said that the bill moves the making of decisions away from elected officials of the city to the discretion of county commissioners. Mr. Moler recommended the committee reject the intent of this bill.

Whitney Damron, City of Topeka, said that most annexations occur with consensual agreement between cities and property owners ([Attachment 8](#)). He noted that during the last twenty-five years the City of Topeka has not used unilateral procedures in the annexation process.

Erik Sartorius, City of Overland Park, speaking as an opponent to the bill, provided background on the procedures used by a city for annexation, stating that a resolution of intent to annex, notification to adjoining property owners, scheduling of public hearings, involvement of various government entities and the application of sixteen criteria are all in place to determine what land is proposed for annexation ([Attachment 9](#)). He noted that if a city utilizes these procedural requirements and land is annexed, any landowner may challenge the annexation in a court of appeal. Mr. Sartorius concluded his remarks by stating that the first section of the bill is not needed.

Written testimony in opposition to the bill was submitted by:

Dave Unruh, Chairman Commissioner, Sedgwick County, Kansas ([Attachment 10](#)).

Ron Fehr, City Manager, City of Manhattan, Kansas ([Attachment 11](#)).

The Chairman closed the hearing on **HB 2065**.

Hearing On: HB 2084 – Consolidation of cities and counties by majority vote.

The Chairman opened the hearing of **HB 2084**, stating that a technical amendment to clarify the term “dual majority vote” might need to be in place before the committee makes a decision on the bill.

Staff Eunice Peters, briefed the committee on the bill, saying that on page three, sub-section (d), the bill needs a technical amendment in order to clearly reveal the intent of dual majority; page four, lines 18-25 has been included to explicitly delineate the intent regarding dual majority vote. She said the bill provides an alternative process for cities and counties to agree by vote before consolidation can occur. She referred to page seven, section eight noting current law indicates that when two offices are performing the same function, they can consolidate, but cannot merge as one entity.

Marilyn Nichols, President, Kansas County Officials Association (KCOA), said the bill contains language which KCOA supports and hopefully includes all cities ([Attachment 12](#)). She noted that dual majority voting is the right of electors to have equal powers to pass or defeat a consolidation plan. She noted support for requiring a separate ballot should consolidation plans pass by dual majority vote and call for the elimination of elected officials. Ms. Nichols questioned whether the bill includes giving subpoena power to the commission on consolidation.

Written testimony in support of the bill was submitted by the following:

Don Moler, Executive Director, League of Kansas Municipalities ([Attachment 13](#)).

Melissa Wangemann, General Counsel & Director of Legislative Services, Kansas Association of Counties ([Attachment 14](#)).

Terry D. Holdren, Kansas Farm Bureau ([Attachment 15](#)).

Ed and Eileen Klumpp, Tecumseh, Kansas ([Attachment 16](#)).

Paul Degener, Topeka, Kansas, speaking in opposition to **HB 2084**, said the tax base would be increased and eventually spent indiscriminately on city projects. He indicated there would be no savings to the taxpayer ([Attachment 17](#)).

CONTINUATION SHEET

Minutes of the House Elections Committee at 3:30 p.m. on February 10, 2011, in Room 144-S of the Capitol.

Marvin Smith, Topeka, Kansas, brought recommendations for amendments, which are highlighted in his testimony (Attachment 18). He said that townships provide effective services and equal consideration should be given to citizens in unincorporated areas for consolidation proposals.

Kenneth Daniel, Chairman, Board of Midway Wholesale, Topeka, Kansas, spoke in opposition to **HB 2084**. He explained his objections, saying that he is concerned the bill is designed to eliminate dual majority voting consolidation issues. Mr. Daniel said there is no evidence that consolidation has resulted in overall efficiency savings; there is considerable evidence to the contrary (Attachment 19).

Greg Dye, Wichita, Kansas, explained “home rule power” in his testimony, stating that it is unconstitutional according to U. S. Supreme Court rulings (Attachment 20). He noted that an amendment to the Kansas Constitution in 1961 creating “home rule power” needs to be reviewed for constitutionality.

Following discussion among committee members, the Chairman closed the hearing on **HB 2084**.

The meeting was closed at 5:05 p.m. The next meeting is scheduled for February 15, 2011.

HOUSE LOCAL GOVERNMENT

GUEST LIST

DATE: 2/10/11

NAME	REPRESENTING
Joe Grisolaro	KS Co. Officials Assoc.
Linda Kizzire	" " " "
Shilo Heger	" " " "
Pat Sharp	" " " "
Cheryl Remington	" " " "
Nancy Weeks	" " " "
Gloria Melton	" " " "
Jesse Waesche	" " " "
Gloria Coon	" "
Amy M. Bey	
Tom Egan	
Carina Bacon	"
Janita Hodgson	" "
Lisa Hudson	" "
Amy Goode	" "
Christine Swain	" "
Greg Herr	" " "
Luella Shields	" " "
Shirley Bildenbach	" " "

HOUSE LOCAL GOVERNMENT

GUEST LIST

DATE: 2-10-11

NAME	REPRESENTING
Mary Underwood	Ks County Officials Assn
Debbie Pack	" " "
Janet Myers	" " " "
Alyn Briggs	Self
Don Mober	LKM
ERIK SARTORIUS	City of Overland Park
Jeff Preisner	City of Topeka
Chris J. Lemond	Mission TWP
Forrest Walter	Mission TWP
DICK CARTER	CITY OF MANHATTAN
Melissa Wangemann	KAC
Bret Arnold	Pinegar, Smith & Assoc.
Jen Bruning	OP Chamber
Whitby Jenson	City of Topeka
Kari Presley	Kearney & Associates Inc.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

STATE CAPITOL
TOPEKA, KANSAS 66612
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ann.mah@house.ks.gov



3351 SE MEADOWVIEW DR.
TOPEKA, KS 66605
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ANN E. MAH
53RD DISTRICT

HOUSE COMMITTEE ON LOCAL GOVERNMENT
CHAIRMAN – REP. HUEBERT
TESTIMONY – HB 2065

This testimony is to support changes in the law regarding unilateral annexation. Unilateral annexation has been an issue of contention with Kansas cities for a very long time. Over 70% of my constituents live in townships, largely because they do not want to be part of a city. Under subsections (a) (1), (4), (5), and (6) of KSA 12-520, once a city touches boundaries with a landowner's property, the city may annex that property without the consent of the landowner using a simple city ordinance. This is an intrusion on property rights. Following a unilateral annexation, the county commission is supposed to hold a hearing to be sure the city has provided the municipal services it is supposed to provide. Sometimes these hearings are not held in a timely manner. HB 2065 addresses both of these issues.

CHANGING THE RULES

HB 2065 changes the law so that a proposed unilateral annexation may be reviewed by the county commission. The county commission has 30 days to approve the annexation, disapprove it, or just do nothing and allow it to become law. In this way, the annexation plan is reviewed by the landowners' elected commissioner. It gives the landowners a voice in the process. This is a fair approach and is less costly than previous proposals for a vote of those being annexed or an annexation study commission. This bill does not impact annexations that are done at the request of a landowner or developer. This language has passed the House several times already.

HB 2065 also shortens the time by which the county commission holds hearings to review a city's progress in providing services. Current law says the county will hold hearings five years following an annexation or where there has been litigation relating to annexation. Then there is another hearing 2 ½ years later if services have not been provided. Those timeframes are too long to be effective, so HB 2065 shortens them. There is also a provision to hold the county accountable should it fail to hold these hearings. This language was approved by both the House and Senate and included in a larger annexation bill vetoed by Gov. Parkinson.

WE'VE BEEN HERE BEFORE

Over twenty years ago the Legislature recommended a boundary commission process to give landowners a voice in unilateral annexation situations, but no bill was passed. Finally, two bills passed in 2003 and 2004 attempted in different ways to limit or eliminate unilateral annexation. Those were both vetoed by the Governor because they were limited to one or two counties and did not apply statewide. However, their passage demonstrates that the Legislature supported the idea of giving the people a voice in the annexation process. In 2005 and 2006 we were successful in getting some additional

House Local Government
Date 2-10-11
Attachment 1

requirements added to city annexation plans, but did not get any substantive changes to the process itself. All of the decisions are made by one party – the city.

ANNEXATION – AS BIG AS YOU THINK

I sensed last session that some legislators felt that unilateral annexation was not a big deal and should be left alone. In reality, unilateral annexations can be quite extensive in scope. A copy of a unilateral annexation map proposed in Topeka in 2004 is attached. They are a big deal.

TWENTY YEARS IS ENOUGH TO DELIBERATE

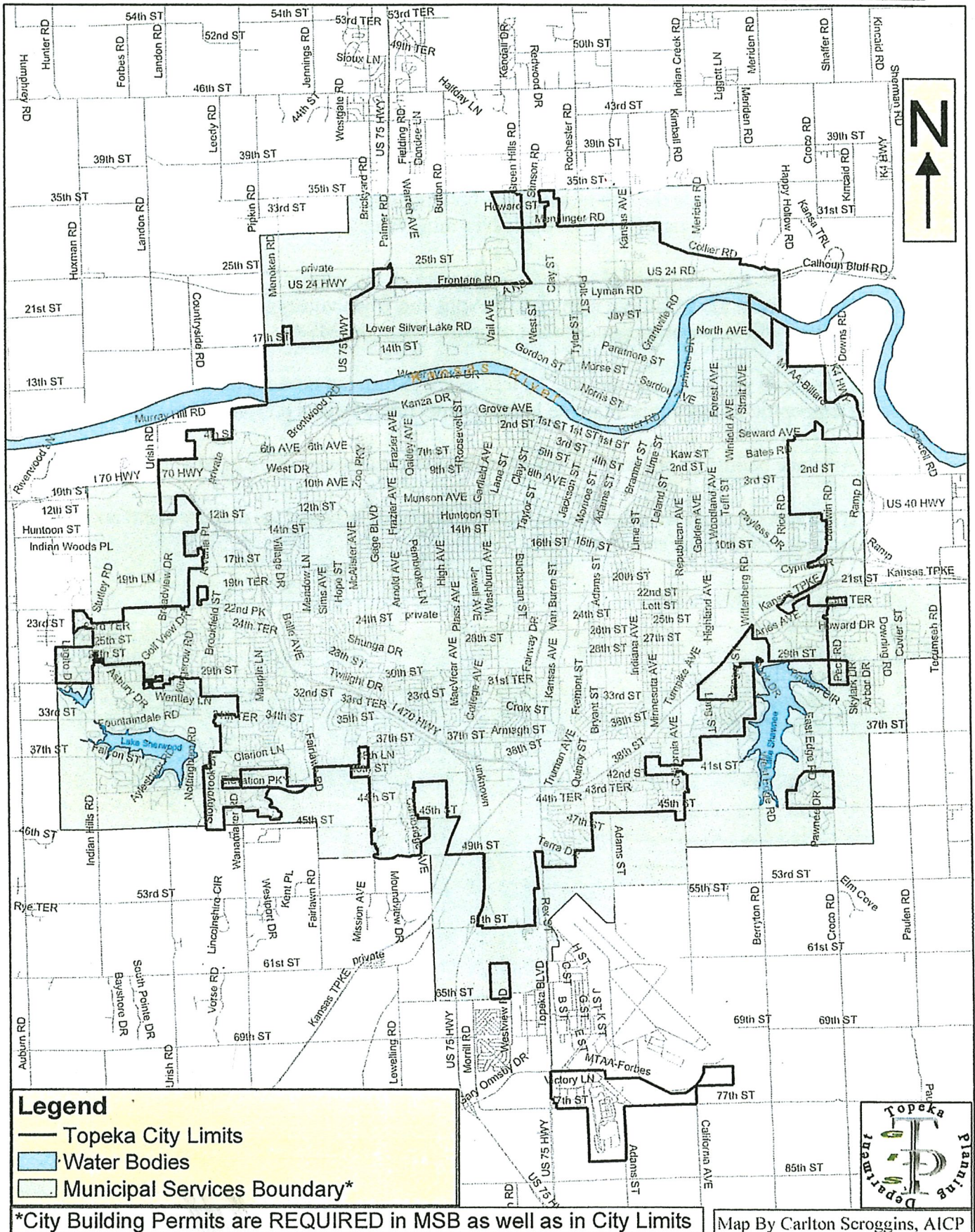
It was suggested in past sessions that we were moving too fast on this issue. I contend we could not drag it out longer if we tried. There is nothing more basic than property rights. If you look at other corresponding processes – like consolidation, incorporation, or expansion of city codes – a vote or protest process is provided. Yet Kansas continues to be one of the few states that clings to the undemocratic unilateral annexation process for “growing” its cities.

Others say that we should not fix something that isn’t broken – that the process works. Yes, it works well for cities that don’t want to be bothered with those pesky landowners who would like something more than a tax increase and a list of services they will no longer receive once annexed. But it doesn’t work worth a hoot for those landowners being annexed without a real say in the process.

It’s time to give the people a voice. When you have lived outside a city for 20, 30, or 40 years, it is unconscionable to allow a city to take your home inside its boundaries without your permission. Cities can learn to be partners with township residents, but today they have no reason to do so. They hold all the cards in a rigged game.

I am asking the Committee to support the concepts of HB 2065 as passed by the House many times already. It is a common sense solution to a problem that has continued far too long.

Municipal Services Boundary & Topeka City Limits



7/5/05 Municipal_Services_Boundary3.mxd

Feb. 10th 2011

House Committee;

Annexation issue: HB 2065

Page 1 of 1

Greetings:

Having been an elected official and government employee for over 36 years, I know that your schedule is full. I will get to the point on unilateral annexation. KANSAS is one of only 3 or 4 states that have this freedom-robbing act. Please repeal in a way that takes into consideration for those who choose to live outside of a city, and decided that long ago in an agri setting. Many homes are over 50 years old and have septic systems and water supplies that are more than adequate. (Mine are spaced far enough apart, function well, and I have a private company test them annually). Our needs for those city services are not there. The township takes better care of our road than many cities are able to maintain.

Does the fact that 3 or 4 states remain with this antiquated law tell us anything? I believe so. Lets not read about this in chapter one of another book "What's the matter with Kansas", second edition.

Please fix this.

Kelly Parks

8005 N.Hoover

West Valley (unincorporated) Ks, 67147

House Local Government

Date 2-10-11

Attachment 2

Mission Township
3101 SW Urish
Topeka Kansas 66614

TO: Committee on Local Government
RE H.B. 2065

My name is Forrest Walter and I am the Fire Chief of Mission Township Fire Department. Over the years I have been contacted by past patrons of our district several times. The main reason, wanting an explanation of services being cut, most notably snow removal services. Mission Township Road Department prides itself on 100% snow plowing and sanding on all of their roads the first day. They do not go home until all the Mission Township Roads have been cleared. Topeka is unable to service all the primary roads let alone the secondary and less travel side street after a snow. This is a concern that patrons have not seen any relief once annexed. Clarion Lakes and Sherwood Park are prime examples that service years later are not near our Mission Township Road department's standards.

Property owners have no one speaking in their behalf when a city government chooses to annex in their area. This bill would at least give the land owner some representation in the annexation procedure.

Concerning the Fire Department, Mission Township Fire Department's level of medical care exceeds the City of Topeka by practicing at an EMT-I level. The further people live from stationed ambulances the more important advanced interventions become.

People need a venue and recourse for their concerns if a city annexes primary to expand their tax base and not give comparable services.

Speaking from experience, there is a level of anxiety and frustration from patrons to not have a mechanism to voice their concerns and receive some resolve. Being able to have the county commissioner address property owners concerns gives a representative voice.

Thank you for your time in this matter.

Sincerely,

Forrest Walter
Fire Chief of MTFD

House Local Government
Date 2-10-11
Attachment 3

TESTIMONY HB 2065
LOCAL GOVERNMENT COMMITTEE

ANN, APPRECIATE YOUR LETTING US KNOW ABOUT THE BILL COMING UP ON ANNEXATION. I UNFORTUNATELY WILL BE UNABLE TO ATTEND THE HEARING. I DO SUPPORT THE BILL AS NOT ONLY A PATRON OF THE COMMUNITY BUT IN MY CAPACITY AS THE TREASURER OF TECUMSEH TOWNSHIP. AS I HAVE TESTIFIED IN THE PAST, BEING ANNEXED BY THE CITY WOULD VIRTUALLY GUT OUR TOWNSHIP AND OUR ABILITY TO TAKE CARE OF THE STREETS AND ROADS IN THE TOWNSHIP. THE HOUSING AREAS THAT WOULD BE TAKEN IN SUPPLY THE TOWNSHIP WITH REVENUE TO KEEP GOOD EQUIPMENT WHICH ENABLES US TO DO A GOOD JOB OF MAINTAINING THE STREETS AND ROADS NOT ONLY IN THE HOUSING AREAS BUT THE BALANCE OF THE TOWNSHIP ROAD SYSTEM. I KNOW WITHOUT A DOUBT THAT THE SERVICE WE PROVIDE TO OUR PATRONS IS FAR SUPERIOR TO THAT GIVEN BY THE CITY TO THEIR RESIDENTS. WHEN THERE IS AN ISSUE WITH THE ROADS OR DRAINAGE, WE RESPOND QUICKLY AND THE PATRONS HAVE COME TO EXPECT THAT KIND OF SERVICE. I DOUBT THAT THE PATRONS WOULD HAVE THAT KIND OF RESPONSE FROM THE CITY STREET DEPARTMENT. I WOULD ENCOURAGE THE COMMITTEE HEARING THIS BILL TO SUPPORT HOUSE BILL 2065. THANK YOU FOR THE OPPORTUNITY TO HAVE SOME INPUT ON THIS MATTER.

EDGAR PECK, TREASURER, TECUMSEH TOWNSHIP.

House Local Government

Date 2-10-11

Attachment 4

Mission Township
3101 SW Urish
Topeka Kansas 66614

Willie White, Trustee
Michael Razo, Clerk
Onis Lemon, Treasurer

TO: Committee on Local Government
RE H.B. 2065

As you know at present, Property owners have no one speaking in their behalf when a city government chooses to annex in their area. This bill would at least give the land owner some representation in the annexation procedure.

Speaking for the Board of Mission Township, we are in favor of House Bill #2065. By passing this legislation property owners would have additional protection from a city's governing body in regard to annexation. This legislation would be a tool for the Board of County Commissioners to review the annexation and determine if the annexation actually benefits or causes duress to the property owner and the County.

This bill also shortens the time that a city has to furnish city services to the annexed area. If services promised are not met within this time frame then the area would be de-annexed as provided in KSA 12.532.

Thank you for your time in this matter.

Sincerely,

Onis Lemon, Treasurer
Mission Township
Shawnee County, Kansas

House Local Government
Date 2-10-11
Attachment 5

State of Kansas

Senate Chamber



Office of Democratic Leader

STATE CAPITOL, ROOM 345-S
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ANTHONY HENSLEY

STATE SENATOR, NINETEENTH DISTRICT
SHAWNEE, DOUGLAS & OSAGE COUNTIES

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COMMITTEE ASSIGNMENTS

VICE-CHAIRMAN: CONFIRMATION OVERSIGHT
RANKING MINORITY MEMBER: EDUCATION
INTERSTATE COOPERATION
MEMBER: LABOR EDUCATION CENTER
ADVISORY COUNCIL
LEGISLATIVE COORDINATING
COUNCIL
LEGISLATIVE POST AUDIT
STATE FINANCE COUNCIL
WORKERS COMPENSATION
FUND OVERSIGHT
PENSIONS, INVESTMENTS
AND BENEFITS
TRANSPORTATION
LEGISLATIVE HOTLINES
1-800-432-3924
TTY (785) 296-8430

Statement in Support of HB 2065 By Senator Anthony Hensley February 10, 2011

Mr. Chairman and Committee Members:

I would like to voice my strong support for House Bill 2065, which would provide Kansas landowners more rights in cases where their property has been unilaterally annexed.

As a lifelong resident of Topeka, and a legislator for more than 30 years, I know that too often unilateral annexations divide a community and involve significant tax increases for those property owners being annexed. This issue has been especially difficult for farmers and landowners living near our growing communities.

Unilateral annexation allows a few to decide what is best for thousands – even though effected property owners have never had the privilege or opportunity to elect any council member as their representative. In plain words, homeowners have absolutely no say in the process except to remonstrate.

House Bill 2065 would permanently change Kansas statute, requiring that within three years following an annexation, county commissions must determine whether the city has provided the municipal services set forth in its original plan.

If a hearing is not held within the allotted time, a landowner would have the right to bring legal action against the commission.

While we must continue to promote economic growth in our state, we must first and foremost respect the important rights of property owners. By allowing formal action to be brought against a board, we ensure that the voices of landowners are heard and that their rights remain the highest priority.

I urge you to support House Bill 2065. Thank you.

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House Local Government

Date 2-10-11

Attachment 6



To: House Local Government Committee
From: Don Moler, Executive Director
Re: Opposition to HB 2065
Date: February 10, 2011

First I would like to thank the Committee for allowing the League to appear today in opposition to HB 2065. 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 24 years, and we believe they continue to work well today.

The Committee should be aware that what is suggested by HB 2065 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 2065 would effectively obliterate the unilateral annexation statutes, and completely reverse many years of sound public policy in this state.

HB 2065 would effectively eliminate unilateral annexations in Kansas. It does this by requiring that the county commission approve any "unilateral" annexations under K.S.A. 12-520 (a)(1), (4), (5) and (6). In effect, HB 2065 takes this decision away from the elected officials of the city and delegates it to the county commission. Thus, we can expect that this bill would signal the end of annexations in a number of counties in Kansas.

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.



TESTIMONY

TO: Chairman Steve Huebert
And Members of the House Local Government Committee

FROM: Whitney Damron
On behalf of the City of Topeka

RE: HB 2065 – An Act concerning cities; relating to annexation.

DATE: February 10, 2011

Good afternoon Chairman Huebert and Members of the House Local Government Committee. I am Whitney Damron and I appear before you today on behalf of the City of Topeka in opposition to HB 2065 that would effectively eliminate a city's ability, under limited circumstances, to utilize its longstanding right to initiate unilateral annexations.

Annexation authority is granted to cities to allow for orderly growth to meet the needs of both its citizens and those who are located in close proximity to a city. The State of Kansas has long recognized this need for planning and growth by allowing cities, subject to certain restrictions, to impose planning and zoning restrictions in a three mile area surrounding its city limits.

Most annexations occur in Kansas through consensual annexation proceedings between cities and property owners. In rare circumstances, an agreement on annexation between a city and a property owner cannot be reached and a city may seek to unilaterally annex a piece of property under K.S.A. 12-520 or through a request to the county for annexation under K.S.A. 12-521. This orderly process is necessary and appropriate to insure there is a procedure in place to resolve situations of stalemate between a city, a property owner and/or a county in regard to planned growth.

The exercise of unilateral annexation authority, i.e., without the consent of the property owner is rarely utilized by cities and current law contains significant property owner protections. In recent years, the City of Topeka has been cited as an example of the need to rein in a city's ability to unilateral annexation. The facts demonstrate nothing could be further from the truth. Since the mid-1980's, a period of more than 25 years, the City has completed more than 80 annexation procedures and none of them involved the use of unilateral annexation authority.

It has previously been suggested in the past that the City commissioned a study in 2005 to determine how best to grow the boundaries of the City and the findings of the study recommended the use of unilateral annexation authority in order to bring "tens of thousands of county residents into the city limits of Topeka." That is not an accurate description of the study.

Included with my testimony is a copy of a memorandum from the City's Planning Director dated December 1, 2008 that references the 2005 study. The introduction of that study clearly indicates that any annexation would be done by petitioning the Board of County Commissioners as allowed under a K.S.A. 12-521 annexation, not through unilateral authority.

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House Local Government
Date 2-10-11
Attachment 8

Specifically, in regard to HB 2065:

- The City of Topeka objects to New Section 1. that requires a city to seek permission from the board of commissioners for an annexation proposed under certain sections of K.S.A. 12-520 (a):
 - o 1) The land is platted, and some part of the land adjoins the city;
 - o 4) The land lies within or mainly within the city and has a common perimeter with the city boundary line of more than 50%;
 - o 5) The land if annexed will make the city boundary line straight or harmonious and some part thereof adjoins the city, except no land in excess of 21 acres shall be annexed for this purpose;
 - o 6) The tract is so situated that 2/3 of any boundary line adjoins the city, except no tract in excess of 21 acres shall be annexed under this condition.

We have strong objections to changes, limitations or prohibitions on a city's ability to utilize the full provisions of K.S.A. 12-520 as currently allowed under law.

Historically, the City has not opposed changes to timelines for when the board of county commissioners must call a hearing to consider whether the city has provided the municipal services as provided for in their annexation plan (Section 2. (a)); the shortening of timelines for consideration of de-annexation proceedings (Section 2. (b)), statutory provisions allowing a land owner to compel a hearing by the board of county commissioners (Section 2. (c) and, related changes to current law that shorten certain timelines for review and re-annexation efforts (Section 3., K.S.A. 12-532).

While we recognize a property owner's interest in remaining in the country, so to speak, the fact that their property is located in close proximity to a city necessarily serves notice to all property owners that they may someday be annexed into the city in which they live in close proximity, which is why as previously referenced in this testimony the state has granted cities certain authority over land located within three miles of a city's boundaries.

Those opposed to annexation oftentimes ignore the benefits of living in close proximity of a city, including employment, community attractions, public safety, utilities, street and road improvements, shopping and access to professional services. Providing infrastructure for these businesses and interests may require a city to be able to grow beyond its existing city limits.

In closing, the City would respectfully note that annexation legislation has historically been targeted at specific, yet local annexation disputes. We would strongly suggest that current law works, as evidenced by the relatively few disputes that are discussed in these hearings and those that have preceded this one. With 627 incorporated cities and 105 counties, the City of Topeka would respectfully suggest the current annexation laws are working well and should not be changed.

On behalf of the City of Topeka, I thank you for your time and consideration of our comments today and would be pleased to stand for questions at the appropriate time.

WBD

MEMORANDUM

PLANNING DEPARTMENT

From: David Thurbon, Planning Director

December 1, 2008

TO: Norton N. Bonaparte, Jr., City Manager

SUBJECT: Annexation

There appears to be some misunderstanding about the "Service Extension Plan" prepared in May 5, 2005 for the City of Topeka. The purpose of this memorandum is to state the actual purpose of that Plan.

It has been reported that the "Service Extension Plan" is an annexation plan and the City Council intends to use this study to unilaterally annex the areas surrounding the City. However, the cover page and the Introduction to the report clearly state that any annexation associated with this study is intended to be by petition to the Shawnee County Board of Commissioners.

The cover page states:

SERVICE EXTENSION PLAN

FOR THE PROPOSED ANNEXATION BY PETITION TO THE SHAWNEE COUNTY BOARD OF COUNTY COMMISSIONERS OF ADJACENT AREAS SURROUNDING THE CITY OF TOPEKA (emphasis added)

The Introduction states:

The City of Topeka is proposing to annex certain eligible parcels of land by means of petitioning the Board of County Commissioners for properties within (sic) as authorized by K.S.A. 12-521. (emphasis added)

The consultant hired by the City of Topeka to assist in this study also included a description of the various methodologies of annexation allowed by Kansas State law; one of these being unilateral annexation. However, the cover page and Introduction clearly state the purpose of the study.

It should be noted that this study was completed three and one half years ago and no unilateral annexations have taken place. Moreover, no unilateral annexations have occurred in Topeka since the mid 1980s. All annexations since the mid 1980s have been by consent of the land owner.



ABOVE AND BEYOND. BY DESIGN.

8500 Santa Fe Drive
Overland Park, Kansas 66212
913-895-6000 | www.opkansas.org

Testimony Before The
House Local Government Committee
Regarding House Bill 2065
By Erik Sartorius

February 10, 2011

The City of Overland Park appreciates the opportunity to appear in opposition to House Bill 2065, specifically Section 1. HB 2065 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 2065 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 hearing,

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...."

House Local Government
Date 2-10-11
Attachment 9

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.

Under HB 2065, 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 2065 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.

HB 2065 would impose a significant burden on counties. In order to properly 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 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 2065 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 2065 abandons this important principle. Under HB 2065, 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 2065 would be to promote lawsuits against counties either by property owners who can now be annexed or by cities when annexations are denied.

The City would like to note its support for most of the provisions in Sections 2 and 3 of House Bill 2065, which address shortcomings in the current law. Current law generally requires that the board of county commissioners hold a public hearing 5 years after a city annexes land to determine whether the city is providing the services it set out in its service extension plan which was submitted in support of its proposed annexation. If it has not, then the county commissioners must hold a second hearing 2½ years later to determine if the city has cured the

deficiencies in its performance. House Bill 2029 would reduce the time period between the annexation and the first review to 3 years, and reduce the time in which the city has to cure deficiencies to 2 years.

Most importantly, the bill provides a remedy for landowners in the annexed area if the county has not held the required review. The City of Overland Park believes it is important that cities be required to demonstrate that they are providing the services that they said they would provide. K.S.A. 12-531 and 12-532, as presently written, provide no means to ensure counties perform the required reviews of service plans. HB 2029 would give citizens living within the annexed area access to the courts to compel these reviews if counties fail to perform them.

Although not included in HB 2065, the City also believes it would be a sensible step to require that cities provide copies of their annexation service plans to the board of county commissioners in annexations under both K.S.A. 12-520 and 12-521. Overland Park produces detailed service plans tailored to the area proposed for annexation. The City has submitted three petitions for annexations to the Johnson County Board of Commissioners during the course of Overland Park's 50 years of existence, and the accompanying service plans have ranged in size from 11 pages in 1985 to 63 pages in 2002 to 87 pages in 2007.

Section 1 of HB 2065 is not needed. The current statute already imposes enormous burdens on cities that wish to annex under the statute. HB 2065 would turn the annexation process from a carefully considered planning decision into a purely political decision by the board of county commissioners.



DAVE UNRUH
Chairman
Commissioner - First District

BOARD OF COUNTY COMMISSIONERS
SEDGWICK COUNTY, KANSAS

COUNTY COURTHOUSE • SUITE 320 • 525 NORTH MAIN • WICHITA, KANSAS 67203-3759
TELEPHONE (316) 660-9300 • FAX (316) 383-8275
e-mail: dunruh@sedgwick.gov

TESTIMONY IN OPPOSITION TO HB 2065
House Committee on Local Government
February 10, 2011

Chairman Huebert and members of the committee, my name is David M. Unruh. I am the Chairman of the Sedgwick County Board of County Commissioners. Thank you for the opportunity to provide this written testimony on behalf of the Board of County Commissioners of Sedgwick County (the Board).

Regarding New Section 1 of HB 2065, the Board does not support legislation that would have the county commission approve all unilateral annexations.

Regarding Section 2, amending K.S.A. 12-531, in 2010 the Board held a post-annexation hearing required by that statute. Based on the testimony received, a majority of the Board made a finding the city had not provided the landowners with services in accordance with the service plan prepared for the annexation. The city appealed that finding to the district court, and the court subsequently found in favor of the city. The Board has been directed to hold a new hearing in the matter.

During the litigation several issues arose that are not clearly addressed in the statute, for example:

- 1) K.S.A. 12-531 does not expressly state whether the city has the right to appeal from a finding made by the county commission at the five year postannexation hearing rather than only at the end of the additional 2 ½ year period under K.S.A. 12-532 if the landowners file a petition for deannexation. The court found the city could appeal from a finding made after the K.S.A. 12-531 hearing, even though K.S.A. 12-531 does not specifically provide for the right to appeal.
- 2) K.S.A. 12-531 does not expressly indicate whether the city has to comply with the bond requirement imposed in K.S.A. 19-223. The court ruled the city was exempt from the bond requirement.
- 3) Whether the county commission's role in making the required finding is limited to simply finding: "yes, the city did provide services," or "no, the city did not provide services." The court determined the Board is limited to only making a limited finding regarding whether the services were provided, and could not make any include in the finding any additional comments on the services provided, or to be provided.

The committee may want to consider whether the statute should be clarified to address these and other issues arising out of the postannexation hearing process.

Thank you again, Chairperson Huebert for this opportunity to present testimony.

House Local Government
Date 2-10-11
Attachment 10

House Committee on Local Government

Hearing on House Bill 2065

Thursday, February 10, 2011

Written Testimony of Ron R. Fehr

City Manager, City of Manhattan, Kansas

Good afternoon Chair Huebert, Vice Chair Seiwert and Honorable Members of the House Local Government Committee. My name is Ron Fehr, and I am the City Manager for the City of Manhattan. I want to thank you for this opportunity to provide written testimony to the Committee regarding the importance of annexation for our community.

The City of Manhattan opposes House Bill 2065 because it limits the Home Rule authority of cities to expand through annexation. Constitutional Home Rule is the cornerstone of municipal government and should not be preempted by State action.

Annexation is an important tool for the economic growth and vitality of our local communities and the entire State of Kansas. The City of Manhattan is currently in a sustained growth period due largely to the ongoing expansion and buildup at Fort Riley. By Fiscal Year 2013, the combined military and civilian workforce at Fort Riley is expected to grow to nearly 21,000 from a pre-BRAC baseline of 11,800. Our region was recently designated as a new Metropolitan Statistical Area (MSA) with the metro area including the principal city of Manhattan and the Counties of Geary, Pottawatomie and Riley, with a combined population of over 123,000 (2009 census estimate).

House Local Government

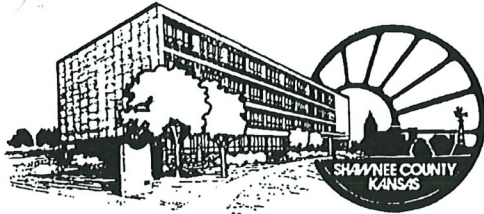
Date 2-10-11

Attachment 11

The City is helping to meet the housing needs of our soldiers and their families. Since 2002, Manhattan has added nearly 4,000 residential units to the community as recorded by building permits. We manage our growth in accordance with sound urban planning principles, despite the expansion pressures from neighboring Fort Riley. Growth opportunities to the west are largely limited to prevent encroachment on the military installation. To meet our growth needs, we must have flexibility to expand in other directions. Specifically, the City has worked to extend infrastructure along growth corridors including K-177 to the southeast and US-24 to the north and east. These extensions have been at the request of property owners, and/or in cooperation with County Commissions, to further develop properties or encourage development. Restricting our ability to annex in these areas would unnecessarily compromise the significant public investments already made in anticipation of future development.

Site preparation is now well underway for the future home of the \$720 million National Bio and Agro-Defense Facility (NBAF) adjacent to the campus of Kansas State University. The decision to locate NBAF in Kansas solidifies our place as a leader in animal health research, and its economic impact cannot be understated. Last July, Kansas was ranked #5 on *Business Facilities'* Top 10 list of states in the nation for biotechnology strength. Now is the time to aggressively support economic development around our biotechnology and research strengths. Please maintain the local tools we need to effectively respond to the residential and commercial growth anticipated from NBAF and its spin-off developments.

Thank you for your consideration, and I would be happy to answer any questions. I may be reached by mail at City Hall, City of Manhattan, 1101 Poyntz Avenue, Manhattan, KS 66502, by phone at (785) 587-2404, or by email at fehr@ci.manhattan.ks.us.



Shawnee County
Register of Deeds

200 East 7th Street
Topeka, Kansas 66603-3932
COURTHOUSE ROOM 108 785-233-8200 Ext. 4020
MARILYN L. NICHOLS
REGISTER

February 10, 2011

House Committee on Local Government

Honorable Steve Huebert, Chairman

Re: House Bill 2084

An act concerning governmental organization; relating to consolidation;

Supporting Testimony offered by Marilyn L. Nichols, as President of the Kansas County Officials Association for 2011.

"The Kansas County Officials Association is committed to upholding democratic principles which allow Kansans to determine their constitutional right of self-governance including the election of all local officials."

We at KCOA understand this bill enables any board of county commissioners and the governing body of any city or cities within such county to adopt a joint resolution to establish a consolidation study commission to prepare a plan for consolidation of cities and counties and/or other political and taxing subdivisions, offices, functions, services and operations. Submission of a final plan to the qualified electors of the county at the next general election held at least 45 days following the adoption of that final plan will take place with specific questions to appear on the ballot, if a county wide election is called for. Further, the bill contains language that the KCOA supports and has advocated for every introduction of a consolidation bill in the past. That language is what has been called the "dual majority" requirement. In other words KCOA's support of this bill relies on the right of the voters both inside and outside the city (or cities) limits to pass or defeat this plan by a majority vote of both classes of electors. We would hope this act could require all cities be included in the plan to avoid creating islands within an otherwise consolidated county government. We cannot continue our support of this bill if that language concerning dual majority is removed. We believe it is the ultimate right of the electors, regardless of the site of residency inside the county, have equal powers to pass or defeat a consolidation plan, and should be considered one unified vote in favor or in opposition.

Further, KCOA supports the language that upholds the electors' right to retain any elected official wherein the office that could be eliminated under the plan and the

House Local Government
Date 2-10-11
Attachment 12

duties transferred to a nonelected office, shall not be effective unless the question has been submitted and approved by a separate ballot question.

KCOA can only continue to support HB 2084 if the language that requires a "dual majority" passage remains intact. Further, we support the language that requires a separate ballot requirement if the consolidation plan passes by dual majority and calls for the elimination of any elected official.

Finally, the question that the bill seems to suggest giving subpoena power to the consolidation commission seems unusual. Is it really the intent to empower this consolidation commission with the ability to take testimony under oath and to compel witnesses' attendance when those members are appointed members to a committee to study the feasibility of consolidation and to discuss a plan to consolidate?

I thank Chairman Huebert and the committee members for their time and attention, and hope you will consider the question and support we have put before you today.

Respectfully,

A handwritten signature in cursive script, appearing to read "Marilyn L. Nichols".

Marilyn L. Nichols,
KCOA President, 2011



To: House Local Government Committee

From: Don Moler, Executive Director

Re: Support with Amendment HB 2084

Date: February 10, 2011

First I would like to thank the Committee for allowing the League, a strong advocate of local control, to submit testimony concerning HB 2084. Our organizational policies typically focus on the ability of cities to make their own way and to determine their own fate. HB 2084, with one significant amendment, would allow cities and counties, and their residents, to determine their own local government organizations and will allow them to maximize efficiencies in government as well as modernizing governmental structures in Kansas.

The League has for many years supported permissive statutory language to allow local reorganization. We have further held the belief that the issue of reorganization is inherently a local one, and that the voters should be allowed to determine whether reorganization with another unit of government should occur. As a result we are fully supportive of HB 2084, with one significant amendment, and the provisions that require the proposal for reorganization to be placed before the voters of the local governmental units involved in the proposed reorganization. Any unit of government whose electors vote against the reorganization would not be included in such reorganization.

While the League has been one of the foremost proponents of permissive statutory language to allow city-county reorganization in Kansas, we have stood firm against one element of this legislation which we believe is not only inherently unfair to the residents and electors of incorporated cities, but also virtually guarantees a negative outcome at the time of the vote. This issue, which is the amendment we would seek to this legislation, involves the dual majority which is found in the next to last paragraph of New Section 4. The dual majority, as it is known, provides for an election within the incorporated city which is considering the consolidation, as well as a vote involving only those county residents living outside of the incorporated area. We believe this to be both unfair to those county residents living inside the city limits, as well as virtually guaranteeing a negative outcome for the consolidation vote itself. For these reasons, we would strongly urge the removal of the paragraph creating the dual majority vote.

House Local Government
Date 2-10-11
Attachment 13

Finally, given these hard economic times, it brings into sharp focus the need for governments, at all levels, to look to maximizing public resources and to minimizing public expenses. We believe that HB 2084, with one significant amendment, will provide 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. I would like to thank the committee for allowing the League to present our thoughts on HB 2084.



TESTIMONY OF THE KANSAS ASSOCIATION OF COUNTIES
TO THE HOUSE LOCAL GOVERNMENT COMMITTEE
FEBRUARY 10, 2011
HB 2084

Chairman Huebert and Members of the Committee:

Thank you for the opportunity to support HB 2084.

The Kansas Association of Counties' legislative policy statement contains the following provision: "We support legislative changes that remove statutory limitations to consolidation of functions or services." We support HB 2084 as a means to allow counties to consolidate with cities.

In the past, KAC has supported the efforts of the Kansas Advisory Council on Intergovernmental Relations to enact legislation allowing for counties and cities to consolidate. Those legislative proposals generally allowed the planning commission to decide whether to allow for one vote within the county or to require a dual majority vote in both the city and county. While we are concerned that HB 2084's proposal to require a dual majority may limit the effectiveness of the bill, we do support the bill because it moves us forward on the issue of allowing consolidation under Kansas law.

I would note that the bill appears to contain an inconsistency. Page 3, section (d) says the preliminary plan shall address whether the vote shall be countywide or whether separate votes will be required. But page 4, section (f) clearly requires a majority vote in both the city and county. The committee may want to address this conflict of language.

We appreciate the committee considering this issue and ask that you support the bill.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Melissa A. Wangemann".

Melissa A. Wangemann

General Counsel & Director of Legislative Services



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

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Re: HB 2084; Consolidation of Cities and Counties by Dual Majority Vote.

February 10, 2011
Topeka, Kansas

Written Testimony Provided by:
Terry D. Holdren
Kansas Farm Bureau

Chairman Huebert and members of the House Local Government Committee, thank you for the opportunity to share our thoughts on HB 2084 which would facilitate city – county consolidation by removing the requirement for legislative approval and establish a mechanism for a study commission and procedure for approval of a consolidation plan.

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. Our members are actively involved in their local communities as tax payers, city council and county commission members, small business owners, and residents of both cities and unincorporated areas.

As you know city – county consolidation is a topic which is not new to the statehouse or to this committee. Neither is the opposition of Kansas Farm Bureau to many of the concepts that have been brought forward thus far. However, we are pleased to offer our support for the measure before you today.

Our member-adopted policy is committed to the concept of local control – that those decisions of government which impact residents on a daily basis are best made by local elected officials and ultimately by voters in local elections. For that reason we strongly support the dual-majority requirement in this bill as a mechanism to ensure that proposals that may present more economical options for the delivery of local government functions will do so fairly and without a detrimental impact on any specific sub-set of residents.

Thank you for the opportunity to share the policy of our members. We stand ready to assist as you and discuss this important topic.

Kansas Farm Bureau represents grass roots agriculture. Established in 1902, this non-profit advocacy organization supports farm families who earn their living in a changing industry.

House Local Government
Date 2-10-11
Attachment 15

Ed and Eileen Klumpp

4339 SE 21st Street
Tecumseh, KS 66542-2606
(785) 235-5619

February 10, 2011

Members of the House Local Government Committee

In Opposition to HB2084 - Consolidation

Chairman Huebert and Committee Members,

We are a little confused with the provisions found on page 3 lines 17-20 stating the plan shall address the issue of a countywide vote or separate votes within the city and in the unincorporated areas of the county as compared to the provisions on page 4 lines 18-25 which seems to state there must be a dual majority. It appears these are in conflict, but perhaps we are just missing something. The provisions on page 4, if we read them correctly, require a majority approval by both the voters inside each city and the voters not in a city under consideration for consolidation. It is this dual majority vote we strongly support. It is the option of a single vote of all county residents combined we strongly oppose. To leave the decision of dual majority vote to the developers of the plan is unacceptable.

Last year, in testimony in the Senate on SB75 the proponents were very clear that a dual majority vote was not in their favor and thus, indicated they would never enact that optional provision. They referred to a dual majority as a "barrier" and stated "a dual majority means failure." It is clear that cities see this as a method to expand their tax base on a much larger scale than annexation. Several of those proponents were members of a previous consolidation study committee in Shawnee county.

The dual majority is important because it is the persons living outside the cities whose taxes will go up in a consolidation while those inside the city will go down. Couple that with the much larger number of voters inside the city and it means those outside the city could not vote the consolidation down even if it is detrimental to them. Statewide 80.7% of Kansas residents live inside a city.

As an example, in Shawnee County 71% of the population resides in the city of Topeka. **If 71% of the population is in the city, it could be assumed that approximately the same percentage of voters are city residents. What are the chances of those not living in the city being able to outvote the city voters who want to reduce their tax burden on the backs of the non-city residents? Slim to none. If the consolidation is truly beneficial to all county residents, the proponents of such a consolidation should be able to convince those living outside the city to vote in favor it based on the merits. It is the city residents who will see a tax reduction in a consolidation. It is the county residents who will see a tax increase, and at best will see services equal to but no better than what they received prior to the tax increase.** In reality, they will probably see a decrease in services as the resources are drawn into the city where the needs are greater for law enforcement and infrastructure maintenance.

From the people's financial perspective, **consolidation is just another form of annexation.** The only difference is that **in an annexation the city must also provide improved services to the**

House Local Government

Date 2-10-11

Attachment 16

area whose taxes will increase due to annexation or face a de-annexation process. In a consolidation they do not have to improve services and there is no de-consolidation provision.

Also consider that last year the house passed an annexation bill (HB2029) that would provide the persons in an annexed area to independently vote down the annexation. **Persons being "annexed" through a consolidation are denied that opportunity without a dual majority vote.** Consolidation is little different than an annexation except it is county wide. That bill strengthened the law by requiring the city to improve services in the annexed area and de-annexation if that is not done.

We believe it is possible to develop a consolidation plan that does improve services and/or provide other benefits for the persons living in the unincorporated areas of the county. Such a plan could pass the dual majority vote. Requiring a dual majority vote assures the efforts are put into the plan to benefit both those living in the city and those living outside the city.

In summary, a voting method absent a dual majority is simply unfair and forces the will of the many on the minority of Kansans living outside incorporated cities. It is also in conflict with the proposals on annexation this committee and the House passed in previous sessions.

Ed and Eileen Klumpp

W. Paul Degener
P.O. Box 8536
Topeka, KS 66608-0536
(785) 246-0215
E-mail: w.degener@sbcglobal.net

February 6, 2011

SUBJECT: HB 2084, Consolidation of City and County Governemnts

Good afternoon Mr. Chairman and members of the committee. My name is Paul Degener and I appear here as a concerned citizen today in opposition to HB 2084, Consolidation of City and County Governments.

I have been testifying against this type of legislation now for a number of years, and I have to say that the proponents of city-county consolidation must want it very badly, I can't help but wonder what the real reason is.

One argument they always put forward is that it will save money. This sounds good but it is not realistic. If any money were to be saved, we all know that it will go down on some extravagance such as the Riverfront Project, or biking and walking trails or the fountain in the middle of 8th St. and Kansas Avenue in Topeka. The same holds true for county, state and the federal government.

Look at all level of government today. Each level of government is in dire straits for money which means to me, no matter how much money **MIGHT** be saved by consolidation, the government, no matter what level will spend the savings and much more followed by increased taxes to pay for the shortfalls.

Page 2, Line 4 and 5:

"At least 1/3 of the membership of a consolidation study commission shall be residents of the unincorporated area of the county."

Even though the population of the unincorporated portion of the county is less than that of the city, it appears to me that the non-city residents will come up on the short end of the stick. In all fairness, there should be equal representation on the committee from both the city and the unincorporated portion of the county. Proponents of this type of legislation say that because the preponderance of the population resides within the city that those in the unincorporated portion of the county should not have an equal voice, that the majority should rule.

At this point I would like to make an observation. Many citizens of this country have been brain washed into believing that this country was founded as a Democracy, and at one time I was one of those who were being brain washed.

The Founding Fathers avoided a Democracie knowing that it would lead to mobocracy, the majority population having undue power over the minority population. Knowing this they conceived a representative republic. Under the city-county consolidation concept, all of the power would be in the hands of one governmental authority rather than the separate divisions of government as we now have.

Having said that I want to read to you a quote:

"The accumulation of all powers, legislative, executive and judiciary in the same hands, whether on one, a few or many and whether hereditary, self- appointed or elective, may justly be pronounced the very definition of tyranny."

-- James Madison, The Federalist Papers, No. 47

This alone should cause any person who cares for this country to vote against this bill, but there is more.

On page 3, Lines 13 through 20: If Consolidation is recommended, the commission shall addressLines 17 through 20: the issue of whether of the vote of the electorate will be countywide or by a dual majority vote.

On page 4, lines 18 through 25 addresses only a dual majority vote with no mention of a county wide vote.

I don't understand it. Which is it, a county wide vote or a dual majority vote? You can't have it both ways. Or is it a slick job of phrasing so they can win no matter which way it goes?

Page 4, lines 41 through 43, authorizes the election or appointment of officers. The appointment of officers is repugnant and should never be allowed.

On page 7, line 1 states that a consolidated city-county shall be a county.

On page 7, line 34 and 14 states that a city-county shall be a city of the first class as determined by the commission of the plan. How can a county be a city?

In closing I want to leave you with one more quote, however, I do not want you to take this personally. I just feel that you should make an informed decision on the issue before you. I feel confident that most people in this room have not read the document this quote was taken from.

9. Combination of agriculture with manufacturing industries; gradual abolition of all the distinction between town and country by a more equable distribution of the populace over the country.

There can be no mistaking that this describes city-county consolidation.

That quote is the 9th plank of the Communist Manifesto, written by Karl Marx. I am just the messenger.

I can point out to you where our federal government has either adopted or partially adopted five of the ten planks of the Communist Manifesto, excluding the 9th plank.

I will stand for any questions.

RE: House Bill 2084

TO: House Local Government Committee

Mr. Chair, and members of the committee, thank you for the opportunity to speak to the concerns about consolidation of the unincorporated area of a county.

I submit to you for consideration the following changes by amendment:

1. Pages on (1) line 34 amend to: 10% to 15%.
2. Page two (2) line four (8) amended from: 1/3 to 1/2.
3. Page 3, line 17: reorganized city-county and (2) the issue of; then delete whether a vote of the electorate shall be required county wide or whether
 - a. Substitute with: the issue of voting will require separate votes of the electorate in the unincorporated area of the county and within each city proposed to be consolidated.
4. Page 4, line 1: county at the next general election; Add held November of even numbered years.

Page 4, line 24; electors who reside; (strike) outside the corporate limits of the city. Amend with: in the unincorporated area of the county vote against.

Many of in rural areas of our county believe Township government serves us with efficient services.

Many of us in unincorporated areas believe "We should have the same vote consideration as those in each city in consolidation proposals.

Marvin

Marvin E. Smith
Topeka, Kansas

House Local Government
Date 2-10-11
Attachment 18

TESTIMONY ON HOUSE BILL 2084
HOUSE LOCAL GOVERNMENT COMMITTEE

By Kenneth Daniel
February 10, 2011

Kenneth L. Daniel is an unpaid volunteer lobbyist who advocates for Kansas small businesses. He is Chairman of the Board of Midway Wholesale, headquartered in Topeka, a business he founded in 1970.

Mister Chairman and Members of the Committee:

In spite of the length of the text of House Bill 2084, the proponents have a single, simple objective – eliminating dual majority voting and forcing “unitary” voting. This would disenfranchise county voters living outside certain cities by subjecting them to the “tyranny of the majority”, a long-recognized abuse of voting rights.



DEMOCRACY
WHATEVER the majority wants, right?

House Local Government
Date 2-10-11
Attachment 19

James Madison wrote on this issue in 1787: "...measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority."

When the citizens of Shawnee County and Topeka voted on this issue in 2005-06, I worked very hard to educate myself on the issue. Proponents spent more than \$200,000 trying to pass the measure. There was no organized opposition, but the measure failed when those living outside the city limits of Topeka overwhelmingly voted against it.

This bill is nothing but a Trojan Horse to keep the citizens of outlying Shawnee County from having the right to vote separately on this issue.

History of City-County Consolidation

In the entire history of the U.S., there have been only 39 successful city-county consolidations. Twelve of those were done without a vote of the people. At least 130 such proposals that have failed.

When there were multiple cities in a county, the residents of no city other than the primary city pushing for consolidation has ever voted in favor. Never, not once. In other words, Silver Lake, Rossville, and Auburn residents are very unlikely to support a consolidation vote. These efforts are always the biggest city in a county trying to take over all the unincorporated land in the county.

Taxes

- A common misconception is that residents of the City pay 100% of the property taxes in Topeka and 70% of those in Shawnee County. This is simply not true. Businesses pay approximately 50% of all property taxes. Topeka's businesses are overwhelmingly owned by outsiders from all over the world. County residents owning businesses in the City pay Shawnee County taxes twice – once on their residence and again on their business property.
- Although I pay 32 mills in the City and only 16 mills to Mission Township, there is no overall "tax unfairness". The other taxes and fees I pay to the City far outstrip the 16 mill imbalance in property taxes.
- None of the sales taxes I pay in Shawnee County go to the County. Shawnee County receives zero in sales tax revenues, period. Of the taxable sales in Shawnee County, 93% are made in Topeka.
- County residents pay a 75% premium on water purchased from the City. A large percentage of City water revenues are turned over to the City's general fund. This amounts to a heavy tax on County residents used by the City for its own purposes.

- County residents using sanitary sewers built by the City pay a 75% premium compared to City residents. A large percentage of City sewer revenues are turned over to the City's general fund. This amounts to a heavy tax on some County residents, used by the City for its own purposes.
- There are at least twenty City taxes and fees that are not paid by those in the County. It is certain that, with consolidation, most or all of these would quickly be levied on those in the County. For instance, there are five different utility franchise fees, each at 5%, which City residents have to pay. City residents pay sewer utility and storm water utility fees even if the construction costs of the utilities serving their property were paid for entirely in earlier years.

Efficiency

There is no evidence that consolidation has resulted in overall efficiency savings anywhere. There is considerable evidence of the opposite.

Invariably, when two or more agencies are consolidated, the highest wages and benefits are the ones that prevail. Instead of saving money, consolidation always costs more.

Wyandotte County

The Kansas City/Wyandotte County consolidation is not the success it is purported to be. The vote was "unitary." No one was allowed to vote on whether to allow themselves to be annexed.

The population, number of jobs, and personal income in Wyandotte County and Kansas City, Kansas ("the Unified Government) have steadily declined, not increased, since the 1997 consolidation.

Of the urban counties, Wyandotte County has the highest property taxes. Property taxes in Wyandotte County average twenty mills more than those in Shawnee County. Any amelioration of property taxes in Wyandotte County can be attributed to the \$308 million in "STAR" bonds they received, almost all of which will be paid off with State revenues and not City revenues.

Issues

Nearly all of what advocates of consolidation want can be achieved without consolidation.

In my view, there are really only three possible areas of property tax "unfairness", those being law enforcement, parks and recreation, and public works.

The City had the chance to hand over parks and recreation to the County, but for whatever reasons, decided against it.

The main item in public works is streets, bridges, and roads. County residents are already paying high premiums for any sewer and water services they are receiving.

The County is only responsible for a small portion of the streets, bridges, and roads. The rest is paid for by residents of townships. About \$8 million per year of the proceeds of the most recent half-cent sales tax goes to streets roads, and bridges, and \$5 million goes to the Topeka Chamber through JEDO. None of the money goes to the County, but some of the projects are in the County.

Law enforcement is not as unfair as it might appear. The communications center is paid for by the County, the jail is furnished by the County, process servers are furnished by the sheriff's department, and the Sheriff's department provides many other services inside the City.

CONCLUSION

Topeka has not grown since the early 1960s in spite of annexations of 29% in land area. When I moved here in 1970, the population was 125,000. Now it is 122,000.

The County has grown by about 15,000, from 155,000 to 170,000.

We cannot afford to kill off growth in the only parts of the County that are growing, the small cities and the unincorporated areas. Every day, approximately 5,000 people leave Shawnee County to work in other counties, while 17,000 outsiders come into Shawnee County to work.

If we want even more people to live elsewhere, we need only force the consolidation of Topeka and Shawnee County.

We need to do everything we can to consolidate services and departments where it makes good sense, and avoid poisoning our community with ill-conceived forced consolidation.

Mister Chairman and members of the committee: I encourage you to defeat House Bill 2084.

Local Government Consolidation

To All it Should Concern:

Many people view consolidation with alarm. The new Unified Government in Kansas City in 1997 Consolidated but removed some of the elected representative government as it removed elected positions. Kansas Statute K.S.A. 12-3903 (b) allows for the removal of some elected representatives at the local level of government in violation of the United States Constitution. This statute allows the consolidated government to remove some elected positions and further removes government from the principle of elected representatives which maintain the proper balance of power under the United States Constitution and the Bill of Rights.

Home Rule Power

The Kansas Constitution was amended in 1961 to add Home Rule Power. The Home Rule Power amendment Article 12 Paragraph 5 Section (4)(d) states "Powers and authority granted cities pursuant to this section shall be liberally construed for the purpose of giving to cities the largest measure of self-government." However, the charter ordinance (of Wichita) along with Home Rule Power creates a state within a state, in violation of the U.S. Constitution Article 4 Section 3.

"New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State ... Home Rule Power creates a state within a state and takes away constitutional protections. Judging by the problems in our cities, do we really want their power to blanket our state? With the influence that the cities wield, those outside of the cities could find themselves forced to foot the bill for a city they may never have contact with. Could this be why the mayors of the large cities are the backers of consolidation?"

Home Rule Power is unconstitutional according to U.S. Supreme Court rulings:

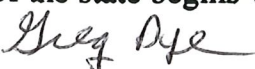
"Where rights secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them.", Key No. 73, *Miranda vs. State of Arizona*, 86, S. Ct. 1602, 1966

"Law repugnant to the Constitution is void", *Maybury vs. Madison*, 1803, L Ed. 60; Cra. 137; ref 6 Whea: 246 & Wal 601

The amendment to the Kansas Constitution in 1961 creating Home Rule Power should also be reviewed for constitutionality.

This situation must be brought to the attention of our law makers and request an interim study and a statute at the state level to correct the problem.

The safety of the state begins with us.

Greg Dye 

623 S. Grove, Wichita, KS 67211

House Local Government

Date 2-10-11

Attachment 20

Under Consolidation of Cities & Counties

Kansas Statute K.S.A 12-3903 b allows for the removal of our elected representatives at the local level of government.

“The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void and ineffective for any purpose; since unconstitutionality dates from the time of its enactment and not merely from the date of the decision so branding it; an unconstitutional law, in legal contemplation, is as inoperative as if it had never been passed... an unconstitutional law is VOID...it imposes no duties, confers no rights, creates no office...bestows no power or authority, affords no protection and justifies no acts performed under it... an unconstitutional law cannot repeal or supercede any existing valid law... an unconstitutional statute cannot repeal or in any way affect an existing valid one... the general principles stated above apply to the Constitution as well as to the laws of the several States insofar as they are repugnant to the Constitution of The United States. Moreover, the construction of a statute which brings it in conflict with the Constitution, will nullify it as effectively as if it had been enacted in conflict therewith.”

16 Am Jur. 2nd Sec. 178; Constitutional Law

Kansas Legislature

Kansas Statute K.S.A 12-3903 (b)**Chapter 12.--CITIES AND MUNICIPALITIES****Article 39.--GOVERNMENTAL ORGANIZATION**

12-3903. Consolidation of operations, procedures and functions by a political and taxing subdivision or by two or more subdivisions; procedure; elimination of elective office, election. (a) Whenever the governing body of any political or taxing subdivision of this state shall by resolution determine that duplication exists in the operations, procedures or functions of any of the offices or agencies of such subdivision or that the operations, procedures or functions of any of the offices or agencies thereof can be more efficiently and effectively exercised or provided as a consolidated activity performed by a single office or agency, or whenever the governing body of any two or more political or taxing subdivisions of this state shall by the passage of identical resolutions determine that duplication exists in the operations, procedures or functions of offices or agencies of such subdivisions or that the operations, procedures or functions of any of the offices or agencies thereof can be more efficiently and effectively exercised or provided as a consolidated activity performed by a single intergovernmental office or agency or by a single office or agency of one of the participating political or taxing subdivisions, such governing body or governing bodies are hereby authorized to consolidate any or all of the operations, procedures or functions performed or carried on by such offices or agencies by the passage of a resolution or identical resolutions setting out the time, form and manner of consolidation and designating the surviving office or agency.

(b) The elimination of an elective office by consolidation under the provisions of this act shall be subject to the approval of a majority of the electors of the political or taxing subdivision served by such office, voting in the next regular general election of the county in which the office of governor is elected, and no elective office shall be eliminated prior to such election. Any such proposed consolidation which eliminates any such elective office shall provide that the elimination of such office shall become effective upon the date of normal expiration of the term of such office. Any such proposed consolidation which

eliminates any such elective office shall not be voted on by the governing body of the political or taxing subdivision until a special public hearing is held within the political or taxing subdivision. Notice of such special hearing shall be published in a newspaper of general circulation in the political or taxing subdivision once each week for two consecutive weeks prior to the hearing. The first publication shall not be less than 21 days prior to such hearing. Any elected officer whose office would be eliminated in such consolidation and any other interested party shall be given an opportunity to appear and offer testimony at any of such hearings.

(c) Whenever the statutorily mandated duties of any elected county official are proposed for elimination, by transfer or otherwise, the question of the elimination of any such duties shall be considered as an elimination of the elective office itself within the meaning of this section, and shall be subject to an election prior to such elimination as required by subsection (b). The provisions of this subsection shall not preclude the transfer of duties of an elected office with the consent of the affected elected official.

History: L. 1974, ch. 426, § 3; L. 1988, ch. 80, § 1; L. 1991, ch. 61, § 1; April 25.