

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT (CORRECTED)
LB104

Hearing Date: Tuesday January 20, 2009
Committee On: Urban Affairs
Introducer: Cornett
One Liner: Change annexation requirements for cities of the first class

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:
Aye: 6 Senators Coash, Cook, Lathrop, McGill, Rogert, White
Nay:
Absent:
Present Not Voting: 1 Senator Friend

Proponents:
Senator Cornett
Dan Hoins
Gary Krumland

Representing:
Introducer
City of Papillion
League of NE Municipalities

Opponents:
Andy Pollock
John Lindsay

Representing:
Northwestern Energy
Source Gas

Neutral:

Representing:

Summary of purpose and/or changes:

This legislation relates to annexation by cities of the first class, proposing to eliminate certain process, hearing, and publication requirements (and thereby equalize the process requirements for all classes of cities and villages).

It would be applicable only to cities of the first class.

The bill proposes the repeal of certain statutory provisions which were enacted in 1989 in LB 421. That bill was introduced by Sen. Jacklyn Smith of Hastings and was intended to address some of the public discord (and litigation) arising from a program of annexation in Hastings in the prior year (1988). In consequence, the legislation only proposed changes governing first class cities. The intent of that legislation was to slow down the annexation process in first class cities to provide for more opportunity for public input both from citizens of the city and the citizens of the area being proposed for annexation. Additionally, it called for the development of a plan for providing city services which was intended to allay the fears and suspicions of residents of the area proposed for annexation and to require the city to address service and finance issues prior to the effective date of the annexation. It also established a process to be followed which would substantially extend the timeline for an annexation by a first class city. First class cities are the only class of cities (or villages) that must follow the extended timeline and "jump the additional hoops." Parenthetically, this is the main reason why Elkhorn could never win the annexation race against the city of Omaha.

The provisions of this bill (LB 104) were introduced in the 2008 legislative session as LB 984. That legislation (also sponsored by Sen. Cornett) was heard by the Urban Affairs Committee on January 29, 2008. It was placed on General File (without amendment) on March 13, 2008. It languished there until it died at the end of the session without consideration by the full legislature.

This bill seeks to accomplish its goal of equalizing the annexation process among all classes of cities and villages by

amending section 16-117, the main statute governing the annexation of territory by first class cities. Basically, current subdivisions (3) through (6) of that statute (those added in 1989) are repealed.

Subdivision (3) requires the city council, prior to any annexation, to adopt a resolution stating its intent to annex territory and proposing a plan for extending city services to the land. The resolution must set out the time, date, and place for a public hearing on the annexation proposal (to be held within sixty days of the adoption of the resolution). Additionally, the resolution must set out a general description of the boundaries of the land proposed for annexation and inform the public that the plan for extending public services is available for public inspection.

Subdivision (4) specifies that the city council must adopt a plan for the extension of city services "in sufficient detail to provide a reasonable person with a full and complete understanding of the proposal for extending city services". The plan must state the estimated cost impact of providing the services and the method by which city plans to finance the extension of services and the maintenance of existing services. The plan must also include a timetable for extending the services. Finally, the plan must include a scale map showing the boundaries of the area to be annexed, the current boundaries of the city, and the general land use pattern in the area proposed for annexation.

Subdivision (5) provides for the public hearing noted in subdivision (3).

Subdivision (6) requires the publication of notice of the hearing in a newspaper of general local distribution in the city at least once in the ten days immediately prior to the hearing. A copy of the scale map showing the area proposed for annexation is to be printed with the notice and a copy of the resolution. A copy of the resolution is also to be mailed (first class) following its adoption to any school district serving the area proposed for annexation.

The passage of LB 104 would eliminate all these procedural steps and requirements.

Explanation of amendments, if any:

The committee amendment strikes all the provisions of the original bill.

It limits the scope of any changes proposed only to cities and villages in a county with a population in excess of one hundred thousand inhabitants but less than two hundred thousand inhabitants (i.e. Sarpy County). It was the concerns of the rapidly growing cities and villages in that county that led to the introduction of the bill.

The committee amendment would not change the existing law of municipal annexation anywhere in the state other than in Sarpy County (the bill would not affect Omaha or Lincoln or any of their surrounding communities).

New section 3 of the committee amendment deals with first class cities and new section 4 deals with second class cities and villages in the specified county.

New Section 3 makes applicable to the cities in the specified county the changes proposed in the original bill: it repeats for these cities the amended version of sec. 16-117 found in the introduced version of the bill. With that change, the annexation process for first and second class cities and villages (and the timeline for the process) become identical; no city or village has a statutory advantage in the annexation process.

However, with the proposed change, there is substantially less notice of a proposed annexation for energy providers, most particularly natural gas utilities (both public and private).

The bulk of the new language found in sections 3 and 4 (which govern the activities of annexing cities and villages in the specially designated county) provide for special notice of a proposed annexation to energy providers.

Both sections provide that not later than fourteen days before the planning commission hearing on a proposed annexation (a hearing requirement which applies to all first and second class cities and villages), the city or village clerk must send notice of the proposed annexation by certified mail, return receipt requested to any of a number of listed entities providing energy services (electric or natural gas) to customers in the city or village or in the area proposed for annexation. The notice must include a copy of the proposed annexation ordinance, the date, time and place of the public hearing and a map showing the boundaries of the area proposed for annexation.

The official minutes of the council or village board must reflect formal compliance with the notice requirement prior to the final adoption of the annexation ordinance.

No additional notice of the proposed annexation is necessary even if the planning commission hearing is adjourned or postponed until a later date or the proposed annexation ordinance is amended or changed or rejected.

In the absence of willful or deliberate failure to provide the specified notice, the final action to annex or reject an annexation shall not be void, invalidated, or affected in any way because of any irregularity, defect, error, or failure on the part of the city or village or its employees to cause notice to be given.

Also, in the absence of willful or deliberate failure to provide the specified notice, the city or village and its employees are not liable for any damage to any person resulting from any failure to cause notice to be given as required by this

section when a reasonable attempt was made to provide such notice. No action for damages resulting from the failure to cause notice to be provided as required can be filed more than one year following the date of the formal acceptance or rejection of the proposed annexation, either in whole or in part, by the city council or village board.

Explanation of amendments:

Mike Friend, Chairperson