

HOUSE BILL No. 2294

By Committee on Local Government

2-10

1 AN ACT concerning cities; relating to annexation; amending K.S.A. 12-
2 519, 12-520b, 12-521, 12-531, 12-532 and 60-2301 and K.S.A. 2010
3 Supp. 25-432 and repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. When land located outside a city is annexed by such
7 city under K.S.A. 12-521 and 12-521a, and amendments thereto, any
8 homestead rights attributable to such land prior to such annexation shall
9 continue after annexation until such land is sold after annexation. The
10 provisions of this section shall be applicable on or after January 1, 2011.

11 Sec. 2. K.S.A. 12-519 is hereby amended to read as follows: 12-519.
12 As used in this act: (a) "Tract" means a single unit of real property under
13 one ownership, outside the corporate limits of a city, which may be
14 platted or unplatted, title to which is publicly or privately held by an
15 owner as defined by subsection (c).

16 (b) "Land" means a part of a tract or one or more tracts.

17 (c) "Owner" means the one who has record title to a tract. In the
18 event two or more persons have record title to a tract, "owner" shall be
19 defined as follows:

20 (1) If joint tenants, "owner" means a majority of the number of joint
21 tenants; (2) if tenants in common, "owner" means both a majority of the
22 number of tenants in common and the holders of a majority of the
23 undivided interests in the tract; (3) if the tract is held by a life tenant and a
24 remainderman, "owner" means the life tenant; (4) if the tract is held by a
25 tenant under a recorded lease providing for a lease term of 10 years or
26 longer and a remainderman, "owner" means both such tenant and
27 remainderman; (5) if one holds title to the surface and another holds title
28 to the minerals, "owner" means the surface title holder.

29 (d) "Adjoins" means to lie upon or touch (1) the city boundary line;
30 or (2) a highway, railway or watercourse which lies upon the city
31 boundary line and separates such city and the land sought to be annexed
32 by only the width of such highway, railway or watercourse.

33 (e) "Platted" means a tract or tracts mapped or drawn to scale,
34 showing a division or divisions thereof, which map or drawing is filed in
35 the office of the register of deeds by the owner of such tract.

36 (f) "Land devoted to agricultural use" means land which is devoted

1 to the production of plants, animals or horticultural products, including
2 but not limited to: Forages; grains and feed crops; dairy animals and
3 dairy products; poultry and poultry products; beef cattle, sheep, swine
4 and horses; bees and apiary products; trees and forest products; fruits,
5 nuts and berries; vegetables; or nursery, floral, ornamental and
6 greenhouse products. Land devoted to agricultural use shall not include
7 those lands which are used for recreational purposes, suburban residential
8 acreages, rural home sites or farm home sites and yard plots whose
9 primary function is for residential or recreational purposes even though
10 such properties may produce or maintain some of those plants or animals
11 listed in the foregoing definition.

12 (g) *"Qualified elector" means any person registered to vote who*
13 *resides within the area proposed to be annexed under the provisions of*
14 *K.S.A. 12-521, and amendments thereto.*

15 (h) *"Area proposed to be annexed" means the area approved for*
16 *annexation by the board of county commissioners under provisions of*
17 *K.S.A. 12-521, and amendments thereto.*

18 ~~(g)~~(i) *"Watercourse" means a natural or manmade course where*
19 *water may flow on a regular or intermittent basis; a watercourse shall not*
20 *include a natural or manmade lake, pond or other impoundment of five or*
21 *more acres of surface area.*

22 Sec. 3. K.S.A. 12-520b is hereby amended to read as follows: 12-
23 520b. (a) The governing body of any city proposing to annex land under
24 the provisions of K.S.A. 12-520, and amendments thereto, shall make
25 plans for the extension of services to the area proposed to be annexed and
26 shall, prior to the adoption of the resolution provided for in K.S.A. 12-
27 520a, and amendments thereto, prepare a report setting forth such plans.
28 The report shall include:

29 (1) A sketch clearly delineating the land proposed to be annexed and
30 the area of the city adjacent thereto to show the following information:

31 (A) The present and proposed boundaries of the city affected by
32 such proposed annexation;

33 (B) the present streets, water mains, sewers and other city utility
34 lines, and the proposed extension thereof; *and*

35 (C) the general land use pattern in the areas to be annexed.

36 (2) A statement setting forth a plan of sufficient detail to provide a
37 reasonable person with a full and complete understanding of the
38 intentions of the city for extending to the area to be annexed each major
39 municipal service provided to persons and property located within the
40 city and the area proposed to be annexed at the time of annexation and the
41 estimated cost of providing such services. The plan shall state the
42 estimated cost impact of providing such services to the residents of the
43 city and the residents of the area proposed to be annexed. The plan shall

1 state the method by which the city plans to finance the extension of such
2 services to such area. Such plan shall include a timetable of the plans for
3 extending each major municipal service to the area annexed. The plan
4 shall state the means by which the services currently provided by a
5 township or special district in the area to be annexed shall be maintained
6 by the city at a level which is equal to or better than the level of services
7 provided prior to annexation. The plan shall state those services which
8 shall be provided immediately upon annexation and those services which
9 may be provided upon petition of the landowners to create a benefit
10 district.

11 *(b) A copy of the plan for extension of services shall be sent by*
12 *certified mail not less than 10 days prior to the public hearing as*
13 *provided in K.S.A. 12-520a, and amendments thereto, to the board of*
14 *county commissioners.*

15 ~~(b)~~(c) The preparation of a plan for the extension of services
16 required by subsection (a) shall not be required for or as a prerequisite to
17 the annexation of land of which all of the owners petition for or consent
18 to such annexation in writing.

19 Sec. 4. K.S.A. 12-521 is hereby amended to read as follows: 12-521.

20 (a) Whenever the governing body of any city deems it advisable to annex
21 land which such city is not permitted to annex under K.S.A. 12-520, and
22 amendments thereto, or if the governing body of any city is permitted to
23 annex land under K.S.A. 12-520, and amendments thereto, but deems it
24 advisable not to annex thereunder, the governing body may annex such
25 land as provided by this section. The governing body, in the name of the
26 city, may present a petition to the board of county commissioners of the
27 county in which the land sought to be annexed is located. The petition
28 shall set forth a legal description of the land sought to be annexed and
29 request a public hearing on the advisability of such annexation. The
30 governing body of such city shall make plans for the extension of
31 services to the tract of land proposed to be annexed and shall file a copy
32 thereof with the board of county commissioners at the time of
33 presentation of the petition. Such report shall include:

34 (1) A sketch clearly delineating the land proposed to be annexed and
35 the area of the city adjacent thereto to show the following information:

36 (A) The present and proposed boundaries of the city affected by
37 such proposed annexation;

38 (B) the present streets, water mains, sewers and other city utility
39 lines, and the proposed extension thereto; *and*

40 (C) the general land use pattern in the areas to be annexed.

41 (2) A statement setting forth a plan of sufficient detail to provide a
42 reasonable person with a full and complete understanding of the
43 intentions of the city for extending to the area to be annexed each major

1 municipal service provided to persons and property located within the
2 city and area proposed to be annexed at the time of annexation and the
3 estimated cost of providing such services. The plan shall state the
4 estimated cost impact of providing such services to the residents of the
5 city and the residents of the area proposed to be annexed. The plan shall
6 state the method by which the city plans to finance the extension of such
7 services to such area. The plan shall include a timetable for the extension
8 of major municipal services to the area proposed to be annexed. The plan
9 shall state the means by which the services currently provided by a
10 township or special district in the area to be annexed shall be maintained
11 by the city at a level which is equal to or better than the level of services
12 provided prior to annexation. The plan shall state those services which
13 shall be provided immediately upon annexation and those services which
14 may be provided upon petition of the landowners to create a benefit
15 district.

16 *(b) No portion of any unplatted tract of land devoted to agricultural*
17 *use of 21 acres or more shall be annexed by any city under the authority*
18 *of this section without the written consent of the owner thereof.*

19 ~~(b)~~(c) The date fixed for the public hearing shall be not less than 60
20 nor more than 70 days following the date of the presentation of the
21 petition requesting such hearing. Notice of the time and place of the
22 hearing, together with a legal description of the land sought to be annexed
23 and the names of the owners thereof, shall be published in a newspaper of
24 general circulation in the city not less than one week and not more than
25 two weeks preceding the date fixed for such hearing.

26 A copy of the notice providing for the public hearing shall be mailed
27 by certified mail to each owner of the land proposed to be annexed not
28 more than 10 days following the date of the presentation of the petition
29 requesting such hearing.

30 A sketch clearly delineating the area in such detail as may be
31 necessary to advise the reader of the particular land proposed to be
32 annexed shall be published with such notice and a copy thereof mailed to
33 the owner of the property with such notice.

34 The board for good cause shown may continue the hearing beyond the
35 time specified in the notice without further publication.

36 ~~(e)~~(d) On the day set for hearing, the board of county commissioners
37 shall hear testimony as to the advisability of such annexation, and a
38 representative of the city shall present the city's proposal for annexation,
39 including the plan of the city for the extension of services to the area
40 proposed to be annexed.

41 The action of the board of county commissioners shall be quasi-
42 judicial in nature. The board of county commissioners shall consider the
43 impact of approving or disapproving the annexation on the entire

1 community involved, including the city and the land proposed to be
2 annexed, in order to insure the orderly growth and development of the
3 community. The board shall make specific written findings of fact and
4 conclusions determining whether such annexation or the annexation of a
5 lesser amount of such area causes manifest injury to the owners of any
6 land proposed to be annexed, or to the owners of land in areas near or
7 adjacent to the land proposed to be annexed or to the city if the
8 annexation is disapproved. The findings and conclusions shall be based
9 upon the preponderance of evidence presented to the board. In
10 determining whether manifest injury would result from the annexation,
11 the board's considerations shall include, but not be limited to, the extent
12 to which the following criteria may affect the city, the area to be annexed,
13 the residents of the city and the area to be annexed, other governmental
14 units providing services to the area to be annexed, the utilities providing
15 services to the area to be annexed, and any other public or private person,
16 firm or corporation which may be affected thereby:

- 17 (1) Extent to which any of the area is land devoted to agricultural
18 use;
- 19 (2) area of platted land relative to unplatted land;
- 20 (3) topography, natural boundaries, storm and sanitary sewers,
21 drainage basins, transportation links or any other physical characteristics
22 which may be an indication of the existence or absence of common
23 interest of the city and the area proposed to be annexed;
- 24 (4) extent and age of residential development in the area to be
25 annexed and adjacent land within the city's boundaries;
- 26 (5) present population in the area to be annexed and the projected
27 population growth during the next five years in the area proposed to be
28 annexed;
- 29 (6) the extent of business, commercial and industrial development in
30 the area;
- 31 (7) the present cost, methods and adequacy of governmental services
32 and regulatory controls in the area;
- 33 (8) the proposed cost, extent and the necessity of governmental
34 services to be provided by the city proposing annexation and the plan and
35 schedule to extend such services;
- 36 (9) tax impact upon property in the city and the area;
- 37 (10) extent to which the residents of the area are directly or
38 indirectly dependent upon the city for governmental services and for
39 social, economic, employment, cultural and recreational opportunities and
40 resources;
- 41 (11) effect of the proposed annexation on the city and other adjacent
42 areas, including, but not limited to, other cities, sewer and water districts,
43 improvement districts, townships or industrial districts and, subject to the

1 provisions of K.S.A. 12-521a, *and amendments thereto*, fire districts;

2 (12) existing petitions for incorporation of the area as a new city or
3 for the creation of a special district;

4 (13) likelihood of significant growth in the area and in adjacent
5 areas during the next five years; and

6 (14) effect of annexation upon the utilities providing services to the
7 area and the ability of those utilities to provide those services shown in
8 the detailed plan.

9 ~~(d)~~(e) The board of county commissioners shall render a judgment
10 within seven days after the hearing has been adjourned sine die. If a
11 majority of the board of county commissioners concludes that the
12 annexation or any part thereof should be allowed, the board shall so find
13 and grant the annexation by order; and thereupon the city may annex the
14 land by ordinance. Orders of the board of county commissioners denying
15 the petition or a part thereof for annexation shall require a majority vote
16 of the members of the board. When an order denying a petition or part
17 thereof is issued, it shall be by resolution, which shall be sent by certified
18 mail to the city proposing the annexation. All orders of the board of
19 county commissioners granting or denying petitions for annexation shall
20 be spread at length upon the journal of proceedings of the board. The
21 failure of such board to spread an order granting annexation upon the
22 journal shall not invalidate such order.

23 (f) *Within 10 days following the rendering of the judgment of the*
24 *board of county commissioners granting all or a part thereof of any*
25 *annexation as provided in subsection (e), the city clerk shall certify to the*
26 *county election officer a legal description and a map of the area outside*
27 *the corporate limits of the city proposed to be annexed and the street*
28 *addresses of all real estate located therein. If there are qualified voters*
29 *residing in the area proposed to be annexed, then the county election*
30 *officer shall conduct a mail ballot election under the provisions of K.S.A.*
31 *25-431 et seq., and amendments thereto, in the area proposed to be*
32 *annexed within 60 days of such certification. If a majority of the qualified*
33 *electors residing in the area proposed to be annexed and voting thereon*
34 *approve the annexation, the city may annex the land by passage of an*
35 *ordinance. If a majority of the qualified electors residing in the area*
36 *proposed to be annexed and voting thereon reject the annexation, the*
37 *lands shall not be annexed and the city may not propose the annexation*
38 *of any such lands in the proposed area for at least four years from the*
39 *date of the election.*

40 ~~(e)~~(g) (1) Any owner of land annexed pursuant to this section or
41 the city aggrieved by the decision of the board of county commissioners
42 may appeal the decision of the board to the district court of the same
43 county in the manner and method set forth in K.S.A. 19-223, and

1 amendments thereto. Nothing in this subsection shall be construed as
2 granting the owner of land in areas near or adjacent to land annexed
3 pursuant to this section the right to appeal the decision of the board of
4 county commissioners. Any city so appealing shall not be required to
5 execute the bond prescribed therein.

6 *(2) In the event that a landowner prevails in the appeal under this*
7 *subsection, the successful landowner shall be awarded reasonable*
8 *attorney fees and costs.*

9 Sec. 5. K.S.A. 12-531 is hereby amended to read as follows: 12-531.

10 (a) ~~Five~~ *Three* years following the annexation of any land pursuant to
11 K.S.A. 12-520 or 12-521, and amendments thereto, or, where there has
12 been litigation relating to the annexation, ~~five~~ *three* years following the
13 conclusion of such litigation, the board of county commissioners shall
14 call a hearing to consider whether the city has provided the municipal
15 services as provided in the timetable set forth in the plan in accordance
16 with K.S.A. 12-520b or 12-521, and amendments thereto. The board of
17 county commissioners shall schedule the matter for public hearing and
18 shall give notice of the date, hour and place of the hearing to: (1) The
19 city; and (2) any landowner in the area subject to the service extension
20 plan.

21 (b) At the hearing, the board shall hear testimony as to the city's
22 extension of municipal services, or lack thereof, from the city and the
23 landowner. After the hearing, the board shall make a finding as to
24 whether or not the city has provided services in accordance with its
25 service extension plan. If the board finds that the city has not provided
26 services as provided in its service extension plan, the board shall notify
27 the city and the landowner that such property may be deannexed, as
28 provided in K.S.A. 12-532, *and amendments thereto*, if the services are
29 not provided within $\pm 1\frac{1}{2}$ years of the date of the board's findings.

30 (c) *If the board of county commissioners refuses to hold the hearing*
31 *as required, any owner of land living in such area annexed may bring an*
32 *action under provisions of K.S.A. 60-1201 et seq., and amendments*
33 *thereto, to compel the board to hold the hearing. The court, upon finding*
34 *the hearing is required, shall award reasonable attorney fees and costs to*
35 *the landowner.*

36 Sec. 6. K.S.A. 12-532 is hereby amended to read as follows: 12-532.

37 (a) If, within $\pm 1\frac{1}{2}$ years following the conclusion of the hearing
38 required by K.S.A. 12-531, *and amendments thereto*, or, where there has
39 been litigation relating to the hearing, $\pm 1\frac{1}{2}$ years following the
40 conclusion of such litigation, the city has not provided the municipal
41 services as provided in the timetable set forth in the plan prepared in
42 accordance with K.S.A. 12-520b or 12-521, and amendments thereto, the
43 owner of such land may petition the board of county commissioners to

1 exclude such land from the boundaries of the city. Within 10 days after
2 receipt of the petition, the board shall schedule the matter for public
3 hearing and shall give notice of the date, hour and place of the hearing to:
4 (1) The owner; (2) the city; (3) the township into which the property, if
5 deannexed, would be placed; and (4) the governing body of any fire
6 district, sewer district, water district or other special district governments
7 which have jurisdiction over territory adjacent to the area sought to be
8 deannexed. The notice shall be sent by certified mail no less than 21 days
9 before the date of the hearing.

10 (b) At the hearing, the board shall hear testimony as to the city's
11 extension of municipal services, or lack thereof, from both the owner and
12 representatives of the city. Except as provided by subsection (e), if the
13 board finds after the hearing that the city has failed to provide the
14 municipal services in accordance with the plan and consistent with the
15 timetable therein, the board may enter an order excluding the land from
16 the boundaries of the city. Any such order shall take effect in the same
17 manner as provided in K.S.A. 12-523, and amendments thereto, for the
18 effective date of annexation ordinances. Such land shall not be annexed
19 again for ~~one~~ *three year* years from the effective date of the order without
20 the written consent of the owner of the land.

21 (c) The county clerk shall certify a copy of the order to the register
22 of deeds of the county. The register of deeds shall record the order in the
23 deed records of the county, and, at the expense of the ~~owner~~ *city*, the
24 register of deeds also shall record the order of exclusion on the margin of
25 the recorded plat of such land, giving reference thereon to the page and
26 book of records where the order is recorded in the register's office.

27 (d) Except as provided by this subsection, after the effective date of
28 the order to exclude the land from the city, such land shall not be liable
29 for any general taxes imposed by the city. Such land shall remain liable,
30 however, for any taxes or special assessments levied by the city as are
31 necessary to pay its proportionate share of the interest on and principal of
32 such bonds or other indebtedness incurred by the city for improvements
33 to the land which were approved by the city before the date on which the
34 owner or owners filed a petition for the exclusion of the land from the
35 city.

36 (e) The board shall not order exclusion of any land if:

37 (1) The service extension plan conditions the extension of certain
38 improvements or services on the filing of a legally sufficient petition by
39 the owners of the land for the creation of an improvement district and to
40 levy special assessments therein to pay a portion of the costs of such
41 improvements, and a sufficient petition has not been filed;

42 (2) since the annexation, the governing body of the city initiated the
43 creation of an improvement or benefit district affecting such land to levy

1 special assessments thereon to pay a portion of the costs of certain
2 municipal improvements, and the formation of the district was blocked by
3 the filing of a sufficient protest petition by some or all of the owners of
4 any land in the proposed district;

5 (3) the exclusion would result in the land being completely
6 surrounded by other tracts of land located within the city's boundaries; or

7 (4) the board finds the exclusion of the land would have an adverse
8 impact on the health, safety and welfare of the residents of the city or
9 such land.

10 (f) Any owner or the city aggrieved by the decision of the board may
11 appeal the decision to the district court in the manner provided in K.S.A.
12 19-223, and amendments thereto. Any city so appealing shall not be
13 required to execute the bond prescribed therein.

14 (g) *If the board of county commissioners refuses to hold the hearing*
15 *as required, any owner of land may bring an action under provisions of*
16 *K.S.A. 60-1201 et seq., and amendments thereto, to compel the board to*
17 *hold the hearing. The court, upon finding the hearing is required, shall*
18 *award reasonable attorney fees and costs to the landowner.*

19 Sec. 7. K.S.A. 2010 Supp. 25-432 is hereby amended to read as
20 follows: 25-432. An election shall not be conducted under this act unless:

21 (a) Conducted on a date, mutually agreed upon by the governing
22 body of the political or taxing subdivision and the county election officer,
23 not later than 120 days following the date the request is submitted by the
24 political or taxing subdivision; ~~and~~

25 (b) the secretary of state approves a written plan for conduct of the
26 election, which shall include a written timetable for the conduct of the
27 election, submitted by the county election officer; ~~and~~

28 (c) the election is nonpartisan; ~~and~~

29 (d) the election is not one at which any candidate is elected, retained
30 or recalled; ~~and~~

31 (e) the election is not held on the same date as another election in
32 which the qualified electors of that subdivision of government are eligible
33 to cast ballots; and

34 (f) the election is a question submitted election at which all of the
35 qualified electors of one of the following subdivisions of government are
36 the only electors eligible to vote:

37 (1) Counties;

38 (2) cities;

39 (3) school districts, except in an election held pursuant to K.S.A. 72-
40 7302 *et seq.*, and amendments thereto;

41 (4) townships;

42 (5) benefit districts organized under K.S.A. 31-301, and
43 amendments thereto;

1 (6) cemetery districts organized under K.S.A. 15-1013 or 17-1330,
2 and amendments thereto;

3 (7) combined sewer districts organized under K.S.A. 19-27,169, and
4 amendments thereto;

5 (8) community college districts organized under K.S.A. 71-1101 *et*
6 *seq.*, and amendments thereto;

7 (9) fire districts organized under K.S.A. 19-3601 or 80-1512, and
8 amendments thereto;

9 (10) hospital districts;

10 (11) improvement districts organized under K.S.A. 19-2753, and
11 amendments thereto;

12 (12) Johnson county park and recreation district organized under
13 K.S.A. 19-2859, and amendments thereto;

14 (13) sewage disposal districts organized under K.S.A. 19-27,140,
15 and amendments thereto;

16 (14) water districts organized under K.S.A. 19-3501 *et seq.*, and
17 amendments thereto; ~~or~~

18 (15) transportation development districts created pursuant to K.S.A.
19 2010 Supp. 12-17,140 *et seq.*, and amendments thereto; *or*

20 (16) *any tract of land annexed pursuant to section 4, and*
21 *amendments thereto.*

22 Sec. 8. K.S.A. 60-2301 is hereby amended to read as follows: 60-
23 2301. *Except as provided in section 1, and amendments thereto, a*
24 *homestead to the extent of 160 acres of farming land, or of one acre*
25 *within the limits of an incorporated town or city, or a manufactured home*
26 *or mobile home, occupied as a residence by the owner or by the family of*
27 *the owner, or by both the owner and family thereof, together with all the*
28 *improvements on the same, shall be exempted from forced sale under any*
29 *process of law, and shall not be alienated without the joint consent of*
30 *husband and wife, when that relation exists; but no property shall be*
31 *exempt from sale for taxes, or for the payment of obligations contracted*
32 *for the purchase of said premises, or for the erection of improvements*
33 *thereon. The provisions of this section shall not apply to any process of*
34 *law obtained by virtue of a lien given by the consent of both husband and*
35 *wife, when that relation exists. The provisions of this section shall be*
36 *applicable on or after January 1, 2011.*

37 Sec. 9. K.S.A. 12-519, 12-520b, 12-521, 12-531, 12-532 and 60-
38 2301 and K.S.A. 2010 Supp. 25-432 are hereby repealed.

39 Sec. 10. This act shall take effect and be in force from and after its
40 publication in the Kansas register.