

Substitute for HOUSE BILL No. 2029

By Committee on Local Government

2-17

10 AN ACT concerning cities; relating to annexation; amending K.S.A. 12-
11 519, 12-520b, 12-521, 12-531 and 12-532 and K.S.A. 2008 Supp. 25-
12 432 and repealing the existing sections.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 12-520b is hereby amended to read as follows: 12-
16 520b. (a) The governing body of any city proposing to annex land under
17 the provisions of K.S.A. 12-520, and amendments thereto, shall make
18 plans for the extension of services to the area proposed to be annexed
19 and shall, prior to the adoption of the resolution provided for in K.S.A.
20 12-520a, and amendments thereto, prepare a report setting forth such
21 plans. The report shall include:

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

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

26 (B) the present streets, water mains, sewers and other city utility
27 lines, and the proposed extension thereof;

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

29 (2) A statement setting forth a plan of sufficient detail to provide a
30 reasonable person with a full and complete understanding of the inten-
31 tions of the city for extending to the area to be annexed each major
32 municipal service provided to persons and property located within the
33 city and the area proposed to be annexed at the time of annexation and
34 the estimated cost of providing such services. The plan shall state the
35 estimated cost impact of providing such services to the residents of the
36 city and the residents of the area proposed to be annexed. The plan shall
37 state the method by which the city plans to finance the extension of such
38 services to such area. Such plan shall include a timetable of the plans for
39 extending each major municipal service to the area annexed. The plan
40 shall state the means by which the services currently provided by a town-
41 ship or special district in the area to be annexed shall be maintained by
42 the city at a level which is equal to or better than the level of services
43 provided prior to annexation. The plan shall state those services which

1 shall be provided immediately upon annexation and those services which
2 may be provided upon petition of the landowners to create a benefit
3 district.

4 *(b) A copy of the plan for extension of services shall be sent by certified*
5 *mail not less than 10 days prior to the public hearing as provided in K.S.A.*
6 *12-520a, and amendments thereto, to the board of county commissioners.*

7 ~~(b)~~ *(c)* The preparation of a plan for the extension of services required
8 by subsection (a) shall not be required for or as a prerequisite to the
9 annexation of land of which all of the owners petition for or consent to
10 such annexation in writing.

11 Sec. 2. K.S.A. 12-531 is hereby amended to read as follows: 12-531.

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

22 (b) At the hearing, the board shall hear testimony as to the city's
23 extension of municipal services, or lack thereof, from the city and the
24 landowner. After the hearing, the board shall make a finding as to whether
25 or not the city has provided services in accordance with its service exten-
26 sion plan. If the board finds that the city has not provided services as
27 provided in its service extension plan, the board shall notify the city and
28 the landowner that such property may be deannexed, as provided in
29 K.S.A. 12-532, *and amendments thereto*, if the services are not provided
30 within ~~2½ years~~ *1½ years* of the date of the board's findings.

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

37 Sec. 3. K.S.A. 12-532 is hereby amended to read as follows: 12-532.

38 (a) If, within ~~2½ years~~ *1½ years* following the conclusion of the hearing
39 required by K.S.A. 12-531, *and amendments thereto*, or, where there has
40 been litigation relating to the hearing, ~~2½ years~~ *1½ years* following the
41 conclusion of such litigation, the city has not provided the municipal serv-
42 ices as provided in the timetable set forth in the plan prepared in ac-
43 cordance with K.S.A. 12-520b or 12-521, and amendments thereto, the

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

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

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

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

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

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

43 (2) since the annexation, the governing body of the city initiated the

1 creation of an improvement or benefit district affecting such land to levy
2 special assessments thereon to pay a portion of the costs of certain mu-
3 nicipal improvements, and the formation of the district was blocked by
4 the filing of a sufficient protest petition by some or all of the owners of
5 any land in the proposed district;

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

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

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

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

20 Sec. 4. K.S.A. 12-519 is hereby amended to read as follows: 12-519.
21 As used in this act: (a) "Tract" means a single unit of real property under
22 one ownership, outside the corporate limits of a city, which may be platted
23 or unplatted, title to which is publicly or privately held by an owner as
24 defined by subsection (c).

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

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

29 (1) If joint tenants, "owner" means a majority of the number of joint
30 tenants; (2) if tenants in common, "owner" means both a majority of the
31 number of tenants in common and the holders of a majority of the un-
32 divided interests in the tract; (3) if the tract is held by a life tenant and a
33 remainderman, "owner" means the life tenant; (4) if the tract is held by
34 a tenant under a recorded lease providing for a lease term of 10 years or
35 longer and a remainderman, "owner" means both such tenant and re-
36 mainderman; (5) if one holds title to the surface and another holds title
37 to the minerals, "owner" means the surface title holder.

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

42 (e) "Platted" means a tract or tracts mapped or drawn to scale, show-
43 ing a division or divisions thereof, which map or drawing is filed in the

1 office of the register of deeds by the owner of such tract.

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

14 (g) “*Qualified elector*” means any person registered to vote who re-
15 sides within the area proposed to be annexed under the provisions of
16 K.S.A. 12-521, and amendments thereto.

17 (h) “*Area proposed to be annexed*” means the area approved for an-
18 nexation by the board of county commissioners under provisions of K.S.A.
19 12-521, and amendments thereto.

20 ~~(g)~~ (i) “*Watercourse*” means a natural or manmade course where wa-
21 ter may flow on a regular or intermittent basis; a watercourse shall not
22 include a natural or manmade lake, pond or other impoundment of five
23 or more acres of surface area.

24 Sec. 5. K.S.A. 12-521 is hereby amended to read as follows: 12-521.

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

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

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

43 (B) the present streets, water mains, sewers and other city utility

1 lines, and the proposed extension thereto;

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

3 (2) A statement setting forth a plan of sufficient detail to provide a
4 reasonable person with a full and complete understanding of the inten-
5 tions of the city for extending to the area to be annexed each major
6 municipal service provided to persons and property located within the
7 city and area proposed to be annexed at the time of annexation and the
8 estimated cost of providing such services. The plan shall state the esti-
9 mated cost impact of providing such services to the residents of the city
10 and the residents of the area proposed to be annexed. The plan shall state
11 the method by which the city plans to finance the extension of such serv-
12 ices to such area. The plan shall include a timetable for the extension of
13 major municipal services to the area proposed to be annexed. The plan
14 shall state the means by which the services currently provided by a town-
15 ship or special district in the area to be annexed shall be maintained by
16 the city at a level which is equal to or better than the level of services
17 provided prior to annexation. The plan shall state those services which
18 shall be provided immediately upon annexation and those services which
19 may be provided upon petition of the landowners to create a benefit
20 district.

21 *(b) No portion of any unplatted tract of land devoted to agricultural*
22 *use of 21 acres or more shall be annexed by any city under the authority*
23 *of this section, and amendments thereto, without the written consent of*
24 *the owner thereof.*

25 ~~(b)~~ (c) The date fixed for the public hearing shall be not less than 60
26 nor more than 70 days following the date of the presentation of the pe-
27 tition requesting such hearing. Notice of the time and place of the hear-
28 ing, together with a legal description of the land sought to be annexed
29 and the names of the owners thereof, shall be published in a newspaper
30 of general circulation in the city not less than one week and not more
31 than two weeks preceding the date fixed for such hearing.

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

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

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

42 ~~(c)~~ (d) On the day set for hearing, the board of county commissioners
43 shall hear testimony as to the advisability of such annexation, and a rep-

1 representative of the city shall present the city's proposal for annexation,
2 including the plan of the city for the extension of services to the area
3 proposed to be annexed.

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

- 23 (1) Extent to which any of the area is land devoted to agricultural
24 use;
- 25 (2) area of platted land relative to unplatted land;
- 26 (3) topography, natural boundaries, storm and sanitary sewers, drain-
27 age basins, transportation links or any other physical characteristics which
28 may be an indication of the existence or absence of common interest of
29 the city and the area proposed to be annexed;
- 30 (4) extent and age of residential development in the area to be an-
31 nexed and adjacent land within the city's boundaries;
- 32 (5) present population in the area to be annexed and the projected
33 population growth during the next five years in the area proposed to be
34 annexed;
- 35 (6) the extent of business, commercial and industrial development in
36 the area;
- 37 (7) the present cost, methods and adequacy of governmental services
38 and regulatory controls in the area;
- 39 (8) the proposed cost, extent and the necessity of governmental serv-
40 ices to be provided by the city proposing annexation and the plan and
41 schedule to extend such services;
- 42 (9) tax impact upon property in the city and the area;
- 43 (10) extent to which the residents of the area are directly or indirectly

- 1 dependent upon the city for governmental services and for social, eco-
2 nomic, employment, cultural and recreational opportunities and
3 resources;
- 4 (11) effect of the proposed annexation on the city and other adjacent
5 areas, including, but not limited to, other cities, sewer and water districts,
6 improvement districts, townships or industrial districts and, subject to the
7 provisions of K.S.A. 12-521a, fire districts;
- 8 (12) existing petitions for incorporation of the area as a new city or
9 for the creation of a special district;
- 10 (13) likelihood of significant growth in the area and in adjacent areas
11 during the next five years; and
- 12 (14) effect of annexation upon the utilities providing services to the
13 area and the ability of those utilities to provide those services shown in
14 the detailed plan.
- 15 ~~(d)~~ (e) The board of county commissioners shall render a judgment
16 within seven days after the hearing has been adjourned sine die. If a
17 majority of the board of county commissioners concludes that the annex-
18 ation or any part thereof should be allowed, the board shall so find and
19 grant the annexation by order; and thereupon the city may annex the land
20 by ordinance. Orders of the board of county commissioners denying the
21 petition or a part thereof for annexation shall require a majority vote of
22 the members of the board. When an order denying a petition or part
23 thereof is issued, it shall be by resolution, which shall be sent by certified
24 mail to the city proposing the annexation. All orders of the board of county
25 commissioners granting or denying petitions for annexation shall be
26 spread at length upon the journal of proceedings of the board. The failure
27 of such board to spread an order granting annexation upon the journal
28 shall not invalidate such order.
- 29 (f) [(1)] *Within 10 days following the rendering of the judgment of*
30 *the board of county commissioners as provided in subsection (e), the city*
31 *clerk shall certify to the county election officer a legal description and a*
32 *map of the area outside the corporate limits of the city proposed to be*
33 *annexed and the street addresses of all real estate located therein. If there*
34 *are qualified voters residing in the area proposed to be annexed, then the*
35 *county election officer shall conduct a mail ballot election under the pro-*
36 *visions of K.S.A. 25-431, et seq., and amendments thereto, in the area*
37 *proposed to be annexed within 60 days of such certification. If a majority*
38 *of the qualified electors residing in the area proposed to be annexed and*
39 *voting thereon approve the annexation, the city may annex the land by*
40 *passage of an ordinance. If a majority of the qualified electors residing in*
41 *the area proposed to be annexed and voting thereon reject the annexation,*
42 *the lands shall not be annexed and the city may not propose the annexation*
43 *of any such lands in the proposed area for at least four years from the*

1 *date of the election.*

2 **[(2) This provision shall apply to annexations in Johnson,**
3 **Sedgwick and Shawnee counties in Kansas.]**

4 ~~(e)~~ (g) Any owner of land annexed pursuant to this section or the city
5 aggrieved by the decision of the board of county commissioners may
6 appeal the decision of the board to the district court of the same county
7 in the manner and method set forth in K.S.A. 19-223, and amendments
8 thereto. Nothing in this subsection shall be construed as granting the
9 owner of land in areas near or adjacent to land annexed pursuant to this
10 section the right to appeal the decision of the board of county commis-
11 sioners. Any city so appealing shall not be required to execute the bond
12 prescribed therein.

13 Sec. 6. K.S.A. 2008 Supp. 25-432 is hereby amended to read as fol-
14 lows: 25-432. An election shall not be conducted under this act unless:

15 (a) Conducted on a date, mutually agreed upon by the governing
16 body of the political or taxing subdivision and the county election officer,
17 not later than 120 days following the date the request is submitted by the
18 political or taxing subdivision; and

19 (b) the secretary of state approves a written plan for conduct of the
20 election, which shall include a written timetable for the conduct of the
21 election, submitted by the county election officer; and

22 (c) the election is nonpartisan; and

23 (d) the election is not one at which any candidate is elected, retained
24 or recalled; and

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

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

31 (1) Counties;

32 (2) cities;

33 (3) school districts, except in an election held pursuant to K.S.A. 72-
34 7302 et seq., and amendments thereto;

35 (4) townships;

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

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

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

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

- 1 (9) fire districts organized under K.S.A. 19-3601 or 80-1512, and
2 amendments thereto;
- 3 (10) hospital districts;
- 4 (11) improvement districts organized under K.S.A. 19-2753, and
5 amendments thereto;
- 6 (12) Johnson county park and recreation district organized under
7 K.S.A. 19-2859, and amendments thereto;
- 8 (13) sewage disposal districts organized under K.S.A. 19-27,140, and
9 amendments thereto;
- 10 (14) water districts organized under K.S.A. 19-3501 et seq., and
11 amendments thereto; ~~or~~
- 12 (15) transportation development districts created pursuant to K.S.A.
13 2008 Supp. 12-17,140 et seq., and amendments thereto; *or*
- 14 (16) *any tract of land annexed pursuant to section 5, and amendments*
15 *thereto.*
- 16 Sec. 7. K.S.A. 12-519, 12-520b, 12-521, 12-531 and 12-532 and
17 K.S.A. 2008 Supp. 25-432 are hereby repealed.
- 18 Sec. 8. This act shall take effect and be in force from and after its
19 publication in the statute book.