

MINUTES OF THE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Roger Reitz at 9:30 a.m. on February 21, 2011, in Room 159-S of the Capitol. Senator Huntington moved to approve the minutes of January 14th and 15th. The motion was seconded by Senator Marshall. The motion carried.

All members were present except:

Senator Dick Kelsey, excused

Senator Pete Brungardt

Committee staff present:

Mike Heim, Office of the Revisor of Statutes

Eunice Peters, Office of the Revisor of Statutes

Jill Shelley, Kansas Legislative Research Department

Noell Memmott, Committee Assistant

Conferees appearing before the Committee:

Brad Smoot, Legislative Counsel, Annexation Reform Coalition

Norman C. Pishny, Bucyrus, Kansas

Whitney Damron, On behalf of the City of Topeka

Erik Sartorius, City of Overland Park

Others attending:

See attached list.

Discussion continued on **SB 101—Uniform common interest owners bill of rights act; exclusion of certain communities.** Mike Heim, Revisor, reviewed the bill. Senator Huntington moved the bill be passed out of committee. The motion was seconded by Senator Kultala. The motion carried.

The hearing opened on **SB 180—An act concerning cities; relating to annexation.**

Mike Heim, revisor, noted significant changes in the current annexation law.

Brad Smoot, Attorney, Legislative Counsel, Annexation Reform Coalition, (attachment 1) and Norman Pishny, Bucyrus, Kansas (attachment 2) spoke in favor of **SB 180.**

Opposition to **SB 180** was presented by Whitney Damron, On behalf of the City of Topeka (attachment 3) and Erik Sartorius, City of Overland Park (attachment 4).

Written testimony on SB 180 was submitted by: Brad Harrelson, Kansas Farm Bureau, Governmental Relations (attachment 5); Ron Fehr, City Manager, Manhattan, Kansas (attachment 6); Doug Mays (attachment 7); Jennifer Bruning, Vice President of Government Affairs, Overland Park Chamber of Commerce (attachment 8).

The hearing on **SB 180** will be continued February 22, 2011.

The next meeting is scheduled for February 22, 2011.

The meeting was adjourned at 10:30 a.m.

DATE: February 21, 2011

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BRAD SMOOT

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STATEMENT OF BRAD SMOOT
LEGISLATIVE COUNSEL
ANNEXATION REFORM COALITION
SENATE LOCAL GOVERNMENT COMMITTEE
REGARDING 2011 SENATE BILL 180
February 21, 2011

Mr. Chairman and Members:

On behalf of the Annexation Reform Coalition, a group of rural landowners whose land was annexed into the city of Overland Park in 2008, we thank you for this opportunity to discuss SB 180. This bill is the result of years of study by the Kansas Legislature. The Special Committee on Eminent Domain in Condemnation of Water Rights recommended the contents of SB 180 in 2008 and the House Local Government Committee combined all three into a bill in 2009 and passed it to the Senate. A version of this bill (House Sub for SB 51) was passed by both houses but vetoed by Governor Parkinson.

As Committee members probably know, the Kansas Legislature has crafted two statutes that allow municipal annexations. One, K.S.A. 12-520, contains several specific situations in which annexation is allowed (for example, when the owner consents) and some limitations (such as when the land to be annexed involves more than 21 acres). K.S.A. 12-520 is the statute used by most cities most of the time and the one with which most of you may be very familiar. The other statute, K.S.A. 12-521, gives cities authority to annex land of any size, without owner consent and without a public vote of those to be annexed. All that is required is approval by the county commission. With the exception of Overland Park, few cities have even used this "521" annexation procedure. Since provisions of SB 180 only affect "521" annexations; not the more common "520" annexations, this bill has no impact on the overwhelming majority of Kansas cities.

SB 180 is an effort to place some reasonable limits on the nearly unbridled authority of local government to annex under section "521." As previously noted, there is no limit on the amount of land that may be annexed under this provision. For example, the city of Overland Park attempted to annex about 15 square miles of rural land in 2008, probably the largest city land grab in state history. The Johnson County Commission disallowed about half the annexation but still the annexation was enormous and unusual by any standard. Many of your colleagues who have reviewed this issue, some of them former city or county officials, are stunned to realize that "521" annexations do not contain the 21 acre limitation found in the more commonly used "520" annexation statute. Since nothing in the "521" statute limits the size of the annexed territory, the interim committee and the House have recommended the 21 acres limit on unplatted agricultural land. See Section 4(b). It's worth noting that even this limitation only applies if the land is "agricultural" and "unplatted." All other land would remain fair game for cities to annex under K.S.A. 12-521.

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Attachment 1

A second safeguard for "521" annexations is built into a new election process (see Section 4(f)). The electors in the area to be annexed would be given an opportunity to vote by mail ballot on whether the annexation should be approved with the decision being made by majority rule. Again, many lawmakers are surprised to learn that we don't permit elections on a matter as important as annexation. We have reviewed the laws of other states and can only find a handful of states that allow such annexations without the right to vote. Indeed, such involuntary annexations are simply not allowed at all in many states. Lawmakers have found it odd that Kansas voters are allowed to express themselves at the ballot box on issues such as city/county consolidation; city incorporation; expansion of city services to unincorporated areas; creation of a variety of service districts like water and libraries, etc., but not involuntary annexations. Voters even have a say in noxious weed control but no say in whether they will be forced against their will into the zoning, traffic and taxing obligations of a city. Opponents will argue that only landowners should vote on the annexation, but that's not how we do things in Kansas. The Kansas Constitution and your local government statutes allow "the people" to vote, often using the phrase "qualified electors," just as provided in SB 180. See attached examples.

The final piece of the interim committee recommendation was the proposal to shorten the time in which counties must review whether a city has met its obligations to provide municipal services to a newly annexed area. See Section 6. Previous law required the review after 5 years and the amendment contained in SB 180 shortens that period to 3 years. We also support this provision and believe that newly annexed landowners shouldn't have to wait 5 years before a city is held accountable for providing the promised services.

SB 180 contains two provisions the Legislature as not seen before. Both are the result of the litigation pending from the Overland Park annexation of 2008. The first, Section 4(g)(2) allows a landowner who has challenged the legality of a 521 annexation to recover reasonable attorney's fees should he or she prevail in court. The Overland Park annexation litigation has already taken two years and hundreds of thousands of dollars in attorneys' fees. The aggrieved landowners have spent more than \$220,000 and the city more than \$400,000 on legal fees alone. You might want to remember these numbers when opponents of this bill suggest that the current law "works well." You might also remember the statistics about our annexation laws prepared by your legislative staff. The 2011 report indicates that the last decade has included more than 31 annexation bills introduced, 24 debated, 7 going to the Governor with 3 of those vetoed. Contrary to the view of opponents, Kansas annexation law is very controversial and doesn't appear to many Kansans to "work well," except for city government.

Second, during the Overland Park annexation litigation, it was discovered that the annexation of large chunks of unplatted farm land raised a disturbing question about the loss of one's constitutional Homestead Exemption rights. First adopted by our Kansas

convention in 1859, Article 15, Section 9, grants protection from debt collectors for 160 acres of land in the county and 1 acre in an incorporated city. When a rural resident's land is annexed by a city, the constitutional protections are reduced from up to 160 acres to 1 -- loss of up to 159 acres of constitutional security provided to Kansas farm families and rural residents. While this may not be a problem when the annexation is consensual as under K.S.A. 12-520, it is an alarming result when farmers and other landowners are dragged unwillingly into the city limits without consent or even the right to vote. The District Court of Johnson County recently ruled that such is the current state of the law. New Section 1 is an attempt to address that issue by preserving the Homestead Exemption for such rural landowners at least until the property is sold after annexation. Of all the injustices created by the current "521" annexation process, the destruction of constitutional Homestead Exemption rights may be the most shocking.

You are likely to be told that SB 180 will cripple economic development although few, if any, specific illustrations of this claim have been provided. Since most states either don't allow involuntary annexations or allow landowners the right to vote and most Kansas cities don't even use the "521" statute, we cannot accept that this bill creates the "sky is falling" catastrophe the opponents allege. Instead, we think it is time Kansas got in line with other states in protecting Kansas property owners from unwarranted and unlimited municipal land grabs.

Final note: As a result of concerns expressed by representatives for the cities. We would be agreeable to deleting the proposed attorney's fees provision (Section 4(g)(2)); removing the 4 month retro activity clause contained in Sections 1 and 8 and amending Section 4(f) to allow consensual "521" annexations even after the voters have rejected a "521" annexation. A copy of these suggestions has been provided to your staff.

Thank you for consideration of our views.

Kansas Statutes Authorizing Local Government Elections by Voters or Electors

Subject	Statute
Agricultural Societies and Fairs	KSA 2-131f
Noxious Weeds	KSA 2-1333
National Defense Operations	KSA 3-401
Consolidation of Municipalities	KSA 12-362
City-Manager Plan	KSA 12-1019
City-Manager Plan	KSA 12-1038
Law Enforcement	KSA 12-11a01
Libraries	KSA 12-1215
Libraries	KSA 12-1236
Buildings, Structures and Grounds	KSA 12-1761
Industrial and Economic Development	KSA 12-3806
Child Care Centers	KSA 12-4801
Municipal Universities	KSA 13-13a24
Changing Classification of City	KSA 14-901
Commission Form of Government	KSA 14-1807
Public Improvements	KSA 15-720
Cemeteries	KSA 15-1015
County Homes	KSA 19-2107
Improvement and Service Districts	KSA 19-2786i
Parks, Museums, Lakes and Recreational Grounds	KSA 19-2801
Water Supply and Distribution Districts	KSA 19-3507a
Fire Protection	KSA 19-3610
Detention and Parental Homes or Farms	KSA 38-523
Licensing and Related Provisions	KSA 41-302
Liquor by the Drink	KSA 41-2646
Irrigation Districts	KSA 42-713
Consolidation of Community Colleges	KSA 71-1304
Disorganization of School Districts	KSA 72-7305
School District Contracts	KSA 72-8157
Consolidation of School Districts	KSA 72-8704
Kansas Lottery	KSA 74-8737
Kansas Lottery	KSA 74-8743
Limitations on Tax Levies	KSA 79-1964
Fire Department or Company	KSA 80-1918a
Sewage Systems	KSA 80-2005
Hospitals and Health Care Facilities	KSA 80-2503
Hospitals and Health Care Facilities	KSA 80-2516

Senate Committee on Local Government
RE: Senate Bill No. 180
February 21, 2011
Topeka, Kansas

Testimony Presented By:

Norman C. Pishny
18750 Antioch
Bucyrus, KS 66013

Homestead Act:

The Kansas Constitution (Homestead Act) guarantees that "160 acres of farming land, or... one acre within the limits of an incorporated town or city, occupied as a residence by the family of the owner" is exempt from forced sale under any process of law (Kansas Constitution, Article 15, § 9). K.S.A. 60-2301 also protects our homestead rights. Further statutes also recognize the sanctity of the homestead. For example, the homestead may be set aside by the children of the deceased person under our probate code (K.S.A. 59-2235). The surviving spouse is also "entitled to the homestead" under our probate code (K.S.A. 59-6a215). Homestead rights are enshrined in our state constitution, but when annexed into an incorporated town, the liability protection is immediately reduced from 160 acres to 1 acre.

SB 180 would protect the landowner's Homestead Act rights until the land is sold. Passing this measure would help get the statute in sync with the Kansas Constitution.

Where have all the flowers gone?

If a farmer owns greater than 21 ac. of unplatted agricultural land, it is not ripe for development. If he does not want to develop his farm at this time, and does not desire city services, he should not be required to enter the city and be subjected to city taxes and urban ordinances on his farm (e.g. prohibition against ATVs and chickens).

Even the City of Olathe provided written testimony to the Special Committee on Eminent Domain in Condemnation of Water Rights in 2008 that "The City maintains its belief that rural and/or agricultural areas should remain in the unincorporated areas of Johnson County and that only as these areas urbanize, should they become part of the city."

K.S.A. 12-520 requires landowner consent for such a takeover. SB 180 adds that protection to K.S.A. 12-521 as well.

Taxation, yes: Representation, No:

We live in a representative government. But let's look at "representation" in our annexation statutes.

- There is no proportionate representation. The decision does not affect everyone in the county. The ones that are impacted can not vote.
 - In Johnson County, our rural landowners vote for 1 commissioner (plus chairman) that has 99% of his district in a city (65% Overland Park).
 - 4 of the 7 commissioners have at least part of their district in Overland Park.
 - In 2008, the Johnson County BOCC approved a partial annexation of over 8 sq. miles even though 24% of Overland Park was still unplatted. The land annexed was a larger land mass than the vast majority of Kansas towns and cities, without any vote of the people. According to www.maps-n-stats.com Hays is 7.5 sq. miles, Garden City is 8.5 sq miles.
 - Our citizen coalition sent a postcard survey to all of the homes Overland Park sent its annexation petition to (540 houses in 15 sq. miles). The results were overwhelming: 88% of the residents returned their cards and 99% of those (471 of 477) were opposed to the Overland Park annexation proposal; but under current law, this clear message from residents doesn't matter. Kansans can be hit with huge additional and higher taxes (property, sales, franchise, special use & permit, etc.) from a government in which they had no vote.

As Kansans, even in our representative government, we get to vote on sewers, swimming pools, and a variety of other issues that affect us. Yet none of us can vote if a city wants to take over our land and home and put us inside the city boundaries to increase their tax base.

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Kansas is one of only a handful of states left in the entire nation where citizens do not have the right to vote on an involuntary takeover by a municipality.

Opponents to citizens' rights present the following arguments against a right to vote:

- If a right to vote is implemented, no more annexations will ever be approved.
 - Cities will always have the ability to do consensual annexations and K.S.A. 12-520 annexations (used by 99% of the cities) are not changing.
- If a city can't expand, it will die.
 - What cities have died in the 45 states that allow a right to vote? What landlocked cities in Kansas have died?
- Our legislators can not figure out how to do a vote.
 - 45 states figured it out.
 - Kansas has several Local Government statutes guaranteeing a right to vote.
- City control over property rights is necessary for economic development in the state.
 - If annexations into a city are what dictate economic development, why has our state economy not boomed since 2008?

SB 180 provides Kansas citizens their basic right to vote on their future and helps protect their property and citizen rights.

What To Do:

The courts have ruled that the purpose of the annexation statutes is to protect the rights of landowners. *Leawood*, 245 Kan. at 283, Syl. ¶2, 777 P.2d at 831 (1989). But this is simply not what happens today.

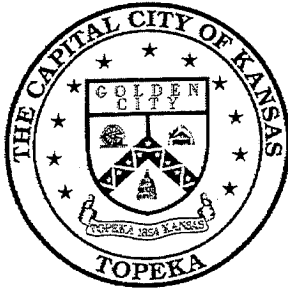
When talking to individuals throughout the state regarding involuntary annexation attempts, citizens are appalled and outraged that Kansas' law does not give them the right to vote and they can lose their Homestead Act rights.

Some cities feel they must be able to take land without having the consent of landowners for city growth and taxes. We could argue about what dictates economic development. We could argue about urban vs. rural environments and disparate needs. We could argue that a city knows better than a landowner when and how to develop their land. **Yet, how can anyone argue that the people should not have a right to vote on their own future and should maintain their basic rights bestowed by the Kansas and U.S. Constitution?**

SB 180 addresses these key flaws in the current Kansas annexation statutes:

- It synchronizes annexation statutes with the Kansas Constitution's Homestead Act.
- It prevents cities from seizing unplatted agricultural land before its time without owner consent.
- It implements a basic citizens' Right to Vote on their property and future.

Please APPROVE SB 180 and Give Citizens Back Their Rights.



CITY OF TOPEKA

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TESTIMONY

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

FROM: Whitney Damron
On behalf of the City of Topeka

RE: SB 180 – An Act concerning cities; relating to annexation.

DATE: February 21, 2011

Good morning Chairman Reitz and Members of the Committee. I am Whitney Damron and I am appearing before you today on behalf of the City of Topeka in general opposition to SB 180 that would restrict a city's ability to utilize annexation authority by petition to its county commission, also known as 12-521 annexation.

SB 180 would dramatically change the way a city seeks to annex property through the petition process – i.e., petitioning the county commission for the opportunity to annex property adjacent to a city.

Our concerns with the bill are as follows:

1. In Section 10 (page 10, lines 34-35 & 38-39), the act would become effective upon publication in the *Kansas Register* with its provisions made effective as of January 1, 2011 as outlined in New Section 1 (page 1, line 10).

Comment: The City believes it is not appropriate to adopt legislation that takes effect at a date/time preceding the bill's introduction and adoption. While the Legislature has on occasion adopted *ex post facto* laws under special circumstances, we do not believe a change to longstanding annexation law warrants such treatment.

2. Section 4. (f) provides for an election on the annexation following approval by the county commission of the qualified electors within the area to be annexed.

Comment: Qualified voters and property owners are represented by the county commissioner or commissioners where the property is located. Lack of an elected representative is often cited as a reason to repeal or limit unilateral annexation authority. Such is not the case with a 12-521 annexation.

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attachment 3

An additional factor for consideration is that under SB 180, the person or persons allowed to vote for or against an annexation may not be the actual property owner and could lead to a situation in which a property owner has requested or acquiesced to his or her land being annexed into a city, but a tenant, apartment dwellers or non-owner residents vote it down.

3. Section 4. (b) found on page 4, on lines 16-18 prohibits a city from annexing more than 21 acres of unplatted agriculture land without the written consent of the owner.

Comment: The 21 acre limitation is found in 12-520 (unilateral annexation authority) and has no real applicability to 12-521 annexations, as the county commission is in place to safeguard property owner interests. A 21 acre limitation on petition annexations is an arbitrary number and would be highly detrimental to a city's ability to manage its growth.

4. Section 4. (g)(2), found on page 7, lines 6-8 requires attorney fees to be paid if the landowner successfully appeals the decision to annex their property.

Comment: This section mandates attorney fees for a successful landowner, but is silent in the case where a landowner loses. We believe it is more appropriate to allow for attorney fees rather than mandate attorney fees and let the judge be the determiner. Furthermore, either side should be eligible to ask for attorney fees if they are successful, not simply the landowner.

Closing Remarks.

As we have previously testified before various committees considering changes to annexation laws during the past decade, the City of Topeka is generally not opposed to changes with various annexation notice provisions, efforts to compel a hearing by a county commission, shortened timelines for production of an extension of services plan or limitations upon future annexation attempts if an attempt to annexation fails or land is de-annexed. We do not oppose those changes found in SB 180, either.

We are opposed to the substantive amendments proposed to 12-521 annexations that are found in the bill that materially impact a city's ability to utilize the petition annexation process, including providing for a post-decision vote by residents in the affected area and would urge this Committee to maintain current law. As we noted last week, these bills are generally brought to the Legislature as a result of local disputes that have or are being worked through the legal process. By and large, annexation laws are working; both 12-520 (unilateral) and 12-521 (petition) and no changes are needed. Legislation such as SB 180 affects all cities and counties in Kansas – more than 700 municipalities, of which perhaps only two to four are before you today seeking change.

On behalf of the City of Topeka, we ask for you to reject changes to longstanding annexation law and not pass SB 180. I would be pleased to stand for questions at the appropriate time.

Thank you.

WBD

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Testimony before the
Senate Local Government Committee
Regarding Senate Bill 180
By Erik Sartorius

February 21, 2011

The City of Overland Park appreciates the opportunity to appear before the committee and present testimony in opposition to Senate Bill 180. For over 100 years, Kansas has allowed its elective representatives to determine whether a city should be able to annex land, and there has never been a referendum on annexations.

Primarily, SB 180 seeks to amend K.S.A. 12-521. This statute generally applies when a city cannot annex land under K.S.A. 12-520 or -520c, and the city must petition the board of county commissioners for approval to annex all or some of the land set out in the petition. The city must prepare a plan for the extension of services to the area and present other information to the county board which holds a public hearing on the proposed annexation. The board of county commissioners determines if the proposed annexation will result in manifest injury to the residents of the area proposed to be annexed if the annexation is approved, or to the petitioning city if the annexation is denied. In determining manifest injury, the board must consider a minimum of 14 factors. Any aggrieved landowner can appeal the board's decision to the courts if the annexation is approved.

If the board of county commissioners rules in favor of a petition to annex land, SB 180 dictates an election must be held in the area proposed to be annexed. If a majority of the qualified electors "residing in the area proposed to be annexed and voting" reject the annexation, the petitioning city may not propose to annex the land for four years following the election. This prohibition would apply even if landowners consented to annexation.

The proposed bill is based upon the erroneous assumption that we cannot trust local elected officials to do their jobs and make decisions that are in the best interest of the people they serve. Elected officials in cities and counties are committed to serve the public interest. In our system of government, officials are elected to represent the people and to make decisions on their behalf, in most instances without any right of referendum. In large measure, this is due to the complexity of the decisions that elected leaders have to make.

It is hard to understand why a decision this complicated (the public record for Overland Park's 2008 annexation contained 3,000 pages of documents) should be left to what might be a

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Attachment 4

minority representation of resident voters. An annexation under K.S.A. 12-521 might have only a dozen or fewer residents who are registered to vote. Even when there are many landowners in the area proposed to be annexed, under this bill a majority might not be eligible to vote. In the 2008 Overland Park annexation, 61% of the land (other than right-of-way tracts) was owned by resident and non-resident entities (businesses and trusts) with no right to vote.

Finally, an underlying premise for petition annexations reviewed by a board of county commissioners is that consideration is given to what is best for the community at large. Narrowing the focus only to the effect of the annexation on the immediate area via an election would remove the broader perspective current law requires.

Another provision contained within SB 180 would prohibit cities from annexing pursuant to K.S.A. 12-521 any portion of any tract of land that is 21 acres or more and devoted to agricultural use. Such a parcel could only be annexed with the consent of the landowner. Although the provision might seem well-intended, it will interfere with the proper growth and development of city and county governments and the regions in which they exist

K.S.A. 12-520(b) already prohibits cities from annexing such tracts unilaterally—meaning without the consent of the property owner and without the approval of the board of county commissioners. This same prohibition does not need to be applied to when cities must petition the board of county commissioners for approval to annex land.

Under K.S.A. 12-521(c)(1), the first factor for the board of county commissioners to examine when determining whether to permit a city to annex an area is the “extent to which any of the area is land devoted to agricultural use.” However, the legislature recognized when they drafted K.S.A. 12-521, that numerous other factors might weigh in favor of annexation even if some the area proposed to be annexed consisted of parcels of land of 21 acres or more and devoted to agricultural use. The City believes that the board of county commissioners is in the best position to make decisions on the annexation of such parcels on a case by case basis applying the specific criteria that a board is required to consider.

It is important that as cities grow, they be able to bring in large parcels of land as well as smaller ones. At least in growing metro areas such as Johnson County, it is imperative that cities be able to plan, in conjunction with the present landowners, for the future use of large parcels of land whether they are currently devoted to agricultural purposes or simply vacant. Planners will confirm that land use planning is done best when it can be done comprehensively rather than on a piecemeal basis.

There is no reason that agricultural lands cannot be located within the boundaries of a city. Overland Park and other metropolitan cities have zoning classifications for agricultural land. Indeed, in its 1985, 2002 and 2008 annexations, Overland Park adopted Johnson County’s zoning regulations so that the annexations would not affect existing agricultural uses. Under state law, annexed land comes into a city with its county zoning in place, and the use of such land becomes a lawful non-conforming use that the city cannot prohibit.

Most importantly, the mere fact that a city annexes agricultural land does not mean that such land must cease its agricultural use and be converted to urban development. The land use will change only if the owner of the land chooses to change it. In addition, the land cannot be negatively affected by city development if it is annexed any more than it would be by county development or city development that would occur at the boundaries of the enclave if it is not annexed. In any event, agricultural land in urban areas will face pressures from surrounding development whether the agricultural land is within cities or outside of cities.

In short, the annexation of tracts of land of 21 acres or more and devoted to agricultural use can provide benefits to the community as a whole and is not detrimental to the owner of the land or the community. Where such danger exists as part of an annexation, the board of county commissioners has the right to deny a city from annexing such land.

A new, disconcerting element is brought forward in Senate Bill 180 in Section 4(g)(2). Specifically, attorneys' fees and costs would be required to be awarded to any landowner prevailing in a challenge to an annexation conducted under K.S.A. 12-521. Under Kansas law, attorneys' fees are generally not awarded. Should the committee feel compelled to include such language, it should be amended to award fees and costs to the prevailing party.

Overland Park would like to note its support for most of the provisions in Sections 5 and 6 of Senate Bill 180. 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. Senate Bill 180 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 1 ½ years. In addition, the bill provides a remedy for landowners in the annexed area if the county has not held the required review, found in Section 5(c) and Section 6(g).

The City also believes it is a sensible step to require that cities provide copies of their annexation service plans to the board of county commissioners, as seen in Section 3(b). 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.

New Section 1 provides that homestead rights attributable to land prior to its annexation remain with the land after annexation until it is sold. The City does not have a position on this provision, per se. In general, however, the City opposes retroactive applicability of statutes, as seen in Section 8 of SB 180. We are not aware of a compelling reason for doing so in this instance, nor do we believe there is a necessary reason for this bill to take effect at publication in the *Kansas Register* rather than the statute book.

Senate Bill 180 will needlessly complicate an annexation process that has suited the state well for over forty years in its current version – over 100 years overall. The legislature carefully crafted statutes that recognize the need of cities to grow while placing proper oversight with counties to weigh the benefits of larger annexations on the community as a whole. The City of Overland Park disagrees with proponents who say this will not harm cities, and asks that the committee reject Senate Bill 180.



KANSAS FARM BUREAU
The Voice of Agriculture

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PUBLIC POLICY STATEMENT

SENATE COMMITTEE ON LOCAL GOVERNMENT

RE: SB 180 & 194; Restrictions on annexation

February 21, 2011

**Written Testimony Submitted by:
Brad Harrelson
KFB Governmental Relations**

Chairman Reitz and members of the Senate Committee on Local Government, thank you for the opportunity to share the policy developed and adopted by our members. I am Brad Harrelson, State Policy Director – Governmental Relations for Kansas Farm Bureau. We represent farmers, ranchers and rural residents totaling more than 110,000 who live and work in each of the state's 105 counties.

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

We wholeheartedly support the revisions suggested by SB 180. The measure would provide increased transparency in the process of extending services and in the review of those efforts by County Commissions.

We also strongly support codification in state statute of the constitutional Homestead Exemption provisions contained in this bill and SB 194. We would view passage of that legislation alone as a significant improvement in the current state of the law. This provision would provide protection for owners of large tracts of land devoted to agricultural use.

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

Senate Local Government

2-21-2011

Attachment 5

For more information please contact:

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

Senate Committee on Local Government

Hearings on Senate Bills 180 and 194

Monday, February 21, 2011 and Tuesday, February 22, 2011

Written Testimony of Ron R. Fehr

City Manager, City of Manhattan, Kansas

Good morning Chair Reitz, Vice Chair Kelsey 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 Senate Bill 180 and Senate Bill 194 because they limit 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).

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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.

Testimony of Doug Mays
before the
Senate Committee on Local Government
February 21 2011

Senate Bill 180

There are few issues that come before the legislature that cause more concern than those involving property rights. Indeed, many who are in favor of restricting or forbidding cities from growing via annexation would site the rights of property owners as their reason for seeking such legislation. Yet, SB 180, by requiring a referendum of voters in any area proposed to be annexed, potentially robs land owners of the very rights that the proponents claim to be protecting.

The problem lies in the difference between voters' rights, and land owners' rights. The two are not necessarily the same people. Not everyone that resides on a tract of land is the owner of that land. Likewise, not everyone who owns a tract of resides on it. This difference would, if SB 180 were to become law, create situations where land owners have no input as to whether or not their land would become a part of the city.

Many land owners request annexation, and many opposed it. If, for example a city were to attempt to unilaterally annex a tract of land owned by Mr. and Mrs. Brown who oppose annexation, but live elsewhere, have a renter who resides in the old farmhouse on the tract in question. Mr. and Mrs. Brown don't want their land annexed, but the renter likes the idea. As the only qualified voter on the property, the renter is the one who decides the future of Mr. and Mrs. Brown's land.

Likewise the reverse could be true with a land owner who welcomes annexation, with the renter rejecting it. Either way, it is the property owner, under SB 180, has no rights unless the owner happens to reside on the land. Land owned by governments, corporations, trusts offer additional troubling scenarios.

This is a defective bill that will not solve the perceived problems associated with annexations. The Legislature should not be in the business of enhancing one set of citizens' rights, by diminishing those of others.

I ask you to not support the passage of SB 180.

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Written testimony in opposition to Senate Bill 180

**Senate Local Government Committee
Monday, February 21, 2011**

Chairman Reitz and Committee Members:

My name is Jennifer Bruning, and I am Vice President of Government Affairs with the Overland Park Chamber of Commerce. I am submitting written testimony today in opposition to Senate Bill 180 on behalf of our Board of Directors and our nearly 1,000 member companies.

One of the standing priorities of the Overland Park Chamber is to oppose changes to statutes further restricting a city's ability to annex unincorporated land needed for growth. Our Chamber has witnessed the successful growth of Overland Park for many years, and we believe it is due in large part to the city's willingness and ability to plan strategically to accommodate growth.

Throughout our history of development and growth, annexation has been a tool used by area cities to successfully allow our area to grow. Planning for growth is a fundamental responsibility of cities, and we believe SB 180 will severely impact that ability should the proposed election requirements and annexation restrictions be implemented.

First, we see several possible issues associated with the election provisions of this bill. Residents already have a "vote" in the process because they elect the county commissioners who are involved in determining if the annexation should go forward or not. Elected officials in cities and counties are committed to serve the public interest, and we believe the process currently in place has been shown to work well and provides multiple opportunities for review and evaluation before annexation moves forward.

Second, the proposed agricultural land restriction (21 acres or more) could cause future growth in cities and counties to have unnatural gaps in an otherwise orderly development pattern by causing "leap frog development," thus leaving holes in a city where annexation consent is lacking from a landowner. This results in inefficient development. These fragmented and non-contiguous land uses can result in higher development costs and higher service costs resulting in higher taxes to citizens in the area.

SB 180 would impede a city's ability to plan for and accommodate growth, causing the natural growth that is going to occur to be less efficient and more costly. In our area, policies and procedures are in place now to allow for the planning and future use of large parcels of land whether they are currently devoted to agricultural purposes or simply vacant. Good planning is done comprehensively, not on a piecemeal basis. For all these stated reasons, we urge you to oppose SB 180. Thank you very much for your consideration.

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