

As Amended by House Committee

Session of 2011

HOUSE BILL No. 2294

By Committee on Local Government

2-10

1 AN ACT concerning cities; relating to annexation; amending K.S.A.
2 12-519, 12-520b, 12-521, 12-531, 12-532 and 60-2301 and K.S.A.
3 2010 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
7 such city under K.S.A. 12-521 and 12-521a, and amendments thereto,
8 any homestead rights attributable to such land prior to such annexation
9 shall continue after annexation until such land is sold after annexation.
10 ~~The provisions of this section shall be applicable on or after January 1,~~
11 ~~2011.~~

12 **New Sec. 2. Except as provided in this section, no land shall be**
13 **annexed pursuant to paragraphs (1), (4), (5) and (6) of subsection**
14 **(a) of K.S.A. 12-520, and amendments thereto, if the board of**
15 **county commissioners determines by resolution adopted within 30**
16 **days following the conclusion of the hearing on the proposed**
17 **annexation that the proposed annexation will have an adverse**
18 **effect on such county. The board of county commissioners shall**
19 **deliver a copy of such resolution to the city. If the board of county**
20 **commissioners fails to adopt such a resolution within the 30-day**
21 **period, the annexation shall be deemed to have been approved by**
22 **the board of county commissioners.**

23 ~~Sec. 2.~~ 3. K.S.A. 12-519 is hereby amended to read as follows: 12-
24 519. As used in this act: (a) "Tract" means a single unit of real property
25 under one ownership, outside the corporate limits of a city, which may
26 be platted or unplatted, title to which is publicly or privately held by an
27 owner as defined by subsection (c).

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

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

32 (1) If joint tenants, "owner" means a majority of the number of
33 joint tenants; (2) if tenants in common, "owner" means both a majority

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

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

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

15 (f) "Land devoted to agricultural use" means land which is devoted
16 to the production of plants, animals or horticultural products, including
17 but not limited to: Forages; grains and feed crops; dairy animals and
18 dairy products; poultry and poultry products; beef cattle, sheep, swine
19 and horses; bees and apiary products; trees and forest products; fruits,
20 nuts and berries; vegetables; or nursery, floral, ornamental and
21 greenhouse products. Land devoted to agricultural use shall not include
22 those lands which are used for recreational purposes, suburban
23 residential acreages, rural home sites or farm home sites and yard plots
24 whose primary function is for residential or recreational purposes even
25 though such properties may produce or maintain some of those plants
26 or animals listed in the foregoing definition.

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

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

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

37 ~~Sec.-3.~~ **4.** K.S.A. 12-520b is hereby amended to read as follows:
38 12-520b. (a) The governing body of any city proposing to annex land
39 under the provisions of K.S.A. 12-520, and amendments thereto, shall

1 make plans for the extension of services to the area proposed to be
2 annexed and shall, prior to the adoption of the resolution provided for
3 in K.S.A. 12-520a, and amendments thereto, prepare a report setting
4 forth such plans. The report shall include:

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

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

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

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

13 (2) A statement setting forth a plan of sufficient detail to provide a
14 reasonable person with a full and complete understanding of the
15 intentions of the city for extending to the area to be annexed each major
16 municipal service provided to persons and property located within the
17 city and the area proposed to be annexed at the time of annexation and
18 the estimated cost of providing such services. The plan shall state the
19 estimated cost impact of providing such services to the residents of the
20 city and the residents of the area proposed to be annexed. The plan
21 shall state the method by which the city plans to finance the extension
22 of such services to such area. Such plan shall include a timetable of the
23 plans for extending each major municipal service to the area annexed.
24 The plan shall state the means by which the services currently provided
25 by a township or special district in the area to be annexed shall be
26 maintained by the city at a level which is equal to or better than the
27 level of services provided prior to annexation. The plan shall state
28 those services which shall be provided immediately upon annexation
29 and those services which may be provided upon petition of the
30 landowners to create a benefit district.

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

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

39 ~~Sec. 4.~~ **5.** K.S.A. 12-521 is hereby amended to read as follows: 12-

1 521. (a) Whenever the governing body of any city deems it advisable to
2 annex land which such city is not permitted to annex under K.S.A. 12-
3 520, and amendments thereto, or if the governing body of any city is
4 permitted to annex land under K.S.A. 12-520, and amendments thereto,
5 but deems it advisable not to annex thereunder, the governing body
6 may annex such land as provided by this section. The governing body,
7 in the name of the city, may present a petition to the board of county
8 commissioners of the county in which the land sought to be annexed is
9 located. The petition shall set forth a legal description of the land
10 sought to be annexed and request a public hearing on the advisability of
11 such annexation. The governing body of such city shall make plans for
12 the extension of services to the tract of land proposed to be annexed
13 and shall file a copy thereof with the board of county commissioners at
14 the time of presentation of the petition. Such report shall include:

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

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

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

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

23 (2) A statement setting forth a plan of sufficient detail to provide a
24 reasonable person with a full and complete understanding of the
25 intentions of the city for extending to the area to be annexed each major
26 municipal service provided to persons and property located within the
27 city and area proposed to be annexed at the time of annexation and the
28 estimated cost of providing such services. The plan shall state the
29 estimated cost impact of providing such services to the residents of the
30 city and the residents of the area proposed to be annexed. The plan
31 shall state the method by which the city plans to finance the extension
32 of such services to such area. The plan shall include a timetable for the
33 extension of major municipal services to the area proposed to be
34 annexed. The plan shall state the means by which the services currently
35 provided by a township or special district in the area to be annexed
36 shall be maintained by the city at a level which is equal to or better than
37 the level of services provided prior to annexation. The plan shall state
38 those services which shall be provided immediately upon annexation
39 and those services which may be provided upon petition of the

1 landowners to create a benefit district.

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

6 ~~(b)~~(c) The date fixed for the public hearing shall be not less than
7 60 nor more than 70 days following the date of the presentation of the
8 petition requesting such hearing. Notice of the time and place of the
9 hearing, together with a legal description of the land sought to be
10 annexed and the names of the owners thereof, shall be published in a
11 newspaper of general circulation in the city not less than one week and
12 not more than two weeks preceding the date fixed for such hearing.

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

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

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

23 ~~(c)~~(d) On the day set for hearing, the board of county
24 commissioners shall hear testimony as to the advisability of such
25 annexation, and a representative of the city shall present the city's
26 proposal for annexation, including the plan of the city for the extension
27 of services to the area proposed to be annexed.

28 The action of the board of county commissioners shall be quasi-
29 judicial in nature. The board of county commissioners shall consider
30 the impact of approving or disapproving the annexation on the entire
31 community involved, including the city and the land proposed to be
32 annexed, in order to insure the orderly growth and development of the
33 community. The board shall make specific written findings of fact and
34 conclusions determining whether such annexation or the annexation of
35 a lesser amount of such area causes manifest injury to the owners of
36 any land proposed to be annexed, or to the owners of land in areas near
37 or adjacent to the land proposed to be annexed or to the city if the
38 annexation is disapproved. The findings and conclusions shall be based
39 upon the preponderance of evidence presented to the board. In

- 1 determining whether manifest injury would result from the annexation,
2 the board's considerations shall include, but not be limited to, the extent
3 to which the following criteria may affect the city, the area to be
4 annexed, the residents of the city and the area to be annexed, other
5 governmental units providing services to the area to be annexed, the
6 utilities providing services to the area to be annexed, and any other
7 public or private person, firm or corporation which may be affected
8 thereby:
- 9 (1) Extent to which any of the area is land devoted to agricultural
10 use;
 - 11 (2) area of platted land relative to unplatted land;
 - 12 (3) topography, natural boundaries, storm and sanitary sewers,
13 drainage basins, transportation links or any other physical
14 characteristics which may be an indication of the existence or absence
15 of common interest of the city and the area proposed to be annexed;
 - 16 (4) extent and age of residential development in the area to be
17 annexed and adjacent land within the city's boundaries;
 - 18 (5) present population in the area to be annexed and the projected
19 population growth during the next five years in the area proposed to be
20 annexed;
 - 21 (6) the extent of business, commercial and industrial development
22 in the area;
 - 23 (7) the present cost, methods and adequacy of governmental
24 services and regulatory controls in the area;
 - 25 (8) the proposed cost, extent and the necessity of governmental
26 services to be provided by the city proposing annexation and the plan
27 and schedule to extend such services;
 - 28 (9) tax impact upon property in the city and the area;
 - 29 (10) extent to which the residents of the area are directly or
30 indirectly dependent upon the city for governmental services and for
31 social, economic, employment, cultural and recreational opportunities
32 and resources;
 - 33 (11) effect of the proposed annexation on the city and other
34 adjacent areas, including, but not limited to, other cities, sewer and
35 water districts, improvement districts, townships or industrial districts
36 and, subject to the provisions of K.S.A. 12-521a, *and amendments*
37 *thereto*, fire districts;
 - 38 (12) existing petitions for incorporation of the area as a new city
39 or for the creation of a special district;

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

3 (14) effect of annexation upon the utilities providing services to
4 the area and the ability of those utilities to provide those services
5 shown in the detailed plan.

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

21 (f) *Within 10 days following the rendering of the judgment of the*
22 *board of county commissioners granting all or a part thereof of any*
23 *annexation as provided in subsection (e), the city clerk shall certify to*
24 *the county election officer a legal description and a map of the area*
25 *outside the corporate limits of the city proposed to be annexed and the*
26 *street addresses of all real estate located therein. If there are qualified*
27 *voters residing in the area proposed to be annexed, then the county*
28 *election officer shall conduct a mail ballot election under the*
29 *provisions of K.S.A. 25-431 et seq., and amendments thereto, in the*
30 *area proposed to be annexed within 60 days of such certification. If a*
31 *majority of the qualified electors residing in the area proposed to be*
32 *annexed and voting thereon approve the annexation, the city may*
33 *annex the land by passage of an ordinance. If a majority of the*
34 *qualified electors residing in the area proposed to be annexed and*
35 *voting thereon reject the annexation, the lands shall not be annexed*
36 *and the city may not propose the annexation of any such lands in the*
37 *proposed area for at least four years from the date of the election,*
38 **unless the proposed annexation is authorized by paragraphs (2), (3)**
39 **or (7) of subsection (a) of K.S.A. 12-520, and amendments thereto.**

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

10 ~~(2) In the event that a landowner prevails in the appeal under this~~
11 ~~subsection, the successful landowner shall be awarded reasonable~~
12 ~~attorney fees and costs.~~

13 ~~Sec. 5:~~ **6.** K.S.A. 12-531 is hereby amended to read as follows: 12-
14 531. (a) ~~Five~~ *Three* years following the annexation of any land pursuant
15 to K.S.A. 12-520 or 12-521, and amendments thereto, or, where there
16 has been litigation relating to the annexation, ~~five~~ *three* years following
17 the conclusion of such litigation, the board of county commissioners
18 shall call a hearing to consider whether the city has provided the
19 municipal services as provided in the timetable set forth in the plan in
20 accordance with K.S.A. 12-520b or 12-521, and amendments thereto.
21 The board of county commissioners shall schedule the matter for public
22 hearing and shall give notice of the date, hour and place of the hearing
23 to: (1) The city; and (2) any landowner in the area subject to the service
24 extension plan.

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

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

1 ~~Sec. 6.~~ 7. K.S.A. 12-532 is hereby amended to read as follows: 12-
2 532. (a) If, within ~~2~~ 1½ years following the conclusion of the hearing
3 required by K.S.A. 12-531, *and amendments thereto*, or, where there
4 has been litigation relating to the hearing, ~~2~~ 1½ years following the
5 conclusion of such litigation, the city has not provided the municipal
6 services as provided in the timetable set forth in the plan prepared in
7 accordance with K.S.A. 12-520b or 12-521, and amendments thereto,
8 the owner of such land may petition the board of county commissioners
9 to exclude such land from the boundaries of the city. Within 10 days
10 after receipt of the petition, the board shall schedule the matter for
11 public hearing and shall give notice of the date, hour and place of the
12 hearing to: (1) The owner; (2) the city; (3) the township into which the
13 property, if deannexed, would be placed; and (4) the governing body of
14 any fire district, sewer district, water district or other special district
15 governments which have jurisdiction over territory adjacent to the area
16 sought to be deannexed. The notice shall be sent by certified mail no
17 less than 21 days before the date of the hearing.

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

29 (c) The county clerk shall certify a copy of the order to the register
30 of deeds of the county. The register of deeds shall record the order in
31 the deed records of the county, and, at the expense of the ~~owner~~ city, the
32 register of deeds also shall record the order of exclusion on the margin
33 of the recorded plat of such land, giving reference thereon to the page
34 and book of records where the order is recorded in the register's office.

35 (d) Except as provided by this subsection, after the effective date
36 of the order to exclude the land from the city, such land shall not be
37 liable for any general taxes imposed by the city. Such land shall remain
38 liable, however, for any taxes or special assessments levied by the city
39 as are necessary to pay its proportionate share of the interest on and

1 principal of such bonds or other indebtedness incurred by the city for
2 improvements to the land which were approved by the city before the
3 date on which the owner or owners filed a petition for the exclusion of
4 the land from the city.

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

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

11 (2) since the annexation, the governing body of the city initiated
12 the creation of an improvement or benefit district affecting such land to
13 levy special assessments thereon to pay a portion of the costs of certain
14 municipal improvements, and the formation of the district was blocked
15 by the filing of a sufficient protest petition by some or all of the owners
16 of any land in the proposed district;

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

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

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

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

33 ~~Sec. 7.~~ **8.** K.S.A. 2010 Supp. 25-432 is hereby amended to read as
34 follows: 25-432. An election shall not be conducted under this act
35 unless:

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

- 1 (b) the secretary of state approves a written plan for conduct of the
2 election, which shall include a written timetable for the conduct of the
3 election, submitted by the county election officer; ~~and~~
- 4 (c) the election is nonpartisan; ~~and~~
- 5 (d) the election is not one at which any candidate is elected,
6 retained or recalled; ~~and~~
- 7 (e) the election is not held on the same date as another election in
8 which the qualified electors of that subdivision of government are
9 eligible to cast ballots; and
- 10 (f) the election is a question submitted election at which all of the
11 qualified electors of one of the following subdivisions of government
12 are the only electors eligible to vote:
- 13 (1) Counties;
 - 14 (2) cities;
 - 15 (3) school districts, except in an election held pursuant to K.S.A.
16 72-7302 *et seq.*, and amendments thereto;
 - 17 (4) townships;
 - 18 (5) benefit districts organized under K.S.A. 31-301, and
19 amendments thereto;
 - 20 (6) cemetery districts organized under K.S.A. 15-1013 or 17-1330,
21 and amendments thereto;
 - 22 (7) combined sewer districts organized under K.S.A. 19-27,169,
23 and amendments thereto;
 - 24 (8) community college districts organized under K.S.A. 71-1101
25 *et seq.*, and amendments thereto;
 - 26 (9) fire districts organized under K.S.A. 19-3601 or 80-1512, and
27 amendments thereto;
 - 28 (10) hospital districts;
 - 29 (11) improvement districts organized under K.S.A. 19-2753, and
30 amendments thereto;
 - 31 (12) Johnson county park and recreation district organized under
32 K.S.A. 19-2859, and amendments thereto;
 - 33 (13) sewage disposal districts organized under K.S.A. 19-27,140,
34 and amendments thereto;
 - 35 (14) water districts organized under K.S.A. 19-3501 *et seq.*, and
36 amendments thereto; ~~or~~
 - 37 (15) transportation development districts created pursuant to
38 K.S.A. 2010 Supp. 12-17,140 *et seq.*, and amendments thereto; *or*
 - 39 (16) *any tract of land annexed pursuant to section 4, and*

1 *amendments thereto.*

2 ~~Sec. 8.~~ **9.** K.S.A. 60-2301 is hereby amended to read as follows:
3 60-2301. *Except as provided in section 1, and amendments thereto, a*
4 *homestead to the extent of 160 acres of farming land, or of one acre*
5 *within the limits of an incorporated town or city, or a manufactured*
6 *home or mobile home, occupied as a residence by the owner or by the*
7 *family of the owner, or by both the owner and family thereof, together*
8 *with all the improvements on the same, shall be exempted from forced*
9 *sale under any process of law, and shall not be alienated without the*
10 *joint consent of husband and wife, when that relation exists; but no*
11 *property shall be exempt from sale for taxes, or for the payment of*
12 *obligations contracted for the purchase of said premises, or for the*
13 *erection of improvements thereon. The provisions of this section shall*
14 *not apply to any process of law obtained by virtue of a lien given by the*
15 *consent of both husband and wife, when that relation exists. ~~The~~*
16 *~~provisions of this section shall be applicable on or after January 1,~~*
17 *~~2011.~~*

18 ~~Sec. 9.~~ **10.** K.S.A. 12-519, 12-520b, 12-521, 12-531, 12-532 and
19 60-2301 and K.S.A. 2010 Supp. 25-432 are hereby repealed.

20 ~~Sec. 10.~~ **11.** This act shall take effect and be in force from and
21 after its publication in the Kansas register.