Approved _____
Date

MINUTES OF THE Senate COMMITTEE ON Local Government.

The meeting was called to order by Senator Don Montgomery at
Chairperson

9:00 a.m./~~p.m.~~ on January 29, 1986 in room 313-S of the Capitol.

All members were present except: Senators: Mulich and Gaines who were excused

Committee staff present: Mike Heim, Theresa Kiernan, Lila McClaflin

Conferees appearing before the committee:
Buford Watson, City Manager, Lawrence
Ernie Mosher, Executive Director, League of Kansas Municipalities
Louis Stroup, Executive Director of Kansas Municipal Utilities, Inc.
Jack Davis, Director of Utilities, Ottawa
Bill Ramsey, Olathe, KS.
Dan McGee, Central Corp./Western Power, Great Bend
Randy Burleson, Empire Dist. Electic, Columbus, KS.
Ed Schaub, Southwestern Bell Telephone
Denny Burgess, Rural Electric Cooperatives
Kathy Peterson, Committee of Kansas Farm Organizations
Karen McClain, Kansas State Board of Realtors

Hearing on S.B. 428

Buford Watson stated the bill would be detrimental to the cities, if they were required to grant franchises for municipal facilities located within newly annexed areas. He requested that any reference to furnishing water services be eliminated from the bill, water should be handled in another way. (Attachment I)

The Chairman stated in the fall he had heard from people in the Lawrence area concerning a water district problem and an Attorney General opinion had been requested. Copies of this opinion was distributed to committee members. (Attachment II and III).

Mr. Watson said since then they have been working with the water district on this and he was confident they'd be able to work it out.

Ernie Mosher testified that when problems exist that they be handled individually. If this issue is cities not paying for the rural water district facilities, this could be addressed as an amendment. He offered such an amendment. (Attachment IV)
He responded to questions concerning his amendment.

Louis Stroup, Jr strongly opposed the bill. He viewed it as a distruptive measure that would lead to a hodgepodge of services within communities that in the long run would not be beneficial to the residents. He stated the REC's are attempting to break their 10-year-old agreement that led to the passage of the territorial bill. (Attachment V)

A member of the Committee asked the Chairman if Mr. Stroup's testimony had been available to the Interim Committee? The Chairman replied no, they did not hear this testimony during the Interim Committee hearings.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government,

room 313-S, Statehouse, at 9:00 a.m./p.m. on January 29, 1986

Jack Davis stated the City of Ottawa stongly believes that service extension restrictions mandated, on any municipal utility, in newly annexed areas would have counter-productive implications and would not be in the best interest of annexed property owners. (Attachment VI)

Bill Ramsey stated this bill could cause Olathe to have four water districts, they already have two electric services, this would cause a lot of problems for residents. He stated they, also, supported the Leagues amendments.

Dan McGee testified the cities should have the right to franchise the utility they feel can best provide quality service. The present law allows this choice. (Attachment VII)

Randy Burleson stated industrial development, in his area of southeast Kansas, would be hindered by this bill. They may not be able to serve new companies when areas are annexed, if this bill is passed.

Ed Schaub stated they were concerned that the phone company might be involved and he offered an amendment that would get the phone company out. (Attachment VIII)

Proponents on S.B. 428

Denny Burgess supports this legislation because it will protect the consumers of our state from the unnecessary expense of duplicating facilities and resources to provide electric service. It is their desire to retain the rights in the territory assigned to them. It is not our desire to invade other service territories. He further stated this bill would prevent cities from taking our territories by neglecting to grant a franchise. (Attachment IX)

Mr. Burgess responded to questions from the Committee concerning the territorial act.

Fred Allen testified that the counties support the bill and this was stated in the county platform. He responded to questions concerning the problems that exist now.

Kathy Peterson stated her organization was concerned with the burden imposed on the residents left in a district, after part of it is annexed. There are few people to share the cost and they are threatened with ever increasing cost. (Attachment X)

S.B. 427 Karen McClain appeared to oppose S.B. 427, the State Board of Realtors believe this bill will stunt economic growth in the State. (Attachment XI)

Dennis Shockley, Director of Federal and State Affairs, Kansas City, Ks., presented written testimony opposing S.B. 428. (Attachment XII)

Kansas City Power and Light and Dr. Thomas Sloan, Chairman, Board of Directors, Water District I, Lawrence, Ks., presented written testimony in support of S.B. 428. (Attachments XIII and IVX).

Senator Allen expressed disappointment that some of these concerns were not expressed at the summer Interim Committee, as the Committee spent many hours on the annexation and related issues.

The meeting adjourned until 9:00 a.m., January 30, 1986.

Sen Don Montgomery

Senator Don Montgomery
Chairman

Date: January 29, 1986

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
Harold Sloan	KEC	Topeka Ks
Ray Sprindle	Victory Electric Coop Assn	Dodge City Ks
[illegible]	KEC	Topeka, KS
Denny Burgess	KEC	Topeka, KS
Lester Murphy	KEC	Topeka, Ks.
Ed Schaub	SWBT.	Topeka Ks.
Jerry Conrad	KG&E	Topeka Ks
DAN McGEE	CENTEL / WESTERN POWER	GREAT BEND
Randy Barlow	Empire Electric	Columbus Ks
DICK COMPTON	MIDWEST ENERGY	HAYS
Ruth Welkin	Girl Scouts	Topeka
Carl Hanson	Ks. Mun. Energy Agency	Mission KS
Norman Harper	adm	Healy
Mary Harper	adm	"
Richard D. Kready	KPL Gas Service	Topeka
Fred Allen	K. A. C.	Topeka
Gayle Mollenkamp	REP 118th	Russell Springs Ks.
John Spurgeon	Budget Div.	Topeka
John Jay Rosacker	KCC	Topeka
Judy Anderson	City of Wichita	Wichita
CHARLES BELT	WICHITA	CHAMBER of COMMERCE
Donna Smith	K.B.A.	Topeka
SCOTT LAMBERS	OVERLAND PARK	OVERLAND PARK
M. Plummer	Topeka Chamber	Topeka
BILL PERDUE	~~TOPEKA~~	TOPEKA
JANET STUBBS	KPL Gas Service	"
	NBAK	

1/29/86

City of Lawrence
KANSAS

BUFORD M. WATSON, JR., CITY MANAGER

CITY OFFICES 6 EAST 6th
BOX 708 66044 913-841-7722

Statement by Buford M. Watson, Jr.
City Manager
Lawrence, Kansas

Presented to Senate Committee on Local Government
January 29, 1986
In Opposition to Senate Bill 428

Mr. Chairman, Members of the Committee, I am Buford Watson, City Manager of Lawrence, Kansas, here to speak in opposition to Senate Bill 428.

We believe that Senate Bill 428 is extremely broad and would be detrimental to the cities, if required to grant franchises for municipal facilities located within a newly annexed area to the city. The bill indicates that the city would not have a choice in authorizing a franchise for any municipal facility located within the city boundaries. Although we are not specifically aware of any particular problems with electric, gas or telephone utilities, I would like to point out to you some of the problems I foresee having to do with water service in a newly annexed area.

As you can see on the map here in front of me, this area is Western Hills, served by Rural Water District No. 1 of Douglas County. This Rural Water District extends a 3" and a $2\frac{1}{2}$" water line from U. S. Highway 40, south into the Western Hills area. There are 76 residences in this area

Attachment I)
1/29/86 S. LG

which is surrounded by either developed or areas being developed in the city. On the south edge of Western Hills, the city has a 16" water line and on the east side of Western Hills, a 12" water line. The Water Treatment Plant is approximately one mile southwest of the subdivision. Western Hills, which is presently served by 3", 2½" and 2" water lines will not provide adequate fire protection for that area. The City of Lawrence has a Class 2 Fire Insurance Rate, which gives credit for a strong water system. If the Rural Water District is to franchise that particular area, it would seem appropriate that they should bring the service up to a Class 2 Fire Insurance Rating. This obviously would be very difficult with the size of equipment available.

Therefore, I believe each individual city should negotiate in accordance with existing laws, either the purchase of the equipment owned by the Rural Water District or to have a mutual understanding of how long the water service can be provided by the Rural Water District. It seems inappropriate for the franchise to be granted for a very small area of the city to be served by an agency other than the city water department.

As I indicated earlier, it may be something different for the electric utilities and for gas service, but for the water service, it is very necessary to plan for large water lines, for fire protection, as well as for domestic service. We believe that franchising a Rural Water District inside the city simply does not give the best possible service to the citizens in the newly annexed area. As you know, the city cannot give an exclusive franchise to anyone operating within the city, and Senate Bill 428 rather negates that by forbidding the duplication or extending of municipal services into a newly annexed area where a franchise has been requested.

I believe that if you look at the track record of the City of Lawrence you will see that we have worked very well with Rural Water District No. 1 on Clinton Parkway and treat Clinton Lake water for the Rural Water District. I believe we could sit down with their board and work out an agreement that will be satisfactory to both the city and to the Rural Water District. I

believe this can be done without any need for this legislation.

I would request you eliminate from Senate Bill 428 any reference to furnishing water service within a newly annexed area.

Thank you for your time, and I will be happy to answer any questions you might have.

Respectfully,

Buford M. Watson, Jr.
City Manager

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

November 27, 1985

ATTORNEY GENERAL OPINION NO. 85- 166

The Honorable Don Montgomery
State Senator, Twenty-First District
1218 Main
Sabetha, Kansas 66534

Re: Cities and Municipalities--General Provisions--Annexation of Lands Located in Water Districts; Title to Facilities; Agreement; Compensation

Synopsis: While K.S.A. 12-527 prescribes no time limit within which a city must purchase rural water district lines and facilities located upon land annexed by the city, such purchase must be accomplished within a reasonable time following annexation. The reasonableness of the time within which a city proposes to consumate such a purchase is a question of fact to be ascertained in light of all facts and circumstances. Additionally, a city is not liable for severance damages in acquiring title to rural water district lines and facilities under the provisions of K.S.A. 12-527. Cited herein: K.S.A. 12-527; 26-504.

* * *

Dear Senator Montgomery:

You request our interpretation of K.S.A. 12-527. That statute prescribes a procedure for the transfer of rural water district facilities located upon land annexed by a city, and provides as follows:

(Attachment II)
1/29/86 S.L.G

> "Whenever a city shall annex lands located within a rural water district organized pursuant to the provisions of K.S.A. 82a-612 et seq., title to all facilities used for the transportation or utilization of water belonging to the water district shall vest in or become the property of the city upon payment by the city to the water district of the value of such property, as agreed by the governing body of the city and the board of directors of the district, or if such agreement is not made, then as determined by the city: Provided, That the board of directors of any such district may bring an action in the district court to determine the reasonableness of the amount of compensation fixed and determined by any such city. The governing body of the city and board of directors of the district may provide, on such terms as may be agreed, that water transmission facilities owned by the district and located within the city may be retained by the district for the purpose of transporting water to customers outside the city. In addition to compensation for such physical facilities the city may pay to the water district an amount equal to that portion of outstanding indebtedness of the district which is properly attributable to the portion of the water district annexed by the city."

You first inquire as to whether there is "a reasonable length of time in which existing rural water district facilities and lines should be purchased by the annexing city." In this regard, while it is clear that the water lines and facilities are ultimately to be purchased by the annexing city (except where there is an agreement that water transmission facilities owned by the district and located within the city are retained by the district for the purpose of transporting water to customers outside the city), the statute does not prescribe the period of time within which the purchase is to be made.

Under these circumstances, it is our opinion that the "reasonable time rule" is applicable. That rule is as follows:

> "Where no time has been fixed for the performance of an act to be done, the law implies that performance is to be accomplished

within a reasonable time." Singer Company v. Makad, Inc., 213 Kan. 725, Syl. ¶7 (1974).

Moreover, "[w]hat constitutes a reasonable time depends on the facts and circumstances of the particular case." (Id. at Syl. ¶8). Accordingly, the purchase mandated by K.S.A. 12-527 could be deferred indefinitely if such course of action was reasonable under the particular facts and circumstances.

You next ask whether the long-term viability of the remainder of the water district should be a factor in determining the value of the annexed water lines, i.e. if remaining patrons cannot, at reasonable rates, support the water plant operation should this be a factor in determining the value of the annexed lines. In this regard, we note that courts in other jurisdictions have awarded severance damages in eminent domain proceedings where only part of a public utility system is taken. [See 27 Am.Jur.2d Eminent Domain §340; Puget Sound Power & Light Co. v. City of Puyallup, 51 F.2d 688, 697 (9th Cir. 1931); Brunswick & T. Water Dist. v. Maine Water Co., 59 A. 537, 542 (Me. 1904).] Further, while no Kansas cases have applied the language of K.S.A. 26-504(d)(4), that paragraph would appear to allow the use of the remaining property to be considered in determining an award in an eminent domain proceeding. However, under the plain and unambiguous provisions of K.S.A. 12-527, a city must pay a rural water district only for the value of the physical facilities actually acquired, and has the option of paying an additional amount equal to that portion of the outstanding indebtedness of the district which is properly attributable to the portion of the water district annexed by the city. Accordingly, in our opinion a city is not liable for severance damages in acquiring title to rural water district lines and facilities under the provisions of K.S.A. 12-527 as they presently read.

In summary, it is our opinion that while K.S.A. 12-527 prescribes no time limit within which a city must purchase rural water district lines and facilities located upon land annexed by the city, such purchase must be accomplished within a reasonable time following annexation. The reasonableness of the time within which a city proposes to consumate such a purchase is a question of fact to be ascertained in light of all facts and circumstances.

Additionally, a city is not liable for severance damages in acquiring title to rural water district lines and facilities under the provisions of K.S.A. 12-527.

Very truly yours,

Robert T. Stephan

ROBERT T. STEPHAN
Attorney General of Kansas

Terrence R. Hearshman

Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:jm

STATE OF KANSAS

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ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

December 30, 1985

The Honorable Don Montgomery
State Senator, Twenty-First District
1218 Main
Sabetha, Kansas 66534

Dear Senator Montgomery:

You have requested clarification of Attorney General Opinion No. 85-166. Specifically, you ask whether the "timetable" for extension of each major municipal service, required by K.S.A. 12-520b(b), constitutes a time limit within which a city must purchase rural water district facilities under K.S.A. 12-527. Also, you ask how it is determined that K.S.A. 12-527 "prevails" over K.S.A. 26-513(d)(4) with respect to city liability for severance damages.

In regard to timing of the purchase transaction, we concluded in the above-referenced opinion that a city must consumate the purchase within a reasonable time following annexation. In most cases, there is probably a wide range of possible purchase dates which would be reasonable, including the date specified in the city timetable for extension of services. There is no indication, however, that the timetable is to serve as a time limit within which a city must consumate the purchase required by K.S.A. 12-527, and we adhere to our conclusion that the reasonableness of the time within which a city proposes to complete such a purchase is a question of fact to be ascertained in light of all facts and circumstances.

Regarding city liability for severance damages, the power of a city to appropriate "private property" for public use would not include the power to condemn rural water district facilities which are devoted to public use. (See K.S.A. 26-201.) Accordingly, statutes concerning compensation in eminent domain

(Attachment III)
1/29/86 S.40

proceedings have no application to acquisition of property under K.S.A. 12-527, and our only purpose in citing K.S.A. 26-513 was to contrast the provisions of that statute with the provisions of K.S.A. 12-527.

Very truly yours,

OFFICE OF THE ATTORNEY GENERAL
ROBERT T. STEPHAN

Terrence R. Hearshman

Terrence R. Hearshman
Assistant Attorney General

TRH:jm

League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

TO: Senate Committee on Local Government
FROM: E.A. Mosher, Executive Director
DATE: January 29, 1986
SUBJECT: SB 428--Annexation--Utilities

By action of the Governing Body of the League, we appear in opposition to SB 428. Frankly, we are confused by the wording of the bill. The fact that it was substantively drafted by Mr. Denny Burgess, a lobbyist for the Kansas Electric Cooperatives, gives us some idea of the intent, but we are still perplexed by some of the provisions.

The first paragraph of the bill is apparently intended to prohibit a city operating a municipal water, electric or gas system from extending municipal water, electric or gas service to an "annexed area," when that area is receiving these services and the providing agency requests a franchise. The second part of the bill, which apparently applies to those cities that do not own a municipal water, electric or gas system, essentially requires that the city guarantee a franchise to the existing provider of these services, even though areas now within the city may be serviced by another supplier.

If this interpretation is correct, the bill has a two-prong approach: (1) It applies to all cities operating municipal utility systems, and (2) it applies to all cities franchising private utility systems, which pretty well covers all cities--although there are some small cities that do not franchise private utilities.

(Attachment IV)
1/29/86 S. LG

CATV. We are not certain how SB 428 applies to community television systems (CATV). There are several cities that do own and operate municipal CATV systems, and a large number of cities which "franchise" private cable systems. This is done under K.S.A. 12-2006, and not under the general franchise law found in K.S.A. 12-2001, et seq. There are a few counties which have franchised private cable systems outside cities, but we do not know of instances where the company involved is a company other than that serving the city.

Water. We have about six cities in Kansas that are served by a private water system franchised by the city, such as in Great Bend. We do not know of situations where a private water system serves the adjoining area but not the city.

There are some people who believe that SB 428 applies to rural water districts. We are not sure this is correct, since K.S.A. 12-527 already applies to annexation of areas served by rural water districts (RWD) and the bill is contradictory to this existing statute. Perhaps it was intended that SB 428 would repeal by implication the provisions of 12-527. More about this later.

Gas. We are not aware of many fact situations where SB 428 is relevant to municipal gas systems or privately franchised gas systems. We have about 67 municipal gas systems. We believe there are only a few cases where a private gas distribution system services only the area outside the city. Typically, a private natural gas system serving a city also serves areas adjoining the city if such service exists.

Electric. The application of SB 428 to retail electric suppliers is also confusing, at least to us. Perhaps it is intended to amend by implication the provisions of the electric territorial act enacted in 1976, beginning with K.S.A. 66-1,170. For your convenience, the last few sections of this act are reprinted at the end of this statement. K.S.A. 66-1,176 is directly pertinent.

We are under the impression that this battle, in application to the approximate 125 municipal electric systems, was resolved when the territorial act was passed in 1976. Other conferees will be testifying on this.

General. As a general comment, we would note that the basic underlying opposition of land owners to being annexed is that their property taxes will increase! There is one thing cities can usually do to help, and that is to provide municipal utility services at a lower cost, which would be denied by SB 428. We--cities--are caught in a quandary. Some want to stop annexation so their taxes won't go up, and others want to stop some of the benefits that occur if there is an annexation. On the one hand, we have people who want to protect the "rights" of land owners against annexation, and, at the same time, deny them the "rights" of municipal services. We are confused!

Recommendation

The principal recommendation we make is that we recognize what problems exist, and deal with them separately. The CATV issue is very minor, if it exists at all. The natural gas issue is also, we believe, comparatively minor in the scheme of things, and we do not now have a territorial act for gas systems. The

water services issue, we believe, is predominately a rural water district versus city issue, and we already have a statute on that. The remaining big issue is electric utility services, also covered by an existing law. To at least narrow the confusion, and deal with the important issues, we suggest the Committee consider the introduction of two new bills, both amendatory of the existing statutes.

Others will comment on the electric utility issue, so I will confine the remainder of my remarks to the matter of city and rural water district relationships.

Water Districts. Let me first briefly summarize the provisions of this statute, enacted in 1968 and reproduced at the end of this report:

(1) The city takes title to the RWD property upon payment to the district of a mutually agreed-upon amount; and

(2) Upon disagreement, the city determines the amount, but the RWD may bring an action in district court "to determine the reasonableness of the amount of compensation."

(3) In addition to paying for the physical assets, the city may pay a portion of the indebtedness of the district properly attributable to the annexed area.

We emphasize the provision for judicial determination of "reasonableness." I assume the intent of SB 428 is not to require the city to pay something more than what is "reasonable."

Frankly, we are not sure we understand the problem. One conferee last week stated that a city wanted to pay only the depreciated value of the RWD water lines, but planned to consider

using those lines. I assume this unnamed RWD found this adequate, or they would have appealed the city's determination to the court.

If the issue is that the city does not pay the RWD for facilities the city will never use, this matter can be addressed as an amendment. If it is the timing of the payment, this also can be addressed. I have not had an opportunity to discuss these policy matters with a League committee, but the following addition to K.S.A. 12-527 might be considered as a starting point:

> "Such payment shall be made to the district whether or not the annexing city utilizes the facilities of the district for the delivery of city water to its residents and shall be paid at a time not later than the date the city provides city water to one or more customers of the district existing at the time of annexation, or at such later date as may be mutually agreed upon or as may be determined by the district court. The city shall, as part of its service extension plan required under K.S.A. 12-520b and K.S.A. 12-521c, notify each affected rural water district of its future plans for the delivery of water currently being served by the district."

Finally, I would note that if the objective is to protect the interests of the public as well as water districts, perhaps we should open up the whole area. There are a number of cities that would like to renegotiate their long-term contracts to wholesale water to rural water districts.

66-1,173. Rights and responsibilities of retail electric suppliers; prohibitions. Every retail electric supplier shall have the exclusive right and responsibility to furnish retail electric service to all electric consuming facilities located within its certified territory, and shall not furnish, make available, render or extend its retail electric service to a consumer for use in electric consuming facilities located within the certified territory of another retail electric supplier: *Provided,* That any retail electric supplier, with the approval of the commission, may extend distribution or transmission facilities through the certified territory of another retail electric supplier, if such extension is necessary for such supplier to connect with any of its facilities or those of others to serve consumers within its own certified territory.

History: L. 1976, ch. 284, § 4; July 1.

66-1,174. Certain retail electric suppliers subject to commission jurisdiction. A municipally-owned or operated retail electric supplier shall be subject to commission jurisdiction as a public utility, as defined in K.S.A. 66-104, with respect to all operations within its certified territory extending more than three (3) miles beyond its corporate limits. A municipal retail electric supplier shall be subject to regulation by the commission in matters relating to the right to serve in the territory within three (3) miles of the corporate city boundary, except that the commission shall have no jurisdiction concerning such retail electric supplier within its corporate limits.

History: L. 1976, ch. 284, § 5; July 1.

Cross References to Related Sections:

Commission's authority to approve rate changes, see 12-808a.

66-1,175. Agreements between retail electric suppliers authorized; commission approval required. Notwithstanding the exclusive right of retail electric suppliers to provide service within the certified territories established pursuant to this act, a retail electric supplier may enter into an agreement with another retail electric supplier for the establishment of boundaries between territories other than the boundaries established pursuant to this act or providing electric service to electric consuming facilities as between such retail electric suppliers. Any agreement entered into pursuant to this section shall be subject to approval by the corporation commission. If so approved, the commission shall issue certificates accordingly.

History: L. 1976, ch. 284, § 6; July 1.

66-1,176. Termination of service rights in annexed areas; certification to existing supplier or franchise holder. All rights of a retail electric supplier to provide electric service in an area annexed by a city shall terminate one hundred eighty (180) days from the date of annexation, unless said electric supplier is then holding a valid franchise for services in said area granted by the annexing city. Said period of one hundred eighty (180) days shall be extended to two hundred ten (210) days from the date of annexation if a franchise is granted to said retail electric supplier pursuant to referendum conducted according to applicable franchise laws of the state of Kansas within said period of two hundred ten (210) days. In the event service rights are terminated pursuant to this section, the commission shall certify such annexed area as a single certified territory to the supplier holding a franchise for or then providing retail electric service in the city immediately prior to the annexation.

History: L. 1976, ch. 284, § 7; July 1.

12-527. Annexation of lands located in water districts; title to facilities; agreement; compensation; bonded debt. Whenever a city shall annex lands located within a rural water district organized pursuant to the provisions of K.S.A. 82a-612 *et seq.*, title to all facilities used for the transportation or utilization of water belonging to the water district shall vest in or become the property of the city upon payment by the city to the water district of the value of such property, as agreed by the governing body of the city and the board of directors of the district, or if such agreement is not made, then as determined by the city: *Provided,* That the board of directors of any such district may bring an action in the district court to determine the reasonableness of the amount of compensation fixed and determined by any such city. The governing body of the city and board of directors of the district may provide, on such terms as may be agreed, that water transmission facilities owned by the district and located within the city may be retained by the district for the purpose of transporting water to customers outside the city. In addition to compensation for such physical facilities the city may pay to the water district an amount equal to that portion of outstanding indebtedness of the district which is properly attributable to the portion of the water district annexed by the city.

History: L. 1968, ch. 80, § 1; July 1.

12-528. Same; bonds; limitations; use of other funds. If deemed necessary, the city is hereby authorized to issue general obligation or revenue bonds of the city without an election for approval thereof, and may use water utility funds as are available for the purpose of making any payments authorized herein. Bonds issued under authority of this section shall not be subject to any limitation on the aggregate amount of bonds authorized to be issued by the city for any purpose nor shall bonds issued hereunder be subject to any such limitation.

KANSAS MUNICIPAL UTILITIES, INC.

Comments on: SB 428
Before Senate Local Government Committee
January 29, 1986

Mr. Chairman, members of the Committee, I am Louis Stroup, Jr., executive director of Kansas Municipal Utilities, Inc., a statewide association of municipal electric, gas and water cities.

KMU is strongly opposed to SB 428, a distruptive measure that would lead to a hodgepodge of services within communities that in the long run would not be beneficial to the residents.

You've heard a lot of rhetoric today, but I would suggest there are 2 basic issues involved in this bill:

(1) Are some of the rural electric cooperatives (RECs) trying to back out of an agreement they made with the other segments of the electric industry and the Kansas Legislature 10 years ago, and

(2) When cities annex, are there inequities in the method of compensating other entities for existing facilities in the newly annexed areas -- such as electric distribution lines, water distribution facilities or fire equipment -- and the affects of annexation on outstanding financing of those facilities.

Because of the shortness of time, I will limit my comments basically to the first issue mentioned.

For those of you who were not here in the early and mid-1970s, some background is needed to understand our strong opposition to this measure.

(Attachment V)
1/29/86 S. L G

Prior to 1976, municipal electric systems could serve any loads within a 3-mile radius of their city limits and private power companies and RECs operated in both single and dual--overlapping service territories and were guided in disputes by wire stringing rules issued by the Kansas Corporation Commission.

REC officials approached KMU early in the 1970s and requested our support for their proposal to provide "single certified territory" for all electric utilities within the state. We did support the bill, but only with the insistance that it contained an annexation provision that would allow a city to determine who would serve in newly annexed areas. The RECs agreed to that provision and it is contained in current state law: K.S.A. 66-1,176 (copy attached). A number of the private power companies insisted upon the annexation provision, too -- especially Kansas Power & Light.

Following unsuccessful attempts to get the measure passed, the proposal was placed before the Interim Committee on Transportation & Utilities in 1975 and subsequently all 3 segments of the electric industry were instructed by legislators to try and reach a compromise and following a series of industry-wide meetings and other meetings between the RECs and municipals with KPL, an agreement (compromise) was reached and resulted in the passage of the Retail Electric Suppliers Act of 1976. The act contained the annexation provision, at KMU and KPL's insistance, and with full agreement of the RECs.

To support our position, I've attached a copy of a November 14, 1975, letter from then general manager of Kansas Electric Cooperatives, Charles Ross, to then chairman of the interim committee, Senator Bob Storey, which shows the RECs agreed to the annexation provision and understood its future ramifications.

Again, I would like to stress that municipal-electric cities gave up a tremendous amount of territory -- from $2\frac{1}{2}$ to 3 miles radius around to reach this agreement with the RECs. If the annexation provision had not been part of the bill, there would not have been a territoral act.

There are more than 600 cities in Kansas and 128 are served by municipally-owned and operated electric systems. I would submit there has been very few disputes over annexation by these cities in the last 10 years -- the certification act has and is working. KMU's president, Jack Davis, director of utilities in Ottawa, will testify later that his city has not had a problem with annexation with Kansas City Power & Light, a utility which surrounds the city on all sides.

There are a great many other reasons why we strongly oppose this measure and I've listed them on attachments to this material because of the small amount of time available for testimony. I've also attached some material that gives you some indication that RECs may be gaining more customers from municipal electric systems than they are losing to annexations.

In conclusion, I would like to make 2 comments:

(1) I feel the main reason behind the RECs attempt to break their 10-year-old agreement that led to the passage of the territorial bill is because in many cases they are no longer competitive rate-wise with many municipal electric systems and private power companies.

Some of the RECs are saddled with the high cost of energy from Sunflower's Holcomb's plant and others are partners in the $3.05 billion Wolf Creek nuclear plant. They feel a pinch -- but that is no justification to try and back out of the agreement. We hold them to the agreement reached in good faith 10 years ago.

(2) If this committee feels there are inequitites in the reimbursement for facilities in newly annexed areas and there are problems with outstanding financing for entities already serving annexed areas, then we stand ready to help work out a plan that would be fair to both sides. I feel this is the major problem area to focus on -- not the "stay put" aspects of SB 428 that are being requested by some RECs.

Attachment A

KANSAS ELECTRIC COOPERATIVES, INC.

5709 WEST 21ST STREET • TOPEKA • AC 913 272 8740

MAILING ADDRESS P.O. BOX 4267 • GAGE CENTER STATION • TOPEKA, KANSAS 66604

CHARLES ROSS
General Manager

November 14, 1975

Senator Bob W. Storey, Chairman & Members
Interim Committee on Transportation & Utilities
State Capitol Building
Topeka, Kansas 66612

Mr. Chairman and Members of the Committee:

The following information is presented as an official report to the Transportation and Utilities Interim Study Committee by the rural electric cooperatives of Kansas. This report relates to the several meetings that have taken place between representatives of investor-owned electric companies, municipal systems and rural electric cooperatives over the past several weeks regarding single certification of service territories for all retail electric suppliers in Kansas.

On July 17, 1975 Senator Storey and Representatives Harris and Weaver met with representatives of investor-owned electric companies, municipal systems and rural electric cooperatives on the fifth floor of the State Capitol Building. Chairman Storey advised those in attendance that it was the desire of the Interim Legislative Committee for electric utilities to meet together in an attempt to reach a mutually agreeable position on territorial service legislation. Chairman Storey further stated that House Bill 2047, as amended, was not to be studied by the Interim Committee during the summer. He did state however, that if agreement among the electric utilities was not reached, House Bill 2047, as amended, would be considered and action taken on the bill in the 1976 session of the Kansas Legislature.

At that meeting on July 17, 1975 speaking for the rural electrics, I advised all in attendance that the RECs would cooperate fully in any meetings with investor-owned companies and municipal systems in attempting to resolve legislation that would be fair and equitable for the division of service territories throughout the state. Further I personally telephoned Mr. Charles W. Edwards, Executive Vice President of Central Telephone & Utilities (Western Power Division) to establish a potential date and place for an initial meeting.

On August 13, 1975 corporate officials of each of the six investor-owned companies, three representatives of the rural electrics and three representatives of municipal systems met together in Topeka. The investor-owned companies (particularly KPL) listed nine issues they wanted considered in

the deliberations. The RECs listed one issue. Several of the issues listed by KPL were already included in the language of House Bill 2047, as amended. It was discovered, after some confusion and after it was called to the attention of the investor-owned company representatives, that the version of House Bill 2047 they had was not the latest and therefore several of their listed issues were not germane. After listening to a lecture from a representative of the investor-owned companies, we agreed that further meetings would be held and dates were set for three such meetings.

On September 3rd, 17th and 30th, meetings were held at various locations. Several issues were discussed and some were at least tentatively resolved. However, at each successive meeting, representatives of investor-owned companies would suggest new schemes for dividing service territories rather than agreeing to division on an equidistance basis between existing electric distribution lines.

I must note here that of the 32 known states that do now have delineated service territories for retail electric suppliers within their boundaries, the general basis for such delineation has been equidistance between existing electric distribution lines. This concept allows each electric supplier to retain the service areas each has respectively developed. House Bill 2047, as amended, encompasses this same concept because it is the most fair and equitable method possible. Under this concept, undeveloped territory is maintained in closest proximity to the present facilities of each respective retail power supplier.

At the conclusion of the September 30th meeting another tentative meeting was scheduled for October 22nd, provided the RECs would agree to consider an annexation proposal. RECs have always contended that the present statutes pertaining to the issuing and granting of utility franchises by cities do apply and there is no need to add annexation provisos to House Bill 2047, as amended. Under present franchising statutes cities have the power to grant or deny a franchise to an electric utility which may have a part of its in-service facilities annexed into a city. If a franchise is denied, the annexed utility must give up its facilities and rights to service in the annexed area to the electric utility which is already franchised to serve in that city. NOTE: Although it would have been to our great benefit, Kansas RECs have never attempted to include language in House Bill 2047 which would mandate that an REC absolutely retain the right to continue service in an annexed area. Several state legislatures have adopted such a provision relating to service territory integrity. Pennsylvania and South Dakota are two states that adopted such legislation in 1975. It would have been to the RECs advantage to include such a provision in House Bill 2047, as amended, since most annexations include REC services. The investor-owned companies currently are franchised in most cities in Kansas and it is difficult for an REC to obtain a franchise to continue to serve in areas which do become annexed. Since RECs have made heavy investments to provide service in areas that become annexed, they would like to continue to serve. We understand why local units of government - the cities themselves - want to have the right to decide which electric utility or utilities are to provide electric service within their incorporated boundaries. This is the principle of present franchise statutes and we subscribe to this principle although it is an issue that we could logically have included in House Bill 2047 to the detriment of the IOUs.

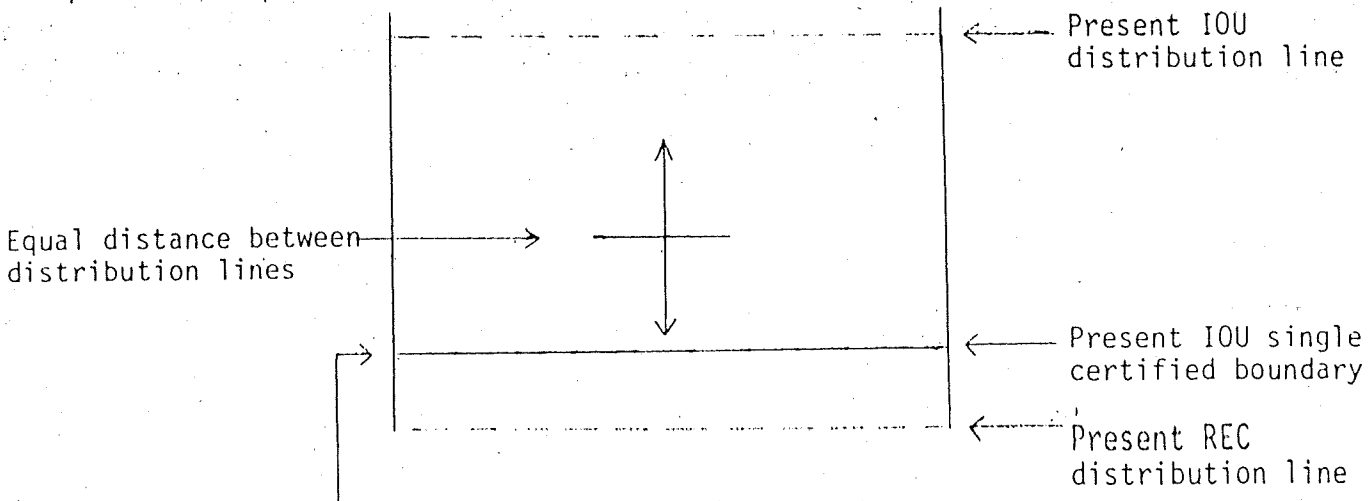
On October 8, 1975 I personally contacted and arranged a meeting with Mr. Bal Jeffrey, Chairman of the Board of KPL to discuss with him a possible annexation provision. Mr. Jeffrey had previously insisted that annexation had to be included in legislation. As a result of this meeting with Mr. Jeffrey another meeting between the three electric entities was scheduled for November 3, 1975. Mr. Jeffrey could not meet on the previously tentatively scheduled date of October 22, 1975.

On November 3, 1975 a final meeting took place in Kansas City, Missouri between representatives of investor-owned companies, municipal systems and rural electrics. At this meeting REC representatives informed the other participants we would agree to a time limit to be included for obtaining a franchise from a city which had annexed areas served by an REC. We pointed out that Mr. E. A. Mosher, Executive Director of the League of Municipalities, had proposed in writing that a time limit for obtaining a franchise after annexation might logically be set at up to two years.

Various periods of time from 30 days up to two years allowable for obtaining a franchise after annexation were discussed at the meeting. However, before agreement was reached, investor-owned representatives again injected a new proposal for dividing service territories. The new wrinkle they insisted on would be to measure from the outside edge of their present single certified territory boundaries equidistance to the closest existing distribution line of an REC. They insisted on this concept even though their nearest distribution line might be a considerable distance inside their single certified service territory boundary.

As REC representatives we said,"We agree that you can retain your present single certified territories as they relate to a division of territory between RECs even though your now existing distribution lines may be a considerable distance inside the boundary of your single certified territories. However, when an RECs nearest distribution line is closer to an IOUs present single certified territory boundary than an IOUs distribution line, the IOUs present single certified boundary should become the dividing line." The investor-owned representatives refused to agree to this fair concept. They insist on more.

Example of concept to which RECs have agreed:



Because IOUs would be allowed to retain their present single certified territories, we agree the dividing line between IOU and REC would be here.

Additionally, the investor-owned representatives have not agreed to divide service territories equal distance between their present distribution lines and a municipal systems present distribution lines when a municipal system has a distribution line already located within an IOUs present single certified territory and is now serving customers. This is inspite of the fact that municipal systems under provisions of House Bill 2047, as amended will forfeit their present right to serve anyone they choose within a three mile radius of said municipal system.

As a result of this stalemate, the November 3rd meeting adjourned without agreement and with no further scheduled meetings.

However, on November 12, 1975 after discussing unresolved matters with rural electric leaders throughout the state, I attempted to contact Mr. Bal Jeffrey by telephone to arrange another possible meeting with him. If the RECs are to make any further compromises, the investor-owned companies must make some key concessions if agreement is to be reached. A meeting did not take place as Mr. Jeffrey was out of the state the entire week.

Mr. Chairman, and members of the committee, the rural electrics said we would cooperate in meeting with representatives of the investor-owned companies and municipal systems. We have kept that promise. Throughout these negotiations we negotiated in "good faith" in an attempt to get issues settled. We made concessions and compromised. We believe others must compromise too. In the process of these meetings the rural electrics have agreed to two fundamental issues that are not now included in House Bill 2047, as amended.

1. As it relates to rural electrics, we agree that in division of territory, RECs will not take any of the investor-owned companies present single certified service territories even though division of territory on an equidistance basis between existing distribution lines might actually cut through such present single certified territories.

2. We have agreed to place a time limit for obtaining a franchise from cities which annex REC services. We are willing to agree to a period of up to 180 days after such annexation or immediately following a franchise referendum conducted by a city for such purpose.

We are agreeable to inclusion of these two provisions in House Bill 2047, as amended.

The municipal electric utilities have likewise made a concession. The present House Bill 2047, as amended, entirely excludes municipal systems from jurisdiction of the Kansas Corporation Commission except for territory. As an addition, municipal representatives have stated they would agree to remain under complete jurisdiction of KCC outside the three mile radius of their corporate limits just as they are now by state statute.

The rural electrics are willing to cooperate in further negotiations with the investor-owned companies. However, from our experiences of recent weeks we are uncertain as to whether they want to resolve this issue at all. Because of the circumstances, we must return this matter to the attention of the legislature.

Mr. Chairman and members of the committee on the basis of this report, the rural electrics respectfully request that the Interim Committee on Transportation and Utilities recommend that the present House Bill 2047, as amended, be recommended favorable for passage to the 1976 session of the Kansas Legislature. In the spirit of "good faith" we agree that the provisions agreed to by the RECs and municipal systems as outlined in this letter should be included as amendments to the present House Bill 2047, as amended. We also respectfully request that the committee consider deletion of Section 6B of House Bill 2047, as amended. In our discussions, investor-owned utilities tentatively agreed that the present language in Section 6B should be eliminated.

The public interest of the people of the state of Kansas will best be served when the matter of delineating service territories for all retail electric suppliers in the state is accomplished fairly and equitably.

To each member of the committee, we sincerely thank you for your interest and cooperation on this issue, and ask for your favorable vote to recommend House Bill 2047, as amended, to the 1976 Kansas legislature favorable for passage.

Cordially,

Charlie

Charles Ross
General Manager

CR:dh

Attachment B

TESTIMONY ON HOUSE BILL 2047 AS AMENDED BEFORE THE SENATE TRANSPORTATION AND UTILITIES COMMITTEE, FEBRUARY 10, 1976

Mr. Chairman, and members of the Committee, My name is Charles Ross. I am General Manager of the Kansas Electric Cooperatives, Inc., the statewide association of all rural electrics in Kansas who serve more than 119,000 consumer members with electricity.

House Bill 2047 as amended is compromise legislation supported by most of the electric utility industry in Kansas.

Mr. Chairman, you will recall that, as Chairman of the Summer Interim Transportation and Utilities Study Committee, you requested representatives of all segments of the electric industry in Kansas to meet with you on Thursday, July 17, 1975, relating to territorial legislation. Consequently, representatives of each of the investor owned companies, the municipal electric utilities, and rural electrics did meet on Thursday, July 17, here in the Statehouse with you, Representative Fred Harris and Representative Fred Weaver. At that meeting, Mr. Chairman, you suggested that representatives of the electric utility industry attempt to reach agreement on proposed legislation relating to service territories. You further stated that if agreement could not be reached House Bill 2047 as amended would be considered by the 1976 session of the Legislature.

As a result of your July 17 request, Mr. Chairman, a series of five negotiating sessions were held between the corporate heads of each of the six investor owned companies, representatives of the municipal systems, and representatives of the rural electrics.

Some resolvement progress was made in these five sessions, but agreement between all entities involved did not occur. Therefore, the Transportation and Utilities Interim Study Committee received two reports at its final meeting on November 18, 1975. Mr. Charles W. Edwards issued his report as a representative of the investor owned companies, and I made a report on behalf of the rural electrics. It was evident to the committee that basic issues had not been resolved at that time.

On about December 1, 1975, I called Mr. Balfour Jeffrey, Chief Executive Officer of Kansas Power and Light Company, to inquire of him if the investor owned companies would like to meet further to discuss and negotiate issues in an attempt to reach a compromise that could be supported by all segments of the industry. Within a few days Mr. Jeffrey got back to me and said he had contacted the corporate heads of the other investor owned companies and most indicated they had no desire to meet further on the issues. Consequently, I asked Mr. Jeffrey if he, representing Kansas Power and Light Company, would like to meet further to discuss unresolved issues. He assured me he would. Therefore, several meetings between Mr. Jeffrey and representatives of the rural electrics took place through the next several weeks. Compromises were agreed to by the parties involved, including the Kansas Municipal Utilities.

Mr. Jeffrey agreed to advise the corporate heads of the other investor owned companies of any progress being made and concepts being considered. I believe he did just that, so that representatives of the entire industry were apprised of compromise agreements being considered.

This is the compromised process through which House Bill 2047, as further amended, progressed. It has required a great amount of time and determined effort by several people. No entity is totally satisfied with all of its provisions, but most of the industry has agreed to support it. It is the same legislation that merited the support of the House of Representatives, with an overwhelming 109 to 15 vote.

House Bill 2047 providesexactly what most other states have already accomplished because of legislation, and what most state Public Service Commissions endorse as effective regulation. Under the jurisdiction of the Kansas Corporation Commission, each retail electric supplier will be assigned specific service territories. All of the state will will be so assigned to eliminate future disputes among suppliers and confusion among consumers.

Mr. Chairman, and members of the committee, I respectively remind you again that it was the legislature itself that directed the Kansas electric industry to work together to resolve the issue of electric service territories. Most of the industry has fulfilled that directive through this compromise legislation. Now I respectfully ask this committee to recommend House Bill 2047 in its present form without any additional amendments to the full Senate favorable for passage.

Thank you Mr. Chairman and members of the committee for your interest and your support.

66-1,176. Termination of service rights in annexed areas; certification to existing supplier or franchise holder. All rights of a retail electric supplier to provide electric service in an area annexed by a city shall terminate one hundred eighty (180) days from the date of annexation, unless said electric supplier is then holding a valid franchise for services in said area granted by the annexing city. Said period of one hundred eighty (180) days shall be extended to two hundred ten (210) days from the date of annexation if a franchise is granted to said retail electric supplier pursuant to referendum conducted according to applicable franchise laws of the state of Kansas within said period of two hundred ten (210) days. In the event service rights are terminated pursuant to this section, the commission shall certify such annexed area as a single certified territory to the supplier holding a franchise for or then providing retail electric service in the city immediately prior to the annexation.

History: L. 1976, ch. 284, § 7; July 1.

Attachment D

Previous testimony may have given the impression that Great Plains Cooperative and Victory Electric have been harmed by recent annexations by Colby and Dodge City respectively. Colby is a municipal system and Dodge City is served by Centel, a private power company. Therefore, I have provided the Committee with the customer loss or gain record during the 5-year period from 1979 through 1984 as shown below:

	*VICTORY ELECTRIC Dodge City	*GREAT PLAINS REC Colby	CITY OF COLBY**
1984	3,387 (+40)	3,890 (-38)	2,707 (-8)
1983	3,347 (+22)	3,928 (-44)	2,715 (+89)
1982	3,325 (+28)	3,972 (-28)	2,626 (+21)
1981	3,297 (+89)	4,000 (+89)	2,605 (-4)
1980	3,208 (+68)	3,911 (+14)	2,609 (+10)
1979	2,599	3,897	2,599
	Since 1979 +247 customers	Since 1979, -7 customers	Since 1979, +108 customers

* Source: Kansas Electric Cooperative Directories for those years published by KEC

**Source: Municipal Utilities Annual Reports for those years published by League of Kansas Municipalities

Attachment E

Although there might be some inclined to let you think RECs are losing lots of customers via annexation, KMU submits that RECs have been very aggressive in recent years in trying to either take over entire cities or serving all or part of their loads. The reasons may vary in individual cases, but KMU would like to point out the following:

CITIES RECENTLY TAKEN OVER BY RECs:

Ellis	No. of customers	1,014
Protection	No. of customers	400
Wilson	No. of customers	523
		1,937

CITIES TO WHICH RECs SELL TOTAL ENERGY REQUIREMENTS:

Garden City	No. of customers	8,795
Anthony	No. of customers	1,981
Kiowa	No. of customers	777
Lakin	No. of customers	948
		10,520

CITIES WHICH PURCHASE SOME POWER FROM RECs:

Colby	No. of customers	2,787
Johnson City	No. of customers	661
LaCrosse	No. of customers	934
Meade	No. of customers	986
Oakley	No. of customers	1,288
		8,637

Exhibit F

The city of Olathe for years has been served by 2 electric suppliers: KPL and KCPL. City officials assert that there is much confusion and many problems with such a set-up. A few of the problems are listed below:

(1) There is much confusion among the general public (residents) as to who their electric supplier is and the city gets many calls from citizens asking who serves them. The city must then determine by location which company is the responsible supplier.

(2) A great deal of confusion comes when customers need service -- they don't know which utility to call.

(3) The city has to operate under 2 different franchise agreements and conduct separate franchise negotiations.

(4) The biggest problem comes in the area of econmic development. Rates differ and causes confusion among developers, realators; there are problems in zoning because one side of town is played against the other, etc.

THE CITY OF OTTAWA

CITY HALL

(913) 242-2190

OTTAWA, KANSAS 66067

January 29, 1986

Senator Don Montgomery, Chairman
Kansas Senate Committee on Local Government
Topeka, Kansas

Re: Public Hearing; SB 428
Granting of Franchises
Following Annexations

Dear Mr. Chairman:

I am Jack Davis, Director of Utilities for the City of Ottawa, Kansas and President of the Kansas Municipal Utilities Association. I am representing both the City of Ottawa and the Kansas Municipal Utilities Association in opposition to SB 428.

The City of Ottawa strongly believes that service extension restrictions mandated on any municipal utility or service in newly annexed areas would have counter-productive implications and would not be in the best interest of the annexed property owners and/or customers. Problems that would be created by passage of this law include inconsistent service, maintenance and rates, an inevitable occurrence when several utility companies provide the same service in different sections of the community, and inefficiency resulting from administrative and maintenance duplications ultimately leading to higher utility rates. This hodge-podge approach to utility service appears to actually duplicate efforts by utility companies to efficiently and effectively provide service, which is contrary to the intent of the bill.

(Attachment VI)

1/29/86 S. 46

During the past ten years and before, when annexations have taken place in the City of Ottawa, we have never experienced difficulty in working out an equitable purchase of equipment with the investor-owned electric utility which entirely surrounds our City, namely Kansas City Power and Light. The City of Ottawa believes that the present Retail Electric Suppliers Act of 1976 has been uniformly applied by our community which has established and maintained an electrical generation and distribution facility for over 80 years.

The City has invested a great deal of time, effort and financing toward planning utility services which meet current customer needs as well as future customer demands. **Case in point:** Presently, Ottawa is considering a contract to furnish water to the small community of Princeton, Kansas, located six miles south of Ottawa. Between Ottawa and Princeton there is an existing Rural Water District. The City is planning to extend a 12-inch water main beyond its City limits to connect with the existing Rural Water District system in order to supply the City of Princeton with desparately needed water. This extension will also provide additional capacity for future development in the area immediately south of the City limits, a prime area for growth in Ottawa because of its location at the intersection of I-35 and U.S. 59. If SB 428 becomes law, there will be no incentive for the City of Ottawa to cooperate in this project by extending its water system due to the possibility of the area being franchised by that Rural Water District thereby prohibiting the city from ever recovering (through future water sales) the extension costs.

Ottawa, and many other cities in Kansas, have worked hard to establish healthy municipal utility and service delivery systems designed to meet current and future needs; to serve customers responsively; and to improve the community's economic development potential. SB 428 will stifle the ability of cities to realize the benefits of careful utility planning, will create utility services that are unresponsive to and not in the best interest of the customer; and because of inconsistency of services, will limit a City's ability to be competitive in economic development.

Jack E. Davis
Director of Utilities, City of Ottawa
& President, Kansas Municipal Utilities, Inc.

TESTIMONY BEFORE

SENATE LOCAL GOVERNMENT COMMITTEE

SB 428

January 29, 1986

BY

DANIEL R. McGEE

Mr. Chairman and Members of the Committee:

My name is Dan McGee, and I work for Centel Corporation/Western Power, which has administrative offices in Great Bend, Kansas. Thank you for the opportunity to speak in opposition to SB 428.

I believe that SB 428 will disrupt orderly development of retail electric service in Kansas. Cities must have the ability to grow, and as they grow, serious consideration should be given to a reasonably priced and adequate supply of electricty. As cities annex new areas, they assume responsibility for services within those areas. These services include police protection, fire protection and utility services. The citizens of annexed areas should have the same quality of services as enjoyed by other citizens of the city. The city is responsible for insuring this quality of service and with this responsibility the city should have the right to franchise the utility they feel can best provide the quality of service desired. The present law allows this choice. City planners should be allowed to decide who will be granted franchises to provide electric service in annexed areas.

Centel would like to point out that the Retail Electric Suppliers Act of 1976 came about as a result of the legislature directing the electric utility industry to work together to resolve the issue of electric service territories. This was done and the resulting law has served Kansas well for 10 years.

(Attachment VII)
1/29/86 S. LG

We contend that existing statutes concerning franchises for electric service are adequate to facilitate the public convenience and necessity; and that they do minimize disputes between retail electric suppliers.

My company is opposed to SB 428.

Session of 1986

SENATE BILL No. 428

By Special Committee on Local Government

Re Proposal No. 45

12-17

AN ACT concerning cities; relating to granting of franchises following annexation.

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

Section 1. Whenever any city shall annex any land, the governing body of the city shall not be authorized to duplicate or extend municipal facilities to provide services which are being ~~provided in the annexed area by any person, firm or corporation, which requests a franchise from the city~~ provided in the annexed area by any person, firm or corporation.

The governing body of the city shall not refuse to grant a franchise to any person, firm or corporation, then providing services in the annexed area, which shall take effect and become valid within 180 days of the annexation, upon reasonable terms and conditions, under K.S.A. 12-2001 *et seq.*, and amendments thereto. Whenever a valid petition is presented to the governing body of the city calling for the franchise to be submitted for adoption to popular vote as provided by paragraph (6) of subsection (a) of K.S.A. 12-2001, and amendments thereto, the special election called for adoption of the franchise shall be set within 200 days of the effective date of annexation.

~~Sec. 2. This act shall take effect and be in force from and~~ after its publication in the Kansas register.

Delete Line 25

Sec. 2 This act shall not require the obtaining of a franchise by any public utility which is not otherwise required by law to obtain a franchise to operate within the limits of a city or municipality.

Sec. 3. This act shall take effect and be in force from and

(ATTACHMENT VIII) S.428 1/29/86

STATEMENT

ON BEHALF OF

KANSAS ELECTRIC COOPERATIVES, INC.

TO THE

SENATE LOCAL GOVERNMENT COMMITTEE

SB 428

JANUARY 29, 1986

The attached statement is submitted for your information and for inclusion in the Committee record.

Kansas Electric Cooperatives, Inc. is a statewide trade association with membership consisting of 35 rural electric cooperatives (two generation and transmission cooperatives and 33 distribution cooperatives) serving Kansas.

(Attachment IX) S. 428

1/29/86

TESTIMONY BEFORE

SENATE LOCAL GOVERNMENT COMMITTEE

SENATE BILL NO. 428

JANUARY 29, 1986

BY

DENNY D. BURGESS

KANSAS ELECTRIC COOPERATIVES, INC.

Mr. Chairman and Members of the Committee:

I am Denny Burgess representing the Kansas Electric Cooperatives, Inc. The issues addressed by Senate Bill 428 are the same ones which were raised during the interim session, therefore I will not repeat all the testimony which we offered previously. You all have access to the interim committee's report for background material.

There are three points that I want to make today:

First, we support this legislation because it will protect the consumers of our state from the unncessary expense of duplicating facilities and resources to provide electric service.

Second, it is our desire to retain our service rights in the territory which we have been assigned. It is not our desire to encroach or invade the service territories of other retail electric suppliers.

Third, it is not our intention to deter municipal annexation but it is our intention to prevent our service territories from being taken due to the cities refusal or neglect to grant a franchise.

This bill simply provides that upon annexation the city may not duplicate or extend electric facilities to provide service

when an electric supplier, which is already offering service in the annexed area, requests a franchise to continue serving.

We are sincerely pleased that the interim committee devoted its time and attention to the serious issues which are addressed in Senate Bill 428. We would urge you to take favorable action on this bill.

Committee of . . .

Kansas Farm Organizations

Kathy Peterson
Legislative Agent
2301 S.W. 33rd Street
Topeka, Kansas 66611
(913) 267-4356

TESTIMONY SUPPORTING SB 428

Senate Local Government Committee

January 29, 1986

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you this morning in support of Senate Bill 428 recommended by your Interim Committee. My name is Kathy Peterson and I represent the Committee of Kansas Farm Organizations.

The CKFO has gone on record in unanimous support of the bill you're considering this morning. It may be of interest to you that before the CKFO takes a position on an issue, it must be the result of a unanimous vote by the 21 members. Those members who make up the CKFO are: The Associated Milk Processors, the Kansas Agri-Women, the Kansas Association of Soil Conservation Districts, the Kansas Association of Wheat Growers, the Kansas Cooperative Council, the Kansas Corn Growers Association, the Kansas Electric Cooperatives, the Kansas Ethanol Association, the Kansas Farm Bureau, the Kansas Fertilizer and Chemical Association, the Grain and Feed Dealers Association, the Kansas Livestock Association, the Kansas Livestock Marketing Association, the Meat Processors Association, the Kansas Pork Producers Council, the Kansas Seed Dealers Association, the Kansas Sheep Association, the Kansas Soybean Association, the Kansas State Grange, the Kansas Veterinary Medical Association and the Mid-America Dairymen.

Mr. Chairman, the Committee of Kansas Farm Organizations understands that annexation is a fact of life. That is not to be disputed or argued, although some rural residents would probably like to do so. Our concerns in annexation lie with the burden imposed on the residents not being annexed. When cities bring residents into their boundaries, they leave the remainder of the residents with diminished numbers with whom they can share the cost of essential services, such as electricity and water. These residents are threatened with ever increasing costs of essential services when there are fewer people to share the costs with.

Annexations threaten the ability of these entities to continue providing adequate and affordable services to the rural residents.

A fair and equitable solution to the problem is found in SB 428. Rural interests as well as urban interests are served by this legislation. We urge its passage.

(Attachment X)
1/29/86 S. LG

KANSAS ASSOCIATION OF REALTORS®

Executive Offices:
3644 S. W. Burlingame Road
Topeka, Kansas 66611
Telephone 913/267-3610

TO: THE SENATE LOCAL GOVERNMENT COMMITTEE

FROM: KAREN MCCLAIN, DIRECTOR, GOVERNMENTAL AFFAIRS

DATE: JANUARY 29, 1986

SUBJECT: ANNEXATION

ON BEHALF OF THE KANSAS ASSOCIATION OF REALTORS®, I APPEAR TODAY TO OPPOSE SB 427, AND TO SUPPORT THE ABILITY OF CITIES AND MUNICIPALITIES TO ANNEX LAND.

THIS IS A TIME WHEN KANSAS IS MAKING STRIDES IN IMPROVING ITS IMAGE AND ENCOURAGING ECONOMIC GROWTH. THE KANSAS ASSOCIATION OF REALTORS® IS COMMITTED TO GROWTH AND ECONOMIC DEVELOPMENT, SO COMMITTED, THAT WE, AS AN ASSOCIATION GAVE $2,000 TO THE KANSAS ECONOMIC DEVELOPMENT STUDY, CO-SPONSORED BY STATE AND PRIVATE FUNDS, WHICH WAS DONE BY THE INSTITUE FOR PUBLIC POLICY AND BUSINESS RESEARCH AT KANSAS UNIVERSITY. WE BELIEVE IN AND ARE ACTIVE PARTICIPANTS IN THE GROWTH AND IMPROVEMENT OF THIS STATE.

ACCORDINGLY, WE FEEL IT IS VERY IMPORTANT TO DO ANYTHING AND EVERYTHING POSSIBLE TO HELP PROVIDE ANY REASONABLE MEANS TO HELP KANSAS GROW AND EXPAND. THE KANSAS ASSOCIATION OF REALTORS® FEELS VERY STRONGLY THAT THE PROPOSED CHANGES IN THE ANNEXATION PROCEDURES OF THE STATES WILL DO NOTHING BUT STUNT THE POTENTIAL GROWTH OF THE CITIES OF THIS STATE.

IT IS TYPICALLY THE URBAN AREAS WHICH LEAD THE WAY IN THIS GROWTH. THESE PROPOSALS, WHETHER THE BOUNDARY COMMISSION OR THE COUNTY COMMISSION APPROACH, WILL EFFECTIVELY PUT FENCES AROUND URBAN AREAS. LEFT TO THE DECISION OF THE PERSONS LIVING ON THE EDGE OF A CITY, THE ODDS OF A CITY EXPANDING ARE VERY SLIM. YET CITIES NEED TO TAKE IN EXTRA LAND, NOT TO INCREASE THEIR TAX BASE, BUT TO ENABLE THEM TO PROVIDE THE RESOURCES FOR NEW BUSINESSES WHICH ARE LOOKING FOR PLACES TO LOCATE, THROUGH PROVIDING LAND AND STREETS FOR NEW BUSINESSES, AND ALSO BY BEING ABLE TO CREATE THE TAX INCENTIVES WHICH BUSINESSES LOOK FOR AND WHICH CITIES IN OTHER STATES CAN OFFER.

(ATTACHMENT XI) 1/29/86
S.L.G

THE KANSAS ASSOCIATION OF REALTORS® HAS ALWAYS REPRESENTED THE RIGHTS OF PROPERTY OWNERS. HOWEVER, WE ALSO RECOGNIZE THAT THERE ARE TIMES WHEN THE RIGHTS OF INDIVIDUAL PROPERTY OWNERS ARE OUTWEIGHED BY THE GOOD OF THE COMMUNITY. THIS IS ONE OF THOSE RARE TIMES. EVERYONE IN A COMMUNITY BENEFITS WHEN THERE ARE OPEN OPPORTUNITIES AND ATTITUDES FOR GROWTH, EVEN THOUGH IT MAY BE TEN YEARS AFTER AN ANNEXATION, THAT THE LAND IS USED. GROUNDWORK FOR GROWTH SOMETIMES BEGINS WELL AHEAD OF THE END PRODUCT. THE CITIES CANNOT LEAVE THAT GROUNDWORK IN THE HANDS OF SOMEONE ELSE.

IN CONCLUSION WE ASK THAT YOU DO NO PASS SB 427 OUT OF THIS COMMITTEE, EITHER IN ITS PRESENT FORM, OR WITH THE COUNTY COMMISSION APPEAL.

A XII

CITY OF KANSAS CITY, KANSAS

ONE CIVIC CENTER PLAZA
KANSAS CITY, KANSAS 66101
(913) 573-5017

DENNIS M. SHOCKLEY
FEDERAL AND STATE AFFAIRS

January 28, 1986

Senator Don Montgomery, Chairman
Senate Committee on Local Government
State House
Topeka, Kansas 66612

Dear Senator Montgomery:

The City of Kansas City, Kansas opposes S.B. 428. The bill has an inherent flaw in that new citizens of a city through annexation cannot benefit from city furnished utility rates which normally are cheaper than those of a publically held utility.

When citizens in urban areas around cities are annexed, their taxes go up since they then pay city taxes which they previously had escaped. In return, they receive city services, fire, police, public works, etc., and city utility services if the city in question has such services. In Kansas, there are 131 cities with municipal electric systems, 67 cities with municipal gas systems and at least 531 cities with municipal water distribution systems.

To tell recently annexed citizens that they cannot share in all the benefits of citizenship in the city is blatantly unfair. A city resident is entitled to city services.

We recommend that your committee report S.B. 428 unfavorably.

Sincerely,

D. M. Shockley

Dennis M. Shockley
Director of Federal & State Affairs

DMS:jdh

cc: Senator Steineger
Senator Mulich

(Attachment XII)
1/29/86 S. LG

COMMENTS OF KANSAS CITY POWER & LIGHT COMPANY
IN SUPPORT OF PROPOSED SENATE BILL NO. 428

Kansas City Power & Light Company (KCPL) supports proposed Senate Bill No. 428 because it would close a loophole in the current system of allocating service territories among the suppliers of electric utility services in the State of Kansas.

K.S.A. 66-1,171 establishes as the public policy of the State of Kansas the "division of the state into territories within which retail electric suppliers are to provide the retail electric service" so as to avoid wasteful duplication of electric facilities and minimize disputes between retail electric suppliers. Pursuant to that policy, K.S.A. 66-1,172 provides for the division of Kansas into electric service territories, including areas served by municipal retail electric suppliers, within which only one supplier shall provide retail service "and any such territory. . .shall be certified to such retail electric supplier by the commission and such area shall be provided retail electric service exclusively by such supplier." K.S.A. 66-1,172 also contains a "grandfather clause" which provides for a freezing of service territories existing at the time of the effective date of that section--"each retail electric supplier shall continue to have the right to serve all customers being served by it on the effective date of the act."

Although municipal electric suppliers are specifically included in this territorial allocation, K.S.A. 66-1,174 makes it clear that the Kansas State Corporation Commission does not have any jurisdiction over retail electric service provided within the

corporate limits of municipalities. Under K.S.A. 66-1,174 the jurisdiction of the KCC extends only to matters relating to the right of the municipality to serve up to 3 miles beyond its corporate boundaries, and to all aspects of utility operations provided beyond that three mile limit. Furthermore, K.S.A. 66-1,176 provides that "all rights of a retail electric supplier to provide electric service in an area annexed by a city shall terminate one hundred eighty (180) days from the date of annexation, unless said electric supplier is then holding a valid franchise for services in said area granted by the annexing city."

This, then, is the loophole in the system of territorial allocation which has been established for Kansas. Although municipal electric suppliers are specifically included within that system, municipalities can evade its clear intent and purpose merely by the device of annexing the area within which the municipality desires to provide service. KCPL believes that this loophole should be closed by the adoption of proposed Senate Bill No. 428 because annexations for the purpose of extending municipal retail electric service would lead to the very wasteful duplication of facilities and disputes between retail electric suppliers the system of territorial allocation was intended to eliminate.

In addition, such annexations can be very harmful to the remaining customers of the utility which loses the annexed service territory because it is they who will ultimately be required to pay for the consequences resulting from that loss of business. One of the essential purposes behind the system of territorial allocation

was to avoid such consequences, as noted by the Supreme Court of Kansas in Kansas Power & Light Company vs. State Corporation Commission, 699 P.2d 53 (1985). In that case, the Supreme Court held that (699 P.2d at 59):

> The grandfather clause of K.S.A. 66-1,172 provides C&W protection to continue to service its customers within KP&L's exclusive territory. We are convinced, however, such protection does not apply to new uses and new demands. We find the purpose of the grandfather clause is to protect the investment of utilities which have previously built lines and facilities and rendered service in a territory awarded by RESA exclusively to another. To authorize such an encroaching utility to build new lines and expand its service in the territory within which it is permitted to continue to serve by sufferance is in direct conflict with the express purpose and goal of RESA to avoid duplication. [emphasis added]

KCPL also supports the adoption of proposed Senate Bill No. 428 because annexations for the purpose of extending municipal electric service are inherently unfair and are not in the public interest. They are unfair because municipal electric systems have an inherent competitive advantage over investor-owned utilities due to their tax exempt status. Municipal property used for utility purposes is exempt from property taxes; income earned by municipal electric systems is exempt from both federal and state income taxes; and municipals can more easily and more cheaply raise capital for their municipal electric systems because of the tax exempt status of the interest paid on municipal bonds. In effect, then, electric service provided by municipalities is directly subsidized by the taxpayers. It is not in the public interest to allow a tax subsidized provider of electric services to take customers away from an investor-owned provider of such services, especially when the remaining customers

of that investor-owned utility will bear the financial consequences of that loss of customers. Municipal utility operations are not given tax exempt status so that they can more effectively supplant utility services being provided by others.

Two final comments should be made. First, line 0034 of proposed Senate Bill No. 428 should be amended to read:

> "tion (b) of K.S.A. 12-2001, and amendments thereto, the special"

This is necessary to correct an apparent typographical error.

Second, to avoid possible conflict with K.S.A. 66-1,176 the following language should be added to the end of the first paragraph of proposed Senate Bill No. 428, at line 0025:

> "which requests a franchise from the city, unless done as a result of the operation of the last sentence of K.S.A. 66-1,176.

This added language will make clear that if the required granting of the franchise in the annexed area to the previous supplier of electric services in the annexed area is defeated in a special election, the first paragraph of proposed Senate Bill No. 428 will not preclude operation of the last sentence of K.S.A. 66-1,176, if the "supplier. . .then providing retail electric service in the city immediately prior to the annexation" happens to be the municipality itself.

Tom Sloan

January 24, 1986

Senator Don Montgomery
Chairman, Local Government Committee
Room 503N, State Capital
Topeka, Kansas 66612

Dear Senator Montgomery:

In Committee, discussions on SB 427 regarding annexation have focused on several issues, principally regarding who should be the final arbitor regarding the propriety of a particular proposed annexation. As Chairman of Douglas County Rural Water District #1, I wish to detail a few of our experiences regarding annexation. I hope that this may be of interest and benefit the committee deliberations.

The City of Lawrence has annexed an area known as Western Hills which lies within the boundries of Rural Water District #1. A review of existing statutes regarding the rights of public utilities involved inadvertently in annexation proceedings revealed K.S.A. 12-520b, requiring a "statement setting forth the plans of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city at the time of annexation, setting forth the method by which the city plans to finance the extension of such services to such area. Such statement shall also include a timetable of the plans for extending each major municipal service to the area annexed." K.S.A. 12-527 also includes the statement "Whenever a city shall annex lands located within a rural water district .... title to all those facilities used for the transportation or utilization of water belonging to the water district shall vest in or become the property of the city upon payment by the city to the water district of the value of such property..."

Because the City of Lawrence would not specify its intentions regarding the provision of services to the newly annexed Western Hills, an area which encompasses in excess of 30% of the patrons of Water District #1, it was impossible for the District to construct a budget for our fiscal year 1986. Without knowing if we would be able to continue serving the patrons of Western Hills for one month, six months, a year, or more we could not rationally determine either a capital expenditure budget or an operating budget for the district as a whole. Consequently, an opinion was requested from the Attorney General regarding the time in which the annexing city must purchase the rural water district facilities as provided by K.S.A. 12-527.

In Opinion 85-166, the Attorney General determined that the annexing city must purchase the water lines under "the reasonable

(Attachment IVX)
1/29/86 S. L G

time rule" and that under certain conditions the "reasonable time" may even be infinitely long. Unfortunately for the water district this opinion left unresolved several important issues. The obvious one regards the budget making problems alluded to above, how can a responsible Board of Directors make intelligent budget decisions when the annexing city denies them the information necessary for prudent management. In our own instance, we have increased the water rates for our patrons beyond what would be necessary if we knew Western Hills patrons would remain on our system for a definate period. A second issue regards the time in which the city must reimburse the district for the annexed water lines. In our case, a date and amount of payment would permit us to avoid an increase in the water rate because part of such payment could have been used to continue the daily operation of the district. Rural water districts do not have much growth potential by the nature of the population dispersion throughout the rural area. The loss of more than 120 water meters can be catastrophic to District #1. The entire long term viability of the District is threatened. It is not just the loss of Western Hills, but the near-term projected annexation path of Lawrence, as indicated by the City Manager in a meeting with the Board of District #1, threatens to capture over 50% of our patrons within the next few years. We do not question the right or need of the city to grow, however we do question the lack of protection for rural utilities which cannot continue to provide necessary services at rates which the "surviving" patrons can afford. Rural water districts serve large numbers of elderly and farmers, neither can afford to pay utility rates which are necessarily increased beyond "reasonable" limits because annexing cities are not required to meet the reimbursement provisions of existing statutes.

The individual citizens affected by annexation have testified to their concerns regarding the annexation process, our concerns are for the ability of one governement unit (the city) to impact on another (the water district) without regard to the detrimental impact on the rural utility and the remaining patrons of that district. Protections for both governmental bodies should be the objective of the Legislature. We request a clarification of the time in which the annexing city must purchase the affected utility facilities and some discussion about the question of city liability in the instances where annexation threatens the continued viability of the rural utility.

I appreciate your consideration of our comments.

Sincerely,

Thomas J. Sloan

Dr. Thomas J. Sloan
Chairman, Board of Directors

454	425
Fiscal Note	Bill No.

1986 Session
February 11, 1986

The Honorable Donald Montgomery, Chairperson
Committee on Local Government
Senate Chamber
Third Floor, Statehouse

Dear Senator Montgomery:

SUBJECT: Fiscal Note for Senate Bill No. 425 by Special Committee on Local Government

In accordance with K.S.A. 75-3715a, the following fiscal note concerning Senate Bill No. 425 is respectfully submitted to your committee.

Senate Bill No. 425 establishes definitions for a special benefit district, the fringe area of a city and the type of city involved; the criteria for creating or enhancing special benefit districts within the fringe area of a city; and the procedure for appealing the board of county commissioners' decision.

Passage of this bill has fiscal implications for certain local units of government and special benefit districts. However, the impact will vary with the specific situation and sufficient information is not available at this time to provide a reliable estimate.

Gary L. Stotts
Acting Director of the Budget

GLS:JS:dh

445	426
Fiscal Note	Bill No.

1986 Session
February 6, 1986

The Honorable Donald Montgomery, Chairperson
Committee on Local Government
Senate Chamber
Third Floor, Statehouse

Dear Senator Montgomery:

SUBJECT: Fiscal Note for Senate Bill No. 426 by Committee on Local Government

In accordance with K.S.A. 75-3715a, the following fiscal note concerning Senate Bill No. 426 is respectfully submitted to your committee.

This bill makes the provisions of Senate Bill No. 427 concerning the conditions for annexation of agricultural land; the conditions of notice, site and time for a public hearing to consider an annexation; and those annexations which were opposed by the landowners of annexed lands retroactive to all annexations having taken place after August 15, 1985.

The fiscal implications of this bill are contingent upon passage of Senate Bill No. 427 and will vary from jurisdiction to jurisdiction. Accordingly, a reliable estimate of the fiscal impact of passage cannot be made.

Gary L. Stotts
Acting Director of the Budget

GLS:JS:ks

401 | 427

Fiscal Note | Bill No.

1986 Session

January 29, 1986

The Honorable Donald Montgomery, Chairperson
Committee on Local Government
Senate Chamber
Third Floor, Statehouse

Dear Senator Montgomery:

SUBJECT: Fiscal Note for Senate Bill No. 427 by Special Committee on Local Government

In accordance with K.S.A. 75-3715a, the following fiscal note concerning Senate Bill No. 427 is respectfully submitted to your committee.

This bill revises the definition of land used for agricultural purposes, and how much agricultural land may be annexed by city ordinance. The bill also provides further specifications concerning location of the public hearing and the entities to be contacted concerning the hearing on an annexation issue. In addition, this bill includes a right to petition provision for the landowners of the land in question through the mechanism of a boundary commission. The criteria for a boundary commission is set forth in the new Section 4 and states that the commission shall be composed of five members: two from the board of county commissioners; two from the governing body of the city; and an impartial fifth member who shall be the chairperson. The members of the commission are to be paid subsistence, mileage, and other expenses as provided for in K.S.A. 75-3223 and amendments thereto.

The bill takes effect upon publication in the Kansas Register.

Passage of this bill has fiscal implications for cities. However, reliable estimates are not possible as the impact will vary from city to city depending upon the number of related annexations proposed and the community response to those actions.

Gary Stotts
Acting Director of the Budget

GS:JS:dh