

Approved February 12, 1986
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 February 11, 1986 in room 531-N of the Capitol.

All members were present except:

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

Conferees appearing before the committee:

Senator Mulich moved to adopt the minutes of the meetings of February 5, 6 and 10. Senator Bogina seconded the motion. The motion carried.

A letter from Otis Morrow, City Attorney of Arkansas City, in response to a letter from Mrs. Charles Kielhorn is attached to these minutes. (Attachment I)

A ballon of the amendments on H.B. 2117 was presented. (Attachment II)

By consensus of the Committee the bill was amended in Section 1, part (5) to 21 acres. Section 1, (d), the definition of "Plat" would be inserted.

Senator Winter moved to amend the bill on page 2, land that is totally enclaved by the city can be annexed unilaterally. Senator Mulich seconded the motion. The motion carried.

A motion by Senator Bogina struck all of the language from lines 87 thru 217 of H.B. 2117. This section allowed for the protest petition and the hearing before the Board of County Commissioners. Senator Mulich seconded the motion. After discussion by the Committee. The vote was taken and the motion carried.

In section 4 of the amendment, section (b) concerning the detailed service plan, Senator Bogina moved to strike the word "may" and insert "shall" after maintained "equal to or better than", would be inserted. The same changes would be made in section 5. Senator Winter seconded the motion. The Motion carried.

New Section 6 thru 11 were adopted by conceptual motion.

New Section 12 this section of the bill would make this legislation retroactive to September 1, 1985. Senator Winter moved to strike this section. Senator Mulich seconded the motion. The motion failed.

A new balloon of the bill will be presented to the Committee tomorrow.

The meeting adjourned until February 12, 1986, at 9:00 a.m.



Senator Don Montgomery

Date: February 11, 1986

GUEST REGISTER

SENATE

LOCAL GOVERNMENT

NAME	ORGANIZATION	ADDRESS
Todd Epp	KTWW-TV	Topoka
Carel Wheeler Sester	KTWW-TV	Topoka
Judy Anderson	Wichita	Wichita
Kevin Davis	League of Ks Muni.	Topoka
Jim Kauf	League of Municipalities	Topoka
Frank Bentema	CAUA	Topoka Ks
G. T. Saper	MISSION TWP	4342 SW URISH RD
M. Heaven	Topoka	C41-J441
WB Danner	Topoka	J. Battenberg
BERNARD J. DUNN J.D.	DISPUTE ALTERNATIVE RESOLUTION CENTER, LTD.	3600 SW BURLINGAME RD SUITE 1A, TOPEKA KS 66611
Jim McKinnon	Senior Citizens	Wamego Ks
Cleo McKinnon	" "	" " Ks
Phil Anderson	BUDGET DIVISION	TOPEKA
Dorothy Cnaway	CAUA	Topoka
Rita Fairbanks	CAUA	Topoka
Clyde S. Foust	CAUA	Topoka
KAREN McCLAIN	KS. ASSOC. OF REALTORS	TOPEKA
DENNIS STACKLOV	CITY OF KCK	KCK
Pruth Wiebin	AAUP	Topoka
Der Bradley	Ks Assoc of Counties	Lawrence

Albee *ent*

OTIS W. MORROW
ATTORNEY AT LAW
THE CORNISH BUILDING - 125 WEST FIFTH AVENUE
P. O. Box 1146
ARKANSAS CITY, KANSAS 67005-1146
316-442-6010

February 7, 1986

Senator Joe Warren
State Senate Building
State Capitol
Topeka, Kansas 66612

Dear Senator Warren:

Attorney Jim Kaup has forwarded to my office a copy of a letter sent to you by Mrs. Charles Kielhorn, dated January 23, 1986, pertaining to the recent annexation conducted by the City Commission in the early part of 1986.

The City of Arkansas City has not conducted any extensive annexation since 1970-71, when Crestwood and Summit Acres, both of which are residential developments, were annexed. Since that time other residential areas have been developed which adjoin the City limits to the East and to the Northwest. These are the areas that the Planning Commission and the City Commission have considered in the recent annexation hearings and work sessions.

The area to the Northwest of the City is the location of the new high school facilities. The high school facility was constructed approximately five years ago and at the time, requested annexation of the school property in order to allow the City to furnish city utilities of water and sewer. As a result of this public facility, a residential area immediately to the West, commonly referred to as Timberlane Estates, has been developed. This development adjoins the City and because of other vacant properties in the area, it is projected that additional residences will be built in close proximity to the high school, its athletic fields, and proposed expansions. Mrs. Kielhorn has purchased property in Timberlane Estates and has purchased additional property undeveloped in this area. City utilities are only a street width (15th Street) away from this development.

(ATTACHMENT I)
2/11/86

S. L. G.

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The other area which the Commission has recently annexed is commonly referred to as Fountaine Tracts, Boyer Heights, and Forewood Subdivisions. These three areas all adjoin the City limits to the East and contain very nice residential houses. Fountaine Tracts still contain undeveloped property for additional housing.

The City has developed a service plan for extension of City utilities to these areas considered for annexation and/or annexed. Some of the proposed expansion of utility services (such as the sewer lift station over the Walnut River to the East) has been incorporated in the City's Capital Improvement Plan.

The issue and consideration of annexation has been discussed and debated by the Planning Commission and the City Commission for the past five years. There have been numerous work sessions conducted by the Planning Commission asking for public input over the past five years. There have been numerous work sessions conducted by the City Commission upon receiving, in the year 1985, the Planning Commission's recommendation for annexation. I am enclosing copies of newspaper articles which set forth in a chronological sequence these work sessions and other considerations of the Planning Commission and the City Commission. One of the primary considerations of the City Commission has been the fact that the assessed valuation of property of the City (which is utilized in formulating the amount of debt financing the City can do to support public projects) has declined as compared to the assessed valuation of residential areas which adjoin the City limits as herein above named. These residential areas have available all of the City parks, streets, and other public conveniences which are paid for through the City's General Fund and yet these individuals are not contributing by way of ad valorem taxation. It will be of great financial advantage to the City to acquire the substantial increase in assessed property valuation. The receipt of tax dollars is projected to be an "even wash" with the City's services which will be immediately provided, such as police, fire, and street maintenance.

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The local committee of Senate Local Government Committee should be further advised that the Planning Commission is comprised of individuals volunteering their time and representing diverse groups of people and/or industries. The following is a list by name and occupation of the Planning Commission, including two individuals who are non-residents of the City:

J. E. McNickol, retired engineer, Kansas, Gas and Electric Company;
Howard King, retired engineer, Gas Service Company;
Steven Long, Chief Engineer and Assistant Manager, Total Petroleum Company;
Dorothy Smith, housewife and office worker;
Charles Ramirez, local restaurant owner;
Herb Harding, owner, bowling alley establishment;
Bruce Watson, instructor, Cowley County Developmental Services;
Rod Marrs, farmer;
Jim Salomon, executive, Peabody, Gordon & Piatt;
E. Rodney Iverson, attorney;
Charles White, vocational technical school instructor; Cowley County Community Junior College.

The City Commission is comprised of five elected officials, who also represent diverse groups of citizens and differing occupations. They are listed as follows:

Mayor Mark D. Paton, vending company owner;
Commissioner Bob Mathews, Vice President, Union State Bank;
Commissioner E. W. Shelton, superintendent of maintenance, Cowley County Community College;
Commissioner Jesse Kindred, jewelry store owner;
Commissioner Lee A. Gregg, Jr., Certified Public Accountant, owner.

Mrs. Kielhorn's allegation in regards to a financial consideration of a Commissioner and one of his banking customers is false.

In addition to the news coverage as to the various work sessions that were conducted by either the Planning Commission or City Commission, I further enclose editorials from

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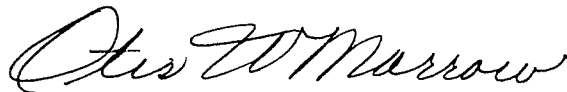
the local papers which further proves the "open door" policy the City has utilized in considering this difficult issue. There is no question that individuals may each feel some detrimental effect from annexation but the City Commission, in viewing the issue as for the common good of the whole community, has in reference to the first phase of annexation voted unanimously in favor thereof.

The Committee should be advised that we do not have county-wide zoning in Cowley County and the City Commission is aware that they have the availability to zone within three miles of the City limits and we may consider that. Annexation is not a necessity to control the development around our boundaries.

Cowley County has struggled with county-wide zoning for the past several years and in fact, two years ago implemented county-wide zoning only to have these actions repealed by the present County Commissioners. Because of the county actions over the past several years, and believing that the county was striving for zoning controls, the City has not implemented three mile zoning. Because of the County Commissioners' recent actions, the City may consider three mile zoning in addition to annexation.

City officials would make themselves available to testify as to the necessity of unilateral annexation or to testify to support the actions this City has taken in connection to more recent annexation.

Yours truly,



OTIS W. MORROW
City Attorney

OWM:gg
Enclosures

cc: Senator Donald L. Montgomery
✓ E. A. Mosher, Executive Director
League of Kansas Municipalities

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 1985

HOUSE BILL No. 2117

By Representatives Barr, Brown, Laird, Littlejohn,
D. Miller and Smith

1-30

0022 AN ACT concerning municipalities; relating to annexation;
0023 amending K.S.A. ~~12-520~~ and repealing the existing section;
0024 [K.S.A. 1984 Supp. 12-520a and repealing the existing sec-
0025 tions.]

12-519, 12-520, 12-520b and 12-521

0026 *Be it enacted by the Legislature of the State of Kansas:*

See Section 1, attached.

0027 ~~Section 1.~~ K.S.A. 12-520 is hereby amended to read as fol-

Sec. 2.

0028 lows: 12-520. (a) Except as otherwise hereinafter provided, the

0029 governing body of any city may by ordinance *may* annex land to

a tract of

0030 such city if any one or more of the following conditions exist:

tract of

0031 (a) (1) The land is platted, and some part of ~~such the land~~

tract

0032 adjoins the city.

0033 (b) (2) The land is owned by or held in trust for the city or

, except no plat or tract of land in excess of 41 acres shall be annexed under this condition

0034 any agency thereof.

0035 (c) (3) The land adjoins the city and is owned by or held in

tract of

0036 trust for any governmental unit other than another city, except

0037 that no city may annex land owned by a county which has

a tract of

0038 primary use as a county-owned and operated airport, or other

0039 aviation related activity, without the express permission of the

0040 board of county commissioners of ~~such the~~ county.

0041 (d) (4) The land lies within or mainly within the city and has

tract of

0042 a common perimeter with the city boundary line of more than

0043 fifty percent (50%) 50%.

tract of

0044 (e) (5) The land if annexed will make the city boundary line

0045 straight or harmonious and some part thereof adjoins the city,

tract

0046 except no land in excess of ~~twenty (20) 20~~ acres shall be annexed

21

0047 for this purpose.

(Attachment II)
2/11/86 S. LG

Section 1. K.S.A. 12-519 is hereby amended to read as follows: 12-519. As used in this act: (a) "Tract of land" means a single unit of real property under one ownership, outside the corporate limits of a city, which may be platted and/or or unplatted, title to which is publicly or privately held by an owner as defined by subsection (c) herein.

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

~~(e)~~ (b) "Owner" means the one who has record title to a tract of land. In the event two ~~(2)~~ or more persons have record title to a tract of land, "owner" shall be defined as follows:

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

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

~~(e)~~ (d) "Plat or platted" means a tract of land mapped or drawn to scale, showing a division or divisions thereof, which map or drawing is filed in the office of the register of deeds by the owner of such tract.

~~(f) -- "Agricultural purposes" as applied to the use of land means the planting, cultivation and harvesting of crops and/or raising and feeding of livestock for profit.~~ (e) "Land devoted to agricultural use" means land, regardless of whether it is

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

0048 (f) (6) The tract is so situated that two-thirds (~~2/3~~) 2/3 of any
0049 boundary line adjoins the city, except no tract in excess of twenty
0050) 20 acres shall be annexed under this condition.

of land

21

0051 (g) (7) The land adjoins the city and a written petition for or
0052 consent to annexation is filed with the city by the owner.

tract of

0053 No ~~[portion of any]~~ unplatted tract of land of fifty-five (55) 55
0054 acres or more which is used only for agricultural purposes shall
0055 be annexed by any city under the authority of this section
0056 without the written consent of the owner thereof. In order to
0057 prevent piece meal annexation, no city shall annex any portion
0058 of such agricultural land without the written consent of the
0059 owner thereof.

Unless a tract of land is entirely within the city, having a common perimeter of 100% with land incorporated within the city, no portion of any tract of land devoted to agricultural use in excess of 41 acres shall be annexed by any city without the written consent of the owner thereof.

0060 Whenever any city shall ~~annex~~ annexes any land under the
0061 authority of subsection (b) of this section paragraph (2) of this
0062 subsection which does not adjoin the city, tracts of land adjoining
0063 the land so annexed shall not be deemed to be adjoining the city
0064 for the purpose of annexation under the authority of this section
0065 until ~~such~~ the adjoining land or the land so annexed adjoins the
0066 remainder of the city by reason of the annexation of the inter-
0067 vening territory.

tract of

tract of

0068 No city shall be authorized to annex the right-of-way of any
0069 highway under the authority of this section unless at the time of
0070 ~~such~~ the annexation the abutting property upon one or both sides
0071 thereof is already within the city or is annexed to the city in the
0072 same proceeding.

0073 The governing body of any city may by one ordinance may
0074 annex one or more separate tracts or lands each of which con-
0075 forms to any one or more of the foregoing conditions. The
0076 invalidity of the annexation of any tract or land in one ordinance
0077 shall not affect the validity of the remaining tracts or lands which
0078 are annexed by ~~such~~ the ordinance and which conform to any
0079 one or more of the foregoing conditions.

land

of

Nothing in this section shall be construed as authorizing a city to annex a portion of a plat or tract of land if the city cannot annex the entire plat or tract of land by the adoption of one ordinance pursuant to this section.

0080 Any owner of land annexed by a city under the authority of this
0081 section may subsection, within thirty (30) 30 days next following
0082 publication of the ordinance annexing ~~such~~ the land, may
0083 maintain an action in the district court of the county in which
0084 ~~such~~ the land is located challenging the authority of the city to

a tract of

tract of

0085 ex such lands the land and the regularity of the proceedings
 0086 had in connection therewith.

tract of

0087 (b) If, within 60 days after the last publication of an annex-
 0088 ation ordinance, a petition signed by at least 5% of the qualified
 0089 voters residing within the area proposed to be annexed is filed
 0090 with the county election officer, the land shall not be annexed
 0091 until the proposal has been submitted for approval at an elec-
 0092 tion by the qualified voters residing within the area proposed to
 0093 be annexed. Except as provided herein, the election shall be held
 0094 at the next school district or county primary or general election.
 0095 Notice of the election shall be given in the manner provided by
 0096 the general election law. If there is no school district or county
 0097 primary or general election within 60 days after the petition is
 0098 filed, then the question shall be submitted by a mail ballot
 0099 election in the manner provided by K.S.A. 25-431 et seq., and
 0100 amendments thereto. A 51% majority vote against the proposal
 0101 shall be required to defeat the proposal. the owners of not less
 0102 than 51% of the property within the area proposed to be annexed
 0103 and by not less than 51% of the property owners in such area is
 0104 filed with the county clerk who shall certify that the petition
 0105 contains the names of the owners of not less than 51% of the
 0106 property within the area proposed to be annexed and the names
 0107 of not less than 51% of the property owners in such area. The
 0108 petition shall: (1) Be addressed to the board of county commis-
 0109 sioners in which the land sought to be annexed is located; (2)
 0110 contain the names of property owners within the area sought to
 0111 be annexed, including a general description of the boundaries of
 0112 their property; (3) request that the board of county commission-
 0113 ers deny the petition for annexation.

area

0114 Upon certification of the petition by the county clerk, the
 0115 board of county commissioners shall fix a date and give notice of
 0116 a public hearing to be held thereon. The date fixed for such
 0 public hearing shall be not less than 30 days following the date of
 0 certification of the petition requesting denial of the annexa-
 0119 tion. Notice of the time and place of the hearing, together with a
 0120 legal description of the land sought to be annexed and the names
 0121 of the owners thereof, shall be published in the official county

tract of

0120 newspaper or any other newspaper of general circulation in the
 0121 county, not less than one week and not more than two weeks
 0124 preceding the date for such hearing. The hearing shall be held at
 0125 the county courthouse in the county where the petition is filed.

0126 Notice of receipt of the petition requesting denial of annexa-
 0127 tion shall be sent by certified mail to the city proposing annexa-
 0128 tion. At least five days prior to publication of the notice of the
 0129 hearing, notice of such hearing shall be sent by certified mail to
 0130 the city proposing annexation, to the township in whose bound-
 0131 aries the territory proposed to be annexed lies and to the prop-
 0132 erty owners in the area proposed to be annexed.

0133 The hearing shall be conducted in a judicious manner, pre-
 0134 sided over by the ~~chairman~~ of the board of county commission-
 0135 ers. The hearing may be adjourned from time to time. Time shall
 0136 be set aside for the proponents of the proposed annexation to be
 0137 heard and to present documentary evidence and briefs support-
 0138 ing the contention that the annexation should be allowed. Fol-
 0139 lowing the time set aside for proponents, time shall be set aside
 0140 for the opponents of the proposed legislation to be heard and to
 0141 present documentary evidence and briefs supporting the con-
 0142 tention that the annexation should be denied. All those wishing
 0143 to be heard and to present documentary evidence or briefs shall
 0144 be allowed to do so.

0145 ~~As a guide in determining the advisability of the proposed~~
 0146 ~~annexation, the board of county commissioners shall consider~~
 0147 ~~the following factors among others:~~

0148 ~~[(1) Extent to which any of the land is used for agricultural~~
 0149 ~~crop production, nursery stock, truck gardening or animal hus-~~
 0150 ~~bandry;~~

0151 ~~[(2) tax impact upon property in the area;~~

0152 ~~[(3) extent of residential development which has been in~~
 0153 ~~existence for 20 years or longer;]~~

0154 ~~(1) Population [(4) Present and prospective population] and~~
 0155 ~~population density of the area proposed to be annexed;~~

0156 ~~(2) [(5)] area of platted land relative to unplatted and assessed~~
 0157 ~~value of platted land relative to assessed value of unplatted~~
 0158 ~~areas; [land;]~~

chairperson

0150 (3) [(6)] likelihood of significant growth in the area and in
 0160 adjacent areas during the next five years;
 0161 (4) [(7)] the present cost and adequacy of governmental ser-
 0162 vices and [regulatory] controls in the area;
 0163 (5) [(8)] the proposed cost, extent and necessity of govern-
 0164 mental services to be provided by the city proposing annexation
 0165 and the estimated length of time to extend 100% of such services;
 0166 (6) ~~present level of direct reliance of the area upon services~~
 0167 ~~provided by the city proposing annexation;~~ [(9)] extent to which
 0168 the residents of the area are directly or indirectly dependent
 0169 upon the city for governmental services and for social, economic,
 0170 employment, cultural and recreational opportunities and re-
 0171 sources;]
 0172 (7) [(10)] past growth of the area in terms of population and
 0173 the extent of business, commercial and industrial development;
 0174 (8) [(11)] effect of the proposed annexation on adjacent areas,
 0175 including other cities, improvement districts or industrial dis-
 0176 tricts; and
 0177 (9) [(12)] topography, natural boundaries, [storm and sanitary
 0178 sewers,] drainage basins, transportation links, or any other phys-
 0179 ical characteristics which may be an indication of the existence
 0180 or absence of common interest of the city and the area proposed
 0181 to be annexed;]
 0182 [(10) likelihood of the formation of new cities or special
 0183 district governments if the annexation is denied;
 0184 [(11) the date of the city's incorporation and whether the
 0185 current owners of the land proposed for annexation acquired an
 0186 interest in the land after the date of the city's incorporation;
 0187 [(12) whether denial of the annexation will result in the city
 0188 being unable to annex other urbanizing areas in the near future.]
 0189 The board of county commissioners shall render a judgment
 0190 within seven days after the hearing has been adjourned *sine die*.
 0191 If a majority of the board of county commissioners conclude that
 0192 the annexation should be allowed, they shall grant the annexa-
 0193 tion by resolution and the city may proceed to annex the ~~land~~ area by
 0194 ordinance. Orders of the board of county commissioners denying
 0195 petitions for annexation shall require a majority vote of the

See attached insert.

area

The action of the board of county commissioners shall be quasi-judicial in nature. As such, the board shall make specific written findings of fact and conclusions determining whether or not it is in the best interests of all involved to approve the annexation. The findings and conclusions shall be based upon the preponderance of evidence presented to the board. In consideration of the advisability of the annexation, the board shall determine the extent to which the following criteria may effect the area to be annexed, the residents of the area to be annexed, other governmental or quasi-governmental units providing services to the area to be annexed, the utilities providing services to the area to be annexed, and any other such public or private person, firm or corporation which may be effected thereby:

(1) Extent to which any of the area is devoted to agricultural use;

(2) area of platted land relative to unplatted land;

(3) topography, natural boundaries, drainage basins or any other physical characteristics which may be an indication of the existence or absence of common interest of the city and the area proposed to be annexed;

(4) extent and age of residential development in the area to be annexed and adjacent land within the city's boundaries;

(5) present and projected population and population density of the area proposed to be annexed during the next five years;

(6) the extent of past business, commercial and industrial development in the area;

(7) the present cost, methods and adequacy of governmental services and regulatory controls in the area;

(8) the proposed cost, extent and necessity of governmental services to be provided by the city proposing annexation and the plan and schedule to extend 100% of such services;

(9) tax impact upon property in the area;

(10) extent to which the residents of the area are directly

or indirectly dependent upon the city for governmental services;

(11) effect of the proposed annexation on adjacent areas, including but not limited to other cities, fire, sewer and water districts, improvement districts, townships or industrial districts;

(12) existing petition for incorporation of the area as a new city or special district government;

(13) degree of opposition by owners of the land in the area;

(14) effect of annexation upon the utilities providing services to the area;

(15) degree to which the city has provided governmental services to areas previously annexed;

(16) availability of other more suitable area for annexation.

0196 members of the board. When an order denying a petition for
 0 annexation is issued, it shall be by resolution, which shall be
 01s sent by certified mail to the city proposing the annexation. Such
 0199 city may not submit a subsequent petition for annexation of ~~any~~
 0200 ~~portion of the~~ land sought to be annexed for a period of ~~five years~~
 0201 [one year] following the date of receipt of the resolution denying
 0202 the petition for annexation. [Any owner of land or the city
 0203 aggrieved by the decision of the board of county commissioners
 0204 ~~may~~ within 30 days following the issuance of the resolution
 0205 appeal from the decision of the board to the district court of the
 0206 county in which the land is located. The appeal shall be taken in
 0207 the manner and method set forth in K.S.A. 19-223 and amend-
 0208 ments thereto. Any city so appealing shall not be required to
 0209 execute the bond prescribed therein.]

tract of

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, may

tract of

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0210 ~~Any suit, action or other proceeding, judicial or administra-~~
 0211 ~~tive, relating to the power and authority of cities to annex~~
 0212 ~~unincorporated territory which is pending prior to the effective~~
 0213 ~~date of this act shall be subject to the provisions of this act.~~

0214 Notwithstanding any provision of this subsection, a city shall
 0215 be authorized to annex land which adjoins the city and for
 0216 which a written petition for or consent to annexation is filed
 0217 with such city by the owner.

0218 ~~Sec. 2. K.S.A. 12-520 is hereby repealed.~~

0219 ~~[Sec. 2.]~~ K.S.A. 1984 Supp. 12-520a is hereby amended to
 0220 read as follows: 12-520a. (a) The governing body of any city
 0221 desiring to annex land under the authority of K.S.A. 12-520, and
 0222 amendments thereto, shall first adopt a resolution stating that the
 0223 city is considering the annexation of the land. The resolution
 0224 shall:

Sec. 3.

any tract of

shall

tract or tracts of

0225 [(1) Give notice that a public hearing will be held to consider
 0226 the annexation of the land and fix the date, hour and place of the
 0227 public hearing;

0228 [(2) Describe the boundaries of the land proposed to be
 0229 annexed; and

0 [(3) State that the plan of the city for the extension of services
 0231 to the area proposed to be annexed, which is required under the
 0232 provisions of K.S.A. 12-520b, and amendments thereto, is avail-

Unless the governing body of the city determines adequate facilities are not available, the public hearing shall be held at a site located in or as near as possible to the area proposed to be annexed. The hearing shall be held at a time which is most convenient for the greatest number of interested persons;

tract or tracts of

0233 able for inspection during regular office hours in the office of the
0234 clerk.

0235 (b) The date fixed for the public hearing shall be not less
0236 than 60 nor more than 70 days following the date of the adoption
0237 of the resolution fixing the date of the hearing.

0238 [(c) A copy of the resolution providing for the public hearing
0239 shall be mailed by certified mail to each owner of land proposed
0240 to be annexed ~~and to each fire district, rural water supply~~
0241 ~~district and to any other district providing services to the area~~
0242 ~~proposed to be annexed~~ not more than 10 days following the date
0243 of the adoption of the resolution. The resolution shall be pub-
0244 lished in the official newspaper of the city not less than one week
0245 and not more than two weeks preceding the date fixed for the
0246 public hearing. A sketch clearly delineating the area in such
0247 detail as may be necessary to advise the reader of the particular
0248 land proposed to be annexed shall be published with the reso-
0249 lution and a copy thereof mailed to the owner of the property
0250 with the resolution.

any tract of

0251 [(d) At the public hearing, a representative of the city shall
0252 present the city's proposal for annexation, including the plan of
0253 the city for the extension of services to the area proposed to be
0254 annexed. Following the explanation, all interested persons shall
0255 be given an opportunity to be heard. The governing body may
0256 recess, for good cause shown, the hearing to a time and date
0257 certain, which shall be fixed in the presence of persons in
0258 attendance at the hearing.

(e)

0259 [(e) No resolution, notice and public hearing required under
0260 the provisions of this section shall be required as a prerequisite
0261 to the annexation of land owned by or held in trust for the city or
0262 any agency thereof or land all of the owners of which petition for
0263 or consent thereto in writing.

(f)

a tract of

0264 [(f) Any resolution, adopted pursuant to this section, which
0265 includes territory subsequently incorporated pursuant to K.S.A.
0266 115 *et seq.*, and amendments thereto, shall be invalid.

(g)

0267 ~~Sec. 3, K.S.A. 12-520 and K.S.A. 1984 Supp. 12-520a are~~
0268 ~~hereby repealed.]~~

0269 ~~Sec. 3 [4]. This act shall take effect and be in force from and~~
0270 ~~after its publication in the statute book.~~

See Secs. 4 to 14, attached.

(d) A copy of the resolution providing for the public hearing shall be sent by certified mail not more than 10 days following the date of the adoption of the resolution to:

- (1) The board of county commissioners;
- (2) the governing body of the township where the land to be annexed is located;
- (3) any special assessment district or governmental unit providing municipal services to the area proposed to be annexed including, but not limited to, sewer districts, rural water districts, fire districts or improvement districts;
- (4) any utilities providing services to the area proposed to be annexed;
- (5) the governing body of any school district in the area proposed to be annexed;
- (6) any city, county, township or joint planning commission having jurisdiction over the area proposed to be annexed; and
- (7) any other political or taxing subdivision located within the area proposed to be annexed.

Sec. 4. K.S.A. 12-520b is hereby amended to read as follows: 12-520b. The governing body of any city proposing to annex a tract of land under the provisions of K.S.A. 12-520, and amendments thereto, shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the adoption of the resolution provided for in K.S.A. 12-520a, and amendments thereto, prepare a report setting forth such plans. The report shall include:

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

(1) The present and proposed boundaries of the city affected by such proposed annexation;

(2) The present streets, water mains, sewers and other city utility lines, and the proposed extension thereof;

(3) The general land use pattern in the areas to be annexed.

(b) A statement setting forth ~~the plans~~ a detailed plan of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city and the area proposed to be annexed 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. The plan shall state the means by which the services currently provided in the area to be annexed may be maintained at the same level following annexation. The plan shall state those services which shall be provided immediately upon annexation and those services which may be provided upon petition of the landowners to create a benefit district.

The preparation of a plan for the extension of services as hereinbefore required shall not be required for or as a prerequisite to the annexation of land all of the owners of which

petition for or consent to such annexation in writing.

Sec. 5. K.S.A. 12-521 is hereby amended to read as follows:
12-521. Whenever the governing body of any city deems it advisable to annex a tract of land which such city is not permitted to annex under the authority of K.S.A. 12-520 and amendments thereto, the governing body in the name of the city may present a petition to the board of county commissioners of the county in which the tract of land sought to be annexed is located. The petition shall set forth a legal description of the tract of land sought to be annexed and request a public hearing on the advisability of such annexation. The governing body of such city shall make plans for the extension of services to the tract of land proposed to be annexed and shall file a copy thereof with the board of county commissioners at the time of presentation of the petition. Such report shall include:

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

(1) The present and proposed boundaries of the city affected by such proposed annexation;

(2) The present streets, water mains, sewers and other city utility lines, and the proposed extension thereto;

(3) The general land use pattern in the areas to be annexed.

(b) A statement setting forth ~~the plans~~ a detailed plan of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city and area proposed to be annexed 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 plan shall include a timetable of the plans for the extension of major municipal service to the area proposed to be annexed. The plan shall state the means by which the services currently provided in the area to be annexed may be maintained at the same level following annexation. The plan shall state those services which

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

The date fixed for such public hearing shall be not less than ~~sixty-(60)~~ 60 nor more than ~~seventy-(70)~~ 70 days following the date of the presentation of the petition requesting such hearing. Notice of the time and place of ~~saïd~~ the hearing, together with a legal description of the tract or tracts of land sought to be annexed and the names of the owners thereof, shall be published in ~~some~~ a newspaper of general circulation in the city not less than one week and not more than two weeks preceding the date fixed for such hearing.

A copy of the notice providing for the public hearing shall be mailed by certified mail to each owner of the tract of tracts of land proposed to be annexed not more than ~~ten--(10)~~ 10 days following the date of the presentation of the petition requesting such hearing.

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

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

On the day set for hearing, the board of county commissioners shall hear testimony as to the advisability of such annexation, and a representative of the city shall present the city's proposal for annexation, including the plan of the city for the extension of services to the area proposed to be annexed.

If ~~saïd~~ the board ~~shall--be~~ of county commissioners is satisfied that such annexation or the annexation of a lesser amount of such ~~land~~ area will cause no manifest injury to such owners, they shall so find and grant the annexation by order; and thereupon the city may annex the tract or tracts of land by

ordinance. All orders of the board of county commissioners granting or denying petitions for annexation shall be spread at length upon the journal of proceedings of ~~said~~ the board. The failure of such board to spread an order granting annexation upon the journal shall not invalidate such order.

Any owner or the city aggrieved by the decision of the board of county commissioners may appeal from the decision of ~~such~~ the board to the district court of the same county in the manner and method set forth in K.S.A. 19-223, and amendments thereto. Any city so appealing shall not be required to execute the bond prescribed therein.

New Sec. 6. Before any city annexes any tract of land pursuant to K.S.A. 12-520 or K.S.A. 12-521, and amendments thereto, the governing body of the city shall submit its resolution of intent to annex adopted pursuant to K.S.A. 12-520, and amendments thereto, or a copy of the petition submitted to the board of county commissioners pursuant to K.S.A. 12-521, and amendments thereto, to any city, county, township or joint city-county planning commission having jurisdiction over any portion of the area to be annexed. If the annexation is pursuant to K.S.A. 12-520, and amendments thereto, a copy of the resolution of intent to annex shall be submitted to the planning commission within 10 days following the adoption of the resolution by the city. If the annexation is by petition pursuant to K.S.A. 12-521, and amendments thereto, a copy of such petition shall be submitted to the planning commission within 20 days after the date on which the petition was presented to the board of county commissioners. The planning commission shall review the proposed annexation and make a finding of the compatibility or the incompatibility of the annexation with any adopted land use or comprehensive plans applicable to the area to be annexed and the annexing city. A copy of the planning commission's findings shall be sent to the city. If the city is annexing property pursuant to K.S.A. 12-521, and amendments thereto, a copy of such findings shall be filed with the board of

county commissioners at least 20 days prior to the date of the hearing. The planning commission's findings shall be available for public inspection in the office of the city clerk. The failure of a planning commission to issue its advisory report prior to the date required by this section shall not invalidate any annexation commenced under K.S.A. 12-520 or 12-521, and amendments thereto, when the annexing city has complied with the provisions of this section.

New Sec. 7. (a) Five years following the annexation of any tract of land pursuant to K.S.A. 12-520 or 12-521, and amendments thereto, or, where there has been litigation relating to the annexation, five years following the conclusion of such litigation, the board of county commissioners shall call a hearing to consider whether the city has provided the municipal services as provided in the timetable set forth in the plan in accordance with K.S.A. 12-520b or 12-521, and amendments thereto. The board of county commissioners shall schedule the matter for public hearing and shall give notice of the date, hour and place of the hearing.

(b) At the hearing, the board shall hear testimony as to the city's extension of municipal services, or lack thereof, from the city and the landowner. After the hearing, the board shall make a finding as to whether or not the city has provided services in accordance with its service extension plan. If the board finds that the city has not provided services as provided in its service extension plan, the board shall notify the city and the landowner that such property may be deannexed, as provided in section 8, if the services are not provided within two years of the date of the board's findings.

New Sec. 8. (a) If, within 2 1/2 years following the conclusion of the hearing required by section 7, or, where there has been litigation relating to the hearing, two years following the conclusion of such litigation, the city has not provided the municipal services as provided in the timetable set forth in the plan prepared in accordance with K.S.A. 12-520b or 12-521, and

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

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

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

(d) Except as provided by this subsection, after the effective date of the order to exclude the tract of land from the city, it shall not be liable for any general taxes imposed by the

city. Such tract of land shall remain liable, however, for any taxes or special assessments levied by the city as are necessary to pay its proportionate share of the interest and principal of such bonds or other indebtedness incurred by the city for improvements to the tract of land which were approved by the city before the date on which the owner or owners filed a petition for the exclusion of the tract of land from the city.

(e) The board shall not order exclusion of any tract or tracts of land if:

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

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

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

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

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

New Sec. 9. (a) The owner of any tract of land in an area annexed by a city may bring an action in the district court of

the county in which the tract of land is located to compel the governing body of such city to provide the services in accordance with the service plan required by K.S.A. 12-520b or 12-521, and amendments thereto.

(b) The court shall hear testimony as to the city's extension of municipal services, or lack thereof, from both the owner and representatives of the city. If the court finds that the city has failed to provide the municipal services in accordance with the plan and consistent with the timetable therein, the court shall order the city to provide such services or the court may enter an order excluding the tract of land from the boundaries of the city. Any such order shall take effect in the same manner provided in K.S.a. 12-523, and amendments thereto, for the effective date of annexation ordinances. Such tract of land shall not be annexed again for one year from the effective date of the order without the written consent of the owner of the tract of land.

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

(d) Except as provided by this subsection, after the effective date of the order to exclude the tract of land from the city, it shall not be liable for any general taxes imposed by the city. Such tract of land shall remain liable, however, for any taxes or special assessments levied by the city as are necessary to pay its proportionate share of the interest and principal of such bonds or other indebtedness incurred by the city for improvements to the tract of land which were approved by the city before the date on which the owner or owners filed the petition to compel the city to provide such services.

(e) The court shall not order exclusion of any tract or tracts of land if:

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

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

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

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

(f) If the court finds that the city has failed to provide the municipal services in accordance with the plan and consistent with the timetable therein, the court shall order the city to pay all attorney's fees and court costs.

New Sec. 10. Any written agreement entered into between a city and the owner of a tract of land proposed to be annexed by the city which conditions the delivery or extension of municipal water, sewer, electrical, gas or other services to the land on the consent of the owner to annexation on a later date shall be deemed to be a sufficient consent to annexation under K.S.A. 12-520, and amendments thereto, by the owner and any successors in interest. Such agreements shall be filed by the city in the office of the register of deeds of the county where the property is located within 30 days after being executed by all parties.

Any such agreement executed prior to the effective date of this act shall be binding upon the owner and any successors in interest if the agreement is filed by the city in the office of the register of deeds of the county where the property is located within 180 days following the effective date of this act, however, the failure to so file any written agreement within 180 days shall not make such agreement void or otherwise unenforceable. No fee shall be charged for such filing.

New Sec. 11. The governing body of any city annexing property pursuant to K.S.A. 12-520 or 12-521, and amendments thereto, may enter into contractual agreements with the owners of land proposed to be annexed to guarantee the apportionment of the costs of improvements made in the area to be annexed between the city at large and the area to be annexed. The term of such agreements shall not exceed 10 years.

This section shall not preclude the formation of a benefit district to make such improvements upon petition by landowners in the area to be annexed.

New Sec. 12. The provisions of this act shall be applicable to any annexation for which the annexing city has adopted a resolution of intent to annex if proceeding pursuant to K.S.A. 12-520, and amendments thereto, or submitted a petition to the board of county commissioners if proceeding pursuant to K.S.A. 12-521, and amendments thereto, prior to September 1, 1985.

Sec. 13. K.S.A. 12-519, 12-520, 12-520a, 12-520b and 12-521 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the Kansas register.