

MINUTES OF THE Senate COMMITTEE ON Local Government

The meeting was called to order by Sen. Don Montgomery at
Chairperson

9:00 a.m./p.m. on February 13, 1986 in room 531-N of the Capitol.

All members were present except:

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

Conferees appearing before the committee: Senator Merrill Werts, Junction City
Kim Dewey, Sedgwick County
Wendy Schiappa, Manhattan Chamber of Commerce
Dan Harden, Riley County Engineer/Director of
Public Works
Ernie Mosher, League of Kansas Municipalities

The Chairman stated the first order of business was to act on Senator Winter's motion from the meeting of February 12th. The motion was read (see minutes of February 12) the vote was taken and the motion carried.

Hearing on S.B. 494 - relating to economic development.

Senator Werts stated he introduced the bill at the request of the Riley County Director of Public Works and Manhattan Chamber of Commerce. He introduced Dan Harden, Director of Public Works.

Mr. Harden explained why they had requested introduction, he stated this bill would allow them to be more competitive and do things other states are now doing in economic development. There was concern from committee members in changing the statutes to allow government entities to buy and sell land, if a countywide levy is assessed to buy land and sell it at a loss. Is this lawful?

Mr. Harden said he anticipated that question and that part of the bill was negotiable.

Staff was asked to respond to the question. Staff stated the House has an identical bill and they had testimony from Mr. Mosher with the League of Municipalities, he recommended an interim study. One of his comments was, if it is a public purpose then they probably have the power to do it under home rule now.

Mr. Mosher was present and agreed with staff's remarks.

Wendy Schiappa urged the Committee to favorably pass S.B. 494 (Attachment I).

Kim Dewey presented testimony that they supported the bill and thought it would help economic development in the State (Attachment II). He recommended striking the language that allows the buying and selling of land and award of grants.

The consensus of the Committee was to get an Attorney General's opinion before the hearing on S.B. 494 would continue. The Chairman will check with Rep. Sand, Chairman of the House Local Government Committee.

Committee discussion continued on H.B. 2117. (Attachment III)

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Local Government,
room 531-N, Statehouse, at 9:00 a.m./p.m. on February 13, 1986

The Chairman stated he had talked with Arden Ensley, concerning the language in section 1, item (7), Mr. Ensley did not think this language prohibited any annexing by petition.

No change was made.

Discussion followed on New Section 12, of the insert, some language should be included here, to protect the written petition or consent. Mr. Ensley suggested two types of language, one is to spell it out. It would say in New Section 12, the provision of this act shall be applicable to any annexation, made without the written consent of or petition by the landowners. Or it could say 1 through 6.

A motion by Senator Bogina to spell it out in plain language. Motion was seconded by Senator Salisbury. The motion carried.

Senator Gaines asked that a vote be delayed as he had two city managers from Butler County coming to visit with him at noon.

Committee discussion followed on when the committee could meet again. No time was agreeable to all the members.

Discussion continued on the bill.

Senator Daniels moved to insert "tracts" to e & f of Section 1, of the insert. Senator Bogina seconded the motion. The motion carried.

Senator Daniels wanted to include in the service plan an estimate of the cost of services. It was suggested that would be very complicated and would be very difficult to include it in the statutes; all benefit districts are different.

The Chairman called an afternoon committee meeting on adjournment of the Senate.

Senator Salisbury stated she would not be able to be present at the afternoon meeting at the time called by the Chairman because it conflicted with another Senate commitment.

Meeting adjourned until the afternoon.



Senator Don Montgomery

3 February 1986

Senate Local Government Committee
Senator Don Montgomery, Chairman

I am testifying today in support of SB 494 concerning the applicable uses of industrial mill levies by counties. The Manhattan Chamber of Commerce supports this legislation which we believe will enhance the abilities of local governments to attract new employers to the State of Kansas.

The current statute outlines four uses of economic development program funds: 1) to conduct studies and prepare plans; 2) to inventory services, facilities and resources; 3) to promote, stimulate and encourage growth and development; and 4) to otherwise promote the general economic welfare and prosperity of the area.

The first two uses of these funds are clear and specific, the latter are vague. We have found that when we approach the counties with suggested uses of these funds, they are hesitant to act. County attorneys have questioned what are appropriate uses of this mill levy.

Specifically, we have the following questions:

1. May a county loan money to an organization that will in turn build a new building and create new jobs?
2. May a county grant any of these funds to a business for the purpose of site preparation, utility extension or other similar uses?
3. May a county use any of these funds as part of an incentive package to attract industrial prospects?

Manhattan recently lost two plants (Sundstrand to Grand Junction, Colorado and Kimberly-Clark to Thomasville, North Carolina) because we were unable to put financial packages and incentives together to compete with other states. We believe it is imperative that the state legislature take actions that will make the state more competitive in industrial development. Clarification of the uses of economic development program funds is one such action.

We believe that the legislature must take a clear position defining "public use of public funds" for the purposes of economic development. County attorneys are reluctant to define for what purposes industrial development funds may be used. In a time when the need to diversify the state's economy is urgent, the Manhattan Chamber believes that broadening the tax base and creating jobs is indeed a public purpose. If you agree that this is a public purpose, then you should so define it by statute and not leave the definition up to attorneys and the courts. If you choose not to clarify the applicable uses of industrial development mill levies, then local economic development programs will continue to be handicapped by uncertainty and hesitancy on the part of county commissions.

We therefore urge you to favorably pass out SB 494.

Wendy J. Schiappa

Dir. Public Affairs, Manhattan Chamber of Commerce

attachment I 2/13/86

S. LG



SEDGWICK COUNTY, KANSAS

BOARD OF COUNTY COMMISSIONERS

BUD HENTZEN
CHAIRMAN
THIRD DISTRICT

DONALD E. GRAGG
CHAIRMAN PRO-TEM
FIRST DISTRICT

TOM SCOTT
COMMISSIONER
SECOND DISTRICT

COUNTY COURTHOUSE • SUITE 320 • WICHITA, KANSAS 67203-3759 • TELEPHONE (316) 268-7411

Testimony of Kim C. Dewey
Sedgwick County
Senate Local Government Committee
SB 494
February 13, 1986

Sedgwick County is very supportive of the changes contained in SB 494. We certainly share the enthusiasm and renewed commitment to economic development that the State is exhibiting. Legislation such as this is very important in giving counties the statutory tools to respond to economic and industrial development opportunities. Often we find that the ability to provide needed infrastructure improvements is a critical factor in the decision of a business or industry to locate in the community.

Generally, the financing of capital improvements through the issuance of general obligation bonds is a lengthy process. The ability to respond to the infrastructure needs of new business and industry, existing business and industry and commercial development in a timely fashion is often crucial. Any added flexibility which could be given to counties in financing infrastructure improvements will be a boon to economic development activities in the State of Kansas

(Attachment II)

2/13/86

S. LG

morning

[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

1985

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

0027 ~~Section 1~~ K.S.A. 12-520 is hereby amended to read as fol-
0028 lows: 12-520. (a) Except as otherwise hereinafter provided, the
0029 governing body of any city may by ordinance may annex land to
0030 such city if any one or more of the following conditions exist:
0031 (a) (1) The land is platted, and some part of ~~such~~ the land
0032 adjoins the city.

See Insert #1, attached

Sec. 2.

0033 (b) (2) The land is owned by or held in trust for the city or
0034 any agency thereof.

, except no land in excess of 21 acres shall be annexed under this condition

0035 (c) (3) The land adjoins the city and is owned by or held in
0036 trust for any governmental unit other than another city, except
0037 that no city may annex land owned by a county which has
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
0042 a common perimeter with the city boundary line of more than
0043 fifty percent (50%) 50%.

0044 (e) (5) The land if annexed will make the city boundary line
0045 straight or harmonious and some part thereof adjoins the city,
0046 except no land in excess of ~~twenty (20)~~ 20 acres shall be annexed
0047 for this purpose.

21

S. L. G
(Attachment III)
2/13/86

0048 (4) (6) The tract is so situated that two-thirds (~~2/3~~) 2/3 of any
0049 dary line adjoins the city, except no tract in excess of twenty
0050 ~~20~~ acres shall be annexed under this condition.

21

0054 (~~5~~) (7) The land adjoins the city and a written petition for or
0052 consent to annexation is filed with the city by the owner.

(b)

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.~~

41

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.

(c)

(a)

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.

(d)

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.

(e)

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

(f) Notwithstanding any of the provisions in subsection (a), nothing in this section shall be construed as authorizing a city to annex a portion of any tract or plat if the city cannot annex such tract or plat by the adoption of one ordinance pursuant to this section.

(g)

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

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.~~
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~~
0117 ~~public hearing shall be not less than 30 days following the date of~~
0118 ~~the 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~~

0122 newspaper or any other newspaper of general circulation in the
23 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 ~~(4) Population~~ [(4) Present and prospective population] and
0155 population density of the area proposed to be annexed;

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

~~0159 (3) [(6)] likelihood of significant growth in the area and in
adjacent areas during the next five years;~~

~~0162 (4) [(7)] the present cost and adequacy of governmental ser-
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 by
0194 ordinance. Orders of the board of county commissioners denying
0195 petitions for annexation shall require a majority vote of the~~

0196 members of the board. When an order denying a petition for
 0197 annexation is issued, it shall be by resolution, which shall be
 0198 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.]

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

Sec. 3.

0219 ~~[Sec. 2. K.S.A. 1984 Supp. 12-520a is hereby amended to~~

1985

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:

shall

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

0230 [(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

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

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.

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.

0264 ~~(f)~~ Any resolution, adopted pursuant to this section, which
0265 includes territory subsequently incorporated pursuant to K.S.A.
0266 12-5115 *et seq.*, and amendments thereto, shall be invalid.

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.

(e)

(f)

(g)

(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.

See Insert #2, attached

INSERT #1

Section 1. K.S.A. 12-519 is hereby amended to read as follows: 12-519. As used in this act: (a) "Tract" 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.

(c) "Owner" means the one who has record title to a tract. In the event two ~~(2)~~ or more persons have record title to a tract, "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; (3) if the tract is held by a life tenant and a remainderman, "owner" means the life tenant; (4) if the tract 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) "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 land sought to be annexed by only the width of such highway, railway or watercourse.

(e) "Platted" means a tract ^{on tracts} 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) "Plat" means a map or drawing of a tract, ^{on tracts} filed in the office of register of deeds, showing a division or divisions thereof.

~~(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. (g) "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.~~

INSERT #3

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 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 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 shall be maintained at a level which is equal to or better than the level of services provided prior to 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 of which 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. (a) Whenever the governing body of any city deems it advisable to annex land which such city is not permitted to annex under ~~the--authority--of~~ K.S.A. 12-520, and amendments thereto, or if the governing body of any city is permitted to annex land under K.S.A. 12-520, and amendments thereto, but deems it advisable not to annex thereunder, the governing body may annex such land as provided by this section. 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 land sought to be annexed is located. The petition shall set forth a legal description of the 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) ~~(b)~~ A sketch clearly delineating the 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)~~ (c) 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 shall be maintained at a level which is equal to or better than the level of services provided prior to 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.

(c) 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 ~~said~~ the hearing, together with a legal description of the land sought to be annexed and the names of the owners thereof, shall be published in ~~some a~~ 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 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 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 ~~said~~ the hearing beyond the time specified in the notice without further publication.

(d) 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-said-board-shall-be-satisfied-that-such-annexation-or-the~~

annexation of a lesser amount of such land 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 land by ordinance.

Over Law

✓ The action of the board of county commissioners shall be quasi-judicial in nature. The board of county commissioners shall consider the impact of approving or disapproving the annexation on the entire community involved, including the city and the proposed land to be annexed, in order to insure the orderly growth and development of the community. The board shall make specific written findings of fact and conclusions determining whether ~~or not~~ such annexation or the annexation of a lesser amount of such area causes manifest injury to the owners of any land proposed to be annexed, or to the city if the annexation is disapproved. The findings and conclusions shall be based upon the preponderance of evidence presented to the board. In determination whether manifest injury would result from the annexation, the boards' considerations shall include, but not be limited to, the extent to which the following criteria may affect the city, 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 public or private person, firm or corporation which may be affected 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 such services;

(9) tax impact upon property in the city and the area;

(10) extent to which the residents of the area are directly or indirectly dependent upon the city for governmental services and for social, economic, employment, cultural and recreational opportunities and resources;

(11) effect of the proposed annexation on the city and other 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 and the ability of those utilities to provide those services shown in the detailed plan;

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

(e) The board of county commissioners shall render a judgment within seven days after the hearing has been adjourned sine die. If a majority of the board of county commissioners conclude that the annexation or any part thereof should be allowed, they shall so find and grant the annexation by order; and thereupon the city may annex the land by ordinance. Orders of the board of county commissioners denying the petition or a part thereof for annexation shall require a majority vote of the members of the board. When an order denying a petition or part

thereof is issued, it shall be by resolution, which shall be sent by certified mail to the city proposing the annexation. 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.

(f) 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 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 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 2 1/2 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, 2 1/2 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 land may petition the board of county commissioners to exclude such 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 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 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 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 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 land from the city, it shall not be liable for any general taxes imposed by the city.

Such 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 land which were approved by the city before the date on which the owner or owners filed a petition for the exclusion of the land from the city.

(e) The board shall not order exclusion of any 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 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 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 land in the proposed district;

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

(4) the board finds the exclusion of the land would have an adverse impact on the health, safety and welfare of the residents of the city or such 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 land in an area annexed by a city may bring an action in the district court of the county in which the 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 in lieu thereof, the court may enter an order excluding the 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 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 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 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 land from the city, it shall not be liable for any general taxes imposed by the city. Such 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 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 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 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 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 land in the proposed district;

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

(4) the board finds the exclusion of the land would have an adverse impact on the health, safety and welfare of the residents of the city or such 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 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, from and after September 1, 1985.

Sec. 13. If any part or parts of this act are held to be invalid or unconstitutional by any court, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such invalid or unconstitutional part or parts.

Sec. 13. K.S.A. 12-519, 12-520, 12-520b and 12-521 and K.S.A. 1985 Supp. 12-520a are hereby repealed.

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