

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Sharon Schwartz at 3:30 p.m. on January 20, 2009, in Room 446-N of the Capitol.

All members were present except:

Representative Delia Garcia- excused

Committee staff present:

Carol Bertram, Committee Assistant
Martha Dorsey, Kansas Legislative Research Department
Jill Shelley, Kansas Legislative Research Department
Ken Wilke, Office of the Revisor of Statutes

Conferees appearing before the committee:

Randall Allen, Executive Director, Kansas Association of Counties
Martha Dorsey, Kansas Legislative Research Department

Others attending:

See attached list

Since the committee room isn't equipped with microphones, Chair Schwartz reminded committee members to be sure to speak up so an accurate record of the proceedings can be written. She asked the visitors to be sure to sign the guest list provided for them.

Chair Schwartz asked committee members to review the House Local Government Committee Rules which had been placed in their committee folders (Attachment 1). She emphasized that cellular phones and other electronic devices with audible tones are prohibited in the committee room. Also text messaging is not allowed as text messaging comes close to an open meeting violation.

Randy Allen, Executive Director, Kansas Association of Counties, introduced Melissa Wangemann, General Counsel and Director of Legislative Affairs. He distributed copies of a pamphlet which lists the legislative priorities of the KAC for 2009. The pamphlet can be found in the offices of the Kansas Association of Counties. He stated that KAC provides legislative representation, education and technical services, and a wide range of other information services to its member counties and affiliate and associate members. Executive Director Allen went on to inform the committee as to who serves on the KAC 2009 Governing Board, the KAC 2008 Legislative Policy Committee, KAC Legislative Staff and the KAC membership—Affiliate Membership and the KAC Associate Membership.

Executive Director Allen stated KAC plans to work for enactment of the following priority objectives during the upcoming session and believes these policies will help better county government for the citizens of Kansas.

These policies are:

- Federal Legislative Priority
 - Medicaid Reform
- State Legislative Priorities
 - Low Birth Weight Infants
 - Countywide Local Sales Tax Authority
 - Suspension of Medicaid Eligibility for Jail Inmates
 - Continuation of E900 Tax
 - Multi-Year State Comprehensive Transportation Program (CTP)

Chair Schwartz opened the floor to questions.

Martha Dorsey, Kansas Legislative Research Department, presented a final report of the Special Committee on Eminent Domain in Condemnation of Water Rights dealing with annexation. She distributed three documents:

- Report of the Special Committee on Eminent Domain in Condemnation of Water Rights to the 2009

CONTINUATION SHEET

Minutes of the House Local Government Committee at 3:30 p.m. on January 20, 2009, in Room 446-N of the Capitol.

- Kansas Legislature (Attachment 2)
- The "Working Draft" of the Special Committee stating the Committee's requests and future topics on annexation (Attachment 3)
- An Outline of Various Annexation Statutes (Attachment 4)

Martha guided the committee through each of the above-mentioned documents, explaining each section of the report. She noted that the Special Committee recommends a number of bills, as well as recommending that it continue to review Kansas annexation laws during the year 2009 to study the public safeguards and the needs of municipalities.

Questions on annexation followed.

Chair Schwartz opened the floor for any bill introductions. Representative Goico moved that the committee introduce a bill which would eliminate the 500 feet restriction on historic buildings, seconded by Rep. Otto. The motion carried.

The next meeting is scheduled for January 27, 2009.

The meeting was adjourned at 4:17 p.m.



Representative Sharon Schwartz, Chair

HOUSE LOCAL GOVERNMENT COMMITTEE

DATE: 1-20-09

NAME	REPRESENTING
SEAN MILLER	CAPITOL STRATEGIES
KELLY DiROCCO	LITTLE GOV. RELATIONS
Luke Bell	Ks Assoc. of REALTORS
Dave Holtwick	O.P. Chamber
DARCI MEESE	WATERONE
Kevin Barone	KRUG
CV Cosradis	KDA
Whitby James	City of Ipeks
Leslie Kaufman	KS Coop Council
Randall Allen	Ks. Assoc. of Counties
ERIK SARTORIUS	City of Overland PARK
Dana Peterson	K AWWG
John Donley	KS Lusk Ass'n
John Beverlin	Pindyl - Summit
Matt Monda	Cooper Assoc
Stuart Little	Little Government Relations
John Maly	KEARNEY & Assoc.
LARRY BREE	CITY OF HAYS
Murray Hoover	Maurei's Capitol Report

Please use black ink

HOUSE LOCAL GOVERNMENT COMMITTEE RULES

1. Committee members are expected to be punctual as the meeting will begin at the appointed time.
2. In any case where committee rules do not apply, House Rules shall govern. All powers, duties and responsibilities not addressed herein are reserved to the chair.
3. Cellular phones and other electronic devices with audible tones are prohibited in the Local Government Committee room, unless audible tones or ringers are disabled.
4. The chair shall determine the committee agenda, including scheduling and the order of business.
5. The chair reserves the right to limit testimony that is cumulative in nature and may limit testimony, when necessary, to a specific number of minutes.
6. Committee members shall not address conferees until and unless permission is granted by the chair.
7. The chair reserves the right to limit questioning of conferees by committee members in the interest of time and fairness to conferees and other committee members.
8. No conferee shall be interrupted during the presentation of their testimony, except with the permission of the chair.
9. Questioning of a conferee shall be limited to the subject matter on the agenda for the day, except as may otherwise be allowed by the chair.
10. Committee members shall not be approached during a committee hearing or deliberations by anyone other than fellow legislative members or legislative staff.
11. No bill or resolution shall be taken up for a committee vote unless announced by the chair.
12. A motion requires a second to be in order.
13. A substitute motion is in order, but no additional substitute motion shall be in order until the prior substitute motion is disposed of.
14. Amendments to motions are not in order except upon consent of the member making the motion and his or her second.
15. A motion to table or take from the table shall be in order only when such item is on the agenda or is taken up by the chair. The motion requires a simple majority of those present and is, unless otherwise determined by the chair, non-debatable.
16. There shall be no recording, audibly, photographically, or otherwise, of committee voting except by the committee secretary.
17. A request from any member that their vote be recorded shall be granted.
18. Granting excused absences is reserved to the chair.
19. The chair reserves the right to take such action as may be necessary to prevent disruptive behavior in the committee room during hearings and deliberations.
20. Adjournment is reserved to the chair.

**Report of the
Special Committee on Eminent
Domain in Condemnation of Water Rights
to the
2009 Kansas Legislature**

CHAIRPERSON: Senator Carolyn McGinn

VICE-CHAIRPERSON: Representative Dan Johnson

RANKING MINORITY MEMBER: Senator Marci Francisco

OTHER MEMBERS: Senator Roger Pine; and Representatives Rocky Fund, Tom Holland, Forrest Knox, Tom Moxley, and Jerry Williams

STUDY TOPICS

- **Eminent Domain in Condemnation of Water Rights.** Study the use of eminent domain as it relates to water rights and other issues concerning water rights.
- **Local Government Annexation.** Review recent legislative proposals related to local government annexation. Study 2008 HB 2747, which deals with unilateral annexation and requiring voter approval.

December 2008

Local Government

Date: 1-20-09

Attachment # 2-1



Special Committee on Eminent Domain in Condemnation of Water Rights

LOCAL GOVERNMENT ANNEXATION

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends that it continue to review Kansas annexation laws during the year 2009 to study the public safeguards and the needs of municipalities.

The Committee recommends that legislation be drafted to accomplish the following:

- Require cities to file a service plan with their respective boards of county commissioners before annexation and prior to public hearings being held.
- Shorten the time frame for reviewing the city plan for providing municipal services to the annexed land to determine whether the land may be deannexed if the services are not provided, including the following:
 - Shorten the period of time, from five to three years following an annexation, before the board of county commissioners is required to call a hearing to consider whether the city has provided the services agreed to in its service plan; and
 - Shorten the time period following the board's conclusion that the services have not been provided, from two and one half years to one and one half years, at which time the property may be deannexed.
- Add the prohibition against annexing unplatted agricultural land consisting of 21 acres or more without the landowner's written consent to the statute authorizing annexation by a board of county commissioners.
- To the statute authorizing annexation by a board of county commissioners, add a requirement for the approval of the annexation by a majority vote of landowners and residents living in the area proposed to be annexed.

Proposed Legislation: Three bills (Note: The first two legislative items above are to be placed in one bill.)

BACKGROUND

Current Law. Kansas law allows cities to annex land by several different methods,

depending upon the circumstances. Unilateral annexation is permitted in Kansas for annexations that meet certain criteria. Also permitted are consent annexations (given other criteria) and

annexations involving the approval of the board of county commissioners. While annexation has been addressed in Kansas statutes since 1868, the current structure is based on the most recent set of extensive changes which occurred in 1987 as a result of a 1986 interim study.

Unilateral annexation. Pursuant to KSA 12-520, subsection (a), a municipality may annex land unilaterally (without obtaining landowner consent or other approval) under the following circumstances:

- The land is platted, and some part of the land adjoins the city. KSA 12-520(a)(1)
- The land lies within or mainly within the city and has a common perimeter with the city boundary of more than 50 percent. KSA 12-520(a)(4)
- Annexing the land will make the city's boundary line straight or harmonious (limit: 21 acres). KSA 12-520(a)(5)
- The tract is situated so that two-thirds of any boundary line adjoins the city (limit: 21 acres). KSA 12-520(a)(6)
- The land is owned by or held in trust for the city. KSA 12-520(a)(2)
- The land adjoins the city and is owned by another government (certain restrictions apply). KSA 12-520(a)(3)

Certain annexations are prohibited as unilateral annexations. The following may not be annexed unilaterally:

- Agricultural lands consisting of 21 acres or more, unless the owner's written consent is received. KSA 12-520(b)
- Improvement districts incorporated under KSA 19-2753 *et seq.* on or before January 1, 1987. KSA 12-520(c)

- Highway rights-of-way - unless the abutting property on one or both sides is annexed. KSA 12-520(f)

A specific process must be followed for most unilateral annexations. Public notification, notice to landowners within the area, and hearings are central to this process, but it is the city's governing body that makes the final decision to approve or reject the annexation. Also, five years after annexation, the board of county commissioners is required to review and hold a hearing on the city's timetable for provision of services to the annexed area. If the board finds that the city has not provided the planned services, the property may be deannexed within two and one-half years of the board's findings. (KSA 12-520a and 12-520b)

Consent Annexation. Cities may annex some properties without a public hearing process if certain other circumstances exist:

- Adjoining land - A city may annex adjoining land if the landowner files a written petition for or consent to the annexation with the city. KSA 12-520(a)(7)
- Noncontiguous land - The governing body of any city may, by ordinance, annex land not adjoining the city if the following conditions exist - KSA 12-520c:
 - The land is located in the same county;
 - The owners of the land petition for or consent in writing to the annexation; and
 - The board of county commissioners determines the annexation will not hinder or prevent the proper growth and development of the area or that of any other incorporated city located within such county.

An aggrieved owner or city may appeal to the district court.

County Board as City Boundary Setter (KSA 12-521) – The board of county commissioners may be petitioned to act as boundary setter for:

- Annexations of land not covered in KSA 12-520.
- Annexations of land covered in KSA 12-520 but which the city deems it advisable not to annex under the provisions of that statute.

The city's petition requirement is followed by publication, public notice, notice to landowners within the area, and hearing requirements in the statute.

Annexation of Certain Lands Is Prohibited.

Kansas statutes forbid certain annexations as follows:

- No city may annex any other incorporated city, in part, or in its entirety. KSA 12-524
- No city may annex any territory of a United States military reservation under control of the Department of the Army (applies to annexation proceedings that began after December 31, 1981). KSA 12-529

Additional Annexation Provisions. Finally, specific provisions exist regarding annexations of water districts and compensation by the city in certain instances. Those are contained in KSA 12-527. See also KSA 66-1,176 *et seq.* regarding city annexation and termination of rights to serve customers by retail electric suppliers in certain cases.

HB 2747 (2008) and Other Legislation

Summary of Original Bill. As introduced, 2008 HB 2747 essentially would have eliminated most options for unilateral annexation by requiring that the city proposing the annexation hold an election in most cases. This would have been accomplished by eliminating the

specific authority in KSA 12-520 for unilateral annexations of (1) platted land, (2) lands having a common perimeter with the city; (3) lands the annexation of which would result in a harmonious boundary line; and (4) lands where two-thirds of the boundary line adjoins the city. These annexations then would have been subject to an election (see next paragraph for exceptions).

The election requirement would not have applied to the following annexations: (1) Those of land owned by or held in trust for the city or another governmental unit (not another city); and (2) those for which the owners of all the land petition for or consent to the annexation in writing. These would have remained in KSA 12-520.

The bill also would have eliminated the ability of a city to refer annexation decisions to the board of county commissioners. This would have been accomplished by repealing KSA 12-521 and 12-521a.

The Hearing on the Original Bill. The House Committee on Elections and Governmental Organization held a hearing on the bill on February 13 and 14, 2008. Testimony was received from some 33 conferees. Proponents included residents from such locations as Overland Park (including Representative Ray Merrick), Topeka (including Representative Ann Mah), Sedgwick County, and others. Opponents represented the League of Kansas Municipalities; the cities of Overland Park, Olathe, Gardner, Wichita, Valley Center, Derby, and Topeka; the Overland Park Chamber of Commerce; and others. After receiving the testimony, the bill was placed into subcommittee.

Subcommittee Action and Resulting Legislation. After several hearings, in which voluminous testimony again was received, an amendment was drafted that would have required many annexations to be subject to a protest petition. For those protested, an election would have been required. If the voters did not

disapprove of the annexation by a two-thirds majority, the city would not have been able to proceed with the annexation unless the board of county commissioners approved the annexation by unanimous vote.

After the full Committee's discussion and debate of the protest petition amendment, HB 2978 was drafted. The bill passed out of the House (as amended by the Committee of the Whole) and was referred to the Senate Committee on Federal and State Affairs. The bill would have subjected a number of annexation decisions to determination by the board of county commissioners that the proposed annexation would not have an adverse effect on the county. It also would have shortened the deadlines by which the board of county commissioners is required to review the city's service plan, and it would have provided for court action to compel the board to act if it had refused to do so. Finally, the bill, as amended, would have prohibited "strip annexation." (Note: Another 2008 bill, HB 2917, contained the provisions eventually amended into HB 2978 dealing with strip annexation.)

COMMITTEE ACTIVITIES

At its first meeting on the topic, the Committee received information regarding several different annexation experiences in Sedgwick County from the perspective of Assistant Sedgwick County Counselor Robert Parnacott. He remarked about island annexations, unilateral annexations, and the county hearings on service plans that occur after land is annexed, as well as other annexation issues.

Representatives of several cities then provided testimony regarding annexation in general and the relevant legislation in particular. The city representatives generally opposed changing annexation laws, stating annexation in general allows a city to plan for orderly growth to meet the needs of both its citizens and those who are located in close proximity to the city.

Limitations on cities' annexation powers would preclude orderly growth and limit a city's ability to provide necessary services to its citizens due to the inability of a city to sustain itself from a shrinking tax base.

Finally, opponents of annexation spoke to the Committee. Conferees indicated a desire to change annexation laws to give voters a voice in annexation decisions, such as prohibiting annexation without an affirmative vote of those being annexed. Some conferees noted the number of states allowing unilateral annexation is small, and one questioned the city representatives' claim that their ability to grow would be hampered if a vote of the electorate were required.

After discussion, the Committee requested a more careful analysis of current Kansas law and other states' laws on annexation. Staff provided the additional information at the Committee's second meeting. After further testimony and discussion, the Committee developed its recommendations.

CONCLUSIONS AND RECOMMENDATIONS

The Committee recommends that it continue to review Kansas annexation laws during the year 2009 to study the public safeguards and the needs of municipalities.

The Committee recommends that legislation be drafted to accomplish the following:

- Require cities to file a service plan with their respective boards of county commissioners before annexation and prior to public hearings being held.
- Shorten the time frame for reviewing the city plan for providing municipal services to the annexed land to determine whether the land may be deannexed if the services are not provided, including the following:

- Shorten the period of time, from five to three years following an annexation, before the board of county commissioners is required to call a hearing to consider whether the city has provided the services agreed to in its service plan; and
- Shorten the time period following the board's conclusion that the services have not been provided, from two and one half years to one and one half years, at which time the property may be deannexed.
- Add the prohibition against annexing unplatted agricultural land consisting of 21 acres or more without the landowner's written consent to the statute authorizing annexation by a board of county commissioners.
- To the statute authorizing annexation by a board of county commissioners, add a requirement to approve the annexation by a majority vote of landowners and residents living in the area proposed to be annexed.

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December 29, 2008

Special Committee on Eminent Domain in Condemnation of Water Rights

****WORKING DRAFT****

Committee Requests and Future Topics

ANNEXATION

1. Analyze the statutes regarding the process for a city to file a service plan with the county commission. Can the county require a service plan without any changes to the statutes?
2. Does the period of time before a review is made need to be shortened from five years to three? (HB 2978)
3. Should any of the conditions required in KSA 12-520 be also conditions for KSA 12-521? In particular, should 12-520 (7) (b) be required: "No portion of any unplatted tract of land devoted to agricultural use of 21 acres or more shall be annexed by any city under the authority of this section without the written consent of the owner thereof." (Is there any zoning other than agricultural land in the county?)
4. Information on annexation procedures (enclave, island, strip, unilateral) in other states (Missouri, North Carolina, Oklahoma, Tennessee); do residents of the area have a vote? Are there other ways to restrict annexation of agricultural use land, other than the 21-acre limitation in KSA 12-520?
5. Timing of annexation attempts - If one city begins an annexation procedure under 12-521, could another city step in annex using 12-520?

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January 20, 2009

Outline of Various Annexation Statutes

KSA 12-520: Unilateral Annexation/Consent Annexation – Allows a city governing body to annex land by ordinance if any one or more of the following conditions exist:

- The land is platted, and some part adjoins the city.
- The land is owned by or held in trust for the city or one of its agencies.
- The land adjoins the city and is owned by or held in trust for another governmental unit.
 - Exception: A city may not annex land owned by a county without the express permission of the board of county commissioners.
 - Exception to the exception: A city is prohibited from annexing highway right-of-way property under this statute unless the abutting property on one or both sides of the right-of-way property is already within the city or is annexed in the same proceeding.
- The land lies within or mainly within the city and has a common perimeter with the city of at least 50 percent.
- Annexation of the land will make the city boundary line straight or harmonious and some part of the land adjoins the city.
 - Exception: No land in excess of 21 acres may be annexed for this purpose.
- The land is situated so that 2/3 of any boundary line adjoins the city.
 - Exception: No land in excess of 21 acres may be annexed for this purpose.
- **The land adjoins the city and the owner files a written petition for or consent to annexation.**

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

KSA 12-520a – Requires a city governing body desiring to annex land under KSA 12-520 to adopt a resolution stating the city is considering the annexation.

- The resolution must, among other things, state that the plan for extending services to the proposed area (required by KSA 12-520b) is available for inspection during regular office hours in the office of the city clerk.
- Following the resolution is a public hearing, at which time the plan must be presented when the city's proposal for annexation is discussed.

KSA 12-520b: Plan for Extension of Services – Requires a city governing body proposing to annex land under KSA 12-520 to make plans for extension of services and, prior to the adoption of the resolution required in KSA 12-520a, prepare a report describing these plans. (Consent annexations are excluded from this requirement. See subsection (b)) The report must include:

- A sketch clearly delineating the land proposed to be annexed, with present and proposed city boundaries; present streets, water mains, sewers and other city utility lines, and the proposed extension of these utilities; and the general land use pattern in the proposed area.
- A statement setting for the plan in sufficient detail to provide a reasonable person with a full and complete understanding of the intentions of the city for extending services to persons and property located in the proposed area, along with the estimated cost of extending the services.
 - Must state the estimated cost impact of providing the services to the residents of the city and of the proposed area.
 - Must state the method by which the city plans to finance the service extension.
 - Must include a timetable for extending each major municipal service.
 - Must state the means by which the services currently provided in the proposed area (by township or special district) will be maintained at a level at least equal to the level of services provided prior to annexation.
 - Must state those services to be provided immediately upon annexation and those services which may be provided upon petition of the landowners to create a benefit district.

KSA 12-520c: Annexation of Noncontiguous Land -- The governing body of any city may, by ordinance, annex land not adjoining the city if the following conditions exist:

- The land is located in the same county;
- **The owners of the land petition for or consent in writing to the annexation; and**
- The board of county commissioners determines the annexation will not hinder or prevent the proper growth and development of the area or that of any other incorporated city located within the county.

KSA 12-521: Annexation by Approval of Board of County Commissioners – (Allows a city governing body to go to board of county commissioners for any annexation that could have been handled under KSA 12-520, or for any annexation not permitted under KSA 12-520.) Requires the city governing body to make plans for the extension of services to the area proposed to be annexed and report this to the board of county commissioners at the time of presentation of the annexation

petition to the board. The report must include the same items as required for unilateral annexations, *i.e.*:

- A sketch clearly delineating the land proposed to be annexed, with present and proposed city boundaries; present streets, water mains, sewers and other city utility lines, and the proposed extension of these utilities; and the general land use pattern in the proposed area.
- A statement setting for the plan in sufficient detail to provide a reasonable person with a full and complete understanding of the intentions of the city for extending services to persons and property located in the proposed area, along with the estimated cost of extending the services.
 - Must state the estimated cost impact of providing the services to the residents of the city and of the proposed area.
 - Must state the method by which the city plans to finance the service extension.
 - Must include a timetable for extending each major municipal service.
 - Must state the means by which the services currently provided in the proposed area (by township or special district) will be maintained at a level at least equal to the level of services provided prior to annexation.
 - Must state those services to be provided immediately upon annexation and those services which may be provided upon petition of the landowners to create a benefit district.

KSA 12-531: County Hearing on Service Extension Plan – Requires the board of county commissioners to call a hearing to consider whether the city has provided the municipal services as provided in the timetable set forth in KSA 12-520b or KSA 12-521.

- Hearing must be called **five years** following the annexation of any land under KSA 12-520 or KSA 12-521, or, where there has been litigation relating to the annexation, five years following the conclusion of the litigation.
- At the hearing, the board must hear testimony about the extension of services or the lack thereof, from the city and the landowner.
- After the hearing, the board must make a finding as to whether or not the city has provided the services in accordance with the city's plan.
- If the board finds the city has not provided the services as set forth in the plan, the board must notify the city and the landowner that the property may be deannexed as provided in KSA 12-532, if the services are not provided within **2 ½ years** of the date of the board's findings. (See KSA 12-532)

KSA 12-532: Deannexation if Service Plan/Timetable Not Met – Allows landowner to petition the board of county commissioners to deannex the land in question.

- Landowner may file petition with the board 2 ½ years following the conclusion of the hearing required by KSA 12-531.
- The board must schedule and provide notice of a public hearing on the matter within the 10-day period following receipt of the petition.
 - The statute (subsection (a)) details the contents of the notice.

- The notice must be sent by certified mail at least 21 days before the date of the hearing.
- At the hearing, the board must hear testimony about the extension of services or the lack thereof, from the city and the landowner.
- If the board finds the city has failed to provide the services in accordance with the plan and consistent with the timetable, the board may enter into an order excluding the land from the city's boundaries. (See exception below)

- The board is prohibited from ordering deannexation if:
 - The service extension plan makes the extension of certain improvements or services conditional on the filing of a petition by the landowners for the creation of an improvement district and to levy assessments to pay a portion of the costs, and the petition has not been filed.
 - Since the annexation, the city governing body initiated the creation of an improvement or benefit district and the formation of the district was blocked by petition of some or all of the landowners in the proposed district.
 - The exclusion would result in the land being completely surrounded by city property.
 - The board finds the exclusion of the land would have an adverse impact on the health, safety and welfare of the city residents or the residents of the land in question.

- The board's decision may be appealed by any aggrieved landowner or city, in the manner provided in KSA 19-223 except that any city so appealing is not required to execute the bond prescribed in that statute.