Approved: February 26, 2009
Date

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

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

All members were present except:
Representative Lana Gordon – Absent
Representative Michael Peterson – Excused

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

Conferees appearing before the committee:
Eric Sartorius, Assistant City Manager, Director External Affairs, City of Overland Park
Whitney Damron, City of Topeka
Daniel Stueckemann, President of Home Owners Association, Cedar Lake Estates
Carl Slaugh, City of Basehor

Others attending:
See attached list.

Chair Schwartz called the meeting to order at 3:30 p.m. She commented that the committee minutes of January 15 and January 20, 2009, meetings have been e-mailed to each member for their review. These minutes will be approved at the committee's next meeting.

Chair Schwartz introduced Heidi Shadid who was a student in the Public Policy Clinic at the University of Kansas School of Law. Heidi distributed a report which provided a brief summary (Attachment 1) of her Land Government Annexation report (Attachment 2). She stated these reports are intended to provide useful, nonpartisan information to the legislature.

Questions and answers followed.

Chair Schwartz opened the hearing on **HB 2029 - Annexation procedures; deannexation, board of county commissioners duties, election required, when.**

Martha Dorsey, Legislative Research Department, explained the contents of **HB 2029** and the changes which had been made due to the recommendations of the Special Committee on Eminent Domain in Condemnation of Water Rights.

Questions and answers followed.

Since no one notified the Chair they wanted to appear before the committee as a proponent, Chair Schwartz opened the floor to anyone wanting to appear as a proponent. Rep. Mah appeared before the committee and noted that she did not have written testimony but that she does support the measurers in the bill.

Neutral:

Erik Sartorius, Assistant City Manager, Director External Affairs, City of Overland Park, appeared before the committee noting the City of Overland Park believes it is a sensible step to require cities to provide copies of the annexation service plans to the board of county commissioners in annexations (Attachment 3). That **HB 2029** aims to improve the law in ways that make sense.

Whitney Damron, City of Topeka, appeared before the committee. He stated the changes proposed in **HB 2029** would appear to be reasonable as currently drafted and would not appear to impose a significant burden on local units of government, either cities or counties (Attachment 4).

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

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

Chair Schwartz reminded the committee a considerable number of e-mails had been sent to committee members by various residents. She recommended the committee be sure to read them.

Opponents:

Daniel Stueckemann, President of the Home Owners Association for Cedar Lake Estates, appeared before the committee stating home owners in Cedar Lake Estates do not support **HB 2029** as written because it does not include any specific provisions to require a direct vote by the affected property owners to approve or reject a proposed involuntary, unilateral annexation by a municipality (Attachment 5).

Questions and answers followed.

Carl Slaugh, City Administrator for the City of Basehor, appeared before the committee. He pointed out that an orderly annexation process needs to be available to allow a city to grow as the services are extended. That without the statutory provisions in place giving cities the authority to annex there would potentially be islands of county land surrounded by city limits. It is hoped and requested that these provisions will be left in place (Attachment 6).

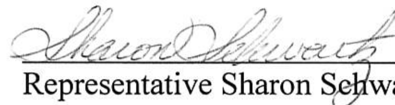
Questions and answers followed.

The hearing on **HB 2029** was closed.

Chair Schwartz pointed out that a letter from Rob Chestnut, Vice-Mayor, City of Lawrence, was in their folders. Mr. Chestnut opposes all annexation bills (Attachment 7).

The next meeting is scheduled for February 5, 2009.

The meeting was adjourned at 5:00 p.m.



Representative Sharon Schwartz, Chair

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

HOUSE LOCAL GOVERNMENT COMMITTEE
DATE: 2-3-09

NAME	REPRESENTING
Sean Miller	Capitol Strategies
Ben Sciortino	City of Mulvane
Brad Stauffer	Carter Group
Joe Mosimann	Hein Law Firm
Ryan Gagleson	Capital Lobby Group, LLC
Michelle Butler	Capitol Strategies
Erik Sartorius	City of Overland Park
Dan [illegible] Mays	City of Olathe
Dennis Schwartz	Tecumseh KS
Sara Humm	Legislative Intern
Carl Slaugh	City of Basehor
Heidi Shadid	KU School of Law Public Policy Clinic
Cathy Stueckemann	Resident Taxpayer
Daniel Stueckemann	President, Cedar Lakes Homeowners Association
Chris Gigstad	Federico Consulting
Travis Lowe	Pinegar, Smith, & Assoc.
Melissa Mundt	City of Gardner, KS
Michelle Schroeder	Dawson Govt Relations
[illegible]	City of Topeka

Please use black ink

TO: Committee on Local Government

FROM: Heidi Shadid
hshadid20@gmail.com
(918) 810-1026

RE: Public Policy Report on Land Government Annexation

DATE: February 3, 2009

INTRODUCTION

My name is Heidi Shadid, and I am a recent graduate of the University of Kansas School of Law. Participation in the Public Policy Clinic this past fall provided me the opportunity of reviewing the current annexation statutes in Kansas. This report was done merely for information purposes to provide a *neutral* analysis of the current statutes and of possible revisions. No particular interests are being represented.

This handout will provide a brief summary of my discussion today along with an easy breakdown of the current annexation laws. Additionally, I have compiled information from the Kansas Department of Revenue's website regarding municipal annexations effective April 1, 2008 through April 1, 2009. For a more detailed analysis, my Land Government Annexation Report has been provided to you.

Today I will be covering unilateral annexation as opposed to consensual annexation. I have broken down unilateral annexation into two sub-groups: "full-unilateral" and "semi-unilateral." These sub-groups are for my purposes only and do not appear in the statutes. Once I discuss the current statutes, I will then discuss the three interests at stake. These interests are referred to as "considerations" in my Land Government Annexation Report. Finally, I will discuss the possible changes to the law on a spectrum according to the interests served.

CURRENT LAW

Unilateral annexation in Kansas can be divided into "full-unilateral" and "semi-unilateral" annexation sub-groups. Full-unilateral annexation is annexation by a municipality that does not require the approval of a separate body, such as the board of county commissioners. Semi-unilateral annexation, on the other hand, requires the municipality to petition the board of county commissioners for approval prior to annexing a tract of land.[1]

[1] Neither full- nor semi-unilateral annexation requires the approval of the landowners. Approval of the landowners comes in the form of *consensual* annexation.

Local Government
Date: 2-3-09
Attachment # 1-1

Full-unilateral annexation is found in K.S.A. § 12-520(a)(1)-(6). The statute provides the municipality power to annex any tract of land provided one of the following six[2] circumstances is met:

(1) The land is platted and adjoins the city,
(2) The land is either owned by or held in trust for the city
(3) The land adjoins the city and is held in trust for any *other* governmental unit
(4) The land either lies within the city or has a common perimeter of 50%
(5) The addition of the land will make the city boundary line straight or harmonious, or
(6) The land is no more than 21 acres and situated so that 2/3 of any boundary line adjoins the city

Provided one of these circumstances is met, the city need only meet the procedural requirements of § 12-520a to unilaterally annex a tract of land. The landowner of the tract of land annexed may judicially challenge the annexation's reasonableness under § 12-538.

Semi-unilateral annexation is found in K.S.A. § 12-521. Under this section, a city has the power to annex *any* portion of land that is not otherwise connected to the city. The city must then petition the board of county commissioners for approval of the annexation. The board of county commissioners determines the "advisability" of the petitioned for annexation. Either the effected landowner or the city may appeal the board of county commissioners' decision.

INTERESTS/CONSIDERATIONS

There are three groups most affected by the annexation statutes: the city desiring annexation, the affected landowners/residents, and the general public. Each of these interests should be considered for each alternative discussed.

Cities have a variety of interests in annexation. By expanding their geographic area and increasing their population, cities expand their tax base. Additionally, timely annexation provides a way for the city to plan the developing areas prior to the construction of buildings or roads. This includes extending zoning and encouraging sustainable and uniform growth. Annexation also allows the city to fairly distribute the costs of services that benefit those outside city limits. Although the city may gain some revenue through taxation, the city has an increased cost to make services available where they are not already present. Additionally the city will face administrative costs should changes occur to the current laws.

Landowners and residents[3] being annexed also have a variety of interests at stake. They have both monetary and other costs associated with a unilateral annexation. Monetarily, the landowners and residents are no longer only subject to the county taxes, but must also pay the city taxes. Additionally, there may be costs associated with accepting the city services. The

[2] K.S.A. §12 -520(a) provides a seventh circumstance for land adjoining the city where the landowner has petitioned for or consented to annexation by the municipality. This is effectively consensual annexation, which is not covered by this report.

[3] I will be using landowners and residents somewhat interchangeably; however they may or may not be the same person and could have differing interests.

landowners and residents primarily benefit from access to city services. They also receive the benefit of city codes and ordinances setting standards for new development. Additionally, the landowners and residents are given opportunities to provide input on growth and development issues in the area. If the city annexes the land early enough, the landowners and residents benefit from an integrated planning process and avoid haphazard patterns of development.

The **general public** has four main interests concerning the ease of which annexation occurs. First, urban growth directly affects the environment. Second, also attributable to urban sprawl, is the effect of "white flight" and segregation. As more people move out to the suburbs, the inner-urban core deteriorates. Third, current city residents must deal with the stretch of city services to the new areas. If the growth is too fast, the city services may not be increased as quickly. The fourth general consideration is the availability of municipal bonds for development. This consideration comes in to play for the development of outside areas.

ALTERNATIVE SPECTRUM

The alternatives can be viewed on a spectrum from those providing most power to the city (the status quo) to those most protective of the landowners (voter approval). In the middle is the Changed Circumstances, which attempts to more equally balance the interests.

The **Status Quo** (discussed above) provides broad authority to the city to annex according to its discretion. There is minimal intrusion into municipal annexation provided the city does so "reasonably" and according to the statutory procedures. Affected landowners have little ability to challenge undesired annexations. Additionally, the general public has an interest in such broad municipal power because of the consequences of rapid municipal growth.

The **Changed Circumstances** alternative provides a compromise between a city's power and the landowner's protection. There is a spectrum within the larger spectrum for the changes that could be made to the statute from removal of one or more of the circumstances to addition of restrictions on unilateral annexation. The combinations of changes are endless and depend on how much protection is desired for the particular interests.

Adding **Voter Approval** provides the greatest protection for landowners who can more easily control what is done by the city. The city, on the other hand, loses much of its power and likely would incur additional expenses. Depending on the constituency definition and the required majorities, this alternative could effectively eliminate unilateral annexation.

CONCLUSION

Implementation of one or more of these alternatives can be done in a number of ways. In fact, there are many combinations that would compromise the competing interests much more than the current statutes. Practically speaking, the impact on annexation depending on the changes may not be very significant.

I have updated my research for the total annexations posted on the Kansas Department of Revenue's website to include the annexation ordinances to become effective on April 1, 2009.[4] Previously there were 14 total annexations. The April 2009 ordinances added 12 more for a grand total of 26 annexations. Below is a table summarizing the annexation ordinances effective April 2008 through April 2009:

Number of Annexations	**Type of Annexation**	**Kansas Statutes**
20	Consensual annexation	*Eighteen* were §12-520(a)(7) *Two* were §12-520(c) requiring landowner consent and BCC approval
2	Full-unilateral annexation	§12-520(1)-(6) -- Note: one was circumstance (2), which is land owned by or held in trust for the city or an agency thereof. The other ordinance did not list which subsection of the six.
1	Semi-unilateral annexation	§12-521
3	Other	Either the type is not listed in ordinance or it is a highway annexation under §12-520(f), which is not discussed in this report

[4] My Land Government Annexation Report discussed the annexations effective 04/01/08 - 01/01/09. The website has now added annexations effective as of 04/01/09 and removed the April 2008 annexation ordinances.

University of Kansas
School of Law

Public Policy Clinic
Fall 2008

Land Government Annexation

By
Heidi Shadid

This report has been prepared by a student enrolled in the Public Policy Clinic at the University of Kansas School of Law. The report is intended to provide useful, nonpartisan information to the legislature and other policy makers in the state. With respect to the particular area analyzed, the report evaluates several possible policy alternatives in light of relevant policy considerations, drawing on the experience of other states and the discussion in the policy and legal literature. The report also discusses the necessary steps for implementing the policy alternatives and possible constitutional or other legal barriers. Each report includes a bibliography of key sources that can be consulted for further information. The views expressed and information contained in the report are solely the responsibility of the student author and do not represent the views of the University of Kansas or the School of Law. For further information about the Clinic or the Reports, contact Professor Richard E. Levy, University of Kansas School of Law (email: rlevy@ku.edu).

Local Government
Date: 2-9-09
Attachment # 2-1

EXECUTIVE SUMMARY

This public policy report analyzes the current unilateral annexation rules in Kansas and the possible alternatives to the current system. Due to controversy over a recent semi-unilateral annexation completed by Overland Park, both forms of unilateral annexation in Kansas are being reviewed in this report, which will analyze two different alternatives in addition to the Status Quo: Changed Circumstances for Unilateral Annexation and Approval by a Separate Party.

The Changed Circumstances for Unilateral Annexation alternative discusses different options for modifying the current annexation laws. This section uses the 2008 House Bill 2747 as a starting point for the analysis of potential changes that could be made. In addition to limiting the circumstances for full-unilateral annexation, House Bill 2747 removes semi-unilateral annexation altogether. The Approval by a Separate Party alternative explores the opportunities for approval by the voters.

In reviewing the alternatives, the legislature primarily must consider the interests of the city desiring to annex and the landowners of the proposed annexed lands. Additionally, however, the general public has an interest in land annexation and the growth of municipalities. This report arranges the alternatives on a spectrum from more power to the city (Status Quo) to more protection for the landowner (Approval by a Separate Party). The Changed Circumstances alternative attempts to balance the interests more equally. The general public's interests are discussed for each alternative as a secondary consideration as well.

In reviewing the Status Quo and other alternatives, legislature should consider two important issues for implementation: Implementation Steps and Constraints. The Implementation Steps for all the alternatives involve deciding which options to keep in or add to the statute and how to organize them. The Constraints, however, differ depending on which alternative is being discussed. For the Status Quo, most constitutional questions have already been addressed. However, due to some relatively recent additions to the statutes in 2005, some issues may arise. In the case of Changed Circumstances for Unilateral Annexation, the legislature must consider the constitutional doctrine of Home Rule as it relates to cities' power to expand their borders. For both Changed Circumstances for Unilateral Annexation and Approval by a Separate Party, the legislature must consider equal protection and whether the distinctions drawn in the statutes meet the rational basis test. The Approval by a Separate Party potentially implicates the constitutional issue of One Person, One Vote.

Attached at the end is a bibliography of all sources reviewed in preparation of this report. The sources are organized topically for easy reference.

TABLE OF CONTENTS

EXECUTIVE SUMMARY 2

TABLE OF CONTENTS 3

I. INTRODUCTION 4

A. General Background 4

B. Framework For Analysis 5

II. POLICY ANALYSIS 6

A. Unilateral Annexation - The Status Quo 6

B. Changed Circumstances For Unilateral Annexation 10

C. Approval By A Separate Party 13

III. LEGISLATIVE IMPLEMENTATION 15

A. Unilateral Annexation - Status Quo 15

B. Changed Circumstances For Unilateral Annexation 15

C. Approval By A Separate Party 16

IV. BIBLIOGRAPHY 18

I. INTRODUCTION

A. General Background

Land annexation occurs when a city desires to expand its boundary to include a nearby or adjacent piece of property. Of the two types of annexation, unilateral and consensual,[1] it is unilateral that presents the largest issue. Consequently, this report will focus mainly on unilateral annexation. Currently, Chapter 12 of the Kansas Statutes governs the annexation of lands by the governing body of a city. These statutes provide municipalities the power and procedure behind unilateral annexation.[2]

Although conflict can occur between neighboring municipalities as to the tracts of land to be annexed, this conflict will not be covered in this report. The primary focus here is the potential conflict between the municipality desiring unilateral annexation and the landowner or resident of the proposed annexation area. This conflict most recently arose when the City of Overland Park desired to annex 15 square miles of land in Southern Johnson County. Of the 1600 affected residents, 98% opposed the annexation.[3] Consequently, the current unilateral annexation statutes are being reviewed.

The current Kansas Statutes provide for two types of unilateral annexation.[4] The first, referred to throughout the report as "full-unilateral annexation," is annexation that does not require the approval of the voters or another governing body. This type of annexation can be found in K.S.A. §12-520. A municipality can unilaterally annex a tract of land in only one of seven circumstances.[5] Once a municipality meets one of the seven circumstances, it must follow the procedures for annexation listed in Section 12-520a, which includes four main procedural requirements: 1) Prepare a Resolution, including a service plan, 2) Hold a public hearing, 3) Determine if annexation is advisable, and 4) Pass and publish an ordinance. Unilateral annexation of this type requires the board of county commissioners to call a hearing five years after an annexation occurs to determine whether the city followed through with its service plan.

The second type of unilateral annexation, referred to in this report as "semi-unilateral annexation," requires the municipality to obtain approval by the board of county commissioners of the county in which the tract of land is located. Both the power of the city and the required procedure can be found in Section 12-521. This section of the statutes allows a municipality the option to annex land that it may otherwise not have the authority to annex so long as it follows the statutory procedures. Then, the board of county commissioners (in a quasi-judicial manner) determines the advisability of annexation based on whether there would be "manifest injury." "[Section] 12-521(c) requires the [board of county commissioners] to consider the impact of

1 Unilateral annexation is initiated by the city and does not require approval of the land owner. Consensual annexation is either initiated by the city and approved by the landowner or petitioned by the landowner.

2 KAN. STAT. ANN. §§ 12-520 *et seq* (2007).

3 http://noannexation.org/index.htm

4 The two types of unilateral annexation, "full-unilateral" and "semi-unilateral," are not statutory terms and are used solely for purposes of this report.

5 K.S.A. § 12-520(a)(1)-(7).

approving or disapproving annexation on the entire community."[6] Although "manifest injury" is not defined in the statute, Section 12-521(c) provides 14 factors the board of county commissioners may consider in making the determination.

As of the 2005 amendments to the annexation statutes, both full-unilateral and semi-unilateral annexation may be judicially challenged[7]; but standing to oppose annexation is limited to affected landowner within the annexed territory. The landowner must file an action in district court within 30 days of publication of the ordinance.

B. Framework For Analysis

To fully examine the public policy behind unilateral annexation, the State of Kansas should review the following alternatives and considerations.

1. Policy Alternatives

There are two primary interests to be considered when looking at which policy Kansas should adopt regarding land annexation: the city's and the landowner's.[8] Because these sometimes are in direct opposition, the policy alternatives are best viewed on a spectrum beginning with those providing the city with the most power (Status Quo) and ending with those most protective of the landowners (Approval by a Separate Party). In the middle is the range of options providing certain protections for each interest (Changed Circumstances for Full-Unilateral Annexation). Elements of each alternative can be combined to make the most workable solution.

a. The Status Quo

The current law provides the city broad authority to annex, subject only to some minor conditions. The city may either full-unilaterally annex under Section 12-520 or semi-unilaterally annex under 12-521. Regardless of the type of annexation, the city must follow a fairly strict procedure. However, once the city jumps through the hoops in the statutes, the city may, at its discretion, annex the desired portion of land. This alternative provides minimal protection for landowners within the annexed tract of land.

b. Changed Circumstances for Full-Unilateral Annexation

Next on the spectrum is the removal or changing of conditions for full-unilateral and semi-unilateral annexation. Under current full-unilateral annexation law, municipalities have the option to effectuate unilateral annexation as long as the tract of land desired meets at least one of seven circumstances. These circumstances can be combined, reduced or changed to narrow the municipality's authority to annex. Presumably, if there are decreased circumstances or increased

6 *Pet. of City of Kansas City*, 253 Kan. 402, 411, 856 P.2d 144, 151 (1993).

7 Full-unilateral annexation may be judicially reviewed pursuant to K.S.A. § 12-538. Semi-unilateral annexation may be judicially reviewed pursuant to K.S.A. § 19-223.

8 The city and the landowner are only the primary interests mentioned. It must be noted that the county or nearby cities may also have an interest in the annexation.

restrictions for the city to effectuate full-unilateral annexation, then the number of full-unilateral annexations would decrease.

c. Approval by a Separate Party

The final alternative provides for voter approval of full-unilateral annexation, semi-unilateral annexation, or both. This option provides the strongest protection for landowners. However, it could be so strong as to effectively remove unilateral annexation altogether.

2. Policy Considerations

d. Benefits and Costs to the City

Cities have a variety of interests in annexation. By expanding their geographic area and increasing their population, cities expand their tax base. Additionally, timely annexation provides a way for the city to plan the developing areas prior to the construction of buildings or roads. This includes extending zoning and encouraging sustainable and uniform growth. Annexation also allows the city to fairly distribute the costs of services that benefit those outside city limits. Although the city may gain some revenue through taxation, the city has an increased cost to make services available where they are not already present. Additionally the city will face administrative costs should changes occur to the current laws.

e. Benefits and Costs to landowners/residents

Landowners and residents being annexed also have a variety of interests at stake. They have both monetary and other costs associated with a unilateral annexation. Monetarily, the landowners and residents are no longer only subject to the county taxes, but must also pay the city taxes. Additionally, there may be costs associated with accepting the city services. The landowners and residents primarily benefit from access to city services. They also receive the benefit of city codes and ordinances setting standards for new development. Additionally, the landowners and residents are given opportunities to provide input on growth and development issues in the area. If the city annexes the land early enough, the landowners and residents benefit from an integrated planning process and avoid haphazard patterns of development.

f. Benefits and Costs to the General Public

The general public has four main interests concerning the ease of which annexation occurs. First, urban growth directly affects the environment. Second, also attributable to urban sprawl, is the effect of "white flight" and segregation. As more people move out to the suburbs, the inner-urban core deteriorates. Third, current city residents must deal with the stretch of city services to the new areas. If the growth is too fast, the city services may not be increased as quickly. The fourth general consideration is the availability of municipal bonds for development. This consideration comes in to play for the development of outside areas.

II. POLICY ANALYSIS

A. Unilateral Annexation - The Status Quo

1. Alternative Description

The current statutes provide the city broad power of full-unilateral or semi-unilateral annexation. In the case of full-unilateral annexation, the city may annex an outlying territory if the tract of land meets one or more of the following conditions: 1) The land is platted and adjoins the city, 2) The land is either owned by or held in trust for the city, 3) The land adjoins the city and is held in trust for any governmental unit other than the city, 4) The land either lies within the city or has a common perimeter of at least 50%, 5) The addition of the land will make the city boundary line straight or harmonious, or 6) The land is no more than 21 acres and situated so that 2/3 of any boundary line adjoins the city, or 7) The land adjoins the city and a written petition for or consent to annexation is filed with the city by the landowner. Circumstances 1 through 6 provide the city the authority for full-unilateral annexation without approval by a separate party. Circumstance 7 is effectively a consensual annexation. Once one of these seven requirements is met, the city may unilaterally annex the tract of land according to the procedures outlined in Section 12-520a.

There are four main steps in the full-unilateral annexation procedure. First, the city must prepare a resolution stating its desire to annex the land. This resolution must be delivered to all necessary parties in the manner provided for under the statute. Included in this resolution is a service plan, which outlines the city services to be provided to the residents in the desired territory upon annexation. The service plan should also include the expected costs to both landowners and residents in the territory.

The second step is a public hearing that allows all interested parties the opportunity to speak regarding the proposed annexation. The testimony provided at the public hearing helps the city with step three: determining the "advisability" of the proposed annexation. Section 12-520a(e) provides the city with sixteen factors it may consider in determining the "advisability." Once the city determines a particular annexation is "advisable" and decides to annex a tract of land, the fourth and final step is an annexation ordinance. Section 12-522 requires the city to adopt and publish the annexation ordinance, which becomes effective upon publication. The city clerk must then "file a certified copy of such [published] ordinance with the county clerk, the recorder of deeds, and the county election commissioner...of the county or counties in which such city is located."[9]

There are two parties that have standing to challenge full-unilateral annexation in circumstances 1 through 6: the landowners within the annexed territory and a neighboring city within ½ mile of the annexed land.[10] The land owner and neighboring city can challenge the annexation by bringing an action in district court within 30 days of publication of the annexation ordinance. The court may determine whether the city had the authority to annex under circumstances 1 through 6, whether the annexation was reasonable, whether the service plan was adequate and whether the city followed the appropriate annexation procedures. The ability to

9 § 12-522.

10 § 12-538.

challenge the reasonableness of annexation and the adequacy of the service plan were added by 2005 amendments to the Kansas Statutes. Previously, the landowner could only challenge and the court could only review whether the city had the authority to annex and whether the city followed the appropriate annexation procedures.

After full-unilateral annexation has been completed, the city has five years to comply with the Service Plan. At the expiration of five years, the county commissioners call a hearing to determine compliance. If the county commissioners find the city failed to substantially comply, then the city has two and one-half years to complete. At the end of this period, residents may then petition the county commission for de-annexation.

The Kansas Department of Revenue posts online annexation ordinances effective April 1, 2008 to present. Of the fourteen land annexation ordinances posted, none were full-unilateral annexations using circumstances 1 through 6. Eleven ordinances[11] involved circumstance 7, which requires either the owner to either petition for or consent to the city's annexation, and two[12] involved annexation pursuant to section 12-520c.[13] The only unilateral annexation ordinance posted on the website involved the controversial semi-unilateral annexation by Overland Park of approximately fifteen square miles south of city limits pursuant to section 12-521.

Where a city is not otherwise authorized to annex a section of land (i.e. the land does not meet circumstances 1 through 6 of 12-520(a)), Section 12-521 provides the city with the power to semi-unilaterally annex *any* portion of land. The city merely must comply with the notice, statement and plan requirements of the statute. The board of county commissioners must then determine the "advisability" of such annexation in a quasi-judicial manner. During the quasi-judicial process, the board of county commissioners looks to whether the desired annexation would lead to any "manifest injury." The board of county commissioners may consider, but are not limited to 14 factors in the statute to determine if there will be "manifest injury." These considerations include not only the land owners in the proposed tract of land, but also adjacent land owners and the city seeking annexation.

Once the board of county commissioners makes its decision, either the land owner or the city may appeal the determination to the district court.[14] Although the adjacent land owner is considered by the board of county commissioners when determining "manifest injury," he does not have standing to judicially challenge the decision.

Practically speaking, cities may avoid board of county commissioners' approval by taking advantage of Circumstance 7 in the full-unilateral annexation statute. Circumstance 7 allows annexation upon landowner consent as long as the land adjoins the city. The word adjoining simply means touching with no minimum requirement for the shared border. "Several

11 Of these eleven ordinances, four were in Olathe, two were in Topeka, two were in Manhattan, one was in Overland Park, one was in Arma and one was in Gardner.

12 These two ordinances were in Olathe and Overland Park.

13 In order to annex pursuant to 12-520c, the city must get approval by both the land owners and the board of county commissioners. This section is not discussed in the report.

14 K.S.A. § 19-223.

cities in Sedgwick County have used this definition to use strip annexations in order to evade the requirement that parcels not adjoining the city be referred to the county commission."[15] Keeping this potential evasion in mind, the eleven consensual annexations reported on the Kansas Department of Revenue website could be merely steps towards eventual full-unilateral annexation of other areas.

2. Considerations

Before looking at the consideration for each interested party, the practical effect of current statutes must be noted. As discussed above, there have been no reported uses of full-unilateral annexation since April of 2008. The majority of the annexations were consensual. However, the legislature should keep in mind a city's possible evasion of the statutory requirements by annexing in a strip up to the area to later be full-unilaterally annexed.

The primary party benefited from the current form of annexation is the city. The fact that it can engage in full-unilateral and semi-unilateral annexation without landowner approval means that the city can grow its tax base (i.e. increase its revenue) with minimal limitations. This also allows for easy growth planning and zoning prior to the construction of buildings or roads.

In some circumstances, the area desired to be annexed by a city is so close in proximity to the city that individuals are already benefiting from the services of the city without having to pay the taxes to sustain them. The ability to annex these areas allows the city to fairly distribute the costs of its services among users. The most prominent example can be seen in the case of a township on the outskirts of a larger city where the township's residents enter the city to transact business on a regular basis. The township's residents then use the roads and benefit from the traffic protection. These services are provided to the non-citizens of the city without cost.

Additionally, the city incurs the minimal procedural costs in preparation of the resolution and service plan and in holding the public hearing. Besides the procedural costs, the city encounters the costs of annexation generally regardless of whether it is unilateral or consensual. These general costs include costs of physically making services available and the continued administration of the new services.

The landowners and residents, however, benefit the least from unilateral annexation. The benefits would be the same for unilateral annexation as it would be for consensual annexation, namely the use of city services, integrated planning, and coherent patterns of development. However, with unilateral annexation, the landowners and residents have minimal opportunity to object; thus they are subject to increased costs without choice. The costs include the increase in taxes because they not only have to pay city but also county taxes.

Also, the landowners or residents must pay for the costs of installation of city services. For example, a landowner relying upon a septic tank must replace it with the city's water system. This process costs the landowner money and time. He or she must then pay for the city's service

15 Robert Parnacott, Testimony to the Interim Committee on Eminent Domain in Condemnation of Water Rights, November 19, 2008.

of water. Many areas already have services provided by the county. This may lead to a double-up of services unnecessarily.

Finally, the landowners and residents would also be subject to the city's regulatory scheme. Landowners and residents may have chosen to live outside the city for a reason, yet they could be forced to be in the city without consent.

The general public has an interest in unilateral annexation because of the consequences of rapid municipal growth. First, there are environmental considerations when a city quickly and easily expands. Without strong opposition, the city will grow at the expense of the environment. Furthermore, the rapid development breeds further urban sprawl. As homes are built in new areas of the city so are roads, schools and retail. Second, also attributable to urban sprawl, is the effect of "white flight" and segregation. As more people move out to the suburbs, the inner-urban core deteriorates. Less tax payer money goes to the inner city schools having an effect on the quality of education in the town center.

Third, if the growth is too rapid, the city services will be unable to keep up. The result will be a stretch of current services at the expense of quality. Current city residents will pay the price for this stretch. Take, for example, a fire department. Suppose the department is responsible for a two mile radius on the edge of the city. If the city grows too quickly, that same department may be responsible for a 10 mile stretch beyond its prior responsibilities. The number of firefighters and trucks may not be increased as quickly. As a result, the response time is increased and greater damage is likely in the event of serious fires.

There are also benefits of municipal growth as opposed to other forms of growth. For example, areas with higher population may more easily attract businesses in a city than in a county. The reason for this is the availability of municipal bonds to developers within city limits. Without the ability to annex territory, the development of certain areas may diminish because the city would not be able to help finance the development. Additionally, the city can require developers to follow specific code and building requirements prior to developing in a new area. This may actually slow the growth, or at least control the sprawl, as opposed to developers who choose to go to areas just outside the city borders.

B. Changed Circumstances For Unilateral Annexation

1. Alternative Description

Full-Unilateral Annexation: There are three ways to alter the current full-unilateral annexation circumstances. First, moving slightly up the spectrum from the status quo would be to decrease the city's power to annex by getting rid of only the most problematic full-unilateral annexation circumstances (notably circumstance 1[16]). Second, moving towards the middle of the spectrum would be to give the city full-unilateral annexation power in the narrowest categories: when it is most necessary to the city. Third, at the farthest end of the spectrum from the status quo, would be the addition of restrictions on annexation in some or all circumstances for full-

16 §12-520(a)(1)

unilateral annexation. It must be noted that these three are options of possible change, because the range of options are endless.

The first option is a decrease in the power given to municipalities for unilateral annexation by only getting rid of the most problematic circumstance. Circumstance 1 provides the city the power to annex any tract of land that is platted and adjoins the city. This essentially allows the city to grow in all directions where land adjoins the city. Besides the platting requirement, there is nothing to stop the city's sprawl. Removal of this category alone would increase protections to the land owners.

The second option would be to further decrease the city's power to annex by only allowing annexation in the circumstances most necessary to the city. In terms of the current statute, categories 1, 4, 5, and 6 could be removed to significantly limit the city's power to unilaterally annex. Removal of these circumstances would leave only circumstance 2, which includes land already owned by or held in trust for the city, and circumstance 3, which includes land owned by or held in trust for any governmental unit. Thus, any privately owned parcel of land could not be annexed. The city would be required to purchase the tract of land or rely on the ownership by another governmental unit.

The third option is the addition of restrictions in the statute. Examples of such restrictions could be as follows: a population requirement, a limited increase on growth to a certain percentage of total corporate area of city in one year, a prohibition on completely surrounding unincorporated land, a prohibition on annexations which cross boundary lines of political subdivisions, a limit on urban growth area within a county, the prohibition of annexation of special utility districts except in limited circumstances, and the application of "tests[17]" to determine when annexation is valid. Any of these restrictions could be added in different ways. First, the restrictions could be added to the beginning of the statute so that annexation in any of the possible circumstances could only occur if the restriction has been met. Another way would be to add the restrictions to certain circumstances. For example if the circumstance in Section 12-520(a)(1) that the land be platted and adjoining the city remained in the statute, a restriction that the city can only annex a certain percentage of its total area in a year using this circumstance. However, the percentage may or may not apply to the other circumstances.

Because these three options are on a spectrum, each could be combined in limitless combinations. For example, the legislature could merely remove circumstance 1, but then add on some of the restrictions suggested in the third option. The number of restrictions or the number of changes in circumstances could be combined however the legislature deems appropriate.

<u>Semi-Unilateral Annexation</u>: Under the current semi-unilateral annexation rules, the city may receive approval by the board of county commissioners for the annexation of land that it otherwise does not have the authority to annex. Changes to the semi-unilateral annexation statutes to move down the spectrum towards more land owner protection can come in two forms.

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17 For example, there could be a "subdivision test" which provides that a certain percentage of lots in the proposed area must actually be used other than agriculturally.

On the one hand, the statute could provide the city with the semi-unilateral annexation power only in certain circumstances. Currently semi-unilateral annexation is available to any land not otherwise authorized; however, this change would only allow certain types of land not otherwise authorized. These changes in limits could include, for example, proximity to city center, population of proposed territory or percentage of common borders.

On the other hand, the statute could increase the procedural requirements the city must meet. One notable increase would be consent from a percentage of land owners in the desired location. Another change would come in the form of the board of county commissioners' review of the "manifest injury." Of the current fourteen factors considered by the board of county commissioners in determining "manifest injury," none address the desires of current land owners. A change in this procedure could require the board to account for the percentage of land owners supporting or opposing the annexation.

Additionally, the statute could require approval by the board of county commissioners on some types of full-unilateral annexations. An example of this was suggested in 2008 House Bill 2978. This Bill would have required the board of county commissioners to pass a resolution concerning a proposed annexation within 30 days of the conclusion of the public hearing. The board of county commissioners would review whether the proposed annexation would have an adverse effect on the county. As a default, should the board fail to act within the 30 day period, the annexation would be deemed approved. In House Bill 2978, the approval by the board of county commissioners was only required in full-unilateral annexation circumstances 1, 4, 5 and 6, the least protective circumstances.

House Bill 2747: Presumably due to the amount of resistance from landowners concerning unilateral land annexation, the 2008 Session of the Kansas Legislature has proposed House Bill No. 2747.[18] House Bill 2747 represents a combination of changing circumstances in full-unilateral and semi-unilateral annexation, limiting the circumstances in which a city has the power to achieve full-unilateral annexation of a tract of land and completely removing the semi-unilateral power under 12-520c. First, the bill removes some of the current circumstances in which full-unilateral annexation is permitted, most notably those dealing with land adjoining the city or sharing certain common borders. Then, the Bill adds an additional possible circumstance for annexation where "the majority of the qualified electors voting at an election held as provided in Section 12-520a, and amendments thereto, approve the proposed annexation."[19] A "qualified elector" is defined as "any person registered to vote who resides within the area proposed to be annexed under the provisions of K.S.A. 12-520(a)(4), and amendments thereto."[20] Note the Bill defines the qualified elector as one who resides, not merely the owner of property in the area to be annexed. Additionally, the Bill removes the city's ability to annex pursuant to approval by the board of county commissioners. As a result, the city may only annex land in a few circumstances, regardless of the board of county commissioners' approval otherwise.

2. Considerations

[18] H.R. 2747, 2008 Sess. (Kan. 2008).
[19] *Id.*
[20] *Id.*

Presumably the reduction in the city's power to annex would decrease the amount of unilateral annexation. For example, the House Bill 2747 would have prevented the Overland Park annexation due to the large opposition of the landowners. Thus, annexation would be more difficult for the municipality, but would provide for more protection to the landowners. Practically speaking, however, this was only one of the fourteen annexations. The two annexations pursuant to Section 12-521 may also have been effected depending on how the landowners in the area felt about the annexation approved by the board of county commissioners. That leaves the majority (11) of the annexations that this would not affect. Only if these eleven annexations are a means of avoiding the other statutory requirements would these changes make a substantial difference.

Consequently, these possible decreases in the city's rate of growth will decrease the potential tax base for the city. If it cannot include more land, it cannot tax more land. Further, it may not be able to reach those individuals taking advantage of the city services without contributing to their funding. However, it also will not have as many development costs for the provision of new services.

The landowners and residents of lands not meeting one of the requirements will not have to pay for the addition of new services or be subject to the city's regulation. This will lessen the number of individuals that would be subject to the city's taxes as well. However, these landowners or residents may not get the benefit of city planning for growth. Instead individual developers will be able to come in and develop as they desire.

As for the general public, the costs associated with ease of development are reduced when a city's power to annex is minimized. Particularly urban sprawl and the stretch of services will be lessened if the city is forced to slow the growth. Additionally, slower growth will allow for greater consideration of environmental impact of development. The development could be planned better if forced to slow down. Better planning should lead to more consideration going to environmental factors.

C. Approval By A Separate Party

1. Alternative Description

The strongest protection for landowners comes in the form of democracy. As suggested by the proposed revisions to the statutes, annexation could be achieved only through voter approval. The House Bill provides for voters residing within the proposed annexation area; however protection could be expanded to include landowners within the area. Additionally, the vote could be for landowners within the proposed area and landowners in the lands adjacent to the proposed area. Another option would be a consolidation vote where annexation would require the majority vote of the city and a separate majority of those in the proposed annexed area (and possibly the surrounding tracts of land.) Depending on the constituency desired, there are a number of factors to consider before choosing an option. Such factors include: the number

of voters in the proposed tract of land, the number of voters in the city, the size of the land proposed per owner, or even the value of the land proposed[21].

The addition of voter approval for annexation removes the "unilateral" element of the annexation statutes. Only upon consent of a majority of landowners and/or residents could the annexation occur. House Bill 2747 would require approval by the majority of residents in the proposed annexation area. However, the eligible voters could be changed to include all affected persons. This would include not only residents in the desired annexation area, but also the landowners. Additionally, the vote might include residents of neighboring areas to the proposed annexation area and current city residents. A variation is a consolidation vote with separate majorities for the proposed annexation area and the current city residents. The different considerations of the potential groups could have a significant effect on the results of an election depending on who is involved in the vote.

2. Considerations

Here again, the fact that none of the annexation ordinances on the Kansas Department of Revenue website involved full-unilateral annexation suggests that the costs to involved parties may be limited. Thus, the following considerations only come into play if the consensual annexations were used to evade the policies behind full-unilateral annexation requirements.

First, adding voter approval would be both a power and procedural change for the city. Not only would the city lose the power to unilaterally annex a desired area, but it would also have to comply with additional procedural requirements for the vote. Requiring a vote would result in the administrative costs of mail ballot elections. For example, Lenexa, KS has estimated a cost of $2.00 per mail ballot for a population of approximately 45,000 citizens in 2008. This is a $90,000 cost if each citizen in the city is required to approve a proposed annexation, not to mention the number of additional landowners or residents in or around the proposed annexation area. Additional estimated costs per mail ballot have ranged from $1.81 in Sunnyvale, CA to $3.91 in Ft. Collins, CO. In order to calculate the Ft. Collins costs, it was determined that 77% of the costs were attributed to mail ballot packages (printing, assembly, supplies and postage) and the remaining 23% of the cost went to other things (legal ads, tech support, public outreach, hourly workers and equipment.)[22] Additionally, most annexation votes presumably would not pass if they required a majority of residents in the area annexed. This presumption comes from the fact that if the landowners would consent, the city would not need full-unilateral annexation. Consequences of failed annexations would be lack of physical growth, inability to accommodate economic growth and inability to grow the tax base.

Additionally, the landowners and residents would benefit from the ability to challenge annexation where undesired. They would not have to worry about the problems associated with

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21 For an example of the number of landowners and the value of the land being a factor, see the Indiana Code for annexation. Indiana Code 36-4-3-11(a) provides for the factors to be considered when a remonstrance is being filed in district court against an annexation ordinance. The remonstrance must be signed by either 65% of landowners or by landowners of 75% in assessed value.

22 Mayor Ann Azari, Ft. Collins, Colorado Mail Ballot Costs, *available at* http://www.usmayors.org/bestpractices/bp_volume_2/fortcoll.htm.

judicial review of a legislative function. No standards for determining the "advisability" would have to be reviewed. Instead, the landowners and residents would have the ability to directly challenge the annexation.

The general public would benefit from the decreased urban sprawl because the rapid growth would not occur. Cities could expand, but it would be a much slower process requiring consent. Consequently, the environmental impact would be lessened as well. With less expansion, the focus of development could be on the inside of the current city limits. Municipal bonds could be rewarded instead to projects to fix up the core of the city.

III. LEGISLATIVE IMPLEMENTATION

A. Unilateral Annexation - Status Quo

1. Implementation Steps

Because this is the current law, no steps are currently necessary for implementation. Additionally, given the changes to the statute occurred in 2005 and are relatively recent, the legislature may want to monitor how it is working before making any changes.

2. Constraints

Because the annexation law has been longstanding, the constitutional questions should already be resolved. It must be noted, however, that the addition in 2005 of the judiciary's power to review "whether annexation is reasonable" for full-unilateral annexations has not yet been explored. There may be questions as to what "reasonable" means in the context of full-unilateral annexation.

B. Changed Circumstances For Unilateral Annexation

1. Implementation Steps

For both full-unilateral and semi-unilateral annexation, the implementation steps depend on which changes are going to be made. One option is the removal of one or more of the circumstances for full-unilateral annexation, which would require an amendment to K.S.A. § 12-520. The next option, either instead of or in combination with the removal of circumstances, would be the addition of restrictions. The restrictions could either be added to the preamble of Section 12-520 to apply to all of the circumstances or be applied to only certain circumstances. If added to only certain circumstances, these restrictions could be added either at the end of each circumstance or as a separate section of the statute listing the circumstances by number to which it applies. For example, in 1987 Texas enacted a restriction limiting the total annexation by a municipality to 10% of the total incorporated of the incorporated area per year.[23] This section of the Texas statute is a separate section that applies to all of the annexation statutes. Additionally, it provides information on how to calculate the 10%.

23 Tex. Code. Ann. § 43.005 (2008).

2. Constraints

g. Home Rule

Home Rule involves state and local power division. Although states are independent sovereign entities, local governments only have the powers granted to them by the state. Under Home Rule, a state may grant local governments the power of self-governance unless pre-empted by the state. The State of Kansas grants the power of Home Rule to local governments under Article 12, Section 5 of the State Constitution. A benefit of Home Rule power to the cities is that if the State of Kansas enacts pre-empting legislation, it must be uniform. If the statute cannot be uniformly applied to all the cities, then a city may be able to opt out by charter ordinance. The current annexation statutes have already been tested for uniformity and have passed.[24] For any of the changed circumstances, as long as they apply uniformly Home Rule will not be an issue.

h. Equal Protection - Rational Basis Test

Concerns regarding equal protection come into play when the statutes treat certain portions of land different from others. In the case of ordinary economic regulation, the statute must meet the rational basis test. "In areas of...economic policy, a statutory policy that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification."[25] The test requires that the government have a legitimate purpose behind making the distinction and the law must be reasonably related to the legitimate purpose. Because the state has a legitimate interest in regulating the growth of cities and permitting the appropriate annexation of land, most likely this will not be an issue unless there are outlandish changes to the current distinctions in the statute.

C. Approval By A Separate Party

1. Implementation Steps

Similar to the implementation of changed circumstances, the implementation of approval by a separate party could be done in a few different ways. The approval by the voters could be required in the preamble to all of the circumstances in K.S.A. § 12-520 for full-unilateral annexation. This could also be done to only a few of the circumstances for full-unilateral annexation either by a separate section in the statute or by adding the requirement to the particular circumstances individually. In the case of semi-unilateral annexation, voter approval could be added to the existing board of county commissioners' approval under Section 12-521. This could be done to semi-unilateral annexation as a whole or only to certain tracts of land.

Additionally, the legislature will need to work on determining the voting constituency by defining the qualified electors and determining the districts. The qualified electors may differ

24 See Dillon Real Estate Co., Inc. v. City of Topeka, 284 Kan 662 (2007).

25 FCC v. Beach Communications, Inc., 508 U.S. 307, 113 S.Ct. 2096, 124 L.Ed.2d 211 (1993).

depending on which annexation circumstance is involved. Different circumstances provide different groups of interest.

2. Constraints

The primary constraint for approval by a separate party arises through the addition of voter approval. The equal protection clause of the fourteenth amendment provides the right of each person to have his vote count as much as any other person's. The "one person one vote" concept states that "all who participate in the election are to have an equal vote."[26] Voting rights are constitutionally protected as fundamental rights. Consequently, defining a constituency in a manner that dilutes the votes of some people "must promote a compelling state interest in order to survive constitutional attack."[27] This test is harder to meet than the rational basis test discussed in the Changed Circumstances for Unilateral Annexation alternative. In deciding how to define the voting constituency requires consideration of the special circumstances of interested parties. These special circumstances most likely will provide the compelling interests necessary to uphold a constituency that dilutes some votes.

26 *See Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964).

27 *Hill v. Stone*, 421 U.S. 289, 95 S.Ct. 1637, 44 L.Ed.2d 172 (1975).

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Testimony before the
House Local Government Committee
Regarding House Bill 2029
By Erik Sartorius

February 3, 2009

The City of Overland Park appreciates the opportunity to present testimony concerning House Bill 2029. This legislation addresses a shortcoming in the current law. HB 2029 would strengthen changes the legislature made a few years ago.

Current law generally requires that the board of county commissioners hold a public hearing 5 years after a city annexes land to determine whether the city is providing the services it set out in its service extension plan which was submitted in support of its proposed annexation. If it has not, then the county commissioners must hold a second hearing 2½ years later to determine if the city has cured the deficiencies in its performance. House Bill 2029 would reduce the time period between the annexation and the first review to 3 years, and reduce the time in which the city has to cure deficiencies to 1 ½ years.

Most importantly, the bill provides a remedy for landowners in the annexed area if the county has not held the required review. The City of Overland Park believes it is important that cities be required to demonstrate that they are providing the services that they said they would provide.

K.S.A. 12-531 and 12-532, as presently written, provide no means to ensure counties perform the required reviews of service plans. HB 2029 would give citizens living within the annexed area access to the courts to compel these reviews if counties fail to perform them.

Additionally, the City believes it is a sensible step to require that cities provide copies of their annexation service plans to the board of county commissioners in annexations under both K.S.A. 12-520 and 12-521. Overland Park produces detailed service plans tailored to the area proposed for annexation. The City has submitted three petitions for annexations to the Johnson County Board of Commissioners during the course of Overland Park's 49 years of existence, and the accompanying service plans have ranged in size from 11 pages in 1985 to 63 pages in 2002 to 87 pages in 2007.

Of the myriad bills introduced this year concerning annexation, House Bill 2029 ~~aims~~ to improve the law in ways that make sense. Should this committee decide that some changes to the state's annexation statutes are warranted, the City of Overland Park would recommend the changes in House Bill 2029.

Local Government
Date: 2-3-09
Attachment # 3

WHITNEY B. DAMRON, P.A.

TESTIMONY

TO: **The Honorable Sharon Schwartz, Chair**
And Members of the House Local Government Committee

FROM: **Whitney Damron**
On Behalf of the City of Topeka

RE: **HB 2029 – An Act concerning cities; relating to annexation.**

DATE: **February 3, 2009**

Good afternoon Madam Chair Schwartz and Members of the House Local Government Committee. I am Whitney Damron and I appear today to offer comments on HB 2029 relating to annexation.

Our understanding of the changes to current annexation law proposed under HB 2029 include the following:

- Require the City utilizing annexation authority under K.S.A. 12-520 et. seq., to file their annexation plan with the Board of County Commissioners ten days before the annexation hearing required under K.S. A. 12-520 (a).

- Shorten from 5 years to three years the timeframe for the county to conduct a hearing on the city's compliance with their annexation plan.

- Shorten from 2 ½ years to 1 ½ years the time a city has to comply with its plan or be subject to a deannexation action by the affected landowners. If the property is deannexed, the city cannot seek to again annex the land for a period of 3 years.

- A landowner in an area annexed under K.S.A. 15-520 can file an action to compel a county commission to hold a hearing under this act.

One suggestion from the City of Topeka would to change the term, "refuses" to "fails" on page two, line 30. A balloon amendment is attached to this testimony.

The City of Topeka is aware there are several other proposals to substantially change annexation laws in Kansas and will likely appear in opposition to a number of them. However, the changes proposed in HB 2029 would appear to be reasonable as currently drafted and would not appear to impose a significant burden on local units of government, either cities or counties.

On behalf of the City of Topeka, we thank you for consideration of our comments today.

WBD
Attachment

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2-4

may be provided upon petition of the landowners to create a benefit district.

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

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

Sec. 2. K.S.A. 12-531 is hereby amended to read as follows: 12-531. (a) ~~Five~~ *Three* 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~~ *three* 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 to: (1) The city; and (2) any landowner in the area subject to the service extension plan.

(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 K.S.A. 12-532, *and amendments thereto,* if the services are not provided within ~~2½ years~~ *1½ years* of the date of the board's findings.

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

Sec. 3. K.S.A. 12-532 is hereby amended to read as follows: 12-532. (a) If, within ~~2½ years~~ *1½ years* following the conclusion of the hearing required by K.S.A. 12-531, *and amendments thereto,* or, where there has been litigation relating to the hearing, ~~2½ years~~ *1½ 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

RE: HB 2029 - Testimony of Daniel Stueckemann, resident, Cedar Lakes Estates (CLE), Bonner Springs, KS.

Good afternoon Chairperson Schwartz, Members of the House Local Government Committee, staff and conferees. My name is Daniel Stueckemann and I am a resident of Cedar Lakes Estates in Leavenworth County KS. I am here today as both a property owner and in my capacity as President of Cedar Lakes Homeowners' Association (CLHOA). I appreciate the opportunity to present testimony regarding HB 2029.

We don't support the bill as written because it does not include any specific provisions to require a direct vote by the affected property owners to approve or reject a proposed involuntary, unilateral annexation by a municipality. Further, the provisions should mandate that if the vote rejects the annexation, that the City shall not propose the annexation of any such lands in the proposed area for at least five years from the date of the election. We would strongly encourage such provisions for equity and consistency in both K.S.A. 12-520a and K.S.A. 12-521 for both City Councils and County Commissions.

Let me state that while certain provisions in HB 2029 are desirable from our perspective, the bill just does not reach far enough to provide real protection for property owners, ensuring that they have a right to vote on fundamental property issues which impact us.

I spoke at the Joint 2008 Special Committee on Eminent Domain in Condemnation of Water Rights, at which one day was devoted to local government annexation. On November 19 that Committee considered a staff overview of Kansas annexation laws and 2008 annexation legislation. I'm not aware of the Special Committee's findings or whether it has shared those with the Local Government Committee.

We as property owners understand a city's desire, and in some cases, real need to grow and in so doing, pay for services which it incurs costs to provide through its tax base. However we fundamentally disagree with the forced annexation process when Cities try to use already existing rural residential subdivisions which have adequate services in place as the primary means to 1) bring additional funding to their budgets at essentially no costs to them and 2) expand their credit rating opportunity for loans. Rather than already existing, solely residential rooftops to provide a tax base, City Councils should go after commercial business development, where tax levies on commercial property are often 3 times that of residential properties.

Surely you know that Cities already utilize alternatives to unilateral annexation which they may not publicize to you but which they use extensively. One example which Cities use extensively is to require developers to "voluntarily annex" if the latter wants to join the sewer system. Please don't believe for one second that hooey about "we'll never grow". How is it that land-locked cities like Leawood have historically shown growth in property values? We think it's because of their business plan, how they pursue commercial development, and how they nurture relationships and practices which

encourage and facilitate growth based on businesses.

We know that Kansas Courts have interpreted annexation statutes as legislatively designed to "protect the right of property owners against a city's unilateral action in annexing their land." Clarke v. City of Wichita, 218 Kan. 334, 346, 543 P.2d 973 at 985-86 (1975) and to allow municipal governments to deal with problems of urban growth. State ex rel. Medley v. City of Coffeyville, 211 Kan. 746, 747, 508 P.2d 1007, 1009 (1973).

But the truth is that current annexation statutes provide minimal, if any, "protection" for property owners in unilateral annexations – and what the Courts may think was designed to work in theory does not work in practice.

Many Cities effectively abuse the power and abuse the process which the statutes afford them. At the public hearing the City can learn of defects or problems in its Service Plan, decide not to vote on the resolution, and start the process all over again when it wants with no limitation. This process can go on until the City gets its way simply by wearing down and out property owners who are opposed to it. Cities use taxpayer dollars to pay their attorneys fees, but affected residents must hire and pay their own legal representation. Here's a good example of abuse of process and power - in July 2008 the Basehor City Council (BCC) began its first annexation attempt of CLE and a Public Hearing was held in September 2008. But BCC never voted to approve or deny its July annexing resolution. On October 8 the BCC approved motions to "start the process over" and hire an engineering company to begin a draft of a new Service Plan, but didn't even list the July resolution as an agenda item for a vote! Somehow, somewhere, some time between September 8 and October 8 the Basehor City Council decided based on someone's recommendations to "start the process over again rather than take the chance that a legal appeal would result in the same determination". (Quotes from City Administrator Carl Slaugh's document "Agenda Item Information Form", City Council Work Session dated November 10 2008). We can find no evidence of any appropriately called City Meeting or the continuation of the Public hearing on our annexation issue at which such a decision was made. Then - a second annexation attempt was started within four months of the first. City staff on November 10 were instructed to "dot their 'i's' and cross their 't's" in preparing the Service Plan... and now another Public Hearing is set for February 9.

Cities often cavalierly quote the League of Kansas Municipalities' mantra "they need to pay their fair share for the benefits they receive from our City" – but let's examine that statement a little more closely. If you look closely at the facts of many cases, ours included, the Government services being received are adequately and safely provided by someone else entirely (usually the County, not the City) and there are little to no additional benefits, such as those offered by commercial development. To add insult to injury, "franchise fees" for utilities already in place get tacked onto property owners' bills, amounting to a hidden tax which the Cities conveniently avoid mentioning in Service Plans. Basehor hasn't ever had a swimming pool, recreational center, or walking

paths and doesn't have a downtown shopping area. Basehor hasn't even had a grocery store for more than 12 years and the latest efforts to build one have been stymied by City Commission politics for 2-3 years!

Cities seem to look at their authority to unilaterally annex as a modern day version of "manifest destiny" – and have used this statute as a mechanism to bully and intimidate property owners who must then turn to the Courts for redress. You understand the costs associated with litigation; you should also understand that Cities and their lobbyists appear to us to only view annexation statutes as a simple process to expand their tax base and not have to provide compensating benefits. Why? Because it's easy and "they can" by virtue of the power which only the Kansas Legislature has afforded them in current legislation. Cities know that homeowners are reluctant to take the fight to court because of litigation costs, the all-too-often verified concept by City staff that annexation is a "done deal", the prospects of a drawn out legal process, and the fact that many attorneys counsel prospective homeowner litigants that it's a hopeless fight with a predetermined outcome – the Cities will win. The reality is that current legislation stacks the deck in any City's favor – it's the functional equivalent of disparate treatment. The bottom line is that a Court typically will not overturn the decision of a City when that City, acting in a quasi-judicial capacity, decides to believe its own staff's statements over those of the property owners impacted – despite the elements which the Legislature mandates be considered in K.S.A. 12-520a(e).

Back to unilateral annexation - what other legislation anywhere allows an entity to initiate an action, determine the hearing and "rules" of procedure; hear the evidence; weigh it according to criteria which are spelled out; and then make a decision? Where's the impartiality or equity? It defies belief to think that a party can exhibit the kind of objectivity needed to make a decision when that party has a vested interest and has been legislatively empowered authority to decide the very issue it initiated. To allow K.S.A. 12-520a to stand as written effectively ensures that even alleged Criminals are afforded more procedural and substantive due process rights than law abiding, tax paying citizens of this state. Criminals at least have the right to a hearing before an impartial and objective judge or jury of their peers.

Speaking of those rights, let me remind you that right here in this country the dictatorial and unfair practices of a King created a rebellion the likes of which this world had never seen. The right to vote for those who represent us is sacrosanct to all of us as Americans. However, K.S.A. 12-520 et seq as it currently exists effectively ensures that we have no voice in electing those who represent us or make decisions which so dramatically impact our lives, livelihoods and property. We maintain that existing annexation statutes effectively discriminate against rural property owners by depriving them of the right to vote for their governmental representatives.

The only democratic remedy consistent with the principles upon which this Nation was founded and has operated for over 200 years is to allow affected property owners the right to vote on this issue. We as a nation just completed national, state and local elections

regarding candidates and issues. If we as affected homeowners had the right to vote on this issue in a properly noticed and worded election, believe me, we would abide by majority rule.

We would also encourage the State Budget Director to consider more factors than the one-sided City's mailing and administrative costs regarding the potential budgetary impact of "allowing" property owners the right to vote on this issue. We believe that a one-shot ballot would be far more cost-effective, realistic and definitive than the current practices voluntarily employed by Cities when they repeatedly start the process, hire numerous experts, make continuous revisions in their service plans based on public outcry pointing out deficiencies/defects.

I would guess that my views here today reflect the majority of Kansas rural citizens and taxpayers. We find it incredible that the Legislature allows unilateral annexation to occur with near disregard of the rights of property owners who live outside City limits and whose lives are so financially impacted when Cities cast a greedy eye towards our already developed, built out rural properties. It would be interesting to require analysis of City's budgetary decisions, policies and practices, along with missed opportunities for commercial development, as part of the statutory process. Perhaps we as property owners could have our own hearing and evaluate existing services provided by Cities. Please let them know that self-determination is a fundamental principle of our country and show them that right is predicated upon our right to vote regarding our property and for our political representatives - before they are given the opportunity to tax us.

RECOMMENDATIONS:

1. Eliminate Municipal Unilateral Annexation powers by incorporating appropriate language into HB 2019 which requires Cities and Counties to require a direct vote by the affected property owners to approve or reject a proposed involuntary, unilateral annexation by a municipality; include provisions mandating that if the vote rejects the annexation, that the City shall not propose the annexation of any such lands in the proposed area for at least five years from the date of the election. We strongly encourage such provisions for equity and consistency in both K.S.A. 12-520a and K.S.A. 12-521 for both City Councils and County Commissions.

2. Failing elimination of City Unilateral Annexation powers, ensure limitations on the number of times a City can attempt an annexation and we strongly suggest a minimum of 5 years but preferably 10 from the date of the resolution:

3. Specifically address through legislation the authority of Kansas Courts to address the issue of "reasonableness" – one of the bases upon which property owners can bring an action per 2005 amendments - when Kansas Courts have historically reiterated that they do not address such a factor after a City Council or Board of County Commissioners bases its decision on the evidence presented. This legal conundrum is patently unfair to property owners and gives an unfair advantage to Cities which initiate the process, conduct the hearing, attach credibility and value to their own staff's evidence while

ignoring property owners' evidence, and decide the outcome.

4. Failing elimination of City Unilateral Annexation powers, Remove from both City Councils and Boards of County Commissioners their power to hear disputes and Institute an impartial, nonpartisan duly elected entity of some type to hear and adjudicate the involuntary annexation issue. In the Basehor City Council-CLE situation, some Leavenworth County Commissioners have already indicated they would encourage City annexation to reduce their budget costs. Even if additional requirements were inserted in K.S.A. 12-520 or 521 to help "level the playing field", we believe that in the current economic climate, it would be impossible for an equitable decision based on the evidence. However, even if an impartial and objective entity were instituted by the Legislature, that action still doesn't satisfy the basic discriminatory practice of stripping citizens of their right to vote.

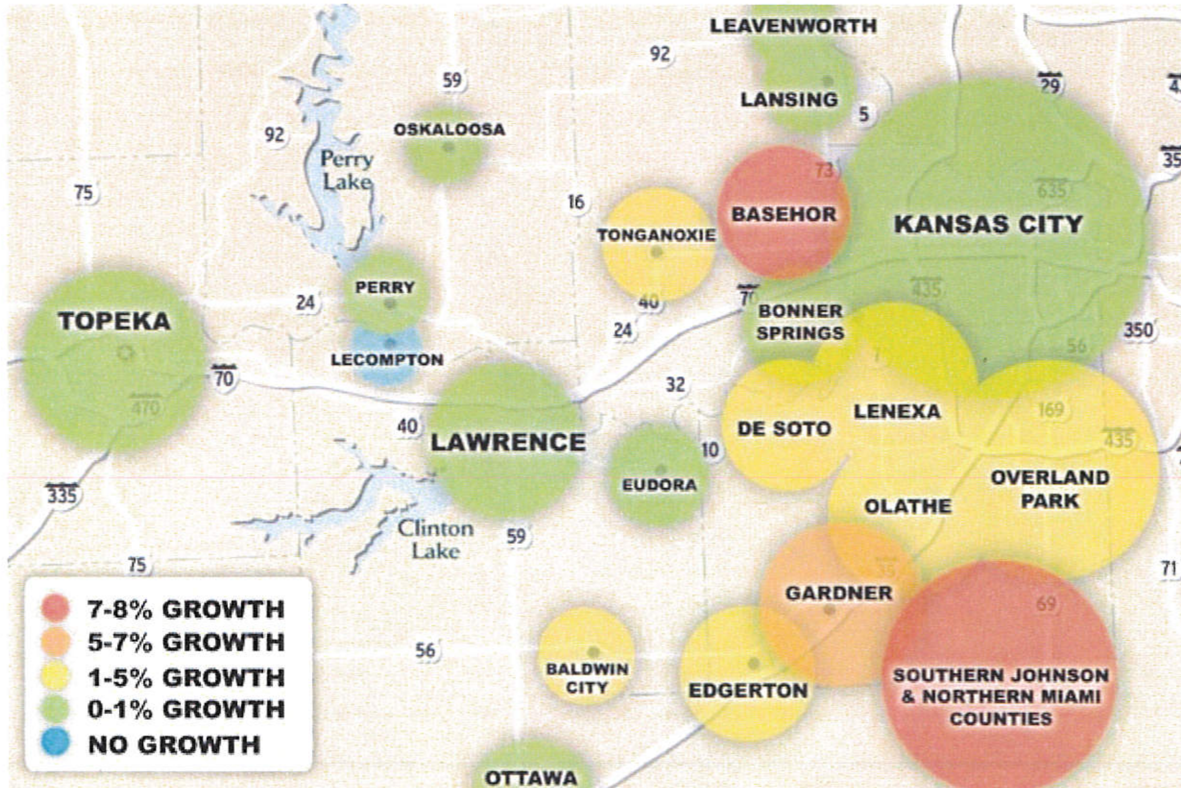
5. Issue a moratorium on Cities' ability to utilize unilateral, involuntary forced annexation statutes until the issue can be addressed by the Legislature this session; assuming elimination of unilateral annexation, nullify or void ordinances accomplished via involuntary annexation statutes as of January 1, 2009.

Thank you for your time, attention and the commitment you all exhibit as our duly elected Kansas Legislators. I'm glad to respond to any questions you might have now or in the future.

Daniel Stueckemann
Cedar Lakes Estates
Leavenworth County KS

HB 2029 Testimony by Carl Slaugh, City Administrator for the City of Basehor, KS
February 3, 2009 to House Local Government Committee

The City of Basehor is located in Leavenworth County six miles west of the Legends area and Kansas City racetrack. The 2007 Basehor population was 3,729, the fifth fastest growing city in the state with a 40% increase in population since 2000.



In 2008 the city council amended the municipal code to require annexation of all properties that connect to the sanitary sewer system. An annexation plan was adopted to pursue the subdivisions already connected to the sanitary sewer system. The first subdivision annexed in this manner was Cedar Falls, by voluntary annexation. The second to be pursued has been Cedar Lake Estates.

On the south side of the City of Basehor is a platted subdivision, Cedar Lake Estates, that was originally developed using sewer lagoons. When the city's sanitary sewer system was extended to the Pinehurst Subdivision just to the north, the Kansas Department of Health and Environment gave an order to decommission the sewer lagoons and connect to the city's sanitary sewer system.

Cedar Lake Estates is a platted subdivision containing 115.28 acres contiguous to the city that contains 114 lots. The subdivision was originally platted in 1996 and the final phase was platted in 2002. There are 105 homes in the subdivision.

Annexation is seen by the City as an orderly process of growth. Most of the subdivisions have annexed voluntarily as part of their request to receive city services, the most expensive of which is sanitary sewer.

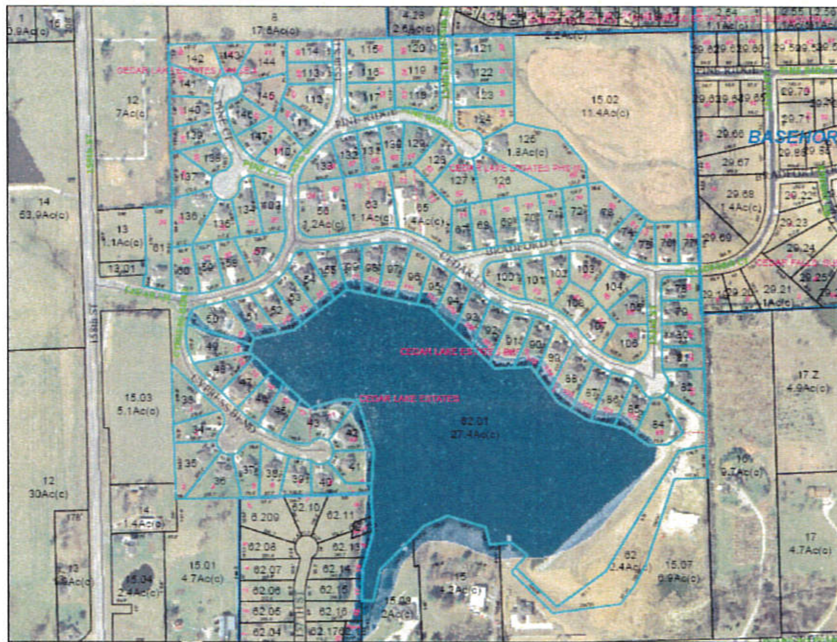
Local Government
Date: 2-3-09
Attachment # 6-1

In the case of the Cedar Lake Estates subdivision, platting took place through the county and it was not until they were required by the Kansas Department of Health and Environment (KDHE) to decommission their sewer lagoons that the subject of annexation came up. The City had an opportunity to require annexation at that point, but backed off apparently due to the threat of lawsuits.

With the growth of the city and change in policy the annexation is being pursued again in accordance with current statutes. K.S.A. 12-520 (1) allows annexation of land that is platted and some part of the land adjoins the city.

Without this provision there would not be an orderly growth of a city with parcels of county land surrounded by parcels under the control of the city.

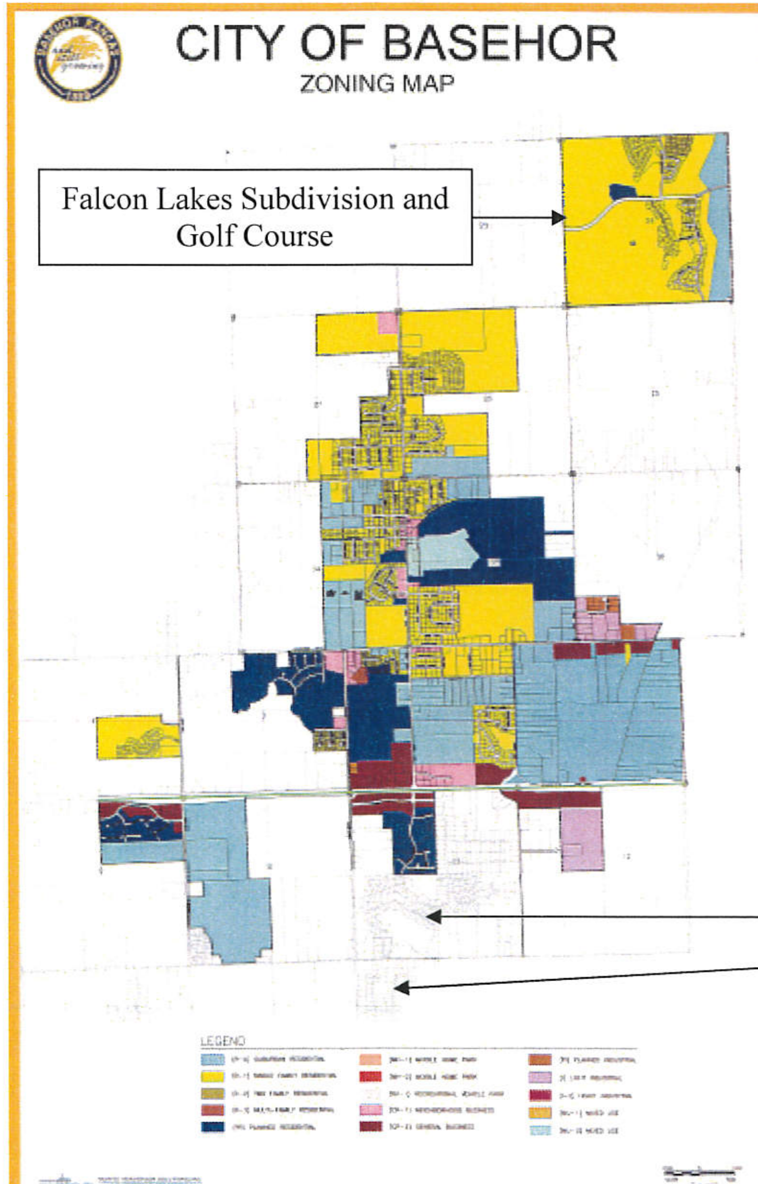
The biggest issue appears to be one of property tax rates. In the case of Cedar Lake Estates the mill levy would go from 95 mills to 116 mills or an approximate 22% increase. The subdivision currently receives all of the services normally provided to land within the city, including water, sewer, police and fire protection, but are receiving the overall services at a discounted rate in comparison to land within the city.



Cedar Lake Estates Subdivision

In an ideal situation the property tax rate would be the same within a county regardless of property location. However, since a city normally provides services that are not normally available within the county and those services cost more to provide, a variable mill levy results.

An orderly annexation process needs to be available to allow a city to grow as the services are extended.



The City has a public hearing scheduled Feb. 9, 2009 for the annexation of the Cedar Lake Estates Subdivision under K.S.A. 12-520 (1). The subdivision is on the perimeter of the city and already receives services similar to subdivisions within the city limits.

Another subdivision south of Cedar Lake Estates, Glenwood Estates, is facing the same situation with decommissioning of sewer lagoons. Leavenworth County has been given an order by KDHE to decommission the sewer lagoons and connect to the sanitary sewer system of the City of Basehor. The city council has let it be known as part of the process that annexation will be required.

Without the statutory provisions in place giving cities the authority to annex there would potentially be islands of county land surrounded by city limits. It is hoped and requested that these provisions such as K.S.A. 12-520 (1) will be left in place.

The extension of services is a costly measure and may be financed by the establishment of a benefit district. The process to set up a benefit district may take one or two years. Add to that the effort to obtain the necessary utility easements and right of way, plus one year for design and one year for construction. Shortening the time frame will place an undesirable burden on both the residents and the municipalities.

While it appears the intent of the proposal, to change the board of county commission review from five to three years after annexation, is to make it more difficult for municipalities to annex, it would also have the effect of placing a greater financial burden on property owners who would share in the cost for extension of services.

City of Lawrence KANSAS

CITY COMMISSION

MAYOR
MICHAEL DEVER

COMMISSIONERS
ROBERT CHESTNUT
DENNIS "BOOG" HIGHBERGER
MIKE AMYX
SUE HACK

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February 2, 2009

Representative Schwartz
and Committee Members
300 SW 10th Ave.
Topeka, Kansas 66612-1504

Re: Annexation Bills

Dear Chairperson Schwartz:

I am writing to you to express our City's strong opposition to legislation amending the state statutes governing annexation. Setting our City's boundaries is absolutely critical for the proper growth of our city. Annexation enables us to plan for and provide public services for our residents and ensures that we grow in an appropriate manner. Moreover, the City of Lawrence has exercised its annexation powers responsibly and with due consideration to the rights of the landowners being annexed.

The current annexation laws do not need amending. The annexation statutes provide a number of procedural protections in those cases in which the landowners have not petitioned or consented to the annexation including notice, public hearings, and comprehensive service plans. Certain annexations require the approval of the board of county commissioners. These statutory requirements serve as an appropriate check on annexing cities; additional restrictions on a city's ability to annex territory and additional procedures are unnecessary.

House Bill 2030 is of particular concern to the City. It provides that no city may annex more than 21 acres of land without the consent of the landowner. This bill, if passed, will greatly harm our ability to grow our City in a well-planned and suitable manner. As an example, just east of our existing City boundaries, the former Farmland Industries site occupies over 400 acres of land. Farmland

Industries went bankrupt in 2001, leaving rusting and decaying facilities and environmentally damaged soils. We believe annexation of this large tract of land located on Highway 10, a gateway to our community, and immediately adjacent to an industrial park that is in the City, is in our community's best interests. Annexation of the former Farmland site will ensure that it is subject to our land use regulations and our infrastructure design standards. It could provide much needed industrial property in an area suitable for industrial development. The property is under the control of an out-of-state trustee appointed by a bankruptcy court. The trustee will not consent to annexation. HB 2030, if passed, will prevent the annexation of this property and opportunities for well planned growth of our City will be lost.

The Legislature has a number of critical issues on its plate this year. We ask that you focus your energy and time on these big issues and leave the annexation statutes alone.

Sincerely,

Rob Chestnut
Vice-Mayor

cc: City Commissioners
David L. Corliss, City Manager