

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Sharon Schwartz, Chair at 3:32 p.m. on February 5, 2009, in Room 446-N of the Capitol.

All members were present except

Representative Mike Peterson - Excused

Representative Mike Slattery - Excused

Committee staff present:

Ken Wilke, Office of the Revisor of Statutes

Jill Shelley, Kansas Legislative Research Department

Carol Bertram, Committee Assistant

Conferees appearing before the committee:

Brad Smoot, No Annexation Coalition

Norman Pishney, No Annexation Coalition

Tom Watson

Don Moler, Executive Director, League of Kansas Municipalities

Michael M. Shultz, Overland Park

Dave Holtwick, Vice President of Government Affairs, Overland Park Chamber of Commerce

Whitney Damron, City of Topeka

Melissa Mundt, Assistant City Administrator, City of Gardner

Doug Mays, City of Olathe

Others attending:

See attached list.

Representative Schwartz, Chair, noted that the minutes of the January 15 and January 20, 2009 meetings were distributed to the committee members electronically. Since there had been no changes or revisions requested, Chair Schwartz asked for a motion to approve the minutes. Representative Goico moved that the minutes of the January 15 and January 20, 2009 meetings be approved as written, seconded by Representative Huebert. The motion carried.

Representative Schwartz, Chair, opened the hearing on **HB 2030—Cities; annexation; board of county commissioners; agriculture land restriction.**

Chair Schwartz recognized Ken Wilke, Office of the Revisor of Statutes, who presented an overview of **HB 2030** noting the changes recommended by the Special Committee on Eminent Domain in Condemnation of Water Rights.

Concerning questions, Chair Schwartz stated that the committee will hear all the proponents and then ask questions.

Proponents:

Brad Smoot, Legislative Counsel for No Annexation Coalition, presented testimony as a proponent to **HB 2030 (Attachment 1)**. He noted that the No Annexation Coalition is composed of landowners in the 15 square miles of land recently proposed for annexation by Overland Park, and said this appears to be the largest involuntary annexation in Kansas history. The No Annexation Coalition believes that K.S.A. 12-521 deserves immediate attention. This statute should be repealed or amended to limit the amount of land which may be annexed.

Norman C. Pishny presented testimony as a proponent to **HB 2030 (Attachment 2)**. He said that the Special Committee on Eminent Domain in Condemnation of Water Rights got it right. There are a multitude of issues with current annexation statutes, but the revisions that committee proposed addresses the top issues. Therefore, he believes **HB 2030**, which requires landowner approval for annexation of 21 acres unplatted agricultural land, should be implemented into law.

CONTINUATION SHEET

Minutes of the House Local Government Committee at 3:32 p.m. on February 5, 2009, in Room 446-N of the Capitol.

Representative Schwartz, Chair, recognized Tom Watson who spoke as a proponent to **HB 2030**. No written testimony was provided the committee. Mr. Watson said he owns land in the area proposed for annexation.

Questions and answers followed.

Opponents:

Don Moler, Executive Director, League of Kansas Municipalities, presented testimony in opposition to **HB 2030** (Attachment 3). He noted that to adopt the language found in **HB 2030** would limit the ability of cities to effectively use the annexation power found in K.S.A. 12-521, and would significantly modify many years of sound public policy in this state.

Michael M. Shultz, City of Overland Park, presented testimony in opposition to **HB 2030** (Attachment 4). He stated the City of Overland Park opposes the bill because it will interfere with the proper growth and development of city and county governments and the regions in which they exist. Also, the annexation of tracts of land of 21 acres or more and devoted to agricultural use can provide benefits to the community as a whole and is not detrimental to the owner of the land or the community. Where such danger exists as part of an annexation, the board of county commissions has the right to deny a city from annexing such land.

Dave Holtwick, Vice President of Government Affairs with the Overland Park Chamber of Commerce, presented testimony in opposition to **HB 2030** (Attachment 5). He stated **HB 2030** would impede a city's ability to plan for and accommodate growth causing the growth that is going to occur to be less efficient and more costly. In Overland Park, there are policies and procedures in place now to allow a rural area to be joined to a city when it begins to be urbanized. **HB 2030** will disrupt the natural development pattern that is occurring now. Therefore, he encouraged the committee to oppose **HB 2030**.

Whitney Damron, City of Topeka, presented testimony in opposition to **HB 2030** (Attachment 6). He stated to require a city to annex land in small parcels or in the alternative, to work around agriculture land that is not platted with no means to require a property owner to acquiesce to annexation into the city, will create a significant impediment to orderly growth.

Chair Schwartz invited questions from the committee. The opponents responded as they were called upon.

Written Testimony:

Representative Schwartz, Chair, drew the committee's attention to four written only testimonies received:

- John Donley, Assistant General Counsel, Kansas Livestock Association, submitted written only testimony as a proponent to **HB 2030** (Attachment 7).
- Terry Holdren, National Director, Kansas Farm Bureau Government Relations, submitted written only testimony as a proponent to **HB 2030 & 2031** (Attachment 8)
- Ron R. Fehr, City Manager, City of Manhattan, submitted written only testimony as an opponent to **HB 2030 & HB 2031** (Attachment 9).
- Melissa Mundt, Assistant City Administrator, City of Gardner, submitted written only testimony as an opponent to **HB 2030 & HB 2031** (Attachment 10).

Chair Schwartz reminded the committee that a written only testimony had been previously received from Rob Chestnut, Vice-Mayor of the City of Lawrence, who opposes all annexation bills.

There being no further conferees appearing before the committee in regard to **HB 2030** the hearing on **HB 2030** was closed.

Representative Schwartz, Chair, opened the hearing on **HB 2031 - Cities; annexation; board of county commissioners decision; election required.**

CONTINUATION SHEET

Minutes of the House Local Government Committee at 3:32 p.m. on February 5, 2009, in Room 446-N of the Capitol.

Chair Schwartz recognized Ken Wilke, Office of the Revisor of Statutes, who presented an overview of **HB 2031**, noting the changes recommended by the Special Committee on Eminent Domain in Condemnation of Water Rights.

Proponents:

Brad Smoot, Legislative Counsel for No Annexation Coalition, was present to present testimony as a proponent to **HB 2031**. Since his testimony on **HB 2030** was combined with his testimony to be presented on **HB 2031**, he directed the committee's attention to his previous testimony which is part of Attachment 1 of these minutes. Mr. Smoot went on to answer questions directed to him by the committee.

Chair Schwartz recognized Norman C. Pishny who was present to present testimony as a proponent to **HB 2031**. Mr. Pishny had presented testimony earlier as a proponent to **HB 2030** and at that time his testimony was combined with **HB 2031**. His testimony for **HB 2031** is part of Attachment 2 of these minutes.

Opponents:

Don Moler, Executive Director, League of Kansas Municipalities, presented testimony in opposition to **HB 2031** (Attachment 11). Mr. Moler stated **HB 2031** takes the decision-making authority away from the elected officials of the county who represent the individuals in the area to be annexed and replaces it with a vote of the people who live in the area or who own land in the area. The idea that a handful of landowners should be determining what is best for the community at large is bad public policy. Mr. Moler went on to answer questions directed to him by the committee.

Michael M. Shultz, City of Overland Park, presented testimony in opposition to **HB 2031** (Attachment 12). He summarized that the state needs to figure out how to grow the economy and promote job development. It is difficult to see why the state should change 100 years of annexation law to placate the special interests of persons who want the benefits of being near a city, but who do not want to share in the burdens that come as part of being part of a community. The state needs to trust our elected officials and let city and county officials perform their obligations in the same way that the members of this legislature do. Mr. Shultz went on to answer questions directed to him by the committee.

Dave Holtwick, Vice President of Government Affairs with the Overland Park Chamber of Commerce, presented testimony in opposition to **HB 2031** (Attachment 13). He noted that the process currently in place has been shown to work well and provides multiple opportunities for review and evaluation before annexation moves forward.

Whitney Damron, City of Topeka, presented testimony in opposition to **HB 2031** (Attachment 14). He stated that **HB 2031** would have seriously negative consequences for cities and should not be adopted. Mr. Damron went on to answer questions from Representative Mah.

After Representative Schwartz opened the floor to anyone else who would want to speak to **HB 2031**, Melissa Mundt, Assistant City Administrator, City of Gardner, who is an opponent to **HB 2030 & HB 2031** emphasized the City of Gardner supports the currently established state statutes and opposes any changes that further limit the ability of cities to grow in a planned and reasonable fashion which promotes the health, safety and welfare while fairly and equitably protecting the interests of all parties.

Doug Mays, City of Olathe, presented himself as an opponent to **HB 2031**. No written testimony was provided the committee.

Questions and answers followed.

There being no further conferees to appear before the committee on **HB 2031**, Chair Schwartz closed the hearing on **HB 2031**.

The meeting was adjourned at 5:55 p.m.

CONTINUATION SHEET

Minutes of the House Local Government Committee at 3:32 p.m. on February 5, 2009, in Room 446-N of the Capitol.

The next meeting of the committee is scheduled for Tuesday, February 10, 2009.



Representative Sharon Schwartz, Chair

HOUSE LOCAL GOVERNMENT COMMITTEE

DATE: 2-05-09

NAME	REPRESENTING
Dave Holtwick	Overland Park Chamber
Melissa Mundt	City of Gardner, KS
Michael Shultz	City of Overland Park, KS
Don Stebbins	Homeowner, Stilwell KS
Betty Bailey	Homeowner, Buena, KS
Robert J. Watson	City Attorney of Overland Park
Michelle Butler	Capital Strategies
ERIK SARTORIUS	City of Overland Park
Ken Barone	City of Park City
Ryan Engelson	CAPITAL LOBBY GROUP, LLC
Whitney Janner	City of Topeka
Law Moler	LKM
Joe Mosimann	Hein Law Firm

Please use black ink

800 SW JACKSON, SUITE 808
TOPEKA, KANSAS 66612
(785) 233-0016
(785) 234-3687 (fax)
bsmoot@nomb.com

BRAD SMOOT
ATTORNEY AT LAW

10200 STATE LINE ROAD
SUITE 230
LEAWOOD, KANSAS 66206

**STATEMENT OF BRAD SMOOT
LEGISLATIVE COUNSEL
NO ANNEXATION COALITION
HOUSE LOCAL GOVERNMENT COMMITTEE
REGARDING 2009 HOUSE BILLS 2030 AND 2031
FEBRUARY 5, 2009**

Madame Chair and members of the Committee,

On behalf of the No Annexation Coalition we represent, I want to thank you for the opportunity to appear before this committee to visit with you about the issue of Kansas annexation laws. I am certain that many of you are familiar with Kansas annexation laws and with the passions and controversy that can occasionally accompany annexation decisions of municipalities.

The Kansas House had much discussion about our annexation concerns last session, conducting subcommittee, committee and floor debate on the topic and while the annexation bill that passed the House did not ultimately include a solution for our concerns, dozens of House members were well educated on the issue and passionate about the need for the 2009 Kansas Legislature to give serious consideration to updating our existing annexation statutes. An interim committee had the opportunity to move that process along. It did that by recommending HB 2030 and 2031. Our coalition urges your support for both measures.

As you may know, members of our Coalition have sued the City of Overland Park alleging irregularities in the process of the recent "521" annexation and that suit is proceeding. It is not likely to be resolved until after the 2009 Kansas Legislative Session. The suit and the facts of the case are unique but the principles of democracy, due process and protection of private property rights implicated in the Overland Park situation apply on a much broader scale, affecting landowners and local government officials statewide. It is not sufficient to let this matter be decided by the courts, as the Overland Park annexation most certainly will be, rather it is necessary that the Legislature promptly address certain annexation statutes so that the situation which brings us before your committee will not arise again. Hundreds of thousands of public and private dollars are being expended to litigate the current matter and without some correction of our existing laws, controversy, confusion and additional legal bills will be inevitable .

To begin with, we are not talking about routine annexations performed pursuant to K.S.A. 12-520. That statute authorizes limited voluntary and involuntary annexations of small parcels of land. Representatives of Kansas cities who testified during the hearings last year made it very clear the "520" annexations were the common practice and that most never used the broader annexation authority used by Overland Park pursuant to K.S.A. 12-521. This latter statute gives cities virtual *carte blanche* to annex large tracts of rural properties,

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requiring only the county's approval but not a vote of the affected (annexed) landowners. It was somewhat surprising that several Kansas cities opposed changes to the "521" annexation law while asserting that they rarely, if ever, utilize 12-521. Yet, we heard tales of woe if the legislature were to, in any way, restrict the broad authority of cities to annex property from unwilling disenfranchised rural property owners. The House committee was told that economic development would be crippled by allowing rural residents to vote on whether to be annexed, such comments coming even from cities that don't use the "521" procedure. All this to say that it will be important for this committee to focus on the specific statute in controversy and not be distracted by generalized concerns, irrelevant to most cities and your constituents. K.S. A. 12-521 and its such lack of public safeguards is the issue; not unsubstantiated concerns about future economic development.

The No Annexation Coalition is composed of landowners in the 15 sq. miles of land recently proposed for annexation by Overland Park. This appears to be the largest involuntary annexation in Kansas history, adding about 23% to the size of the city. Rural residents were not allowed by Kansas law to vote on the annexation. They were not allowed to vote for the city council members who proposed the annexation (not yet being residents of Overland Park) and while they could vote for the County Commissioners who ultimately approved part of the annexation, theirs was a small voice since all the commissioners are residents of various cities in Johnson County where city dwellers overwhelm the rural vote. The land in question is not yet developed commercially. It is an area of gravel roads, streams, woods, pastures, cattle and horse ranches and family residences. While someday this land may be ripe for development and its residents eager to be part of Overland Park, that time is not now. For these reasons we support HB 2030.

We have reviewed the laws of other states and can only conclude that Kansas involuntary annexation laws are in the clear minority. It appears that only a handful of other states even allow this type of involuntary annexation. By contrast, Kansas local government laws are replete with examples of statutes where the voters of an affected area are given the right to express their views at the ballot box (city/county consolidation; city incorporation; expansion of various municipal services to unincorporated areas; creation of various service districts such as libraries, water, etc.). Indeed, most of us would be hard pressed to explain why residents can vote to incorporate a new city but not vote when they are to be dragged into an existing city. For these reasons we support HB 2031.

Along with other groups concerned with rural Kansas interests, the No Annexation Coalition believes that K.S.A. 12-521 deserves immediate attention. This statute should be repealed or amended to limit the amount of land which may be annexed and to give the voters in the affected rural areas a meaningful say (vote) in the decision to be annexed into a Kansas city. The current statutory procedure provides inadequate safeguards, is not strictly followed by the municipalities and counties and is blatantly undemocratic. We would greatly appreciate your leadership in fixing what is now a clear and present injustice.

Thank you.

House Committee on Local Government

RE: House Bills NO. 2030 & 2031

February 5, 2009
Topeka, Kansas

Testimony Presented By:

Norman C. Pishny

18750 Antioch

Bucyrus, KS 66013

Secretary-Treasurer; NO To Involuntary Annexation Coalition www.noannexation.org

Introduction:

The Special Committee on Eminent Domain in Condemnation of Water Rights studied annexation issues for two days last winter hearing views from numerous Kansas citizens, as well as lobbyists for some cities, and the League of Municipalities.

The Special Committee GOT IT RIGHT!

There are issues that would still remain with Kansas annexation statutes, but the Special Committee's recommendations address the most pressing concerns. It addressed protection of agricultural land (HB 2030) and inserted some basic voter rights for Kansas citizens (HB 2031). These bills do not take away from a city's ability to utilize the current seven ways to annex land under the "normal" annexation statute K.S.A. 12-520.

Background:

I live in rural southern Johnson County and my home was recently taken over by one of the continuing involuntary annexations of Overland Park. I had no vote in the process.

After a previous Overland Park annexation attempt in 1999, the Johnson County BOCC commissioned a 2001 joint city, county, and citizen taskforce to address annexation issues in the county. This Aubry/Oxford Township Planning Committee created a document, signed by Olathe and Overland Park city officials (including current Overland Park mayor Carl Gerlach). In it, county officials and citizens stated: "It is our belief that voluntary annexation should be preferred over involuntary annexation. We wish to emphasize that involuntary annexation by a city will typically be expensive, extremely controversial and, in all likelihood, difficult to achieve in southern Johnson County."

However, in 2002, the Overland Park petitioned for, and the BOCC granted, approval of a large K.S.A. 12-521 involuntary annexation area.

In 2007, Overland Park was back for another takeover attempt of 15 square miles (9,569 acres). Again, they utilized K.S.A. 12-521, which allows them to get around the restrictions in 12-520 and still do involuntary annexations without landowner approval. The JO County BOCC approved about 8.5 square miles.

If the Johnson County BOCC and City of Overland Park had followed the current Kansas statutes, there would be nothing the homeowners could do about the forced annexation. However, they didn't.

As a result, landowners in the annexed area were forced to take their case to district court by filing a lawsuit to have the illegally obtained annexation overturned. The lawsuit, filed in March 2008, won't even be heard until more than a year later (currently scheduled for April 2, 2009). This is an expensive and time consuming process.

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further frustrated by the fact our tax dollars are being spent by the City and County to fight the lawsuit, but it is the only recourse the law provides.

The burden is on the individual taxpayers to fight the cities and counties if they don't want a city to dictate their future. Due to the time and cost involved, most Kansans do not even attempt to fight the city and counties (who are using taxpayer funded legal teams) even if there were legal issues with the annexation.

In the OP annexation, K.S.A. 12-521 violations were found relating to a constantly changing service plan, failure to follow quasi-judicial procedures, a contractually unlawful fire agreement, due process violations, no service plan for the partial annexation that the Johnson County BOCC approved, and more.

Flaws with current annexation and incorporation statutes:

Some of the deficiencies with current annexation statutes encountered in the Overland Park land grab:

- K.S.A. 12-521 does not provide for a vote of the people on what they want done with their homes and land.
 - In Johnson County, our coalition (at our expense) sent a postcard survey to all of the homes OP sent its annexation petition to (540 houses in 15 sq. miles). The results were overwhelming: 88% of the residents returned their cards and 99% of those (471 of 477) were opposed to the forced Overland Park annexation proposal; but under current law, this clear message from residents isn't even considered.
- Involuntary annexations don't just harm individual citizens. They pit cities versus other cities, counties, and government entities.
 - The open record from the annexation showed strong opposition from City of Spring Hill, Aubry Township, Johnson County Sheriff's Department, Johnson County Fire Department, Miami County, Stilwell residents (filed for incorporation), and current Overland Park Citizens.
- The Homestead Act provision (K.S.A. 60-2301) provides that "160 acres of farming land, or of one acre within the limits of an incorporated town or city" is exempt from a forced sale and certain other claims of creditors.
 - By being involuntarily taken over by the city, our financial and estate plans have been and will be subjected to massive potential liability by the forced imposition of the City's boundaries upon them.
- Urban ordinances that do not fit with rural life.
 - No city ordinance changes were part of the service plan for annexation.
 - After citizens reviewed them and pointed out they would put them out of business, the BOCC mandated proffers from Overland Park to grandfather 25 ordinances including allowing for ATV's, not requiring driveways to be paved, and legalizing uneven distribution of animal waste in feedlots.
- Commissioners are to determine manifest injury; however, there is no clear definition or standard for the term and the burden of proof is on the landowner vs. city.
 - Since the City is the petitioner in the process, they should be the party having to prove manifest injury, yet K.S.A. 12-521 requires the citizens to prove that they would be the party harmed. The burden is placed on the individual citizens to prove harm to them.
 - BOCC Chairman Annabeth Surbaugh, when ruling in favor of annexation, stated: "We probably have not solved everything for every one of you whose lifestyle will change because of this."
- K.S.A. 12-521 requires the BOCC to sit in a quasi-judicial process, which is not clear to them.
 - When ruling on the annexation, BOCC Chairman Annabeth Surbaugh said, "I think the problem is that this system of quasi-judicial ends up making everyone hacked off at us." Three additional commissioners of the 6 stated on the record that the quasi-judicial process caused them problems.
 - There is no body that represents the landowners in the quasi-judicial process. Normally, the County would represent them, but since the County is the judge, the citizens have no representation.
- K.S.A. 12-531 requires a 5-year review of the annexation to see if service commitments were met. There is no accountability if reviews are not held.
 - Johnson County has never held a mandated 5-year review on any of its many annexations. While the statute states the area can be de-annexed if service commitments were not met, it does not state what the penalty is

for not doing the review at all.

- Citizens are up against seemingly limitless city (taxpayer) funds if they oppose the annexation.
 - Not only did the citizens not have a right to vote in the process, there were huge amounts of tax dollars spent on an annexation that nearly all of the residents opposed. As of February 2008, Overland Park had already paid outside legal consultants nearly \$400,000 for their work on the annexation. That is above the city's own huge legal staff. City staff spent taxpayer dollars to generate more than 90,000 pages of documents for the unpopular annexation. The County spent large amounts of tax dollars processing more than 3,100 pages of documents on record. And now, our tax dollars are being spent by city lobbyists to coerce you (the law makers) to keep voter rights from being part of annexation statutes.
- The law needs to be clear that a ruling of the court would bind both the city and county.
 - The Overland Park position is that private citizens can not question anything the government (city) does. In the city's response to our motion for a stay, when addressing the possibility that we would win our appeal, Overland Park states "If the City did not withdraw from exercising jurisdiction over the Annexed Area after the issuance of such a ruling, the District Attorney or Attorney General could then bring an action in *quo warranto* to compel such ouster."
- If the homeowners in an unincorporated area would rather incorporate into a city than be annexed by an existing city, it requires unanimous approval (K.S.A. 15-223) from county commissioners vs. the simple majority approval required for a city to annex (K.S.A. 12-521) an unincorporated area.
 - Recently, residents filed a petition to incorporate the City of Stilwell. Even with the former mayor of OP on the BOCC, a majority approved the incorporation petition (4 to 3). However, since the statute requires unanimous approval, it did not pass.

Conclusion:

The Special Committee on Eminent Domain in Condemnation of Water Rights got it right. There are a multitude of issues with current annexation statutes, but the revisions they proposed address the top issues. Two of their bills address K.S.A. 12-521 issues and should be implemented into law.

HB 2030 (requires landowner approval for annexation of >21 ac. unplatted agricultural land):

People should be able to make choices. In a democratic society, if Kansans chose to live in a rural environment with rural ordinances and county regulations, a city should not be allowed to now tell them their choice was wrong.

Incorporating the same protection language as K.S.A. 12-520 to protect agricultural landowners from unwarranted takeovers is definitely appropriate. This would help alleviate issues above associated with:

- Homestead Act liability protection.
- Imposing City ordinances on rural homes and businesses.
- Elimination of agricultural lifestyle.

The Kansas Division of the Budget report on HB 2030 states "The League of Kansas Municipalities states that the passage of HB 2030 would have a negligible fiscal effect on Kansas cities."

HB 2031 (inclusion of majority vote approval by qualified electors & 4 year waiting period):

When I've talked to individuals throughout the state regarding involuntary annexation attempts, citizens are unaware that Kansas law does not give them the right to vote and are appalled and outraged that a city has the power to take over control of land and people without their approval. They can all vote in the general election on candidates and issues, yet they have no vote if a city wants to take over their home and business.

HB 2031 inserts a citizen vote in the annexation process to give a voice to Kansans that currently have no viable input when a city wants to take over their homes and lands. This would correct the key democracy rights and

taxation without representation issue in current Kansas law.

If the city proposes a bad plan that is not approved by the voters, HB 2031 mandates a four year waiting period prior to trying again. That would give the city time to communicate with residents and develop a plan that would be approved by voters. If it's a good plan, voters will APPROVE it.

Analysis of the Kansas Division of the Budget report on HB 2031:

- “The League of Kansas Municipalities states that the passage of HB 2031 would cause both direct and indirect costs for Kansas cities.”
 - An election can not be that burdensome to those cities that utilize K.S.A. 12-521. Certainly if a city can spend \$400,000 on just outside attorneys on an involuntary annexation petition, they can find taxpayer funds to let the landowners vote. Election costs are part of being a democratic society.
 - No indirect costs are given.
- “The League anticipates that many, if not most, proposed annexations would not be approved in the election process.”
 - Why? If it was a good plan, wouldn't Kansans jump at the chance to join in the benefits of living within the city boundaries? Why should a City Council tell voters what is best for them? Let them vote!
 - If the plan is rejected, the city can get their act together and come back with a better plan in 4 years.
- The League states “This would result in lack of physical growth by cities, the inability to accommodate economic growth, and the inability for a city's tax base to grow.”
 - Yes, we are currently living in a “bail out” time and society. However, it is NOT appropriate for a city to grab new taxpayers to bail them out of their problems without the taxpayers having a vote.
 - If there is economic growth outside the city boundaries, that's good. It doesn't help the state to put this development within city boundaries.
 - Expansion of a city is not required for economic growth, and is not the solution to poor city management. Economic growth is dictated by a free market and hard work. It is not dictated by city boundaries.
 - If a city has a shrinking tax base, they need to address that issue. Adding additional strip malls will not solve the issue of dying commercial and residential areas within the city.
 - An increased tax base may help a poorly run city, but it does not contribute to overall economic development at a state level.
 - Spring Hill is one of (if not the) fastest growing city in the state, yet only utilizes voluntary annexations. Landlocked cities like Leawood, Fairway, Mission Hills, and Prairie Village certainly have not died.

We could argue with cities that feel they must be able to take land without having the consent of landowners for economic growth and increased tax base. We could argue about urban vs. rural environments and disparate needs. We could argue about numerous urban ordinances and the impact they have on rural landowner's livelihoods.

Yet, how can anyone argue that **KANSANS** should not have a **RIGHT to VOTE** on their own future.

Summary:

None of the enhancements to K.S.A. 12-521 recommended by the Special Committee in HB 2030 and 2031 keep a city from doing consensual or unilateral annexations under K.S.A. 12-520. This is the “normal” annexation statute and allows for 7 possible ways to annex land into a city.

When a city does go outside the boundaries of K.S.A. 12-520, HB's 2030 and 2031 add appropriate protections for Kansas citizens by restricting unbridled takeovers of agricultural land and inserting a right to vote by landowners.

The Special Committee on Eminent Domain in Condemnation of Water Rights got it right.

Support their recommendations and vote to APPROVE HB's 2030 and 2031.



League of Kansas Municipalities

To: House Local Government Committee
From: Don Moler, Executive Director
Re: Opposition to HB 2030
Date: February 5, 2009

First I would like to thank the Committee for allowing the League to appear today in opposition to HB 2030. The history of the Kansas annexation statutes is long and storied. I will not bore the Committee with all of the details and nuances of its development today. Suffice it to say, the annexation laws, as they are currently structured, are the result of a major conflict and compromise which occurred in the mid-1980's. The League was a major player in this struggle and worked with many interested parties to reach the eventual compromise which led to the current statutes we see today. As far as the League knows, the annexation statutes have worked well over the past 22 years, and we believe they continue to work well today.

The Committee should be aware that what is suggested by HB 2030 is a significant change in public policy, and one which should not be undertaken lightly. There is always a natural tension involved between landowners and cities when cities are growing as a result of economic development, population changes, and the need for public services. We understand that landowners feel the need to be protected, and that is why there are so many protections currently found in the Kansas annexation statutes. The simple reality is that to adopt the language found in HB 2030 would limit the ability of cities to effectively use the annexation power found in K.S.A. 12-521, and would significantly modify many years of sound public policy in this state.

HB 2030 would unnecessarily limit annexations under K.S.A. 12-521, where the county commission has the ability to review and approve or reject proposed city annexations. It would prohibit the annexation of any unplatted tract of land devoted to agricultural use, even if the city governing body, and the county commission, felt that the annexation was in the best interests of the community at large. We suspect that this change would lead to piecemeal annexations where entire tracts of land would be surrounded by an incorporated city, but they would remain unincorporated.

We feel this is not sound public policy, and would urge the committee to reject HB 2030. I will be happy to answer any questions the committee may have concerning this matter.

Local Government

Date: 2-5-09

Attachment # 3



John M. Nachbar, City Manager

Email: john.nachbar@opkansas.org

City Hall • 8500 Santa Fe Drive
Overland Park, Kansas 66212
913/895-6000 • Fax: 913/895-5003
www.opkansas.org

Testimony Before The
House Local Government Committee
Regarding
House Bill No. 2030
By: Michael M. Shultz

February 5, 2009

The City of Overland Park appreciates the opportunity to appear before the committee and to present its views on House Bill No. 2030. Although the bill might seem well-intended, the City opposes the bill because it will interfere with the proper growth and development of city and county governments and the regions in which they exist. The City also believes that the proposed bill is based upon false assumptions.

House Bill No. 2030 proposes to prohibit cities from being able to annex pursuant to K.S.A. 12-521 any portion of any tract of land that is 21 acres or more and devoted to agricultural use. Such a parcel could only be annexed with the consent of the landowner. K.S.A. 12-521 concerns annexations where a city petitions the board of county commissioners for approval to annex land. K.S.A. 12-520(b) already prohibits cities from annexing such tracts unilaterally—meaning without the consent of the property owner and without the approval of the board of county commissioners.

One must ask at the outset if prohibiting the annexation of parcels of 21 acres or more to protect agricultural uses sets too low of a minimum size since it is doubtful that farming or ranching in any traditional sense occurs on parcels so small. Although there might be small boutique farms on small tracts of land, there is no reason that a city should be prohibited from annexing such land when it makes sense to do so *and* the board of county commissioners agrees.

Although it might be sensible to prohibit cities from unilaterally annexing tracts of land of 21 acres or more that are devoted to agricultural use, this same prohibition does not need to be applied to K.S.A. 12-521 where a city must petition the board of county commissioners for approval to annex land. Under K.S.A. 12-521(c)(1), the first factor for the board of county commissioners to examine when determining whether to permit a city to annex an area of unincorporated land is the “extent to which any of the area is land devoted to agricultural use.” However, the legislature recognized when they drafted K.S.A. 12-521, that numerous other factors might weigh in favor of annexation even if some the area proposed to be annexed consisted of parcels of land of 21 acres or more and devoted to agricultural use. The City believes that the board of county commissioners is in the best position to make decisions on the annexation of such parcels on a case by case basis applying the specific criteria that a board is required to consider.

There are several significant points that weigh heavily against this bill. First, even though a parcel of land might be devoted to agricultural use, it might very likely be owned by investors and held as a speculative real estate investment. The agricultural use on the land allows the owners to obtain some income from the land to pay debt service and to keep taxes down, by virtue of the

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agricultural classification for assessment purposes, until the owners are ready to sell to a developer or begin development themselves.

Even when an agricultural parcel is being used for bona fide agricultural purposes, there is nothing that prevents its immediate sale and development for industrial, commercial or residential use. Such urban level development needs to be in cities which are capable of providing the services that these developments need and thereby avoiding an increase in the cost of providing county services.

It is important that as cities grow, they be able to bring in large parcels of land as well as smaller ones. At least in growing metro areas such as Johnson County, it is imperative that cities be able to plan, in conjunction with the present landowners, for the future use of large parcels of land whether they are currently devoted to agricultural purposes or simply vacant. Planners will confirm that land use planning is done best when it can be done comprehensively rather than on a piecemeal basis.

The truth is that there are very few instances where cities have used K.S.A. 12-521 to annex parcels of land of 21 acres or more that are devoted to agricultural use. Overland Park has done so on only three occasions in its 49 year history—1985, 2002 and 2008; but, as we discovered in our 2008 annexation, a substantial number of the parcels that were 21 acres or more were held by investors and not committed to agricultural purposes for the long run.

If the purpose of House Bill No. 2030 is to preserve these agricultural enclaves indefinitely, then cities that experience high rates of growth will simply have to grow around and among these enclaves. This will create haphazard boundaries between cities and unincorporated land, resulting in difficulties for emergency services and increasing the cost of government services. It also will contribute to sprawl if city development has to leapfrog large-lot developments that the county might allow on these supposed agricultural enclaves.

The truth is that there is no reason that agricultural lands cannot be located within the boundaries of a city. Overland Park and other metropolitan cities have zoning classifications for agricultural land. Indeed, in its 1985, 2002 and 2008 annexations, Overland Park adopted Johnson County's zoning regulations so that the annexations would not affect existing agricultural uses. Under state law, annexed land comes into a city with its county zoning in place, and the use of such land becomes a lawful non-conforming use that the city cannot prohibit. Even if the city were to rezone the agricultural land after it is annexed, the owner of the land has the right to continue the agricultural use.

Most importantly, the mere fact that a city annexes agricultural land does not mean that such land must cease its agricultural use and be converted to urban development. The land use will change only if the owner of the land chooses to change it. In addition, the land cannot be negatively affected by city development if it is annexed any more than it would be by county development or city development that would occur at the boundaries of the enclave if it is not annexed. In any event, agricultural land in urban areas will face pressures from surrounding development whether the agricultural land is within cities or outside of cities.

In short, the annexation of tracts of land of 21 acres or more and devoted to agricultural use can provide benefits to the community as a whole and is not detrimental to the owner of the land or the community. Where such danger exists as part of an annexation, the board of county commissioners has the right to deny a city from annexing such land.

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Testimony in opposition to HB 2030

Submitted by Dave Holtwick
On behalf of the Overland Park Chamber of Commerce

House Local Government Committee
Thursday, February 5th, 2009

Madam Chair and Committee Members:

My name is Dave Holtwick and I am Vice President of Government Affairs with the Overland Park Chamber of Commerce. I am appearing today on behalf of our board of directors and our nearly 900 member companies. I appreciate the opportunity to appear before you today to share testimony in opposition to House Bill 2030.

One of the standing priorities on our legislative agenda is to oppose changes to statutes limiting a city's ability to annex unincorporated land with the county's approval. Our chamber has witnessed the successful growth of Overland Park for many years and I believe it is due in large part to the city's willingness and ability to plan strategically to accommodate the growth.

I believe Johnson County and cities in the county have worked well together to provide expected services to the growing area. Although growth has slowed some lately, our area has experienced rapid growth for a number of years and we are expected to continue to grow for some time to come. Throughout our history of development and growth, annexation has been a tool used by area cities to methodically plan for and accommodate the growth.

If passed, I believe HB 2030 would cause future growth to leave unnatural gaps in an otherwise orderly development pattern by causing "leap frog development". This would leave "holes" because of land tracks over 21 acres that would not be allowed to be annexed. This results in inefficient development. These fragmented and non-contiguous land uses can result in higher development costs and higher service costs resulting in higher taxes to citizens in the area.

In summary, I believe HB 2030 would impede a city's ability to plan for and accommodate growth causing the growth that is going to occur to be less efficient and more costly. In our area policies and procedures are in place now to allow a rural area to be joined to a city when it begins to be urbanized. HB 2030 will disrupt the natural development pattern that is occurring now.

Thank you very much for your time today. I encourage you to oppose HB 2030.

9001 W. 110th Street • Suite 150
Overland Park, KS 66210
t: 913.491.3600 • w: opks.org

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Date: 2-5-09

Attachment # 5



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 2030 Cities; annexation; board of county commissioners;
agriculture land restriction.

DATE: February 5, 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 2030 relating to annexation.

HB 2130 would restrict a city's ability to annex 21 acres of land or more without written permission of the landowner. The City of Topeka is opposed to this change in annexation laws.

The City of Topeka believes the passage of HB 2030 would greatly affect a city's ability to plan for and provide infrastructure to accommodate new growth and development into unplatted land outside its city limits. Major investments in road, sewer and water extensions are made by cities to open up land in order to encourage development in appropriate areas with the anticipation the land will eventually be annexed. Without the ability to annex, cities will be reluctant to make these investments in the continued growth and development of our cities.

The prohibition of a city annexing more than 21 acres of unplatted land into a city unless the owner consents in writing is a significant change in public policy and most certainly will lead to increased costs of service for cities, improper growth patterns and lead to the creation of islands of undeveloped land surrounding within cities in Kansas as property owners refuse to allow their land to be annexed by a city and eventually become surrounded by urban development.

The number of acres protected by HB 2030 appears to be an arbitrary number tied to protections found in K.S.A. 12-520 relating to the use of unilateral annexation authority. HB 2030 proposes to place the same restrictions on cities for the use of annexation authority under K.S.A. 12-521 into K.S.A. 12-521, which requires approval of the county commission, which is how the majority of annexations occur.

For illustration purposes, the statehouse grounds sit on approximately 20 acres. It would generally not be practical or prudent for a city such as one the size of the City of Topeka to annex lands surrounding the city in bits and pieces, when infrastructure requirements for such areas would require significantly more investment to be cost effective. To require a city to annex land in small parcels or in the alternative, to work around agriculture land that is not platted with no means to require a property owner to acquiesce to annexation into a city will create a significant impediment to orderly growth.

On behalf of the City of Topeka, we respectfully ask this Committee not to advance HB 2030 out of committee.

WBD



Since 1894

TESTIMONY

To: The House Committee on Local Government
Rep. Sharon Schwartz, Chairperson

From: John Donley, Assistant General Counsel

Date: February 5, 2009

Subject: **House Bill 2030** -An act concerning annexation of territory by cities

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing approximately 5,500 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, dairy production, grazing land management and diversified farming operations.

Good Afternoon. My name is John Donley. I am Assistant General Counsel for the Kansas Livestock Association.

I am providing written comments today in support of HB 2030. This bill provides that no agricultural land of 21 acres or more shall be annexed by any city under K.S.A. 12-521. We feel that this provision should be added to this statutory annexation provision because the annexation laws would then be consistent with regards to agricultural land.

Currently, the 21 acre limitation is in K.S.A. 12-520. This limitation allows for the protection of farm and ranch land near city boundaries where the owner of such land does not wish to have their land developed. This is an essential protection that is need by landowners in order to protect their private property rights and allow them to use their land as they see fit regardless of the type of annexation being utilized. Additionally, this prevents a landowner from being forced to develop his farm and ranch land.

Feel free to contact me if you have any questions regarding this testimony.

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Attachment # 7

Kansas Farm Bureau
POLICY STATEMENT

House Committee on Local Government

HB 2030 & 2031

Re: Restrictions on annexation

February 5, 2009

Submitted by:

Terry Holdren

National Director – KFB Government Relations

Chairperson Schwartz and members of the House Committee on Local Government, thank you for the opportunity to appear today and share the policy developed and adopted by our members. I am Terry Holdren, National Director – Government Relations at Kansas Farm Bureau. As you know KFB represents farmers, ranchers and rural residents totaling more than 40,000 who live and work in each of the states 105 counties.

KFB members continually express a great deal of concern regarding the practices of cities seeking to annex surrounding lands. These practices have numerous negative consequences for agricultural operations and rural landowners, including but certainly not limited to financial impacts on land values and homeowners who will undoubtedly face higher tax bills for services they may not receive benefits from.

Annexation also has significant impacts on rural water districts, fire districts, electric cooperatives and townships, many of whom have developed, and bonded, infrastructure projects to provide services to the residents living within their boundaries. It's these units of government that will face extreme hardship in continuing to serve their remaining populations and in meeting their financial commitments for infrastructure improvements.

Our member adopted policy favors annexation only after a majority vote of the residents of the area to be annexed. Our policy also supports the current law requiring cities to follow additional procedures and submit to a review of the

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reasonableness of their action. We also strongly support the prospects of expanding the 21 acre exclusion to County Commission approved annexations as proposed in HB 2030 and would view passage of that legislation alone as a significant improvement in the current state of the law.

While we would agree that cities need the ability to grow and that annexation is a necessary tool to facilitate that growth. However, we would submit that there are reasonable restrictions that can be placed on cities to ensure that rural residents and service providers are protected in the annexation process. The proposal before you today in HB 2030 provides an opportunity to strike that kind of balance.

Thank you once again for the opportunity to comment on this issue. We stand ready to assist as you seek solutions for all Kansans.

For more information please contact:

Terry Holdren
Kansas Farm Bureau
800 SW Jackson, Suite 1300
Topeka, KS 66612
785.234.4535
holdrent@kfb.org

Kansas Farm Bureau represents grass roots agriculture. Established in 1919, this non-profit advocacy organization supports farm families who earn their living in a changing industry.

House Committee on Local Government

Hearing on House Bills 2030 and 2031

Thursday, February 5, 2009

Written Testimony of Ron R. Fehr

City Manager, City of Manhattan, Kansas

Good afternoon Chairperson Schwartz and Honorable Members of the House Local Government Committee. My name is Ron Fehr, and I am the City Manager for the City of Manhattan. I want to thank you for this opportunity to provide written testimony to the Committee regarding the importance of annexation for our community.

The City of Manhattan opposes House Bills 2030 and 2031 because they limit the Home Rule authority of cities to expand through annexation. Constitutional Home Rule is the cornerstone of municipal government and should not be preempted by State action.

Annexation is an important tool for the economic growth and vitality of our local communities and the entire State of Kansas. The City of Manhattan is currently in a sustained growth period due to the ongoing expansion and buildup at Fort Riley. By Fiscal Year 2013, the combined military and civilian workforce at Fort Riley is expected to grow to nearly 21,000 from a pre-BRAC baseline of 11,800. In November of 2008, our region was named by the U. S. Office of Management and Budget as one of three (3) new Metropolitan Statistical Areas in the United States with the metro area including the principal city of Manhattan and the Counties of Geary, Pottawatomie and Riley, with a combined population of over 118,000.

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The City is helping to meet the housing needs of our soldiers and their families. Since 2002, Manhattan has added 3,045 residential units to the community as recorded by building permits. We manage our growth in accordance with sound urban planning principles, despite the expansion pressures from neighboring Fort Riley. Growth opportunities to the west are largely limited to prevent encroachment on the military installation. To meet our growth needs, we must have flexibility to expand in other directions. Specifically, the City has worked to extend infrastructure along growth corridors including K-177 to the Southeast and US-24 to the North and East. These extensions have been at the request of property owners, and/or in cooperation with County Commissions, to further develop properties or encourage development. Restricting our ability to annex in these areas would unnecessarily compromise the significant public investments already made in anticipation of future development.

Last month we celebrated with state and regional partners the announcement that Manhattan has been selected as the future home for the \$650 million National Bio and Agro-Defense Facility (NBAF). This decision solidifies Kansas' place as the leader in animal health research, and its economic impact cannot be overstated. Our success was due to the effective team approach that unified key supporters from all levels of government around a common vision to bring the NBAF to Kansas. Let us continue that cooperative effort as we move forward in the implementation phase. Please maintain the local tools we need to effectively respond to the residential and commercial growth anticipated from NBAF and its spin-off developments.

Thank you for your consideration, and I would be happy to answer any questions. I may be reached by mail at City Hall, City of Manhattan, 1101 Poyntz Avenue, Manhattan, KS 66502, by phone at (785) 587-2404, or by email at fehr@ci.manhattan.ks.us.



**TESTIMONY
to
KANSAS HOUSE
HOUSE LOCAL GOVERNMENT COMMITTEE**

Melissa Mundt, Assistant City Administrator, City of Gardner, Kansas

**February 5, 2009
House Bill 2030 and 2031**

Honorable Chairperson Schwartz and Committee Members:

Gardner would like to express its concern regarding the House Bills 2030 and 2031. The bills strike away significantly at K.S.A.12-521. In HB 2030, county approved annexations would be restricted to 21 acres or less without the consent of the property owner. Gardner does not understand the significance of the number, which seems to be arbitrary. Because of this and the City's stated legislative platform for 2009, we submit our objection to a change of this nature to K.S.A. 12-521. Creating significant changes to tested statutes to apparently pertain to a specific issue does not in our opinion seem to not be in the best interest of the majority of the population of the State of Kansas that live in our cities.

HB 2031 is also a significant shift away from current State law as it would require a vote of "qualified electors" in the area of unilateral annexation, removing government planning and other oversight considerations that provides for the orderly development of urbanizing areas. The electors in this case are those in the area that are being considered for annexation through the county process and does not take into consideration those in the neighboring or adjacent properties that are providing amenities indirectly through payment of their city taxes for those trying to develop housing communities or other developments directly next to them. In urbanizing counties, this is not an issue of existing rural residents that have been there for a number of years, it is about those trying to develop adjacent to a community today and not pay the taxes even though the benefits are on their doorstep and available to them every day from park and recreation services to fire and police protection.

Gardner's philosophy related to annexation has been one of consent and it has worked well through its growth period as developers recognize the value of city level services for their projects, which include well planned and design roadway infrastructure, parks and recreation amenities, expanded public safety services and responsiveness, as well as planned development that provide an enhanced quality of life in areas with significant population. It is our belief that people chose to live in or near cities for those very reason and that level of infrastructure comes at a price, a price most willing chose to pay for as they understand that there is a cost to having those amenities and services.

Gardner is also concerned about equity. How is it right for someone or a group of people to enjoy city level services and to not pay their fare share? All city residents would pay for these properties to use urban levels of service, while those in the unincorporated areas pay nothing. If residents of cities understood more clearly the cost that they bare for residents in the county to have the urbanized levels of service, they would probably be equally unhappy about this issue as those not wanting to be annexed or are about being annexed.

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Urban densities of development that will occur, if either of these bills are made into law, they would then place an extraordinary burden on County level of government, in our case Johnson County whose adopted land use policies are to direct urban level development into incorporated areas of cities, not to provide city services.

Additionally, as many of you are aware, the City of Gardner is working on a major economic development project, the Logistics Hub KC, in conjunction with Johnson County and the State of Kansas. The financial package needed to support this development will require participation at the City level, due to economic development laws that are only granted to cities in Kansas. Restricting cities ability to annex in some cases may result in a loss of economic development projects that are vital to a healthy State economy for Kansas.

Current language in Kansas State Statutes today provides for due process for those to be annexed. The Gardner City Council wants to reiterate that it does not perceive a need to change the process as outlined in the current statutes, given only two known unilateral annexations in the last 100 years.

Once again based on Gardner's adopted Legislative Agenda for 2009, we emphasize support of the currently established State statutes and oppose any changes that further limit the ability of cities to grow in a planned and reasonable fashion which promotes the health, safety and welfare while fairly and equitably protecting the interests of all parties.



League of Kansas Municipalities

300 SW 8th Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: House Local Government Committee
From: Don Moler, Executive Director
Re: Opposition to HB 2031
Date: February 5, 2009

First I would like to thank the Committee for allowing the League to appear today in opposition to HB 2031. The history of the Kansas annexation statutes is long and storied. I will not bore the Committee with all of the details and nuances of its development today. Suffice it to say, the annexation laws, as they are currently structured, are the result of a major conflict and compromise which occurred in the mid-1980's. The League was a major player in this struggle and worked with many interested parties to reach the eventual compromise which led to the current statutes we see today. As far as the League knows, the annexation statutes have worked well over the past 22 years, and we believe they continue to work well today.

The Committee should be aware that what is suggested by HB 2031 is a significant change in public policy and one which should not be undertaken lightly. There is always a natural tension involved between landowners and cities when cities are growing as a result of economic development, population changes, and the need for public services. We understand that landowners feel the need to be protected, and that is why there are so many protections currently found in the Kansas annexation statutes. The simple reality is that to adopt the language found in HB 2031 would effectively obliterate all K.S.A. 12-521 annexations, and would completely reverse many years of sound public policy in this state.

HB 2031 would effectively eliminate petitioned for annexations under K.S.A. 12-521, where the county commission has the ability to review and approve or reject proposed city annexations. It would substitute the decision-making of the county commission with a vote of the people who live in the area (or who own land in the area), who would be largely motivated by self-interest, not what is best for the community at large. Also the inclusion of persons in the definition of **(g) "Qualified elector"** of "any nonresident landowners who would otherwise be a qualified elector" sets up an anomaly in Kansas statute where nonresidents would be allowed to vote. I would strongly suggest that the legislature does not want to go down this road. Allowing nonresident landowners to vote in ANY election could very easily lead to a call for them to vote in all elections. What a disaster that would be for the State of Kansas.

Ultimately, HB 2031 takes the decision-making authority away from the elected officials of the county, who represent the individuals in the area to be annexed, and replaces it with a vote of the people who live in the area, or who own land in the area. The idea that a handful of landowners should be determining what is best for the community at large we think is bad public policy, and we would strongly urge this committee to reject it out of hand.

City Hall • 8500 Santa Fe Drive
Overland Park, Kansas 66212
913/895-6000 • Fax: 913/895-5003

www.opkansas.org

Testimony Before The
House Local Government Committee
Regarding
House Bill No. 2031
By: Michael M. Shultz

February 5, 2009

The City of Overland Park appreciates the opportunity to appear before the committee and to present its views in opposition to House Bill No. 2031—a bill which would change 100 years of annexation law in Kansas, reject the notion of a republican form of government and have substantial, negative impacts on the economy and the environment.

Much has been made of the fact that Kansas has some of the most liberal annexation laws in the country. This probably depends upon what one means by “liberal.” For over 100 years, Kansas has allowed its elective representatives to determine whether a city should be able to annex land, and there has never been a referendum on annexations. In 1967, pursuant to the constitutional home rule amendment for cities, the Kansas legislature adopted a carefully crafted set of statutes for municipal annexations. The 1967 law was the result of careful and lengthy analysis with all of the stakeholders at the table.

The current annexation statutes, K.S.A. 12-519, et seq., are the most lenient when a property owner consents to the annexation of his land (K.S.A. 12-520(a)(2), (3) and (7)); however, even here, if the land does not adjoin the city, the board of county commissioners must approve the annexation (K.S.A. 12-520c).

When land adjoins the city and the landowner does not consent, but the land meets very narrow geographic conditions, the city can annex the land without the approval of the board of county commissioners. K.S.A. 12-520(a)(1), (4), (5) and (6)). However, the city must give notice to the landowners and area governments, prepare a service extension plan, hold a public hearing, and analyze 16 criteria to determine if the annexation is appropriate. Landowners and certain nearby cities can challenge the annexation in court if they think the city acted unlawfully.

HB 2031 seeks to amend K.S.A. 12-521. This statute generally applies when a city cannot annex land under K.S.A. 12-520 or -520c, and the city must petition the board of county commissioners for approval to annex all or some of the land set out in the petition. The city must still prepare a plan for the extension of major municipal services to the area to be annexed and present a vast amount of other information to the county board which holds a public hearing on the proposed annexation. The job of the board of county commissioners is to determine if the proposed annexation will result in manifest injury to the residents of the area proposed to be annexed if the annexation is approved, or to the petitioning city if the annexation is denied. In determining manifest injury, the board must consider a minimum of 14 factors. Any aggrieved landowner can appeal the board’s decision to the courts if the annexation is approved.

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HB 2031 creates two new definitions relevant to 521 annexations. "Qualified elector" is any person registered to vote in the area proposed to be annexed, and also includes persons who would be eligible to vote if they lived in the area proposed to be annexed. The "area proposed to be annexed" refers to the area that the city petitions to annex. As will be seen, these definitions create serious problems of interpretation concerning the intent of the proposed bill.

The key feature of HB 2031 is that if the board of county commissioners rules in favor of a petition to annex land, an election must be held in the area proposed to be annexed (apparently even if the county approves an area smaller than the area the city proposed to annex). If a majority of the qualified electors "residing in the area proposed to be annexed and voting" reject the annexation, the petitioning city may not propose to annex the land for four years following the election. This prohibition would apply even if landowners consented to annexation.

This proposed sea change in Kansas annexation law is motivated by several fundamental errors in thinking about the law and about public policy. First, the United States Supreme Court long ago held that residents have no constitutional right to vote on a municipal annexation. The state government controls the methods by which municipal boundaries may be adjusted.

Likewise, the Supreme Court and all other courts interpreting the federal constitution, have held that annexations do not constitute a taking of property. It is nearly impossible to understand how they could—especially in Kansas. When a city annexes land, it does not take title to the landowners' properties, and land comes into the city with its county zoning in place. Even if a city changes the zoning on the annexed land, the uses on the land are allowed to continue as lawful non-conforming uses. Thus, the fact that Kansas does not allow a referendum on municipal annexations does not violate any constitutional rights. A landowner can maintain his existing use of land until he decides that he wants to change the use—no one forces development upon him.

The proposed bill also is based upon the erroneous assumption that we cannot trust local elected officials to do their jobs and make decisions that are in the best interest of the people they serve. Nearly 82% of all Kansans live in cities, and the elected officials in those cities are just as committed to serve the public interest as the legislators in this room. The same is true for members of boards of county commissioners. HB 2031 is premised upon a mistrust of local governments to do the right thing—a mistrust that is clearly not deserved.

In our system of government, officials are elected to represent the people and to make decisions on their behalf, in most instances without any right of referendum. In large measure, this is due to the complexity of the decisions that elected leaders with the help of their professional staffs have to make. It is also based upon the fact that we could not determine where the right of referendum should end.

In Overland Park's recent and controversial 2008 annexation, the board of county commissioners received an 87 page service plan from the City, heard several hours of testimony, allowing every person to speak who wanted to do so. The board then kept the record open for nearly 4 months so citizens could add more information for consideration. The board also sent out multiple sets of questions to governmental agencies and service providers who would be affected by the annexation.

By the time it was done, the board had amassed a record of over 3,000 pages upon which to base its decision. The board divided the area proposed to be annexed into five parts and permitted the City to annex three of those areas. Two of the areas are dominated by residential development and open land, while a third area will likely be a commercial corridor. The board of county commissioners made a tough decision based upon what they perceived as being best for the community as a whole, and not just for one special interest group.

It is hard to imagine why a decision this complicated should be left to what might be a handful of voters. An annexation under K.S.A. 12-521 might have only a dozen or fewer residents

who are registered to vote. Even when there are many landowners in the area proposed to be annexed, under HB 2031, a majority might not be eligible to vote. In the 8.35 square miles that Overland Park annexed last year, 61% of the land (other than right-of-way tracts) is owned by resident and non-resident entities (businesses and trusts) with no right to vote. Also troublesome is the fact that HB 2031 states that the annexation is rejected if a majority of qualified electors *residing in the area proposed to be annexed* vote against it. Thus, it is unclear why landowners who would be eligible to vote if they lived in the annexed area are given the right to vote if the majority vote of electors in the area proposed to be annexed control the outcome.

It also is not clear as to what is to be done if the area to be annexed has no registered voter. Does the voting requirement not apply, or can the land never be annexed under K.S.A. 12-521? It also makes no sense to put the vote of the residents at the end of the annexation process after government officials have put in hundreds of hours of work and spent thousands of dollars in the annexation process. Finally, HB 2031 states that there will be a vote after the judgment of the board of county commissioners, but it does not distinguish between a judgment in favor of or against the annexation.

A major policy flaw in a proposal that gives residents in the area proposed to be annexed the right to vote on the annexation is that the residents have only their self-interest at stake. They are not elected officials and they have every reason to vote for what is best for them and not what is best for the community at large. Imagine if the this legislature had to put to a vote the tough legislation that it often must pass, whether it is a reduction in funding for schools or for social services or for demand transfers to local governments. Should the owners of liquor stores be allowed to vote on legislation that limits their rights? Even the incorporation of a new city does not give the possible future residents of the city the right to vote. The decision is left to the board of county commissioners.

These same arguments against a referendum apply if the opponents of current annexation law want to require the board of county commissioners to render a unanimous vote on a proposed annexation. This still means that a small, special interest group controls the process. Although it is true that a unanimous vote is required to create a new city within 5 miles of an existing city, the decision to create a new city is a far more substantial act than the expansion of the boundaries of an existing city.

Another false assumption on which HB 2031 is based is that there is a statewide or even localized problem with annexations under K.S.A. 12-521. There has been no evidence of a misuse of the 521 process. Although Overland Park has become the poster child for 521 annexations, it followed the law to a "T" and the Johnson County Board of County Commissioners performed a heroic job in making a difficult decision. However, in its 49 years of existence, Overland Park has annexed land under K.S.A. 12-521 on only 3 occasions—1985, 2002 and 2008.

There is a reason that even a perceived issue with 521 annexations is a localized issue. A recent study by the Census Bureau reveals that Kansas is one of 16 states where there is a net out-migration of people generally and young, single and college-educated people specifically. Of the state's 105 counties, 80 experienced a population decrease between 2000 and 2003. In dramatic contrast to these statistics, the population of Shawnee County increased by about 3,000 from 2001 through 2007, while Douglas County increased by 11,000 from 2001 to 2007, Sedgwick County increased by about 20,000 people, and *Johnson County's population increased by about 52,000 people*. The point is that annexations are not an issue throughout the state; they are only an issue where there is significantly greater than average population growth.

A March 2008 article in the Kansas City Business Journal reported that Johnson County is projected to increase its population from 538,000 today to 783,000 by 2033. The most significant reason for this is that Johnson County has taken over as the leader in job creation not only in the

state of Kansas but in the 15 county area that comprises the Kansas City metropolitan area. It is projected that Johnson County will add 195,000 jobs during the next 25 years, making it the metro areas largest employment center.

So, what does this have to do with annexations? According to a 2006 study by the Brookings Institution, "a city's ability to annex land from its surrounding county is a primary determinant of its fiscal health. Cities with greater abilities to annex have much higher bond rating scores." The Brookings Institution went on to explain that higher bond ratings means that a city can sell bonds at lower interest rates, meeting needs for both municipal facilities and major infrastructure with regional benefits. Better facilities attract employers and allow existing businesses to expand.

Some argue that with its "liberal" annexation laws, all of Kansas should reap economic prosperity. But, it is clear that numerous factors contribute to economic growth, and it is equally clear that the ability of cities in major metropolitan areas to promote economic development and tax revenues benefits the entire state. Job creation in metropolitan areas ensures that our sons and daughters can live and work in Kansas if they so choose.

Finally, many proponents of the right of residents to vote on annexations claim that it will stop urban sprawl and encroachment into rural areas. However, the vast majority of research by land use planning experts has demonstrated that the type of large-lot, scattered site development that is seen in areas like unincorporated Johnson County creates far more sprawl than urban development, does more damage to the environment, more significantly depletes agricultural land and imposes substantial service costs on county governments as upscale residents eventually demand high end services. It is not surprising that one of the rural fire districts in south Johnson County has the highest mill levy of any fire district in the state. Over the past year, the average size of a home in unincorporated south Johnson County was about 6,000 square feet. No wonder the owners want urban level services.

When landowners choose to live on large lots beyond the edge of the city, they still gain substantial benefits from the city. Even the property values of their homes are higher because they are close to city jobs, shopping and entertainment centers. Residents in areas with few or no commercial uses must drive longer distances to work, shop and play, resulting in more pollution and wear and tear on roads never meant to handle high volumes of traffic.

Perhaps the most telling set of statistics is this. If the landowners in the so-called rural areas of the county are able to continue to promote development on 5-10 acre tracts of land, the projected increase of 20,000 people in Aubry Township over the next 12 years will take up from about 52 square miles to 104 square miles of land. This same population can be accommodated in urbanized areas on about 3.5 square miles of land. It is far less expensive to service 3.5 square miles of land than 52 or 104. Much less farm land is lost when development is at urban densities rather than 5 and 10 acre lots for ranchettes or hobby farms.

In summary, at a time when, as a nation, we must figure out how to grow the economy and promote job development, it is extraordinarily difficult to see why we should change 100 years of annexation law to placate the special interests of persons who want the benefits of being near a city, but who do not want to share in the burdens that come as part of being part of a community. We need to trust our elected officials and let city and county officials perform their obligations in the same way that the members of this legislature do.



Testimony in opposition to HB 2031

Submitted by Dave Holtwick
On behalf of the Overland Park Chamber of Commerce

House Local Government Committee
Thursday, February 5th, 2009

Madam Chair and Committee Members:

My name is Dave Holtwick and I am Vice President of Government Affairs with the Overland Park Chamber of Commerce. I am appearing today on behalf of our board of directors and our nearly 900 member companies. I appreciate the opportunity to appear before you today to share testimony in opposition to House Bill 2031.

One of the standing priorities of the Overland Park Chamber is to oppose changes to statutes further restricting a city's ability to annex unincorporated land needed for growth. Our chamber has witnessed the successful growth of Overland Park for many years and I believe it is due in large part to the city's willingness and ability to plan strategically to accommodate the growth.

Throughout our history of development and growth, annexation has been a tool used by area cities to successfully allow our area to grow. Planning for growth is a fundamental responsibility of cities and I believe HB 2031 will severely impact that ability with the additional voting requirements it would put in place.

I see several possible issues associated with the voting provisions of this bill. First off, it appears that residents already have a "vote" in the process because they elect the county commission that is involved in determining if the annexation should go forward or not.

A second concern is how the bill defines a "qualified elector". Allowing any nonresident landowner who would otherwise be a qualified elector AND any person registered to vote who resides within the area proposed to be annexed could result in multiple votes for the same affected property. This seems to be a fundamental change away from the way we vote now. If I live in Topeka and I own a rental home in Salina, I am not allowed to vote for elected officials in Salina even though their decisions could impact the value and/or use of my property in the area they serve.

I believe the process currently in place has been shown to work well and provides multiple opportunities for review and evaluation before annexation moves forward. Please vote "no" on HB 2031. Thank you very much for your time today.

9001 W. 110th Street • Suite 150
Overland Park, KS 66210
t: 913.491.3600 • w: opks.org

Local Government

Date: 2-5-09

Attachment # 13



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 2031 Cities; annexation; board of county commissioner decision;
election required.**

DATE: February 5, 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 2031 relating to annexation.

HB 2031 would empower the residents and the landowners of property proposed for annexation to have the ability to vote on whether they would prefer to be annexed into a city.

Simply put, HB 2031 would eliminate any kind of annexation by a city whatsoever.

To provide such overriding rights to a minority party is an inappropriate delegation of authority by the Legislature to such a small group. Those who reside near the city limits of any city are defacto on notice of the possibility, if not the probability that their property may someday be annexed into the city in which they adjoin or are near. Current law provides cities with certain powers and authority over land located within three miles of its boundary for a reason: To insure a city has the ability to plan for orderly growth.

To place insurmountable roadblocks to annexation for a city to circumnavigate will lead to a declining tax base for cities, disorderly growth, inefficient delivery of public services, increased costs for city residents and untold additional ramifications. The result of legislation such as HB 2031 is to unduly empower minority interests with rights and opportunity for redress that will be subsidized by those who are already a part of a city.

Legislation such as HB 2031 will have seriously negative consequences for cities and should not be adopted. On behalf of the City of Topeka, I thank you for your consideration of our comments today.

WBD