

MINUTES OF THE HOUSE LOCAL GOVERNMENT COMMITTEE

The meeting was called to order by Chairman Sharon Schwartz at 3:35 p.m. on March 19, 2009, in Room 446-N of the Capitol.

All members were present except:

Representative Mitch Holmes - Excused  
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:

Ron Shaver, Assistant City Attorney, Olathe, Kansas  
Representative Terrie Huntington

Others attending:

See attached list.

Committee members had been sent copies of the minutes of the March 12, 2009, meeting for their review. Chair Schwartz asked for a motion to approve those minutes. Representative Seiwert moved the minutes of the March 12, 2009, Local Government Committee meeting be approved as written, seconded by Representative Garcia. The motion carried.

Chair Schwartz opened the hearing on **SB 257 - Requirements for public improvements by cities outside of city limits.**

Ken Wilke, Office of the Revisor of Statutes, explained the Senate amendments to **SB 257** and noted the bill would provide two additional approval methods, each of which would allow a city to make improvements in unincorporated areas within three miles of their corporate limits. Questions and answers followed.

Chair Schwartz recognized Ron Shaver, Assistant City Attorney, City of Olathe, who appeared before the Committee in support of **SB 257** (Attachment 1). He stated the changes provided by **SB 257** would allow cities to deal more effectively with the demands of growth without requiring properties to be annexed by a city, causing unfair tax burdens on its existing residents, or creating additional regulatory complexity. Questions and answers followed.

Chair Schwartz called the Committee's attention to written-only testimony from Jason A. Gage, City Manager, City of Salina, which was submitted in support of **SB 257** (Attachment 2). She asked the Committee to take a few minutes to review it.

Representative Mah explained a proposed balloon amendment she wanted to make to **SB 257** (Attachment 3). She then moved that **SB 257** be amended to include the balloon amendment, which added the contents of **Substitute for HB 2029** which had been amended by the HCOW last week except that it substitutes "counties with populations over 100,000" for "Johnson, Sedgwick, and Shawnee Counties." Seconded by Representative Goico. The motion carried by voice vote.

Representative Slattery moved that the Committee table **SB 257** as amended, seconded by Representative Seiwert. The motion failed.

Representative Goico moved that the Committee recommend **SB 257** as amended favorably for passage and have it designated as a substitute bill, seconded by Representative Gordon. The motion carried by voice vote.

Chair Schwartz directed the Committee's attention to **HB 2253**. She recognized Representative Huntington who stated she has been in contact with the Kansas Bar Association (Attachment 4). The Bar has concerns

CONTINUATION SHEET

Minutes of the House Local Government Committee at 3:35 p.m. on March 19, 2009, in Room 446-N of the Capitol.

with **HB 2253**. Its members believe the bill would be an appropriate topic for study by the Judicial Council, which can pull together various legal experts to evaluate this legislation and make recommendations to the Legislature. Representative Huntington went on to offer a balloon amendment (Attachment 5) which would address the concerns raised by various homeowners in maintenance-free communities. She went on to explain the effects of the amendments.

Questions and answers followed.

Representative Slattery moved that the Committee adopt the balloon amendment recommended by Representative Huntington, seconded by Representative Seiwert. The motion carried unanimously.

Discussion followed.

Representative Mah moved the Committee refer HB 2253 as amended to the Judicial Council for consideration and then report back to the Committee by December 15, 2009, seconded by Representative Slattery. Motion carried unanimously.

Chair Schwartz informed the Committee that since this was the Committee's last meeting of the 2009 session members should take their folders with them.

The meeting was adjourned at 4:25 p.m.

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Representative Sharon Schwartz, Chair

# HOUSE LOCAL GOVERNMENT COMMITTEE

DATE: 3-19-09

NAME	REPRESENTING
Luke Bell	Kansas Assoc. of REALTORS
Ron Shaver	City of Olathe
<del>Doug Myers</del>	" " "
Michelle Butler	Cap. Strategies
KEITH PANGBORN	KEARNEY & ASSOC.

**Please use black ink**



March 19, 2009

The Honorable Sharon Schwartz, Chairperson  
The Honorable Mitch Holmes, Vice Chairperson  
And Members of the House Local Government Committee  
Statehouse, Room 446-N  
Topeka, Kansas

**Re: SB 257**

Ladies and Gentlemen:

The City of Olathe respectfully requests your approval of amendments to K.S.A. 12-693 as provided in SB 257. The bill would make it easier for cities to create improvement districts requested by residents outside of a city while utilizing the special assessment procedure set forth in K.S.A. 12-6a01 *et. seq.* The tools provided by SB 257 allow cities to respond more effectively to the demands of growth just outside the city limits without forcing properties to be annexed, creating undue tax burdens on the city's current residents, or adding additional regulatory complexity. The bill would allow a city to make certain public improvements within three miles of the city limits upon approval of the board of county commissioners where the property is located, or upon the city's receipt and approval of a petition signed by 100% of the property owners wishing to be served by the public improvements.

**Current Law**

The authority currently provided pursuant to K.S.A. 12-693 is two-fold. First, the statute allows cities to make public improvements outside of the city limits, but within three miles of the city limits, if those improvements are undertaken in connection with an improvement district. Second, the statute allows cities to include property located outside of the city limits in improvement districts created pursuant to K.S.A. 12-6a01 *et seq.*, and specifically grants cities the authority to levy special assessments against such property.

K.S.A. 12-693 currently allows cities to construct public improvements outside of but within three miles of the city limits only if the city adopts regulations governing the subdivision of land in the unincorporated area that would benefit from the improvements. This requirement is cumbersome, and records in Johnson County indicate that no city has used the current form of K.S.A. 12-693 to obtain subdivision authority outside its city limits.

K.S.A. 12-693 further provides that even if a city has subdivision authority outside its city limits, a city may not create an improvement district or levy special assessments against property outside of the city limits unless the city receives an improvement district petition signed by the owners of more than half of the property in the unincorporated area.

**An Example of the Impact of the Current Law on Growth Surrounding Olathe**

The City of Olathe wishes to create an improvement district to construct needed sanitary sewer improvements to serve a rapidly growing area including property both in the Olathe city limits and in the unincorporated area of Johnson County. The improvements would be located in the unincorporated area of the County, but within three miles of Olathe's city limits. The project is multijurisdictional in that it would ultimately serve property in the Olathe city limits, the Olathe future growth area, the Gardner future growth area and Johnson County Wastewater's service territory. Olathe has had positive conversations with Johnson County legal and planning staff, Johnson County Wastewater staff, and certain property owners in the unincorporated area of the County regarding this

proposed project. All parties recognize the potential economic benefits to all jurisdictions if these improvements are constructed.

A majority of the property that will be benefited by these improvements is currently in the unincorporated area of Johnson County. Because Olathe does not have subdivision authority within this unincorporated area of Johnson County, Olathe cannot use K.S.A. 12-6a01 *et seq.* to finance the cost of the improvements through special assessments. Absent annexation of such property, Olathe's city at large will be required to pay for that portion of the improvements which benefit properties in the unincorporated area of the County. This would unfairly burden all Olathe taxpayers with repayment obligations rather than placing that responsibility on the property that is benefited but located in the unincorporated area of Johnson County.

### **Solution Provided by SB 257**

SB 257 provides a practical method to expand the ability of cities to construct public improvements in rapidly growing areas near their borders. The first amendment to section (a) of K.S.A. 12-693 would require that the city obtain the county's consent prior to making such improvements. This allows a majority of affected property owners in the unincorporated part of the county to proceed with a benefit district upon approval of their county commissioners. This also allows counties to cooperate in multijurisdictional projects like Olathe's without giving up subdivision authority.

The second amendment to section (a) of K.S.A. 12-693 allows cities to construct public improvements outside of their borders but within three miles thereof if requested by 100% of the property owners to be served by the improvements. This option streamlines the approval process for a unanimous benefit improvement petition since all property owners have consented to construction of the improvements and levy of the special assessments.

SB 257 clarifies in Section (c) that a petition for improvements to boundary line roads that includes property both inside and outside of the city is sufficient if it contains the signatures of at least 50% of the property owners of all of the property described in the petition. This amendment is intended to more equitably distribute costs of boundary line roads where the county has already consented to the creation of such an improvement district (as is currently required by K.S.A. 12-693).

The changes provided by SB 257 would allow cities to deal more effectively with the demands of growth without requiring properties to be annexed by a city, causing unfair tax burdens on its existing residents, or creating additional regulatory complexity. In this economic environment, it makes sense to clarify and enhance the ability of cities to facilitate growth near their borders in the manner provided by SB 257.

I would be happy to assist or answer questions.

Sincerely,

Ron Shaver  
Assistant City Attorney

CITY MANAGER'S OFFICE  
Jason A. Gage  
City Manager  
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Salina, Kansas 67402-0736



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## **SB 257 Testimony to House Committee on Local Government**

**By: Jason A. Gage – March 19, 2009**

The City of Salina respectfully supports the consideration and resulting passage of SB 257. This bill amends language dealing with special assessments outside the corporate limits of a city, but within three miles. As you are well aware, the use of special assessments in Kansas is a much used and vital tool for economic and residential development. It allows cities to fairly apply cost allocations to infrastructure needs related to existing and future development. The City of Salina finds this tool to be vital to ensuring our response to local community development opportunities. The special assessment process provides for equitable cost allocation of infrastructure for industrial, commercial and residential projects.

As you are well aware, much of a city's development occurs along the fringe area. In response to these development demands, K.S.A. 12-693 intends to address the application of special assessments to this area. We believe the intent of the current law to be solid, but the language somewhat vague with regards to jurisdictional process. The proposed language amendments in SB 257 clarify this issue for all related parties (i.e., municipality, county, developer and property owner). We believe this clarification is needed and adequately addresses the shortcomings of the current law. As a result, we fully support the approval of SB 257.

Thank you for considering SB 257 and providing an opportunity for the City of Salina to submit testimony on its behalf.

Local Government  
Date: 3-19-09  
Attachment # 2

SENATE BILL No. 257

By Committee on Federal and State Affairs

2-10

10 AN ACT concerning cities; relating to public improvements outside the  
11 city limits; [amending K.S.A. 12-693 and repealing the existing section.]

relating to annexation; amending K.S.A. 12-519, 12-520b,  
12-521, 12-531, 12-532 and 12-693 and K.S.A. 2008 Supp.  
25-432 and repealing the existing sections.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 12-693 is hereby amended to read as follows: 12-  
15 693. (a) All cities are hereby authorized to make improvements authorized  
16 by and in the manner provided for in the general improvement and as-  
17 sessment law as contained in chapter 12, article 6a of Kansas Statutes  
18 Annotated, in those unincorporated areas beyond their corporate limits  
19 and within three miles thereof. Before any such improvements shall be  
20 made; (1) The city shall have adopted, in the manner provided by law,  
21 regulations governing the subdivision of land in such unincorporated area;  
22 (2) the city shall have obtained the county's consent to making such im-  
23 provements; or (3) 100% of the property owners located outside the city  
24 limits and benefited by such improvements shall have signed a petition  
25 requesting that the city make such improvements.

26 (b) Such improvements may be located in a proposed improvement  
27 district which is wholly outside the corporate limits of the city or partially  
28 within the city limits. Improvements within such three mile area located  
29 in a proposed improvement district which is wholly outside the corporate  
30 limits of the city shall be commenced only upon a petition submitted  
31 pursuant to K.S.A. 12-6a04, and amendments thereto, signed by both a  
32 majority of the owners of record of property and the owners of record of  
33 more than one-half of the area liable for special assessment under the  
34 proposal. Except as provided in subsection (b) (c), improvements within  
35 such three mile area located in a proposed improvement district which is  
36 partially within the corporate limits of the city shall be commenced only  
37 upon a petition found sufficient by the provisions of K.S.A. 12-6a04, and  
38 amendments thereto, except that for the purpose of determining the suf-  
39 ficiency of the signatures to such petitions only, that area which is outside  
40 the corporate limits of the city shall be considered to constitute the pro-  
41 posed district. Financing of the improvements, including the levying of  
42 special assessments, shall be made in the same manner as if the improve-  
43 ments were made within the corporate limits of the city. In the event the

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1 improvements authorized hereunder are for water, storm water drain or  
 2 sanitary sewer systems, the city is hereby authorized to impose upon the  
 3 property served, user fees which may be based upon the cost of the op-  
 4 eration and maintenance of such improvements and also the recovery of  
 5 an equitable portion of the capital improvement costs of any of such  
 6 improvements originally charged to or assessed against property within  
 7 the corporate limits of such city. The user fees herein authorized shall be  
 8 a lien against the property served and may be collected in the same man-  
 9 ner as delinquent real estate taxes.

10 ~~(b)~~ (c) If the area of a proposed improvement district is located partly  
 11 within and partly outside the city, and the construction, reconstruction or  
 12 other improvement to roads or streets which lie upon the corporate  
 13 boundary limits of the city is proposed, the governing body of the city  
 14 and the board of county commissioners of the county may enter into  
 15 agreements whereby the city or county may initiate such improvements  
 16 by the establishment of an improvement district by the city under the  
 17 provisions of K.S.A. 12-6a04, and amendments thereto. ~~For the purpose~~  
 18 ~~of determining the sufficiency of the signatures to such petition, that area~~  
 19 ~~which is both inside and outside the corporate limits of the city shall be~~  
 20 ~~considered to constitute the proposed district.~~ Such agreement shall pro-  
 21 vide for the proportionate share of the total costs of the improvement  
 22 which shall be paid by the city and by the county and the share to be paid  
 23 by the levying of special assessments against the benefiting property  
 24 within the improvement district. If the proposed boundary line road or  
 25 street improvement involves a road under the jurisdiction of a township,  
 26 the governing body of the township also may enter into an agreement  
 27 with the governing body of the city to contribute a share of the cost of  
 28 the improvement. If the area of a proposed improvement district includes  
 29 property within an industrial district, established by a charter resolution  
 30 adopted pursuant to K.S.A. 19-101a, and amendments thereto, which  
 31 effected changes in the provisions of K.S.A. 19-3801, et seq., and amend-  
 32 ments thereto, the board of directors of such industrial district shall have  
 33 the right to approve or disapprove the agreement prior to the undertaking  
 34 of any improvement. If the board disapproves the agreement, the indus-  
 35 trial district shall not be liable for the cost of any improvement undertaken  
 36 pursuant to such agreement.

37 [ Sec. 2.. K.S.A. 12-693 is hereby repealed.

38 Sec. 3. This act shall take effect and be in force from and after its  
 39 publication in the statute book.]

On page 2 after line 38 insert Sections 1 - 8 of Sub. for HB  
 2029 as amended by HCOW as marked as sections 2 - 9  
 respectively.

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**Substitute for HOUSE BILL No. 2029**

By Committee on Local Government

2-17

10 AN ACT concerning cities; relating to annexation; amending K.S.A. 12-  
11 519, 12-520b, 12-521, 12-531 and 12-532 and K.S.A. 2008 Supp. 25-  
12 432 and repealing the existing sections.

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

2 15 Section 1. K.S.A. 12-520b is hereby amended to read as follows: 12-  
16 520b. (a) The governing body of any city proposing to annex land under  
17 the provisions of K.S.A. 12-520, and amendments thereto, shall make  
18 plans for the extension of services to the area proposed to be annexed  
19 and shall, prior to the adoption of the resolution provided for in K.S.A.  
20 12-520a, and amendments thereto, prepare a report setting forth such  
21 plans. The report shall include:

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

24 (A) The present and proposed boundaries of the city affected by such  
25 proposed annexation;

26 (B) the present streets, water mains, sewers and other city utility  
27 lines, and the proposed extension thereof;

28 (C) the general land use pattern in the areas to be annexed.

29 (2) A statement setting forth a plan of sufficient detail to provide a  
30 reasonable person with a full and complete understanding of the inten-  
31 tions of the city for extending to the area to be annexed each major  
32 municipal service provided to persons and property located within the  
33 city and the area proposed to be annexed at the time of annexation and  
34 the estimated cost of providing such services. The plan shall state the  
35 estimated cost impact of providing such services to the residents of the  
36 city and the residents of the area proposed to be annexed. The plan shall  
37 state the method by which the city plans to finance the extension of such  
38 services to such area. Such plan shall include a timetable of the plans for  
39 extending each major municipal service to the area annexed. The plan  
40 shall state the means by which the services currently provided by a town-  
41 ship or special district in the area to be annexed shall be maintained by  
42 the city at a level which is equal to or better than the level of services  
43 provided prior to annexation. The plan shall state those services which

2-3

4-3

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

4 (b) *A copy of the plan for extension of services shall be sent by certified*  
5 *mail not less than 10 days prior to the public hearing as provided in K.S.A.*  
6 *12-520a, and amendments thereto, to the board of county commissioners.*

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

3 11 Sec. 17. K.S.A. 12-531 is hereby amended to read as follows: 12-531.

12 (a) ~~Five~~ *Three* years following the annexation of any land pursuant to  
13 K.S.A. 12-520 or 12-521, and amendments thereto, or, where there has  
14 been litigation relating to the annexation, ~~five~~ *three* years following the  
15 conclusion of such litigation, the board of county commissioners shall call  
16 a hearing to consider whether the city has provided the municipal services  
17 as provided in the timetable set forth in the plan in accordance with K.S.A.  
18 12-520b or 12-521, and amendments thereto. The board of county com-  
19 missioners shall schedule the matter for public hearing and shall give  
20 notice of the date, hour and place of the hearing to: (1) The city; and (2)  
21 any landowner in the area subject to the service extension plan.

22 (b) At the hearing, the board shall hear testimony as to the city's  
23 extension of municipal services, or lack thereof, from the city and the  
24 landowner. After the hearing, the board shall make a finding as to whether  
25 or not the city has provided services in accordance with its service exten-  
26 sion plan. If the board finds that the city has not provided services as  
27 provided in its service extension plan, the board shall notify the city and  
28 the landowner that such property may be deannexed, as provided in  
29 K.S.A. 12-532, *and amendments thereto*, if the services are not provided  
30 within ~~2½ years~~ *1½ years* of the date of the board's findings.

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

4 37 Sec. 18. K.S.A. 12-532 is hereby amended to read as follows: 12-532.

38 (a) If, within ~~2½ years~~ *1½ years* following the conclusion of the hearing  
39 required by K.S.A. 12-531, *and amendments thereto*, or, where there has  
40 been litigation relating to the hearing, ~~2½ years~~ *1½ years* following the  
41 conclusion of such litigation, the city has not provided the municipal serv-  
42 ices as provided in the timetable set forth in the plan prepared in ac-  
43 cordance with K.S.A. 12-520b or 12-521, and amendments thereto, the

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

11 (b) At the hearing, the board shall hear testimony as to the city's  
12 extension of municipal services, or lack thereof, from both the owner and  
13 representatives of the city. Except as provided by subsection (e), if the  
14 board finds after the hearing that the city has failed to provide the mu-  
15 nicipal services in accordance with the plan and consistent with the time-  
16 table therein, the board may enter an order excluding the land from the  
17 boundaries of the city. Any such order shall take effect in the same man-  
18 ner as provided in K.S.A. 12-523, and amendments thereto, for the ef-  
19 fective date of annexation ordinances. Such land shall not be annexed  
20 again for ~~one year~~ *three years* from the effective date of the order without  
21 the written consent of the owner of the land.

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

28 (d) Except as provided by this subsection, after the effective date of  
29 the order to exclude the land from the city, such land shall not be liable  
30 for any general taxes imposed by the city. Such land shall remain liable,  
31 however, for any taxes or special assessments levied by the city as are  
32 necessary to pay its proportionate share of the interest on and principal  
33 of such bonds or other indebtedness incurred by the city for improve-  
34 ments to the land which were approved by the city before the date on  
35 which the owner or owners filed a petition for the exclusion of the land  
36 from the city.

37 (e) The board shall not order exclusion of any land if:

38 (1) The service extension plan conditions the extension of certain im-  
39 provements or services on the filing of a legally sufficient petition by the  
40 owners of the land for the creation of an improvement district and to levy  
41 special assessments therein to pay a portion of the costs of such improve-  
42 ments, and a sufficient petition has not been filed;

43 (2) since the annexation, the governing body of the city initiated the

1 creation of an improvement or benefit district affecting such land to levy  
2 special assessments thereon to pay a portion of the costs of certain mu-  
3 nicipal improvements, and the formation of the district was blocked by  
4 the filing of a sufficient protest petition by some or all of the owners of  
5 any land in the proposed district;

6 (3) the exclusion would result in the land being completely sur-  
7 rounded by other tracts of land located within the city's boundaries; or

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

11 (f) Any owner or the city aggrieved by the decision of the board may  
12 appeal the decision to the district court in the manner provided in K.S.A.  
13 19-223, and amendments thereto. Any city so appealing shall not be re-  
14 quired to execute the bond prescribed therein.

15 (g) *If the board of county commissioners refuses to hold the hearing*  
16 *as required, any owner of land may bring an action under provisions of*  
17 *K.S.A. 60-1201 et seq., and amendments thereto, to compel the board to*  
18 *hold the hearing. The court, upon finding the hearing is required, shall*  
19 *award attorney fees and costs to the landowner.*

20 Sec. 12 K.S.A. 12-519 is hereby amended to read as follows: 12-519.

21 As used in this act: (a) "Tract" means a single unit of real property under  
22 one ownership, outside the corporate limits of a city, which may be platted  
23 or unplatted, title to which is publicly or privately held by an owner as  
24 defined by subsection (c).

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

26 (c) "Owner" means the one who has record title to a tract. In the  
27 event two or more persons have record title to a tract, "owner" shall be  
28 defined as follows:

29 (1) If joint tenants, "owner" means a majority of the number of joint  
30 tenants; (2) if tenants in common, "owner" means both a majority of the  
31 number of tenants in common and the holders of a majority of the un-  
32 divided interests in the tract; (3) if the tract is held by a life tenant and a  
33 remainderman, "owner" means the life tenant; (4) if the tract is held by  
34 a tenant under a recorded lease providing for a lease term of 10 years or  
35 longer and a remainderman, "owner" means both such tenant and re-  
36 mainderman; (5) if one holds title to the surface and another holds title  
37 to the minerals, "owner" means the surface title holder.

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

42 (e) "Platted" means a tract or tracts mapped or drawn to scale, show-  
43 ing a division or divisions thereof, which map or drawing is filed in the

1 office of the register of deeds by the owner of such tract.

2 (f) "Land devoted to agricultural use" means land which is devoted  
3 to the production of plants, animals or horticultural products, including  
4 but not limited to: Forages; grains and feed crops; dairy animals and dairy  
5 products; poultry and poultry products; beef cattle, sheep, swine and  
6 horses; bees and apiary products; trees and forest products; fruits, nuts  
7 and berries; vegetables; or nursery, floral, ornamental and greenhouse  
8 products. Land devoted to agricultural use shall not include those lands  
9 which are used for recreational purposes, suburban residential acreages,  
10 rural home sites or farm home sites and yard plots whose primary function  
11 is for residential or recreational purposes even though such properties  
12 may produce or maintain some of those plants or animals listed in the  
13 foregoing definition.

14 (g) "Qualified elector" means any person registered to vote who re-  
15 sides within the area proposed to be annexed under the provisions of  
16 K.S.A. 12-521, and amendments thereto.

17 (h) "Area proposed to be annexed" means the area approved for an-  
18 nexation by the board of county commissioners under provisions of K.S.A.  
19 12-521, and amendments thereto.

20 ~~(g)~~ (i) "Watercourse" means a natural or manmade course where wa-  
21 ter may flow on a regular or intermittent basis; a watercourse shall not  
22 include a natural or manmade lake, pond or other impoundment of five  
23 or more acres of surface area.

6 24 ~~Sec. 17~~ K.S.A. 12-521 is hereby amended to read as follows: 12-521.

25 (a) Whenever the governing body of any city deems it advisable to annex  
26 land which such city is not permitted to annex under K.S.A. 12-520, and  
27 amendments thereto, or if the governing body of any city is permitted to  
28 annex land under K.S.A. 12-520, and amendments thereto, but deems it  
29 advisable not to annex thereunder, the governing body may annex such  
30 land as provided by this section. The governing body, in the name of the  
31 city, may present a petition to the board of county commissioners of the  
32 county in which the land sought to be annexed is located. The petition  
33 shall set forth a legal description of the land sought to be annexed and  
34 request a public hearing on the advisability of such annexation. The gov-  
35 erning body of such city shall make plans for the extension of services to  
36 the tract of land proposed to be annexed and shall file a copy thereof with  
37 the board of county commissioners at the time of presentation of the  
38 petition. Such report shall include:

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

41 (A) The present and proposed boundaries of the city affected by such  
42 proposed annexation;

43 (B) the present streets, water mains, sewers and other city utility

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1 lines, and the proposed extension thereto;

2 (C) the general land use pattern in the areas to be annexed

3 (2) A statement setting forth a plan of sufficient detail to provide a  
4 reasonable person with a full and complete understanding of the inten-  
5 tions of the city for extending to the area to be annexed each major  
6 municipal service provided to persons and property located within the  
7 city and area proposed to be annexed at the time of annexation and the  
8 estimated cost of providing such services. The plan shall state the esti-  
9 mated cost impact of providing such services to the residents of the city  
10 and the residents of the area proposed to be annexed. The plan shall state  
11 the method by which the city plans to finance the extension of such serv-  
12 ices to such area. The plan shall include a timetable for the extension of  
13 major municipal services to the area proposed to be annexed. The plan  
14 shall state the means by which the services currently provided by a town-  
15 ship or special district in the area to be annexed shall be maintained by  
16 the city at a level which is equal to or better than the level of services  
17 provided prior to annexation. The plan shall state those services which  
18 shall be provided immediately upon annexation and those services which  
19 may be provided upon petition of the landowners to create a benefit  
20 district.

21 (b) *No portion of any unplatted tract of land devoted to agricultural*  
22 *use of 21 acres or more shall be annexed by any city under the authority*  
23 *of this section, and amendments thereto, without the written consent of*  
24 *the owner thereof.*

25 ~~(b)~~ (c) The date fixed for the public hearing shall be not less than 60  
26 nor more than 70 days following the date of the presentation of the pe-  
27 tition requesting such hearing. Notice of the time and place of the hear-  
28 ing, together with a legal description of the land sought to be annexed  
29 and the names of the owners thereof, shall be published in a newspaper  
30 of general circulation in the city not less than one week and not more  
31 than two weeks preceding the date fixed for such hearing.

32 A copy of the notice providing for the public hearing shall be mailed  
33 by certified mail to each owner of the land proposed to be annexed not  
34 more than 10 days following the date of the presentation of the petition  
35 requesting such hearing.

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

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

42 (e) (d) On the day set for hearing, the board of county commissioners  
43 shall hear testimony as to the advisability of such annexation, and a rep-

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1 resentative of the city shall present the city's proposal for annexation,  
2 including the plan of the city for the extension of services to the area  
3 proposed to be annexed.

4 The action of the board of county commissioners shall be quasi-judicial  
5 in nature. The board of county commissioners shall consider the impact  
6 of approving or disapproving the annexation on the entire community  
7 involved, including the city and the land proposed to be annexed, in order  
8 to insure the orderly growth and development of the community. The  
9 board shall make specific written findings of fact and conclusions deter-  
10 mining whether such annexation or the annexation of a lesser amount of  
11 such area causes manifest injury to the owners of any land proposed to  
12 be annexed, or to the owners of land in areas near or adjacent to the land  
13 proposed to be annexed or to the city if the annexation is disapproved.  
14 The findings and conclusions shall be based upon the preponderance of  
15 evidence presented to the board. In determining whether manifest injury  
16 would result from the annexation, the board's considerations shall include,  
17 but not be limited to, the extent to which the following criteria may affect  
18 the city, the area to be annexed, the residents of the city and the area to  
19 be annexed, other governmental units providing services to the area to  
20 be annexed, the utilities providing services to the area to be annexed, and  
21 any other public or private person, firm or corporation which may be  
22 affected thereby:

- 23 (1) Extent to which any of the area is land devoted to agricultural  
24 use;
- 25 (2) area of platted land relative to unplatted land;
- 26 (3) topography, natural boundaries, storm and sanitary sewers, drain-  
27 age basins, transportation links or any other physical characteristics which  
28 may be an indication of the existence or absence of common interest of  
29 the city and the area proposed to be annexed;
- 30 (4) extent and age of residential development in the area to be an-  
31 nexed and adjacent land within the city's boundaries;
- 32 (5) present population in the area to be annexed and the projected  
33 population growth during the next five years in the area proposed to be  
34 annexed;
- 35 (6) the extent of business, commercial and industrial development in  
36 the area;
- 37 (7) the present cost, methods and adequacy of governmental services  
38 and regulatory controls in the area;
- 39 (8) the proposed cost, extent and the necessity of governmental serv-  
40 ices to be provided by the city proposing annexation and the plan and  
41 schedule to extend such services;
- 42 (9) tax impact upon property in the city and the area;
- 43 (10) extent to which the residents of the area are directly or indirectly

1 dependent upon the city for governmental services and for social, eco-  
2 nomic, employment, cultural and recreational opportunities and  
3 resources;

4 (11) effect of the proposed annexation on the city and other adjacent  
5 areas, including, but not limited to, other cities, sewer and water districts,  
6 improvement districts, townships or industrial districts and, subject to the  
7 provisions of K.S.A. 12-521a, fire districts;

8 (12) existing petitions for incorporation of the area as a new city or  
9 for the creation of a special district;

10 (13) likelihood of significant growth in the area and in adjacent areas  
11 during the next five years; and

12 (14) effect of annexation upon the utilities providing services to the  
13 area and the ability of those utilities to provide those services shown in  
14 the detailed plan.

15 ~~(d)~~ (e) The board of county commissioners shall render a judgment  
16 within seven days after the hearing has been adjourned sine die. If a  
17 majority of the board of county commissioners concludes that the annex-  
18 ation or any part thereof should be allowed, the board shall so find and  
19 grant the annexation by order; and thereupon the city may annex the land  
20 by ordinance. Orders of the board of county commissioners denying the  
21 petition or a part thereof for annexation shall require a majority vote of  
22 the members of the board. When an order denying a petition or part  
23 thereof is issued, it shall be by resolution, which shall be sent by certified  
24 mail to the city proposing the annexation. All orders of the board of county  
25 commissioners granting or denying petitions for annexation shall be  
26 spread at length upon the journal of proceedings of the board. The failure  
27 of such board to spread an order granting annexation upon the journal  
28 shall not invalidate such order.

29 (f) [(1)] *Within 10 days following the rendering of the judgment of*  
30 *the board of county commissioners as provided in subsection (e), the city*  
31 *clerk shall certify to the county election officer a legal description and a*  
32 *map of the area outside the corporate limits of the city proposed to be*  
33 *annexed and the street addresses of all real estate located therein. If there*  
34 *are qualified voters residing in the area proposed to be annexed, then the*  
35 *county election officer shall conduct a mail ballot election under the pro-*  
36 *visions of K.S.A. 25-431, et seq., and amendments thereto, in the area*  
37 *proposed to be annexed within 60 days of such certification. If a majority*  
38 *of the qualified electors residing in the area proposed to be annexed and*  
39 *voting thereon approve the annexation, the city may annex the land by*  
40 *passage of an ordinance. If a majority of the qualified electors residing in*  
41 *the area proposed to be annexed and voting thereon reject the annexation,*  
42 *the lands shall not be annexed and the city may not propose the annexation*  
43 *of any such lands in the proposed area for at least four years from the*

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1 *date of the election.*

2 [(2) This provision shall apply to annexations in Johnson,  
3 Sedgwick and Shawnee counties in Kansas.]

[counties having a population of at least 100,000

4 (e) (g) Any owner of land annexed pursuant to this section or the city  
5 aggrieved by the decision of the board of county commissioners may  
6 appeal the decision of the board to the district court of the same county  
7 in the manner and method set forth in K.S.A. 19-223, and amendments  
8 thereto. Nothing in this subsection shall be construed as granting the  
9 owner of land in areas near or adjacent to land annexed pursuant to this  
10 section the right to appeal the decision of the board of county commis-  
11 sioners. Any city so appealing shall not be required to execute the bond  
12 prescribed therein.

7 13 Sec. 7 K.S.A. 2008 Supp. 25-432 is hereby amended to read as fol-  
14 lows: 25-432. An election shall not be conducted under this act unless:

15 (a) Conducted on a date, mutually agreed upon by the governing  
16 body of the political or taxing subdivision and the county election officer,  
17 not later than 120 days following the date the request is submitted by the  
18 political or taxing subdivision; and

19 (b) the secretary of state approves a written plan for conduct of the  
20 election, which shall include a written timetable for the conduct of the  
21 election, submitted by the county election officer; and

22 (c) the election is nonpartisan; and

23 (d) the election is not one at which any candidate is elected, retained  
24 or recalled; and

25 (e) the election is not held on the same date as another election in  
26 which the qualified electors of that subdivision of government are eligible  
27 to cast ballots; and

28 (f) the election is a question submitted election at which all of the  
29 qualified electors of one of the following subdivisions of government are  
30 the only electors eligible to vote:

31 (1) Counties;

32 (2) cities;

33 (3) school districts, except in an election held pursuant to K.S.A. 72-  
34 7302 et seq., and amendments thereto;

35 (4) townships;

36 (5) benefit districts organized under K.S.A. 31-301, and amendments  
37 thereto;

38 (6) cemetery districts organized under K.S.A. 15-1013 or 17-1330,  
39 and amendments thereto;

40 (7) combined sewer districts organized under K.S.A. 19-27,169, and  
41 amendments thereto;

42 (8) community college districts organized under K.S.A. 71-1101 et  
43 seq., and amendments thereto;

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1 (9) fire districts organized under K.S.A. 19-3601 or 80-1512, and  
2 amendments thereto;

3 (10) hospital districts;

4 (11) improvement districts organized under K.S.A. 19-2753, and  
5 amendments thereto;

6 (12) Johnson county park and recreation district organized under  
7 K.S.A. 19-2859, and amendments thereto;

8 (13) sewage disposal districts organized under K.S.A. 19-27,140, and  
9 amendments thereto;

10 (14) water districts organized under K.S.A. 19-3501 et seq., and  
11 amendments thereto; or

12 (15) transportation development districts created pursuant to K.S.A.  
13 2008 Supp. 12-17,140 et seq., and amendments thereto; or

14 (16) any tract of land annexed pursuant to section 5, and amendments  
15 thereto.

8 16 Sec. ~~7~~, K.S.A. 12-519, 12-520b, 12-521, 12-531 [and 12-532] and  
17 K.S.A. 2008 Supp. 25-432 are hereby repealed.

9 18 Sec. ~~8~~ This act shall take effect and be in force from and after its  
19 publication in the statute book.

[ , 12-532 and 12-693



**KANSAS BAR  
ASSOCIATION**

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March 19, 2009

The Honorable Sharon Schwartz  
Chair, House Local Government Committee  
Statehouse, 161-W  
300 SW 10<sup>th</sup> Avenue  
Topeka, Kansas 66612

**Re: HB 2253 – Enacting the Homeowner’s Association Act**

Dear Madam Chair Schwartz:

During the past two legislative sessions, we have had the opportunity to work with Representative Terrie Huntington in regard to several homeowner association bills that she has introduced for consideration by the Kansas Legislature. As you are aware through hearings held recently in your committee, the homeowner association bill presents complex issues that are not easily remedied in the legislative proposals that have come forth to date.

While the Kansas Bar Association does not take issue with most of the debate between the homeowner associations and the association members, we have expressed concerns with provisions that would require for the reimbursement of attorney fees for a successful plaintiff (i.e., the homeowner), but not allow for recovery of attorney fees for a successful defendant (i.e., the homeowner’s association).

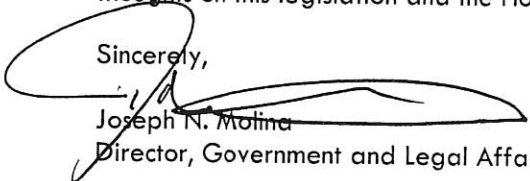
The Kansas Bar Association has a longstanding position against “loser pay” provisions, as we believe the potential impact of having to pay for attorney fees by a losing party discourages citizens accessing the court system for redress of their complaints.

We have suggested allowing the court discretion to award attorney fees would be a reasonable accommodation of this matter, but we also believe it should be a remedy available for both prevailing plaintiffs and defendants, not just plaintiffs. Otherwise, we would respectfully suggest the references to attorney fees be removed from the bill altogether.

The issue of attorney fees is but a small part of the Homeowner’s Association Act and previous legislative proposals in this area. From our observation of the hearing process, we know the issue to be complex with no easy answers. Past attempts at resolving the differences between the parties have involved committee hearings, subcommittees and interim study with no agreed-upon solution produced or forthcoming. Accordingly, we believe the subject and specifically HB 2253 would be an appropriate topic for study by the Judicial Council, who can pull together various legal experts to evaluate this legislation and make recommendations to the Legislature.

On behalf of the Kansas Bar Association, I thank you for your consideration of our thoughts on this legislation and the Homeowner’s Association Act.

Sincerely,

  
Joseph N. Molina  
Director, Government and Legal Affairs

CC: The Honorable Terrie Huntington  
Mr. Randy M. Hearrell, Judicial Council  
Whitney Damron, KBA Contract Lobbyist

**Local Government**

**Date:** 3-19-09  
**Attachment #** 4

**HOUSE BILL No. 2253**

By Committee on Local Government

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9 AN ACT concerning homeowners' associations and associations of apart-  
10 ment owners; relating to certain duties, required procedures, attorney  
11 fees, dispute resolution and duties of the attorney general.

12  
13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. (a) For the purposes of this act:

15 (1) "Act" means the homeowners' association act.  
16 (2) "Dispute" means a disagreement regarding the rights or obliga-  
17 tions of the homeowners' association or the home owners; apartment  
18 owners or residents.

19 (3) "Homeowners' association" means a for-profit homeowners' as-  
20 sociation, a non-profit homeowners' association as defined in K.S.A. 60-  
21 3611, and amendments thereto, and an association of apartment owners  
22 as defined in K.S.A. 58-3102, and amendments thereto.

23 (4) "Mediation" shall have the meaning ascribed to it in K.S.A. 5-  
24 502(f), and amendments thereto.

25 (5) "Resident" means a real property owner or lessee whose property  
26 is subject to the jurisdiction of a non-profit homeowners' association as  
27 defined in K.S.A. 60-3611; and amendments thereto. The term shall not  
28 include persons renting or leasing a home, apartment or condominium  
29 unit subject to the authority of a for-profit homeowners' association or an  
30 association of apartment owners.

31 (b) Sections 1 through 6, and amendments thereto, shall be known  
32 and may be cited as the homeowners' association act.

33 Sec. 2. The governing board of a homeowners' association, herein-  
34 after referred to as the board of directors, is subject to the following:

35 (a) The board of directors may amend the by-laws of the association  
36 only upon approval of a majority of homeowners, apartment owners or  
37 residents voting in person, by proxy or by absentee ballot at a duly-noticed  
38 and duly-constituted homeowners, apartment owners or residents  
39 meeting.

40 (b) All elections for the membership on the board of directors shall  
41 be by secret ballot and conducted in a manner to assure the integrity of  
42 the election process.

43 (c) All meetings of the board of directors shall be open to all hom-

1 eowners, apartment owners or residents of a homeowners' association.  
 2 The board of directors shall not meet in closed executive session unless  
 3 it is in consultation with its attorneys about matters properly a part of the  
 4 attorney-client relationship or if it involves personnel matters or personal  
 5 matters between the board of directors and the homeowner, apartment  
 6 owner or resident of a confidential nature.

7 (d) The board of directors, at least 30 days before adopting any pro-  
 8 posed assessments, special charges or fees of general application, shall  
 9 give in writing to the homeowners, apartment owners or residents, full  
 10 disclosure concerning any proposed assessments, special charges or fees  
 11 of general application. All homeowners, apartment owners or residents  
 12 shall be given the opportunity to comment on such proposals. Assess-  
 13 ments, charges and fees shall be equitable and proportionate to the re-  
 14 spective interests of the homeowners, apartment owners or residents.

15 (e) The board of directors, during reasonable business hours, shall  
 16 provide a homeowner, apartment owner or resident access, at no cost, to  
 17 the homeowner's association records, including, but not limited to,  
 18 minutes of meetings, budget and financial records, all bills from utility  
 19 companies, suppliers, contractors, bill payments, tax filings, audits, re-  
 20 imbursements to board members and homeowners, apartment owners or  
 21 residents, attorney bills and any other statements where checks are being  
 22 disbursed for payment.

23 (f) The board of directors shall provide a homeowner, apartment  
 24 owner or resident with copies of association records, including minutes  
 25 of meetings, budget and financial records no later than 10 business days  
 26 following the receipt of a written request by a homeowner, apartment  
 27 owner or resident of the homeowner's association. The cost to the hom-  
 28 eowner, apartment owner or resident requesting such copies should not  
 29 exceed the reasonable and prevailing commercial duplication costs for  
 30 copying.

31 (g) The board of directors shall provide a prospective homeowner,  
 32 apartment owner or resident, at no cost, a copy of the homeowners' as-  
 33 sociation by-laws.

34 Sec. 3. Within 60 days of the effective date of this act, a homeowners'  
 35 association shall adopt procedures to implement the following:

36 (a) The selection of one board member and two nonboard members  
 37 who are homeowners, apartment owners or residents of the homeowners'  
 38 association to receive and tally the ballots cast for the election of members  
 39 of the board of directors, to verify the number of votes received against  
 40 the number of persons voting and proxies voted and to report the results  
 41 to the board of directors and for publication of the results to the hom-  
 42 eowners, apartment owners or residents of such homeowners' association;

43 (b) provide homeowners, apartment owners or residents information

(h) The board of directors shall cause an annual audit of the homeowners' association's receipts and expenditures to be made by a certified public accountant. Such audit shall be based the expenditures and receipts occurring during a calendar year or the homeowners' association tax year if different from a calendar year and shall be made at the expense of the homeowners' association. A copy of such audit shall be made available to any member of the homeowners' association upon receipt of a written request from such member. The homeowners' association shall also file a copy of such audit with the attorney general within 30 days after receipt thereof.

Upon written request, the

1 concerning their rights under this act; and  
 2 (c) provide a homeowner, apartment owner or resident with a list of  
 3 all the homeowners, apartment owners or residents in the association  
 4 along with their current mailing addresses, no later than 10 business days  
 5 following the receipt of a written request by a homeowner, apartment  
 6 owner or resident.

5 7 Sec. 4. In a civil action by a homeowner, apartment owner or resi-  
 8 dent against a homeowners' association, should the plaintiff homeowner,  
 9 apartment owner or resident substantially prevail or the homeowners'  
 10 association be found to be substantially unjust in its actions, the court  
 11 shall award such homeowner, apartment owner or resident actual costs  
 12 and expenses, including reasonable attorney fees.

6 13 Sec. 5. (a) Upon the written request of any homeowner, apartment  
 14 owner or resident, a homeowners' association shall participate in media-  
 15 tion of a dispute. A homeowners' association shall make a written request  
 16 for mediation with a homeowner, apartment owner or resident when a  
 17 dispute arises. The homeowner's, apartment owner's or resident's partic-  
 18 ipation in mediation shall be optional.

19 (b) If the parties agree to mediation, a mediator shall be appointed  
 20 by mutual agreement of the homeowners' association and the hom-  
 21 eowner, apartment owner or resident within 60 days of the written  
 22 request.

23 (c) Prospective mediators shall be required to disclose to the parties  
 24 the mediator's education, training, relevant experience and professional  
 25 and community affiliations, the names of any participants in mediation  
 26 conducted by the mediator who are willing to act as references and any  
 27 possible conflicts of interest.

28 (d) If the parties cannot agree upon the selection of a mediator, a  
 29 mediator shall be designated by the attorney general.

30 (e) Mediation shall not exceed two hours in duration unless the par-  
 31 ties agree to a longer period. Costs of the mediation shall be paid 2/3 by  
 32 the homeowners' association and 1/3 by the homeowner, apartment owner  
 33 or resident.

34 (f) Parties at their own expense may be assisted by legal counsel at  
 35 the mediation.

36 (g) The terms of any settlement agreement shall be open to disclosure  
 37 to any homeowner, apartment owner or resident.

38 (h) The attorney general shall maintain a list of qualified mediators  
 39 for purposes of this act.

40 (i) The provisions of this section shall not apply to any homeowners'  
 41 association with an annual budget less than \$100,000 unless the hom-  
 42 eowners' association opts in to the provisions of this section.

7 43 Sec. 6. (a) The attorney general shall develop written educational

Sec. 4. Each resident shall have the right to attend any regular or special meeting of the board of directors of the homeowners' association or any regular or special meeting of the homeowners' association. At any such meeting, the resident shall be entitled to speak on any issue discussed at such meeting regardless of whether or not such resident's dues or assessments are delinquent at the time of such meeting.

may

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1 materials and a website with an interactive question-and-answer feature  
2 for the purpose of providing guidance to homeowners' associations and  
3 their homeowners, apartment owners or residents regarding best prac-  
4 tices of corporate governance including the following:

- 5 (1) Election procedures including secret ballots; absentee ballots,
- 6 proxies and election monitoring procedures;
- 7 (2) appropriateness of executive sessions during board meetings;
- 8 (3) necessity for providing advance notice to homeowners, apartment
- 9 owners or residents prior to board consideration of certain matters;
- 10 (4) prompt disclosure of board minutes to homeowners, apartment
- 11 owners or residents;
- 12 (5) necessity for providing access to homeowners, apartment owners
- 13 or residents to association records and appropriate copying costs;
- 14 (6) appropriate procedures for the approval of amendments to by-
- 15 laws;
- 16 (7) conflict of interest rules covering directors, officers, employees
- 17 and committee members in connection with homeowners' association
- 18 business and homeowner's, apartment owner's or resident's concerns;
- 19 (8) appropriate rules regarding the possible shifting of legal costs to
- 20 and among homeowners, apartment owners or residents, directors per-
- 21 sonally and homeowners' associations;
- 22 (9) appropriate utilization of mediation procedures; and
- 23 (10) other matters deemed to be important in the overall governance
- 24 and operation of a homeowners' association.

25 (b) Homeowners' associations shall notify their homeowners, apart-  
26 ment owners or residents of the availability of this information and the  
27 website no later than the next annual meeting following the effective date  
28 of this act.

§ 29 Sec. 17 This act shall take effect and be in force from and after its  
30 publication in the Kansas register.