

**SENATE BILL No. 88**

By Committee on Local Government

1-28

1 AN ACT concerning cities; relating to the vacation or exclusion of  
2 territory or easements; providing procedure to challenge certain  
3 decisions of a city; amending K.S.A. 12-504 and 12-505 and repealing  
4 the existing sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. Any owner of land aggrieved by the decision of the  
8 city governing body under the provisions of K.S.A. 12-505, 13-443, 14-  
9 423 and 15-427, and amendments thereto, within 30 days following the  
10 publication of the vacation ordinance, may bring an action in district court  
11 challenging the reasonableness of such decision.

12 Sec. 2. K.S.A. 12-504 is hereby amended to read as follows: 12-504.  
13 ~~Whenever the governing body of the city in which any of the following are~~  
14 ~~located or whenever~~ (a) The owner or owners of: (1) Any townsite or part  
15 of a townsite, or of; (2) any addition or part of an addition to any city; or  
16 ~~the governing body in which the following are located, or the owner or~~  
17 ~~owners of~~ (3) the lands adjoining on both sides of any street, alley or  
18 public reservation such as, but not limited to, public easements, dedicated  
19 building setback lines, access control, or a part thereof, in any city or any  
20 addition thereto; that desires to have the same any townsite or part thereof,  
21 any addition or part thereof, or public easements, building setback lines,  
22 access control or part thereof vacated, or that desires to exclude any  
23 farming lands or unplatted tracts, or any addition or part of an addition to  
24 be vacated hereunder, from the boundaries of the city wherein situated,  
25 shall petition the governing body of such city or the city planning  
26 commission shall and request a public hearing on the issues. The  
27 governing body shall give public notice of the same of such request by a  
28 publication in a newspaper of general circulation in the vicinity of such  
29 place sought to be vacated or excluded or in the official city newspaper in  
30 which is situated the place, tract or tracts, street, alley, or public  
31 reservation sought to be vacated or excluded, if there is any such  
32 newspaper published therein and shall designate whether the hearing will  
33 be conducted by the governing body or the planning commission. Such  
34 The notice shall be published at least one time at least 20 days prior to the  
35 date of the hearing. Such The notice shall state that a petition has been  
36 filed in the office of the city clerk praying for requesting such vacation or

1 exclusion, or both, describing the property fully, ~~and that on a certain date~~  
2 ~~after the completion of such publication notice, naming the day on which~~  
3 ~~the petition will be presented to the governing body of the city or the city~~  
4 ~~planning commission for a hearing thereon, and that at such time and~~  
5 ~~place. The notice shall specify whether the hearing is to be held before the~~  
6 ~~governing body or the planning commission. All interested persons~~  
7 ~~interested can appear and shall be given an opportunity to be heard under~~  
8 ~~on the petition.~~

9 (b) Any city may initiate the deannexation of land from the city by  
10 following the notice and public hearing process established in subsection  
11 (a). The hearing shall be held before the city governing body.

12 Sec. 3. K.S.A. 12-505 is hereby amended to read as follows: 12-505.

13 (a) (1) Upon the presentation of ~~such the~~ petition, ~~as hereinbefore provided~~  
14 ~~for,~~ to the governing body of the city or planning commission, the  
15 governing body or planning commission shall proceed to hear the ~~same~~  
16 ~~petition, or may adjourn the hearing from time to time to some day and~~  
17 ~~hour certain, as deemed necessary, and which adjournment shall be noted~~  
18 ~~upon the record of the proceedings thereof as provided in the notice. On~~  
19 ~~the day of the hearing of such petition, the governing body or planning~~  
20 ~~commission shall hear such testimony as may be produced before it, and~~  
21 ~~such other testimony as required in order to fully understand the true~~  
22 ~~nature of the petition and on the propriety of granting the same petition. If~~  
23 ~~the planning commission holds the hearing, the commission shall make a~~  
24 ~~recommendation regarding the vacation and submit such recommendation~~  
25 ~~to the governing body in the same manner provided by K.S.A. 12-752, and~~  
26 ~~amendments thereto, for the submission and approval of recommendations~~  
27 ~~regarding plats. Subject to the provisions of subsection (b),~~

28 (2) If the governing body or planning commission determines from  
29 the proofs and evidence presented that ~~due and~~ legal notice has been given  
30 by publication as required ~~in this act, and,~~ that no private rights will be  
31 injured or endangered by such vacation or exclusion, ~~and that the public~~  
32 ~~will suffer no loss or inconvenience thereby, and that in justice to the~~  
33 ~~petitioner or petitioners the prayer request of the petitioner ought to be~~  
34 ~~granted, the governing body shall enact an ordinance containing the order~~  
35 ~~that such vacation or exclusion, or both, be made. Any order approving a~~  
36 ~~vacation of plat, street, alleys, easements or a public reservation shall~~  
37 ~~provide for the reservation to the city and the owners of any lesser~~  
38 ~~property rights for public utilities, rights-of-ways and easements for public~~  
39 ~~service facilities originally held in such plat, street, alley, easement or~~  
40 ~~public reservation then in existence and use.~~

41 (3) The petition shall not be granted if a written objection ~~thereto~~ is  
42 filed with the city clerk, at the time of or before the hearing, by any owner  
43 or adjoining owner who would be a proper party to the petition but has not

1 joined therein. When only a portion of a street, alley or public reservation  
2 is proposed to be vacated, the petition shall not be granted if a written  
3 objection is filed with the clerk of the governing body by any owner of  
4 lands ~~which~~ *that* adjoin the portion to be vacated.

5 ~~(b) If within two years following the effective date of the annexation~~  
6 ~~of any tract pursuant to K.S.A. 12-520c, and amendments thereto, and~~  
7 ~~upon petition of the owner of any such tract, the governing body of the city~~  
8 ~~shall exclude such tract if the owner reimburses the city for all costs~~  
9 ~~incurred by the city in the extension of services to such tract, together with~~  
10 ~~interest on the amount of such costs at a rate provided by K.S.A. 16-201,~~  
11 ~~and amendments thereto. The owner shall be required to pay only those~~  
12 ~~costs which are attributable to services which exclusively benefit such~~  
13 ~~tract.~~

14 ~~The provisions of this subsection shall apply only to a tract which is~~  
15 ~~under one ownership on the date the petition for exclusion is filed by the~~  
16 ~~owner thereof with the city governing body, and which will not adjoin the~~  
17 ~~city on the effective date of its exclusion from the city.~~

18 ~~The terms "tract" and "owner" in this subsection shall have the same~~  
19 ~~meaning ascribed thereto in K.S.A. 12-519, and amendments thereto.~~

20 ~~The provisions of this subsection shall expire on December 31, 1997.~~

21 ~~(e) Any lands so excluded pursuant to this section shall be listed for~~  
22 ~~future taxation the same as though if the lands had never been a part of~~  
23 ~~such city, and which order shall be entered at length on the records of the~~  
24 ~~proceedings of the governing body. Thereupon The city clerk shall certify~~  
25 ~~a copy of such ordinance containing the order to the register of deeds of~~  
26 ~~the county in which such property is located. The register of deeds shall~~  
27 ~~record in the deed records of the county at the expense of the petitioner or~~  
28 ~~petitioners, and the register of deeds shall also write on the margin of the~~  
29 ~~recorded plat of such townsite or addition, the words "canceled by order"~~  
30 ~~or "canceled in part by order," as the case may be, giving reference thereon~~  
31 ~~to the page and book of records where such the ordinance containing the~~  
32 ~~order is recorded in the register's office.~~

33 Sec. 4. K.S.A. 12-504 and 12-505 are hereby repealed.

34 Sec. 5. This act shall take effect and be in force from and after its  
35 publication in the statute book.