

HOUSE BILL No. 2043

By Representative Toelkes

1-22

AN ACT concerning annexation; relating to the powers and duties of cities and counties; amending K.S.A. 12-519, 12-521, 12-527, 12-530, 12-531, 12-532, 12-534 and 12-535 and repealing the existing sections; also repealing K.S.A. 12-520, 12-520a, 12-520b, 12-526, 12-536 and 12-537.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 12-519 is hereby amended to read as follows: 12-519. As used in this ~~act~~ *section and K.S.A. 12-521 through 12-535 and section 9, and amendments thereto:*

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

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

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

(1) If joint tenants, "owner" means a majority of the number of joint tenants; (2) if tenants in common, "owner" means both a majority of the number of tenants in common and the holders of a majority of the undivided interests in the tract; (3) if the tract is held by a life tenant and a remainderman, "owner" means the life tenant; (4) if the tract is held by a tenant under a recorded lease providing for a lease term of 10 years or longer and a remainderman, "owner" means both such tenant and remainderman; (5) if one holds title to the surface and another holds title to the minerals, "owner" means the surface title holder.

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

(e) "Platted" means a tract or tracts mapped or drawn to scale, showing a division or divisions thereof, which map or drawing is filed in the office of the register of deeds by the owner of such tract.

(f) "Land devoted to agricultural use" means land which is devoted

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

12 (g) "Watercourse" means a natural or manmade course where water
13 may flow on a regular or intermittent basis; a watercourse shall not include
14 a natural or manmade lake, pond or other impoundment of five or more
15 acres of surface area.

16 Sec. 2. K.S.A. 12-521 is hereby amended to read as follows: 12-521.

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

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

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

35 (B) the present streets, water mains, sewers and other city utility
36 lines, and the proposed extension thereto;

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

38 (2) A statement setting forth a plan of sufficient detail to provide a
39 reasonable person with a full and complete understanding of the inten-
40 tions of the city for extending to the area to be annexed each major
41 municipal service provided to persons and property located within the
42 city and area proposed to be annexed at the time of annexation and the
43 estimated cost of providing such services. The plan shall state the esti-

1 mated cost impact of providing such services to the residents of the city
2 and the residents of the area proposed to be annexed. The plan shall state
3 the method by which the city plans to finance the extension of such serv-
4 ices to such area. The plan shall include a timetable for the extension of
5 major municipal services to the area proposed to be annexed. The plan
6 shall state the means by which the services currently provided by a town-
7 ship or special district in the area to be annexed shall be maintained by
8 the city at a level which is equal to or better than the level of services
9 provided prior to annexation. The plan shall state those services which
10 shall be provided immediately upon annexation and those services which
11 may be provided upon petition of the landowners to create a benefit
12 district.

13 (b) The date fixed for the public hearing shall be not less than 60 nor
14 more than 70 days following the date of the presentation of the petition
15 requesting such hearing. Notice of the time and place of the hearing,
16 together with a legal description of the land sought to be annexed and
17 the names of the owners thereof, shall be published in a newspaper of
18 general circulation in the city not less than one week and not more than
19 two weeks preceding the date fixed for such hearing.

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

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

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

30 (c) On the day set for hearing, the board of county commissioners
31 shall hear testimony as to the advisability of such annexation, and a rep-
32 resentative of the city shall present the city's proposal for annexation,
33 including the plan of the city for the extension of services to the area
34 proposed to be annexed.

35 The action of the board of county commissioners shall be quasi-judicial
36 in nature. The board of county commissioners shall consider the impact
37 of approving or disapproving the annexation on the entire community
38 involved, including the city and the land proposed to be annexed, in order
39 to insure the orderly growth and development of the community. The
40 board shall make specific written findings of fact and conclusions deter-
41 mining whether such annexation or the annexation of a lesser amount of
42 such area causes manifest injury to the owners of any land proposed to
43 be annexed, or to the owners of land in areas near or adjacent to the land

1 proposed to be annexed or to the city if the annexation is disapproved.
2 The findings and conclusions shall be based upon the preponderance of
3 evidence presented to the board. In determining whether manifest injury
4 would result from the annexation, the board's considerations shall include,
5 but not be limited to, the extent to which the following criteria may affect
6 the city, the area to be annexed, the residents of the city and the area to
7 be annexed, other governmental units providing services to the area to
8 be annexed, the utilities providing services to the area to be annexed, and
9 any other public or private person, firm or corporation which may be
10 affected thereby:

11 (1) Extent to which any of the area is land devoted to agricultural
12 use;

13 (2) area of platted land relative to unplatted land;

14 (3) topography, natural boundaries, storm and sanitary sewers, drain-
15 age basins, transportation links or any other physical characteristics which
16 may be an indication of the existence or absence of common interest of
17 the city and the area proposed to be annexed;

18 (4) extent and age of residential development in the area to be an-
19 nexed and adjacent land within the city's boundaries;

20 (5) present population in the area to be annexed and the projected
21 population growth during the next five years in the area proposed to be
22 annexed;

23 (6) the extent of business, commercial and industrial development in
24 the area;

25 (7) the present cost, methods and adequacy of governmental services
26 and regulatory controls in the area;

27 (8) the proposed cost, extent and the necessity of governmental serv-
28 ices to be provided by the city proposing annexation and the plan and
29 schedule to extend such services;

30 (9) tax impact upon property in the city and the area;

31 (10) extent to which the residents of the area are directly or indirectly
32 dependent upon the city for governmental services and for social, eco-
33 nomic, employment, cultural and recreational opportunities and
34 resources;

35 (11) effect of the proposed annexation on the city and other adjacent
36 areas, including, but not limited to, other cities, sewer and water districts,
37 improvement districts, townships or industrial districts and, subject to the
38 provisions of K.S.A. 12-521a, *and amendments thereto*, fire districts;

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

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

43 (14) effect of annexation upon the utilities providing services to the

1 area and the ability of those utilities to provide those services shown in
2 the detailed plan.

3 (d) The board of county commissioners shall render a judgment
4 within seven days after the hearing has been adjourned sine die. If a
5 majority of the board of county commissioners concludes that the annex-
6 ation or any part thereof should be allowed, the board shall so find and
7 grant the annexation by order; and thereupon the city may annex the land
8 by ordinance. Orders of the board of county commissioners denying the
9 petition or a part thereof for annexation shall require a majority vote of
10 the members of the board. When an order denying a petition or part
11 thereof is issued, it shall be by resolution, which shall be sent by certified
12 mail to the city proposing the annexation. All orders of the board of county
13 commissioners granting or denying petitions for annexation shall be
14 spread at length upon the journal of proceedings of the board. The failure
15 of such board to spread an order granting annexation upon the journal
16 shall not invalidate such order.

17 (e) Any owner of land annexed pursuant to this section or the city
18 aggrieved by the decision of the board of county commissioners may
19 appeal the decision of the board to the district court of the same county
20 in the manner and method set forth in K.S.A. 19-223, and amendments
21 thereto. Nothing in this subsection shall be construed as granting the
22 owner of land in areas near or adjacent to land annexed pursuant to this
23 section the right to appeal the decision of the board of county commis-
24 sioners. Any city so appealing shall not be required to execute the bond
25 prescribed therein.

26 Sec. 3. K.S.A. 12-527 is hereby amended to read as follows: 12-527.

27 (a) Whenever a city annexes land located within a rural water district
28 organized pursuant to the provisions of K.S.A. 82a-612 *et seq.*, and
29 amendments thereto, the city shall negotiate with the district to acquire
30 title to all facilities owned by the water district and used for the trans-
31 portation or utilization of water distribution to the water district benefit
32 units within the area annexed by the city. Title shall vest in or become
33 the property of the city upon payment by the city to the water district of
34 the reasonable value of such property, as agreed upon by the governing
35 body of the city and the board of directors of the district. If the district
36 is unable to reach agreement with the city on the reasonable value for
37 such facilities, then the reasonable value shall be determined in the fol-
38 lowing manner:

39 (1) The district and the city shall each select one qualified appraiser
40 and the two appraisers so selected shall then select a third appraiser for
41 the purpose of conducting appraisals so as to determine reasonable value
42 of the property, facilities and improvements of the district annexed by
43 the city.

1 (2) The agreement or decision of at least two of the three appraisers
2 shall be the fair market value presented to the city for payment and the
3 district for acceptance.

4 (3) If either the district or the city is dissatisfied with the decision of
5 the appraisers, then the district or the city may institute an action in the
6 district court to challenge the reasonableness of the value determined by
7 the appraisers.

8 (b) The compensation required by this section shall be paid to the
9 district whether or not the city actually utilizes the facilities of the district
10 for the delivery of water to property within the city and shall be paid at
11 a time not later than 120 days following the date upon which the fair
12 market value of the facilities are certified to the city and to the district,
13 or at such later date as may be mutually agreed upon by the city and the
14 water district or as may be determined by the district court. The city, as
15 part of its service extension plan required ~~under the provisions of K.S.A.~~
16 ~~12-520b and 12-521e~~ *by 12-521*, and amendments thereto, shall notify
17 each affected rural water district of its future plans for the delivery of
18 water in areas proposed for annexation currently being served by the
19 district.

20 (c) The governing body of the city and board of directors of the dis-
21 trict may provide, on such terms as may be agreed upon, that water trans-
22 mission facilities owned by the district and located within the city may be
23 retained by the district for the purpose of transporting water to benefit
24 units outside the city.

25 (d) Except for nonpayment of bills, the district shall not diminish
26 service to benefit units who were supplied water by the district at the
27 time of annexation during the period of negotiations conducted pursuant
28 to this section.

29 (e) Nothing in this section shall be construed as limiting in any man-
30 ner the authority of a city to select water service suppliers to areas within
31 the city limits, or to limit in any manner the authority of a city to adopt
32 and enforce regulations for the operation of a water service supplier,
33 including but not limited to standards of water quality, classification of
34 water customers, capacity of water system, water system connections to
35 sanitary sewer systems, rates and billing practices and other regulations
36 for protection of the public health, safety and welfare.

37 Sec. 4. K.S.A. 12-530 is hereby amended to read as follows: 12-530.
38 (a) Before any city annexes any land pursuant to K.S.A. ~~12-520 or~~ 12-521,
39 and amendments thereto, the governing body of the city shall submit ~~its~~
40 ~~resolution of intent to annex adopted pursuant to K.S.A. 12-520, and~~
41 ~~amendments thereto, or~~ a copy of the petition submitted to the board of
42 county commissioners pursuant to K.S.A. 12-521, and amendments
43 thereto, to any city, county, township or joint planning commission having

1 jurisdiction over any portion of the area to be annexed. ~~If the annexation~~
2 ~~is pursuant to K.S.A. 12-520, and amendments thereto, a copy of the~~
3 ~~resolution of intent to annex shall be submitted to the planning commis-~~
4 ~~sion within 10 days following the adoption of the resolution by the city.~~
5 ~~If the annexation is by petition pursuant to K.S.A. 12-521, and amend-~~
6 ~~ments thereto, A copy of such petition shall be submitted to the planning~~
7 ~~commission within 20 days after the date on which the petition was pre-~~
8 ~~sented to the board of county commissioners. The provisions of this sub-~~
9 ~~section shall not apply to annexations pursuant to K.S.A. 12-520, and~~
10 ~~amendments thereto, for which no resolution or intent to annex is re-~~
11 ~~quired to be adopted.~~

12 (b) The planning commission shall review the proposed annexation
13 and make a finding of the compatibility or the incompatibility of the
14 annexation with any adopted land use or comprehensive plans applicable
15 to the area to be annexed and the annexing city. A copy of the planning
16 commission's findings shall be sent to the city. ~~If the city is annexing~~
17 ~~property pursuant to K.S.A. 12-521, and amendments thereto, A copy of~~
18 ~~such findings shall be filed with the board of county commissioners at~~
19 ~~least 20 days prior to the date of the hearing. The planning commission's~~
20 ~~findings shall be available for public inspection in the office of the city~~
21 ~~clerk. The failure of a planning commission to issue its advisory report~~
22 ~~prior to the date required by this section shall not invalidate any annex-~~
23 ~~ation commenced under K.S.A. 12-520 or 12-521, and amendments~~
24 ~~thereto, when the annexing city has complied with the provisions of this~~
25 ~~section.~~

26 Sec. 5. K.S.A. 12-531 is hereby amended to read as follows: 12-531.

27 (a) Five years following the annexation of any land pursuant to K.S.A. ~~12-~~
28 ~~520 or~~ 12-521, and amendments thereto, or, where there has been liti-
29 gation relating to the annexation, five years following the conclusion of
30 such litigation, the board of county commissioners shall call a hearing to
31 consider whether the city has provided the municipal services as provided
32 in the timetable set forth in the plan in accordance with K.S.A. ~~12-520b~~
33 ~~or~~ 12-521, and amendments thereto. The board of county commissioners
34 shall schedule the matter for public hearing and shall give notice of the
35 date, hour and place of the hearing to: (1) The city; and (2) any landowner
36 in the area subject to the service extension plan.

37 (b) At the hearing, the board shall hear testimony as to the city's
38 extension of municipal services, or lack thereof, from the city and the
39 landowner. After the hearing, the board shall make a finding as to whether
40 or not the city has provided services in accordance with its service exten-
41 sion plan. If the board finds that the city has not provided services as
42 provided in its service extension plan, the board shall notify the city and
43 the landowner that such property may be deannexed, as provided in

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

3 Sec. 6. K.S.A. 12-532 is hereby amended to read as follows: 12-532.
4 (a) If, within 2½ years following the conclusion of the hearing required
5 by K.S.A. 12-531, *and amendments thereto*, or, where there has been
6 litigation relating to the hearing, 2½ years following the conclusion of
7 such litigation, the city has not provided the municipal services as pro-
8 vided in the timetable set forth in the plan prepared in accordance with
9 K.S.A. ~~12-520b~~ or 12-521, and amendments thereto, the owner of such
10 land may petition the board of county commissioners to exclude such
11 land from the boundaries of the city. Within 10 days after receipt of the
12 petition, the board shall schedule the matter for public hearing and shall
13 give notice of the date, hour and place of the hearing to: (1) The owner;
14 (2) the city; (3) the township into which the property, if deannexed, would
15 be placed; and (4) the governing body of any fire district, sewer district,
16 water district or other special district governments which have jurisdiction
17 over territory adjacent to the area sought to be deannexed. The notice
18 shall be sent by certified mail no less than 21 days before the date of the
19 hearing.

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

31 (c) The county clerk shall certify a copy of the order to the register
32 of deeds of the county. The register of deeds shall record the order in
33 the deed records of the county, and, at the expense of the owner, the
34 register of deeds also shall record the order of exclusion on the margin
35 of the recorded plat of such land, giving reference thereon to the page
36 and book of records where the order is recorded in the register's office.

37 (d) Except as provided by this subsection, after the effective date of
38 the order to exclude the land from the city, such land shall not be liable
39 for any general taxes imposed by the city. Such land shall remain liable,
40 however, for any taxes or special assessments levied by the city as are
41 necessary to pay its proportionate share of the interest on and principal
42 of such bonds or other indebtedness incurred by the city for improve-
43 ments to the land which were approved by the city before the date on

1 which the owner or owners filed a petition for the exclusion of the land
2 from the city.

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

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

9 (2) since the annexation, the governing body of the city initiated the
10 creation of an improvement or benefit district affecting such land to levy
11 special assessments thereon to pay a portion of the costs of certain mu-
12 nicipal improvements, and the formation of the district was blocked by
13 the filing of a sufficient protest petition by some or all of the owners of
14 any land in the proposed district;

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

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

20 (f) Any owner or the city aggrieved by the decision of the board may
21 appeal the decision to the district court in the manner provided in K.S.A.
22 19-223, and amendments thereto. Any city so appealing shall not be re-
23 quired to execute the bond prescribed therein.

24 Sec. 7. K.S.A. 12-534 is hereby amended to read as follows: 12-534.
25 Any written agreement entered into between a city and the owner of land
26 proposed to be annexed by the city which conditions the delivery or ex-
27 tension of municipal water, sewer, electrical, gas or other services to the
28 land, regardless of the size of the land, on the consent of the owner to
29 annexation on a later date shall be deemed to be a sufficient consent to
30 annexation ~~under K.S.A. 12-520, and amendments thereto~~, by the owner
31 and any successors in interest. Such agreements shall be filed by the city
32 in the office of the register of deeds of the county where the land is
33 located within 30 days after being executed by all parties. Any such agree-
34 ment executed prior to the effective date of this act shall be binding upon
35 the owner and any successors in interest if the agreement is filed by the
36 city in the office of the register of deeds of the county where the land is
37 located within 180 days following the effective date of this act; however,
38 the failure to so file any written agreement within 180 days shall not make
39 such agreement void or otherwise unenforceable.

40 Sec. 8. K.S.A. 12-535 is hereby amended to read as follows: 12-535.
41 The governing body of any city annexing land pursuant to K.S.A. ~~12-520~~
42 ~~or~~ 12-521, and amendments thereto, may enter into contractual agree-
43 ments with the owners of land proposed to be annexed to guarantee the

1 apportionment of the costs of improvements made in the area to be an-
2 nexed between the city at large and the area to be annexed. The term of
3 such agreements shall not exceed 10 years. In the event the city appor-
4 tions the costs of improvements in a manner contrary to the contractual
5 agreement, the owners of land may bring an action in the district court
6 for deannexation, such action shall be subject to the provisions of K.S.A.
7 12-533 *and amendments thereto*.

8 This section shall not preclude the formation of a benefit district to
9 make such improvements upon petition by landowners in the area to be
10 annexed.

11 New Sec. 9. The provisions of this act shall be applicable to any an-
12 nexation initiated under the provisions of K.S.A. 12-520 prior to the repeal
13 of that section by this act and which is not completed before the effective
14 date of this act. For the purpose of this section “completed” means the
15 date of the publication of the annexation ordinance as provided by K.S.A.
16 12-523, and amendments thereto.

17 Sec. 10. K.S.A. 12-519, 12-520, 12-520a, 12-520b, 12-521, 12-526,
18 12-527, 12-530, 12-531, 12-532, 12-534, 12-535, 12-536 and 12-537 are
19 hereby repealed.

20 Sec. 11. This act shall take effect and be in force from and after its
21 publication in the statute book.

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