

HOUSE BILL No. 2774

AN ACT concerning townships; relating to annexation of township territory by cities; amending K.S.A. 12-520 and repealing the existing section.

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

New Section 1. (a) If any township has no residents, as certified by the county clerk of the county in which such township is located, the board of county commissioners, by resolution, may disorganize the township or consolidate the township with the next geographically closest township, within such county, having a functioning township board. Prior to the adoption of such resolution, the board of county commissioners shall conduct a public hearing on the advisability of adopting such resolution. Until such time as the disorganization or consolidation is completed, the board of county commissioners may exercise all of the statutory powers of the township board deemed necessary and advisable by such board of county commissioners.

(b) All books, papers, records, moneys and other assets belonging to any township proposed to be disorganized or consolidated under subsection (a) shall be delivered by the persons in possession thereof to the board of county commissioners. The board of county commissioners may dispose of any assets of such township in the manner provided by this section. If at the time of its disorganization or consolidation, the township has any outstanding indebtedness, the board of county commissioners shall place any moneys together with the proceeds of any assets of such township into a special fund that shall be used for the purpose of paying such indebtedness. Moneys and assets in excess of that required for the payment of outstanding indebtedness either shall be transferred to the township with which the disorganized township is consolidated or shall be disposed of in such other manner as determined by the board of county commissioners to be in the best interests of the former residents or property owners of such township.

New Sec. 2. (a) No land located in a township shall be annexed pursuant to subsection (a) (1) of K.S.A. 12-520, and amendments thereto, unless the city adopts a resolution stating its intent to annex such land. Such resolution shall be published at least once in a newspaper of general circulation within the city and in the area sought to be annexed. If within 30 days after the publication of such resolution, a petition requesting the appointment of an annexation review board signed by at least 40% of the landowners in the area sought to be annexed is filed with the city clerk, no land shall be annexed unless such annexation, or portion thereof, is approved by an annexation review board as provided by this section.

(b) The mayor shall convene a review board composed of the following persons:

(1) The mayor of the city desiring to annex such land or the mayor's designee.

(2) A landowner in the area sought to be annexed appointed by majority vote of the landowners in the area sought to be annexed.

(3) A hearing officer from the office of administrative hearings within the department of administration or such officer's designee.

(c) The review board shall determine whether the proposed annexation is in the public interest and in the best interest of the city, county and other political subdivisions in the area sought to be annexed. The governing bodies of the city, county and other political subdivisions in the area sought to be annexed shall assist the board in making its decision. Such governing bodies shall provide all relevant information and records requested by the review board. In making its determination the review board shall be guided, but not be limited to, its findings with respect to the following factors:

(1) The immediate and prospective populations of the area to be annexed.

(2) The assessed valuation of the area to be annexed, and its relationship to population.

(3) The history of and prospects for construction of improvements in the area to be annexed.

(4) The needs and possibilities for geographical expansion of the city.

(5) The present and anticipated need for governmental services in the area proposed to be annexed, including but not limited to, water supply, sewage and garbage disposal, zoning, streets and alleys, curbs,

sidewalks, police and fire protection, playgrounds, parks and other municipal services, and transportation and drainage.

(6) The relative capabilities of the city, county, and other political subdivisions in the area sought to be annexed to provide or obtain governmental services when needed.

(7) The existence of benefit districts within the area proposed to be annexed, and the impact of annexation upon such districts.

(8) The elimination of isolated unincorporated areas existing without adequate economical governmental services.

(9) The immediate and potential revenues that would be derived by the city as a result of annexation, and their relation to the cost of providing service to the area.

(d) The board shall make its determination either approving or disapproving the annexation, or a portion thereof, within 90 days of the appointment of the first member of the annexation review board. The board specifically shall state its reasons and findings for its determination. Such findings need not include specific data on every finding made, but shall indicate that all factors listed in subsection (c) were considered. A copy of the board's determination shall be filed with the mayor of the city seeking to make such annexation and with the board of county commissioners.

(e) The city may annex the land sought to be annexed to the extent approved by the annexation review board under subsection (d).

(f) All costs incurred pursuant to this section shall be paid by the city if the annexation is not approved. If the annexation of a part, but not all, of the land sought to be annexed is approved by the board, the city shall pay costs in an amount which is proportionate to the amount approved to be annexed. All costs incurred pursuant to this section shall be paid by the landowners whose land is annexed pursuant to the approval of the board.

(g) This section shall apply only to townships located in the counties of Sedgwick and Shawnee in the state of Kansas.

Sec. 3. K.S.A. 12-520 is hereby amended to read as follows: 12-520.

(a) ~~Except as hereinafter provided,~~ The governing body of any city, by ordinance, may annex land to such city if any one or more of the following conditions exist:

(1) *Subject to the provisions of section 2, and amendments thereto,* the land is platted, and some part of the land adjoins the city.

(2) The land is owned by or held in trust for the city or any agency thereof.

(3) The land adjoins the city and is owned by or held in trust for any governmental unit other than another city, except that no city may annex land owned by a county which has primary use as a county-owned and operated airport, or other aviation related activity or which has primary use as a county owned and operated zoological facility, recreation park or exhibition and sports facility without the express permission of the board of county commissioners of the county.

(4) The land lies within or mainly within the city and has a common perimeter with the city boundary line of more than 50%.

(5) The land if annexed will make the city boundary line straight or harmonious and some part thereof adjoins the city, except no land in excess of 21 acres shall be annexed for this purpose.

(6) The tract is so situated that $\frac{2}{3}$ of any boundary line adjoins the city, except no tract in excess of 21 acres shall be annexed under this condition.

(7) The land adjoins the city and a written petition for or consent to annexation is filed with the city by the owner.

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

(c) No city may annex, pursuant to this section, any improvement district incorporated and organized pursuant to K.S.A. 19-2753 *et seq.*, and amendments thereto, or any land within such improvement district. The provisions of this subsection shall apply to such improvement districts for which the petition for incorporation and organization was presented on or before January 1, 1987.

(d) Subject to the provisions of this section and subsection (e) of

K.S.A. 12-520a, and amendments thereto, a city may annex, pursuant to this section, any fire district or any land within such fire district.

(e) Whenever any city annexes any land under the authority of paragraph 2 of subsection (a) which does not adjoin the city, tracts of land adjoining the land so annexed shall not be deemed to be adjoining the city for the purpose of annexation under the authority of this section until the adjoining land or the land so annexed adjoins the remainder of the city by reason of the annexation of the intervening territory.

(f) No city may annex the right-of-way of any highway under the authority of this section unless at the time of the annexation the abutting property upon one or both sides thereof is already within the city or is annexed to the city in the same proceeding.

(g) The governing body of any city by one ordinance may annex one or more separate tracts or lands each of which conforms to any one or more of the foregoing conditions. The invalidity of the annexation of any tract or land in one ordinance shall not affect the validity of the remaining tracts or lands which are annexed by the ordinance and which conform to any one or more of the foregoing conditions.

(h) Any owner of land annexed by a city under the authority of this section, within 30 days next following the publication of the ordinance annexing the land, may maintain an action in the district court of the county in which the land is located challenging the authority of the city to annex the land, *the reasonableness of the annexation* and the regularity of the proceedings had in connection therewith.

Sec. 4. K.S.A. 12-520 is hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.

House Bill 2774: Annexation Bill

Pursuant to Article 2, §14 of the Constitution of the State of Kansas, I veto HB 2774. HB 2774 would significantly alter the annexation laws in Shawnee and Sedgwick counties by creating a new review board process to determine if a proposed annexation should be approved.

While I am very sympathetic to the issues and concerns of local citizens behind this particular piece of legislation, as a matter of policy, I believe that all cities and counties in the State of Kansas should follow the same rules, especially when it comes to annexation. It is a fundamental belief that I have held since my days as a member of the House of Representatives.

As was the case with 2003 HB 2212, which I also vetoed, HB 2774 is non-uniform in its application to cities and counties, and therefore, is subject to serious constitutional challenge. In my veto message of 2003 HB 2212, I indicated my belief that a challenge should be considered for the special annexation legislation passed for Shawnee County in 1987. The City of Topeka is currently litigating this issue. The outcome of this case should provide further legal direction concerning the constitutional limits imposed on the Kansas Legislature on the subject of annexation. The case is now in the early stages of litigation.

It is my sincere hope that the outcome of this case will provide the legal direction and guidance necessary to frame future annexation legislation that will clearly be able to pass constitutional muster, address the very important issues and concerns of local citizens at hand, and receive my signature.

Dated May 20, 2004.

KATHLEEN SEBELIUS
Governor