

## HOUSE BILL No. 2747

By Representatives Merrick, Mah, Dahl, Donohoe, Faber, Fund,  
Gordon, Hayzlett, Hodge, Huebert, Kiegerl, Judy Morrison, Powell,  
Rhoades and Wetta

2-4

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11 AN ACT concerning annexation of territory by cities; amending K.S.A.  
12 12-519, 12-530, 12-531, 12-532 and 12-535 and K.S.A. 2007 Supp. 12-  
13 520 and 12-520a and repealing the existing sections; and also repealing  
14 K.S.A. 12-521 and 12-521a.  
15

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

17 Section 1. K.S.A. 12-519 is hereby amended to read as follows: 12-  
18 519. As used in this act: (a) "Tract" means a single unit of real property  
19 under one ownership, outside the corporate limits of a city, which may  
20 be platted or unplatted, title to which is publicly or privately held by an  
21 owner as defined by subsection (c).

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

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

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

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

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

42 (f) "Land devoted to agricultural use" means land which is devoted  
43 to the production of plants, animals or horticultural products, including

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

11 (g) *“Qualified elector” means any person registered to vote who re-*  
 12 *sides within the area proposed to be annexed under the provisions of*  
 13 *K.S.A. 12-520(a)(4), and amendments thereto.*

14 ~~(g)~~ (h) *“Watercourse” means a natural or manmade course where*  
 15 *water may flow on a regular or intermittent basis; a watercourse shall not*  
 16 *include a natural or manmade lake, pond or other impoundment of five*  
 17 *or more acres of surface area.*

18 Sec. 2. K.S.A. 2007 Supp. 12-520 is hereby amended to read as fol-  
 19 lows: 12-520. (a) Except as hereinafter provided, the governing body of  
 20 any city, by ordinance, may annex land to such city if any one or more of  
 21 the following conditions exist:

22 ~~(1) The land is platted, and some part of the land adjoins the city.~~

23 ~~(2)~~ (1) The land is owned by or held in trust for the city or any agency  
 24 thereof.

25 ~~(3)~~ (2) The land adjoins the city and is owned by or held in trust for  
 26 any governmental unit other than another city except that no city may  
 27 annex land owned by a county *any governmental unit* without the express  
 28 permission of the ~~board of county commissioners of the county~~ *governing*  
 29 *body of the governmental unit* other than as provided in subsection (f).

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

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

35 ~~(6) The tract is so situated that 2/3 of any boundary line adjoins the~~  
 36 ~~city, except no tract in excess of 21 acres shall be annexed under this~~  
 37 ~~condition.~~

38 ~~(7)~~ (3) The land adjoins the city and a written petition for or consent  
 39 to annexation is filed with the city by the owner.

40 (4) *The majority of the qualified electors voting at an election held as*  
 41 *provided in K.S.A. 12-520a, and amendments thereto, approve the pro-*  
 42 *posed annexation.*

43 (b) No portion of any unplatted tract of land devoted to agricultural

1 use of 21 acres or more shall be annexed by any city under the authority  
2 of this section without the written consent of the owner thereof.

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

9 (d) Subject to the provisions of this section and subsection (e) of  
10 K.S.A. 12-520a, and amendments thereto, a city may annex, pursuant to  
11 this section, any fire district or any land within such fire district.

12 (e) Whenever any city annexes any land under the authority of ~~par-~~  
13 ~~agraph 2 of subsection (a)~~ *subsection (a)(2)* which does not adjoin the  
14 city, tracts of land adjoining the land so annexed shall not be deemed to  
15 be adjoining the city for the purpose of annexation under the authority  
16 of this section until the adjoining land or the land so annexed adjoins the  
17 remainder of the city by reason of the annexation of the intervening  
18 territory.

19 (f) No city may annex the right-of-way of any highway under the au-  
20 thority of this section unless at the time of the annexation the abutting  
21 property upon one or both sides thereof is already within the city or is  
22 annexed to the city in the same proceeding. The board of county com-  
23 missioners may notify the city of the existence of any highway which has  
24 not become part of the city by annexation and which has a common  
25 boundary with the city. The notification shall include a legal description  
26 and a map identifying the location of the highway. The governing body  
27 of the city shall certify by ordinance that the certification is correct and  
28 declare the highway, or portion of the highway extending to the center  
29 line where another city boundary line abuts the opposing side of the  
30 highway, annexed to the city as of the date of the publication of the  
31 ordinance.

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

38 Sec. 3. K.S.A. 2007 Supp. 12-520a is hereby amended to read as  
39 follows: 12-520a. (a) The governing body of any city desiring to annex  
40 land under the authority of K.S.A. 12-520, and amendments thereto, *ex-*  
41 *cept as provided in subsection (f)* shall adopt a resolution stating that the  
42 city is considering the annexation of the land. The resolution shall:

43 (1) Give notice that a public hearing will be held to consider the

- 1 annexation of the land and fix the date, hour and place of the public  
2 hearing. Unless the governing body of the city determines adequate fa-  
3 cilities are not available, the public hearing shall be held at a site located  
4 in or as near as possible to the area proposed to be annexed. The hearing  
5 shall be held at the time determined by the governing body to be the  
6 most convenient for the greatest number of interested persons;
- 7 (2) describe the boundaries of the land proposed to be annexed; and  
8 (3) state that the plan of the city for the extension of services to the  
9 area proposed to be annexed, which is required under the provisions of  
10 K.S.A. 12-520b, and amendments thereto, is available for inspection dur-  
11 ing regular office hours in the office of the city clerk.
- 12 (b) The date fixed for the public hearing shall be not less than 60 nor  
13 more than 70 days following the date of the adoption of the resolution  
14 fixing the date of the hearing.
- 15 (c) A copy of the resolution providing for the public hearing shall be  
16 mailed by certified mail to each owner of land proposed to be annexed  
17 not more than 10 days following the date of the adoption of the resolution.  
18 The resolution shall be published in the official newspaper of the city not  
19 less than one week and not more than two weeks preceding the date fixed  
20 for the public hearing. A sketch clearly delineating the area in such detail  
21 as may be necessary to advise the reader of the particular land proposed  
22 to be annexed shall be published with the resolution. A copy of such  
23 sketch also shall be mailed to the owner of the property with the  
24 resolution.
- 25 (d) A copy of the resolution providing for the public hearing shall be  
26 sent by certified mail not more than 10 days following the date of the  
27 adoption of the resolution to:
- 28 (1) The board of county commissioners;  
29 (2) the governing body of the township where the land to be annexed  
30 is located;  
31 (3) any special assessment district or governmental unit providing  
32 municipal services to the area proposed to be annexed including, but not  
33 limited to, sewer districts, rural water districts, fire districts or improve-  
34 ment districts;  
35 (4) any utilities having facilities within the area proposed to be  
36 annexed;  
37 (5) the governing body of any school district in the area proposed to  
38 be annexed;  
39 (6) any city, county, township or joint planning commission having  
40 jurisdiction over the area proposed to be annexed; and  
41 (7) any other political or taxing subdivision located within the area  
42 proposed to be annexed.
- 43 (e) At the public hearing, a representative of the city shall present

1 the city's proposal for annexation, including the plan of the city for the  
2 extension of services to the area proposed to be annexed. Following the  
3 explanation, all interested persons shall be given an opportunity to be  
4 heard. The governing body may recess, for good cause shown, the hearing  
5 to a time and date certain, which shall be fixed in the presence of persons  
6 in attendance at the hearing.

7 At such hearing or at any continuation of such hearing, the city shall  
8 determine the advisability of the annexation. As a guide in determining  
9 the advisability of such annexation, the city shall consider the:

- 10 (1) Extent to which any of the area is land devoted to agricultural  
11 use;
- 12 (2) area of platted land relative to unplatted land;
- 13 (3) topography, natural boundaries, storm and sanitary sewers, drain-  
14 age basins, transportation links or any other physical characteristics which  
15 may be an indication of the existence or absence of common interest of  
16 the city and the area proposed to be annexed;
- 17 (4) extent and age of residential development in the area to be an-  
18 nexed and adjacent land within the city's boundaries;
- 19 (5) present population in the area to be annexed and the projected  
20 population growth during the next five years in the area proposed to be  
21 annexed;
- 22 (6) extent of business, commercial and industrial development in the  
23 area;
- 24 (7) present cost, methods and adequacy of governmental services and  
25 regulatory controls in the area;
- 26 (8) proposed cost, extent and the necessity of governmental services  
27 to be provided by the city proposing annexation and the plan and schedule  
28 to extend such services;
- 29 (9) tax impact upon property in the city and the area;
- 30 (10) extent to which the residents of the area are directly or indirectly  
31 dependent upon the city for governmental services and for social, eco-  
32 nomic, employment, cultural and recreational opportunities and  
33 resources;
- 34 (11) effect of the proposed annexation on the city and other adjacent  
35 areas, including, but not limited to, other cities, sewer and water districts,  
36 improvement districts, townships or industrial districts and, subject to the  
37 provisions of K.S.A. 12-521a, and amendments thereto, fire districts;
- 38 (12) existing petitions for incorporation of the area as a new city or  
39 for the creation of a special district;
- 40 (13) likelihood of significant growth in the area and in adjacent areas  
41 during the next five years;
- 42 (14) effect of annexation upon the utilities providing services to the  
43 area and the ability of those utilities to provide those services shown in

1 the detailed plan;

2 (15) economic impact on the area; and

3 (16) wasteful duplication of services.

4 (f) No resolution, notice and public hearing required under the pro-  
5 visions of this section shall be required as a prerequisite to the annexation  
6 of land owned by or held in trust for the city or any agency thereof or  
7 land all of the owners of which petition for or consent thereto in writing.

8 (g) Any resolution, adopted pursuant to this section, which includes  
9 territory subsequently incorporated pursuant to K.S.A. 15-115 et seq.,  
10 and amendments thereto, shall be invalid.

11 (h) *Within 10 days following the public hearing, the city clerk shall*  
12 *certify to the county election officer a legal description and a map of the*  
13 *area outside the corporate limits of the city proposed to be annexed and*  
14 *the street addresses of all real estate located therein. The county election*  
15 *officer shall conduct a mail ballot election under the provisions of K.S.A.*  
16 *25-431 et seq., and amendments thereto, in the area proposed to be an-*  
17 *nexed within 60 days of such certification. If a majority of the qualified*  
18 *electors residing in the area proposed to be annexed and voting thereon*  
19 *approve the annexation, the city may annex the land by passage of an*  
20 *ordinance. If a majority of the qualified electors residing in the area pro-*  
21 *posed to be annexed and voting thereon reject the annexation, the lands*  
22 *shall not be annexed and the city may not propose the annexation of any*  
23 *such lands in the proposed area for at least four years from the date of*  
24 *the election.*

25 Sec. 4. K.S.A. 12-530 is hereby amended to read as follows: 12-530.

26 (a) Before any city annexes any land pursuant to K.S.A. 12-520 ~~or 12-521~~,  
27 and amendments thereto, the governing body of the city shall submit its  
28 resolution of intent to annex adopted pursuant to K.S.A. 12-520, and  
29 amendments thereto, ~~or a copy of the petition submitted to the board of~~  
30 ~~county commissioners pursuant to K.S.A. 12-521, and amendments~~  
31 ~~thereto~~, to any city, county, township or joint planning commission having  
32 jurisdiction over any portion of the area to be annexed. If the annexation  
33 is pursuant to K.S.A. 12-520, and amendments thereto, a copy of the  
34 resolution of intent to annex shall be submitted to the planning commis-  
35 sion within 10 days following the adoption of the resolution by the city.  
36 ~~If the annexation is by petition pursuant to K.S.A. 12-521, and amend-~~  
37 ~~ments thereto, a copy of such petition shall be submitted to the planning~~  
38 ~~commission within 20 days after the date on which the petition was pre-~~  
39 ~~sented to the board of county commissioners.~~ The provisions of this sub-  
40 section shall not apply to annexations pursuant to K.S.A. 12-520, and  
41 amendments thereto, for which no resolution or intent to annex is re-  
42 quired to be adopted.

43 (b) The planning commission shall review the proposed annexation

1 and make a finding of the compatibility or the incompatibility of the  
2 annexation with any adopted land use or comprehensive plans applicable  
3 to the area to be annexed and the annexing city. A copy of the planning  
4 commission's findings shall be sent to the city. ~~If the city is annexing~~  
5 ~~property pursuant to K.S.A. 12-521, and amendments thereto, a copy of~~  
6 ~~such findings shall be filed with the board of county commissioners at~~  
7 ~~least 20 days prior to the date of the hearing.~~ The planning commission's  
8 findings shall be available for public inspection in the office of the city  
9 clerk. The failure of a planning commission to issue its advisory report  
10 prior to the date required by this section shall not invalidate any annex-  
11 ation commenced under K.S.A. 12-520 ~~or 12-521~~, and amendments  
12 thereto, when the annexing city has complied with the provisions of this  
13 section.

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

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

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

34 Sec. 6. K.S.A. 12-532 is hereby amended to read as follows: 12-532.

35 (a) If, within 2½ years following the conclusion of the hearing required  
36 by K.S.A. 12-531, or, where there has been litigation relating to the hear-  
37 ing, 2½ years following the conclusion of such litigation, the city has not  
38 provided the municipal services as provided in the timetable set forth in  
39 the plan prepared in accordance with K.S.A. 12-520b ~~or 12-521~~, and  
40 amendments thereto, the owner of such land may petition the board of  
41 county commissioners to exclude such land from the boundaries of the  
42 city. Within 10 days after receipt of the petition, the board shall schedule  
43 the matter for public hearing and shall give notice of the date, hour and

1 place of the hearing to: (1) The owner; (2) the city; (3) the township into  
2 which the property, if deannexed, would be placed; and (4) the governing  
3 body of any fire district, sewer district, water district or other special  
4 district governments which have jurisdiction over territory adjacent to the  
5 area sought to be deannexed. The notice shall be sent by certified mail  
6 no less than 21 days before the date of the hearing.

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

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

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

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

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

39 (2) since the annexation, the governing body of the city initiated the  
40 creation of an improvement or benefit district affecting such land to levy  
41 special assessments thereon to pay a portion of the costs of certain mu-  
42 nicipal improvements, and the formation of the district was blocked by  
43 the filing of a sufficient protest petition by some or all of the owners of



1 any land in the proposed district;

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

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

7 (f) Any owner or the city aggrieved by the decision of the board may  
8 appeal the decision to the district court in the manner provided in K.S.A.  
9 19-223, and amendments thereto. Any city so appealing shall not be re-  
10 quired to execute the bond prescribed therein.

11 Sec. 7. K.S.A. 12-535 is hereby amended to read as follows: 12-535.  
12 The governing body of any city annexing land pursuant to K.S.A. 12-520  
13 ~~or 12-521~~, and amendments thereto, may enter into contractual agree-  
14 ments with the owners of land proposed to be annexed to guarantee the  
15 apportionment of the costs of improvements made in the area to be an-  
16 nexed between the city at large and the area to be annexed. The term of  
17 such agreements shall not exceed 10 years. In the event the city appor-  
18 tions the costs of improvements in a manner contrary to the contractual  
19 agreement, the owners of land may bring an action in the district court  
20 for deannexation, such action shall be subject to the provisions of K.S.A.  
21 12-533, *and amendments thereto*.

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

25 Sec. 8. The amendments to each section in this act and the repealers  
26 contained in this act shall be construed and applied prospectively, as well  
27 as retroactively to February 1, 2008, and shall apply to all annexation  
28 proceedings pending or commenced after February 1, 2008.

29 Sec. 9. K.S.A. 12-519, 12-521, 12-521a, 12-530, 12-531, 12-532 and  
30 12-535 and K.S.A. 2007 Supp. 12-520 and 12-520a are hereby repealed.

31 Sec. 10. This act shall take effect and be in force from and after its  
32 publication in the Kansas register.