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Home Rule**

**P-2
Boundary Changes—
Annexation**

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Local Government

P-2 Boundary Changes—Annexation

Introduction

There are basically three ways a municipality can change its boundaries: annexation, consolidation, or detachment. This paper will discuss the first of these boundary change methods.

Annexation is defined as “the territorial expansion of a municipal corporation through the addition of new land.” Nationally, there are five major methods of annexation: (1) state legislation; (2) municipal ordinance or resolution; (3) petition of the residents or landowners in the area to be annexed; (4) judicial action; and (5) boundary review commissions. Most states no longer use direct legislative action to provide for annexation. Instead, most states allow for annexation by way of general, permissive laws. Many states, including Kansas, provide for multiple methods of annexation. (Briffault, Richard and Laurie Reynolds, *State and Local Government Law*, 6 Ed., West Group Publishing, July 2004, p. 180.)

Kansas: Current Law

Kansas law allows cities to annex land by several different methods, depending upon the circumstances. Unilateral annexation is permitted in Kansas for annexations that meet certain criteria. Also permitted are consent annexations (given other criteria) and annexations involving the approval of the board of county commissioners.

All unilateral and most consent annexations are addressed in one statute. KSA 12-520 sets out the conditions under which each of these may take place.

Unilateral annexation – Pursuant to KSA 12-520(a), a municipality may annex land unilaterally (*i.e.*, without obtaining landowner consent or voter approval) under any of the following circumstances:

- The land is platted and some part of the land adjoins the city. KSA 12-520(a)(1);
- The land lies within or mainly within the city and has a common perimeter with the city boundary of more than 50 percent. KSA 12-520(a)(4);
- Annexing the land will make the city’s boundary line more harmonious (limit: 21 acres). KSA 12-520(a)(5);

- The tract is situated so that two-thirds of any boundary line adjoins the city (limit: 21 acres). KSA 12-520(a)(6);
- The land is owned by or held in trust for the city. KSA 12-520(a)(2); or
- The land adjoins the city and is owned by another government (certain restrictions apply). KSA 12-520(a)(3).

Note: KSA 12-520c allows for annexation, by consent, of land that does not adjoin a city if certain conditions are met. This is discussed later in this paper.

A specific process must be followed for unilateral annexations. Public notification, notice to landowners within the area, and hearings are central to this process, but it is the city's governing body that makes the final decision to approve or reject the annexation. KSA 12-520a and 12-520b. Also, three years after annexation, the board of county commissioners is required to review and hold a hearing on the city's timetable for provision of services to the annexed area. If the board finds the city has not provided the planned services, the property may be deannexed within one and one half years of the board's findings. (The time periods were reduced by 2011 SB 150, as noted below.)

Consent Annexation – Cities may annex some properties without a public hearing process if certain other circumstances exist, including landowner consent:

- Adjoining land – A city may annex adjoining land if the landowner files a written petition for or consent to the annexation with the city. KSA 12-520(a)(7); and
- Noncontiguous land – The governing body of any city may by ordinance annex land not adjoining the city if all of the following conditions exist. An aggrieved owner or city may appeal to the district court. KSA 12-520c.
 - The land is located in the same county;
 - The owners of the land petition for or consent in writing to the annexation; and

- The board of county commissioners determines the annexation will not hinder or prevent the proper growth and development of the area or that of any other incorporated city located within such county.

County Board as City Boundary Setter (KSA 12-521) – The board of county commissioners may be petitioned to act as boundary setter for:

- Annexations of land not covered in KSA 12-520; or
- Annexations of land covered in KSA 12-520 but for which the city deems it advisable not to annex under the provisions of that statute.

The city's petition requirement is followed by publication, public notice, notice to landowners within the area, and hearing requirements in the statute. SB 150, enacted by the Legislature in 2011 (2011 Session Laws, Ch.101), requires the board of county commissioners to approve any such petition by a two-thirds vote of its members. In addition, the bill makes a distinction between bilateral annexations of 40 acres or more and those of less than 40 acres, as follows: (a) It requires any such annexation involving 40 acres or more be put to a vote of the qualified electors, which the bill defines as owners of land in the area proposed to be annexed; and (b) if the area to be annexed is less than 40 acres, it allows the board of county commissioners to render a judgment on the petition unless the board previously had granted three annexations of adjoining tracts within a 60-month period.

Annexation of Certain Lands Is Prohibited – Certain annexations are prohibited under KSA 12-520. All of the following are prohibited from being annexed unilaterally, and one of the three is allowed only if the owner's written consent is received:

- Agricultural lands consisting of 21 acres or more, unless the owner's written consent is received. KSA 12-520(b).
- Improvement districts incorporated under KSA 19-2753 *et seq.* on or before January 1, 1987. KSA 12-520(c).

- Highway rights-of-way—unless the abutting property on one or both sides is annexed. KSA 12-520(f).

Other Kansas statutes forbid certain other annexations as follows.

- No city may annex *via* KSA 12-520 (*i.e.*, unilaterally or by the consent circumstances in that statute) a narrow corridor of land to gain access to noncontiguous tracts of land. The corridor of land must have a tangible value and purpose other than to enhance future annexations. KSA 12-520 (2010 Session Laws, Ch. 130, Sec. 1.).
- No city may annex unilaterally territory of improvement districts where the formation process for the district began on or before January 1, 1987. KSA 12-520(c).
- If the annexation is of 40 acres or more and the qualified electors reject the annexation, no city may annex any lands within that area for four years. (There are exceptions for government-owned land and for consent annexation.) KSA 12-521(e) (2011 Session Laws, Ch. 101, Sec. 7).
- No city may annex any other incorporated city, in part or in its entirety. KSA 12-524.
- No city may annex any territory of a United States military reservation under control of the Department of the Army (applies to annexation proceedings that began after December 31, 1981). KSA 12-529.

Additional Annexation Provisions – Finally, specific provisions exist regarding compensation for annexations of water districts. Those are contained in KSA 12-527. See also KSA 66-1,176, *et seq.* regarding city annexation and termination of rights to serve customers and retail electric suppliers.

Recent Kansas Legislative History

Annexation has been addressed by the Kansas Legislature. During the 14 years prior to and including the 2014 Legislative Session, at least 36 bills were introduced and debated. Of the 36 bills, ten passed both legislative chambers. Of those

ten, seven were approved by the Governor, and three were vetoed.

The number of bills considered each biennium generally had been increasing, with a significant increase in the 2009-2010 biennium, until 2011-2012 when the number began to decline. The following table shows the number of annexation bills considered in each biennium:

Biennium	Number of Bills
2001-2002	3
2003-2004	5
2005-2006	7
2007-2008	6
2009-2010	15
2011-2012	7
2013-2014	6

The bills addressed several different aspects of annexation, both of general (statewide) applicability and of more limited pertinence. Many bills have repeated the proposed provisions, either exactly or in similar fashion. Twenty-two of the bills dealt at least in part with unilateral annexation, but the topic has declined in popularity. The following table lists these unilateral annexation-related bills:

Biennium	Bills Containing Unilateral Annexation Provisions
2003-2004	HB 2043, HB 2654
2005-2006	HB 2185, HB 2229, HB 2230, SB 24 (Approved) , SB 492
2007-2008	HB 2058 (Approved) , HB 2917, HB 2978
2009-2010	HB 2084, HB 2471, HB 2478, SB 51 (Vetoed) , SB 204, SB 214 (Approved) , SB 254, SB 561
2011-2012	none
2013-2014	SB 301, HB 2765

The following table lists the unilateral annexation-related topics and the bills in which they were contained:

Unilateral Annexation-Related Topics	Bills
Repeal outright	2005 HB 2185
Eliminate by requiring approval of board of county commissioners (BCC)	2003 HB 2043
Eliminate by requiring voter approval	2004 HB 2654; 2008 HB 2747
Prohibit unilateral unless BCC determines it will not have an adverse effect on county	2008 HB 2978; 2009 SB 118, SB 204, SB 561; 2010 HB 2478
Limit unilateral annexation to cities with 100,000+ population	2006 SB 492
Prohibit annexation of county-owned land unless city receives BCC permission	2007 HB 2058 (Approved)
Allow cities within 1/2 mile to challenge another city's unilateral annexation decisions	2005 HB 24 (Approved)
Require cities to consider 16 factors when annexing unilaterally	2005 SB 24 (Approved)
Require annexation of highway right-of-way under certain circumstances	2013 SB 301

Another, more recent area of focus in legislation was annexation *via* approval by the board of county commissioners (*i.e.*, “county board as city boundary setter” or bilateral annexation). From 2007 through 2012, a total of 16 bills addressed this issue at least in part. The following table lists the topics related to this area and the bills that contained them:

Topic Re: Board of County Commissioner (BCC) Approval	Bills
Require voter approval of any BCC-approved annexation	2009 HB 2029, HB 2031; 2010 HB 2470; 2011 SB 150 (Approved) , SB 180, HB 2294
Prohibit BCC approval of the annexation of 21+ acres of unplanted agricultural land without landowner's consent	2009 HB 2029, HB 2030, SB 51 (Vetoed) (65 acres); 2010 HB 2470; 2011 SB 180, HB 2294
Prohibit annexation of county-owned land unless city receives BCC's permission	2007 HB 2058 (Approved)
Prohibit unilateral annexation unless BCC determines it will not have an adverse effect on county	2008 HB 2978; 2009 SB 118, SB 204; 2010 HB 2478, SB 561; 2011 HB 2294; 2012 HB 2478
Revise review process of BCC-approved annexations	2014 HB 2733

Among other annexation-related topics, a number had been considered in multiple bills. Following is a brief description of three such topics:

- Revising the time line for service provision related to annexations – From 2004 through 2011, a total of seven bills were introduced and worked that would shorten the time line to determine whether promised services were provided to the annexed area before steps to deannex could begin. Although the specific time reductions were different in the bills, the issue was the same. One bill was introduced in 2004, one in 2008, two in 2009 (one of which – SB 51 – passed both legislative chambers but was vetoed), and one in 2010. Finally, 2011 SB 150 was signed by the Governor. That bill, in part, reduced from five years to three years the time that must elapse following annexation (or related litigation) before the board of county commissioners is required to hold a hearing to consider whether the city has provided the services set forth in its annexation plan and timetable. The bill also reduced from

two and a half years to one and a half years the time that must elapse following the services hearing (or conclusion of litigation) before a landowner may petition to the board of county commissioners to deannex the land in question;

- Prohibiting “strip” annexation – This legislation has appeared in seven bills since 2008 and finally was approved in 2010 SB 214; and
- Expanding the scope of the court review regarding challenged annexations – This legislation appeared in four bills and finally was approved in 2005 SB 24.

As mentioned previously, 2011 SB 150 – the last annexation bill to pass both chambers and be approved – made some significant changes in the annexation laws, particularly relating to bilateral annexation (*i.e.*, “county board as city boundary setter”). The most significant change was to require an election for specific bilateral annexations. The bill also required homestead rights attributable prior to annexation (in unilateral, bilateral, or most consent-annexation circumstances) to continue after annexation until the land is sold after the annexation.

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