

HOUSE BILL No. 2283

AN ACT concerning water; amending K.S.A. 2009 Supp. 82a-612 and 82a-646 and repealing the existing sections; also repealing K.S.A. 12-527.

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

New Section 1. Not less than 60 days before the effective date of any ordinance annexing land into the boundaries of any city:

(a) The city shall give written notice to any rural water district organized pursuant to K.S.A. 82a-612 et seq., and amendments thereto, in whose territory the land or any portion thereof is located of the city's intent to annex such land; and

(b) the notice shall contain the description of the land to be annexed and the city's plan for the provision of water service to the land being annexed.

New Sec. 2. Following annexation of rural water district territory by a city, the city and the district may contract for the district to provide water service to all or certain portions of the annexed area. If the agreement includes a provision for the payment of a franchise fee to the city, such agreement shall be subject to the provisions of K.S.A. 12-2001 et seq., and amendments thereto.

New Sec. 3. (a) Following annexation, the rural water district shall remain the water service provider to the annexed area unless the city gives written notice designating a different supplier. If the city designates a different supplier, the city shall purchase the property, facilities, improvements and going concern value of the facilities of the district located within the territory annexed by the city. If an agreement for the purchase of such property, facilities, improvements and going concern value of the facilities of the district annexed by the city is not executed within 90 days after delivery of the notice designating a different supplier, the city and the rural water district in good faith shall engage in mediation. Unless an agreement is executed, no change in water service provider shall occur and no appraisers shall be appointed until more than 120 days after delivery of the notice of intent to change the water supplier and the mediation has been terminated.

(b) If the district and the city are unable to reach agreement on the reasonable value for such property, facilities, improvements and going concern value of the facilities of the district, then the reasonable value shall be determined in the following manner:

(1) The district and the city shall each select one qualified appraiser and the two appraisers so selected shall then select a third appraiser for the purpose of conducting an appraisal to determine reasonable value of the property, facilities, improvements and going concern value of the facilities of the district annexed by the city. The appraisers shall consider all elements of value, employing any method of valuation the appraisers deem appropriate and shall specifically consider the following factors in determining reasonable value:

(A) Whether any property of the district is rendered useless or valueless to the district;

(B) the amount of damage to property remaining in the ownership of the district following annexation;

(C) impact on the existing indebtedness of the district and such district's ability to repay that debt;

(D) the value of the service facilities of the district located within the area in question;

(E) the amount of any expenditures for planning, design or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question;

(F) the amount of the district's contractual obligations allocable to the area in question;

(G) if the area transferred consists of land for which no water service is being provided by the system at the time of the annexation, the value of such land based on the planning, design and construction of improvements located outside the annexed area reasonably made to provide future water service to the annexed area;

(H) any demonstrated impairment of service or increase of cost to consumers of the district remaining after the annexation and the impact on future revenues lost from existing customers;

(I) any necessary and reasonable legal expenses and professional fees;

(J) any factors relevant to maintaining the current financial integrity of the district;

(K) the average increase in the number of benefit units in the area annexed for the three years immediately preceding such annexation; and

(L) any other relevant factors as agreed to by the three appointed appraisers.

(2) The appraisers shall hear such evidence as the appraisers deem appropriate and shall make a written summary of findings and conclusions. The agreement or decision of at least two of the three appraisers shall be the fair market value presented to the city for payment and the district for acceptance.

(3) If either the district or the city is dissatisfied with the decision of the appraisers, then the district or the city may appeal within 30 days such award to the district court. Such appeal shall be heard de novo by the court without a jury.

(c) The compensation required by this section shall be paid to the district whether or not the city actually utilizes the facilities of the district for the delivery of water to property within the city and shall be paid at a time not later than 120 days following the date upon which the fair market value of the facilities are certified to the city and to the district, or at such later date as may be mutually agreed upon by the city and the district or as may be determined by the district court.

(d) In any event, the district may elect to retain facilities located within the city used for transmission of water, provided that the district use those facilities to continue to supply water service to benefit units outside the city. The district shall not receive compensation for facilities it elects to retain.

(e) Except as otherwise provided, nothing in this section shall be construed as limiting the authority of a city to select water service suppliers to areas within the city limits, or to limit the authority of a city to adopt and enforce regulations for the operation of a water service supplier, including, but not limited to, standards of water quality, classification of water customers, capacity of water system, water system connections to sanitary sewer systems, rates and billing practices and other regulations for protection of the public health, safety and welfare.

(f) In the event that a district will no longer be the water supplier to land as a result of annexation and notice pursuant to subsection (a), the district shall continue to provide such service until the city gives notice of its assumption of responsibility for service, designating the date that the service shall transfer to the supplier designated by the city. The district and the city shall cooperate as necessary to minimize the inconvenience to water customers as a result of the transfer. The city shall give written notice to each customer of the district for whom water service is being transferred specifying the name and address of the new supplier, the effective date of the transfer, the reason for the transfer and a schedule of applicable rates. The district shall not discontinue or limit service to customers who were supplied water by the district at the time of annexation during the period of negotiations unless such customer has violated district bylaws or rules and regulations.

(g) Following the transfer of water service from the district to the city, the annexed land, or amount of such land for which water service has been transferred to the city, shall be deleted from the territory of the district and all benefit units attached to land located therein shall be canceled without compensation. Notice of such deletion of territory shall be provided to the county clerk and the chief engineer of the division of water resources of the department of agriculture.

Sec. 4. K.S.A. 2009 Supp. 82a-612 is hereby amended to read as follows: 82a-612. As used in this act, unless the context clearly requires otherwise:

(a) “District” means a rural water district organized pursuant to this act;

(b) “board” means the governing body of a district;

(c) the terms “board of county commissioners” and “county clerk” shall mean, respectively, the board of county commissioners and county clerk of the county in which the greatest portion of the territory of any existing or proposed rural water district is located;

(d) “participating member” means an individual, firm, partnership, association or corporation which owns land located within a district and:

(1) Which has subscribed to one or more benefit units of such district;
or

(2) *which is charged a franchise fee for water service which is paid, either directly or indirectly through another water provider, to such district;*

(e) “chief engineer” means the chief engineer of the division of water resources, Kansas department of agriculture.

Sec. 5. K.S.A. 2009 Supp. 82a-646 is hereby amended to read as follows: 82a-646. (a) Terms used in this section shall have the meanings provided by K.S.A. 82a-612, and amendments thereto.

(b) If certain lands included within a district cannot be economically or adequately served by the facilities of the district, the owners of such lands may petition the board of directors of the district to release those lands from the district. The petition shall describe the lands requested to be released and shall be signed by at least 75% of the total number of the owners of the lands requested to be released. The board of directors may prescribe a fee to be collected from the petitioners for the purpose of offsetting costs reasonably expected to be incurred by the district in hearing the request for release. The petition for release, together with a verified list of the names and addresses of all owners of the land requested to be released, and the prescribed fee, shall be filed with the secretary of the district.

(c) If the board of directors of the district finds the petition to be in proper form, the board shall conduct a hearing on the petition for release. Notice of the time and place of the hearing shall be mailed to all owners of land requested to be released not later than 10 days before the hearing. The hearing may be continued from time to time without further notice to landowners.

(d) ~~In considering the petition for release, the board shall consider whether the lands requested to be released cannot be economically or adequately served by the facilities of the district and whether the release would be in the best interests of the landowners and the district, based on the following factors~~ *make specific written findings of fact and conclusions determining whether the lands requested to be released cannot be economically or adequately serviced by the facilities of the district and whether such release would be in the best interests of the landowner and the district. The findings and conclusions shall be based upon the preponderance of evidence presented to the board. In determining whether to grant the petition for release, the board's considerations shall be based on the following factors:*

(1) Whether the petitioners for release of lands have applied for one or more benefit units to serve the lands requested to be released, which applications have been denied *directly or where the cost of the benefit units or service or equipment is unreasonable, excessive or confiscatory so as to render service unavailable;*

(2) *the length of time before the board of directors reasonably expect to make water service available to the lands requested to be released;*

(3) *whether water service is available from another source if the lands are released from the district and the relative cost of obtaining service from each source;*

(4) *if water service is available from the district to the lands requested to be released, the relative cost of obtaining such water service, as determined by the district, compared to the additional value of the lands after water service is made available;*

(5) *if water service is available from the district, the cost of obtaining such water service, as determined by the district, compared to the cost of obtaining water from another source;*

(6) *whether any applicable law will prevent any other water suppliers from serving the lands requested to be released; and*

(7) *whether the district's interest in maintaining the integrity of its territory is outweighed by the landowners' need to obtain a source of supply of water to the lands requested to be released;*

(8) *whether the decision of such board to deny release of lands would allow the district to yield more than adequate compensation;*

(9) *whether the district establishes a rate for services or equipment that is disproportionate to the services rendered;*

(10) *whether the district has provided water service to residents or landowners within the disputed territory and would be losing existing customers or whether the disputed territory would supply new customers;*

(11) *whether the district can provide a safe and adequate supply of water to customers of such district and whether a greater level of water service can be provided by another provider and the relative cost of each option;*

(12) *whether such board's refusal to detach the territory would result in any economic waste or hinder any economic development; and*

(13) *where a district provides water service to residences and where a city is required to provide fire protection services, if duplicate water service lines would cause any economic or physical waste.*

(d) The board may approve the release of all or part of the lands requested to be released or may deny the request. The burden of proof shall be on the petitioners for release. The board of directors shall make a determination on the petition for release within 120 days after its receipt, shall record its *written findings and conclusions* in the minutes of the district and shall mail a copy of such *written findings and conclusions* to each petitioner within seven days.

(e) *Except as provided in subsection (f), any owner of land requested to be released from the district who is dissatisfied with the determination of the board of directors on the petition for release may bring an action in the district court of the county in which the district is located to determine if the board of directors of the district abused its discretion in making such determination. Such appeal shall be filed within 30 days after the final decision of the board.*

(f) *If the district denies the landowner's petition for release because such release would not yield adequate compensation to the district, once such release is denied, the district and the landowner shall determine the amount of compensation sufficient to enable the district to be adequately compensated from the release in the following manner:*

(1) *The district and the landowner shall each select one qualified appraiser and the two appraisers so selected shall then select a third appraiser for the purpose of conducting an appraisal to determine the amount of compensation sufficient to enable the district to be adequately compensated from the release. The appraisers shall consider all elements of value, employing any method of valuation the appraisers deem appropriate and shall specifically consider the following factors in determining reasonable value:*

(A) *Whether any property of the district is rendered useless or valueless to the district;*

(B) *the impact on the existing indebtedness of the district and such district's ability to repay that debt;*

(C) *the value of the service facilities of the district located within the area in question;*

(D) *the amount of the district's contractual obligations allocable to the area in question;*

(E) *any demonstrated impairment of service or increase of cost to consumers of the district remaining after the release and the impact on future revenues lost from existing customers;*

(F) *any necessary and reasonable legal expenses and professional fees;*

(G) *any factors relevant to maintaining the current financial integrity of the district; and*

(H) *if the area released consists of land for which no water service is being provided by the system at the time of the release, the value of such land based on the planning, design and construction of improvements located outside the released area reasonably made to provide future water service to the released area;*

(I) *any other relevant factors.*

(2) *The appraisers shall hear such evidence as the appraisers deem appropriate and shall make a written summary of findings and conclusions. At least two of the three appraisers shall agree as to the amount of compensation owed by the landowner to the district and shall require such payment from the landowner to the district for acceptance.*

(3) *If either the district or the landowner is dissatisfied with the decision of the appraisers, then the district or the landowner may appeal*

within 30 days such award to the district court. Such appeal shall be heard de novo by the court without a jury.

⊕ (g) If the board of directors of the district approves the petition, or if the district court on appeal determines that the board abused its discretion in denying release, a copy of the board's action approving the release or of the district court's order on appeal, as the case may be, shall be transmitted to the chief engineer and to the county clerk, who shall note the change of such district's boundaries.

Sec. 6. The provisions of sections 1 through 5 shall be part of and supplemental to the Kansas rural water district act.

Sec. 7. K.S.A. 12-527 and K.S.A. 2009 Supp. 82a-612 and 82a-646 are hereby repealed.

Sec. 8. 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.