

HOUSE Substitute for SENATE BILL No. 51

AN ACT concerning local governments; relating to boundary issues; amending K.S.A. 12-519, 12-520b, 12-521, 12-531 and 12-532 and K.S.A. 2008 Supp. 12-520, 82a-612 and 82a-646 and repealing the existing sections.

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

Section 1. K.S.A. 12-520b is hereby amended to read as follows: 12-520b. (a) The governing body of any city proposing to annex land under the provisions of K.S.A. 12-520, and amendments thereto, shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the adoption of the resolution provided for in K.S.A. 12-520a, and amendments thereto, prepare a report setting forth such plans. The report shall include:

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

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

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

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

(2) A statement setting forth a plan of sufficient detail to provide a reasonable person with a full and complete understanding of the intentions of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city and the area proposed to be annexed at the time of annexation and the estimated cost of providing such services. The plan shall state the estimated cost impact of providing such services to the residents of the city and the residents of the area proposed to be annexed. The plan shall state the method by which the city plans to finance the extension of such services to such area. Such plan shall include a timetable of the plans for extending each major municipal service to the area annexed. The plan shall state the means by which the services currently provided by a township or special district in the area to be annexed shall be maintained by the city at a level which is equal to or better than the level of services provided prior to annexation. The plan shall state those services which shall be provided immediately upon annexation and those services which may be provided upon petition of the landowners to create a benefit district.

*(b) A copy of the plan for extension of services shall be sent by certified mail not less than 10 days prior to the public hearing as provided in K.S.A. 12-520a, and amendments thereto, to the board of county commissioners.*

~~(b)~~ (c) The preparation of a plan for the extension of services required by subsection (a) shall not be required for or as a prerequisite to the annexation of land of which all of the owners petition for or consent to such annexation in writing.

Sec. 2. K.S.A. 12-531 is hereby amended to read as follows: 12-531.

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

(b) At the hearing, the board shall hear testimony as to the city's extension of municipal services, or lack thereof, from the city and the landowner. After the hearing, the board shall make a finding as to whether or not the city has provided services in accordance with its service extension plan. If the board finds that the city has not provided services as provided in its service extension plan, the board shall notify the city and the landowner that such property may be deannexed, as provided in K.S.A. 12-532, *and amendments thereto*, if the services are not provided within ~~2 1/2 years~~ *two years* of the date of the board's findings.

*(c) If the board of county commissioners refuses to hold the hearing as required, any owner of land living in such area annexed, may bring an action under provisions of K.S.A. 60-1201 et seq., and amendments thereto, to compel the board to hold the hearing. The court, upon finding*

*the hearing is required, may award attorney fees and costs to the prevailing party.*

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

(b) At the hearing, the board shall hear testimony as to the city's extension of municipal services, or lack thereof, from both the owner and representatives of the city. Except as provided by subsection (e), if the board finds after the hearing that the city has failed to provide the municipal services in accordance with the plan and consistent with the timetable therein, the board may enter an order excluding the land from the boundaries of the city. Any such order shall take effect in the same manner as provided in K.S.A. 12-523, and amendments thereto, for the effective date of annexation ordinances. Such land shall not be annexed again for ~~one year~~ *four years* from the effective date of the order without the written consent of the owner of the land.

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

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

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

(1) The service extension plan conditions the extension of certain improvements or services on the filing of a legally sufficient petition by the owners of the land for the creation of an improvement district and to levy special assessments therein to pay a portion of the costs of such improvements, and a sufficient petition has not been filed;

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

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

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

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

(g) *If the board of county commissioners refuses to hold the hearing*

*as required, any owner of land may bring an action under provisions of K.S.A. 60-1201 et seq., and amendments thereto, to compel the board to hold the hearing. The court, upon finding the hearing is required, may award attorney fees and costs to the prevailing party.*

Sec. 4. K.S.A. 12-519 is hereby amended to read as follows: 12-519. As used in this act: (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 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 to the production of plants, animals or horticultural products, including but not limited to: Forages; grains and feed crops; dairy animals and dairy products; poultry and poultry products; beef cattle, sheep, swine and horses; bees and apiary products; trees and forest products; fruits, nuts and berries; vegetables; or nursery, floral, ornamental and greenhouse products. Land devoted to agricultural use shall not include those lands which are used for recreational purposes, suburban residential acreages, rural home sites or farm home sites and yard plots whose primary function is for residential or recreational purposes even though such properties may produce or maintain some of those plants or animals listed in the foregoing definition.

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

(h) “Municipal services” include *police, fire, emergency medical services, park and recreation services, planning, zoning and code enforcement services, water, sewer, storm water drainage, gas, electric or other utility services, street and bridge maintenance and repair, street light maintenance and repair, and any other municipal service that a city may provide to its residents.*

(i) “Municipal infrastructure” includes *the construction or reconstruction of municipal buildings, parks, roads, bridges, curbs, gutters, sidewalks, crosswalks, drainage works, water facilities, sewer facilities, storm water drainage facilities, gas, electric or other city utility facilities, parking facilities or other infrastructure facilities owned by the city and used to provide municipal services to its residents.*

Sec. 5. K.S.A. 12-521 is hereby amended to read as follows: 12-521. (a) Whenever the governing body of any city deems it advisable to annex land which such city is not permitted to annex under K.S.A. 12-520, and amendments thereto, or if the governing body of any city is permitted to annex land under K.S.A. 12-520, and amendments thereto, but deems it advisable not to annex thereunder, the governing body may annex such land as provided by this section. The governing body, in the name of the city, may present a petition to the board of county commissioners of the county in which the land sought to be annexed is located. The petition shall set forth a legal description of the land sought to be annexed and

request a public hearing on the advisability of such annexation. The governing body of such city shall make plans for the extension of services to the tract of land proposed to be annexed and shall file a copy thereof with the board of county commissioners at the time of presentation of the petition. Such report shall include:

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

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

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

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

(2) A statement setting forth a plan of sufficient detail to provide a reasonable person with a full and complete understanding of the intentions of the city for extending to the area to be annexed each major municipal service provided to persons and property located within the city and area proposed to be annexed at the time of annexation and the estimated cost of providing such services. The plan shall state the estimated cost impact of providing such services to the residents of the city and the residents of the area proposed to be annexed. The plan shall state the method by which the city plans to finance the extension of such services to such area. The plan shall include a timetable for the extension of major municipal services to the area proposed to be annexed. The plan shall state the means by which the services currently provided by a township or special district in the area to be annexed shall be maintained by the city at a level which is equal to or better than the level of services provided prior to annexation. The plan shall state those services which shall be provided immediately upon annexation and those services which may be provided upon petition of the landowners to create a benefit district.

*(b) No portion of any unplatted tract of land devoted to agricultural use of more than 65 acres shall be annexed by any city under the authority of this section, and amendments thereto, without the written consent of the owner thereof.*

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

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

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

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

~~(c)~~ (d) On the day set for hearing, the board of county commissioners shall hear testimony as to the advisability of such annexation, and a representative of the city shall present the city's proposal for annexation, including the plan of the city for the extension of services to the area proposed to be annexed.

The action of the board of county commissioners shall be quasi-judicial in nature. The board of county commissioners shall consider the impact of approving or disapproving the annexation on the entire community involved, including the city and the land proposed to be annexed, in order to insure the orderly growth and development of the community. The board shall make specific written findings of fact and conclusions determining whether such annexation or the annexation of a lesser amount of such area causes manifest injury to the owners of any land proposed to be annexed, or to the owners of land in areas near or adjacent to the land proposed to be annexed or to the city if the annexation is disapproved. The findings and conclusions shall be based upon the preponderance of evidence presented to the board. In determining whether manifest injury

would result from the annexation, the board's considerations shall include, but not be limited to, the extent to which the following criteria may affect the city, the area to be annexed, the residents of the city and the area to be annexed, other governmental units providing services to the area to be annexed, the utilities providing services to the area to be annexed, and any other public or private person, firm or corporation which may be affected thereby:

- (1) Extent to which any of the area is land devoted to agricultural use;
- (2) area of platted land relative to unplatted land;
- (3) topography, natural boundaries, storm and sanitary sewers, drainage basins, transportation links or any other physical characteristics which may be an indication of the existence or absence of common interest of the city and the area proposed to be annexed;
- (4) extent and age of residential development in the area to be annexed and adjacent land within the city's boundaries;
- (5) present population in the area to be annexed and the projected population growth during the next five years in the area proposed to be annexed;
- (6) the extent of business, commercial and industrial development in the area;
- (7) the present cost, methods and adequacy of governmental services and regulatory controls in the area;
- (8) the proposed cost, extent and the necessity of governmental services to be provided by the city proposing annexation and the plan and schedule to extend such services;
- (9) tax impact upon property in the city and the area;
- (10) extent to which the residents of the area are directly or indirectly dependent upon the city for governmental services and for social, economic, employment, cultural and recreational opportunities and resources;
- (11) effect of the proposed annexation on the city and other adjacent areas, including, but not limited to, other cities, sewer and water districts, improvement districts, townships or industrial districts and, subject to the provisions of K.S.A. 12-521a, fire districts;
- (12) existing petitions for incorporation of the area as a new city or for the creation of a special district;
- (13) likelihood of significant growth in the area and in adjacent areas during the next five years; and
- (14) effect of annexation upon the utilities providing services to the area and the ability of those utilities to provide those services shown in the detailed plan.

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

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

Sec. 6. K.S.A. 2008 Supp. 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) 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 without the express permission of the board of county commissioners of the county other than as provided in subsection (f).
- (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. The board of county commissioners may notify the city of the existence of any highway which has not become part of the city by annexation and which has a common boundary with the city. The notification shall include a legal description and a map identifying the location of the highway. The governing body of the city shall certify by ordinance that the certification is correct and declare the highway, or portion of the highway extending to the center line where another city boundary line abuts the opposing side of the highway, annexed to the city as of the date of the publication of the ordinance.
  - (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) *No city may utilize any provision of this section from and after July 1, 2009, to annex a narrow corridor of land to gain access to non-contiguous tracts of land. The corridor of land must have a tangible value and purpose other than for enhancing future annexations of land by the city.*

New Sec. 7. Any city which annexes an area of land under provisions of K.S.A. 12-520 through 12-521, and amendments thereto, shall spend all the proceeds from the ad valorem taxes levied against such land for a period of one year from the date of annexation to provide municipal infrastructure and municipal services, other than police and fire services,

to such area. A report documenting the amount of money raised by ad valorem taxes in such area and the amount of money spent in such area shall be made available for public inspection in the city clerk's office.

New Sec. 8. 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. 9. 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. 10. (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) 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;

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

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

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

(K) 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. 11. K.S.A. 2008 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. 12. K.S.A. 2008 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) 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.*

~~(f)~~ (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.

New Sec. 13. The provisions of sections 8 through 10, and amendments thereto, shall be part of and supplemental to the Kansas rural water district act.

Sec. 14. K.S.A. 12-519, 12-520b, 12-521, 12-531, 12-532 and K.S.A. 2008 Supp. 12-520, 82a-612 and 82a-646 are hereby repealed.

Sec. 15. 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 SENATE, and passed that body

\_\_\_\_\_

SENATE adopted

Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE

as amended \_\_\_\_\_

HOUSE adopted

Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*