

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 10:00 a.m. on May 1, 2009, in Room 446-N of the Capitol.

All members were present except:

Senator Steve Morris- excused

Committee staff present:

Kristen Kellems, Revisor of Statutes Office
Mike Heim, Revisor of Statutes Office
Corey Carnahan, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Alissa Vogel, Committee Assistant

Conferees appearing before the Committee:

Elmer Ronnebaum, Manager, Kansas Rural Water Association
Chris Wilson, Executive Director, Kansas Building Industry Association
Kevin Barone, Cities of Eudora and Park City
Kim Winn, Director, Policy Development and Communications, League of Kansas Municipalities

Others attending:

See attached list.

Senator McGinn announced the hearings on **HB 2283- Procedures for release of certain property of rural water districts** and **SB 332- Annexation by cities; territory of rural water districts**.

Raney Gilliland, Legislative Research Department, provided Committee members with a brief overview of **HB 2283**. He stated that the bill would amend a section of current law regarding the factors a rural water district board needs to consider prior to the releasing of lands from a rural water district (RWD). The bill adds additional factors for the members to consider.

He stood for questions. He stated that **HB 2283** passed the House with a vote of 125 to 0.

Elmer Ronnebaum, General Manager of the Kansas Rural Water Association, spoke as a proponent to **HB 2283** and informed the Committee of the KRWA's support for the passage of this legislation.

He stood for questions. Discussion was held on the process a rural water district board follows when determining appropriate compensation for the proposed land to be released from a RWD and whether the process should be modified. **HB 2283** allows a rural water district board to look at additional factors, increasing communication between interested parties, and making more information readily available to courts.

Kevin Barone, representing Park City and Eudora, assisted in answering questions regarding the necessity of **HB 2283**. He provided Committee members with a document that summarized the provisions of the bill. (Attachment 1) He stated that the factors listed in **HB 2283** evolved from previous court cases. This bill acts as a starting point to increase negotiations between RWDs, cities and landowners, prior to any court intervention. **HB 2283** acts as a time and cost saving measure; it resolves issues and limits attorney involvement.

Discussion was held on the court's role in determining whether rural water district boards have abused their power.

Chris Wilson, Executive Director of Kansas Building Industry Association (KBIA), spoke as a proponent to **HB 2283**. (Attachment 2) She shared with Committee members the encounters of homebuilders in the Wichita and Lawrence areas and situations where development occurs in RWDs, but city water services are needed to adequately service the areas. There has increasingly been the problem where RWDs have charged an excessive amount of money, without considering realistic factors to determine a fair amount of compensation for the land. She stated that a federal statute allows RWDs to obtain a loan from the United States Department

CONTINUATION SHEET

Minutes of the Senate Natural Resources Committee at 10:00 a.m. on May 1, 2009, in Room 446-N of the Capitol.

of Agriculture (USDA) that protects RWDs from being forced to release land for development. USDA officials acknowledged the abuses and encouraged the KBIA to pursue state legislation to address this issue. She stated **HB 2283** is a step in the right direction, allowing RWDs, landowners and cities to fairly value the loss of the territory to the RWD and for determining the value if negotiations fail.

She stood for questions. Discussion was held on the meaning of the language contained in Section 1, line 19, that stated "to yield more than a fair profit." Kevin Barone stated that the Kansas Supreme Court determined that a RWD may only "charge such rate as will yield a fair profit, so long as the rate is not disproportionate to the service rendered."

The hearing was closed on **HB 2283** and opened on **SB 332**.

Raney Gilliland provided the Committee with an overview of **SB 332**, specifically regarding the annexation of territory by cities into RWDs. He described the provisions of **SB 332**, including a mechanism for notice to be given to a RWD that describes the potential annexation and a city's plan of water service for the area. If a RWD and city are unable to reach an agreement, the bill outlines a negotiation process including mediation and the appointment of appraisers. If the RWD or city is not satisfied with the appraiser's decision, then an appeal may be made to the district court.

He stood for questions. Senator Francisco requested clarification of language contained on page 3, lines 23 through 26. Members of the Committee requested that clarification be given to the language regarding the factors that need to be considered and the procedure for the appraisers to follow. Mike Heim, Revisor of Statutes Office, assisted in answering questions.

Elmer Ronnebaum, General Manager for the Kansas Rural Water Association, spoke as a proponent to **SB 332**. (Attachment 3) He stated that the main goal of **SB 332** is to see RWDs and cities work out territorial agreements. **SB 332** will give a wake-up call to the RWDs that a city is preparing to annex some of their territory. It provides time for RWDs and cities to evaluate the loss of a territory and/or facility and work towards an agreement.

He stood for questions. Senator Abrams suggested adding "geographic territory" to the language in section 1, line 42.

Chris Wilson, Executive Director of KBIA, spoke as a proponent to **SB 332**. She stated that **SB 332** would encourage mediation to help move the development process along, save tax payer dollars and avoid litigation.

She stood for questions.

Kevin Barone, representing Park City and Eudora, spoke in favor of **SB 332**. He explained to the Committee that each bill pertains to two different situations and both bills are beneficial.

Dale Goter, Government Relations Manager of the City of Wichita, submitted written testimony in support of **SB 332**. (Attachment 4)

Kim Winn, Director of Policy Development & Communications of the League of Kansas Municipalities, spoke as an opponent to **SB 332**. (Attachment 5) Earlier this session, the League of Kansas Municipalities was approached by the Rural Water Association and agreed to meet with them during the interim to address some of these issues. They are concerned with this bill, because it deals with the much larger issue of annexation. She requested that more time be given for all interested parties to meet together to review and consider the specifics of this legislation and reach an agreement on language, including the "blue sky" annexation language.

She stood for questions.

Senator McGinn closed the hearing on **SB 332**.

CONTINUATION SHEET

Minutes of the Senate Natural Resources Committee at 10:00 a.m. on May 1, 2009, in Room 446-N of the Capitol.

Senator McGinn requested input from Committee members on the direction they wanted to pursue HB 2283 and SB 332. Senator Abrams suggested combining the two bills and suggested inserting the language contained in section 3, number 1, of SB 332 into HB 2283. Members of the Committee expressed concerns for combining the two bills, due to the language pertaining to two separate situations and whether the same procedure for rural water district boards to follow is appropriate for both situations. Discussion was held on whether to combine the two bills or have them remain separate legislation.

Further discussion was held on the process rural water district boards should be required to follow and the factors appraisers consider in determining reasonable value.

The Committee agreed to include "geographic territory" in the language of SB 332 and work to combine the language of SB 332 and HB 2283.

The next meeting is scheduled for May 4, 2009.

The meeting was adjourned at 11:00 a.m.

HOUSE BILL No. 2283

By Committee on Energy and Utilities

-HB 2283 would amend current law by increasing the factors a board must consider when determining whether to release lands from rural water districts.

-The factors added by HB 2283 reflect current case law adopted by, both, the Kansas Supreme Court and the 10th Circuit. The factors are the same or similar to the factors a court will evaluate where a dispute arises concerning federally indebted rural water districts.

Currently, the law requires the RWD board to determine "whether release of the land would be in the best interests of [both] the landowners and the district." (Emphasis added.)

Where prices are unreasonable, excessive, or confiscatory, denying the release of the land is NOT in the best interest of the landowner, district, municipality, or the state of Kansas.

Neither the district or municipality gain new customers; the landowner is unable to develop the land, and Kansas suffers as a result of a loss of economic development.

The amended language comes directly from a 10th Circuit case involving a Kansas RWD:

"There is some point at which costs become so high that assessing them . . . constitutes a practical deprivation of service." In articulating the standard, Kansas courts have concluded that rates may not be "unreasonable, excessive or confiscatory."

RWD No. 1 v. Ellsworth Co., 243 F.3d 1263, 1271 (10th Cir. 2001).

9 AN ACT concerning rural water districts; relating to procedures for re-
10 lease of lands from a district; amending K.S.A. 2008 Supp. 82a-646
11 and repealing the existing section.
12

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

14 Section 1. K.S.A. 2008 Supp. 82a-646 is hereby amended to read as
15 follows: 82a-646. (a) Terms used in this section shall have the meanings
16 provided by K.S.A. 82a-612, and amendments thereto.

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

29 (c) If the board of directors of the district finds the petition to be in
30 proper form, the board shall conduct a hearing on the petition for release.
31 Notice of the time and place of the hearing shall be mailed to all owners
32 of land requested to be released not later than 10 days before the hearing.
33 The hearing may be continued from time to time without further notice
34 to landowners. In considering the petition for release, the board shall
35 consider whether the lands requested to be released cannot be econom-
36 ically or adequately served by the facilities of the district and whether the
37 release would be in the best interests of the landowners and the district.
38 based on the following factors:

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

Kevin Barone Senate Natural Resources
May 1, 2009
Attachment #1

Factors ## 8,9,11

In determining whether prices are unreasonable, Kansas decisions indicate that a RWD may only "charge such rates as will yield a fair profit, so long as the rate is not disproportionate to the service rendered." Amended factors 8 & 9 come directly from the Kansas Supreme Court and the 10th Circuit.

RWD No. 1 v. Ellsworth Co., 243 F.3d 1263 (10th Cir. 2001) citing *Shawnee Hills Mobile Homes, Inc. v. RWD*, No. 6, 537 P.2d 210, 218 (Kan. 1975).

Factors ## 10 & 12

In its hearing to determine whether release of land is in the best interest of *both* landowner *and* district, the RWD should consider whether its decision *not* to release the land, and any high prices associated with the decision, could hinder development of any kind. Hindering development can severely stunt the growth of a city's tax base, which is detrimental to the state of Kansas.

Factor # 13

Cities may be required provide fire protection services to annexed territories. See K.S.A. § 80-1513(c). The RWD should be required to examine whether its decision will result in duplicate lines, and waste of any kind.

- 1 (2) the length of time before the board of directors reasonably expect
- 2 to make water service available to the lands requested to be released;
- 3 (3) whether water service is available from another source if the lands
- 4 are released from the district *and the relative cost of obtaining service*
- 5 *from each source;*
- 6 (4) if water service is available from the district to the lands requested
- 7 to be released, the relative cost of obtaining such water service, as deter-
- 8 mined by the district, compared to the additional value of the lands after
- 9 water service is made available;
- 10 (5) if water service is available from the district, the cost of obtaining
- 11 such water service, as determined by the district, compared to the cost
- 12 of obtaining water from another source;
- 13 (6) whether any applicable law will prevent any other water suppliers
- 14 from serving the lands requested to be released; *and*
- 15 (7) whether the district's interest in maintaining the integrity of its
- 16 territory is outweighed by the landowners' need to obtain a source of
- 17 supply of water to the lands requested to be released;
- 18 (8) *whether the decision of such board to deny release of lands would*
- 19 *allow the district to yield more than a fair profit;*
- 20 (9) *whether the district establishes a rate for services or equipment*
- 21 *that is disproportionate to the services rendered;*
- 22 (10) *whether the district has provided water service to residents or*
- 23 *landowners within the disputed territory and would be losing existing*
- 24 *customers or whether the disputed territory would supply new customers;*
- 25 (11) *whether the district can provide a safe and adequate supply of*
- 26 *water to customers of such district and whether a greater level of water*
- 27 *service can be provided by another provider and the relative cost of each*
- 28 *option;*
- 29 (12) *whether such board's refusal to detach the territory would result*
- 30 *in any economic waste or hinder any economic development; and*
- 31 (13) *where a district provides water service to residences and where*
- 32 *a city is required to provide fire protection services, if duplicate water*
- 33 *service lines would cause any economic or physical waste.*
- 34 (d) The board may approve the release of all or part of the lands
- 35 requested to be released or may deny the request. The burden of proof
- 36 shall be on the petitioners for release. The board of directors shall make
- 37 a determination on the petition for release within 120 days after its re-
- 38 cept, shall record its findings in the minutes of the district and shall mail
- 39 a copy of such findings to each petitioner within seven days.
- 40 (e) Any owner of land requested to be released from the district who
- 41 is dissatisfied with the determination of the board of directors on the
- 42 petition for release may bring an action in the district court of the county
- 43 in which the district is located to determine if the board of directors of

Kevin Barone
Senate Natural Resources C.
#1-
May 1, 2009 Attachment 2

1 the district abused its discretion in making such determination. Such ap-
2 peal shall be filed within 30 days after the final decision of the board.

3 (f) If the board of directors of the district approves the petition, or if
4 the district court on appeal determines that the board abused its discre-
5 tion in denying release, a copy of the board's action approving the release
6 or of the district court's order on appeal, as the case may be, shall be
7 transmitted to the chief engineer and to the county clerk, who shall note
8 the change of such district's boundaries.

9 Sec. 2. K.S.A. 2008 Supp. 82a-646 is hereby repealed.

10 Sec. 3. This act shall take effect and be in force from and after its
11 publication in the statute book.



STATEMENT OF
THE KANSAS BUILDING INDUSTRY ASSOCIATION
REGARDING H.B. 2283 and S.B. 332
SENATE NATURAL RESOURCES COMMITTEE
SENATOR CAROLYN MCGINN, CHAIR
MAY 1, 2009

Chairman McGinn and Members of the Committee, I am Chris Wilson, Executive Director of Kansas Building Industry Association (KBIA). KBIA is the professional trade association of the residential construction industry in Kansas, with over 2300 members. Kansas Building Industry Association appreciates the opportunity to submit this statement in support of H.B. 2283 and S.B. 332.

Thank you for holding this hearing on these bills concerning the transfer of rural water district territory. This is an important issue for our members where development occurs in rural water district territory but city water service is needed to adequately service the area. A mechanism is needed to fairly value the loss of the territory to the rural water district and for determining the value if negotiations fail. We believe this is an important issue that should be addressed this

Senate Natural Resources
Committee
May 1, 2009
Attachment #2

Session if at all possible. This issue was addressed by the interim Special Committee on Eminent Domain in Condemnation of Water Rights. During that interim, one of our members Kevin Mullens, President, Ritchie Development Corporation, Wichita, discussed the issues his company has had involving Rural Water Districts 1 and 5. The RWD had requested compensation in the amount of \$500,000 to release its rights to serve an area owned by Ritchie Development. In most cases, a rural water district and a city have been able to fairly negotiate for the transfer of territory. However, the number of problems have increased in recent years.

Several bills were brought forward early in the Session. The House Agriculture and Natural Resources Committee forwarded H.B. 2283, which passed the House 125-0, but did not arrive in the Senate until the last days of the regular session. H.B. 2283 amends the rural water statutes and sets forth additional factors for a rural water district to consider when evaluating the release of territory.

Just prior to the end of the regular Session, leaders of my Association met in Washington, D.C., with officials of the National Association of Home Builders (NAHB) and the U.S. Department of Agriculture concerning this situation. USDA provides facility loans to rural water districts. USDA officials acknowledged the abuses and encouraged us to do all possible to pursue state legislation to address this situation.

S.B. 332 goes beyond H.B. 2283 to meet the needs for legislation by establishing a procedure for annexation by the city in cases where the city and district are unable to reach an agreed upon value through the use of appraisers. This bill is based on the Texas law which has worked well to resolve such cases.

We respectfully request that the Committee consider amending H.B. 2283 by adding the provisions of S.B. 332. KBIA fully supports both H.B. 2283 and S.B. 332.

Thank you for your consideration of this issue. I would be happy to attempt to respond to any questions.



KANSAS
RURAL
WATER
association

Quality water, quality life

P.O. Box 226 • Seneca, KS 66538 • 785/336-3760
FAX 785/336-2751 • <http://www.krwa.net>

**Comments on Senate Bill 332
Before the Senate Committee on Natural Resources
May 1, 2009**

Madam Chairman and Members of the Committee:

The Kansas Rural Water Association appears in support of Senate Bill 332. Kansas Rural Water Association has encouraged public water supply systems – cities and rural water districts – to work out territorial agreements so that the most reasonable service is provided to the citizens. We believe that SB 332 strengthens and clarifies existing state law to help attain that goal.

For example, under current law, a city need not give notice of an annexation to a rural water district if it is a consensual annexation (by far the most common type). Section 1 would require that notice in all cases. It also specifies a time frame by which that notice must be given (not less than thirty (30) days) and is self-policing by providing that the Ordinance is not effective unless that notice is timely made. Kansas Rural Water Association respectfully suggests that the time of notice be increased to sixty (60) days.

Section 2 is intended to clarify current law that a rural water district and a city may agree for the district to continue to be the water supplier to the annexed area following the annexation.

Section 3(a) is loosely modeled after a similar provision in Texas statutes. Kansas Rural Water Association suggests that majority of the problem cases where there are territorial disputes between rural water districts and cities result from a city not talking to the district about its plans and making commitments that it later finds it cannot keep. By the time the discussions actually occur, the situation may be on a level that is destined to result in conflict. KRWA has made a real effort to try to educate all of the parties in order for them to be better equipped to deal with these situations, but that approach has its limits. By preventing a forced change in water supplier, until the parties meet and mediate, this Section is designed to force these discussions to occur in an effort to try and head off these long running conflicts.

Also, unlike some of the ideas that have been previously introduced would seem to be ineffective in addressing the 1926(b) cases, this Section approaches it from the annexation angle, not the water district service angle. It would be applicable universally (in other words, it will apply to those annexations of land within a rural water district which has 1926(b) protection as it would to those that do not). Of course, the city may not be entitled to assume water service without district approval in a 1926(b) case, regardless of the meet and mediate requirement; but at least this provision forces them to talk about it very early in the process before positions have hardened.

Section 3(b) is essentially current Kansas law concerning the appointment of appraisers and appeal to a court by either party who is dissatisfied with the appraisers' award. This is in place of the wholly open valuation that is permitted under current statute. The factors in this Section may help give some guidance to a panel of appraisers and a court on appeal as to reasonable items of value for their consideration.

Senate Natural Resources
Committee
May 1, 2009
Attachment #3

Section 3(f) includes the provision under current law that there be no diminishment of service during negotiations, but whereas current law provides for an exception to that rule only for non-payment of bills, SB 332 would allow termination or limitation of service for any violation of district by-laws or rules and regulations. It also contains a requirement that the city give notice at the time of actual transfer of service from the district to the city.

Section 3(g) clarifies what happens to district boundaries and benefit units located within those annexed areas once service has been transferred from the district to the new supplier. This is not clear under current law.

Thank you for your consideration.

Respectfully,



Elmer Ronnebaum
General Manager
Kansas Rural Water Association



TESTIMONY

City of Wichita
455 N Main, Wichita, KS. 67202
Wichita Phone: 316.268.4351
dgoter@wichita.gov

Dale Goter
Government Relations Manager

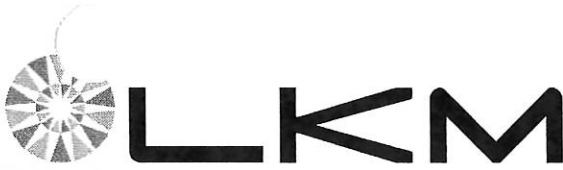
City of Wichita Testimony on Senate Bill 332 Senate Natural Resources Committee May 1, 2009

The issue of equitable compensation to rural water districts for territory annexed by adjacent cities has presented a dilemma for municipalities that pursue the orderly expansion of their boundaries.

The City of Wichita has actively participated in the search for a solution that would allow it to continue to meet the growing demand for new housing developments. That effort has resulted from unsatisfactory outcomes to past negotiations between the city and adjacent rural water districts.

Senate Bill 332 presents a new opportunity to resolve this dilemma, and the City of Wichita joins in support of its passage.

Senate Natural Resources
Committee
May 1, 2009
Attachment #4



League of Kansas Municipalities

300 SW Commerce Avenue
Topeka, Kansas 66603-3912
Phone: (785) 354-9565
Fax: (785) 354-4186

To: Senate Natural Resources
From: Kim Winn, Director of Policy Development & Communications
Date: May 1, 2009
Re: SB 332

Thank you for the opportunity to appear today regarding SB 332. This legislation repeals existing law with regard to the statutory process that is required when cities annex territory that is currently served by a rural water district. In its place, SB 332 leaves an entirely new scheme which has not been reviewed or considered by all of the interested parties.

Earlier in this legislative session, the League was approached by the Kansas Rural Water Association about the possibility of having discussions regarding this type of legislation. At that time the League committed to sitting down over the interim to discuss these issues. We believe that with a good faith discussion between the various parties that we may indeed find a workable piece of legislation that will suit the needs of Kansans across the state.

Passage of this bill at this time preempts those efforts and forces the parties into a adversarial position which we do not believe is productive. Therefore, we respectfully request that the Senate Natural Resources Committee does not take action on this legislation at this time. Rather, we are asking that you allow the interested parties to meet and to discuss this very important policy issue in a meaningful way during the interim.

Again, thank you for the opportunity to appear today and I would be happy to stand for questions at the appropriate time.

Senate Natural Resources
Committee
May 1, 2009
Attachment # 5