

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 3:00 p.m. on May 4, 2009, in Room 446-N of the Capitol.

All members were present except:

Senator Steve Morris- excused

Senator Terry Bruce- 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:

Dale Goter, Government Relations Manager, City of Wichita

Kim Winn, Director, Policy Development and Communications, League of Kansas Municipalities

Others attending:

See attached list.

The meeting began with continued discussion on **HB 2283- Procedures for release of certain property of rural water districts** and **SB 332- Annexation by cities; territory of rural water districts**.

Kristen Kellems, Revisor of Statutes Office, provided Committee members with a summary of the proposed changes to **HB 2283** and **SB 332** that would combine the legislation into one bill. (Attachment 1) Proposed amendments to the combined legislation include: inserting sections 1 through 3 of **SB 332** into **HB 2283**, modifying the title of **HB 2283**, inserting "geographic area" into the language of **SB 322**, inserting new language that would clarify the rural water district board's procedure when considering the release of land, the procedure for the appointment of appraisers, and the factors the appraisers need to consider for determining value.

She stood for questions. Senator Abrams asked whether language needs to be added to the new section 3, which would state that a city will not purchase a main water line that a rural water district (RWD) uses to provide water service for those outside the annexed area. Kristen Kellems suggested adding the language "except defined in subsection (d)," in which RWDs could elect to retain and cities not purchase main lines which serve residents outside the proposed area of annexation. Discussion ensued. Senator Francisco suggested adding language in subsection (d) stating that "whatever the RWD chooses to retain, it will not be compensated for."

Discussion was held on the use of "geographic area," and a suggestion was made to replace the term with "going concern." Kristen Kellems suggested adding the definition of "going concern" as a new section.

Senator McGinn stated that an attempt to reach an agreement was made between the League of Kansas Municipalities (LKM) and the City of Wichita. Kim Winn, Director of Policy Development and Communications from the League of Kansas Municipalities, explained that the best way to move forward with the legislation is to use K.S.A. 66-1, 176 as the model for the process. (Attachment 2) Dale Goter, Government Relations Manager from the City of Wichita, expressed concern regarding the notification requirement of 30 days located in the new section 3, number (3). He suggested increasing the time period to 60 days.

Senator Francisco expressed concern regarding the language contained in section (f), on page 3, stating "to enable the district to make a fair profit from the release." Senator Taddiken suggested using the terminology "adequate compensation."

Senator Abrams stated that punctuation needs to be added to section (f), on page 3. Kristen Kellems stated that a comma would be appropriate between "denied" and "the."

CONTINUATION SHEET

Minutes of the Senate Natural Resources Committee at 10:00 a.m. on May 4, 2009, in Room 446-N of the Capitol.

Dale Goter, Government Relations Manager of the City of Wichita, and Kim Winn, Director of Policy Development and Communications of the LKM, reached an agreement. They agreed that the bill should not be amended into the annexation statute, K.S.A 12-527. Instead, the bill should be inserted into Chapter 82a, Article 6, regarding rural water districts. Their concern was that, if the bill was amended into the annexation statute, courts could call into question the whole annexation process. The Committee members concluded that K.S.A. 12-527 should be repealed, and the new legislation would be made supplemental to the rural water district law.

Senator Lee moved to combine SB 332 and HB 2283, by placing sections 1 through 3 of SB 332 into HB 2283. Senator Abrams seconded the motion, and the motion carried.

Senator Lee moved to replace "geographic area," located in the new section 3, with the terminology "going concern." Senator Teichman seconded the motion, and the motion carried.

Senator Teichman moved to replace "fair profit" with "adequate compensation." Senator Lee seconded the motion. Senator Francisco requested that the motion be interpreted liberally. After discussion, the motion carried.

Senator Abrams moved to include language on page 3, section (d), that states "transmission of water to be used, provided water service is provided to benefit units outside the annexed area." Senator Teichman seconded the motion, and the motion carried.

The Committee members agreed to wait for a final draft of the bill, before considering moving the bill out of Committee.

The next meeting is scheduled for May 5, 2009.

The meeting was adjourned at 4:00 p.m.

HOUSE BILL No. 2283

By Committee on Energy and Utilities

2-5

Proposed Amendments to
House Bill No. 2283

Kristen KellemS
Senate Natural
Resources Committee
May 4, 2009
Attachment #1

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~~. sections

12-527 and K.S.A.

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

Insert New Sections 1 through 3 which is SB332 (Attached)
And by renumbering the remaining sections accordingly

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:~~

(d)

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:

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;*

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

written

and conclusions

written

and conclusions

Except as provided in subsection (f), any

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.

(g) 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.

12-527 and K.S.A.

are

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.

(f) If the district denies the landowner's petition for release because such
release would not yield a fair profit 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 make a fair profit from the
release in the following manner:

1-3

(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 make a fair profit 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.

New Section 1. Not less than 30 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 geographic area of the district located within the territory annexed by the city. If an agreement for the purchase of such property, facilities, improvements and geographic area 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 geographic area, 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 geographic area 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; and
- (J) 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. 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 to be used for providing water service outside the city.

(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.



League of Kansas Municipalities

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To: Senate Natural Resources
From: Kim Winn, Director of Policy Development & Communications
Date: May 4, 2009
Re: Comments Regarding SB 332

While we still hope to have the time and opportunity to work together with the interested parties on this legislation, we understand that there is interest in moving some legislation this year regarding annexation in areas served by rural water districts. We have reviewed the proposed language in SB 332 and we would offer the following suggestion as a way to move forward at this time.

As I mentioned during my testimony, we have had similar discussions with the Kansas rural electric cooperatives. We spent many hours working with the REC's to develop the process that is set out in K.S.A. 66-1,176 (attached). This process, first established in 2002, is a solid process that we believe balances the various interests involved.

Should you decide to go forward with legislation this year, we would respectfully request that K.S.A. 66-1,176 be used as the model for the process. In that way, we are treating various utilities who are similarly situated in the same manner.

You will note that K.S.A. 66-1,176 provides notice to the interested parties and it establishes two separate sets of factors. The first set of factors regards the decision that the city must make with regard to who should provide service in the area to be annexed. The second set of factors identifies what must be considered when determining appropriate compensation.

We believe that these factors are both comprehensive and specific. It is very clear exactly how the decision as to service should be made and how the compensation should be calculated. We believe that this process would serve all of the parties well in the circumstance that involves a rural water district as well.

Thank you in advance for your consideration of this very important issue. We look forward to working with the Committee on this and any other issue of mutual concern.

Senate Natural Resources
Committee
May 4, 2009
Attachment #2

66-1,176

1. Chapter 66.--PUBLIC UTILITIES

Article 1.--POWERS OF STATE CORPORATION COMMISSION

66-1,176. Termination of service rights in annexed areas; right to serve existing customers, when; compensation for termination of service rights. (a) Whenever a city proposes to annex land that is located within the certified territory of a retail electric supplier, the city shall provide notice to the retail electric supplier in the manner prescribed by K.S.A. 12-520a, and amendments thereto. All rights of a retail electric supplier to provide electric service in an area annexed by a city shall terminate 180 days from the date of annexation, unless such electric supplier is then holding a valid franchise for service in the area granted by the annexing city. Such period of 180 days shall be extended to 210 days from the date of annexation if a franchise is granted to the retail electric supplier pursuant to referendum conducted according to applicable franchise laws of the state of Kansas within such period of 210 days. Whenever the city annexes land that is located within the certified territory of a retail electric supplier, the city shall negotiate for the issuance of a franchise agreement pursuant to K.S.A. 12-2001, *et seq.*, and amendments thereto, with a retail electric supplier holding a certificate within the annexed area. Nothing herein shall be construed to require a supplier holding both a certificate of convenience and a franchise for the area annexed to obtain a new franchise. The city shall have the final selection of which supplier receives a franchise to operate within the annexed area. When making such selection, the city shall consider certain factors including, but not limited to: (1) The public convenience and necessity; (2) rates of various suppliers; (3) desires of the customer or customers to be served; (4) economic impact on the suppliers; (5) economic impact on the customers of the suppliers; (6) the utility's operational ability to serve the annexed area; (7) avoiding the wasteful duplication of facilities; (8) avoiding unnecessary encumbrance on the landscape; and (9) preventing the waste of materials and natural resources. Within 30 days after the final decision of the city, any supplier aggrieved thereby may file an appeal in the district court of the county in which the annexed area is located to determine the reasonableness of the final decision. In the event that an appeal of the decision is filed in the district court, the retail electric supplier providing service at the time of annexation shall continue to provide service until such time as the appeal has been concluded. In the event service rights are terminated pursuant to this section, the commission shall certify such annexed area as a single certified territory to the supplier holding a franchise for or then providing retail electric service in the city immediately prior to the annexation.

(b) In the event the supplier holding a franchise or then providing retail electric service does not effect the assumption of electric service to the annexed area at the termination of the applicable 180-day or 210-day period as provided in subsection (a), then the originally certified supplier shall have the right to continue service to the annexed area and charge its ordinary rates therefor until such supplier does assume service to the annexed area. Such service shall be free of any franchise fee or other compensation to the city or the electric supplier holding the franchise. If the supplier holding a franchise has not assumed service to the annexed area within 180 days following the applicable 180-day or 210-day period provided in subsection (a), the city may require the originally certified supplier to obtain a franchise in order to continue service to the annexed area. Unless otherwise mutually agreed upon by the affected suppliers, no assumption of electric service shall occur within 15 days following notice to the originally certified supplier of the intended changeover time.

(c) Whenever the service rights of a retail electric supplier are terminated pursuant to subsection (a), fair and reasonable compensation shall be paid to such retail electric supplier by the supplier subsequently authorized to provide electric service. Such compensation shall be an amount mutually agreed upon by the affected suppliers or the sum of the following:

(1) The depreciated replacement cost for the electric utility facilities in the territory in which the service rights have been terminated pursuant to subsection (a). As used in this paragraph, "depreciated replacement cost" shall mean the original installed cost of the facilities, adjusted to present value by utilizing a nationally recognized index of utility construction costs, less accumulated depreciation based on the book depreciation rates of the selling utility as filed with and approved by the state corporation commission, which are in effect at the time of acquisition;

(2) all reasonable and prudent costs of detaching the electric system facilities to be sold and all reasonable and prudent costs of reintegrating the remaining electric system facilities of the retail electric supplier whose service rights are terminated pursuant to subsection (a);

(3) an amount equal to two times the gross revenues attributable to the customers in the terminated territory during the 12 months next preceding the date of transfer of the service pursuant to subsection (a); and

(4) an amount equal to the state and federal tax liability created by the taxable income pursuant to the provisions of this paragraph and paragraphs (1), (2) and (3) by the retail electric supplier whose service rights are terminated pursuant to subsection (a), calculated without regard to any tax deductions or benefits not related to the sale of assets covered herein.

(d) In the event that the parties are unable to agree upon an amount of compensation to be paid pursuant to subsection (c), after 60 days following the date of termination of service rights either party may apply to the district court having jurisdiction where any portion of the facilities are located, for determination of compensation. Such determination shall be made by the court sitting without a jury.

History: L. 1976, ch. 284, § 7; L. 1986, ch. 249, § 3; L. 1987, ch. 257, § 3; L. 2002, ch. 27, § 1; July 1.