

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 3:45 p.m. on May 5, 2009, in Room 446-N of the Capitol.

All members were present except:

Senator Terry Bruce- excused
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

Others attending:

See attached list.

Senator McGinn asked Kristen Kellems to summarize the amendments proposed for **HB 2283 - Procedures for release of certain property of rural water districts.**

Kristen Kellems, Revisor of Statutes Office, outlined the amendments proposed for **HB 2283** including: modifying the title in **HB 2283** including the repeal of K.S.A. 12-527, replacing the language "geographic concern" with "going concern," amending subsection (d) in new section 3 to state "In any event, the district may elect to retain facilities located within the city used for transmission of water, provided that the district continue to supply water service to benefit units outside the city. The district shall not receive compensation for facilities it elects to retain," replacing the language "fair profit" with "adequate compensation," and adding section 6 that states "The provisions of this act shall be part of and supplemental to the Kansas rural water district act." (Attachment 1)

She stood for questions. Senator Francisco suggested amending subsection (d) in the new section 3, beginning in the second line, to state "provided that the district used those facilities to continue to supply water service to benefit units outside the city."

Senator Abrams suggested amending the new section 1 and replace "not less than 30 days" with "not less than 60 days."

Senator Abrams proposed inserting lines 27 through 29 of **HB 2318 - Defining participating member of a rural water district, requirements on water districts** into **HB 2283**. This amendment would allow all who live in a rural water district and pay taxes or fees to the rural water district (RWD) to have the opportunity to run for a rural water district board, including those who do not receive water services from the RWD. Senator Abrams moved to amend **HB 2283**, by inserting lines 27 through 29 of **HB 2318**. Senator Taddiken seconded the motion, and the motion carried.

Senator Abrams moved to pass **HB 2283** favorably, as amended, out of Committee. Senator Teichman seconded the motion.

Senator Lee made a substitute motion to insert in the new section 3, subsection (d), the language Senator Francisco proposed and pass **HB 2283** favorably, as amended, out of Committee. Senator Abrams seconded the motion, and the motion carried.

The meeting was adjourned at 4:05 p.m.

HOUSE BILL No. 2283

By Committee on Energy and Utilities

2-5

Proposed Amendments to
House Bill No. 2283

Kristens Kellems
Senate Natural Resources
Committee
May 5, 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.

; also repealing K.S.A. 12-527

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.

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

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 ceipt, 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

adequate compensation

written

and conclusions

written

and conclusions

Except as provided in subsection (f), any

(g) 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. 12-527 and K.S.A.
 9 ~~Sec. 2.~~ K.S.A. 2008 Supp. 82a-646 is hereby repealed. are
 10 ~~Sec. 3.~~ This act shall take effect and be in force from and after its
 11 publication in the statute book.

Sec. 6. The provisions of this act shall be part of and supplemental to the Kansas rural water district act.

And by renumbering the remaining sections accordingly

1-3

(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.

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 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; 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, provided that the district 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.