

SESSION OF 2010

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2283**

As Agreed to February 18, 2010

Brief*

HB 2283 would enact new law dealing with the process of transfer of water service when a city annexes property where a rural water district is providing service and amend existing law to provide an additional factor that must be considered by a rural water district's board of directors prior to their releasing lands from the rural water district. The bill also would repeal KSA 12-527 dealing with the annexation of lands located within water districts and clarify existing guidelines for the implementation of an intensive groundwater use control area within the boundaries of a groundwater management district.

**Annexation of Property Serviced by a
Rural Water District**

The bill would enact new law which would require a city to give written notice to a rural water district not less than 60 days before the effective date of any ordinance proposing to annex land into the city. The city would be permitted to contract with the rural water district for water service to allow portions of the annexed area. If the city designates a different supplier, the city would be required to purchase the property, facilities, improvements, and going concern value of the district located in the annexed territory. If the agreement for purchase is not executed within 90 days, the bill would require the city and rural water district to engage in mediation.

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If the process of mediation does not reach an agreement of reasonable value within 120 days, the city and the rural water district will each appoint a qualified appraiser. Then these two appraisers would appoint a third appraiser. The three appraisers then would consider all elements of value of the property, facilities, improvements, and going concern value within the area to be annexed.

The bill would establish factors in determining reasonable value, including the average increase in the number of benefit units in the area annexed for the three years immediately preceding the annexation and including whether the area annexed consists of land for which no water service is being provided by the system at the time of the annexation, the value of such land based on the planning, design, and construction of improvements located outside the transferred area reasonably made to provide future water service to the annexed area.

Once the appraisers make a determination, they would be required to make a written summary of findings and conclusions. If either the rural water district or the city is dissatisfied with the decision, an appeal may be made to the district court within 30 days. The compensation would be paid to the rural water district whether or not the city plans to use the facilities not later than 120 days after fair market value has been determined.

The bill also would permit rural water districts to maintain facilities within the annexed area for use in its active service territory provided that the district use those facilities to continue to supply water service to benefit units outside the city. The rural water district would not receive compensation for facilities it elects to retain.

None of these provisions would limit the authority of a city to select water service suppliers or to limit the authority of the city to adopt and enforce regulations for operation of a water service supplier. The bill also would require the rural water district to continue to serve until the city gives notice of an alternative supply and would require the city and rural water

district to cooperate to minimize inconvenience to water customers. Following the transfer of water service, the annexed land would be deleted from the territory of the rural water district and all benefit units attached to land located in the annexed area would be canceled without compensation. Notice of the action would be required to be provided to the county clerk and the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture.

Release of Lands from a Rural Water District

Currently, Kansas law allows landowners to petition the rural water district's board of directors for a release of lands from the district. Upon the successful filing of a petition, the district's board of directors is required to hold a hearing where the landowners' release request is considered.

The board would be required to make specific findings of fact and conclusions determining whether the lands requested to be released cannot economically or adequately be serviced. The board would need to determine if the release would be in the best interests of the landowner and the district, and the findings and conclusions would be based upon the preponderance of evidence.

In addition to the factors outlined in existing law, the bill would require the district's governing body to consider the following additional factors when determining whether or not lands should be released:

- Whether the cost of the benefit units or service or equipment is unreasonable, excessive or confiscating so as to render service unavailable;
- The relating cost of obtaining service from an alternative source;
- Whether the release of lands would allow the district to yield more than adequate compensation;

- Whether the district establishes a rate for services or equipment that is disproportionate to the services rendered;
- Whether the release of lands would cause a loss of existing customers or supply new customers;
- Whether the district can provide a safe and adequate supply of water to customers in the district, and whether another provider could provide a greater level of service;
- Whether the board's refusal to release lands would result in any economic waste or hinder any economic development; and
- Whether duplicate water service lines would cause any economic or physical waste.

If the district denies the landowner's desire for release of lands because it would result in inadequate compensation, a process would be established to determine the compensation sufficient to enable adequate compensation. The bill would provide for the appointment of a qualified appraiser by both the district and the landowner. These two appraisers would appoint a third appraiser. The three appraisers would consider the following factors when determining reasonable value:

- Whether any property of the district is rendered useless or valueless to the district;
- The impact on the existing indebtedness of the district and such district's ability to repay;
- The value of the service facilities of the district located within the area in question;
- The amount of the district's contractual obligations allocable to the area in question;

- Any demonstrated impairment of service or increase of cost to consumers of the district;
- Any necessary and reasonable legal expenses and professional fees;
- Any factors relevant to maintaining the current financial integrity of the district;
- Whether the area released consists of land for which no water service is being provided by the system at the time of the release, the value of such land based on the planning, design and construction of improvements located outside the released area reasonably made to provide future water service to the released area; and
- Any other relevant factors.

The appraisers would hear evidence and make a written summary of findings and conclusions. At least two of the three appraisers need to agree and the landowners would be required to make the payment to the district for acceptance. 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 to the district court.

Participating Members of Rural Water Districts

The bill also would amend the definition of “participating member” in the rural water district law to include those individuals, firms, partnerships, associations or corporations which own land located within a district which is charged a franchise fee for water service which is paid, either directly or indirectly through another water provider, to the district.

Conference Committee Action

The conference committee on HB 2283 made the following amendments:

- Strike prior language relating to Intensive Groundwater Use Control Areas (IGUCAs);
- Added an additional factor to be considered by appraisers when determining reasonable value of annexed property regarding whether the area annexed consists of land for which no water service is being provided by the system at the time of the annexation, the value of such land based on the planning, design, and construction of improvements located outside the annexed area reasonably made to provide future water service to the transferred area; and
- Added an additional factor to be considered by appraisers when determining reasonable value of land released from a rural water district regarding whether the area released consists of land for which no water service is being provided by the system at the time of release, the value of such land based on the planning, design, and construction of improvements located outside the released area reasonably made to provide future water service to the released area.

Background

HB 2283 was introduced by the House Committee on Energy and Utilities; then referred to the House Committee on Agriculture and Natural Resources. At the hearing, testimony in support of the bill was provided by representatives of the Kansas Rural Water Association, the City of Eudora, and the City of Park City. No neutral or testimony opposing the bill was provided.

The fiscal note on the original bill indicates that passage of the bill would have no fiscal effect on the original bill.

At the Senate hearing on HB 2283, testimony in support of the bill was provided by representatives from the Kansas Rural Water Association and the Kansas Building Industry Association. No neutral or opposing testimony was provided.

The Senate Committee on Energy and Natural Resources amended the bill to clarify that when a board of directors of a rural water district considers the release of lands from a district that it needs to base its decision on written findings of fact. The board would need to determine whether the lands requested to be released could not be economically or adequately serviced by the facilities in the district. The Committee also amended the bill to require the findings and conclusions be based upon the preponderance of evidence. The Committee also added a process for the determination of adequate compensation when the petition for release of lands does not yield adequate compensation to the district.

Further, the Senate Committee on Natural Resources amended the bill by adding the provisions of SB 332 with further amendments. Those provisions address the process of determining compensation to a rural water district when a city annexes a portion of the district into the city. These new provisions are made supplemental to the rural water district act. The fiscal note on the original provisions of SB 332 indicates that the bill would not affect state revenues or expenditures.

When the Senate Committee on Natural Resources held a hearing on SB 332, testimony in support of the bill was provided by the representatives from Kansas Rural Water Association and the Kansas Building Industry Association. The League of Kansas Municipalities provided testimony opposing the original provisions of the bill.

Additionally, the Senate Committee on Natural Resources amended the bill by modifying the definition of “participating member” as described above. This language was derived from HB 2318.

After recommending the bill favorably for passage, the Senate Committee on Natural Resources reconsidered its previous action. The Committee then further amended the bill to add IGUCA language (HB 2272 as amended by the House Committee of the Whole) and to change the annexation notice requirement from 30 days to 60 days.

The Senate Committee of the Whole amended the bill to add an additional factor to be considered by the appraisers when determining the reasonable value of rural water district property prior to a city annexing territory located within the rural water district.