

Legally (Relevant



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LEGISLATIVE UPDATE:

- 1) City Annexation of Rural Water District Territory; and,
- 2) Release of Territory from Rural Water Districts

House Bill 2283 was recently signed by Governor Parkinson and will become law on July 1, 2010. The Bill makes significant changes to the laws affecting annexation of rural water district territory by cities and also makes significant changes to the laws affecting release of territory from rural water districts. Below are some of the more important provisions of the Bill.

1. City Annexation of Rural Water District Territory

Under the provisions of the Bill, if a city wishes to annex RWD land, the City must notify the RWD of that fact at least 60 days before the effective date of the ordinance annexing such land. Failure to comply with the 60-day notice provision may well invalidate the attempted annexation, so compliance with the provision is important. Cities will have to plan in advance for such annexations or risk the possibility of having them invalidated.

In addition to the above, a city's notice must contain a description of the land to be annexed and the city's plan for the provision of water service to the land being annexed. If land is annexed by a city, the city and the affected RWD can contract for the RWD to provide water service to all or certain portions of the annexed area if they choose.

After annexation, the RWD will remain the water service provider for the annexed area unless the city designates a different supplier. If the city designates a different supplier, it must then purchase the "property, facilities, improvements and going concern value" of the RWD facilities in the annexed territory. If the parties aren't able to reach agreement on the reasonable value of the RWD facilities, they must first engage in mediation. If mediation is not successful, they must then each choose an appraiser. Those two appraisers then choose a third appraiser and the three appraisers hear evidence to determine the reasonable value of the RWD facilities. The appraisers are allowed to consider any method of valuation, and must specifically consider 12 factors set forth in the Bill. The agreement of at least two of the three appraisers will determine "fair market value."

If either the RWD or the city is dissatisfied with the decision of the appraisers, it may appeal within 30



The appraisers must consider all elements of value of the released territory to the RWD, including eight elements specifically listed in the Bill.

The Bill now requires that in determining whether lands can be economically or adequately served, RWDs must consider six factors more than they previously had to consider (for a total of 13 factors). The Bill also provides that after considering the required factors at a hearing, RWDs must now make specific written findings of fact and conclusions.

If a RWD denies a release petition for any reason other than a finding that the release would not yield adequate compensation for the district, the petitioners can bring an action in county district court within 30 days after the district's board issues its final decision. If

a RWD denies a release petition based on a finding that the release would not yield adequate compensation for the district, the petitioners and the RWD must determine, through a specific process, the amount of compensation sufficient to enable the district to be adequately compensated for the release of the lands involved.

Specifically, the RWD and the landowner must each select one qualified appraiser and those two appraisers must then select a third appraiser for conducting an appraisal. The appraisers must consider all elements of value of the released territory to the RWD, including eight elements specifically listed in the Bill. The appraisers must hear evidence as they deem necessary and issue a written summary of their findings and conclusions. At least two of the three appraisers must agree as to the amount of compensation owed by the petitioners to the RWD and must require the payment of that amount from the petitioners to the district. If either the RWD or the petitioners is dissatisfied with the decision of the appraisers, then either may appeal within 30 days to the county district court. If such an appeal is filed, a county district court judge will hear the case without a jury.

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If the process described above results in the transfer of water service from a RWD to a city, the annexed land for which water service has been transferred to the city will be deleted from the territory of the RWD and all benefit units attached to such land will be cancelled without compensation.

2. Release of Territory from Rural Water Districts

Before House Bill 2283 was passed, Kansas law allowed owners of land within RWDs to petition for release of their land from the territories of their RWDs in certain instances. The Bill leaves in place a requirement that 75 percent of the total owners of lands requested to be released file a petition stating that their lands cannot be economically or adequately served by the facilities of the District. The Bill, however, makes some important changes to the RWD territory release laws.

Observations On The Bill

Cities must be wary of the notice requirements for annexations of land located within the territory of rural water districts. Most annexations are consensual, with the landowner requesting the city annex the land. This can occur under a streamlined process with no notice or service extension plan required. House Bill 2283 changes this if any part of the annexation is of land in an RWD, requiring notice before the annexation and after the annexation if water service responsibility is to change. This new requirement will not be readily apparent, at least for several months as it will not appear in any commonly used index and depending on where this part of the bill is placed by the Reviser of Statutes, it may be difficult to locate for years to come. These notice requirements may be a real trap for cities and city attorneys, with the possibility that an annexation that fails to comply with this requirement may be void.

Rural water districts located near cities absolutely must know the location of their boundaries. Each such district should have a file available at the office that contains copies of the petition, notice and order originally establishing the district; and each attachment and release of district territory thereafter. If these documents are not available, they need to be researched from the district's files or the county clerk's office. The district should maintain a map that clearly depicts these boundaries, prepared or checked by the district's engineers for accuracy. Without this information on file, how is the district to answer the question that may come from the neighboring city clerk after July 1, 2010 asking if a proposed annexation includes RWD land? Finally, districts should not be serving land located outside



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the territory of the district. This practice continues to be fairly widespread, but doing

so creates the potential for a number of problems that are only magnified by House Bill 2283.

The provisions in House Bill 2283 that allow for the city to designate the water supplier for annexed land and compensate the district will not override the protections afforded to USDA borrowers under Title 7, Section 1926(b). These districts will still have the right to continue to provide service, or to serve land where water service has "been made available" just as under existing federal law.

In those cases where RWD land has been annexed, the city has designated a different water supplier and the parties have been unable to reach agreement on compensation to the district, House Bill 2283 directs the appraisers to consider a number of factors that might not have been considered under previous law. Note that application of these factors to a given case may make it necessary to involve not only district staff but accountants, financial analysts and

engineers to fully evaluate those factors. As a result, these cases could be very involved and potentially expensive – which is all the more reason to come to reasonable settlements of these matters before they become full-fledged disputes that must be resolved by a panel of appraisers or the courts.

Finally, it is doubtful that the provisions concerning release of RWD territory where the RWD board has denied the release based on a finding that the release would not yield adequate compensation for the district will be used with much frequency. It seems more likely that in such cases the RWD board will weigh the various factors for release and conclude that the district is a preferable supplier to the land. Such decision will be subject to review by a court on appeal, but would not invoke the appointment of a three-member panel of appraisers to value that territory to be released.

Conclusion

House Bill 2283 is the most significant change to city/RWD relationships concerning water service territory since rural water districts were first authorized in 1957. Neighboring cities and rural water districts should pay careful attention to this bill and how it may affect their future plans and make preparations necessary to comply with its requirements. This bill contains a number of clarifications on previous law, but also adds a level of complication that makes it more important than ever that cities and rural water districts communicate with each other and seek to work through issues that may arise.

How cities and RWDs should proceed ...

When water suppliers anticipate a change in water service territory, they should use the following action checklist:

A. BEFORE THE ANNEXATION

1. Regular meetings of City staff and Rural Water District staff should be held, no less than annually.
2. As soon as the City or RWD learns of potential expansion, the City or District should immediately contact the other and advise of the possible annexation or expansion of service area.
3. DO NOT make commitments to landowners or developers concerning future water service until after completion of the steps contained in the section.
4. The annexing city staff and RWD staff should meet together with planning agency staff to review the proposed annexation, current and future land use and resulting water service needs, and capability of both systems to provide service to the area. Landowners and developers should be included in these meetings when appropriate.
5. The parties should jointly develop a water service plan for the proposed annexed area if possible. Any agreement by which the RWD is to continue water service to any portion of the annexed area should be in writing, and submitted to the governing bodies for approval.
6. If the water service provider to all or any portion of the annexed area is to change, the parties should negotiate a written agreement for compensation as appropriate. Such agreement should be submitted to the governing bodies for approval.

B. AFTER THE ANNEXATION

1. If agreement has not been reached for water service and/or compensation to the RWD whose territory is affected by the annexation, the parties should submit to mediation. Mediation services may be available through the Kansas Water Office (Phone: 785-296-3185 – Contact: Kim Christensen, General Counsel).
2. The city and the RWD should cooperate and communicate with any affected property owners, developers and water service customers regarding any changes in or transfer of water service.

– from Guidelines for the Transfer of Water Service Territory Between Cities and Rural Water Districts, by stakeholder organizations, March 2010