

# Legally ( Relevant



by Gary Hanson, JD  
Stumbo Hanson, LLP, Topeka, Kan.

## New Legislation Affects Kansas Water Districts

**T**he 2017 legislative session was one of the most active in recent years, with three new bills that directly affect water systems. KRWA supported these bills that have been signed into law, all to be effective July 1, 2017.

**HB 2066** adds public wholesale water supply districts (PWWSDs) to rural water districts as systems entitled to be reimbursed for line relocation costs incurred because of state highway funded projects. In order to qualify, the RWD/PWWSD must have 90 percent or more of its remaining waterlines, excluding waterlines that cross a highway, in private right-of-way. With very few exceptions, most every RWD and PWWSD will satisfy this requirement, and thus be eligible for relocation cost reimbursement.



**HB 2080** concerns water districts in two areas:

**Vehicle Tags.** Section 1 of HB 2080 adds “water districts” to the list of local governments entitled to special motor vehicle registration. The new license plates issued for such vehicles will contain the phrase “water district”. These plates will be similar in appearance to those currently issued that indicate the plate has been issued to a “county”, “city” and “school district”. In addition, the plates will have a decal that indicates that the vehicle is being used by a “utility”. The plates are good for five years, but the fees are to be charged as though payable annually. This bill effectively places water district vehicles on the same footing that city and county utilities currently enjoy.

These license plates will only be available for use on water district owned vehicles. Privately owned vehicles used for water district business will not be eligible.

Note that the bill refers to these eligible entities as “water districts”. This description describes not just “rural water districts” but public wholesale water

supply districts, rural water supply districts and other specific types of water districts, including Water District No. 1 of Johnson County (WaterOne).

There is reason to hope that this process by which water districts are tagged the same way as city and county vehicles will provide better uniformity for the treatment of these vehicles for registration and taxation purposes. An informal survey done in 2015 indicated considerable inconsistency in these practices from one county to the next. This bill provides the guidance needed to achieve this uniformity.

**Reinstatement of Forfeited Benefit Units:** HB 2080 also provides for a new option available to owners of property to reinstate a benefit unit that was forfeited for nonpayment. The bill provides that a rural water district “shall reinstate any benefit unit forfeited for nonpayment of fees and charges upon payment of:



(1) all fees and charges due to the district in addition to any fees and charges that would have accrued since the date of forfeiture; and (2) a benefit unit reinstatement fee which shall not exceed 20 percent of the district’s current new benefit unit fee”.

Most rural water district bylaws provide that a benefit unit “shall be” or “may be” forfeited if fees and charges are more than six months past due. This bylaw was designed to provide stability to new, financially fragile districts as a way to insure their viability and to repay their USDA debt. It was never designed to be a trap whereby for a few hundred

**Despite the provisions for benefit unit forfeiture after six months of nonpayment found in nearly all Kansas RWD bylaws, actual practices varied widely.**

dollars in past due service fees and charges a landowner could be forced to buy a new benefit unit costing several thousand dollars.

By the terms of HB 2080, the water district will be entitled to recover everything it would have

received had the benefit unit never been forfeited: all amounts due at the time of forfeiture, plus all amounts that would have been due had the unit not been forfeited (usually the monthly service fee), plus a reinstatement fee set by the district in an amount not to exceed 20 percent of the new benefit unit fee.

Despite the provisions for benefit unit forfeiture after six months of nonpayment found in nearly all Kansas RWD bylaws, actual practices varied widely. Some applied the rule very strictly, which in cases of foreclosure, extended illness or death could produce very harsh consequences. Other districts offered reinstatement opportunities very similar to what HB 2080 provides. Still others decided reinstatement requests on a case-by-case basis. HB 2080 provides a formula that caps the amount that can be charged in these benefit unit forfeiture cases.

Note that as a result of this bill, rural water districts will need to have a way to track forfeited benefit units beyond the dates of forfeiture, to include the amount that was owed on the date of forfeiture, and the monthly fees that would have accrued on that unit after the forfeiture. This should involve a simple modification to the district’s billing program in most cases, although this record can be maintained manually. The district board needs to establish the amount of the benefit unit reinstatement fee, not to exceed 20 percent of the new benefit unit fee. Finally, the district may seek approval by participating members of an amendment to bylaws to add the reinstatement conditions required by this bill. Such bylaw amendment would provide clarity to the process and help prevent confusion. However, whether the bylaws are amended or not, because bylaws are subordinate to state law, these benefit unit reinstatement provisions will be in effect for all

## Residential Use of Water Not Subject to State and Local Sales Tax

Sales of water delivered through pipes are exempt from state and local sales tax under certain circumstances. These exempt sales include water sold to: 1) residential premises for use by the occupant; 2) for agricultural use; 3) for use in severing oil; and, 4) for use by certain non-profit homes for children, for the elderly, and for mentally handicapped persons. Also, certain types of users, such as churches and federal, state, and local governments are almost always exempt from payment of all sales taxes, including sales of water.

As for water sold to residential property for use by the occupant, this exemption from sales tax applies to the typical single family resident. The customer does not need to do anything to qualify for the exemption – the water utility simply recognizes the exemption and does not collect the tax.

But the exemption from tax for “water sold to residential property for use by the occupant” goes far beyond the typical single family residence. Duplexes, triplexes and apartment buildings all qualify for the exemption. In addition, other facilities, such as nursing homes, adult care facilities and group homes, may qualify for at least a partial exemption.

For these kinds of multi-family or mixed use customers, the water utility should have the customer prepare Kansas Department of Revenue Form ST-28B, available online from the Revenue Department at <http://KSRevenue.org/pdf/st28b.pdf#search-ST-28B>. This form is fairly self-explanatory, requiring that it be completed, that a worksheet be included showing the exempt use, non-exempt use, and resulting exempt percentage of use,

and then filed with the water utility. Until the completed Form ST-28B is received, the utility should charge sales tax, keeping track of the tax that has been paid. Upon receipt of the completed form and worksheet, the water utility should forward the form to the Revenue Department for review. The Revenue Department will accept the form as filed, or adjust the exception and notify the utility accordingly. In the meantime, the utility can adjust the tax being charged by the percentage claimed as exempt (100 percent or less).

Most multifamily properties will qualify for a 100 percent exemption from the sales tax. According to the Revenue Department’s letter ruling P-2009-004, as well as instructions to Form ST-28B, when part of the water served from a single meter is used for residential purposes and part of it is used for commercial purposes, only the percentage used for residential purposes is exempt. Examples of commercial use in a multi-family residential structure would include a coin operated laundry, clubhouse, business office and swimming pool. In facilities such as nursing homes and adult care facilities, these commercial uses would include nurses’ stations, dining rooms, commercial kitchens, day rooms and waiting rooms. Usage in these areas would be shown by the customer on the worksheet as

nonexempt and the percentage of exempt use adjusted accordingly.

With combined sales taxes exceeding 10 percent in some places in Kansas, these exemptions from sales tax for multi-family and mixed use properties may be very valuable to water systems’ customers.

**Duplexes, triplexes and apartment buildings all qualify for the exemption. In addition, other facilities, such as nursing homes, adult care facilities and group homes, may qualify for at least a partial exemption.**

rural water districts beginning July 1, 2017, whether or not bylaws are amended.

When approached for reinstatement of a forfeited benefit unit, a district should require documentation that the applicant has an ownership interest in the land to which the forfeited benefit unit was attached. The district will need to calculate the cost of reinstatement, consisting of the amount due at the time of forfeiture (balance due for water purchased, monthly minimum fees, late payment fees, disconnect fees, etc.), plus the amounts that would have been due since that date had the unit not been forfeited (usually just monthly minimum fees), plus the amount approved by the board as the benefit unit reinstatement fee.

In most cases these reinstatement costs will be less than the cost of a new benefit unit. However, if the unit is forfeited for a substantial amount of time, these costs could exceed the cost of a new unit, in which case the owner would be better off simply applying for a new benefit unit and paying the new benefit unit fee.

### Conclusion

Two bills signed into law in the 2017 legislative session contain some important changes for Kansas water districts. The bills may be viewed in their entirety on the KRWA Website at [www.krwa.net](http://www.krwa.net) under the tab “Online Resources”, then “Legislative News” or [www.krwa.net/ONLINE-RESOURCES/Legislative-News](http://www.krwa.net/ONLINE-RESOURCES/Legislative-News).