

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 656

By: Easley of the Senate

and

Rice of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to cities and towns and rural water, sewer, gas and solid waste management districts; amending 11 O.S. 1991, Section 37-119, as amended by Section 1, Chapter 339, O.S.L. 1994 (11 O.S. Supp. 2000, Section 37-119), which relates to contracts for water sales; stating requirements for water sale contracts; providing basis for certain water rates; prohibiting inclusion of expenses for public services in water contracts; prohibiting subsidy of certain public services; requiring municipality to use certain accounting method; requiring separate account; requiring accounting be subject to the Oklahoma Open Records Act and available to the public; removing requirement for certain modifications to be allocated in certain manner; prohibiting termination of certain water contracts without prior notice; stating requirements for notice; stating requirements for water rationing; stating contractual prohibitions effective on certain date; authorizing parties to initiate proceedings in certain district court upon dispute; authorizing municipalities or beneficial trusts to request buyout of certain rural water district territory upon certain date; stating requirement for request; requiring district response in writing within certain time period; providing for negotiation of terms; requiring compliance with certain provisions; stating procedures for buyout; providing for application to Oklahoma Water Resources Board if buyout is not accomplished within certain time period; stating requirements for application and service; providing for certain hearing; requiring Board to make final determination within certain time period; stating procedure for filing action in district court; requiring each party to bear its own attorney fees and costs; authorizing certain transactions by mutual agreement; providing existing contracts not be impaired; stating provisions superior to and binding over certain statute; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 1991, Section 37-119, as amended by Section 1, 339, O.S.L. 1994 (11 O.S. Supp. 2000, Section 37-119), is amended to read as follows:

Section 37-119. A. All contracts for the sale ~~or furnishing~~ of water ~~from a source obtained by or on behalf of a municipality by permit or prior right under state law or by general obligation bonds~~ between a municipality or its public trust and a rural water district organized pursuant to Section 1324.2 of Title 82 of the Oklahoma Statutes or a corporation as defined in Section 1324.2 and Section 1324.30 of Title 82 of the Oklahoma Statutes shall be made ~~in the name of the municipality as provided for by statute or by charter~~ pursuant to written contracts in compliance with the provisions of this act.

B. ~~All such water sold and furnished to persons or public or private entities outside the corporate limits of the municipality shall be sold and furnished upon written contracts which~~ Water rates for such contracts shall be based on the actual direct cost of the municipality or its public trust for water supply, treatment and delivery of water to such wholesale water purchaser plus a reasonable margin for profit. The municipality or its public trust shall not include expenses for its public services or other proprietary endeavors in its wholesale water costs. The municipality or its public trust shall not subsidize its public services or other proprietary endeavors by its wholesale water rates, except by use of its margin of profit. The municipality or its public trust shall use an accounting method which clearly delineates the actual direct cost for water supply, treatment and delivery of water to such wholesale water purchasers. The account shall be kept separately from the accounts for all other public services and proprietary functions. Such accounting shall be subject to the Oklahoma Open Records Act, and shall be made

available to any person requesting such accounting. The contracts shall provide for an annual review of the municipality's or its public trust's costs and shall provide for contract modification of the rates to permit the rates to be increased or decreased to the purchasers as appropriate. Any modification shall be nondiscriminatorily allocated between the municipality's customers and the purchaser. Provided, however, that only those costs that are attributable to maintaining the ability of the municipality to provide water service to the purchaser shall be included in purchaser's rates. No water contract may be terminated without adequate prior notice for the rural water district or non-profit water corporation to find or develop an alternative source of water supply. Such notice shall not be less than eighteen (18) months. All such contracts for the sale or furnishing of water from a source obtained by or on behalf of a municipality by permit or prior right under state law or by general obligation bonds shall be made in the name of the municipality as provided for by statute or charter.

C. The contracts shall provide that the persons or public or private entities outside the corporate limits of the municipality shall be subject to a rationing program consistent with any rationing program ordered by the municipality for persons located inside the municipality.

D. The following contractual provisions, although permissible in a separate contract, shall be prohibited from being included in such wholesale water contract entered into on or after the effective date of this act:

1. Buyout or takeover provisions of the wholesale purchaser's facilities, customers or service areas;
2. Wavier of statutory rights, privileges or protections;
3. Requirements that the wholesale purchaser collect fees for services not rendered by the wholesale purchaser;

4. Requirement that the wholesale purchaser build its facilities to codes or specifications beyond those required by the Department of Environmental Quality, or state or federal law, provided, that at the connection between the municipal system and the purchaser's system, the point of connection shall include a valve, a meter and a backwater device or backflow preventer in order to segregate the systems and to allow different standards to be maintained under applicable federal or state law; or

5. Contract terms and provisions which are not directly related to the purchase of wholesale water.

E. In the event that a municipality or its public trust and a rural water district or non-profit water corporation has a dispute on a water contract or rate issue, either party may initiate proceedings in the district court of the county wherein the dispute arose.

F. All other contracts for the sale or furnishing of water to persons or public or private entities outside the corporate limits of the municipality from a source obtained by or on behalf of a municipality by permit or prior right under state law or by general obligation bonds shall be made in the name of the municipality as provided for by statute or by charter. All such contracts shall be in writing and shall provide that the persons or public or private entities outside the corporate limits of the municipality shall be subject to a rationing program consistent with any rationing program ordered by the municipality for persons located inside the municipality.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1324.27 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. At any time after the effective date of this section, any municipality or its beneficial trust may submit to any district or non-profit water corporation a request for a buyout of the

district's territory or a portion thereof. Such request shall be in writing; reference this section; specifically describe the portion of the district's territory to be included in such buyout; contain an estimate of the amount to be paid under subsection B of this section; and be delivered to the chair or chief executive officer of the district. Within sixty (60) days of receipt of such request, the district shall respond in writing stating whether it will proceed with the specified buyout. If the district states in its response that it will proceed with the buyout, the district and the municipality may negotiate the terms of the buyout. Otherwise, the parties shall comply with the procedures outlined in subsection B of this section.

B. The procedure for a buyout initiated pursuant to this section shall be as follows:

1. Every reasonable effort shall be made by both parties to reach an agreement on the amount of payment for the buyout provided for by this section. If a sale cannot be accomplished within six (6) months from the date set in subsection A of this section for the district's response, either party may apply to the Oklahoma Water Resources Board to determine the amount to be paid pursuant to the factors set out herein. The application shall contain the applicant's calculated amount for each such factor and the basis for the calculation.

The application shall be served on the opposite party by delivery to the municipal clerk or trust secretary or to the chair or chief executive officer of the district, whichever is applicable, no later than three (3) days after the date of filing the application with the Board. Within thirty (30) days after receipt of the application, the other party shall deliver to the Board and to the applicant its response, which shall contain its calculated amount for each factor and the basis for the calculation.

Within sixty (60) days after filing the application, the Board shall provide for a hearing to allow the parties to present oral arguments on the issues.

The Board shall make a final determination within thirty (30) days of the date of the hearing. Following the determination, the municipality or its beneficial trust shall pay the district the determined amount unless it files an action as provided in paragraph 2 of this section;

2. No later than thirty (30) days after the final determination of the Board, either party may file an original action in the district court for the county in which the territory proposed for the buyout is located; and

3. In all proceedings provided by this section, each party shall bear its own attorney fees and costs.

D. Nothing in this section shall prevent any municipality or its beneficial trust and a district from buying, selling, or exchanging water distribution facilities, service rights and other rights, property and assets by mutual agreement. Municipalities and their beneficial trusts and districts are hereby authorized to enter into any mutual agreements or other arrangements to share or divide water service territories, water service rights, water customers or other arrangements for the delivery of water service to water users.

E. Nothing in this section shall impair the obligation of existing contracts.

F. This section is expressly rendered superior to and binding over the provisions of Section 1085.36 of Title 82 of the Oklahoma Statutes.

SECTION 3. AMENDATORY 82 O.S. 1991, Section 1324.4, is amended to read as follows:

Section 1324.4 Any two or more owners of lands may file with the county clerk a petition addressed to the board of county commissioners praying for the incorporation of a district under the

provisions of this act. The petition shall give a legal description of the lands owned by the petitioners and other lands which the petitioners propose to be incorporated into the proposed district and shall state:

1. That the rural residents within such territory are without an adequate water supply, sewage facilities, gas distribution facilities or solid waste management system to meet their needs;

2. That the construction, installation, improvement, maintenance and operation of all or any combination of water works, sewage facilities, gas distribution facilities and solid waste management systems are necessary to provide an adequate water supply, sewage facilities, gas distribution facilities or solid waste management system to serve rural residents of the district;

3. That such improvements or works will be conducive to and will promote the public health, convenience and welfare; ~~and~~

4. That there is sufficient water available for purchase or available for appropriation by the Oklahoma Water Resources Board to serve the needs of the district. Attached to said petition shall be an accurate map or plat of the proposed territory to be embraced within the district showing the location of said territory by reference to sections or portions thereof and the township and range wherein the same are located; and

5. That they have mailed by certified mail, return receipt requested, notice of the petition to each municipality located inside or within five (5) miles of the boundaries of the proposed district and to each board of county commissioners of counties containing territory proposed to be included within the district. The petitioners shall attach to the petition proof of such notice for each such municipality and county.

SECTION 4. AMENDATORY 82 O.S. 1991, Section 1324.6, is amended to read as follows:

Section 1324.6 At the time and place set for the hearing and consideration of the petition, it shall be the duty of the board of county commissioners to determine:

1. Whether proper notice of the hearing has been given as required by Section 1324.5 of this title;

2. Whether the rural residents of the area described in the petition are without an adequate water supply, sewage facilities, gas distribution facilities or solid waste management system to meet their needs;

3. Whether the construction, installation, improvement, maintenance and operation of all or a combination of water works, sewage facilities and solid waste management systems are necessary to provide an adequate water supply, sewage facilities, gas distribution facilities or solid waste management system to serve rural residents of the district;

4. Whether such improvements or works will be conducive to and will tend to promote the public health, convenience and welfare;

5. The area which should be included in the district, provided that no territory situated in another county shall be included in the district unless the board of county commissioners for the county in which the territory is situated finds in open meeting that the territory may be so included; and

6. Whether there is sufficient water available for purchase or available for appropriation by the Oklahoma Water Resources Board. If, upon such consideration, it shall be found that such petition is in conformity with the requirements of this act, and that such a district should be created the board of county commissioners shall thereupon immediately declare the land described in the petition or any part thereof to be incorporated as a district under the name of "Rural Water and/or Sewer and/or Gas and/or Solid Waste Management District No. _____, _____ County, Oklahoma" (inserting number in order of incorporation and name of county) and thereupon

the district shall be a body politic and corporate and an agency and legally constituted authority of the State of Oklahoma for the public purposes set forth in this act. The board of county commissioners shall thereupon enter upon its records full minutes of such hearing, together with its order creating the rural district under said corporate name for the purposes of this act. Such districts shall not be political corporations or subdivisions of the state within the meaning of any constitutional debt limitations, nor shall said districts have any power or authority to levy any taxes whatsoever or make any assessments on property, real or personal.

SECTION 5. AMENDATORY 82 O.S. 1991, Section 1324.13, is amended to read as follows:

Section 1324.13 Lands outside the boundaries of any district which can economically be served by the facilities of the district may be annexed to such district. Any two or more owners of such lands shall file a petition for annexation with the county clerk addressed to the board of county commissioners, which shall give the legal descriptions of the lands owned by the petitioners and other lands which the petitioners propose to be annexed to such district, and shall state:

1. The name of the district to which annexation is desired;
2. That such lands are without an adequate water supply, sewage facilities, gas distribution system or solid waste management system;
3. That annexation to said district will be conducive to and will promote the public health, convenience and welfare of rural residents in the district; ~~and~~
4. That adequate water is available to the district or has been appropriated to the district by the Oklahoma Water Resources Board; and
5. That they have mailed by certified mail, return receipt requested, notice of the petition to each municipality located

inside or within five (5) miles of the boundaries of the proposed district and to each board of county commissioners of counties containing territory proposed to be included within the district. The petitioners shall attach to the petition proof of such notice for each municipality and county.

SECTION 6. AMENDATORY 82 O.S. 1991, Section 1324.15, is amended to read as follows:

Section 1324.15 At the time and place set for the hearing and consideration of the petition, the board of county commissioners shall ascertain whether proper notice has been given and whether the statements contained in the petition are true. If true, and if a majority of the members of the Board of the district to which annexation is desired do not object to such statement, the board of county commissioners shall enter into its minutes such findings and shall set forth in said minutes a description of the new boundaries of such district, provided that no territory situated in another county shall be included in the district unless the board of county commissioners for the county in which the territory is situated finds in open meeting that the territory may be so included.

Thereafter, owners of land located within the annexed territory shall be entitled to subscribe to such benefit units upon such terms and conditions as the board in its discretion may provide. Any owner of land located within any territory annexed to a district who shall subscribe to one or more benefit units and comply with terms and conditions provided by the board, shall be entitled to the same rights as participating members.

SECTION 7. This act shall become effective November 1, 2001.

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