

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 656

By: Easley

AS INTRODUCED

An Act relating to municipalities and rural water 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 wholesale water contracts; stating procedures for certain wholesale water sales between municipalities and rural water districts or other wholesale water purchasers; providing for water rates based on certain criteria; prohibiting municipalities from subsidizing certain public services or proprietary functions; providing for separate accounting; providing for contractual rates to be nondiscriminatory; stating provisions for rationing water; prohibiting certain elements from inclusion in wholesale water contracts; stating procedures for municipal purchases of certain water districts; stating requirements for determining just compensation; stating exception; providing for condemnation or inverse condemnation in district court; authorizing buying, selling, or exchanging facilities by mutual agreement; providing for contractual obligations; providing for codification; and declaring an emergency.

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, Chapter 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 wholesale 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, a non-profit corporation as defined in Section 1324.2 and Section 1324.30 of Title 82 of the Oklahoma Statutes or any other wholesale water purchaser 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 Wholesale water rates shall be based on the actual direct cost of the municipality or its public trust for water supply, treatment and delivery of water to the wholesale water purchaser plus a reasonable margin of profit. The municipality or its public trust shall not include expenses for its public services or other proprietary endeavors in its wholesale water rates. 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 the wholesale water purchaser. The account shall be separately kept 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 freely 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 wholesale rates to permit the rates to be increased or decreased to the purchasers as appropriate. Any The contractual rates and 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 nondiscriminatory.~~

C. The contracts shall provide that the ~~persons or public or private entities~~ wholesale purchaser's retail customers located outside the corporate limits of the municipality shall be subject to a rationing program consistent with any rationing program ordered by the municipality or its public trust for its retail water customers located inside the municipality.

D. The following contractual provisions shall be prohibited from being included in any 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. Waiver 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 unless such facility codes or specifications are necessary to maintain the integrity of the sellers' system; or
5. Contract terms and provisions which are not directly related to the purchase of wholesale water.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1325.27 of Title 82, unless there is created a duplication in numbering, reads as follows:

A. If a municipality annexes territory certified to a district, as defined in Section 1324.2 of Title 82 of the Oklahoma Statutes then:

1. The municipality may notify the district in writing that the municipality desires to purchase the district's facilities used in furnishing its services in the territory; or

2. A district may demonstrate within six (6) months after the annexation by the municipality, as to a particular and contiguous

area encompassing no less than ten water customers, that the municipality serves more than seventy percent (70%) of customers that were served by the district on the date of annexation by the municipality. These conditions having been met the municipality shall obtain title to the water distribution facilities of the district located within the annexed territory or the particular and contiguous area upon the payment of just compensation to the district.

B. The amount of just compensation to be paid by the municipality to the district pursuant to subsection A of this section may be determined by mutual agreement of the parties based on the following factors:

1. The present-day reproduction cost of the water distribution facilities being acquired, less depreciation computed on a straight-line basis over thirty-five (35) years with such depreciation being limited to twenty-five percent (25%) of such cost;

2. An amount equal to the cost of constructing, by the most economical route, using the same size lines as those operated by the district within the annexed territory or particular and contiguous area, any necessary facilities to reintegrate the system of the district located outside the municipality or the area annexed after detaching the facilities encompassed in the annexed territory or particular and contiguous area;

3. An annual amount, payable each year for a period of ten (10) years following the date of purchase, equal to twenty-five percent (25%) of the net revenues received by the municipality from the sale to customers that were previously served by the district from the facilities being purchased by the municipality; and

4. An annual amount, payable each year for a period of ten (10) years following the date of purchase, equal to twenty-five percent (25%) of the net revenues received by the municipality from the sale of water to additional customers that come into existence in the

annexed territory or particular and contiguous area that could have been served by the facilities of the district in said location as said facilities existed on the date of purchase.

B. The amounts provided for in paragraphs 3 and 4 of subsection A shall not include sales to customers for service to areas that were used only for agricultural purposes and had no service connection to the district's facilities on the date of purchase of such facilities. In lieu of payments provided for by paragraphs 3 and 4 of subsection A, the municipality may pay in a lump sum an amount equal to the present value of the anticipated payments.

C. Every reasonable effort shall be made by both parties to reach an agreement under subsection A of this section. If the parties are unable to mutually agree upon the amount of just compensation within a reasonable time, either party may bring an action for condemnation or inverse condemnation in the district court for the county in which the property is located to determine the amount to be paid pursuant to the factors stated in subsection A of this section.

D. Nothing in this section shall prevent a municipality and district from buying, selling, or exchanging water distribution facilities, service rights, and other rights, property, and assets by mutual agreement.

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

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.