

MINUTES

SPECIAL COMMITTEE ON EMINENT DOMAIN IN CONDEMNATION OF WATER RIGHTS

December 30, 2008
Room 545-N—Statehouse

Members Present

Representative Dan Johnson, Vice-Chairperson
Senator Marci Francisco
Senator Roger Pine
Representative Rocky Fund
Representative Forrest Knox
Representative Tom Moxley
Representative Jerry Williams

Members Absent

Senator Carolyn McGinn, Chairperson
Representative Tom Holland

Staff

Raney Gilliland, Kansas Legislative Research Department
Athena Andaya, Kansas Legislative Research Department
Corey Carnahan, Kansas Legislative Research Department
Mike Heim, Office of the Revisor of Statutes
Kristen Kellems, Office of the Revisor of Statutes
Jason Thompson, Office of the Revisor of Statutes
Ann McMorris, Committee Secretary

Conferees

Michael Shultz, City of Overland Park

Others in Attendance

See attached list.

Morning Session

Vice-Chairperson Johnson opened the meeting on behalf of Chairperson McGinn because she was ill. The Vice-Chairperson noted the Committee's statutory charge is to study the use of eminent domain as it relates to water rights and other issues concerning water rights. The Vice-Chairperson stated the Legislative Coordinating Council also referred a topic dealing with recent legislative proposals related to local government annexation and to study 2008 HB 2747 which deals with unilateral annexation requiring voter approval. He reminded the Committee that this is a two year study on eminent domain as it relates to water rights and it is a very important issue in which the Legislature cannot afford to make any mistakes.

However, Ranking Minority Member Senator Francisco stated that refinements in the statutes should be made if the study of the issues shows changes are needed.

Vice-Chairperson Johnson called on Athena Andaya, Kansas Legislative Research Department, to summarize the use of eminent domain as it relates to water rights and other issues concerning water rights in various annexation statutes (Attachment 1).

Vice-Chairperson Johnson asked for suggestions and recommendations from the Committee on condemnation of water rights statutes. There was discussion on the overlap of rural and urban services and how this could be considered economic development. However staff from the Office of the Revisor of Statutes indicated that most condemnation of economic development is not specifically about gaining water rights. There also was discussion on whether to allow public wholesale supply district (PWSD) to have eminent domain powers but on a more limited basis. Finally, there was discussion on the room for improvement in the law regarding water rights because of ambiguities.

The Vice-Chairperson summarized that the recommendations should direct staff of the Office of the Revisor of Statutes to draft changes in the language to the law to make it more understandable and less confusing. The Revisors' staff agreed a bill could be drafted for study during the 2009 Session, but it would not necessarily be the final product.

The Committee decided to focus the discussion of ambiguities in the law by referring to the information provided by John C. Peck, Professor of Law, University of Kansas School of Law, at the November 18, 2008 meeting of the Committee. Professor Peck provided an outline on the background on Kansas water law, water districts, and condemnation in water and water rights. On pages 11-13 of the outline, Professor Peck provided suggestions on potential issues and ambiguities in the statutes. The Committee took the following actions in reference to Professor Peck's suggestions:

Moved by Senator Francisco, seconded by Representative Knox, the Committee recommends that KSA 82a-701(g) of the Kansas Water Appropriation Act be modified to eliminate the word "voluntary." Motion carried.

Moved by Senator Francisco, seconded by Representative Knox, add the word "new" to KSA 82a-705 to clarify the intent of the statute is with obtaining a new water right from the Chief Engineer, but not with obtaining water rights by transfer between the holder and a purchaser, donee, mortgagee, lessee, or devisee. Motion carried.

Moved by Representative Moxley, seconded by Senator Francisco, to draft a bill clarifying existing Kansas Water Appropriation laws about preferences to make clear the preference list is

to be used when water rights have the same priority date or where there is more than one use that has been identified within the same water right. Motion carried.

Moved by Senator Francisco, seconded by Senator Pine, a recommendation to add the words "not including water rights" to those statutes that refer to "land" or "interest in land." Motion carried.

Moved by Representative Knox, seconded by Senator Francisco, to direct the Revisor's staff to draft the first three above actions in one bill and the fourth action in a separate bill. Motion carried.

Afternoon Session

The Vice-Chairperson noted the topic for this portion of the meeting will be solely on annexation.

Mike Shultz, City of Overland Park, presented information about Overland Park's annexation of 8.35 square miles in southern Johnson County. Various maps demonstrated the boundaries of the annexed areas, the developed land and land platted or zoned for development, and the current status of the sanitary sewers (Attachment 2).

Doug Mays provided the Committee with copies of a memorandum from the Topeka Planning Department on Annexation and provided an explanation about the Service Extension Plan (Attachment 3).

A memorandum on answers to questions on the annexation laws raised by the Committee at the last meeting was provided by Kristen Kellems and Jason Thompson, Office of the Revisor of Statutes (Attachment 4).

Mike Heim, Office of the Revisor of Statutes, provided copies of the current annexation laws and discussed the three bills on annexation considered during the 2008 Session (Attachment 5).

Actions taken by the Committee on annexation followed the list in the document drafted by the Legislative Research Department on Committee requests and future topics (Attachment 6).

Moved by Senator Pine, seconded by Representative Knox, recommended the Committee review Kansas annexation laws to study the public safeguards and the needs of municipalities during the year 2009. Motion carried.

Moved by Representative Moxley, seconded by Senator Pine, require cities to file a service plan with the Board of County Commissioners before annexation and prior to public hearings being held. Motion carried.

Moved by Representative Knox, seconded by Senator Pine, the period of time before a review is made be shortened from five years to three, and annexation from two and a half years to one and one half years. Motion carried.

Moved by Representative Knox, seconded by Representative Moxley, to modify KSA 12-521 by adding the following language from KSA 12-520, "No portion of any unplatted tract of land

devoted to agricultural use of 21 acres or more shall be annexed by any city under the authority of this section without the written consent of the owner thereof.” Motion carried.

Moved by Representative Knox, seconded by Senator Pine, to modify the law to add language to KSA 12-521 that authorizes landowners and residents living in the area proposed to be annexed to have an opportunity to vote and must approve the annexation by a majority vote. Motion carried. Representative Moxley and Senator Francisco abstained.

Approval of Minutes

Vice-Chairperson Johnson announced the minutes for the November 18 and 19, 2008 meetings of the Special Committee on Eminent Domain in Condemnation of Water Rights would be considered approved after January 5, 2009. All Committee members were provided copies of the minutes and should contact the Research Department before January 5, 2009 if they wish to report any changes to the minutes.

The meeting adjourned at 4:00 p.m.

Prepared by Ann McMorris
Edited by Athena Andaya

Approved by Committee on:

January 27, 2009

(Date)