

**12-541. Same; city designates different supplier; purchase of district property; appraisers; factors; appeal; detachment of territory from district.** (a) Following annexation, the rural water district shall remain the water service provider to the annexed area unless the city gives written notice designating a different supplier. If the city designates a different supplier, the city shall purchase the property, facilities, improvements and going concern value of the facilities of the district located within the territory annexed by the city. If an agreement for the purchase of such property, facilities, improvements and going concern value of the facilities of the district annexed by the city is not executed within 90 days after delivery of the notice designating a different supplier, the city and the rural water district in good faith shall engage in mediation. Unless an agreement is executed, no change in water service provider shall occur and no appraisers shall be appointed until more than 120 days after delivery of the notice of intent to change the water supplier and the mediation has been terminated.

(b) If the district and the city are unable to reach agreement on the reasonable value for such property, facilities, improvements and going concern value of the facilities of the district, then the reasonable value shall be determined in the following manner:

(1) The district and the city shall each select one qualified appraiser and the two appraisers so selected shall then select a third appraiser for the purpose of conducting an appraisal to determine reasonable value of the property, facilities, improvements and going concern value of the facilities of the district annexed by the city. The appraisers shall consider all elements of value, employing any method of valuation the appraisers deem appropriate and shall specifically consider the following factors in determining reasonable value:

(A) Whether any property of the district is rendered useless or valueless to the district;

(B) the amount of damage to property remaining in the ownership of the district following annexation;

(C) impact on the existing indebtedness of the district and such district's ability to repay that debt;

(D) the value of the service facilities of the district located within the area in question;

(E) the amount of any expenditures for planning, design or construction of service facilities outside the incorporated or annexed area that are allocable to service to the area in question;

(F) the amount of the district's contractual obligations allocable to the area in question;

(G) if the area transferred consists of land for which no water service is being provided by the system at the time of the annexation, the value of such land based on the planning, design and construction of improvements located outside the annexed area reasonably made to provide future water service to the annexed area;

(H) any demonstrated impairment of service or increase of cost to consumers of the district remaining after the annexation and the impact on future revenues lost from existing customers;

(I) any necessary and reasonable legal expenses and professional fees;

(J) any factors relevant to maintaining the current financial integrity of the district;

(K) the average increase in the number of benefit units in the area annexed for the three years immediately preceding such annexation; and

(L) any other relevant factors as agreed to by the three appointed appraisers.

(2) The appraisers shall hear such evidence as the appraisers deem appropriate and shall make a written summary of findings and conclusions. The agreement or decision of at least two of the three appraisers shall be the fair market value presented to the city for payment and the district for acceptance.

(3) If either the district or the city is dissatisfied with the decision of the appraisers, then the district or the city may appeal within 30 days such award to the district court. Such appeal shall be heard de novo by the court without a jury.

(c) The compensation required by this section shall be paid to the district whether or not the city actually utilizes the facilities of the district for the delivery of water to property within the city and shall be paid at a time not later than 120 days following the date upon which the fair market value of the facilities are certified to the city and to the district, or at such later date as may be mutually agreed upon by the city and the district or as may be determined by the district court.

(d) In any event, the district may elect to retain facilities located within the city used for transmission of water, provided that the district use those facilities to continue to supply water service to benefit units outside the city. The district shall not receive compensation for facilities it elects to retain.

(e) Except as otherwise provided, nothing in this section shall be construed as limiting the authority of a city to select water service suppliers to areas within the city limits, or to limit the authority of a city to adopt and enforce regulations for the operation of a water service supplier, including, but not limited to, standards of water quality, classification of water customers, capacity of water system, water system connections to sanitary sewer systems, rates and billing practices and other regulations for protection of the public health, safety and welfare.

(f) In the event that a district will no longer be the water supplier to land as a result of annexation and notice pursuant to subsection (a), the district shall continue to provide such service until the city gives notice of its assumption of responsibility for service, designating the date that the service shall transfer to the supplier designated by the city. The district and the city shall cooperate as necessary to minimize the inconvenience to water customers as a result of the transfer. The city shall give written notice to each customer of the district for whom water service is being transferred specifying the name and address of the new supplier, the effective date of the transfer, the reason for the transfer and a schedule of applicable rates. The district shall not discontinue or limit service to customers who were supplied water by the district at the time of annexation during the period of negotiations unless such customer has violated district bylaws or rules and regulations.

(g) Following the transfer of water service from the district to the city, the annexed land, or amount of such land for which water service has been transferred to the city, shall be deleted from the territory of the district and all benefit units attached to land located therein shall be canceled without compensation. Notice of such deletion of territory shall be provided to the county clerk and the chief engineer of the division of water resources of the department of agriculture.

**History:** L. 2010, ch. 15, § 3; July 1.