

Approved April 20, 1983
Date

MINUTES OF THE House SUB COMMITTEE ON Natural Resources

The meeting was called to order by Representative Ron Fox at
Chairperson

3:30 ~~am~~/p.m. on March 22, 1983 in room 519-S of the Capitol.

All members were present except:

Committee staff present:

Ramon Powers, Research Department
Theresa Kiernan, Revisor of Statutes' Office
La Nelle Frey, Secretary to the Committee

Conferees appearing before the committee:

Discussion on SB 62

Vice-chairman Ron Fox reminded Subcommittee members that revisions made to proposed House Substitute for SB 62 during the March 17 and 18 Subcommittee meetings had been incorporated into the draft which he was distributing for discussion. He asked Ramon Powers, Committee staff member from the Research Department, to provide a line-by-line explanation of the House Substitute for SB 62 (see attachment 1).

Mr. Powers explained the substitute bill, noting that the bill shows changes which were made since the previous draft--the final draft would not show any of the changes.

Throughout the meeting, Vice-chairman Fox encouraged input and discussion from Subcommittee members and persons in attendance at the meeting. In addition to Subcommittee members' participation, active participation was received from: Joe Harkins, Kansas Water Office; Leland Rolfs and David Pope, Kansas Board of Agriculture, Division of Water Resources; Chris McKenzie, League of Kansas Municipalities; and, Paul Fleener, Kansas Farm Bureau.

Vice-chairman Fox asked if there were any other suggested revisions to be made at this time. There being none, he asked if the Subcommittee was receptive to the idea of having the revisions suggested at today's meeting incorporated into the proposed House Substitute for further Subcommittee discussion the following day. He thought the Subcommittee needed one more day of discussion before presenting the bill to the Committee on Energy and Natural Resources.

Representative Kent Ott made a motion that Vice-chairman Fox and Committee staff members meet to refine the wording of Subcommittee-suggested revisions and prepare a draft for the Subcommittee for further discussion. Representative Thomas Walker seconded the motion. The motion passed.

There being no further business to come before the Subcommittee, the meeting adjourned at 4:30 p.m.

The next meeting of the Subcommittee will be held March 23, 1983.

Rep. Ron Fox, Vice-chairman

HOUSE Substitute for SENATE BILL NO. 62

1 AN ACT concerning water; relating to the approval of certain
2 water transfers; ~~providing for a procedure for approval of~~
3 ~~such transfers.~~

4 Be it enacted by the Legislature of the State of Kansas:

5 Section 1. As used in this act:

6 (a) "Water transfer" means the diversion and transportation
7 of water in a quantity of ~~1,000~~ acre feet or more per year for
8 beneficial use outside a ten-mile radius from the point of
9 diversion of such water.

10 (b) "Point of diversion means:

11 (1) ~~For a reservoir:~~ The point where the longitudinal axis
12 of the dam crosses the center line of the stream in the case of a
13 reservoir;

14 (2) ~~for~~ the location of the headgate or intake in the case
15 of a direct diversion from a river, stream or other watercourse;
16 ~~The location of the headgate or pump intake;~~

17 (3) ~~for groundwater diversion:~~ the location of the well in
18 the case of groundwater diversion;

19 (4) ~~for multiple points of diversion:~~ the geographical
20 center of ~~these~~ the points of diversion in the case of multiple
21 diversion points.

22 (c) "Chief engineer" means the chief engineer of the
23 division of water resources of the state board of agriculture.

24 (d) "Secretary" means the secretary of the department of
25 health and environment.

26 (e) "Director" means the director of the Kansas water
27 office.

28 (f) "Authority" means the Kansas water authority.

29 (g) "Party" means any person who intervened at the public
30 hearing held pursuant to section 3, and who presented testimony

1 of witnesses under oath, conducted cross examination, presented
2 oral arguments and filed written briefs. "Party" does not mean a
3 person who made a limited appearance for the purpose of
4 presenting a statement for or against the water transfer.

5 (h) "District court" means the district court of Shawnee
6 county.

7 Sec. 2. No person shall make a water transfer in this state
8 unless and until the transfer is approved pursuant to the
9 provisions of this act. No water transfer shall be approved
10 which would reduce the amount of water required to meet the
11 present or reasonably foreseeable future beneficial uses of water
12 by present or ~~ether--potential~~ future users, unless (1) the
13 authority determines that the benefits to the state for approving
14 the transfer outweigh the benefits to the state for not approving
15 the transfer ~~ex--when;~~ (2) the chief engineer recommends to the
16 authority and the authority concurs that an emergency exists
17 which affects the public health, safety or welfare ~~ex--when;~~ or
18 (3) the governor has declared that an emergency exists which
19 affects the public health, safety or welfare. ~~Whenever the~~
20 ~~authority has determined, or the governor has--declared--that~~ an
21 emergency exists, a water transfer may be approved on a temporary
22 basis for a period of time not to exceed one year under rules and
23 regulations adopted by the chief engineer. The emergency
24 approval shall be subject to the terms, conditions and
25 limitations specified by the chief engineer.

26 Sec. 3. (a) Any person desiring to make a water transfer
27 shall file ~~an--application,~~ with the chief engineer, an
28 application in the form required by rules and regulations adopted
29 by the chief engineer. If the application is found to be
30 insufficient to enable the water transfer hearing panel to
31 determine the source, nature and amount of the proposed transfer,
32 it shall be returned for correction or completion or for any
33 other necessary information. This act ~~does~~ shall not be
34 construed as to exempt the applicant from complying with the

1 provisions of the Kansas water appropriation act or the state
2 water plan storage act, whichever is applicable.

3 (b) Within 60 days of receipt of a sufficient application
4 for a water transfer pursuant to this act, the chief engineer
5 shall ~~call--and--held~~ convene and conduct a hearing thereon. At
6 such hearing, the water transfer hearing panel shall consider the
7 application and shall make a recommendation to the authority
8 whether to approve the proposed water transfer. ~~The panel shall~~
9 ~~make its recommendation based on written findings of fact.~~

10 If it is determined to be in the best interest of the state,
11 the chief engineer may ~~call-and-held~~ convene and conduct such a
12 hearing ~~upon~~ within 60 days of receipt of (1) of an application
13 to appropriate water pursuant to the Kansas water appropriation
14 act or (2) of a proposal to contract for the sale of water from
15 the state's conservation storage water supply capacity even
16 though such diversion and transportation of water is not a water
17 transfer as defined by section 1.

18 (c) The water transfer hearing panel shall consist of the
19 chief engineer, the director and the secretary or the director of
20 the division of environment of the department of health and
21 environment if designated by the secretary. The chief engineer
22 shall serve as the chairperson of the panel. A recommendation
23 concurred in by any two of the three panel members shall
24 constitute the recommendation of the panel in all matters. The
25 panel shall have all ~~power--and--authority~~ powers necessary to
26 conduct the hearings and make findings and recommendations
27 required by this act. The hearing shall be conducted in a prudent
28 and timely manner.

29 (d) To determine whether the benefits to the state for
30 approving the transfer outweigh the benefits to the state for not
31 approving the transfer, the panel shall consider all matters
32 pertaining to such questions, including specifically:

33 (1) Any current beneficial uses being made of the water
34 proposed to be diverted, including minimum desirable streamflow
35 requirements;

1 (2) any reasonably foreseeable future beneficial uses of
2 the water;

3 (3) the economic, environmental, public health and welfare
4 and other impacts of approving or denying the transfer of the
5 water;

6 (4) alternative sources of water available to the applicant
7 and present or ~~ether-potential~~ future users for ~~future~~ beneficial
8 uses;

9 (5) the proposed plan of design, construction and operation
10 of any works or facilities used in conjunction with carrying the
11 water from the point of diversion. The plan shall be in
12 sufficient detail to enable all interested parties to understand
13 the ~~nature~~ impacts of the proposed water transfer; and

14 (6) conservation ~~practice--implementation~~ practices and
15 plans implemented for the use of water currently available to and
16 being used by the applicant and for the use of the water proposed
17 to be transferred, ~~and~~.

18 (7) conservation plans and practices or the need for such
19 plans and practices of persons protesting or potentially affected
20 by the proposed transfer.

21 (e) Notice of any such hearing shall be published in the
22 Kansas register. Such notice shall be published at least 15 days
23 prior to the date of the hearing.

24 (f) Upon timely application made therefor, any interested
25 person shall be permitted to intervene as a party in any such
26 hearing ~~and,--in--granting--the--privilege--to--intervene,--the--chief~~
27 ~~engineer--may--de--se~~ upon such the terms and conditions as
28 determined by the chief engineer ~~may--deem--equitable--and--just.~~

29 (g) The record of the hearing and findings of fact shall be
30 public records and open for inspection at the office of the chief
31 engineer. The water transfer hearing panel shall assess to the
32 applicant ~~with~~ all ~~ef--the~~ costs of obtaining a court reporter for
33 the hearing and transcribing the transcript of the hearing.
34 Certified transcripts of the hearing shall be provided at the
35 expense of those requesting same. A transcript shall be provided

1 to the chairperson of the authority.

2 Sec. 4. (a) Within 90 days following the conclusion of the
3 hearing, the water transfer hearing panel shall make its
4 recommendation of approval or disapproval of the proposed water
5 transfer, along with any dissenting recommendation, to the
6 authority. The panel's recommendation shall specify the reasons
7 for such recommendation, including findings of fact relating to
8 each of the factors set forth in subsection (d) of section 3.
9 The findings shall be documented by reference to specific
10 portions of the hearing record and to any other sources used in
11 making the recommendation. The panel may recommend approval of
12 an application for a smaller amount of water than requested and
13 may recommend approval of an application upon such terms,
14 conditions and limitations as it deems necessary for the
15 protection of the public interest of the state as a whole. Within
16 90 days of receipt of the panel's recommendation, the authority
17 shall then determine whether to approve the proposed water
18 transfer and shall ~~render~~ send written notice of its decision in
19 writing to all interested parties. If the authority ~~disapproves~~
20 the water transfer, it shall include in its decision the reasons
21 for its disapproval.

22 (b) Upon approval of a proposed water transfer by the
23 authority and if there is no pending appeal of the authority's
24 decision, the proposed transfer shall be submitted by the chief
25 engineer to the legislature for review as provided for in K.S.A.
26 82a-1301 et seq., and amendments thereto. Absent legislative
27 disapproval, the chief engineer shall issue the order approving
28 the transfer ~~involving--the--appropriation--of--water----~~ Absent
29 ~~legislative--disapproval, a water transfer contract involving the~~
30 ~~purchase of water from the state's conservation storage water~~
31 ~~supply--capacity to implement the decision of the authority shall~~
32 ~~be deemed valid and enforceable.~~

33 (c) Any party aggrieved by the final decision of the
34 authority may appeal ~~to--the--district--court--of--Shawnee--county--~~
35 ~~The--attorney--general--of--the--state--of--Kansas--shall--defend--the~~

1 authority's--final--decision-in-any-appeal-proceeding-in-district
2 court the decision in the manner provided by section 5.

3 See--5---(a)--The--provisions--of--this--section--shall---be
4 exclusive--in--determining--appeals--from--all--decisions--of--the
5 authority-under-this-act-after-the-effective-date-of-this-act-and
6 shall-exclusively-govern-the-procedure-to-be-followed--in--taking
7 an-appeal-from-the-authority-from-and-after-such-date.

8 (b)--An--appeal--shall--be-taken-by-filing-with-the-clerk-of
9 the-district-court-of-Shawnee-county-within-30-days-following-the
10 date-of-the-authority's-final-decision-a-written--notice--stating
11 that--the--party--appeals--to--the-district-court-and-alleging-the
12 pertinent-facts-upon-which-the-appeal-is-grounded.---Upon--filing
13 of--the--notice--of--appeal,--the--clerk-of-the-district-court-of
14 Shawnee-county-shall-docket-the-cause--as--a--civil--action,--and
15 shall-forthwith-and-without-praeceipe,--issue-summons-and-cause-the
16 same--to--be--served-upon-all-parties-involved-in-the-proceedings
17 before-the-hearing-panel-and-the-authority,--in--the--manner--now
18 provided-by-law-in-civil-cases.---The-appellant-shall-also,--within
19 10--days--of--the-filing-of-the-notice-of-appeal,--serve-a-written
20 request-upon-the-authority-to-certify-the-complete-record-of--the
21 proceedings--before--the--hearing--panel,--the-panel's-findings-of
22 fact-and-the-authority's--final--decision.---The--authority--shall
23 certify--the--record--and--deliver--same--to--the--Shawnee-county
24 district-court-within-30-days-following-the--appellant's--request
25 therefor.

26 (c)--Jurisdiction--to--hear--and--determine--such-appeals-is
27 hereby-conferred-upon-the-district-court-of-Shawnee-county.---Such
28 an-appeal-shall-not-be-heard-as-a-trial--de--novo--but--shall--be
29 limited--to--the-review-of-the-record-certified-by-the-authority.
30 In-such-appeal,--the-Shawnee-county

31 Sec. 5. (a) From and after the effective date of this act,
32 the provisions of this section shall govern exclusively the
33 manner in which any appeal from the ^{final} decision of the authority is
34 made.

35 (b) All appeals from the authority's final decision shall

1 be filed with the district court of Shawnee county. The attorney
2 general of the state of Kansas shall represent the authority in
3 any appellate procedure.

4 (c) Not later than 30 days after the date of the ^{final} decision
5 of the authority, any party may apply to the district court for
6 review of the decision. The application for review shall state
7 the specific facts upon which the appeal for review is based.
8 Upon application for review, the clerk of the district court
9 shall serve a copy of such application upon the secretary. The
10 secretary shall notify, by prepaid first class mail, all parties
11 that an application for review has been filed. The secretary
12 shall transmit to the clerk a certified transcript of the
13 proceedings before the hearing panel, the panel's findings of
14 fact, the authority's decisions ~~and any~~ ^{of the} authority's findings of
15 fact.

16 (d) The district court shall review the certified ~~record~~
17 transcript and findings for the sole purpose of determining
18 whether:

19 (1) The final decision of the authority ~~is~~ was based upon
20 insufficient evidence, or

21 (2) the final decision of the authority ~~is~~ was arbitrary or
22 capricious, ~~arbitrary~~ or fraudulent.

23 (e) The review proceedings shall have precedence ~~over~~ all
24 other matters in the district court and shall be heard by the
25 court without a jury. Except as provided by this section, the
26 procedure for review shall be the same as in other civil actions.

27 (f) The decision of the district court may be appealed in
28 the same manner as other civil actions. Appellate proceedings
29 shall have precedence in the court of appeals and in the state
30 supreme court. Except as provided by this section, the procedure
31 upon appeal shall be the same as in other civil actions.

32 ~~(d)~~ (g) Any findings of fact ~~within the authority of the~~
33 authority made by the hearing panel ~~or~~ the authority shall be
34 deemed conclusive unless it is made to appear to the court that
35 the findings ~~of fact~~ are not supported by substantial evidence

1 after-consideration-of-the-record-as-a-whole.

2 (e)--The-final-decision-of-the-Shawnee-county-district-court
3 in--such-appeals-shall-be-entered-as-a-judgment-as-in-other-civil
4 cases.--Appeals-may-be-taken--from--the--district--court--to--the
5 Kansas-appellate-court-as-in-civil-cases.

6 Sec. 6. The chief engineer shall adopt all rules and
7 regulations necessary to effectuate and administer the provisions
8 of this act.

9 Sec. 7. This act shall take effect and be in force from and
10 after its publication in the Kansas register.