

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
Vice-Chairperson

3:30 ~~am~~/p.m. on March 23, 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 told Subcommittee members that the final draft of House Substitute for SB 62 being distributed to them today had several suggested changes which he was proposing in an amendment (see attachment 1). He then explained the stages of the SB 62 review process, as currently written, and with his proposed amendment (see attachment 2).

Vice-chairman Fox said the intent of the proposed amendment was to make it clear that: (1) the hearing panel is making the decision regarding an appropriation or transfer; and, (2) the Kansas Water Authority has input into that decision-making in that they can concur or not concur with the panel's decision, and send their reasons to the Legislature when that proposed transfer comes before the Legislature. When a hearing is held on the contract, they can intervene at that time as a conferee.

Theresa Kiernan, Committee staff member from the Revisor of Statutes' Office, provided a line-by-line explanation of the proposed amendment.

Representative Harold Guldner made a motion that House Substitute for SB 62 be amended as proposed by Vice-chairman Fox. Representative Ginger Barr seconded the motion. The motion was unanimously passed.

Vice-chairman Fox distributed a letter that had been sent to Representative Edgar Moore by Terry McKanna, Utilities Director for the City of Olathe, regarding a proposed amendment clarifying the question surrounding existing water transfers (see attachment 3). Vice-chairman Fox asked Leland Rolfs of the Kansas Board of Agriculture, Division of Water Resources, to draft an amendment addressing this proposed amendment. Mr. Rolfs suggested there might be a grandfather clause which would address the proposal.

Representative Thomas Walker made a motion that Mrs. Kiernan research the grandfather clause issue and draft an amendment addressing this request. Representative Barr seconded the motion. The motion was unanimously passed.

Joe Harkins, director of the Kansas Water Office, asked if paragraph (c) on page 5, in the amendment proposed by Vice-chairman Fox and adopted by the Subcommittee, reflected language that was intended to be in the bill.

Representative Judy Runnels made a motion that Committee staff draft an amendment addressing Mr. Harkins' concern about paragraph (c) on page 5 of the adopted amendment. Representative Kathryn Sughrue seconded the motion. The motion was unanimously passed.

Representative Walker made a motion that the Subcommittee submit House Substitute for SB 62 with adopted amendments incorporated into it, to the Committee on Energy and Natural Resources for consideration and action. Representative Barr seconded the motion. The motion was unanimously passed.

There being no further business to come before the Subcommittee, the meeting adjourned at 5:00 p.m.

CONTINUATION SHEET

MINUTES OF THE House SUB COMMITTEE ON Natural Resources,
room 519-S, Statehouse, at 3:30 ~~xx~~/p.m. on March 23, 1983.

The Subcommittee on Natural Resources does not have another meeting scheduled at the present time.

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.

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

4 Section 1. As used in this act:

5 (a) "Water transfer" means the diversion and transportation
6 of water in a quantity of 3,000 acre feet or more per year for
7 beneficial use outside a ten-mile radius from the point of
8 diversion of such water.

9 (b) "Point of diversion" means:

10 (1) The point where the longitudinal axis of the dam
11 crosses the center line of the stream in the case of a reservoir;

12 (2) the location of the headgate or intake in the case of a
13 direct diversion from a river, stream or other watercourse;

14 (3) the location of a well in the case of groundwater
15 diversion;

16 (4) the geographical center of the points of diversion in
17 the case of multiple diversion points.

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

20 (d) "Secretary" means the secretary of the department of
21 health and environment.

22 (e) "Director" means the director of the Kansas water
23 office.

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

25 (g) "Party" means any person who intervened at the public
26 hearing held pursuant to section 3, and who presented testimony
27 of witnesses under oath, conducted cross examination, presented
28 oral arguments and filed written briefs. "Party" does not mean a
29 person who made a limited appearance for the purpose of
30 presenting a statement for or against the water transfer.

1 (h) "District court" means the district court of Shawnee
2 county.

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

21 Sec. 3. (a) Any person desiring to make a water transfer
22 shall file, with the chief engineer, an application in the form
23 required by rules and regulations adopted by the chief engineer.
24 If the application is found to be insufficient to enable the
25 water transfer hearing panel to determine the source, nature and
26 amount of the proposed transfer, it shall be returned for
27 correction or completion or for any other necessary information.
28 This act shall not be construed as to exempt the applicant from
29 complying with the provisions of the Kansas water appropriation
30 act or the state water plan storage act, whichever is applicable.

31 (b) Within 60 days of receipt of a sufficient application
32 for a water transfer pursuant to this act, the chief engineer
33 shall convene and conduct a hearing thereon. At such hearing, the
34 water transfer hearing panel shall consider the application and

1 shall make a recommendation to the authority whether to approve
2 the proposed water transfer.

3 If it is determined to be in the best interest of the state,
4 the chief engineer may convene and conduct such a hearing within
5 60 days of receipt of (1) an application to appropriate water
6 pursuant to the Kansas water appropriation act or (2) a proposed
7 contract for the sale of water from the state's conservation
8 storage water supply capacity even though such diversion and
9 transportation of water is not a water transfer as defined by
10 section 1.

11 (c) The water transfer hearing panel shall consist of the
12 chief engineer, the director and the secretary or the director of
13 the division of environment of the department of health and
14 environment if designated by the secretary. The chief engineer
15 shall serve as the chairperson of the panel. A recommendation
16 concurred in by any two of the three panel members shall
17 constitute the recommendation of the panel in all matters. The
18 panel shall have all powers necessary to conduct the hearings and
19 make findings and recommendations required by this act. The
20 hearing shall be conducted in a prudent and timely manner.

21 (d) To determine whether the benefits to the state for
22 approving the transfer outweigh the benefits to the state for not
23 approving the transfer, the panel shall consider all matters
24 pertaining to such questions, including specifically:

25 (1) Any current beneficial use being made of the water
26 proposed to be diverted, including minimum desirable streamflow
27 requirements;

28 (2) any reasonably foreseeable future beneficial use of the
29 water;

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

33 (4) alternative sources of water available to the applicant
34 and present or future users for any beneficial use;

35 (5) the proposed plan of design, construction and operation

1 of any works or facilities used in conjunction with carrying the
2 water from the point of diversion. The plan shall be in
3 sufficient detail to enable all parties to understand the impacts
4 of the proposed water transfer; and

5 (6) conservation practice implementation plans for the use
6 of water currently available to and being used by the applicant
7 and for the use of the water proposed to be transferred; and

8 (7) conservation plans and practices or the need for such
9 plans and practices of persons protesting or potentially affected
10 by the proposed transfer.

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

14 (f) Any person shall be permitted to appear and testify at
15 any such hearing upon the terms and conditions determined by the
16 chief engineer.

17 (g) The record of the hearing and findings of fact shall be
18 public records and open for inspection at the office of the chief
19 engineer. The water transfer hearing panel shall assess to the
20 applicant all costs of obtaining a court reporter for the hearing
21 and transcribing the transcript of the hearing. Certified
22 transcripts of the hearing shall be provided at the expense of
23 those requesting same. A transcript shall be provided to the
24 chairperson of the authority.

25 Sec. 4. (a) Within 90 days following the conclusion of the
26 hearing, the water transfer hearing panel shall make its
27 recommendation of approval or disapproval of the proposed water
28 transfer, along with any dissenting recommendation, to the
29 authority. The panel's recommendation shall specify the reasons
30 for such recommendation, including findings of fact relating to
31 each of the factors set forth in subsection (d) of section 3.
32 The findings shall be documented by reference to specific
33 portions of the hearing record and to any other sources used in
34 making the recommendation. The panel may recommend approval of
35 an application for a smaller amount of water than requested and

1 may recommend approval of an application upon such terms,
2 conditions and limitations as it deems necessary for the
3 protection of the public interest of the state as a whole. Within
4 90 days of receipt of the panel's recommendation, the authority
5 shall determine whether to adopt the panel's recommendation and
6 shall send written notice of its decision to all parties. If the
7 authority does not adopt the panel's recommendation, it shall
8 include in its decision the reasons therefor.

9 (b) Upon approval of a proposed water transfer by the
10 authority and if there is no pending appeal of the authority's
11 final decision, the proposed transfer shall be submitted by the
12 chief engineer to the legislature for review as provided for in
13 K.S.A. 82a-1301 et seq., and amendments thereto. Absent
14 legislative disapproval, the chief engineer shall issue the order
15 approving the transfer.

16 (c) Any party aggrieved by the final decision of the
17 authority may appeal the decision in the manner provided by
18 section 5.

19 Sec. 5. (a) From and after the effective date of this act,
20 the provisions of this section shall govern exclusively the
21 manner in which any appeal from the final decision of the
22 authority is made.

23 (b) All appeals from the authority's final decision shall
24 be filed with the district court. The attorney general of the
25 state of Kansas shall represent the authority in any appellate
26 procedure.

27 (c) Not later than 30 days after the date of the final
28 decision of the authority, any party may apply to the district
29 court for review of the decision. The application for review
30 shall state the specific facts upon which the appeal for review
31 is based. Upon application for review, the clerk of the district
32 court shall serve a copy of such application upon the chief
33 engineer. The chief engineer shall notify, by prepaid first class
34 mail, all parties that an application for review has been filed.
35 The chief engineer shall transmit to the clerk a certified

1 transcript of the proceedings before the hearing panel, the
2 panel's findings of fact and the authority's final written
3 decision.

4 (d) The district court shall review the certified
5 transcript and findings for the sole purpose of determining
6 whether:

7 (1) The final decision of the authority was based upon
8 sufficient evidence, or

9 (2) the final decision of the authority was arbitrary or
10 capricious or fraudulent.

11 (e) The review proceedings shall have precedence in the
12 district court and shall be heard by the court without a jury.
13 Except as provided by this section, the procedure for review
14 shall be the same as in other civil actions.

15 (f) The decision of the district court may be appealed in
16 the same manner as other civil actions. Appellate proceedings
17 shall have precedence in the court of appeals and in the state
18 supreme court. Except as provided by this section, the procedure
19 upon appeal shall be the same as in other civil actions.

20 (g) Any findings of fact made by the hearing panel and the
21 final written decision of the authority shall be deemed
22 conclusive unless it is clearly shown to the court that the
23 findings are not supported by substantial evidence.

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

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

PROPOSED AMENDMENTS

Be amended:

On page 4, in line 27, by striking "of approval or disapproval of" and inserting "to approve or disapprove"; in line 28, by striking ", along with" and inserting "and shall send a copy of the recommendation and"; also in line 28, by striking the comma preceding "to"; in line 35, by striking "an application for" and inserting "a transfer of";

On page 5, in line 1, by striking "an" and inserting "the"; in line 3, preceding "Within" by inserting the following:

"(b) The chief engineer shall send the panel's recommendation to the authority.";

Also on page 5, in line 5, by striking "adopt" and inserting "concur or nonconcur in"; in line 6, preceding "all" by inserting "the chief engineer and to"; also in line 6, preceding "parties" by inserting "other"; also in line 6, preceding "If" by inserting the following:

"The authority shall review the certified transcript of the hearing and the panel's findings.";

Also on page 5, in line 7, by striking "adopt" and inserting "concur in"; by striking all in lines 9, 10 and 11; in line 12, by striking "chief engineer" and inserting the following:

"(c) If there is no appeal pending from the panel's recommendation, the chief engineer shall submit the panel's ~~recommendation~~ and a copy of the authority's decision.";

Also on page 5, in line 16, by striking "(c)" and inserting "(d)"; in line 17, by striking "authority" and inserting "hearing panel"; in line 21, by striking "final decision" and inserting "recommendation"; in line 22, by striking "authority" and inserting "hearing panel"; in line 23, by striking "authority's

final decision" and inserting "hearing panel's recommendation"; in line 27, by striking "final"; in line 28, by striking all preceding the comma and inserting "panel's recommendation"; in line 29, preceding "review" by inserting "a"; also in line 29, by striking "of the decision" and inserting "thereof";

On page 6, in line 5, preceding "and" by inserting "of the hearing"; also in line 5, preceding "findings" by inserting "the panel's"; in line 7, by striking "final decision of the authority" and inserting "panel's recommendation"; in line 9, by striking "final decision of the authority" and inserting "panel's recommendation";



CITY COMMISSIONERS

H. PHIL MAPES, MAYOR
DOUG KNOP, VICE-MAYOR
HERMAN CLINE
LOREN SCHROEDER
PAUL W. BROWN

CITY MANAGER
LEE BRODBECK

March 17, 1983

Representative Edgar Moore
State Capital Building
Topeka, Kansas 66612

RE: Senate Bill No. 62

Dear Representative Moore:

I have reviewed Senate Bill No. 62 as amended by the State Committee and feel that the present form of the bill should be clarified prior to approval. The central issue that needs clarification relates to whether or not the proposed bill will affect water transfers that are currently being made in Kansas.

I am requesting that the bill be amended to clarify the question surrounding existing water transfers. I would propose the following language:

"No provision of this act shall be construed as to require the approval of the Kansas Water Authority or the hearing panel for any water transfers being made under vested rights and appropriation applications and extensions thereto which were approved under the authority of the Chief Engineer prior to the enactment of this act."

The reason I am requesting that the bill be amended as indicated is explained as follows. Olathe and other cities and water suppliers have acquired authority for the diversion of water under water appropriation applications approved by the Chief Engineer of the Kansas Division of Water Resources. Olathe uses water under existing appropriation applications more than ten miles from the points of diversion approved under existing appropriation applications. The City has invested large sums of capital in the form of supply, treatment, and transmission improvements to utilize water authorized under existing water appropriation applications.

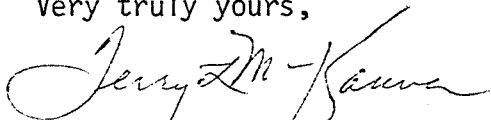
Attachment 3

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It would simply be an unreasonable requirement of Senate Bill No. 62 if it was the intent of the bill to require Olathe or any other supplier to justify, after the fact, the use of water that has already been approved by the State. Such a requirement would lead to undue expense for the purposes of justifying past actions and could result in costly changes in municipal water works systems.

I appreciate your consideration of the preceding comments. If you have any questions, please give me a call.

Very truly yours,



Terry L. McKanna
Utilities Director

TLM:sr

xc: City Manager