

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Senator David Corbin at 8:11 a.m. on March 24, 1999 in Room 254-E of the Capitol.

All members were present except: Senator Pugh who was excused.

Committee staff present:

Raney Gilliland, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes Office
Lila McClafin, Committee Secretary

Conferees appearing before the committee:

Clint Riley, Department of Wildlife and Parks
Clark Duffy, Kansas Water Office

Others attending: See attached list.

With a motion from Senator Vratil and a second from Senator Morris the minutes of March 23 were adopted as presented.

HB 2146: Concerning expenditures related to certain wetlands.

Clint Riley, Department of Wildlife and Parks, said the adjustment to the statutory language was necessary, in order to enable the department and the Corps to jointly proceed with this important project. He emphasized that the amendment would not materially alter the department's spending authority, nor would it remove the Legislature's authority over the department's appropriations. In addition, they did not anticipate that the project cooperative agreement would incur costs different than those discussed during the 1998 Legislative Session (Attachment 1). Mr. Riley responded to several questions.

The hearing was closed.

Senator Goodwin moved to amended the enforcement clause to read after publication in the Kansas Register, and with that HB 2146 be passed as amended. Senator Morris seconded the motion and the motion carried.

HB 2404: Termination of water rights; notice to user of due and sufficient cause exception.

A balloon copy of **HB 2404** was distributed. It marks up the amendments adopted on March 18 and including one to be offered by Senator Vratil (Attachment 2). Chairperson Corbin called on Senator Vratil to explain his amendment.

Senator Vratil explained the original draft negotiated by Water District #1 included a clause that the Sunflower Water Rights would be held in trust until the Legislature determined how they were to be disposed of. The question arose whether water rights held by federal government can ever be abandoned? Senator Vratil moved the adoption of his amendment that would add a new subsection (b), to New Sec 2. The motion was seconded by Senator Morris. Discussion followed. Some questions arose on the maximum quantity surface water right and maximum quantity of acre-feet available. Clark Duffy was called on for clarification. Also, a question arose regarding the Chief Engineer why he had not been included in the negotiations and his authority? The vote was taken and the motion carried.

Chairperson Corbin and Vice-Chairperson Morris agreed that the whole water issue may need to be assigned to an interim committee for further study.

A motion was made by Senator Vratil that HB 2404 be passed as amended and the motion was seconded by Senator Biggs. The motion carried.

The meeting adjourned at 8:45 a.m. Chairperson Corbin announced no further meetings were planned.



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HOUSE BILL NO. 2146

**Testimony Provided to
Senate Committee on Energy and Natural Resources
March 24, 1999**

During the 1998 Legislative Session, both the House and Senate unanimously approved 1998 House Bill No. 2783, which authorized the Department of Wildlife and Parks to enter into an agreement with the U.S. Army Corps of Engineers to restore approximately 2,550 acres of wetlands near Milford Lake, and to designate an area of the project the "Steve Lloyd Wetlands," in honor of the former chair of the House Committee on Environment.

By developing the Milford Wetlands in cooperation with the Corps, the department, as the non-federal sponsor of the project, will receive a 3 to 1 match of funds from the Corps. Although the majority of the nonfederal funds are being raised privately, the 1998 Legislature also appropriated \$361,512 from the state general fund to provide the matching funds for the first phase of the project. 1998 HB 2783 included clarifying language that no more than this amount is to be paid from the state general fund, and that the remainder of the nonfederal share is to be paid from nonstate moneys. This remains the intention. WILDSCAPE, a non-profit association affiliated with the department, has already raised approximately \$700,000 (including the SGF contribution) for the project.

However, the Corps has determined that the clarifying language declaring a limitation on the state's financial obligation prevents the Corps from signing a project cooperative agreement with the department. Consequently, the department has proposed House Bill No. 2146, which strikes the problematic language, currently in statute as subsection (2) of K.S.A. 32-846.

We emphasize that this amendment will not materially alter the department's spending authority, nor will it remove the Legislature's authority over the department's appropriations. In addition, we emphasize that the project cooperative agreement is not anticipated to incur costs different than those anticipated during the 1998 Legislative Session. Both the Corps and the department fully intend that the nonfederal share of the project costs will be limited to the amount of private funds raised, plus the appropriations already made during the 1998 Legislative Session. If, for some unanticipated reason, the department should ever request additional state funding, that request would go through the normal appropriations process and would require approval by the Legislature.

Nonetheless, this adjustment to the statutory language is necessary. In order to enable the department and the Corps to jointly proceed with this important project, we respectfully request the passage of HB 2146.

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Senate Energy & Natural Resources

Attachment: 1

Date: 3-24-99

HOUSE BILL No. 2404

By Committee on Environment

2-10

authorizing the Kansas water office to acquire and hold certain water rights, subject to certain restrictions;

(c) The provisions of subsection (a) shall not apply to a water right that has not been declared abandoned and terminated before the effective date of this act if the five years of successive nonuse occurred exclusively and entirely before January 1, 1990. However, the provisions of subsection (a) shall apply if the period of five successive years of nonuse began before January 1, 1990, and continued after that date.

New Sec. 2. (a) The Kansas water office, on behalf of the state, shall enter into negotiations, agreements and contracts with the federal government regarding water rights appurtenant to federal property located in Johnson county when the Kansas water office deems such negotiations, agreements and contracts to be necessary for the achievement of the policies of the state relative to the water resources of the state. Any such agreement or contract shall be binding on the state only upon adoption by the legislature of a concurrent resolution approving such agreement or contract.

(b) The Kansas water office, on behalf of the state, shall accept and hold in trust any water rights acquired pursuant to subsection (a) until the legislature determines the appropriate state agency and procedures for disposition of such water rights. Until the legislative determination thereof:

(1) The Kansas water office shall have no authority to assign, transfer or otherwise dispose of such water rights;

(2) all contractual agreements associated with such water rights shall remain in effect and the provisions of K.S.A. 82a-718 and amendments thereto shall not apply to such water rights; and

(3) the Kansas water office shall make all annual payments associated with such water rights to any water assurance district under the provisions of K.S.A. 82a-1301 et seq. and amendments thereto.

that amendment

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10 AN ACT concerning water appropriation rights; relating to abandon-
11 ment; amending K.S.A. 82a-718 and repealing the existing section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 82a-718 is hereby amended to read as follows: 82a-
15 718. (a) All appropriations of water must be for some beneficial purpose.
16 Every water right of every kind shall be deemed abandoned and shall
17 terminate when without due and sufficient cause no lawful, beneficial use
18 is henceforth made of water under such right for ~~three~~ five successive
19 years. Before any water right shall be declared abandoned and terminated
20 the chief engineer shall conduct a hearing thereon in accordance with the
21 provisions of the Kansas administrative procedure act. Notice shall be
22 served on the user at least 30 days before the date of the hearing.

23 The verified report of the chief engineer or such engineer's authorized
24 representative shall be prima facie evidence of the abandonment and
25 termination of any water right.

26 (b) *When no lawful, beneficial use has been made of water under a*
27 *water right for two of water under a water right has been reported*
28 *for three successive years, the chief engineer shall notify the user, by*
29 *certified mail, return receipt requested, that: (1) No lawful, beneficial*
30 *use has been made of the water for two of the water has been reported*
31 *for three successive years; (2) if no lawful, beneficial use is made of the*
32 *water for three five successive years, the right may be terminated; and*
33 *(3) the right will not be terminated if the user shows that for one or more*
34 *of the three five consecutive years the beneficial use of the water was*
35 *prevented or made unnecessary by circumstances that are due and suf-*
36 *ficient cause for nonuse, which circumstances shall be included in the*
37 *notice.*

38 Sec. ~~2~~ K.S.A. 82a-718 is hereby repealed.

39 Sec. ~~3~~ This act shall take effect and be in force from and after its
40 publication in the statute book.