

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson Senator David Corbin at 8:00 a.m. on February 21, 2000 in 245-N of the Capitol.

All members were present except: Senator Goodwin 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:

Doug Wareham, Kansas Fertilizer and Chemical Association and Kansas Grain and Feed Association
Tom Tunnell, Kansas Fertilizer and Chemical Association and Kansas Grain and Feed Association

Others attending:

List not available.

With a motion from Senator Huelskamp and a second from Senator Biggs the minutes of February 16 and 17 were adopted as written.

Chairperson Senator Corbin announced **SB 501 Enacting the agricultural and specialty chemical remediation act** was open for discussion. A new fiscal note was distributed on the bill.

Doug Wareham responded to questions regarding the maximum dollars available for any one agricultural site. Responding to a question he said his association would support a cap of \$300. thousand.

Senator Stephens said he was concerned about the 4.0 percent interest rate. He moved to amend the bill to comply with the language in the agricultural production loan legislation which would make the interest rate not more than 2% above the market rate as determined under KSA 75-4237. The bill also be amended on page 3, in line 39, by striking "a zero interest rate" and inserting "an interest rate which is 2% below the market rate as determined under KSA 75-4237, and on page 10, in line 30, by striking "zero percent interest rate", and inserting the appropriate language. Senator Biggs seconded the motion. Discussion followed. The motion carried.

Senator Biggs recommend the bill be an amended by inserting the total amount of linked deposit loans for any one site shall not exceed \$300,000.. The motion was seconded by Senator Morris. Discussion followed concerning the cap on the underground storage tank fund and the dry cleaners remediation fund. The motion carried.

Senator Huelskamp moved to amend the bill to exempt from the annual assessment and owner/dealer with a new site built after January 1, 1999. Senator Tyson seconded the motion. Senator Huelskamp than offered a substitute motion to amend his first motion and add language that a new site would not be eligible to access the fund. The second Senator Tyson agreed. Discussion followed regarding how this would be monitored and what if an existing site was built on and the site was contaminated. Another concerns was that not all of the current sites have contamination yet they would have to pay, and the businesses not paying would have a significant advantage of those that were paying the assessment. Mr. Tom Tunnell pointed out that the bill did include a sunset provision. The vote was taken and the motion failed.

Senator Biggs moved that SB 501 be passed as amended. Senator Stephens seconded the motion. Motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

Chairperson called on Senator Huelskamp for a sub-committee report on **SB 388**. Senator Huelskamp said the members of the subcommittee, Senators: Stephens, Vratil and himself had met with the interested parties and prepared a subcommittee report. It was distributed as a balloon of the bill (Attachment 1).

Staff was called on to review the subcommittee report.

Senator Huelskamp said the subcommittee thought the water banking program should be available to all areas of the state and they expanded the number to ten that could be chartered. He said the subcommittee thought the main purpose of the banks would be to be flexibility and to conserve water. The chief engineer would make the determination where the water banks would be located. Section (6) of the bill that contains the makeup of the team to evaluate the operation of the bank they thought some members of the legislature should be on the team and they added two legislators appointed by the Legislative Coordinating Council to the team.

The meeting adjourned at 9:00 a.m. The next scheduled meeting is on Tuesday, February 22, 2000.

SENATE BILL No. 388

SUBCOMMITTEE REPORT

By Special Committee on Environment

12-15

Senate Energy & Natural Resources

Attachment: /

Date: 2-21-2000

9 AN ACT enacting the Kansas water banking act.

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

11 Section 1. This act may be cited as the Kansas water banking act.

12 Sec. 2. As used in this act:

13 (a) "Bank boundary" means the geographic area where a water bank
14 operates and conducts the functions of a water bank.

and may encompass more than one hydrologic unit

15 (b) "Bank charter" means a document that sets out the articles of
16 incorporation and principal functions of a water bank.

17 (c) "Bankable water right" means a water right that has been deter-
18 mined pursuant to section 4, and amendments thereto, to be bankable.

19 (d) "Chief engineer" means the chief engineer of the division.

20 (e) "Conservation element" means the portion of a deposit that is
21 taken out of use for the duration of the deposit and is not allowed to be
22 withdrawn and used by subsequent users.

(f) "Deposit," other than as used in "safe deposit account," refers to the deposit of
a water right, or portion of a water right, in a water bank for the purpose of having the
bank lease water from such water right, or portion of a water right, to another person or
entity.

23 ~~(f) "Consumptive use" means the gross diversion of water minus: (1)~~
24 ~~Waste of water, and (2) amounts returned to the source of water supply.~~

25 (g) "Division" means the division of water resources of the Kansas
26 department of agriculture.

27 (h) "Hydrologic unit" means the defined area of ~~hydraulically~~ con-
28 nected sources of water supply.

hydrologically

29 (i) "Safe deposit account" means a personal account held in a water
30 bank where unused water from a bankable water right is ~~deposited~~ for
31 use in future years.

(h) "Linked water rights" means two or more water rights that authorize common
points of diversion or a common place of use, or both.

32 (j) "Term permit" means a permit to appropriate water for a specified
33 period of time.

34 (k) "Water bank" means a private not-for-profit corporation that
35 ~~leases~~ water from water rights that have been deposited in the bank.

placed

36 Sec. 3. (a) A water bank shall ~~be authorized to~~ enter into contracts
37 with holders of water rights for deposit in the bank of all or a portion of
38 any water right from a source of supply within the bank boundary, subject
39 to the following:

: (1) Leases

40 (1) The bank shall accept for deposit only a water right, or portion of
41 a water right, that has been determined to be a bankable water right under
42 section 4 and amendments thereto;

; and (2) provides safe deposit accounts. A water bank may be a groundwater bank
or a surface water bank, or both

1 (2) a deposit of a groundwater water right shall be for a period of not
2 more than five years;

3 (3) a deposit shall be subject to such terms and conditions as provided
4 by the contract between the bank and the depositor, including penalty
5 provisions for breach of any contract conditions; and

6 (4) a deposit shall be subject to such terms and conditions, and such
7 approval by the chief engineer, as provided by rules and regulations of
8 the chief engineer.

9 (b) A water bank shall be authorized to lease water from any water
10 right, or portion of a water right, that has been deposited in the bank,
11 subject to the following:

12 (1) Any water leased must be used within the bank boundary and in
13 the same hydrologic unit from which the water is leased;

14 (2) use of leased water shall be subject to all provisions of the Kansas
15 water appropriation act, including but not limited to all requirements
16 relating to ~~Term permits, changes in the place of use, the point of di-~~
17 ~~version and the use made of water, and water use reporting~~ term permits

18 (3) a lease shall be subject to such terms and conditions as provided
19 by the contract between the bank and the lessor, including penalty pro-
20 visions for breach of any contract conditions; ~~and~~

21 (4) a lease shall be subject to such terms and conditions, and such
22 approval by the chief engineer, as provided by rules and regulations of
23 the chief engineer; and

24 (c) A water bank shall ~~be authorized to~~ provide safe deposit accounts
25 where a holder of a water right may place unused water from the water
26 right for future withdrawal, subject to the following:

(5) a water bank's decision of whether or not to lease water shall not be based
on the proposed use of the water

27 (1) A water right holder shall place in a safe deposit account only
28 water from a water right that has been determined to be a bankable water
right under section 4 and amendments thereto;

30 (2) only water that was unused in the immediate past calendar year
31 may be placed in a safe deposit account and the amount that shall be
32 placed in such account shall be less than the total amount of unused water
33 from the bankable water right in that year;

, except that water from linked water rights may be placed in a single safe deposit
account

34 (3) only water from one water right shall be placed in a safe deposit
35 account and water from a water right shall not be placed in more than
36 one safe deposit account;

37 (4) each calendar year that water remains in a safe deposit account,
38 the amount of water held in the account shall decrease by a percentage
39 established by the charter of the bank but in no case less than 10% an-
40 nually of all amounts placed in the account;

accumulated

41 (5) the total amount of water ~~placed~~ in a safe deposit account shall
42 not exceed the maximum annual quantity authorized to be diverted under
43 the water right;

or the aggregate maximum quantity authorized to be diverted under all linked
water rights from which water is deposited in the account

1-3-

1 (6) use of water withdrawn from a safe deposit account shall be sub-
2 ject to all provisions of the Kansas water appropriation act, including but
3 not limited to all requirements relating to ~~Term permits, changes in the~~
4 ~~place of use, the point of diversion and the use made of water, and water~~
5 ~~use reporting;~~

term permits

6 (7) a safe deposit account shall be subject to such terms and condi-
7 tions as provided by the contract between the bank and the account
8 holder, including penalty provisions for breach of any contract conditions;
9 and

10 (8) a safe deposit account shall be subject to such terms and condi-
11 tions, and such approval by the chief engineer, as provided by rules and
12 regulations of the chief engineer.

13 (d) A water bank may provide services to facilitate the sale or lease
14 of water rights.

(e) A water bank shall not own, buy or sell water rights.

15 Sec. 4. (a) Before a water right or portion of a water right shall be
16 accepted for deposit in a water bank or water from a water right shall be
17 placed in a safe deposit account, the bank, with the assistance of the
18 division, shall determine whether the water right is bankable, as follows:
19 (1) The right is vested or has been issued a certificate of appropriation;
20 and (2) the right has not been abandoned and is in good standing, based
21 on past water usage and compliance with the terms of the holder's permit
22 and all applicable provisions of law and orders of the chief engineer.

Determination of the portion of a water right that is bankable shall be based on
the maximum annual quantity authorized to be diverted under the water right and
shall not take into account actual prior use of less than amount.

23 (b) The division may charge a water bank for the actual cost of assis-
24 tance provided pursuant to subsection (a) or for the actual cost of any
25 other services provided to a water bank pursuant to this act.

26 Sec. 5. (a) Before a water bank is authorized to operate in the state,
27 the bank's charter must be approved by the chief engineer. Prior to ap-
28 proval, the body wishing to charter the bank shall submit to the chief
29 engineer the proposed bank charter and any other information required
30 by rules and regulations of the chief engineer to determine whether the
31 bank shall be chartered to operate in the state.

32 (b) The chief engineer shall approve the charter of a water bank only
33 if the chief engineer determines that:

34 (1) The charter ensures that the operations and policies of the bank
35 will be consistent with the provisions of this act, the state water plan and
36 all applicable statutes, rules and regulations, findings and orders of the
37 chief engineer, groundwater management district policies and water as-
38 surance district operations plans;

39 (2) there is sufficient participation by water right holders and water
40 users to make the operations of the bank practical and feasible;

41 (3) the governing body of the bank is reasonably representative of
42 public and private interests in water within the bank boundary;

43 ~~(4) the boundary of the bank does not overlap with the boundary of~~

~~any other chartered water bank;~~

(5) the charter ensures that, for each calendar year, the aggregate amount of all bank deposits (determined by multiplying the amount of each water right deposited by the length of time of the deposit and then adding together the resulting amounts for all deposits) will equal or exceed the sum of the aggregate amount of water leased by the bank (determined by multiplying the amount of each lease by the length of time of the lease and then adding together the resulting amounts for all leases) plus the aggregate conservation element of all leases (determined by multiplying the conservation element of each lease by the length of the lease and then adding together the resulting amounts for all leases);

(6) the charter ensures that the operations of the bank will not result in impairment of existing water rights or an increase in depletion of severely depleted groundwater aquifers or stream courses;

(7) the charter ensures that the operations of the bank will result in a savings of 10% or more in the total amount of groundwater consumed pursuant to water rights deposited in the bank, excluding groundwater located in an intensive groundwater use control area; and

~~(8) if the bank is a groundwater bank, the charter ensures that the operations of the bank will not result in an increase in consumptive use of water within the boundary of the bank.~~

(c) Not more than five water banks shall be chartered to operate in the state and at least one such bank shall be a surface water bank.

(d) A water bank shall be chartered for a period of not more than seven years, at which time the bank shall be subject to review in accordance with section 6, and amendments thereto, to determine whether the bank's charter shall be extended.

Sec. 6. (a) Not later than five years after the establishment of a water bank, the chief engineer shall convene a team to evaluate the operation of the bank. The team shall consist of:

(1) The chief engineer or the chief engineer's designee;

(2) the director of the Kansas water office or the director's designee;

(3) the governing body of the bank;

(4) ~~one~~ representative of each groundwater management district located partly or wholly within the boundary of the bank in the state, which representative shall be selected by the board of directors of the district;

(5) ~~one~~ representative of each assurance district located partly or wholly within the boundary of the bank, which representative shall be selected by the board of directors of the district;

(6) two representatives of water right holders and water users who have used the bank's services, which representatives shall be selected by the chief engineer;

~~(7) a representative of the water bank task force familiar with the~~

(4) the bank would not lease or accept for deposit water from the same source of supply as another chartered water bank;

10

(e) Any amendment to the charter of a water bank must be approved by the chief engineer prior to adoption of the amendment.

one representative of

one

one

two

1 ~~operation of the bank, and~~
 2 ~~(8) any additional members that the foregoing members determine~~
 3 ~~useful to the team's evaluation.~~

(c) 4 ~~(b)~~ Not more than one year after a team is convened pursuant to this
 5 section, the team shall submit a report of its evaluation and recommen-
 6 dations to the governor, the Kansas water office, the Kansas water au-
 7 thority, the secretary of agriculture, the chief engineer and the senate
 8 standing committee on energy and natural resources and the house stand-
 9 ing committee on environment, or the successors to such committees
 10 regarding:

- 11 (1) The operations and policies of the bank and whether they are
- 12 consistent with the provisions of this act, the state water plan and all
- 13 applicable statutes, rules and regulations, findings and orders of the chief
- 14 engineer, groundwater management district policies and water assurance
- 15 district operations plans;
- 16 (2) whether the operations of the bank are achieving the goals and
- 17 objectives of water banking as set out in the state water plan and whether
- 18 changes could be made to further those goals and objectives;
- 19 (3) whether the charter of the bank should be extended;
- 20 (4) the terms under which the bank's charter should be allowed to
- 21 lapse, if the team recommends that the charter not be extended; and
- 22 (5) any other matters that the team determines relevant to the future
- 23 of water banking in the state.

(d) 24 ~~(e)~~ Unless otherwise provided by law, the chief engineer, in accord-
 25 ance with the recommendations of the team, ~~shall~~ extend the charter of
 26 the bank for an additional period not to exceed seven years or ~~shall~~ allow
 27 the bank charter to lapse under the terms recommended by the team.

and

(7) two legislators appointed by the legislative coordinating council.

(b) A legislator serving on the team shall be paid compensation, travel expenses and subsistence expenses or allowances as provided by K.S.A. 75-3212, and amendments thereto, for attendance at any meeting of the team or any subcommittee meeting of the team authorized by the team.

may

may

28 Sec. 7. Depositing a water right in a water bank or placement of
 29 water in a safe deposit account in a water bank shall constitute due and
 30 sufficient cause pursuant to K.S.A. 82a-718, and amendments thereto, for
 31 failure to use water for a lawful, beneficial use for the term of the deposit
 32 or the placement.

33 Sec. 8. The chief engineer may adopt rules and regulations to ad-
 34 minister and enforce the provisions of this act.

35 Sec. 9. This act shall take effect and be in force from and after its
 36 publication in the statute book.