

MINUTES OF THE SENATE NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Carolyn McGinn at 8:30 a.m. on March 17, 2006, in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Kansas Legislative Research Department
Emalene Correll, Kansas Legislative Research Department
Lisa Montgomery, Revisor of Statutes Office
Judy Holliday, Committee Secretary

Conferees appearing before the committee:

J. Michael Hayden, Secretary, Kansas Department of Wildlife and Parks

Others attending:

See attached list.

Chairperson McGinn asked for approval of the March 2 and 3 Committee minutes. A motion was made to approve by Senator Teichman, seconded by Senator Huelskamp. The motion carried.

Chairperson McGinn announced that the Committee would be hearing **SB 526, Concerning sales of over-the-counter deer tags** until 9 a.m.; would hear **HB 2867, Concerning dam safety**; and would finish up with approval of the amendment to **HB 2710, Creating the water right transition program**.

Senator Lee began discussion of **SB 526** and stated that the Department of Wildlife and Parks had been promising for three years that it would totally redo the antlerless deer hunting regulations and asked that the Natural Resources Committee not make any changes, but the DWP made changes without notifying the Committee. She stated the bill she has introduced attempts to undo the change the Department made last year to only allowing hunters with big game permits to then purchase over-the-counter antlerless deer permits. **SB 526** would allow the purchase of over-the-counter antlerless deer tags by out-of-state hunters the same as Kansas allows in-state hunters. Senator Lee cited a report showing the change made by the Department of Wildlife and Parks resulted in a reduction of hunting permits sold to out-of-state hunters; the number of deer in relation to automobile accidents does not indicate a decline in deer population; and the change was not justified and should be changed back and discussed with the Committee. Senator Lee moved to pass **SB 526** out favorably, seconded by Senator Ostmeyer. Staff asked if the word "tags" should be changed to "permits."

Christopher Tymeson, Chief Legal Counsel, Kansas Wildlife and Parks, commented that the bill as drafted would have no impact on Department operations; over-the-counter deer tags are available for non-residents as well as residents. Copies of written testimony from J. Michael Hayden, Secretary of the Kansas Department of Wildlife and Parks were distributed (Attachment 1). Senator Lee stated that she thought the bill had been written in consultation with the Department, but since it had not, she offered a motion to amend her motion to include the language by Mr. Tymeson of Wildlife and Parks. Senator Ostmeyer seconded the motion, and the motion carried. Chairperson McGinn restated Senator Lee's original motion to pass the bill favorably out of Committee with a second by Senator Ostmeyer. The motion carried.

Chairperson McGinn opened the hearing on **HB 2867, Concerning dam safety**, and asked Brent Haden, Assistant Counsel, Kansas Livestock Association, to answer some questions. Chairperson McGinn stated that the bill reads "returns back to the Department" and asked if that meant the Department did the inspections before? Mr. Haden told the Committee the law changed in 2002 to require dam owners to pay for inspections, but that the Department had done them in prior years. In response to Chairperson McGinn's question about the Division doing all dams, Mr. Haden stated that the Division would be doing all dam inspections. Mr. Haden also stated that the language on fee structure could be stricken.

Chairperson McGinn asked about rental property downstream in an inundation area from a dam, and if the renter would be responsible for a breach. Mr. Haden answered that the owner, not the renter would be liable.

Senator Lee questioned the report that only four dams were identified, and Mr. Haden's response was that he

CONTINUATION SHEET

MINUTES OF THE Senate Natural Resources Committee at 8:30 a.m. on March 17, 2006, in Room 423-S of the Capitol.

really did not know, and there could be four or there could be two.

Constantine Cotsoradis, Assistant Secretary of Agriculture, offered comments on the issue. Mr. Cotsoradis stated that there may be more dams affected but only four that affect homes downstream, and three of those have been resolved. He stated that only the owner acknowledges the risk, not an employee or renter.

Chairperson McGinn stated that some language in the bill needs cleaned up but the Committee would continue hearing the bill. Chairperson McGinn asked if there had been any dam failures in Kansas, and if any of the larger ones were at risk. Mr. Cotsoradis stated that there had not yet been any failures, that there are several larger dams but there is no way to know when a dam will fail. Mr. Cotsoradis stated that \$275,000 had been earmarked for the Division's budget to fund the dam inspections, but the Senate would need to put the money into their budget.

Chairperson McGinn asked about the bill language that states "use existing maps available and then do breach maps." Mr. Cotsoradis told the Committee the maps cost \$3,200 each, thus requiring more staff to analyze the maps and increasing the costs. He stated that there are 5500 dams that need maps.

Chairperson McGinn asked Brent Haden to clarify language regarding who does inspections, and Mr. Haden stated they are done by a private engineer paid by the owner. Chairperson McGinn told the Committee that if the inspection fee language is left in the bill a tremendous burden would be placed on the Chief Engineer, and ultimately all taxpayers would be paying for the dam inspections, and that is not good policy either.

Senator Taddiken stated that if the bill passes "as is," the burden would be on the Division of Water Resources, and in his opinion if the cost burden were put back onto a state agency, it would be handled. Constantine Cotsoradis stated that the Department acknowledges there is a problem with the bill and asked that the Committee continue to study this issue and come up with a thoughtful recommendation, or concur with the House and require the Department to do the inspections.

Senator Bruce agreed that this is an ongoing problem acknowledged by the Department; that the system is not equitable now, and suggested that an Interim Study be done. Chairperson McGinn stated she would suggest to the Senate President that a study on this issue be done on its own or add to the Colorado water rights hearings.

Senator Bruce moved to table **HB 2867** and recommend an Interim Study, seconded by Senator Ostmeyer. The motion carried. The hearing on **HB 2867** was closed.

Chairperson McGinn opened the hearing on **HB 2710, Creating water right transition assistance program**, and called attention to the changes that were recommended (Attachment 2).

Senator Teichman stated this was a pilot project in only two areas, but could be extended to other areas. She made a motion to amend, taking out "permanent" and add "partial," seconded by Chairperson McGinn. The motion failed.

Mike Hayden, Secretary of Wildlife and Parks, commented that the bill as amended would cut out Almena and Prairie Dog. Chairperson McGinn stated it was her understanding that this language would only apply to new programs. Secretary Hayden told the Committee that the Almena contract would expire June 30 and a new contract would have to be written July 1, and even though it was a continuation of a two-year old program, it is a new contract. Senator Taddiken moved to amend the bill that the Almena project be funded and allow the Revisor's office to draft the appropriate language, seconded by Senator Ostmeyer. The motion carried.

Senator Lee made a motion to move **HB 2710** out of Committee, as amended, seconded by Senator Ostmeyer. The motion carried.

There being no further business to come before the Committee, the meeting adjourned.

KANSAS

DEPARTMENT OF WILDLIFE & PARKS

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on SB 526 relating to Over-the-Counter Deer Permits
To
Senate Committee on Natural Resources**

**By J. Michael Hayden
Secretary
Kansas Department of Wildlife and Parks**

March 17, 2006

Senate Bill 526 would amend K.S.A. 32-937 to require nonresident antlerless deer tags be issued over-the-counter if resident antlerless deer tags were issued over-the-counter. The provisions of this bill would be effective on July 1, 2006. **The Department is opposed to the provisions contained in this bill.**

The bill, as drafted, would have no impact on the operations of the Department. Currently, nonresident and resident antlerless permits are all offered over-the-counter, after the applicant has a permit allowing the take of antlered deer. However, given the fact the Department is currently in the process of conducting a public comment period for the very purpose of bringing forth revisions to the deer management process, we feel it is inappropriate to bring forth any statutory change at this time. The Department would appreciate your support in opposition to the bill.

HOUSE BILL No. 2710

By Committee on Environment

1-25

Senate Natural Resources
3/17/06
Attachment 2

12 AN ACT concerning water; creating the water right transition assistance
13 program.

pilot project

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. (a) There is hereby established the water right transition
17 assistance **pilot project** program. The program shall be administered by
18 the state conservation commission. The Kansas department of agriculture,
19 division of water resources and recognized local governing agencies, in-
20 cluding groundwater management districts, shall cooperate in program
21 implementation. The program shall be administered for the purpose of
22 reducing consumptive use in the target or high priority areas of the state
23 by issuing water right transition grants for privately held water rights.

24 (b) (1) The state conservation commission may receive and expend
25 funds from the federal or state government, or private source for the
26 purpose of carrying out the provisions of this section.

The state conservation commission and the participating groundwater management districts shall carry over unexpended funds from one fiscal year to the next.

27 (2) **Federal and state funds shall not exceed \$1,500,000 per**
28 **year.**

enter into water right transition assistance pilot project program contracts with landowners that will result in the permanent retirement of

29 (c) ~~The state conservation commission may retire permanently~~
30 ~~part or all of landowner historic consumptive use water rights. The~~
31 ~~state conservation commission and the participating groundwater~~
32 ~~management districts shall carry over unexpended funds from one~~
33 ~~fiscal year to the next.~~

by action of the chief engineer as provided for in subsection (f) of this section

34 (d) All applications for permanent water right retirements shall be
35 considered for funding as a first priority. If allocated funds are not com-
36 pletely used for permanent retirement grants, then the remaining funds
37 may be used for set aside agreements of not less than four calendar years.

When prioritizing among water right applications for acceptance under the water right transition assistance pilot project, where rights with similar hydrologic impacts are considered, priority should be given to the senior right as determined under the Kansas water appropriation act.

38 (d) (e) ~~Permanent retirement of partial water rights shall only~~
39 ~~be approved by the Kansas department of agriculture division of~~
40 ~~water resources when the groundwater management district has~~
41 ~~the metering and monitoring capabilities necessary to ensure com-~~
42 ~~pliance with the program.~~

43 (f) Water rights enrolled in the water right transition assistance pro-

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1 gram for permanent retirement shall require the written consent of all
2 landowners and authorized agents to voluntarily request dismissal and
3 forfeiture of priority of the enrolled water right. Upon enrollment of the
4 water right into the water right transition assistance program, the chief
5 engineer of the Kansas department of agriculture division of water re-
6 sources shall concurrently dismiss and terminate the water right in ac-
7 cordance with the terms of the contract.

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8 (e) (g) (1) The state conservation commission shall make water right
9 transition grants available only in ~~not more than two~~ areas that have
10 been designated as target or high priority areas by the groundwater man-
11 agement districts and the chief engineer of the Kansas department of
12 agriculture division of water resources ~~or priority areas outside the~~
13 ~~groundwater management districts as designated by the chief engineer of~~
14 ~~the Kansas department of agriculture division of water resources.~~

or priority areas outside the groundwater management districts as designated by the chief engineer of the Kansas department of agriculture division of water resources

15 (2) ~~Notwithstanding any other provisions of this act, one of the~~
16 ~~two~~ [of the] target or high priority areas shall be the prairie dog
17 creek area located in hydrologic unit code 10250015 [and the rat-
18 tlesnake creek subbasin located in hydrologic unit code 11030009].

Two

19 (f) (h) Contracts accepted under the water right transition assistance
20 program shall result in a net reduction in consumptive use equivalent to
21 the amount of historic consumptive use of the water right or rights en-
22 rolled in the program based on the average historic consumptive water
23 use. Except as provided for in ~~paragraphs (g) and (h),~~ once a water right
24 transition assistance program grant has been provided, the land author-
25 ized to be irrigated by the water right or water rights associated with that
26 grant shall not be irrigated either permanently or for the period of the
27 agreement, whichever is applicable. Water right transition assistance pro-
28 gram contracts shall be subject to such terms, conditions and limitations
29 as may be necessary to ensure that such reduction in consumptive use
30 occurs and can be adequately monitored and enforced.

subsections (i) and (j)

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31 “Historic consumptive water use” means the average amount of water
32 consumed by crops as a result of the lawful beneficial use of water for
33 irrigation during four of the six preceding calendar years, with the highest
34 and lowest years removed from the analysis. For purposes of this program,
35 historic consumptive water use will be determined by multiplying the
36 average reported water use for the four selected years by a factor of 0.85
37 for center pivot sprinkler irrigation systems, 0.75 for flood or gravity ir-
38 rigation systems and 0.95 for subsurface drip irrigation systems, but not
39 to exceed the net irrigation requirements for the 50% chance rainfall for
40 the appropriate county as shown in K.A.R. 5-5-12. The applicant may also
41 submit an engineering study that determines the average historic con-
42 sumptive water use as an alternative method if it is demonstrated to be
43 more accurate for the water right or water rights involved.

2-3

1 ~~(g)~~ (i) Enrollment in the water right transition assistance program
2 shall not subsequently prohibit irrigation of the land that, prior to en-
3 rollment, was authorized by the water right or water rights if irrigation
4 can be lawfully allowed by another water right or permit pursuant to the
5 rules and regulations and consideration of any future changes to other
6 water rights that may be proposed to be transferred to such land.

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7 ~~(h)~~ (j) If more than one water right overlaps the place of use author-
8 ized by the water right proposed to be enrolled in the water right tran-
9 sition assistance program, then all overlapping water rights shall be en-
10 rolled in water right transition assistance program or the landowners shall
11 take the necessary lawful steps to eliminate the overlap with the water
12 right to be enrolled. The burden shall be on the landowner to provide
13 sufficient information to substantiate that the proposed use of water by
14 the resulting exercise of all water rights involved will result in the net
15 reduction amount of historic consumptive water use by the water right
16 or water rights to be enrolled. The state conservation commission may
17 require such documentation to be provided by someone with special
18 knowledge or experience related to water rights and such operations.

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19 ~~(i)~~ (k) The state conservation commission shall adopt rules and reg-
20 ulations as necessary for the administration of this section. **When adopt-**
21 **ing such rules and regulations the state conservation commission**
22 **shall consider cropping, system design, metered water use and all**
23 **other pertinent information that will permit a verifiable reduction**
24 **in annual water consumptive use and permit alternative crop or**
25 **other use of the land so that the landowner's economic opportu-**
26 **nities are taken into account.**

27 ~~(j)~~ (l) ~~[The state conservation commission shall be required to~~
28 ~~conduct an economic impact study that analyzes the impact to the~~
29 ~~local community within the project area or areas. The study shall~~
30 ~~be submitted to the legislative coordinating council for their re-~~
31 ~~view prior to the purchase of water rights.]~~ The state conservation
32 commission shall report annually to the senate standing committee
33 on natural resources and the house standing committee on envi-
34 ronment on the ~~results of~~ economic impact studies conducted on
35 the reduction of water consumption and the financial impact on
36 the communities within the program areas. Such studies shall in-
37 clude comparative data for areas and communities outside the pro-
38 gram areas.

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39 (m) The water right transition assistance program shall expire five
40 years from the effective date of the fiscal year for which state moneys are
41 appropriated thereof and approval of program rules and regulations.

42 ~~(k)~~ (n) Water right transition assistance grants for water rights to re-
43 main unused for the contract period shall constitute due and sufficient

2-4

1 cause for nonuse pursuant to K.S.A. 82a-718 and amendments thereto
2 pursuant to the determination of the chief engineer for the duration of
3 the water right transition assistance program contract.

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4 Sec. 2. (a) Any person who commits any of the following may incur
5 a civil penalty as provided by this section:

6 (1) Any violation of the Kansas water right transition assistance pro-
7 gram act or any rule and regulation adopted thereunder; and

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8 (2) any violation of term, condition or limitation defined and or im-
9 posed within the contractual agreement between the state conservation
10 commission and the water right owner.

11 (b) Any participant who violates any section of a water right transition
12 assistance program contract shall be subject to either one or both of the
13 following:

14 (1) A civil penalty of not less than \$100 nor more than \$1,000 per
15 violation. Each day shall constitute a separate violation for purposes of
16 this section; and

17 (2) repayment of the grant amount in its entirety plus a penalty at six
18 percent of the full grant amount.

19 (c) Any penalties or reimbursements received under this act shall be
20 reappropriated for use in the water right transition assistance program.

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21 Sec. 3. This act shall take effect and be in force from and after its
22 publication in the statute book.

New Sec. 3 (a) On and after the effective date of this act, notwithstanding the provisions of any other statute to the contrary, no moneys shall be expended by any state agency for the purpose of water rights purchase or leasing unless the acquisition or leasing is conducted in accordance with and subject to a program that is prescribed and specifically authorized by act of the legislature. The provisions of this section shall not apply to the environmental quality incentives program or any other program or agreement that purchases or leases water rights in existence prior to January 1, 2006.

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