

SESSION OF 2003

**CONFERENCE COMMITTEE REPORT BRIEF  
SENATE SUBSTITUTE FOR  
SUBSTITUTE FOR HOUSE BILL NO. 2219**

As Agreed to April 2, 2003

**Brief \***

Senate Sub. for Sub. for HB 2219 would amend a portion of the definition of "classified stream segments" in the statutes dealing with that issue. Under the amendment a "classified stream segment" would include those segments of streams where scientific studies conducted by the Kansas Department of Health and Environment (KDHE) show that during periods of flow less than one cubic foot per second stream segments provide important refuges for aquatic life and permit biological recolonization of intermittently flowing segments.

In addition, the bill would modify the general definition of primary contact recreational use and create new subcategories of both primary and secondary contact recreational use. Under the bill, primary contact recreational use would be use of a classified stream segment for recreation during the period from April 1 through October 31 of each year provided the stream segment is capable of supporting the recreational activities of swimming, skin diving, water skiing, wind surfing, kayaking, or mussel harvesting where the body is intended to be immersed in surface water to the extent that some inadvertent ingestion of water is probable. Under the bill, secondary contact recreational use would be use of a classified stream segment for recreation, provided the classified stream segment is capable of supporting the recreational activities of wading, fishing, canoeing, motor boating, rafting, or other types of boating where the body is not intended to be immersed and where ingestion of surface water is not probable.

---

\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. The conference committee summary report may be accessed on the Internet at <http://www.kslegislature.org/kldr>

As indicated above, the bill would create the new subcategories of both primary and secondary contact recreational use to include primary contact recreational use—Class A; primary contact recreational use—Class B; primary contact recreational use—Class C; secondary contact recreational use—Class A; and secondary contact recreational use—Class B.

Under the bill, primary contact recreational use-Class A would be the use of a classified stream segment during the period April 1 through October 31 of each year, and the classified stream segment is a designated public swimming area. The water quality criterion for bacterial indicator organisms applied to Class A waters would be an illness rate of eight, or more, per 1,000 swimmers. The classified stream segment would only be considered impaired for primary contact recreational use—Class A if the calculated geometric mean of at least five samples collected in separate 24-hour periods within a 30-day period exceeds the corresponding water quality criterion. The water quality criterion for primary contact recreation use-Class A waters during the period November 1 through March 31 of each year shall be equal to the criterion applied to secondary contact recreation use-Class A waters.

Under the bill, primary contact recreational use-Class B would be: use of a classified stream segment for recreation, where moderate full body contact recreation is expected, during the period April 1 through October 31 of each year, classified stream segment is by law or written permission of the landowner open to and accessible by the public. Water quality criterion for bacterial indicator organisms applied to Class B waters would be an illness rate of ten or more per 1,000 swimmers. The classified stream segment would only be considered impaired for primary contact recreational use—Class B if the calculated geometric mean of at least five samples collected in separate 24-hour periods within a 30-day period exceeds the corresponding water quality criterion. The water quality criterion for primary contact recreation use-Class B waters during the period November 1 through March 31 of each year would be equal to the criterion applied to secondary contact recreation use-Class A waters.

Also under the bill, primary contact recreational use-Class C would be: use of a classified stream segment for recreation, where full body contact recreation is infrequent, during the period from April 1 through October 31 of each year and is not open to and accessible by the public under Kansas law and is capable of supporting the activities of swimming, skin diving, water-skiing, wind surfing, or mussel

harvesting. Water quality criterion for bacterial indicator organisms applied to Class A waters would be an illness rate of 12, or more, per 1,000 swimmers. The classified stream segment would only be considered impaired for primary contact recreational use—Class C if the calculated geometric mean of at least five samples collected in separate 24-hour periods within a 30-day period exceeds the corresponding water quality criterion. The water quality criterion for primary contact recreation use—Class C waters during the period November 1 through March 31 of each year would be equal to the criterion applied to secondary contact recreation use—Class B waters.

Under the bill, secondary contact recreational use—Class A would be use of a classified stream segment for recreation capable of supporting the recreational activities of wading or fishing and the classified stream segment is by law or written permission of the landowner not open to and accessible by the public. Water quality criterion for bacterial indicator organisms applied to secondary contact recreational use—Class A water would be 9 times the criterion applied to primary contact recreational use—Class B waters. The classified stream segment would only be considered impaired for secondary contact recreational use—Class A if the calculated geometric mean of at least five samples collected in separate 24-hour periods within a 30-day period exceeds the corresponding water quality criterion.

Under the bill, secondary contact recreational use—Class B would be use of a classified stream segment for recreation capable of supporting the recreational activities of wading or fishing and the classified stream segment is by law or written permission of the landowner open to and accessible by the public under Kansas law. Water quality criterion for bacterial indicator organisms applied to secondary contact recreational use—Class B water would be 9 times the criterion applied to primary contact recreational use—Class C waters. The classified stream segment would only be considered impaired for secondary contact recreational use—Class B if the calculated geometric mean of at least five samples collected in separate 24-hour periods within a 30-day period exceeds the corresponding water quality criterion.

The Secretary of KDHE would be required to develop and publish proposed rules and regulations to incorporate the provisions of the bill on or before July 1, 2003.

The bill would become effective upon publication in the *Kansas Register*.

## **Background**

This bill would amend provisions of current law which were established in 2001 SB 204. The 2001 legislation was designed to address the issue of the classification of stream segments as proposed by KDHE and address the issue of the classification of intermittent low-flow streams and depression where there is no water. Subsequent to the adoption of 2001 SB 204, officials with KDHE developed and adopted rules and regulations which become final in December of 2002. These rules and regulations were sent to Region VII Office of the Environmental Protection Agency (EPA) for review in December 2002. Although EPA has not officially responded to the Kansas regulations, officials from EPA have expressed concern with some of the provisions which the amendments to this bill were designed to address. EPA approval of subsequent rules and regulations of KDHE would be required.

The Conference Committee deleted language which established the mechanism for declaring a stream segment to be considered impaired. The Conference Committee added new language which would establish how a stream segment may be considered to be impaired.