

SESSION OF 2004

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2919

As Amended by House Committee of the Whole on
Committee of the Whole

Brief*

HB 2919 would amend the section of law dealing with water right requirements for operators of sand and gravel pits. The bill would provide that net evaporation of water exposed as the result of the opening or operation of sand and gravel pits be construed to be a beneficial use or diversion of water for the purposes of the Kansas Water Appropriation Act, if the sand and gravel pit is opened or operated in a township where the average annual potential net evaporation is greater than 18 inches per year, as determined by the Chief Engineer.

In addition, the bill would require that if the Chief Engineer determines that an existing or proposed sand and gravel pit operation is a beneficial use of water, the operator would be required to apply to the Chief Engineer for a permit to appropriate water in accordance with the Kansas Water Appropriation Act or otherwise acquire ownership or control of sufficient water rights to offset net evaporation for the operation.

The bill would require that the period of time allowed to complete construction of diversion works be reasonable and consistent with the proposed use, but not less than five years. The Chief Engineer could allow an extension of time by not to exceed two five-year extensions if it can be shown that the operation requires the additional time for the operator to satisfy the operator's market demand in the area. The two five-year extensions may be granted at the same time, to run consecutively, if the applicant submits to the Chief Engineer a written development plan.

The period of time allowed to perfect an approved application to appropriate water for the purpose of net evaporation from a sand and

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

gravel pit operation would be not less than 20 years and, for good cause shown, the Chief Engineer may allow one or more 10-year extensions. The Chief Engineer would be required to consider the time needed until exhaustion of proven reserves, closure in accordance with the Surface Land Reclamation and Mining Act, and the availability of water for the proposed use. In no case would there be a grant for more than 60 years for perfection. Nothing in the bill would require an extension of time to construct diversion works or to perfect a water right if there is demonstrable impairment of a use under an existing water right from the same source of supply.

Finally, the bill would require the Chief Engineer to study and develop recommendations regarding: (a) the use of water banking as it pertains to sand and gravel pits; (b) calculation of the amount by which the removal of trees and other vegetation at sand and gravel pits offsets net evaporation from such pits, with special emphasis on salt cedar (tamarisk); and (c) the pollution control and flood control benefits of diverting water runoff into sand and gravel pits. On or before January 20, 2005, the Chief Engineer would be required to submit a report of the study and recommendations to the House Committee on Environment and the Senate Committee on Natural Resources.

Background

At the hearing on the original bill, proponents included representatives of the Kansas Aggregate Producers' Association; the Kansas Building Industry Association; the Kansas Chamber of Commerce and Industry; Associated Material & Supply, Wichita; Wichita Area Homebuilders Association, Wichita; Alsop Sand Co., Inc., Concordia; and Larned Sand & Gravel, Inc., Larned. Also appearing in support of the bill was a consulting hydrologist from Topeka. Written testimony in support of the bill was provided by representatives of Tarbet Construction, Hugoton; Ash Grove Cement Co., Overland Park; Klotz Sand & Asphalt Paving Co., Inc., Holcomb; Keenan & Boeckman, Great Bend; APAC-Kansas, Inc.—Shears Division, Hays; and Concrete Materials, Wichita. Proponents indicated that the current rules and regulations of the Division of Water Resources require that sand and gravel operators have a water right or permit prior to the commencement of the operations. They also indicated that the Division requires the industry to commence operations within one year despite the reserves of sand and gravel may not be needed for some number of years.

Opponents to the original bill included representatives of the Kansas Wildlife Federation, the Kansas Department of Agriculture, Groundwater Management District # 4 Northwest Kansas, the Kansas Chapter of the Sierra Club, and the City of Wichita. Written testimony was received from the Equus Beds Groundwater Management District. Opponents argued that the bill would essentially remove sand and gravel operations from regulation of water consumption under the Kansas Water Appropriations Act. Testimony indicated that this was accomplished by defining terms in a way that ensures that evaporation from sand and gravel operation is considered neither a beneficial use nor a diversion of water. The Committee was told that evaporation was considered a consumptive use in other beneficial uses regulated by the Division of Water Resources.

The fiscal note on the original bill indicates that the passage of the bill would have no fiscal effect on the Kansas Water Office. The note does state that it is possible that the bill could decrease the amount of industrial use evaporation that would be subject to the Water Protection Fee. The amount of any decrease to the Water Protection Fund is unknown.

The House Committee of the Whole adopted all new provisions for the bill.