

SESSION OF 2009

SUPPLEMENTAL NOTE ON SENATE BILL NO. 64

As Amended by House Committee of the Whole

Brief*

SB 64 would modify several provisions of the Kansas Water Appropriation Act.

The first modification would amend the definition of “water right” by striking the word “voluntary” in order to make it clear that a water right passes as an appurtenance with a conveyance of land in either voluntary or involuntary situations.

The second modification would clarify that no person would be able to acquire a new water appropriation right without obtaining a water right through the Chief Engineer. Current law speaks to the acquisition of a water right, not a “new” water right. Since existing water rights pass with the conveyance of land when sold or transferred, the only time a right is granted from the Chief Engineer is for a “new” water appropriation right.

The third modification would amend a section dealing with a person seeking to acquire a new water appropriation right and require, in addition to the other information required in current law, that the person provide to the Chief Engineer a sworn statement or evidence of legal access to or control of the point of diversion and place of use from the landowner, or his or her authorized representative.

The last modification would restate and clarify current law by stating that the date of priority of every water right and not the purpose determines the right to divert and use water when the supply is not sufficient to satisfy all water rights. The bill also would clarify that when the lawful uses of water have the same date of priority, the order of preference is domestic,

*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>

municipal, irrigation, industrial, recreational, and water power uses. The only water rights with the same date of priority are vested rights since all other appropriation rights have a date of priority.

Background

This bill was introduced by the Special Committee on Eminent Domain in Condemnation of Water Rights. Several of the amendments included in the original bill were suggested by a conferee at the hearing of the Special Committee during the 2008 Interim.

The Senate Committee on Natural Resources amended the bill to clarify that the “date of priority” was the determinate factor in allocating vested rights and added a provision to current law which would require the submission of evidence to the Chief Engineer that the applicant has access to or control of the point of diversion and place of use from the landowner when applying for a new water appropriation right.

The House Committee on Agriculture and Natural Resources amended the bill to also allow sworn statements showing legal access to or control of the point of diversion and place of use from the landowner when seeking to acquire a new water appropriation right.

The House Committee of the Whole amended the bill to strike “and place of use” from the language allowing sworn statements when seeking a water right.

At the House Committee hearing, testimony in support of the bill was provided by Kansas Farm Bureau and Kansas Livestock Association. Testimony opposing the bill was provided by the Kansas Rural Water Association. Neutral testimony was provided by the Kansas Independent Oil and Gas Association.

The fiscal note on the original bill indicates that there would be no fiscal impact.