

SESSION OF 2011

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 124**

As Agreed to April 28, 2011

Brief*

SB 124 would combine various provisions regarding water which are detailed below.

Lower Smoky Hill Water Supply Access Program

The bill would create the Lower Smoky Hill Water Supply Access District, the Lower Smoky Hill Water Supply Access Program, the Lower Smoky Hill Special Irrigation District, and the Lower Smoky Hill Water Supply Access Fund.

Definitions

Among the definitions which would be established by the bill are the following:

- “Access water” would mean water stored in water supply access storage of a reservoir under a water reservation right and provided as supplemental water to eligible water right holders;
- “District” would mean the Lower Smoky Hill Water Supply Access District;
- “Eligible water right holder” would mean a person holding a right or permit to appropriate surface water from the program area for municipal, industrial, irrigation

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(limited to the Lower Smoky Hill River Special Irrigation District), or recreational purposes;

- “Landowner” would mean a person who is the record owner of any real estate within the boundaries of the Access District or who has an interest as a contract purchaser of 40 or more contiguous acres in the district not within the corporate limits of any municipality, excluding owners of oil leases, gas leases, mineral rights, easements, and mortgages;
- “Program” would mean the Lower Smoky Hill Water Supply Access Program;
- “Program area” would mean the area of the Smoky Hill River below the Kanopolis Reservoir Dam to the confluence of the Smoky Hill and Saline rivers;
- “Special Irrigation District” would mean the Lower Smoky Hill Special Irrigation District; and
- “Water supply access storage” would mean water held by the Kansas Water Office in Kanopolis Reservoir under contract with the U.S. Army Corps of Engineers and designated by the Kansas Water Office as water supply access storage for the purposes of the Lower Smoky Hill Water Supply Access Program.

Lower Smoky Hill Water Supply Access Program

The bill would create the Lower Smoky Hill Water Supply Access Program within the Kansas Water Office. The agency, with the approval of the Kansas Water Authority, would have the authority to negotiate and enter into contracts for water supply access storage to be used for the purposes outlined in the bill. The agency also could designate all or any portion of the water held in Kanopolis Reservoir to water supply access storage to meet the needs of the Lower Smoky Hill Water Supply Access District.

Lower Smoky Hill Water Supply Access Fund

The bill would create the Lower Smoky Hill Water Supply Access Fund within the State Treasury, which would be administered by the Kansas Water Office.

All expenditures from the Fund would be required to be used for purposes of the provisions of the bill and made in accordance with appropriations acts.

Lower Smoky Hill Water Supply Access District

The bill would create the Lower Smoky Hill Water Supply Access District and authorize the establishment of an incorporating governing body.

Prospective members of the Access District may join if they apply to the Kansas Water Office. Prospective members would be able to join if they apply for water supply access storage and currently have, or would apply for, a water right which makes them eligible for membership under this act.

The Director of the Kansas Water Office, in consultation with the Chief Engineer, would approve prospective members under certain conditions.

The Access District would have authority to impose charges against members of the Access District to pay the Kansas Water Office the full annual amortized cost incurred for the operation, administration, and enforcement of the program. In addition, the Access District would have authority to impose additional charges for repayment of bonds used for certain projects or to finance the purchase of water storage in Kanopolis Reservoir and to cover district operating costs. All moneys would be remitted to the Kansas Water Office for deposit in the Lower Smoky Hill Water Supply Access Fund.

The bill would authorize the Director of the Kansas Water Office to request releases of water supply access water by the federal government from the Kanopolis

Reservoir and would communicate to the Chief Engineer the date and quantity of requests for releases.

Each member of the Access District would adopt conservation plans and practices, which would be consistent with the guidelines maintained by the Kansas Water Office.

If the Access District is not formed by December 31, 2020, the provisions of the act that pertain to the Access District would expire.

Lower Smoky Hill Special Irrigation District

The bill would authorize the creation of the Lower Smoky Hill Special Irrigation District for the purpose of participating in the Lower Smoky Hill Water Supply Access District. The Special Irrigation District would be a single member of the Lower Smoky Hill Water Supply Access District.

The Special Irrigation District would be formed upon petition by eligible irrigation water right holders to the Director of the Kansas Water Office.

All members of the Special Irrigation District would be able to use water supply access storage under the rules and by-laws of the Lower Smoky Hill Water Supply Access District and the Special Irrigation District.

The bill would create a governing board of the Special Irrigation District. The governing board would have the authority to purchase, allocate, determine, and charge fees and assessments for, and allow the use of, water supply access storage; contract for property; contract with employees and consultants; and buy, sell, lease, rent, and purchase water supply access storage.

In addition, the bill would authorize the governing board of the Special Irrigation District to designate at least one representative to serve as a member of the Lower Smoky Hill

Water Supply Access District Board of Directors; provide for a fee structure sufficient to pay for water supply access storage and any additional costs as determined by the Special Irrigation District and set a fee schedule for all members of the Special Irrigation District; and create an agreement to be entered into with each person who desires to become a member of the Special Irrigation District.

If the Special Irrigation District is not formed by December 31, 2020, the provisions of the act that pertain to the Special Irrigation District would expire.

Rules and Regulations

The bill would authorize the Director of the Kansas Water Office and the Chief Engineer to adopt any rules and regulations necessary to carry out the purposes and procedures of the act. In addition, the bill would direct the Director and the Chief Engineer to consider the advice of the Kansas Water Authority and stakeholders in the program area when preparing any rules and regulations. The bill also would authorize the Kansas Water Office to adopt rules and regulations to implement the Lower Smoky Hill Water Supply Access Program.

Water Conservation Reserve Program

The bill would establish the Water Rights Conservation Program, which would be administered by the Chief Engineer of the Division of Water Resources within the Kansas Department of Agriculture (KDA).

The Program would allow an eligible water right in good standing to be enrolled in the Program, with the approval of the Chief Engineer, for a period not exceeding ten years. The water right could be re-enrolled within two years of the expiration date of the previous enrollment period, subject to approval by the Chief Engineer.

Each application for enrollment and re-enrollment in the Program would require the payment of a non-refundable fee, which could not exceed \$300. The fees collected from the application enrollments would be deposited in the KDA's existing Water Appropriation Certification Fund.

In addition, the bill would amend existing law regarding abandonment of water rights. Enrollment in the Program and being continually in compliance with the Program would be considered as having due and sufficient cause for non-use of a water right and the water right would not be considered abandoned under state law.

The Chief Engineer would have the authority to adopt rules and regulations to effectuate and administer the Program.

Multi-Year Flex Accounts

The bill would amend a section of water appropriations law dealing with multi-year flex accounts. Specifically, the bill would modify the years of data to be used to calculate the "base average usage" from 1992 through 2002 to 2000 through 2009. In addition, the bill would stipulate that unless the term permit issued by the Division of Water Resources for participation in the multi-year flex account program is issued pursuant to an application filed before November 1 of the year prior to the first year of participation, then the quantity of water used during the year of application for the term permit would be deducted from the amount of water deposited in the account authorized by the term permit.

Arkansas River Gaging Fund

The bill would establish the Arkansas River Gaging Fund in the State Treasury. The Fund would be administered by the Secretary of Agriculture and the first expenditures from the Fund would be used for the operation and maintenance of the gages along the Arkansas River to manage the River under the Arkansas River Compact. After moneys are

expended for the operation and maintenance of the gages, then the bill would authorize up to \$20,000 in a fiscal year to be expended for the purposes of livestock market reporting. If there continues to be moneys available in the Fund, then up to \$5,000 in any fiscal year may be expended for the purpose of funding the bluestem pasture report.

The bill would require moneys received from royalties on the state's oil and gas leases in Hamilton, Kearny, Finney, Gray, and Ford counties to be credited to the Fund. Moneys received from royalties on lands under the control of the Secretary of Wildlife and Parks, as provided in KSA 32-854, would continue to be credited to either the Wildlife Fee Fund or the Park Fee Fund, as determined by the Secretary, and would not be credited to the Fund.

In addition, when the Fund attains a balance of \$75,000 in any fiscal year, the Fund would no longer receive royalties from the state's oil and gas leases in the five counties mentioned in the bill. Instead, the royalties would be credited to the State General Fund for the remainder of the fiscal year.

Conference Committee Action

The Conference Committee combined the provisions of SB 191 (Water Rights Conservation Program), HB 2231 (Multi-Year Flex Accounts), and HB 2357 (Arkansas River Gaging Fund) into SB 124 (Lower Smoky Hill Water Supply Access Program).

The Conference Committee agreed to the House amendments on SB 124, the Senate amendments on SB 191, the House amendments on HB 2231, and the House amendments on HB 2357. The Conference Committee further agreed to technical amendments on SB 124.

A Conference Committee Report on SB 124 was distributed and subsequently retracted on April 1, 2011.

The Conference Committee agreed to modify the language of the House Committee version of HB 2357 by providing an exception for the Kansas Department of Wildlife and Parks with regard to any royalties on leases it receives in the five counties mentioned in the bill. In addition, the Conference Committee agreed to specify that the total amount of moneys deposited in the Fund in any fiscal year should not exceed \$75,000 and that any excess royalties that are collected over \$75,000 would be credited to the State General Fund.

Background

Lower Smoky Hill Water Supply Access Program

The original version of SB 124 was introduced by the Senate Committee on Natural Resources at the request of the Kansas Water Office.

The proponents of the bill at the hearing before the Senate Committee on Natural Resources included the Kansas Water Office, Lower Smoky Valley Irrigators Association, Kansas Livestock Association, Kansas Farm Bureau, and the City of Salina.

An official with the Kansas Water Office stated that SB 124 would allow the Kansas Water Office to provide access to water storage owned by the state in Kanopolis Reservoir to downstream users. The bill is the result of on-going discussion and review by stakeholders in the area since 2006. The bill would allow downstream surface water right holders to voluntarily form a special district for the purpose of purchasing storage in Kanopolis Reservoir.

There were no opponents to the bill at the time of the Senate Committee hearing.

The Senate Committee approved two amendments to the bill. The first amendment included language that states that the Board of Directors for the Access District shall have

an odd number of directors and clarifies that at least one member of the Special Irrigation District shall serve as a director on the Board of Directors, if the Special Irrigation District is formed. The second amendment included a technical adjustment to the bill.

The House Committee on Agriculture and Natural Resources made technical amendments to the bill to make the names of the Special Irrigation District and the Lower Smoky Hill Water Supply Access District consistent throughout the proposed legislation.

Water Conservation Reserve Program

The original version of SB 191 was introduced by the Senate Committee on Natural Resources at the request of the KDA.

Proponents testifying in favor of the bill during the hearing before the Senate Committee on Natural Resources included the Chief Engineer; the Kansas Water Congress; Northwest Kansas Groundwater Management District (GMD) No. 4; the five Kansas GMDs; Kansas Farm Bureau; and the Kansas Livestock Association. The Board of Public Utilities for the City of McPherson provided written testimony in favor of the bill.

The Chief Engineer stated that the Program was initiated through rules and regulations in 1992 without many restrictions and fees. The Program was phased out in 2009 as the KDA faced a 20.0 percent budget reduction in State General Funds and the Program was eliminated as it was not statutorily required. The Chief Engineer provided the Senate Committee with an example of the possible language that would be used to update the current rules and regulations.

Other conferees stated that stakeholders believe the creation of the fee-funded Program is beneficial for water right holders and water users within the state. In addition, the Program is a useful tool in areas like the Ogallala Aquifer,

which are largely closed to new water appropriations and are experiencing declining water levels. The Program makes it possible for eligible water right holders to idle pumps and conserve water in these over-developed areas without the fear of abandoning their water rights.

Testimony provided by the five Kansas GMDs requested that clarifying language to New Section 1(b), regarding the length of the enrollment period for the Program, be added to the bill.

The Senate Committee amended the bill to add clarifying language regarding the length of the enrollment period for the Program.

Multi-Year Flex Accounts

The original version of HB 2231 was requested by a spokesperson from the KDA. At the hearing on the bill before the House Committee on Agriculture and Natural Resources, the only conferee was a proponent from the KDA. The conferee explained that the statute being amended provides for a water right to enter into a flex account, which is a multi-year flexible appropriation of water. The statute authorizes an owner of a water right to have a five-year term permit that can be approved for an amount of water that is five times the annual average use of the water right over a 10-year base period, times 90 percent to achieve 10 percent conservation. In exchange for conserving some water, the owner receives a five-year allotment of water to pump as needed over a five-year term. The conferee noted that the legislation could be used to help save a crop in an exceptionally dry year or to grow a more water-intensive crop some years.

Written testimony in support of the bill was provided by the Kansas Farm Bureau.

The House Committee amended the bill to clarify the reference in the title of the bill and to ensure that the water to be deducted would be from the amount of water deposited in the account “authorized by the term permit.”

Arkansas River Gaging Fund

At the hearing on HB 2357 before the House Committee on Agriculture and Natural Resources, a spokesperson from the KDA indicated that the Division of Water Resources is responsible for administering the Arkansas River Compact and allocating river flows among entities that have water rights. The House Committee learned that due to budget issues, the agency is no longer funding the state's share of operation and maintenance costs for certain streamgages. The House Committee was told that the bill would be an alternative means to help fund the costs associated with operation and maintenance costs for these streamgages along the Arkansas River. The spokesperson spoke as a proponent of the bill. In addition, a representative of Southwest Kansas GMD No. 3 spoke in favor of the bill indicating that the restoration of funding would aid in the management of the water available from the Arkansas River in Southwest Kansas. Written testimony in support of the bill was provided from the Garden City Company. There were no opponents to the bill at the hearing.

The House Committee amended the bill by implementing a cap on the amount of money to be credited to the Arkansas River Gaging Fund and set that amount at \$75,000. In addition, the House Committee amended the bill to permit expenditures from the fund of up to \$20,000 on livestock market reports once the amount of money in the Fund was sufficient to cover the cost of the operation and maintenance of the streamgages. These amendments also would permit, if there are additional moneys in the Fund, that up to \$5,000 could be spent on the bluestem pasture report. Other amendments were technical in nature.

The Senate Committee on Ways and Means amended the bill by increasing the cap on the amount of money to be credited to the Arkansas River Gaging Fund from \$75,000 to \$80,000.

Fiscal Effects

Lower Smoky Hill Water Supply Access Program

The fiscal note on the original version of SB 124 would require an increase in State General Fund expenditures of \$15,892 in FY 2012 for the KDA, due to 428 additional staff hours to comply with all aspects of the bill. The Kansas Water Office indicates SB 124 would not have a fiscal effect upon its expenditures; however, depending on the agreement reached with the Access District, the bill could shift expenditures from the Kansas Water Office to the Access District.

Water Conservation Reserve Program

The fiscal note on the original version of SB 191 indicates that the proposed fee of \$300 would be adequate to cover the KDA's costs of processing program applications. Although the KDA is unable to estimate how many applications there would be, any increase in staff time would be funded by the application fees.

Multi-Year Flex Accounts

The fiscal note on the original version of HB 2231 indicates that the KDA believes that the bill could increase participation in the Program by irrigators or local governments, but the amount of the increase is not known. The cost to the KDA to process each permit application is \$900 for technical review while the per permit fee charged to each applicant is \$400. The KDA would implement the bill by using existing staff and available resources.

Arkansas River Gaging Fund

The fiscal note on the original version of HB 2357 states the amount of oil and gas royalties that would be credited to the fund in FY 2012 and in subsequent years is not known by the KDA. The KDA would resume, in priority order, operation

and maintenance of streamgages as revenues allow. Currently, there is a need to resume operation of two discontinued streamgages on the Arkansas River, and three discontinued streamgages on irrigation ditches fed by the Arkansas River in Hamilton, Kearny, and Finney counties. The current cost to the state for resuming U.S. Geological Survey's operation and maintenance of these five streamgages is \$51,360.

The Conference Committee received further information from the Department of Revenue stating that oil and gas royalty payments to the state are currently deposited into the State General Fund. In FY 2010, total deposits were \$161,600. Oil and gas royalties received from Hamilton, Kearny, Finney, Gray, and Ford counties in FY 2010 totaled approximately \$82,500. The Department of Revenue states that oil and gas royalty amounts are dependent on production and price. Assuming a five percent increase per year, the royalty amount estimated for these counties for FY 2012 is \$91,000. The House version of the bill limits the transfer to the Arkansas River Gaging Fund to \$75,000.

The Conference Committee received additional information from the Kansas Department of Wildlife and Parks stating that the agency's oil and gas leases produced royalties in Finney and Kearny counties in FY 2010 totaling \$61,213. This funding was deposited in the agency's Wildlife Fee Fund. The agency stated that the provisions of HB 2357 would transfer the funding from the Wildlife Fee Fund to the Arkansas River Gaging Fund, which would constitute a diversion of funds according to the U.S. Fish and Wildlife Service. The penalty for diversion of funds could result in a monetary penalty or loss of federal funds. In addition, the agency noted that the Department of Revenue did not include the fiscal effect for the Kansas Department of Wildlife and Parks in its original fiscal note on the bill.

Water; Water Rights Conservation Program; Multi-Year Flex Accounts; Division of Water Resources