

SESSION OF 2012

**SECOND CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SUBSTITUTE FOR SENATE
BILL NO. 148**

As Agreed to May 8, 2012

Brief*

House Sub. for Sub. for SB 148 would address the division of water rights and the issue of the treatment of water permits for sand and gravel operations.

Division of Water Rights

The bill would explicitly codify the authority to divide water rights by stating that an owner of a water right that is not abandoned may divide the water right into two or more distinct water rights without losing priority. In order to divide the water right, the owner must:

- Notify the Chief Engineer in writing of the proposed division, with the written consent of all persons that have an ownership interest in the water right;
- Designate the relative priority of the divided water rights;
- Demonstrate to the Chief Engineer the division is reasonable and would not increase consumptive use; and

*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. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

- Demonstrate to the Chief Engineer the request does not violate the Kansas Water Appropriation Act.

If the Chief Engineer finds the above four requirements are met, the Chief Engineer then must issue an order dividing the water right and describing the terms and conditions of each water right. Acceptance of the request to divide a water right would not authorize any change in the place of use, point of diversion, or the use made of the water. Upon finding the four requirements are not met, the Chief Engineer would return the division request and take no action.

The bill would provide that if a judicial determination should occur regarding ownership interests and that the determination would result in a partition of a water right not deemed abandoned, the Chief Engineer then must issue an order dividing the water right in accordance with the judicial determination, to the extent the determination does not violate the provisions of the Kansas Water Appropriation Act.

The bill states each division request submitted to the Chief Engineer would be assessed a \$300 fee. Funding from the fee would be remitted to the State Treasurer.

Water Permits for Sand and Gravel Operations

The bill would address permits to appropriate water for sand and gravel operations by requiring that the permit authorize net evaporation as the primary use and hydraulic dredging and sand washing as a secondary use of water. Secondary uses would use water in a manner in which there is not significant net consumptive use. The secondary uses would be granted for the proposed life of the project or the exhaustion of reserves. If a permit is denied, the Chief Engineer would be required to set forth all reasons for the denial. Applicants who are denied a project permit by a final order of the Chief Engineer would be able to appeal the decision. The bill would provide for a project application

permit fee of \$500, with any request for modification to be accompanied by a \$250 fee.

The bill would authorize the Chief Engineer to reduce the required offset of net evaporation for the operation, as currently provided for in law, based on the estimated use of groundwater by the existing vegetation.

Conference Committee Action

The second Conference Committee agreed to add language requiring the Chief Engineer to set forth all the reasons for denial of a permit to a sand and gravel operation if a permit application is denied. In addition, the second Conference Committee agreed to add language providing that a sand and gravel operator must provide that an off-set water right cannot be reasonably obtained at or near the current market value in addition to other requirements.

The second Conference Committee also agreed to further amend the bill to strike the provision regarding approval of permits in closed areas or waiving safe-yield requirements in an area that is over-appropriated. In addition, the Conference Committee added language to allow the Chief Engineer to reduce the required net evaporation offset based on the estimated use of groundwater by the existing vegetation.

Background

House Sub. for Sub. for SB 148 is composed of the original SB 148 and the original concepts contained in HB 2698. After the hearing on HB 2698, the Chairperson of the House Agriculture and Natural Resources Committee asked the interested parties to meet. The provisions of the bill relating to sand and gravel operations reflect the outcome of the meetings of the interested parties.

During floor action, the Senate did not adopt the Conference Committee Report and appointed a second conference committee. The House acceded to this request.

SB 148 Review

A representative of the Division of Water Resources, Department of Agriculture, provided testimony in favor of the bill, stating the bill makes the agency's current practice of dividing water rights explicit in statute and provides for a fee of \$300 for the division, regardless of the number of wells involved. A representative of the Kansas Farm Bureau also provided testimony in favor of the concepts presented by the bill.

The majority of the bill's language was originally contained in New Section 1 of SB 272, which was introduced by the Senate Committee on Agriculture at the request of the Department of Agriculture. Before the Senate Committee passed SB 272, New Section 1 was removed from the bill. A hearing later was held by the Senate Committee on SB 148. The Senate Committee removed the contents of the original bill and inserted language into SB 148 that resembles New Section 1 of SB 272.

The Senate Committee approved several technical amendments to the bill, as recommended by committee staff. The Senate Committee then recommended the contents of SB 148, as amended, be placed in a substitute bill.

The Division of the Budget provided a fiscal note for the original version of SB 148, which states there would be no fiscal effect. An updated fiscal note for the bill was not available at the time of the Senate Committee hearing.

HB 2698 Review

At the hearing before the House Agriculture and Natural Resources Committee on HB 2698, proponents included two

spokespersons for the Kansas Aggregate Producers' Association and three individuals who are aggregate producers. The Chief Engineer gave neutral testimony and a spokesperson for the groundwater management districts spoke in opposition to the original bill.

The fiscal note on the original HB 2698 indicates there would be no impact to the Department of Agriculture.

Water rights; water permits

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