

SESSION OF 2013

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2363**

As Agreed to April 3, 2013

Brief*

HB 2363 would address a number of water-related issues, including establishing limited transfer permits; granting land-based sand and gravel pits and aggregate mining operations utilizing washwater ponds, term permits; amending various provisions of existing law dealing with dams and water obstructions providing for general permits; granting additional authority to boards of county commissions to clean and maintain banks and channels of streams; amending statutory language involving agency reviews of water development projects; repealing several obsolete statutes; and making orders of the Chief Engineer regarding Local Enhancement Management Areas subject to the Kansas Administrative Procedure Act.

Limited Transfer Permits

The bill would allow the Chief Engineer of the Division of Water Resources (DWR) to grant limited transfer permits authorizing the use of up to 4,000,000 gallons from an existing water right. The permit would be limited to a single calendar year and would require an application fee of \$200. If the base water right is groundwater, the bill would allow its use to be transferred to another well from the same source of supply within two miles. If the base water right is for surface water, the use could be transferred to another surface water

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use within the same surface water system. The Chief Engineer would be authorized to adopt rules and regulations to administer these provisions and to ensure there is no increase in consumptive use. These provisions would be supplemental to the Kansas Water Appropriations Act.

Land-Based Sand and Gravel Pits and Aggregate Mining Operations Utilizing Washwater Ponds; Term Permits

The bill would require the rules and regulations adopted by the Secretary of Health and Environment pertaining to the prevention of surface water, subsurface water, and soil pollution to not apply to land-based sand and gravel pits or aggregate mining operations utilizing washwater ponds. This provision would apply if the only water or wastewater directed to the dredge pit or washwater pond consists of dredge return flows, flows generated from aggregate classification, or flows from washing aggregate, if water used in the flows is returned to the dredge pit or washwater pond.

The bill also would provide that locations in the state where the average potential net evaporation is less than 18 inches per year, as determined by the Chief Engineer, would be issued a single term permit for the life of a sand or gravel pit project, not to exceed 80 years for secondary uses of water. Existing law states secondary beneficial uses would include hydraulic dredging and sand washing.

Dams

With respect to dams, the bill would modify the statutory definition of what constitutes a “dam” to those that have a height of 25 feet or more (current law), or has a height of six feet or greater (current law) and a storage volume at the top of the emergency spillway elevation of 50 or more acre feet (proposed modification). The height of a dam would be measured from the lowest elevation of the streambed, downstream toe, or outside limit of the dam to the elevation of the top of the dam.

In addition, the bill would exempt hazard Class A dams proposed for construction or modification from the requirement to acquire a permit or written consent unless the Chief Engineer determines it is necessary for the protection of life or property. Those hazard Class A dams generally not required to have a permit or written consent include:

- Those that have a height of less than 30 feet and a storage volume at the top of the emergency spillway elevation of less than 125 acre feet; **and**
- The dam location and dimensions have been registered; **or**
- The dam is a wastewater storage structure for a confined feeding facility approved by the Secretary of Health and Environment.

The bill would establish the application fee for a permit to construct, modify, or add to a dam at \$200. The bill would repeal current law establishing fees based on their point in construction. Also, the bill would repeal statutory language in instances where dam inspection fees were assessed by the size of the dam.

When a dam has been determined to be unsafe, the bill would require the safety inspection to be conducted by the Chief Engineer or authorized representative and the cost of the inspection would be based upon the size of the dam. Class sizes 1 and 2 would be repealed and inspection fees for dam sizes Class 3 and 4 would be retained.

Language requiring the Chief Engineer to maintain a list of licensed professional engineers who may conduct the review of any application for the consent or permit would be repealed.

Water Obstructions

With respect to a permit or consent of the Chief Engineer for a water obstruction, the bill would no longer require the permit or consent for a water obstruction or change in the cross section of a designated stream if the cross section area is obstructed for less than five percent and the water obstruction or change is contained within a land area measuring 25 feet or less along the stream length. In addition, no permit or consent would be required if the water obstruction is not a dam (current law); is not located within an incorporated area (current law); every part is located more than 300 feet from any property boundary (current law), which includes any water impounded by the obstruction (proposed law); and if the watershed area above the water obstruction is five square miles (proposed law) (current law is 640 acres).

The bill would define a “designated stream” to mean a natural or man-made channel that conveys drainage or runoff from a watershed having an area of one or more square miles in zone one, two or more square miles or more in zone two, or three or more square miles or more in zone three. Zone one includes all geographic points located in or east of Washington, Clay, Dickinson, Marion, Harvey, Sedgwick, or Sumner counties. Zone two includes all geographic points located west of zone one, and in or east of Smith, Osborne, Russell, Barton, Stafford, Pratt, or Barber counties. Zone three includes all geographic points location west of zone two.

The bill would establish a new methodology for the application fee for a permit to construct, modify, or add to a water obstruction or to change or diminish the course, current, or cross section of a stream based on the watershed area. For a permit with a watershed area above the project of less than five square miles, the permit application fee would be \$100; for those areas above the project between five and fifty square miles, the fee would be \$200; and for those areas above the project with greater than fifty square miles, the fee

would be \$500. The prior fee methodology would be repealed.

General Permits

The bill would authorize the Chief Engineer to issue general permits for projects that require limited supervision and review. The fee for a general permit would be \$100.

Authority of County Commissions and Review of Water Development Projects

The bill would amend current law to allow boards of county commissions, upon enactment of resolution or after having received a petition from 50 taxpayers of any county owning land in the floodplain in question, to clean and maintain the banks and channels of streams and watercourses. Upon petition or resolution, the boards could remove debris, but could not change or diminish the course, current, or cross sections of any stream. The boards could act if they have obtained written permission of the landowner to enter private property. If damage is done, the bill would require a landowner to make a claim within 60 days, rather than the current 10 days, of the alleged material damage.

The bill also would subject only those water development projects requiring a permit by the Chief Engineer to be reviewed by the “environmental review agencies” outlined in KSA 82a-326. Current law defines a “water development project” to mean any project or plan that may be allowed or permitted.

Repeal of Statutes, Deletion of the Term “Jettie,” and Local Enhancement Management Areas

The bill would repeal current provisions of law relating to: certain dams built under the federal agricultural conservation program; obstructing the flow of surface water; construction of drainage on private land by owners; authority of the former position entitled “irrigation commissioner”; and water rights held by the former Sunflower Ammunition Plant.

In addition, the term “jettie” would be removed from the law, since it is no longer a commonly used term.

Further, Local Enhancement Management Area (LEMA) orders would be added to the list of order made by the Chief Engineer that are subject to review in accordance with the Kansas Administrative Procedure Act.

Conference Committee Action

The members of the Conference Committee agreed to the Senate amendments to the bill and to further add language relating to limited transfer permits from an existing water right and language that would make the orders of the Chief Engineer regarding Local Enhancement Management Areas subject to review in accordance with the Kansas Administrative Procedure Act. In addition, the Conference Committee agreed to language regarding the authority of boards of county commissioners to remove drift, trees, and other debris from streams. The additional language would clarify the removal could not change or diminish the course, current, or cross sections of any stream.

Background

The bill contains the provisions of HB 2363 and Senate Sub. for Sub. for HB 2051.

HB 2363

The bill was introduced at the request of a spokesperson for the Kansas Aggregate Producers' Association.

At the House Committee hearing on the bill, a spokesperson from the Kansas Department of Health and Environment (KDHE) appeared in support of the bill. The conferee indicated that only the portion of the bill involving rules and regulations regarding water pollution pertain to KDHE. The conferee indicated the bill does not affect the manner in which KDHE addresses most land-based sand, gravel, and aggregate operations. The conferee stated that if all of the washwater and dredge water from the operation is directed back to the pit or pond and does not discharge water to the surface, then no pollution permit is required. The conferee noted that if the pit discharges water to the surface or there is stormwater discharge, then a federal National Pollutant Discharge Elimination System (NPDES) permit would be required.

A spokesperson from the Kansas Aggregate Producers' Association also appeared in support of the bill. This conferee noted the bill would exempt the industry from the more stringent requirements contained in the statutes relating to confined animal facilities, particularly those which have in some cases required the conferee's industry to use clay liners to protect the groundwater. The conferee noted the expense associated for engineering and compliance.

No one appeared before the House Committee as a neutral on the bill or in opposition to the bill.

The House Committee amended the bill in a clarifying manner and provided that the single term permit for secondary beneficial uses would be for the life of the project, not to exceed 80 years.

Sub. for HB 2051

The bill was introduced at the request of a spokesperson of the Kansas Department of Agriculture (KDA). At the House Committee hearing on the bill, a spokesperson from the KDA appeared in support of the bill. Also appearing in support of the bill was a representative of the Kansas Water Authority. Other proponents included representatives of the Kansas Farm Bureau, the Kansas Livestock Association, and Groundwater Management District 3, all who proposed amendments to the bill. Those appearing in opposition to the bill included a representative of the Kansas Association of Counties and a member of the Sedgwick County Commission.

The Chairperson of the House Committee on Agriculture and Natural Resources, after the hearings on **HB 2073** (dealing with cleaning and maintaining banks and channels, eliminating discretion of Chief Engineer and modifying the definition of a “water development project” subject to state agency review) and HB 2051, appointed a subcommittee to consider the contents of both bills. Appointed to the subcommittee were Representatives Schroeder, Johnson, Carpenter, and Lane. The substitute bill is the product of the subcommittee.

Senate Committee Action

The Senate Committee on Natural Resources held hearings on both HB 2363 and Sub. for HB 2051. The Senate Committee amended HB 2363 by including provisions from Sub. for HB 2051 concerning streams, dams, and obstructions. In addition, the Committee amended the provisions from Sub. for HB 2051 to clarify that the board of county commissioners may remove debris, but shall not scalp or extract streambeds when cleaning and maintaining the banks and channels of the stream and watercourses within definitely established bank lines. The Committee also amended the definition of “dam” in the Sub. for HB 2051 provisions regarding measurement and storage volume. The

Committee also amended which dams the Chief Engineer would not need to provide prior written consent or a permit.

Fiscal Information

The fiscal note on the original version of **HB 2363** states the KDA estimates the bill would exempt approximately ten sand and gravel pits or aggregate mining sites from water flow meter requirements when water is used for hydraulic dredging and sand washing. The bill would produce savings of between \$500 and \$1,000 each for those site owners affected. Passage of the bill would have no fiscal effect for the KDA.

The fiscal note on HB 2363 also states KDHE indicates that if a pit or pond only accepts dredge return flows, water from aggregate classification, or flows from washing aggregate, and there is no surface discharge from the pit or pond, no federal NPDES permit would be required. The passage of the bill would not have a fiscal effect for KDHE.

The fiscal note on the original version of **HB 2051** indicates passage of the bill would affect the KDA as follows:

- Obtaining a limited transfer permit would make water available for a temporary appropriation. The KDA estimates there would be 200 applications in FY 2014 with a fee of \$200 for each permit. This would result in a \$40,000 revenue increase and a corresponding \$40,000 expenditure increase for providing the service. The expenditure increase would include \$35,000 for the half-time work of an existing FTE position and \$5,000 for operating expenditures.
- The dam permit exemption would result in a slight reduction in the number of permit applications received, estimated to be five to ten per year. The dam permit exemption would reduce the current number of dams subject to Division of Water

Resources (DWR) regulation by 1,492, or 24.0 percent. The federal dam safety grant is currently allocated to states based on the number of dams regulated; therefore the change proposed in the bill would result in a 24.0 percent reduction in the federal grant dollars awarded to the Department, effective during the second quarter of FY 2014. The current federal grant amount is \$486,000; therefore, a 24.0 percent reduction in funding would be \$116,640. The federal funding reduction would result in the elimination of 1.50 FTE positions responsible for site evaluations and engineering reviews.

- Dam inspection responsibilities would be assigned to the dam owner; however, the DWR would still inspect some dams. The fee for dam inspections performed by the agency would be set, so the amount would exceed similar fees charged by private dam inspection providers. The combination of fees and penalties would encourage greater compliance with the inspection requirement, resulting in fewer inspections that would have to be completed by the agency. The fiscal effect would be negligible.
- The carryover of limited amounts of water from multi-year flex accounts to subsequent flex accounts would have no fiscal effect.
- LEMA orders would be subject to administrative review and would have no fiscal effect.

Any fiscal effect associated with either bill is not reflected in *The FY 2014 Governor's Budget Report*.

agriculture and natural resources; permits; water; local government; licenses, permits, and registrations; administrative rules and regulations; department of agriculture; department of health and environment

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