

SESSION OF 2015

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 52**

As Agreed to April 2, 2015

Brief*

SB 52 would amend law regarding water, including augmentation, multi-year flex accounts, and public water supply storage, and create law regarding consideration of conservation measures. Specific information on these topics follows.

Augmentation

The bill would allow the Rattlesnake Creek Subbasin (located in hydrologic unit code 11030009) water right holders to utilize augmentation for the replacement in time, location, and quantity of water that was unlawfully diverted from senior water right holders, if the replacement water is available and offered voluntarily.

The bill also would make several technical corrections to the law and clarify it is unlawful for any person to divert or take any water that has been released from storage under authority of water reservation rights held by the State.

Multi-year Flex Accounts

The bill would make two changes to law that establishes multi-year flex accounts (MYFAs) for water appropriations for irrigation.

*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>

[Note: A MYFA is a voluntary, five-year term permit that temporarily replaces an existing (base) water right. The term permit allows the water right holder to exceed that holder's annual authorized quantity in any year, but restricts total pumping over the five-year period. MYFAs do not change the underlying base water right. At the end of the five-year period, the water right holder can choose whether to re-enroll that water right into another MYFA.]

First, the bill would allow a MYFA term permit holder to make a change to the permit's authorized place of use by up to 10 acres or 10 percent of the authorized place of use, whichever is less. Current law does not allow any changes to a MYFA term permit's authorized place of use.

Second, the bill would allow MYFA term permit holders, who re-enroll in a MYFA, to roll-over their unused quantity of water available at the end of the MYFA to the new MYFA. The amount of unused water that could be rolled over would be capped at an amount that is less than or equal to 100 percent of the base average use (a calculated average amount of water diverted for beneficial use during the period of calendar years 2000 through 2009). The total amount of water in any MYFA could not exceed five times the authorized quantity of the base water right.

Consideration of Conservation Measures

The bill would create law by requiring the Chief Engineer of the Kansas Department of Agriculture (KDA) to give due consideration to water management or conservation measures previously implemented by a water right holder when implementing further limitations on a water right. The Chief Engineer would be required to take into account reductions in water use, changes in water management practices, and other measures undertaken by the water right holder. The new law would be part of and supplemental to the Kansas Water Appropriation Act.

In addition, the bill would amend the Kansas Water Appropriation Act to require the Chief Engineer to give due consideration to water users who already have implemented reductions in water use resulting in voluntary conservation measures when reviewing local enhanced management plans.

Public Water Supply Storage

The bill would change the rate of interest charged to a local entity by the State for the purchase of public water supply storage in a class I, II, or III project under the Multipurpose Small Lakes (MPSL) Act, as administered by the Kansas Water Office (KWO).

Currently, the interest on the State's costs incurred in providing the storage is calculated at a rate *per annum*, which is the greater of the average rate of interest earned during the past calendar year on repurchase agreements of less than 30 days duration entered into by the Pooled Money Investment Board, less 5 percent; or 4 percent.

The bill would change the calculation of the interest to a rate *per annum*, equal to the average of the monthly net earnings rate for the Pooled Money Investment Portfolio for the preceding calendar year, for each year of storage.

Conference Committee Action

The Conference Committee agreed to the House language on SB 52, but added language from the Senate version of SB 52 that limits augmentation to Rattlesnake Creek Subbasin water right holders. In addition, the Conference Committee added the language of SB 64, as amended by the Senate Committee on Natural Resources.

Background

SB 52 – Augmentation, MYFAs, Consideration of Conservation Measures

During consideration of SB 52, the House Committee on Agriculture and Natural Resources added provisions of SB 36 and SB 227, as amended by the Senate Committee on Natural Resources.

SB 52 – Augmentation

SB 52 was introduced by the Senate Committee on Natural Resources.

At the Senate Committee hearing, proponent testimony was provided by representatives of the Big Bend Groundwater Management District #5, Kansas Corn Growers Association, KDA, Kansas Farm Bureau, Kansas Livestock Association, and Water PACK of Edwards County, and by a private citizen. Proponents stated the bill is a result of KDA working with a group of stakeholders above the Quivira National Wildlife Refuge (Quivira) that is owned by the U.S. Fish and Wildlife Service. Quivira holds a very senior surface right in the Rattlesnake Creek Subbasin and the surface water right is being affected by groundwater pumping. The stakeholders have approached both the KDA and Quivira with the idea of augmentation as part of the solution to ensure Quivira receives the water it is due, but KDA does not believe existing law allows the Chief Engineer to offer augmentation as an option.

Neutral testimony was provided by a representative of Groundwater Management District #3, who suggested the bill be limited to the Rattlesnake Creek Subbasin, as augmentation is a new development in Kansas water policy to address impairment concerns.

The Senate Committee amended the bill to:

- Limit augmentation as an option only within the Rattlesnake Creek Subbasin;
- Provide that augmentation is an option if replacement water is available and offered voluntarily; and
- Clarify that unlawful diversion of water applies to water released from storage under authority of water reservations rights held by the State.

At the hearing on SB 52 before the House Agriculture and Natural Resources Committee, proponents included representatives of the KDA; the Water Protection Association of Central Kansas; the Kansas Livestock Association; the Kansas Farm Bureau; Groundwater Management Districts #1, #3, and #4; and Groundwater Management District #5. An additional proponent was an individual from Stafford County. Written proponent testimony was provided by the Kansas Corn Growers Association. There was no neutral or opponent testimony.

The House Committee amended the bill by adding the contents of SB 36 and SB 227. The Committee further amended the bill by removing language limiting application of the bill to the Rattlesnake Creek Subbasin.

The fiscal note prepared by the Division of the Budget on SB 52, as introduced, states the bill would have no fiscal effect on the KDA budget.

SB 36 - MYFAs

SB 36 was introduced by the Senate Committee on Natural Resources.

At the Senate Committee hearing, representatives from the KDA, Kansas Farm Bureau, Kansas Livestock Association, Kansas Corn Growers Association, and the Kansas Cooperative Council provided testimony in favor of the bill. The proponents stated the bill provides flexibility and incentive for conservation by water right holders. In addition, allowing those enrolled in MYFAs to slightly modify the place of use could improve irrigation system efficiency (for example, moving away from flood irrigation to a center pivot system). There was no neutral or opponent testimony.

At the hearing on SB 36 before the House Agriculture and Natural Resources Committee proponents included representatives of the KDA, the Kansas Livestock Association, and the Kansas Farm Bureau. Written proponent testimony was provided by the Kansas Corn Growers Association and the Kansas Cooperative Council. There was no neutral or opponent testimony.

The fiscal note prepared by the Division of the Budget states the KDA indicates enactment of SB 36 could result in additional enrollees because of the increased flexibility of the program; however, the agency is unable to estimate revenue or expenditures increases at this time.

SB 227 – Consideration of Conservation Measures

SB 227 also was introduced by the Senate Committee on Natural Resources.

Representatives of the KDA and Kansas Farm Bureau provided testimony in favor of the bill. The KDA and Kansas Farm Bureau representatives stated these changes should help Kansas water users understand that the State does not want to punish good stewardship of water resources. A representative of Groundwater Management District #4 provided neutral testimony on the bill, citing concerns regarding a portion of the bill that would place in statute a ten-year period of water use data.

The Senate Committee amended the bill to remove the ten-year period of water use data language. The Committee also adopted a technical amendment.

At the hearing on SB 227 before the House Agriculture and Natural Resources Committee, proponents included representatives of the KDA, the Kansas Farm Bureau, and Groundwater Management District #4. There was no neutral or opponent testimony.

The fiscal note prepared by the Division of the Budget on SB 227 as introduced states the KDA considers the bill to be technical in nature and enactment of the bill, as introduced, would not have a fiscal effect on agency operations.

SB 64 – Public Water Supply Storage

SB 64 was introduced by the Senate Committee on Federal and State Affairs.

At the Senate Committee on Natural Resources hearing on the bill, the KWO Assistant Director presented testimony in favor of the bill, stating the bill is a result of the City of Alma approaching the KWO in the fall of 2014 with a request to purchase additional storage from Mill Creek MPSL. During these discussions, KWO noted the repayment calculations described in the MPSL Act varied from the calculation for storage repayment from KWO reservoir storage programs. The Assistant Director stated by changing the statute through this bill, the cost to the City of Alma is more consistent with other KWO programs and may result in cost savings for that community and others in the future. A representative of the League of Kansas Municipalities also provided testimony in support of the bill, stating the legislation would allow fairer interest rates for cities wanting to take part in class I projects.

The Senate Committee amended the bill to add language that clarifies the new calculation of interest and add language extending the calculation to class II and III projects.

According to the fiscal note prepared by the Division of the Budget on SB 64, as introduced, the KWO indicates enactment of the bill would have a negative fiscal effect on the KWO. The bill would reduce revenue by \$59,383 in the agency's fee fund due to the purchase of water storage in Mill Creek Lake by the City of Alma. Any fiscal effect associated with the bill is not reflected in *The FY 2016 Governor's Budget Report*.

water, multi-year flex accounts; local enhanced management areas; public water supply storage

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