

SESSION OF 2017

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2099

As Amended by House Committee on
Agriculture

Brief*

HB 2099, as amended, would require any person with a valid water right or permit to divert and use water to first exhaust the administrative remedies available to the person in law before seeking a court-ordered injunction to stop the impairment of the person's water right by the activity of another entity without a prior right to the same water.

Additionally, the bill would amend law pertaining to administrative remedies available and allow claimants to submit complaints to the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture (KDA), indicating their water rights are being impaired by an entity without prior right to the same water, and require the Chief Engineer to handle complaints in the following manner:

- Initiate an investigation within two weeks of a complaint and notify the parties so they may have an opportunity to submit relevant information; and
- Complete an investigation within 12 months of the date the complaint was received. The Chief Engineer would be authorized to extend the investigation for good cause by notifying the parties in writing of the amount of time needed to complete the investigation.

The bill would allow the Chief Engineer, following the investigation, to issue an order that limits or curtails the

*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>

diversion and use of water by any person without a prior right to the same water that otherwise disposes of the complainant.

Finally, the bill would allow a complainant to petition the Chief Engineer to issue a temporary order, to be in effect until a final order is issued, to limit or prevent the diversion and use of water by any person without a prior right to the same water as the complainant if the Chief Engineer finds limiting or preventing diversion and the use of water would not be adverse to public interest.

Background

The bill was introduced by the House Committee on Agriculture at the request of the KDA. In the House Committee hearing, representatives of the KDA, Kansas Corn Growers Association, Kansas Farm Bureau, Kansas Livestock Association, Kansas Water Office, and Southwest Kansas Groundwater Management District No. 3 testified in favor of the bill. Proponents stated the bill would create a consistent administrative process that would be utilized before court action and create a consistent application for what constitutes a water impairment. Additionally, proponents stated the bill is a result of stakeholder working groups formed after the 2016 Session. Written-only proponent testimony was received from the City of Wichita.

Opponent testimony was provided by a representative of Garetson Brothers Partnership, who stated the bill would restrict a vested water right owner's options to remedy an impairment by requiring water right owner's to exhaust the administrative remedy prior to enjoining a court. Neutral testimony was received from the League of Kansas Municipalities.

The House Committee amended the bill to clarify the Chief Engineer would be required to initiate an investigation within two weeks of receiving a complaint and provide notice

of the investigation to the involved parties. Additionally, the term "curtail" was changed to "prevent" where it appeared in the bill.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the KDA states enactment of the bill would have no fiscal effect on the agency.