

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2302**

As Agreed to April 5, 2023

Brief*

HB 2302 would establish funding for the State Water Plan and water infrastructure projects, create the Water Technical Assistance Fund (Assistance Fund) and the Water Projects Grant Fund (Grant Fund), authorize the Kansas Water Office (KWO) to provide grants and adopt rules and regulations to establish criteria for grants, update reporting requirements for the Kansas Water Authority (KWA), and make technical amendments.

The bill would be in effect upon publication in the *Kansas Register*.

Milford and Perry Reservoirs Debt Repayment and Investment (New Sections 1 and 2)

The bill would appropriate \$52.0 million in FY 2023 from the State General Fund (SGF) to the Water Supply Storage Debt Payment for Milford and Perry Reservoirs Account (Reservoirs Account) in the State Treasury for the water supply storage debt payment (debt payment) on Milford and Perry reservoirs.

The bill would require the State Treasurer, or allow the State Treasurer to direct the Pooled Money Investment Board, to invest all moneys in the Reservoirs Account in U.S. Treasury bills until the interest rate for the bills is equal to or less than the interest rate for the debt payments as determined by the State Treasurer. Upon this determination, the State Treasurer would be required to make debt payments from the Reservoirs Account.

The bill would provide a mechanism in FY 2023 if the Director of the KWO determines there is a need to call into service the water supply storage in Milford and Perry Reservoirs. The State Finance Council would be able to authorize the State Treasurer to immediately make expenditures from the Reservoirs Account for debt payments. The bill would declare the State Finance Council action to be a matter of legislative delegation and subject to guidelines in continuing law and authorize that action to take place during the Legislative Session.

The bill would authorize any unencumbered balance in the Reservoirs Account in excess of \$100 on June 30, 2023, to be reappropriated for FY 2024. The bill would reauthorize the investment of moneys in U.S. Treasury bills, the State Treasurer's determination on interest

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rates, and the mechanism by which the Director of the KWO would have the ability to call water storage into service.

State General Fund Transfer; State Water Plan Fund; Kansas Water Authority (New Section 3)

State General Fund Transfer to the State Water Plan Fund

On July 1, 2023, the Director of Accounts and Reports would be required to transfer \$35.0 million from the SGF to the State Water Plan Fund (SWPF). The bill would state the intent of the Legislature to provide for the transfer of \$35.0 million from the SGF to the SWPF on July 1, 2024; July 1, 2025; July 1, 2026; and July 1, 2027.

[*Note:* The SWPF is a statutory fund that receives two statutory transfers each fiscal year, \$6.0 million from the SGF and \$2.0 million from the Economic Development Initiatives Fund (EDIF), unless modified by the Legislature. The bill would not modify the statutory transfers.]

The bill would state the SWPF would continue to be appropriated and expended for the purposes prescribed in law, with the following exceptions:

- If an appropriation is made for any fiscal year, as provided in New Section 3(a), on July 1 of such fiscal year or as soon thereafter when moneys are available:
 - \$5.0 million would be transferred from the SWPF to the Assistance Fund established by the bill; and
 - \$12.0 million would be transferred from the SWPF to the Grant Fund established by the bill.

Sunset

The bill would sunset the provisions of New Section 3 on July 1, 2028. All moneys in and liabilities of the two funds established by the bill would be transferred to the SWPF, and the two funds established by the bill would be abolished.

Kansas Water Authority Recommendations to the Legislature

Salaries. The bill would allow the KWA to recommend to the Legislature an appropriation of up to 10 percent of the unencumbered balance of the SWPF to be used to supplement the salaries of existing state agency full-time equivalent (FTE) employees and for funding new FTE positions created to implement the State Water Plan. The bill would allow moneys from the appropriation to be used to supplement existing positions, but the moneys could not be used to replace SGF or fee fund moneys or other funding for positions existing on July 1, 2023.

FTE positions. The bill would list the eligible FTE positions for which moneys could be used, to include engineers, geologists, hydrologists, environmental scientists, attorneys, resource planners, grant specialists, and any other similar positions.

Conservation district salaries. The bill would allow the KWA to recommend that moneys be used to supplement salaries if at least two conservation districts present a joint proposal to the KWO for positions to provide shared services to the districts involved in the proposal.

Non-profit entities. The KWA would be required to encourage funding requests from state and local entities that cooperate with qualified non-profit entities on projects that provide a direct benefit to water quantity and quality, including water infrastructures that are both natural and man-made, and include matching funds from non-state sources.

Stockwater fees. The bill would require, for FY 2024 through FY 2028, the priority of funds collected and remitted to the SWPF on stockwater use to be used for stockwatering conservation projects, and the type and scope of such projects would be identified by the KWO in the formulation of the SWPF.

National park site, State historic site. The KWA could direct the KWO to provide funding from the Assistance or Grant Fund for the improvement of water infrastructure in an unincorporated area related to or serving a national park site or state historic site if:

- The request for funding is made by a non-profit organization or state agency that is willing to administer the moneys and oversee the project; and
- The KWA deems such applicant capable of successfully managing the project.

Upon receipt of such request, the KWO could award moneys at its discretion in any fiscal year before July 1, 2028.

Reporting requirements. The bill would state that all reporting requirements in the SWPF law would continue and would apply to the two funds established in the bill.

Water Technical Assistance Fund (New Section 4)

The bill would establish the Assistance Fund, which would be administered by the KWO.

The bill would provide that when the unencumbered balance of the Assistance Fund exceeds \$15.0 million, the excess amount would be transferred from the Assistance Fund to the SGF.

The bill would require the KWO to use the Assistance Fund to provide grants for planning, engineering, management, and other technical assistance that could be necessary in the development of plans for water infrastructure projects or for processing the grant and loan applications for such water infrastructure projects. The KWO could offer services directly, provide funding to other organizations to provide services at no cost to a municipality or special district related to water, or provide grants directly to applicants to cover expenses related to the hiring of technical assistance.

The bill would allow any municipality or special district related to water organized under state law to apply for a grant. The KWO would be authorized to award grants to the applicants. Municipalities with fewer than 2,000 residents would be prioritized for awarding full grants. Watershed districts, conservation districts, groundwater management districts, and all special districts related to water would not be prioritized for awarding full grants.

The bill would require the KWO to adopt rules and regulations to establish any necessary criteria for administering the Assistance Fund and awarding grants for technical assistance. The bill would require the criteria to include, but not be limited to, factors applicable to:

- Municipalities of different populations, including the prioritization of small municipalities as required by New Section 4(b)(2);
 - Factors could include, but not be limited to, public health, socio-economic factors, and the ability for a municipality to repay any loans without grant assistance; and
- Special districts, such as watershed districts, conservation districts, groundwater management districts, rural water districts, and any other similar districts formed for a special or single purpose related to water.

The bill would prohibit any single awarded grant for technical assistance exceeding \$1.0 million unless specified by an appropriation act of the Legislature.

Water Project Grant Fund (New Section 5)

The bill would establish the Grant Fund, which would be administered by the KWO.

The bill would provide that when the unencumbered balance of the Grant Fund exceeds \$35.0 million, the excess amount would be transferred from the Grant Fund to the SGF.

The bill would allow the KWO to provide full or partial funding for grants to any municipality or special district related to water that is established under state law for the following:

- Construction, repair, maintenance, or replacement of water-related infrastructures and any related construction costs;
- Matching moneys for grant or loan applications for water-related infrastructure projects; and
- Grants that could be applied to an outstanding loan balance from the existing Public Water Supply Loan Fund or Kansas Pollution Control Revolving Fund.

The bill would require the KWO to adopt rules and regulations to establish any necessary criteria for grants from the Grant Fund. The bill would require the rules and regulations to include any necessary criteria that could be applied to the selection of projects with outstanding loan balances from the existing Public Water Supply Loan Fund or Kansas Pollution Control Revolving Fund.

The criteria would be based on the following factors:

- The planned construction on the project with the outstanding loan balance being complete;
- The municipality or special district having made at least five years of payments on the project loans;

- Awarding grants that provide repayment of up to:
 - 90 percent of any remaining project loan balance for cities with fewer than 2,000 residents;
 - 75 percent of any remaining project loan balance for cities with fewer than 5,000 residents;
 - 50 percent of any remaining project loan balance for cities with fewer than 10,000 residents; and
 - 25 percent of any remaining project loan balance for all other cities in Kansas; and
- Any other relevant criteria including, but not limited to, the socio-economic status of the residents of any municipality, public health, and the ability of any municipality to repay a loan without further assistance.

The bill would prohibit any single grant awarded for a project greater than \$8.0 million unless specified by an appropriation of the Legislature.

The bill would require the KWO and Kansas Department of Health and Environment (KDHE) to coordinate the sharing of information about applicants to the Public Water Supply Loan Fund and the Kansas Pollution Control Revolving Fund, and require the agencies to take into consideration approval or likely approval of a grant by the KWO when considering the eligibility of any municipality to receive moneys from the funds.

Kansas Water Authority Report (Section 6)

The bill would require the KWA to include in its annual report to the Governor and Legislature an account of all moneys expended from the Assistance Fund and the Grant Fund each year.

Conference Committee Action

The Conference Committee agreed to the provisions of Senate Sub. for HB 2302, as passed by the Senate, with the following changes:

- Authorize the State Treasurer, at the State Treasurer's discretion, to direct the Pooled Money Investment Board to invest moneys in U.S. Treasury bills;
- Reduce from \$15.0 million to \$12.0 million the amount that would be transferred to the Grant Fund each year;
- Allow the KWA to direct the KWO to provide funding for water infrastructure improvements in an unincorporated area related to or serving a national park site or state historic site, if the request is made by a non-profit organization or state agency that is willing to administer the moneys and oversee the project, and the KWA would deem the applicant capable of successfully managing the project. In addition, the KWO could award moneys any time before July 1, 2028, at their discretion;

- Remove language regarding “unincorporated areas” and “unincorporated area with a national park site or state historic site” that reflect the new language added by the above amendment;
- Increase the cap from \$30.0 million to \$35.0 million in the Grant Fund that would trigger any excess funding over that amount that would be transferred to the SGF; and
- Make a technical amendment to place the language regarding stockwater fees in a different portion of the bill.

Background

The bill was introduced by the House Committee on Water at the request of Representative Blex.

House Committee on Water

Proponent Testimony

In the House Committee hearing, **proponent** testimony was provided by representatives of the cities of Caney and Wichita, Ducks Unlimited, Kansas Farm Bureau, Kansas Livestock Association, Kansas Municipal Utilities, League of Kansas Municipalities, Regional Economic Area Partnership of South Central Kansas, Sierra Club – Kansas Chapter, The Nature Conservancy, and WaterOne. The proponents generally stated the legislation is a good start, more work needs to be done, and there is a willingness to have these discussions.

Written-only proponent testimony was provided by representatives of the cities of Arkansas City, Belle Plaine, Columbus, Ellsworth, Fredonia, Garden City, Greensburg, Haysville, Independence, Logan, Maize, McLouth, Mound Ridge, Olathe, Ottawa, Overland Park, Parsons, Valley Falls, and WaKeeney; Kansas Agribusiness Retailers Association, Kansas Grain and Feed Association, and Renew Kansas Biofuels Association; Kansas Association of Conservation Districts; Kansas Contractors Association; Kansas Cooperative Council; Kansas Corn Growers Association; Kansas Farmers Union; Kansas Rural Center; and Kansas Rural Water Association.

Neutral Testimony

Neutral testimony was provided by a representative of the Kansas Department of Agriculture, KDHE, and KWO, stating the agencies are committed to working with each other and the House Committee to move forward with the bill.

Opponent Testimony

Written-only **opponent** testimony was provided by a representative of the City of McPherson, stating the bill does not address certain groundwater management district and municipal water issues.

House Committee Amendments

The House Committee amended the bill to:

- Add provisions that would require the KWA to encourage funding requests from state and local entities that cooperate with qualified non-profit entities on projects that provide a direct benefit to water quantity and quality, including water infrastructures that are both natural and man-made, and including matching funds from non-state sources [Note: The Conference Committee retained the amendment.];
- Delete municipalities as the sole receiver of grants from the KWO [Note: The Conference Committee retained the amendment.];
- Add special districts to various provisions of New Section 2 of the House Committee version of the bill [Note: The Conference Committee retained the amendment.];
- Add groundwater management districts to those that would not be prioritized for the awarding of full grants of New Section 2 of the House Committee version of the bill [Note: The Conference Committee retained the amendment.];
- Replace “municipalities with greater than 2,000 residents” with “municipalities of different populations and specify prioritization of small municipalities” with regard to criteria for awarding technical assistance grants [Note: The Conference Committee retained the amendment.];
- Require the KWO and KDHE to coordinate sharing information about applicants to the Public Water Supply Loan Fund and the Kansas Pollution Control Revolving Fund and take into consideration the approval or likely approval of a grant by the KWO when considering the eligibility of any municipality to receive moneys from the funds [Note: The Conference Committee retained the amendment.]; and
- Make clarifying amendments. [Note: The Conference Committee retained the amendment.]

Senate Committee on Agriculture and Natural Resources

Proponent Testimony

In the Senate Committee hearing, **proponent** testimony was provided by Representative Titus, the Chairperson of the KWA, and representatives of Groundwater Management District No. 2, Kansas Farm Bureau, Kansas Livestock Association, Kansas Municipal Utilities, Kansas Rural Water Districts, League of Kansas Municipalities, The Nature Conservancy, and WaterOne.

Written-only proponent testimony was provided by representatives of American Council of Engineering Companies of Kansas and Kansas Society of Professional Engineers; the cities of Arkansas City, Greensburg, Independence, McLouth, Overland Park, Valley Falls, and WaKeeney; Ducks Unlimited; Groundwater Management District No. 1; Kansas Agribusiness Retailers Association, Kansas Grain and Feed Association, and Renew Kansas Biofuels Association; Kansas Association of Conservation Districts; Kansas Chapter of Backcountry Hunters and Anglers; Kansas Contractors Association; Kansas Cooperative Council; Kansas Corn Growers Association; Kansas Farmers Union; Kansans for Conservation; Regional Economic Area Partnership of South Central Kansas; and Sierra Club.

Neutral Testimony

Neutral testimony was provided by a representative of the Department of Agriculture, KDHE, and KWO. Written-only neutral testimony was provided by a representative of the Kansas Geological Survey. No other testimony was provided.

Senate Committee Amendments

The Senate Committee amended the bill to:

- Add an appropriation of \$52.0 million that would be transferred from the SGF to the SWPF that would be invested by the State Treasurer in U.S. Treasury bills until the interest rate on the bills is equal to or less than the interest rate on the storage debt [Note: The Conference Committee retained the amendment.];
- Authorize the Director of the KWO to certify to the State Treasurer and Governor, and provide certification at the same time to the Directors of the Budget and Legislative Research, that the water supply storage needs to be called into service, which would require the State Finance Council to authorize the State Treasurer to immediately make expenditures to pay storage debt [Note: The Conference Committee retained the amendment.];
- Characterize the State Finance Council action as a matter of legislative delegation that may take place during the legislative session and is subject to guidelines in continuing law [Note: The Conference Committee retained the amendment.];
- Allow for reappropriation of any unencumbered balance in the Reservoirs Account in excess of \$100 on June 30, 2023 [Note: The Conference Committee retained the amendment.];
- Reauthorize for FY 2024 the allowance of investing moneys in the Reservoirs Account in U.S. Treasury bills, the ability of the Director of KWO to call into service the water supply in Milford and Perry reservoirs by sending certification to the State Treasurer and Governor and the Directors of the Budget and Legislative Research, State Finance Council action, allowance of action during the legislative session, characterization of State Finance Council action as legislative delegation, and transmission of certification [Note: The Conference Committee retained the amendment.];

- Remove all provisions related to sales tax revenue [Note: The Conference Committee retained the amendment.];
- Require the Director of Accounts of Reports on July 1, 2023, to transfer \$35.0 million from the SGF to the SWPF and state the intent of the Legislature is to transfer \$35.0 million from the SGF to SWPF each July 1 from 2024 to 2027 [Note: The Conference Committee retained the amendment.];
- Require, for FY 2024 through FY 2028, priority for the use of funds collected from stockwater fees to be used for stockwatering conservation projects. The KWO would be required to identify the type and scope of such projects in the formulation of the SWPF [Note: The Conference Committee retained the amendment, but moved it to a different section of the bill.];
- Require the Director of the KWO to certify to the Director of Accounts and Reports any excess funds in the Assistance Fund when its unencumbered balance exceeds \$15.0 million and, upon receipt of the certification, the Director of Accounts and Reports to transfer the certified excess amount from the Assistance Fund to the SGF [Note: The Conference Committee did not retain the amendment and reverted to the House language that would transfer the excess amount to the SWPF.];
- Include an unincorporated area with a national park site or state historic site to places to which the KWO could offer services or provide grants to cover expenses related to the hiring of technical assistance [Note: The Conference Committee did not retain the amendment, but added similar language in a different part of the bill.];
- Require the Director of the KWO to certify to the Director of Accounts and Reports any excess funds in the Grant Fund when its unencumbered balance exceeds \$30.0 million and, upon receipt of the certification, the Director of Accounts and Reports to transfer the certified excess amount from the Grant Fund to the SGF [Note: The Conference Committee retained the amendment, but increased the amount to \$35.0 million.];
- Change the effective date of the bill from upon publication in the statute book to upon publication in the *Kansas Register* [Note: The Conference Committee retained the amendment.]; and
- Make technical amendments. [Note: The Conference Committee retained the amendment.]

The Senate Committee recommended a substitute bill.

Fiscal Information

According to the revised fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department of Revenue estimates the bill would decrease SGF revenues by \$48.1 million in FY 2024, including a reduction of \$54.1 million in retail sales and compensating use tax revenue and an increase of \$6.0 million by eliminating the SWPF transfer from the SGF. Based on the November 2022 Consensus Revenue Estimate, the Department of Revenue estimates the bill would result in distributing \$54.1 million in retail sales and compensating use

tax revenue to the SWPF in FY 2024, including \$41.4 million of retail sales tax receipts and \$12.7 million of compensating use tax receipts.

In the original fiscal note issued, the distribution of retail sales and compensating use tax to the SWPF were identified as a transfer from the SGF instead of as reduction in SGF revenues. This distribution would replace the existing statutory transfers to the SWPF totaling \$8.0 million, resulting in a net funding increase of \$46.1 million for additional water infrastructure projects in FY 2024. The Department of Revenue indicates that the specific adjustments to the SGF in subsequent fiscal years would be as follows:

	FY 2025	FY 2026	FY 2027	FY 2028
Sales Tax	(\$42.0 million)	(\$42.7 million)	(\$43.2 million)	(\$43.6 million)
Comp. Use Tax	(\$13.5 million)	(\$14.2 million)	(\$14.9 million)	(\$15.6 million)
Net Transfers	\$6.0 million	\$6.0 million	\$6.0 million	\$6.0 million
TOTAL	(\$49.5 million)	(\$50.9 million)	(\$52.1 million)	(\$53.2 million)

[Note: The bill, as agreed to by the Conference Committee, would no longer utilize sales tax revenue for State Water Plan and water infrastructure projects.]

The suspension of the existing statutory transfer from the EDIF to the SWPF would increase EDIF revenues by \$2.0 million per year from FY 2024 through FY 2028. The Department of Agriculture, KDHE, and KWO are the primary recipients of the SWPF appropriations, so enactment of the bill would likely increase the expenditures of all three agencies by unknown amounts. According to KWO, administration of the bill would cost \$246,650 in FY 2024 and \$200,000 in subsequent fiscal years. These expenditures would be made to fill 2.0 FTE positions and contract with outside counsel to draft rules and regulations.

KDHE indicates that enactment of the bill could decrease agency revenues from loan service fees as water storage debt is paid, but the size of this reduction is unknown.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2024 Governor's Budget Report*.

The League of Kansas Municipalities indicates the new local grant opportunities authorized by the bill would increase municipal revenues by unknown amounts.

The Kansas Association of Counties indicates the bill would not have a fiscal effect on counties.

A revised fiscal note was not available when the Conference Committee took action on the bill.

Water; State Water Plan Fund; State Water Plan; water infrastructure projects; water technical assistance fund; Water Projects Grant Fund; rules and regulations; Kansas Water Office; Kansas Water Authority; Kansas Department of Health and Environment; municipalities; national parks; stockwater; water supply storage debt; Milford Reservoir; Perry Reservoirccrb_hb2302_01_040523.odt