

SESSION OF 2011

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 122**

As Amended by House Committee on  
Agriculture and Natural Resources

**Brief\***

SB 122 would authorize the Director of the Kansas Water Office, after consultation with the Kansas Department of Agriculture (KDA), the Kansas Department of Health and Environment, the Kansas Department of Wildlife and Parks, and the State Conservation Commission (SCC), to negotiate and grant easements on state property for construction and maintenance of conservation projects with cooperating landowners for the expected life of the project.

Conservation projects would be defined as any project or activity that the Director of the Kansas Water Office determines would assist in restoring, protecting, rehabilitating, improving, sustaining, or maintaining the banks of the Arkansas, Kansas, or Missouri rivers from the effects of erosion.

State property would be defined as real property currently owned in full or in part by the state in the Arkansas, Kansas, or Missouri rivers in Kansas, in and along the bed of the river to the ordinary high water mark on the banks.

Notice of the easement would be given to the county or counties in which the easement is proposed and to any municipality or other governmental entity that holds a riparian interest in the river and may have an interest in the project or results of the project. Those persons receiving notice would have 30 days to provide comments on the proposed easement to the Director of the Kansas Water Office.

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\*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>

In addition, if the proposed easement on state property would be located on property owned or managed by any other state agency, the Director of the Kansas Water Office would provide notice of the proposed easement and project to the state agency. The state agency would then jointly negotiate the proposed easement with the Director of the Kansas Water Office.

The Director of the Kansas Water Office would file a copy of all easements entered into with the Office of the Secretary of State and the Office of the Register of Deeds for the county or counties in which the easement is located.

The bill would authorize the Director of the Kansas Water Office to adopt rules and regulations to carry out the provisions of the bill.

## **Background**

The bill was introduced by the Senate Committee on Natural Resources at the request of the Director of the Kansas Water Office.

Proponents on SB 122 included the Kansas Water Office, the SCC, and a member of the public.

The Director of the Kansas Water Office testified that the proposed legislation stems from recent project proposals along the Kansas River, in which four riparian landowners have initiated funding requests from the federal Natural Resources Conservation Service (NRCS) and have requested Stream Obstructions Act permits from the KDA, Division of Water Resources for bank stabilization projects. In each of these instances, funding contracts with NRCS were terminated and permits were unable to be issued by the KDA due to the fact that the riparian landowner was not the legal owner of the entire project area, which included state property below the ordinary high water mark. The bill would allow these landowners and others, to apply for funding and

receive permit consideration for projects providing mutual benefits to the landowner and the state.

The Executive Director of the SCC testified that the bill would be beneficial to private landowners that have property adjacent to a navigable river. The proposed legislation would prevent significant survey costs for each individual landowner and prevent each project from coming before the Legislature for authorization of individual projects.

A member of the public provided written testimony stating that conservation projects within the state's navigable waterways currently are prohibited because no state agency is authorized to grant an easement allowing construction within the waterways. In addition, streambank erosion causes soil loss and streambank stabilization projects are effective methods of preventing soil loss and establishing stable, environmentally beneficial streambanks.

Opponents on SB 122 included Southwest Kansas Groundwater Management District No. 3 (GMD3). The Executive Director of GMD3 testified that while the intent of the bill was laudable, the issues surrounding the state-private property owner relationship reach beyond the good purposes of this bill. In addition, property boundaries along the sometimes dry Arkansas River continue to be an issue upon which reasonable and knowledgeable people disagree as river channels change over time.

The Senate Committee on Natural Resources approved several amendments to the bill, which included:

- Clarifying the definition of “conservation project”;
- Deleting the definition of “interest in or along the river”;
- Clarifying the conservation projects for which the Director of the Kansas Water Office is authorized to negotiate and grant easements on state property; and

- Further defining when notice shall be given to the county or counties, and municipality or other governmental entity when an easement is proposed.

At the hearing before the House Committee on Agriculture and Natural Resources, proponents included representatives of the Kansas Water Office and the SCC. In addition, Representative Tom Sloan appeared as a proponent and urged the Committee to amend the provisions of HB 2096 into the bill. A representative of GMD3 opposed the scope and implications of the language of the bill, but supported the efforts to facilitate the proper work of adjacent landowners to stabilize the streambanks.

The House Committee deleted language in the definition of the term “conservation project” to eliminate references to the “bed” of the three navigable rivers in the state. In addition, the Committee amended the bill to add language concerning the negotiated easements to limit those easements to “the expected life of the project.”

The fiscal note prepared by the Division of the Budget on the original bill states that the Kansas Water Office indicates that passage of the bill would have no fiscal effect on agency operations.