

SESSION OF 2016

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 337**

As Agreed to April 28, 2016

Brief*

House Sub. for SB 337 would amend existing law regarding water rights and permits, make changes to the way the Chief Engineer provides notice of program changes or proposed rules and regulations, and the classification of the Chief Engineer position.

Water Rights and Permits

The bill would amend the section of law dealing with the requirement that owners of water rights or permits to appropriate water for beneficial use must file annual water use permits with the Chief Engineer of the Division of Water Resources (DWR) in the Kansas Department of Agriculture (KDA). Language would be added to make it clear that a water right owner could "cause" the water use report to be filed, in addition to the owner filing the report individually.

In addition, the bill would subject an owner of a water right or permit to appropriate water for beneficial use who fails to file a water use report to a civil penalty in an amount not to exceed \$1,000 per water right (current law is a civil penalty not to exceed \$250).

Further, the bill would add a provision that would permit the Chief Engineer to issue an order indefinitely suspending

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water rights of water right holders or those holding permits to appropriate water for beneficial use if the water use report has not been filed by June 1 of the calendar year in which it is due, in addition to incurring the civil penalty for failing to submit a water use permit outlined above. In addition to the civil penalty and the authority to issue an order of indefinite suspension of a water right, the Chief Engineer also could require the use of telemetry for documentation purposes.

The bill also would make the provisions of the section of law being amended (KSA 2015 Supp. 82a-732) a part of and supplemental to the Water Appropriations Act.

Notice

The bill would create new law that states when the Secretary of Agriculture or the Chief Engineer of the DWR, KDA, proposes rules and regulations that could change an adopted local groundwater management program or impact water use in a groundwater management district (GMD), the Secretary or Chief Engineer would be required to notify the GMD board of directors in the affected area and provide a copy of the program change or proposed rules and regulations.

Upon receiving the notice, the GMD board of directors would be required to prepare a response of intended board actions and follow existing GMD law for revising active groundwater management programs.

The DWR would be required to post all complete applications and all orders issued by the DWR on its official website. The DWR, along with the GMD where the water right is situated, would directly notify all water right owners with a point of diversion within half a mile, or further if necessary, of a water right pending request or application pursuant to existing law, except for change applications requesting a point of diversion move of 300 feet or less from the currently authorized location.

Chief Engineer Position

The bill also would require the position of Chief Engineer to be a classified position, but the bill would allow the Secretary of Agriculture to convert vacant positions under the Chief Engineer to unclassified positions.

Conference Committee Action

The Conference Committee agreed to the House Substitute version of SB 337 with the addition of language that clarifies telemetry could be used for documentation purposes. The Conference Committee also agreed to add the language of Senate Sub. for HB 2156, with the following changes:

- Remove language from the Senate Substitute version of the bill that deals with dam inspection fees;
- Clarify that DWR shall post all complete applications and all orders issued by the DWR on its website, instead of providing notice;
- Require the DWR to notify all water right owners with a point of diversion within half a mile, or further if deemed necessary by a rule and regulation of the Chief Engineer, of a water right pending request or application, except for change applications requesting a point of diversion move of 300 feet or less from the currently authorized location; and
- Two technical corrections.

Background

The bill contains provisions of House Sub. for SB 337 and Senate Sub. for HB 2156. The background provisions on those bills and associated legislation follows.

House Sub. for SB 337 Background

[Note: House Sub. for SB 337 contains provisions regarding water rights and permits. The Conference Committee amended this bill to clarify that telemetry could be used for documentation purposes.]

SB 337 was introduced at the request of the KDA. At the Senate Committee on Natural Resources hearing on the bill, a spokesperson from the KDA indicated the agency supported the bill because it allowed for better management of groundwater resources and would extend the useful life of the Ogallala High Plains Aquifer. The spokesperson also stated the information gathered from water use reports was critical to proper management. Also appearing in support of the bill was a spokesperson from the Southwest Kansas Groundwater Management District (GMD) No. 3. In addition, a spokesperson appeared in support of the bill from the Kansas GMD No. 1. This spokesperson indicated GMD No. 1 was particularly interested in the group of people who failed to ever file a water use report.

Other proponents submitting written testimony included representatives of the Kansas Farm Bureau; the Kansas Grain and Feed Association, the Kansas Cooperative Council, and the Kansas Agribusiness Retailers Association; and the Kansas Corn Growers Association.

The Senate Committee amended the bill to provide that the maximum \$1,000 civil penalty apply to those water right owners or holders of permits to appropriate water who have failed to submit water use reports for two or more consecutive years. The Committee, through amendment, restored the

maximum \$250 civil penalty for those who fail to file water use reports for one year. In addition, the Committee amended the bill to make the section of law being amended by the bill supplemental to and a part of the Kansas Water Appropriation Act.

At the hearing on the bill before the House Committee on Agriculture and Natural Resources, proponents included representatives of KDA and the Kansas Farm Bureau.

Other proponents submitting written testimony included representatives of the Kansas Grain and Feed Association, the Kansas Cooperative Council, and the Kansas Agribusiness Retailers Association; the Kansas Corn Growers Association; Groundwater Management Area #1; and Groundwater Management Area #3. No one provided neutral testimony or testimony in opposition to the bill.

During action on the bill, the House Committee deleted the provisions of SB 337, as amended by Senate Committee on Natural Resources, and inserted provisions of HB 2491, as amended by House Committee on Agriculture and Natural Resources, to create a substitute bill. Both bills deal with the issue of penalties associated with the failure to submit a water use report to the Division of Water Resources of the KDA.

The fiscal note prepared by the Division of the Budget on the original bill states, according to the KDA, there are approximately ten cases each year where an owner of a water right or permit does not file annual water use reports by June 1 of the calendar year in which the reports were due. The fiscal note states owners do, however, pay the current \$250 fine each year. Increasing the penalty to \$1,000 would initially result in additional annual revenue for the agency of \$7,500. The agency anticipates the number of cases will decline over time due to the higher penalty. Any fiscal effect associated with the bill as introduced is not reflected in *The FY 2017 Governor's Budget Report*.

Senate Sub. for 2156 Background

[Note: Senate Sub. for 2156 contains provisions regarding notice and the Chief Engineer position. The Conference Committee agreed to the provisions of Senate Sub. for 2156, but agreed to not include Section 5 of the Senate Substitute bill, which deals with dam inspection fees. The Conference Committee also agreed to various language changes regarding providing notice.]

The bill contains the provisions of SB 491, with amendments added by the Senate Committee on Natural Resources.

The House Committee version of HB 2156 dealt with interest rates on the State's cost for selling public water supply storage and the associated water rights for water from Classes I, II, and III multipurpose small lakes projects. This language was placed into 2015 SB 52, which was signed into law by the Governor on May 19, 2015.

SB 491 Background

[Note: SB 491 was amended by the Senate Committee on Natural Resources and its content was placed in Senate Sub. for 2156.]

The bill was introduced by the Senate Committee on Ways and Means.

At the hearing before the Senate Committee on Natural Resources, the Executive Director of GMD No. 3 provided testimony in favor of the bill. A representative of the Southwest Irrigation Association later provided written proponent testimony. A representative of the Kansas Farm Bureau provided neutral testimony on the bill.

Opponent testimony was provided by the KDA and the Kansas Livestock Association.

The Senate Committee amended the bill to:

- Delete New Section 2 and Sections 5, 6, 7, and 8 of the original version of the bill;
- Clarify in New Section 1 that the GMD board of directors would prepare a response of intended board actions instead of a revised management program statement;
- Require the DWR to provide notice of all final orders on its website, along with notifying water right owners with a point of diversion within half a mile or further if necessary, as required by rules and regulations; and
- Clarify the Chief Engineer is a classified position, but any vacant positions under the Chief Engineer's purview may be converted to unclassified by the Secretary of Agriculture.

A fiscal note on the bill was not available at the time of the Senate Committee action.

Water Appropriation Act; Chief Engineer; Division of Water Resources; Kansas Department of Agriculture; annual water use report; rules and regulations; groundwater management districts

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