

SESSION OF 2016

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2059**

As Amended by Senate Committee on Natural
Resources

Brief*

Senate Sub. for HB 2059 would establish the application fee for permits to appropriate surface water that otherwise leaves the state, require the submission of a work plan, and clarify the deadline for decisions by the Chief Engineer and when the Chief Engineer may dismiss an application.

Application Fee

For a permit application to appropriate surface water that otherwise leaves the state and is for a water transfer project proposed for multiple uses, an application fee of \$100 plus \$200 for each 100 cubic feet per second of the diversion rate requested would be established. An additional fee could be assessed by the Chief Engineer if additional expenses are incurred in the review of an application until it is approved or denied.

The bill would cap the maximum total fee for these applications in accordance with limits in existing law.

Submission of a Work Plan

The bill would require an applicant for a permit to appropriate water to submit a work plan with the application. The work plan would need to include milestones for implementing the water transfer project.

*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>

Chief Engineer Action

The Chief Engineer could conditionally approve the application and work plan and assess progress of the implementation of the work plan.

The bill also would establish that there is no deadline for the Chief Engineer to render a final decision on an application, but the application could be dismissed if the Chief Engineer:

- Has good cause to believe the applicant is unable to demonstrate the application is likely to be approvable in a reasonable amount of time; or
- Determines that the applicant cannot successfully meet the milestones contained in the work plan.

Application Submission Date

The bill would not allow any application for a permit to appropriate water pursuant to the bill before December 1, 2016.

Background

Senate Sub. for HB 2059 contains the contents of SB 322, as amended by the Senate Committee on Natural Resources (the Senate Committee amendments are described below). The contents of HB 2059, as it passed the House during the 2015 Legislative Session, had previously been removed and placed in 2015 SB 52, which was signed into law on May 19, 2015. The House version of HB 2059 dealt with augmentation regarding unlawful diversions of water and notification of an unlawful diversion to the affected Groundwater Management District (GMD).

SB 322

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

At the 2016 bill hearing in the Senate Committee on Natural Resources, the Executive Director of GMD No. 3 provided testimony in favor of the bill, stating the bill provides legislative leadership to help Kansans consider new appropriations of water that otherwise leave the state to be conserved and transferred to meet current and future multiple beneficial purposes for Kansas. The Executive Director also stated the bill achieves these goals by setting a reasonable filing fee structure that provides both upfront funds and additional funds as agency costs are incurred in the necessarily extended review of such unique and complex water appropriation proposals. A representative of the Southwest Kansas Irrigation Association provided written testimony in favor of the bill.

Testimony in opposition of the bill was presented by the Secretary of Agriculture, who stated the proposed filing fee undercompensates the work required by the Kansas Department of Agriculture (KDA), Division of Water Resources, to evaluate applications; there is no deadline on the Chief Engineer to render a final decision on an application; recognizing water right applications for a transfer from the Missouri River would be unique and would likely result in a long perfection period and a large filing fee; and there are other options available. In addition, the Secretary stated the *Vision for the Future of Water Supply in Kansas* includes several action items to allow for the transfer of water between basins where feasible and cost effective, and calls for a summit between the Missouri River states to collaborate on river management issues.

The Senate Committee approved two amendments to the bill, including the addition of language regarding the chemigation users' permit and application fee and language that allows the Chief Engineer to dismiss an application if the applicant cannot demonstrate the application is likely to be approved in a reasonable amount of time. The Senate Committee then deleted the contents of HB 2059 and inserted the contents of SB 322, as amended, into HB 2059 and passed the bill as a Senate Substitute bill.

The fiscal note prepared by the Division of the Budget, on the original version of SB 322, states passage of the bill could result in notable revenue losses to the KDA. The agency provided an example assuming an application for 1.0 million acre-feet. Under the current fee structure, the fee would equal \$200,240. Passage of the bill would establish the fee at \$1,400, resulting in a revenue loss of \$198,840. The bill contains a provision allowing the Chief Engineer to assess an additional fee if additional expenses are incurred in reviewing an application; however, it is not anticipated that assessment of this fee would offset the overall revenue loss. The agency is unable to estimate the fiscal effect of passage of the bill, as that would depend on the number of applications of this type that are received. While it is not anticipated there would be a large number of these applications, the agency indicates each application would involve a great deal of staff time due to the complexity of interstate water issues. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.

Senate Sub. for HB 2059

Senate Sub. for HB 2059 was passed by the Senate Committee on Natural Resources on February 8, 2016, but the bill was withdrawn from the Senate Calendar and re-referred to the Senate Committee on February 17, 2016.

The Senate Committee amended the bill to remove Section 1 of the bill, which addressed chemigation users' permits. The Senate Committee also added language regarding submission of a work plan by applicants for a surface water appropriation. The Senate Committee passed the bill, as amended, on March 16, 2016.

An updated fiscal note on the bill, as amended by the Senate Committee, was not available at the time of passage.