

SESSION OF 2004

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2705**

As Amended by Senate Committee on Ways and Means

**Brief\***

HB 2705 would restore into law the annual transfer of \$6 million from the State General Fund to the State Water Plan Fund.

In addition, the bill would amend the section of law dealing with water right requirements for operators of sand and gravel pits. The bill would provide that net evaporation of water exposed as the result of the opening or operation of sand and gravel pits be construed to be a beneficial use or diversion of water for the purposes of the Kansas Water Appropriation Act, if the sand and gravel pit is opened or operated in a township where the average annual potential net evaporation is greater than 18 inches per year, as determined by the Chief Engineer.

In addition, the bill would require that if the Chief Engineer determines that an existing or proposed sand and gravel pit operation is a beneficial use of water, the operator would be required to apply to the Chief Engineer for a permit to appropriate water in accordance with the Kansas Water Appropriation Act or otherwise acquire ownership or control of sufficient water rights to offset net evaporation for the operation.

The bill would require that the period of time allowed to complete construction of diversion works be reasonable and consistent with the proposed use, but not less than five years. The Chief Engineer could allow an extension of time by not to exceed two five-year extensions if it can be shown that the operation requires the additional time for the operator to satisfy the operator's market demand in the area. The two five-year extensions may be granted at the same time, to run consecutively, if the applicant submits to the Chief Engineer a written development plan.

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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>

The period of time allowed to perfect an approved application to appropriate water for the purpose of net evaporation from a sand and gravel pit operation would be not less than 20 years and, for good cause shown, the Chief Engineer may allow one or more 10-year extensions. The Chief Engineer would be required to consider the time needed until exhaustion of proven reserves, closure in accordance with the Surface Land Reclamation and Mining Act, and the availability of water for the proposed use. In no case would there be a grant for more than 60 years for perfection. Nothing in the bill would require an extension of time to construct diversion works or to perfect a water right if there is demonstrable impairment of a use under an existing water right from the same source of supply.

The bill would require the Chief Engineer to study and develop recommendations regarding: (a) the use of water banking as it pertains to sand and gravel pits; (b) calculation of the amount by which the removal of trees and other vegetation at sand and gravel pits offsets net evaporation from such pits, with special emphasis on salt cedar (tamarisk); and (c) the pollution control and flood control benefits of diverting water runoff into sand and gravel pits. On or before January 20, 2005, the Chief Engineer would be required to submit a report of the study and recommendations to the House Committee on Environment and the Senate Committee on Natural Resources.

The bill also would amend a section of law dealing with the certification of water rights to provide an exception to the July 1, 2004 deadline for the issuance of certificates of appropriation in those cases where the time allowed in the permit to perfect the water right expired before July 1, 1999. The exception to the issuance of the certificate would be until July 1, 2006 for those cases in which abandonment proceedings of the water right are pending on July 1, 2004.

The Senate Committee on Ways and Means amended the bill to include the provisions of HB 2919 and SB 463, as amended by the Senate.

## **Background**

During the 2002 Legislative Session, the transfer was reduced through the appropriations process; however, the language used in the appropriations bill inadvertently made permanent what was intended to

be an amendment for one year.

At the hearing, the Assistant Director of the Kansas Water Office testified in favor of the bill.