

SESSION OF 2008

**SUPPLEMENTAL NOTE ON  
HOUSE SUBSTITUTE FOR SENATE BILL NO. 15**

As Recommended by House Committee on  
Agriculture and Natural Resources

**Brief\***

House Sub. for SB 15 would require that the Chief Engineer of the Division of Water Resources hold and conduct a public review hearing within seven years of the effective date of the bill to determine whether the designation of an Intensive Groundwater Use Control Area (IGUCA) should be continued for each IGUCA. This requirement would apply to IGUCAs designated prior and subsequent to July 1, 2008. The bill would require that the Chief Engineer have a subsequent designation review within ten years after the previous public review hearing or more frequently as determined by the Chief Engineer.

In addition, a public review hearing could be initiated by a petition signed by five percent of the affected water users in an IGUCA. A public review hearing initiated under this process could not occur more frequently than every four years.

When the Chief Engineer holds a public review hearing on the question of continuing the designation of the IGUCA, a written notice of the hearing would be given to every person holding a water right in the affected area. Notice of the hearing also would be made in a newspaper or newspapers of general circulation within the affected area.

Once the public review hearing has taken place, the Chief Engineer would consider whether any one or more of the circumstances set forth in KSA 82a-1036 exist and determine whether the public interest requires the IGUCA should be

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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>

continued. The State would have the burden of proving the need for continuance of the IGUCA designation. Based on the review, the Chief Engineer would be required to:

- Continue the IGUCA with its original or current corrective control provisions;
- Modify the corrective control provisions;
- Reduce the IGUCA boundaries;
- Change any allocations within the IGUCA;
- Address any other issues; or
- Dismiss the IGUCA and order alternative measures.

If the holder of groundwater rights within an IGUCA applies for review of the order of designation, the provisions of the order may be stayed in accordance with the Kansas Administrative Procedure Act.

In addition, the Chief Engineer would be required to present an annual report on any IGUCA proceeding, review, or pending IGUCA to the House Committee on Agriculture and Natural Resources, the Senate Committee on Agriculture, and the Senate Committee on Natural Resources.

The proceedings of the public review hearings created by the bill as well as those required under KSA 82a-1037 (which requires a public hearing when proceedings to designate an IGUCA are initiated) would be determined by rules and regulations adopted by the Chief Engineer.

The bill would require the Chief Engineer to establish an advisory panel to include members from names submitted by affected water users and affected groundwater management districts for any public hearing under KSA 82a-1037 or under the review process established by the bill. The panel would be required to represent all segments of water users in the proposed IGUCA.

In addition, the bill would amend KSA 82a-1036 to clarify the conditions under which the Chief Engineer may initiate

proceedings for designation of an IGUCA when the proposed IGUCA is within a groundwater management district (GMD). Under the bill, the Chief Engineer could initiate an IGUCA within a GMD only when the following criteria have been met:

- The Chief Engineer has notified the affected GMD that one or more of the water conditions involving issues such as declining levels, rates of withdrawal and recharge, waste of water, deterioration of water quality, or other issues in the public interest exist;
- The Chief Engineer has provided the GMD with a description of the area in question and data and analysis that documents the existence of one or more water conditions outlined above; agreement to the conditions would have to be agreed to by the GMD. If no agreement could be reached within 120 days, or a mutually agreed to extension, the GMD and the Chief Engineer would enter into mediation. Parties to the mediation would be a representative of the GMD, a representative of the Chief Engineer, and a mutually agreed to third party;
- The Chief Engineer has made a preliminary determination that application of the priority system to address the water conditions will be significantly less effective in solving or reducing the water conditions, or will result in significantly more permits and water rights being ordered to completely cease diverting water, than if an IGUCA is created, and provide a report to the affected GMD explaining how administration of water rights under the priority system would impact water rights;
- The Chief Engineer has provided 120 days, or greater time specified by the Chief Engineer, for the GMD to develop a plan to address the problem;
- The affected GMD has failed to submit the plan to address the problem within the time period, or any extension thereof, authorized by the Chief Engineer;

- The Chief Engineer has given the GMD 90 days, or a greater time specified by the Chief Engineer, to request initiation of an IGUCA; and
- The GMD has failed to request initiation of an IGUCA within the time period authorized by the Chief Engineer.

If a GMD regulation specifying the manner in which the Chief Engineer may initiate an IGUCA within any GMD has been adopted by the Chief Engineer, that procedure would supersede the procedure created by the bill and would become the procedure the Chief Engineer would use to initiate an IGUCA within a GMD.

## **Background**

The House Committee on Agriculture and Natural Resources recommended the introduction of a substitute bill. The original provisions of SB 15 dealt with the establishment of the Kansas Dam Rehabilitation Program. The House Committee on Agriculture and Natural Resources deleted all of the provisions and inserted the provisions of Sub. for HB 2625, as amended by the Senate Committee, dealing with IGUCAs. The House Committee further amended those provisions to provide a process of mediation between the GMD and the Chief Engineer when the conditions for a proposed IGUCA are not agreed upon by these two entities.

The original HB 2625 was recommended by the 2007 Special Committee on Energy, Natural Resources and Environment. The original bill would have created IGUCA review advisory committees, created designation advisory committees, clarified current law to allow only groundwater management districts to initiate IGUCA proceedings for areas within their districts, and clarified current law to limit the Chief Engineer from initiating proceedings for an IGUCA to those areas outside of a groundwater management district.

At the hearing on the original bill, representatives of the Kansas Livestock Association, the Kansas Farm Bureau, the Kansas Aggregate Producers' Association, the Kansas Corn Growers Association, Groundwater Management District #5, and Groundwater Management District # 3 all testified in favor of the bill. Representatives of the Kansas Department of Agriculture, Groundwater Management District #4, and Groundwater Management District #2 appeared in opposition to the bill. Written testimony in opposition to the bill was submitted by an individual from Overland Park. An individual from Macksville appeared as a neutral conferee.

The House Committee amended the bill by adopting a substitute bill.

The House Committee of the Whole amended the bill to eliminate language which would have:

- Permitted groundwater management districts to sign a petition to require the Chief Engineer to convene a review hearing on the designation of an IGUCA;
- Allowed individuals and organizations to be parties to public hearings;
- Allowed parties to present evidence and cross-examine other parties; and
- Allowed federal and state agencies to present information, but not be a party to the hearing.

The House Committee of the Whole also amended the bill to require the Chief Engineer to conduct a public hearing, not an adversarial hearing. The requirements for the proceedings would be determined by rules and regulations.

The Senate Committee on Natural Resources made amendments to the bill including the following:

- Clarifying that the review hearings are “public” hearings;
- Clarifying that a public review hearing could be initiated by a petition “signed by” 5 percent of the affected water users;
- Deleting the requirement for a public hearing and requiring it not to be adversarial;
- Making the proceedings for public hearings under KSA 82a-1037 and public review hearings created by the bill subject to rules and regulations of the Chief Engineer;
- Requiring the Chief Engineer to establish an advisory panel for the public hearings conducted under KSA 82a-1037 or public review hearings created by the bill;
- Clarifying that the Chief Engineer would submit annual reports on IGUCA proceedings or reviews to specified committees of the Legislature;
- Creating a procedure by which the Chief Engineer would designate an IGUCA within a GMD on his or her own initiative;
- As an alternative to the above requirements, permit GMDs to create a procedure specifying the manner in which the Chief Engineer may initiate an IGUCA within a GMD through the adoption of rules and regulations; and
- Adding amendments which are technical in nature to ensure these provisions are tied to existing provisions of law dealing with IGUCAs.

The fiscal note on the original bill estimated the enactment of HB 2625 would increase the Department of Agriculture’s expenditures for FY 2009 by approximately \$255,000 from the State General Fund and would require an additional 2.50 FTE positions. There currently are eight existing IGUCAs. On a seven-year cycle of reviews, the Department of Agriculture

estimates in the fiscal note that there would be at least one IGUCA review per year on average. Based on previous IGUCA proceedings, the cost for the review of each IGUCA is estimated at \$255,000. The total expenditure for the eight IGUCAs over the seven-year review cycle would total \$2,040,000 from the State General Fund. The passage of HB 2625 also would require an additional 1.50 environmental scientist FTE positions and 1.00 FTE attorney position to implement the provisions of the bill. Costs associated with designating or reviewing new IGUCAs in the future are not included in the Department's estimate because it is not known how many, if any, new IGUCAs would be established. Any fiscal effect associated with HB 2625 is not reflected in *The FY 2009 Governor's Budget Report*.