

National Bio and Agro Defense Facility and University of Kansas Engineering School Bonding

House Sub. for SB 154 replaces the Kansas Bioscience Authority with the Kansas Department of Administration in KSA2010 Supp. 74-8963 which provides authority to issue revenue bonds and to make expenditures from the proceeds of the bonds for the purpose of land acquisition, site preparation, fencing, central utility plant facility construction and improvements in anticipation of the construction of the National Bio and Agro Defense Facility (NBAF) at Kansas State University. The bill predicates issuance of the bonds by the Department of Administration on approval by the State Finance Council.

The bill also adds language approving \$65.0 million in bonding authority for the University of Kansas for the School of Engineering Project Phase Two, with debt service to be paid from special revenue funds of the university.

Pesticide Licenses

SB 186 allows the Secretary of Agriculture discretion in suspending a pesticide business license without a hearing until compliance is reached, if a pesticide business does not employ one or more commercial applicators that are certified in each type of commercial pesticide application the pesticide business uses. Prior law stated the Secretary of Agriculture must suspend the license if the pesticide business was not in compliance with the law.

Solid Waste Permits

SB 188 expands the Kansas Department of Health and Environment's authority to approve the disposal of the demolition waste of buildings or structures at, adjacent to, or near the site of the building or structure without requiring a solid waste permit. The bill also adds additional evaluation criteria that the Secretary of Health and Environment must consider when determining whether to approve a request for off-site disposal of demolition waste. The additional criteria to consider would include public safety concerns, proposed plans to redevelop the demolition site, and the disposal capacity of any nearby permitted landfills.

Groundwater Management Districts; Stream Obstructions

House Sub. for SB 214 changes the existing definition of “person” for the purposes of the Groundwater Management District Act to mean any natural person, public or private corporation, municipality, or any other legal commercial entity. In addition, the term “eligible voter” is modified to reflect the new definition of “person,” and the bill clarifies that each eligible voter shall be entitled to cast only one vote per eligible voter. The former definition of “person” or “eligible voter” did not include the term “or any other legal commercial entity.”

Further, the bill modifies the section of law which requires prior written consent or permit of the Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture. Specifically, the bill provides that the prior written consent or permit does not apply to a water obstruction that meets the following:

- The water obstruction is not a dam as defined by law;
- The water obstruction is not located within an incorporated area;
- Every part of the water obstruction is located more than 300 feet from any property boundary; and
- The watershed area above the water obstruction is 640 acres or less.

In addition, if the water obstruction is not 300 feet or more from any property boundary, the water obstruction may be exempted from the permitting requirements if the Chief Engineer determines that the water obstruction has minimal impact upon safety and property based on a review of information provided, including:

- An aerial photo or topographic map depicting the location of the proposed project; and
- The principal dimension of the project including the height above the streambed.

Regardless of whether a water obstruction meets the requirements of being exempt from the permitting requirements, the bill provides authority to the Chief Engineer to require a permit for any water obstruction if it is determined it is necessary for the protection of life or property.

Abolishing the Liquefied Petroleum Gas Advisory Board

SB 215 abolishes the Liquefied Petroleum Gas Advisory Board on July 1, 2011, and repeals KSA 55-1811, which is the statute that establishes the Board and provides for the Board's members and their terms of office.

Support for National Bio and Agro-Defense Facility Funding

SCR 1605 urges the United States Congress to support the President's budget request of \$150 million to ensure the timely construction and operations of the National Bio and Agro-Defense Facility (NBAF) to be located in Manhattan. The resolution encourages the Department of Homeland Security and the General Services Administration to move quickly to sell Plum Island and then direct the proceeds to be used to help fund the NBAF.

The resolution also urges the construction and operations of the NBAF be accelerated to eliminate the capability gap outlined in a 2004 report by the Department of Homeland Security and that the construction of the facility provide the research, testing, and evaluation necessary to secure the nation's food supply and agricultural economy.

Extension of the Agricultural Ethyl Alcohol Producer Incentive Fund

HB 2122 makes several changes to the Kansas Qualified Agricultural Ethyl Alcohol Producer Incentive Fund (Incentive Fund). The bill extends the sunset date for the Incentive Fund from July 1, 2011, to July 1, 2018; reduces the maximum incentive rate for all producers from \$0.075 per gallon to \$0.035 per gallon; allows any producer of agricultural ethyl alcohol (ethanol) who begins production on or after July 1, 2001, but prior to July 1, 2012, to receive \$0.035 per gallon of ethanol sold, if the producer has sold at least 5.0 million gallons; allows any producer of cellulosic alcohol who begins production on or after July 1, 2012, to receive \$0.035 per gallon of ethanol sold, if the producer has sold at least 5.0 million gallons. This last provision does not apply to producers who commence alcohol production from grain. On June 30 of each fiscal year, the bill requires transfer of any unencumbered balance in the Incentive Fund to the Motor Vehicle Fuel Tax Refund Fund.

Moneys Recovered from Water Litigation; Funding for Local Health Departments

Senate Sub. for HB 2133 makes two statutory changes.

First, the bill amends prior law which directed how water litigation moneys recovered by Kansas from Nebraska and Colorado through disputes under the Arkansas River Compact and the Republican River Compact were deposited in the State Treasury and how the moneys were spent on various projects.

According to prior law, moneys received from Colorado under the Arkansas River Compact were deposited in the State Treasury differently than moneys received from Nebraska and Colorado under the Republican River Compact. The bill amends prior law to treat the depositing of moneys from both states under both compacts in the same way.

The bill adds language that all moneys received from either Nebraska or Colorado under any litigation arising under the Arkansas River Compact or the Republican River Compact is to be distributed as follows:

- An amount equal to the total of five percent of the aggregate moneys received from Nebraska or Colorado as a result of litigation, plus the amount equal to the litigation expenses, certified by the Attorney General, incurred by Kansas defending its rights under each Compact will be deposited in the Interstate Water Litigation Fund; and
- After the initial transfer to the Interstate Water Litigation Fund, one-third of all remaining moneys recovered from Nebraska or Colorado will be transferred to the State Water Plan Fund and the remaining two-thirds will be transferred to the Arkansas River Water Conservation Projects Fund, the Republican River Water Conservation Projects Nebraska Moneys Fund, or the Republican River Water Conservation Projects Colorado Moneys Fund.

All moneys transferred to the State Water Plan Fund will be used for water conservation projects, with priority given to those projects which are designed to enhance directly the ability of the State to remain in compliance with the various compacts.

In addition, the bill renames the Water Conservation Projects Fund as the Arkansas River Water Conservation Projects Fund. The bill clarifies prior law to state for what purposes the moneys transferred to the Arkansas River Water Conservation Projects Fund can be spent.

The bill removes the transfer of moneys under the Republican River Compact from the Interstate Water Litigation Fund to the Interstate Water Litigation Reserve Account of the State General Fund and the bill eliminates the \$20 million cap on the account. In addition, the bill eliminates language that references litigation filed by Kansas in 1985 and a sunset provision that expired in June 30, 2001.

The second change made by the bill addresses the way reductions in tax revenue allotted for local public health departments are handled. Prior law required counties to match dollar for dollar state financial assistance to local health departments. When local tax revenue allotted for local health departments falls below the previous fiscal year amount, prior law required that the amount of state financial assistance for these departments for the current fiscal year be reduced by an amount equal to the dollar amount of the reduction in local tax revenue. The bill amends the law so that the reduction would be a percentage equal to the percentage of the local tax revenue allotment reduction rather than a dollar amount.

Noncommercial Aviation Activities Added to Definition of Recreational Purpose

HB 2184 amends the definition of “recreational purpose” in a definitional section of law dealing with the liability of landowners who choose to open up their private property to recreational activities. The modification to the law adds “noncommercial aviation activities” to the definition of “recreational purpose.”

Weights and Measures—Aggregate Products

HB 2205 amends a section in the weights and measures laws to delete the time limit on a provision which allows mechanical vehicle scales used solely to sell aggregate products to have a minimum tolerance of +/- 100 pounds, thus making the exception permanent.

Kansas Plant Pest Act

Sub. for HB 2271 amends various provisions of the Kansas Plant Pest Act and clarifies authority given to the Secretary of Agriculture or the Secretary's designee. Specifically, the bill:

- Creates a separate definition of the term “plant products”;
- Clarifies that the Secretary has the authority to enter any property, other than a private dwelling, in order to inspect, monitor, place and inspect monitoring equipment, and obtain samples;
- Changes probable cause to reasonable suspicion as the criteria to allow the Secretary to stop and inspect any conveyance when there is a belief the contents contain or carry any plant pest;
- Allows the Secretary to apply to any court of competent jurisdiction for an order to permit access to any property if access is denied;
- Allows the Secretary to treat or dispose of plant pests if the person in possession of the plant pests fails to comply with an order to do so;
- Permits the assessment of reasonable costs of treatment and disposal of plant pests against live plant dealers when the Secretary incurs these types of costs;
- Allows any diagnostic and identification service fees to be assessed and established by rules and regulations of the Secretary;
- Eliminates vehicles from which live plants are offered for sale from the license requirements;
- Increases the maximum cap on the application fee for a live plant dealer license from \$60 to \$80;
- Exempts live plant dealers who import or export plants into or from the state who have annual gross receipts of \$10,000 or less from license requirements (a change from requiring a license but no payment of fees for these dealers);
- Clarifies that the Secretary may deny an application or refuse to renew, revoke, suspend, or modify the provisions of any license, permit, or certificate

issued under the Plant Pest Act (the specific conditions for this type of action are outlined in the proposed changes to the Act);

- Clarifies that live plants being shipped into or within this state have proper documentation;
- Makes each day a criminal violation of the Act occurs or continues a separate violation;
- Eliminates the provision that establishes a maximum amount (\$15,000) that may be collected in the Plant Pest Emergency Response Fund;
- Permits district courts to issue orders and have jurisdiction over violations of the Act;
- Raises the upper civil penalty limitation for violation of the Act or any rules and regulations from \$1,000 to \$2,000;
- Designates the Entomology Fee Fund as the Plant Protection Fee Fund;
- Eliminates a provision that permits each day of a continuing violation of the Plant Pest Act to be deemed a separate civil violation; and
- Clarifies and corrects a number of technical issues.

Lodging Establishment Licensure and Inspection

HB 2282 changes the law regarding the licensure and inspection of lodging establishments. The bill consolidates the Food Service Inspection Reimbursement Fund and the Food Inspection Fee Fund into the Food Safety Fee Fund, as well as establishes the Lodging Fee Fund, with both funds being administered by the Food Safety and Lodging program in the Kansas Department of Agriculture. Inspection of lodging establishments will occur upon the application for a new license or the filing of a customer complaint with the Kansas Department of Agriculture. The bill raises the rates on license and application fees and establishes new maximum fee levels as follows:

- Duplicate license fees increase from \$3 to \$5;
- Maximum application fees increase from \$100 to \$200; and
- The license fee for an establishment with more than ten sleeping rooms will be \$40 and increase by \$10 for every ten additional sleeping rooms. Prior law established the license fee for establishments with ten or more sleeping rooms at \$35 and an additional \$5 for each additional ten sleeping rooms, with no maximum fee.

U.S. Army Corps of Engineers—Conservation Easements

Sub. for HR 6009 expresses support for the U.S. Army Corps of Engineers (the Corps) accepting conservation easement language for the “Life of the Project” and not for perpetuity. The resolution states conservation easements are needed to protect mitigation areas resulting from the construction of watershed district flood retarding dams that require constant maintenance and management for an extended period of time. “Life of the Project” is defined to include the period of time during which the dam continues to function, and for all practical purposes equates to perpetuity as described by the Corps. The resolution further states it is not necessary for easement language to include perpetuity as the required term of the easement.