

SESSION OF 2012

**SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2649**

As Amended by Senate Committee of the Whole

**Brief\***

HB 2649, as amended, would repeal the following statutes regarding dikes, levees, dams, and water rights:

- KSA 24-105 describes when a landowner or proprietor may construct a dike or levee which obstructs the flow of surface water, the application requirements to build a dike or levee, the required examination by the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture (KDA), and the permit needed to build a dike or levee;
- KSA 82a-312, KSA 82a-313, and KSA 82a-314 outline the application for approval to be submitted to the Chief Engineer of the Division of Water Resources by a landowner or operator who has built, or desires to build, a dam for agricultural purposes, as part of the Federal Agricultural Conservation Program, without complying with other statutory provisions for obtaining the prior written consent or permit and supervision of the Chief Engineer. The statutes also set out the plan requirements which must accompany the applications and the provisions for the revision of the plans; and
- KSA 2011 Supp. 82a-735 establishes the state as the sole authority to enter into negotiations, agreements, and contracts with the federal

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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>

government regarding water rights related to the Sunflower Ammunition Plant.

The bill also would repeal a statute concerning the Division of Water Resources within the KDA (Chapter 74, Article 5). The statute, KSA 2011 Supp. 74-509, relates to the duties of the Irrigation Commissioner which were conferred on the Division of Water Resources by KSA 74-506b in 1927.

In addition, the bill would establish in statute the Conservation Reserve Enhancement Program (CREP). The CREP would be a joint state-federal program to be administered for the state by the KDA. The CREP would have the purpose of reducing withdrawal demands on the high plains aquifer, improving water quality, protecting public water supplies, and enhancing wildlife habitat.

The CREP would provide for voluntary retirement of water rights and would be subject to the following criteria:

- The total number of acres for enrollment in Kansas in the CREP would not exceed 40,000;
- The number of acres eligible for enrollment in Kansas in CREP would be limited to one-half of the number of acres represented by contracts in the federal Conservation Reserve Program (CRP) that have expired in the prior year in counties within the CREP area, except if federal law permits the land to be used for agricultural purposes, then the number of eligible acres would be limited to the number of acres represented by contracts in the CRP that have expired in the prior year in counties within the CREP area;
- Lands enrolled in the CRP as of January 1, 2008, would not be eligible for enrollment in CREP;
- No more than 25 percent of the acreage in CREP

could be in any one county;

- No water right that is owned by a governmental entity, except a groundwater management district (GMD), would be purchased or retired under CREP provisions; and
- Only water rights in good standing would be eligible for inclusion under CREP.

The bill would establish that to have a water right in good standing, the following criteria must be met:

- At least 50 percent of the maximum annual quantity authorized to be diverted under the water right has been used in any three years from 2001 through 2005;
- From 2001 to 2005, the water rights used for the acreage in CREP would not exceed the maximum annual quantity authorized to be diverted and would not have been the subject of enforcement sanctions by the Division of Water Resources, KDA, in the last four years; and
- The water right holder has submitted the required annual water use report required by law for each of the most recent 10 years.

The KDA would be required to submit an annual report regarding CREP to the Senate Committee on Natural Resources and the House Committee on Agriculture and Natural Resources. The report would consist of a description of program activities and would include the total water rights, measured in acre-feet, retired each year by CREP; the acreage in the CREP; the dollar amount received and expended for the CREP; the economic impact of the CREP; the change in groundwater levels in the CREP area; the annual amount of water usage in the CREP area; an

assessment of meeting each of the program objectives identified in the agreement with the U.S. Department of Agriculture Farm Service Agency; and other pertinent information.

In addition, the KDA would be authorized to promulgate rules and regulations for the implementation and administration of the CREP.

## **Background**

The bill combines the original provisions of HB 2649 and HB 2596, and includes proviso language that has appeared in the appropriations bill in recent years.

HB 2649 was introduced at the request of the Governor's Office of the Repealer. The Chief Engineer for the Division of Water Resources, Kansas Department of Agriculture, testified in favor of the bill before the House Committee on Government Efficiency. The Chief Engineer stated KSA 24-105 is redundant with other existing statutes and is not referenced in the current adopted rules and regulations. The Chief Engineer also indicated KSA 82a-312, KSA 82a-313, and KSA 82a-314 only refer to dams built under the Agricultural Conservation Program and the permitting and regulating of these dams is adequately covered within other existing statutes. With regard to KSA 82a-735, the Chief Engineer stated the federal government no longer owns the water right to which the statute applies and the statute is obsolete. No opposing or neutral testimony was presented to the House Committee.

HB 2596 was introduced at the request of the Governor's Office of the Repealer. A representative of the Department of Agriculture testified in favor of the bill before the House Committee on Government Efficiency indicating the statute is obsolete because the duties referenced are no longer performed. Further testimony indicated the duties are unnecessary with the water right system currently in place

and the data collection currently available. No opposing or neutral testimony was presented to the House Committee.

The Senate Committee amended HB 2649 to include the provisions of the original version of HB 2596.

The Senate Committee of the Whole amended the bill to include language that would make permanent the CREP. Proviso language creating the CREP has appeared in the appropriations bill in recent years.

The fiscal notes prepared by the Division of the Budget on HB 2649 and HB 2596 state both bills are of a technical nature; therefore, enactment of HB 2649, as amended, would have no fiscal effect.