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MEMORANDUM

To: House Committee on Water and Environment
From: Nick Myers, Assistant Revisor of Statutes
Date: February 16, 2017
Subject: House Bill 2312

House Bill 2312 makes administrative procedure amendments to certain fertilizer statutes and water statutes that are administered by the Department of Agriculture.

The statutory amendments that are made to statutes relating to fertilizers include:

- HB 2312 amends K.S.A. 2-1201b to require that a person who violates statutes relating to custom blending of fertilizers be entitled to notice and an opportunity for a hearing under the Kansas administrative procedure act before a civil penalty can be assessed by the Secretary of Agriculture. There is no current requirement for notice and an opportunity for a hearing under the current statute.
- HB 2312 amends K.S.A. 2-1201c to clarify that the registration of an ammonium nitrate dealer can only be denied, revoked or suspended after notice and an opportunity for a hearing. The current statutory language provides that such registration can only be denied, revoked or suspended “pending a hearing in accordance with the Kansas administrative procedure act.”
- HB 2312 amends K.S.A. 2-1208a to allow the Secretary to cancel a commercial fertilizer brand registration after notice and an opportunity for a hearing in accordance with the Kansas administrative procedure act. Current law requires the Secretary hold a hearing and establish that a violation has occurred before the Secretary would have authority to cancel the commercial fertilizer brand registration.

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HB 2312 also amends two water related administrative procedure and enforcement statutes. K.S.A. 82a-1901 subsections (a) and (b) are amended to provide that certain orders of the Chief Engineer of the Department of Agriculture would be subject to an administrative hearing upon a request being made for a hearing within 15 days of service of the order or the inaction. The hearing would be before the Chief Engineer or a hearing officer appointed by the Chief Engineer. Similar to what is provided in current law, new subsection (c) would allow for an administrative review with the Secretary for certain orders issued by the Chief Engineer, including those orders or decisions issued pursuant to one of the administrative hearings with the Chief Engineer. Request must be made for review by the Secretary within 30 days of service of an order. Currently, K.S.A. 82a-1901 authorizes a review process by the Secretary but does not statutorily provide for administrative hearings with the Chief Engineer prior to the Secretary's review.

HB 2312 amends K.S.A. 82a-737, which provides enforcement provisions for violations of water laws, to make conforming amendments with the changes that were made in K.S.A. 82a-1901. In addition, K.S.A. 82a-1902 would be repealed by the bill which requires the Department of Administration to contract with or employ administrative law judges, court reporters and other personnel to conduct the proceedings under 82a-1901.

Overview of K.S.A. 82a-1901's Administrative Procedure Changes in HB 2312

Subsections (a) and (b) authorize an administrative hearing process with the Chief Engineer for orders issued pursuant to:

82a-708b – orders on applications for change the use, place of use or points of diversion of water

82a-711 – orders on permits to appropriate water

82a-737 – orders assessing civil penalties for violations

82a-714 – failure to act on a certificate for water appropriation within specified period of time

82a-770 – orders suspending the use of water under a permit or right

New subsection (c) would authorize administrative review by the Secretary of Agriculture for any orders and decisions issued in the administrative hearings with the Chief Engineer, and any orders issued pursuant to:

82a-708b – orders on applications for change the use, place of use or points of diversion of water

82a-711 – orders on permits to appropriate water

82a-737 – orders assessing civil penalties for violations

82a-714 – failure to act on a certificate for water appropriation within specified period of time

82a-770 – orders suspending the use of water under a permit or right

42-703 – orders on applications for proposed irrigation districts

42-722 – orders on dissolution of irrigation district

42-722a – orders on dissolution of Cedar Bluff irrigation district

82a-718 – orders on abandonment of water rights, hearing required prior to order in statute

82a-1038 – orders on intensive groundwater use areas

82a-1041 – orders on local enhanced management plans

