

CORRECTED
SESSION OF 2023

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2302

As Amended by House Committee on Water

Brief*

HB 2302, as amended, would establish funding for the State Water Plan and water infrastructure projects, create the Water Technical Assistance Fund and the Water Projects Grant Fund, authorize the Kansas Water Office (KWO) to provide grants and adopt rules and regulations to establish criteria for grants, and authorize distribution to the State Water Plan Fund (SWPF) of a portion of the revenue from the state sales and compensating use tax (sales tax revenue).

***State Water Plan Fund Transfers and Appropriations;
Kansas Water Authority (New Section 1)***

The bill would require that on July 1, 2023, and each July 1 after through July 1, 2028, no statutory transfers to the SWPF would be made if the full amount of sales tax revenue is transferred to the SWPF.

[*Note:* The SWPF is a statutory fund that receives two statutory transfers each fiscal year, \$6.0 million from the State General Fund (SGF) and \$2.0 million from the Economic Development Initiatives Fund (EDIF), unless modified by the Legislature.]

The bill would state the SWPF would continue to be appropriated and expended for the purposes prescribed in law, with the following exceptions:

*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>

- On July 1, 2023, and each July 1 after through July 1, 2028, or as soon thereafter when moneys are available:
 - \$5.0 million would be transferred from the SWPF to the Water Technical Assistance Fund established by the bill; and
 - \$15.0 million would be transferred from the SWPF to the Water Projects Grant Fund established by the bill.

The bill would state that for FY 2024 through FY 2026, an amount no less than \$15.0 million from the SWPF would be applied toward the retirement of any water supply storage debt for Milford and Perry Lake reservoirs until the debt is retired.

The transfers from the SWPF would only occur if the full amount of sales tax revenue authorized for distribution is transferred to the SWPF.

The bill would sunset the provisions of New Section 1 on July 1, 2028. All moneys in and liabilities of the two funds established by the bill would be transferred to the SWPF, and the two funds would be abolished.

The bill would allow, notwithstanding the provisions of the law that established the SWPF, the Kansas Water Authority (KWA) to recommend to the Legislature an appropriation of up to 10.0 percent of the unencumbered balance of the SWPF to be used to supplement the salaries of existing state agency full-time equivalent (FTE) employees and for funding new FTE positions created to implement the State Water Plan. The moneys from the appropriation could be used to supplement existing positions, but the moneys could not be used to replace SGF or fee fund moneys or other funding for positions existing on July 1, 2023.

The bill would list the eligible FTE positions for which moneys could be used to include engineers, geologists, hydrologists, environmental scientists, attorneys, resource planners, grant specialists, and any other similar positions.

The bill would allow the KWA to recommend that moneys be used to supplement salaries if at least two conservation districts present a joint proposal to the KWO for positions to provide shared services to the districts involved in the proposal.

The KWA would be required to encourage funding requests from state and local entities on projects that provide a direct benefit to water quantity and quality, including water infrastructures that are both natural and man-made, and include matching funds from non-state sources.

The bill would state that all reporting requirements in the SWPF law would continue and would apply to the two funds established in the bill.

Water Technical Assistance Fund (New Section 2)

The bill would establish the Water Technical Assistance Fund, which would be administered by the KWO.

The bill would provide that when the unencumbered balance of the Fund exceeds \$15.0 million, the excess moneys could be recommended for appropriation by the KWA for the same purposes as any other moneys in the SWPF are appropriated.

The bill would require the KWO to use the Fund to provide grants for planning, engineering, management, and other technical assistance that could be necessary in the development of plans for water infrastructure projects or for processing the grant and loan applications for such water infrastructure projects. The KWO could offer services directly, provide funding to other organizations to provide services at

no cost to a municipality or special district related to water, or the KWO could provide grants directly to applicants to cover expenses related to the hiring of technical assistance.

The bill would allow any municipality or special district related to water organized under state law to apply for a grant. The KWO would be authorized to award full or partial grants to the applicants. Municipalities with fewer than 2,000 residents would be prioritized for the awarding of full grants. Watershed districts, conservation districts, groundwater management districts, and all special districts related to water would not be prioritized for the awarding of full grants for the purposes of New Section 2 of the bill.

The bill would require the KWO to adopt rules and regulations to establish any necessary criteria for administering the Fund and awarding grants for technical assistance. The bill would require the criteria to include, but not be limited to, factors applicable to:

- Municipalities of different populations, including the prioritization of small municipalities as required by New Section 2(b)(2);
- Factors that could include, but not be limited to, public health, socio-economic factors, and the ability for a municipality to repay any loans without grant assistance; and
- Special districts, such as watershed districts, conservation districts, groundwater management districts, rural water districts, and any other similar districts formed for a special or single purpose related to water.

The bill would prohibit any single awarded grant for technical assistance to exceed \$1.0 million unless specified by an appropriation act of the Legislature.

Water Project Grant Fund (New Section 3)

The bill would establish the Water Projects Grant Fund, which would be administered by the KWO.

The bill would provide that when the unencumbered balance of the Fund exceeds \$45.0 million, the excess moneys could be recommended for appropriation by the KWA for the same purposes as any other moneys in the SWPF are appropriated.

The bill would allow the KWO to provide full or partial funding for grants to any municipality or special district related to water that is established under state law for the following:

- Construction, repair, maintenance, or replacement of water-related infrastructures and any related construction costs;
- Matching moneys for grant or loan applications for water-related infrastructure projects; and
- Grants that could be applied to an outstanding loan balance from the existing Public Water Supply Loan Fund or Kansas Pollution Control Revolving Fund.

The bill would require the KWO to adopt rules and regulations to establish any necessary criteria for grants from the Water Projects Grant Fund. The rules and regulations would include any necessary criteria that could be applied to the selection of projects with outstanding loan balances from the existing Public Water Supply Loan Fund or Kansas Pollution Control Revolving Fund. The criteria would be based on the following factors:

- The planned construction on the project with the outstanding loan balance being complete;

- The municipality or special district having made at least five years of payments on the project loans;
- Awarding grants that provide repayment of up to:
 - 90.0 percent of any remaining project loan balance for cities with fewer than 2,000 residents;
 - 75.0 percent of any remaining project loan balance for cities with fewer than 5,000 residents;
 - 50.0 percent of any remaining project loan balance for cities with fewer than 10,000 residents; and
 - 25.0 percent of any remaining project loan balance for all other cities in Kansas; and
- Any other relevant criteria including, but not limited to, the socio-economic status of the residents of any municipality, public health, and the ability of any municipality to repay a loan without further assistance.

The bill would prohibit any single grant awarded for a project to be greater than \$8.0 million unless specified by an appropriation of the Legislature.

The bill would require the KWO and Kansas Department of Health and Environment (KDHE) to coordinate the sharing of information about applicants to the Public Water Supply Loan Fund and the Kansas Pollution Control Revolving Fund, and require the agencies to take into consideration approval or likely approval of a grant by the KWO when considering the eligibility of any municipality to receive moneys from the funds.

Sales Tax Revenue (Section 4)

The bill would require the State Treasurer, on and after July 1, 2023, and before July 1, 2028, to credit 1.231 percent of sales tax revenue and deposit the amount in the SWPF.

Technical Amendments (Sections 6 and 8)

The bill would make technical amendments to account for the trigger of statutory transfers to the SWPF should the full amount of sales tax revenue be transferred to the SWPF.

Kansas Water Authority Report (Section 7)

The bill would require the KWA to include in its annual report to the Governor and Legislature an account of all moneys expended from the Water Technical Assistance Fund and the Water Projects Grant Fund each year.

Background

The bill was introduced by the House Committee on Water at the request of Representative Blex.

House Committee on Water

Proponent Testimony

In the House Committee hearing, **proponent** testimony was provided by representatives of the Cities of Caney and Wichita, Ducks Unlimited, Kansas Farm Bureau, Kansas Livestock Association, Kansas Municipal Utilities, League of Kansas Municipalities, Regional Economic Area Partnership of South Central Kansas, Sierra Club – Kansas Chapter, The Nature Conservancy, and WaterOne. The proponents generally stated the legislation is a good start, more work

needs to be done, and there is a willingness to have these discussions.

Written-only proponent testimony was provided by representatives of the Cities of Arkansas City, Belle Plaine, Columbus, Ellsworth, Fredonia, Garden City, Greensburg, Haysville, Independence, Logan, Maize, McLouth, Mound Ridge, Olathe, Ottawa, Overland Park, Parsons, Valley Falls, and WaKeeney; Kansas Agribusiness Retailers Association, Kansas Grain and Feed Association, and Renew Kansas Biofuels Association; Kansas Association of Conservation Districts; Kansas Contractors Association; Kansas Cooperative Council; Kansas Corn Growers Association; Kansas Farmers Union; Kansas Rural Center; and Kansas Rural Water Association.

Neutral Testimony

Neutral testimony was provided by a representative of the Kansas Department of Agriculture, KDHE, and KWO, stating the agencies are committed to working with each other and the House Committee to move forward with the bill.

Opponent Testimony

Written-only **opponent** testimony was provided by a representative of the City of McPherson, stating the bill does not address certain groundwater management district and municipal water issues.

House Committee Amendments

The House Committee amended the bill to:

- Add provisions that would require the KWA to encourage funding requests from state and local entities that cooperate with qualified nonprofit entities on projects that provide a direct benefit to

water quantity and quality, including water infrastructures that are both natural and man-made, and including matching funds from non-state sources;

- Delete municipalities as the sole receiver of grants from the KWO;
- Add special districts to various provisions of New Section 2;
- Add groundwater management districts to those that would not be prioritized for the awarding of full grants of New Section 2;
- Replace municipalities with greater than 2,000 residents with municipalities of different populations and specify prioritization of small municipalities;
- Require the KWO and KDHE to coordinate sharing information about applicants to the Public Water Supply Loan Fund and the Kansas Pollution Control Revolving Fund and take into consideration the approval or likely approval of a grant by the KWO when considering the eligibility of any municipality to receive moneys from the funds; and
- Make clarifying amendments.

Fiscal Information

According to the revised fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department of Revenue estimates the bill would decrease SGF revenues by \$48.1 million in FY 2024, including a reduction of \$54.1 million in retail sales and compensating use tax revenue and an increase of \$6.0 million by eliminating the SWPF transfer from the SGF. Based on the November

2022 Consensus Revenue Estimate, the Department of Revenue estimates the bill would result in distributing \$54.1 million in retail sales and compensating use tax revenue to the SWPF in FY 2024, including \$41.4 million of retail sales tax receipts and \$12.7 million of compensating use tax receipts.

In the original fiscal note issued, the distribution of retail sales and compensating use tax to the SWPF were identified as a transfer from the SGF instead of as reduction in SGF revenues. This distribution would replace the existing statutory transfers to the SWPF totaling \$8.0 million, resulting in a net funding increase of \$46.1 million for additional water infrastructure projects in FY 2024. The Department of Revenue indicates that the specific adjustments to the SGF in subsequent fiscal years would be as follows:

	FY 2025	FY 2026	FY 2027	FY 2028
Sales Tax	(\$42.0 million)	(\$42.7 million)	(\$43.2 million)	(\$43.6 million)
Comp. Use Tax	(\$13.5 million)	(\$14.2 million)	(\$14.9 million)	(\$15.6 million)
Net Transfers	\$6.0 million	\$6.0 million	\$6.0 million	\$6.0 million
	(\$49.5 million)	(\$50.9 million)	(\$52.1 million)	(\$53.2 million)

The suspension of the existing statutory transfer from the EDIF to the SWPF would increase EDIF revenues by \$2.0 million per year from FY 2024 through FY 2028. The Department of Agriculture, KDHE, and KWO are the primary recipients of the SWPF appropriations, so enactment of the bill would likely increase the expenditures of all three agencies by unknown amounts. According to KWO, administration of the bill would cost \$246,650 in FY 2024 and \$200,000 in subsequent fiscal years. These expenditures would be made to fill 2.0 FTE positions and contract with outside counsel to draft rules and regulations.

KDHE indicates that enactment of the bill could decrease agency revenues from loan service fees as water storage debt is paid off, but the size of this reduction is unknown.

Any fiscal effect associated with the bill is not reflected in *The FY 2024 Governor's Budget Report*.

The League of Kansas Municipalities indicates the new local grant opportunities authorized by the bill would increase municipal revenues by unknown amounts.

The Kansas Association of Counties indicates the bill would not have a fiscal effect on counties.

Water; State Water Plan Fund; State Water Plan; water infrastructure projects; Water Technical Assistance Fund; Water Projects Grant Fund; rules and regulations; sales tax revenue; Kansas Water Office; Kansas Department of Health and Environment; Kansas Water Authority; State General Fund; Economic Development Initiatives Fund; municipalities