

SESSION OF 2012

SUPPLEMENTAL NOTE ON SENATE BILL NO. 272

As Amended by House Committee on
Agriculture and Natural Resources

Brief*

SB 272 would amend existing law in the Kansas Water Appropriations Act that authorizes and governs multi-year flex accounts.

The bill would establish that an opportunity for water management practices exists that enables multi-year flexibility in the use of water authorized to be diverted under a groundwater water right, provided such flexibility does not impair existing water rights or increase the total amount of water diverted.

The bill also would establish definitions for the terms "base water right"; "multi-year flex account"; "base average usage"; "flex account acreage"; and "net irrigation requirement." In addition, the bill would provide the various conditions under which term permits may operate.

A multi-flex account, as defined by the bill, would be a term permit that suspends a base water right during its term, except when the term permit may be no longer exercised because of an order of the Chief Engineer, Division of Water Resources, Department of Agriculture. Current law provides for multi-year flex accounts that allow water right holders to exchange annual pumping maximums for a five-year pumping maximum, enabling flexibility in year-to-year pumping. However, current law also provides that users of multi-year flex accounts must reduce their five-year quantity by 10 percent to promote water conservation.

*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>

The bill would remove the 10 percent reduction requirement on multi-year flex account users. In order for water users to calculate the amount of water they may place into a multi-year flex account, the bill provides three options for this calculation:

- Option 1 - use the average annual historic usage of a water right, based on the years 2000 to 2009, multiplied by five;
- Option 2 - use the normal irrigation requirement for crops in the water user's county, multiplied by the water user's maximum irrigated acres, multiplied by five; or
- Option 3 - where available, use a Groundwater Management District (GMD)-developed alternative, provided that it does not increase long-term water use.

The quantity of water deposited into a multi-year flex account would be reduced by the quantity of water used in excess of the base water right during 2011, provided that an application for a multi-year flex account is filed with the Chief Engineer on or before July 15, 2012.

If a base water right is suspended due to the issuance of a two-year term permit in a designated drought emergency area for 2011 and 2012 and the water right holder applies for a multi-year flex account on or before July 15, 2012, that quantity of water that was used in excess of the base water right would not be deducted from the quantity of water that is deposited into the multi-year flex account.

Applications for multi-year flex accounts shall be filed with the Chief Engineer on or before October 1 of the first year of the multi-year flex account term for which the application is being made.

If a base water right is currently suspended due to the

issuance of a two-year term permit in a designated drought emergency area for 2011 and 2012, and the water right holder applies for a multi-year flex account, a fee of \$200 would be assessed.

If water use under the authority of the base water right exceeded the maximum annual quantity authorized by the base water right during 2011, and the water right holder did not have a two-year term permit in a designated drought emergency area for 2011 and 2012, and the water right holder applies for a multi-year flex account, a fee of \$600 would be assessed.

The bill would allow the Chief Engineer to require any additional measuring devices and any additional reporting of water use for term permits issued in accordance with the language of the bill. Failure to comply with any measuring or reporting requirement could result in a penalty. In addition, the Chief Engineer would be required to submit a written report on the implementation of the bill to the House Committee on Agriculture and Natural Resources and the Senate Committee on Natural Resources on or before February 1 of each year.

The bill would take effect upon publication in the *Kansas Register*.

Background

The bill was introduced by the Senate Committee on Agriculture at the request of the Department of Agriculture. The Senate Committee heard testimony in support of the bill from the Chief Engineer, who stated that the bill increases the amount of groundwater that can be pumped under a multi-year flex account without increasing overall water use. In addition, the Chief Engineer explained the three different options available for water users to compute the amount of water that they can place into a multi-year flex account. Finally, the Chief Engineer discussed that the bill is drafted so

that it can be implemented as quickly as possible.

The Chairman of the Kansas Water Authority appeared before the Senate Committee in favor of the bill, stating the bill will be an important tool for aquifer conservation efforts.

A representative of the Kansas Farm Bureau testified in favor of the bill and suggested to the Senate Committee that New Section 1 of the bill be removed and kept separate from the multi-year flex account portion of the bill. A representative of the Kansas Livestock Association also testified in favor of the bill and suggested to the Senate Committee the effective date of the bill be changed from upon publication in the statute book to upon publication in the *Kansas Register*.

The Senate Committee also received testimony from the five GMDs in support of the bill, stating that the benefits of the bill to water users that are coming out of the 2011 drought are significant and provides water users with additional options going forward. The City of Wichita also provided testimony in favor of the bill and provided additional information regarding Wichita's Aquifer Storage and Recovery (ASR) Project to the Senate Committee.

Written testimony in favor of the bill was submitted by the Southwest Kansas Irrigation Association; the Kansas Corn Growers Association; the Kansas Agribusiness Retailers Association; the Kansas Grain and Feed Association; and the Kansas Cooperative Council.

No opposing or neutral testimony was presented to the Senate Committee at the time of the hearing.

The Senate Committee on Agriculture made several amendments to the bill as originally introduced. The Senate Committee also removed New Section 1 of the bill. The Senate Committee amended the effective date of the bill to be upon publication in the *Kansas Register*. Other amendments included adding an exception from reducing the quantity of water used in excess of the maximum annual

quantity of the base water right in 2011 for those water right holders whose base water rights are suspended due to the issuance of a two-year term permit in designated drought emergency areas for 2011 and 2012. In addition, the definition of "multi-year flex account" was amended to include an exception for when the term permit may be no longer exercised because of an order of the Chief Engineer. The Senate Committee also approved two technical amendments.

The House Committee on Agriculture and Natural Resources heard from representatives of the following organizations who spoke in favor of the bill: the Kansas Water Authority, the Division of Water Resources, the Kansas Groundwater Management Districts, the Kansas Farm Bureau, and the Kansas Livestock Association. A producer from McPherson also spoke as a proponent. Written testimony in favor of the bill was provided by the Kansas Grain and Feed Association and the Kansas Corn Growers Association. Written testimony in support of the bill was provided by a producer from Ingalls. No one appeared as an opponent or provided neutral testimony.

The House Committee on Agriculture and Natural Resources amended the bill in a technical manner to clarify that amendments to existing rules and regulations in statute could not be adopted automatically.

The fiscal note provided by the Division of the Budget on the original version of the bill states that passage of the bill would increase expenditures by \$900 for each application filed for participation in the multi-year flex account program and would result in \$400 in revenue for each application filed. The Department of Agriculture does not have an estimate of the number of participants that will enroll in the program as a result of the bill.

