

SESSION OF 2012

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR SENATE
BILL NO. 412**

As Amended by Senate Committee of the Whole

Brief*

Sub. for SB 412 would require any operator of a sand and gravel pit to notify the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture, of the location and area extent of any existing or proposed sand and gravel pit to be excavated, expanded, or operated by the operator.

In terms of beneficial uses for a water appropriation permit issued to a sand and gravel pit operation, the bill would authorize net evaporation as the primary use and hydraulic dredging and sand washing as secondary uses of water so long as the uses are located within the same source of supply and are associated with the project. The bill would require secondary water uses to be used in a manner that would have no significant net consumptive use. The bill would not require the permit to be subject to the installation of a water flow meter or administration of minimum desirable stream flow.

The bill would grant secondary uses for the proposed life of the project or until the exhaustion of sand and gravel reserves. At the end of the industrial project, the owner would be required to file an application to change the beneficial use of the water right to a recreational use in order to authorize the net evaporation use caused by the exposed groundwater.

If the Chief Engineer were to deny a permit application, he would be required to provide reasons for doing so. The applicant for the permit would then be able to appeal the

*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>

denial as a final order in accordance with the Kansas Judicial Review Act. A permit for a sand and gravel project would cost \$500 and further modification requests would cost \$250.

The bill also would establish the initial period of time allowed for the completion of diversion works as reasonable and consistent with the proposed use. The Chief Engineer would be authorized to allow extensions of the initial period, which could not exceed two 10-year periods, so long as it could be shown that the operation requires the additional time for the operator to satisfy the operator's market demand in the area. The two 10-year periods could be granted at the same time for a total of a 20-year extension. The bill would change the perfection period from not longer than 60 years to not longer than 80 years.

Background

The bill was introduced by the Senate Committee on Agriculture. At the Senate Committee on Agriculture hearing on the bill, a representative of the Kansas Aggregate Producers' Association (KAPA) provided testimony in favor of the bill. The KAPA representative stated the bill would balance the public interest in sand, gravel, and water by providing a long-term solution for sand and gravel operations, by securing reserves that may not be accessed for another 50 to 100 years; reduce the workload of the Division of Water Resources; provide economical access for the development of natural resources; and preserve property rights, while protecting state resources.

The Kansas Groundwater Management Districts (GMDs) provided testimony in opposition to the bill. The representative of the GMDs stated the bill creates a new class of water users with general project permits that can hoard undetermined amounts of water for indeterminable amounts of time under proposed conditions that are outside the established doctrines of the Water Appropriations Act.

The Chief Engineer provided neutral testimony on the bill. The Chief Engineer stated that while the agency does not oppose reducing the number of separate permits required for sand and gravel operations, the agency has a number of concerns regarding the bill as introduced.

The Senate Committee adopted a substitute bill, the provisions of which included:

- Designating which beneficial water uses in a sand and gravel pit operation are a primary use and which uses are secondary; and specifying how long secondary use may last. The substitute bill would require secondary water uses to be used in a manner that would have no significant net consumptive use;
- Allowing the Chief Engineer to approve a permit in a closed area, or to waive "safe-yield" in an area that is over appropriated, if the applicant could demonstrate to the Chief Engineer that the sand and gravel operation is required in the proposed area and that an off-set water right could not be obtained within 3.5 miles of the operation;
- Establishing that the initial period of time allowed for the completion of diversions works would be reasonable and consistent with the proposed use. The Chief Engineer would be authorized to allow extensions of the period, not to exceed two 10-year periods, so long as it can be shown that the operation requires the additional time for the operator to satisfy the operator's market demand in the area. The two 10-year periods may be granted at the same time for a total of a 20-year extension; and
- Changing the perfection period from not longer than 60 years to not longer than 80 years.

The Senate Committee of the Whole moved to favorably pass the bill as it passed from the Senate Committee on Agriculture. Upon reconsideration of the bill, the Senate Committee of the Whole amended the bill by striking language that would have authorized the Chief Engineer to approve a permit in a closed area or waive "safe-yield" in an area that is over appropriated, if it could be demonstrated that the sand and gravel operation is required in the proposed area and that an off-set water right could not be obtained within 3.5 miles of the operation.

The fiscal note provided by the Division of the Budget on the original bill states that passage of the bill, as introduced, would have no fiscal effect on state operations.