

REVISED
SESSION OF 2016

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR
HOUSE BILL NO. 2059**

As Recommended by Senate Committee on
Natural Resources

Brief*

Senate Sub. for HB 2059 would add exemptions for a chemigation user's permits, change the chemigation user's permits fee, and establish the application fee for permits to appropriate surface water that otherwise leaves the state.

Chemigation User's Permits

The bill would exempt users of the chemigation process from obtaining a chemigation user's permit if a person:

- Only applies liquid fertilizer;
- Only uses surface water storage facilities as the point of diversion; and
- Has obtained a private pesticide applicator certificate.

In addition, the bill would change the application fee for a chemigation user's permit to \$30 per year for each point of diversion, instead of \$75 plus \$15 for each additional point of diversion.

*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>

Surface Water Appropriation Application Fee

For a permit application to appropriate surface water that otherwise leaves the state and is for a water transfer project proposed for multiple uses, an application fee of \$100 plus \$200 for each 100 cubic feet per second of the diversion rate requested would be established. An additional fee could be assessed by the Chief Engineer of the Kansas Department of Agriculture (KDA) if additional expenses are incurred in the review of an application until it is approved or denied. The bill would cap the maximum total fee for these applications in accordance with limits in existing law. The bill also would establish that there is no deadline for the Chief Engineer to render a final decision on an application, but the application could be dismissed if the Chief Engineer has good cause to believe the applicant is unable to demonstrate the application is likely to be approvable in a reasonable amount of time.

Background

Senate Sub. for HB 2059 contains the contents of SB 322, as amended by the Senate Committee on Natural Resources (the Senate Committee amendments are described later). The contents of HB 2059, as it passed the House during the 2015 Legislative Session, had previously been removed and placed in 2015 SB 52, which was signed into law on May 19, 2015. The House version of HB 2059 dealt with augmentation regarding unlawful diversions of water and notification of an unlawful diversion to the affected Groundwater Management District (GMD).

SB 322

The bill was introduced by the Senate Committee on Ways and Means.

At the 2016 bill hearing in the Senate Committee on Natural Resources, the Executive Director of GMD No. 3 provided testimony in favor of the bill, stating the bill provides legislative leadership to help Kansans consider new appropriations of water that otherwise leave the state to be conserved and transferred to meet current and future multiple beneficial purposes for Kansas. The Executive Director also stated the bill achieves these goals by setting a reasonable filing fee structure that provides both upfront funds and additional funds as agency costs are incurred in the necessarily extended review of such unique and complex water appropriation proposals. A representative of the Southwest Kansas Irrigation Association provided written testimony in favor of the bill.

Testimony in opposition of the bill was presented by the Secretary of Agriculture, who stated the proposed filing fee undercompensates the work required by the KDA, Division of Water Resources, to evaluate applications; there is no deadline on the Chief Engineer to render a final decision on an application; recognizing water right applications for a transfer from the Missouri River would be unique and would likely result in a long perfection period and a large filing fee; and there are other options available. In addition, the Secretary stated the *Vision for the Future of Water Supply in Kansas* includes several action items to allow for the transfer of water between basins where feasible and cost effective, and calls for a summit between the Missouri River states to collaborate on river management issues.

The Senate Committee approved two amendments to the bill, including the addition of language regarding the chemigation user's permit and application fee and language that allows the Chief Engineer to dismiss an application if the applicant cannot demonstrate the application is likely to be approved in a reasonable amount of time. The Senate Committee then deleted the contents of HB 2059 and inserted the contents of SB 322, as amended, into HB 2059 and passed the bill as a Senate Substitute bill.

The fiscal note provided by the Division of the Budget on the original version of SB 322 states passage of the bill could result in notable revenue losses to the KDA. The agency provided an example assuming an application for 1.0 million acre-feet. Under the current fee structure, the fee would equal \$200,240. Passage of the bill would establish the fee at \$1,400, resulting in a revenue loss of \$198,840. The bill contains a provision allowing the Chief Engineer to assess an additional fee if additional expenses are incurred in reviewing an application; however, it is not anticipated that assessment of this fee would offset the overall revenue loss. The agency is unable to estimate the fiscal effect of passage of the bill, as that would depend on the number of applications of this type that are received. While it is not anticipated there would be a large number of these applications, the agency indicates each application would involve a great deal of staff time due to the complexity of interstate water issues. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.