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MEMORANDUM

To: House Committee on Water
From: Office of Revisor of Statutes
Date: February 14, 2022
Subject: Bill Brief – HB 2686

HB 2686 creates a new executive branch agency, the Kansas Department of Water and Environment (KDWE) and transfers the duties and powers of the Kansas Water Office, Kansas Department of Health and Environment (KDHE), Division of Environment, Kansas Department of Agriculture (KDA), Division of Conservation and Division of Water Resources to the new agency. The bill also creates the water and environment maintenance board to oversee the newly established water and environment maintenance fund and the state water plan fund and establishes a new fee on water rights that will be deposited into the new fund. The bill also modifies procedures for groundwater management district (GMD) elections, requires GMDs to submit conservation and stabilization plans to the Chief Engineer and certain reports to the Legislature. The bill also increases water protection fees, authorizes the Chief Engineer to issue certain orders without review by the Secretary of Water and Environment (formerly Agriculture) and establishes civil penalties for violations of the obstructions in streams act. The remainder of the bill updates statutory references corresponding to the transfer of duties and powers under HB 2686. HB 2686 is effective on July 1, 2023.

Sections 1 and 2: Secretary of Water and Environment

Sections 1 and 2 create the Kansas Department of Water and Environment and the Secretary of Water and Environment. The Secretary is appointed by the Governor and subject to confirmation by the Senate. The Secretary is an unclassified position that serves at the pleasure of the Governor and is a member of the Governor's cabinet. The Secretary is directed to maintain an office in Topeka and prior to July 1, 2028, shall investigate how to consolidate or manage the agency's offices on a local level. The Secretary is allowed to organize KDWE and govern the administration of each division of KDWE. The Secretary may also delegate duties to the

directors of each division. The bill requires the Secretary to appoint a chief attorney for KDWE. The Secretary may also appoint additional attorneys to positions within KDWE and the chief attorney will determine where to assign such additional attorneys.

Additionally, in section 2, the Secretary inherits the authority to adopt rules and regulations that were previously the authority of the Kansas Water Office, Division of Environment or Secretary of Health and Environment and Division of Conservation or the Secretary of Agriculture. The rules and regulations authority corresponds to the powers transferred relating to the water and environment of Kansas. Other powers of the secretary include:

- (1) appointing employees of the office, enter into contract and agreements as necessary to perform the duties of the Secretary;
- (2) designating an official seal;
- (3) charging and collecting paper document processing fees; and
- (4) doing such other act to carry out the water and environment laws of this state to better protect, conserve, control, use, increase, develop and provide for the enjoyment of water and environment in Kansas.

Sections 3, 4 and 5: New Divisions of KDWE

Sections 3, 4 and 5 establish three divisions within KDWE under the authority of the Secretary

Section 3 establishes the Division of Water and Environmental Planning, formerly the Kansas Water Office. The director of the Division of Water and Environmental Planning is an unclassified position appointed by the Governor and serving at the pleasure of the Governor. The authority to adopt rules and regulations, orders and directives previously with the Kansas Water Office is transferred to the Secretary of KDWE.

Section 4 establishes the Division of Environment and Conservation, formerly KDHE, Division of Environment and KDA, Division of Conservation. The director of the Division of Environment and Conservation is an unclassified position appointed by the Governor and serving at the pleasure of the Governor. The authority to adopt rules and regulations, orders and directives previously with the KDA, Division of Conservation or the Secretary of Agriculture and KDHE, Division of Environment or the Secretary of Health and Environment is transferred to the Secretary of KDWE.

Section 5 establishes the Division of Water Resources, formerly of the KDA. The Chief Engineer of the Division of Water Resources is a classified position employed by the Secretary.

The authority to adopt rules and regulations, orders and directives that was previously with the Chief Engineer remains with the Chief Engineer, however rules and regulations proposed by the Chief Engineer are subject to review by the Secretary of KDWE.

All three sections contain standard transfer requirements, including transfers of:

- (1) the powers, duties and functions, property interests and rights to acquire property, rules and regulations and directives and orders of the previous divisions and directors;
- (2) the previous divisions' officers and employees if approved by the Secretary of KDWE;
- (3) the balance of all funds appropriated to the previous divisions for the purposes those funds are to be used for; and
- (4) the liability for officer and employee salaries transferring to KDWE.

Any conflicts as to the proper disposition of powers, duties and functions, property or records or appropriated funds that arise between the previous agencies and the new divisions resulting from the transfers shall be decided by the Governor.

Section 6

Section 6 renames the Kansas Department of Health and Environment as the Kansas Department of Health to correspond with the transfer of the Division of Environment to KDWE. Where applicable, some of the statutes referencing the Kansas Department of Health and Environment amend the title to Kansas Department of Health.

Section 7

Section 7 establishes the water and environment maintenance fund. The fund will be administered by the Secretary of Water and Environment in coordination with the water and environment maintenance board established in section 8. The State Water Plan fund is now a separate, subaccount in the water and environment maintenance fund, but State Water Plan fund moneys shall still only be made for implementation of the State Water Plan in accordance with K.S.A. 82a-951. Other fund moneys include proceeds from the assessment of the newly imposed water rights fee established in section 9 and moneys received by the secretary in the form of gifts, grants or reimbursements to be used for the purposes of KDWE. The Secretary is authorized to expend moneys from the fund to administer, implement and enforce the water and environment laws in the state.

Section 8

Section 8 establishes the water and environment maintenance board. The board consists of seven members including: the Secretary of KDWE, the chairperson of the Kansas Water Authority, the state treasurer, one member of the Kansas Senate appointed by the President, one

member of the Kansas House of Representatives appointed by the Speaker and two members of the general public who have special technical experience and knowledge about water issues and the industry. The technical experts are subject to confirmation by the Senate. Members of the board appointed by the Legislature and Governor shall serve terms of two years.

The board is responsible for overseeing the water and environment maintenance fund, including the State Water Plan fund subaccount. The board is directed to make recommendations for an agency budget to KDWE to fund the agency's objectives and implement the State Water Plan. The board is also required to submit an annual written report to the legislature providing: summary financial information of KDWE, including an assurance that KDWE has had an independent audit review of the financial position of KDWE and the water and environment maintenance fund; revenue available for the water and environment maintenance fund; detailed breakdowns of anticipated annual expenditures and committed expenditures for projects and programs of KDWE; statutory recommendations; and pertinent information on state water systems and issues.

Section 9

Section 9 establishes a new water rights fee on all existing owners of a water right or permit to appropriate water for beneficial use. The water rights fee is based on the authorized quantity of the water right in an amount equal to \$1 per acre foot of authorized quantity. The fee shall be a minimum of \$25 and a maximum of \$250 based on the quantity of water right. The fee is paid annually to the Chief Engineer simultaneously with the annual water use report required by K.S.A. 82a-732. Failure to pay the fee is a violation of the Kansas Water Appropriation Act and subject to a penalty not to exceed \$100 per water right. The Chief Engineer may also issue a written order for the indefinite suspension of water use under the right or permit until the fee is paid. Appeals procedures are provided for any water rights holder aggrieved by an order issued by the Chief Engineer. The new water rights fee is not imposed on any water right owner or permit holder who is subject to the water protection fee in K.S.A. 82a-954.

Sections 10-19

Sections 10 through 19 amend the groundwater management district act to provide new election procedures for GMD boards and to require GMDs to submit a financial report to the legislature and to submit conservation and stabilization plans to the Chief Engineer.

Section 10 outlines the new election procedures for GMDs. GMD elections are to be nonpartisan and the new election procedures begin with the 2023 election. There are procedures outlined for primary and general elections and that those elections should occur jointly with other

local elections as practicable. Current GMD boards shall determine the number of directors that will make up the board between five, seven and nine members who are elected at-large from the district beginning with the 2023 election. Directors will serve a term of four years except for the board elected after 2023 when the top half of directors plus the one with the most number of votes elected will serve four year terms and the remainder will serve two year terms creating a staggered election cycle.

Section 11 provides who may become a candidate for a district board. Any eligible voter of the district may become a board candidate either by filing a petition signed by not less than 50 electors in the district or filing with the election officer and paying a \$20 fee. The definition of eligible voter is expanded in the GMD Act in section 15 to include any person over 18 years or older who is a qualified elector in the district.

Section 12 provides the election procedures for changing the number of directors of a GMD and how that proposition should be presented to qualified electors of the district.

Section 16 allows any new GMD to be organized by a steering committee petition signed by not less than 10% of the eligible voters of the district and submitted to the Secretary of State who shall forward any sufficient petition to the Chief Engineer. Section 17 provides that GMD organization petitions approved by the Chief Engineer shall allow a steering committee to submit the petition to the county election official to place the district organization question on the next election ballot. Section 18 provides additional procedures for when there are not enough candidates to fill the vacant positions on the board and also specifies that board directors cannot serve more than two consecutive terms, but are eligible to serve again after not serving on the board for one full term. Section 19 allows the question of dissolution of a GMD on a ballot at the next election by a two-thirds vote of board members in the same manner as section 12 or by a written petition signed by 20% of the eligible voters is submitted to the board secretary.

Section 13 requires GMDs to submit annual reports to the legislature. The written report shall be on the finances and activities of the district in the previous calendar year and shall occur not later than February 1. The report shall contain a detailed financial statement prepared according to generally accepted accounting principles. The financial statement shall also include an itemized list of all income and income sources, all expenditures and an accounting of all assets held by the GMD board. Failure to timely provide the annual report shall result in a suspension of the board's authority to make any further expenditures in the calendar year when the report was due.

Section 14 requires GMD boards to submit conservation and stabilization plans to the Chief Engineer. By January 1, 2024, the board is required to identify all areas of concern within the district where: groundwater levels are declining or have declined excessively, the rate of withdrawal of groundwater equals or exceeds the rate of recharge, preventable waste of water is occurring or may occur, or an unreasonable deterioration of the quality of groundwater is occurring or may occur. The GMD board is also directed to conduct education and outreach in each area so the board may develop plans to address the concern areas based on input from water right owners and users in the area. Plans developed under this section shall be incorporated into the GMD's management program and submitted to the Chief Engineer by January 1, 2026. The Chief Engineer will implement any plans that require Chief Engineer action if the plans are approved. If a board fails to identify or adequately address areas of concerns and submit a management program, the Chief Engineer is authorized to initiate IGUCA proceedings pursuant to the GMD Act. The Chief Engineer is required to submit annual reports to the legislature detailing any activities taken pursuant to section 14.

Sections 178, 181 and 182

Sections 178, 181 and 182 make changes to the obstructions in streams act. Section 178 provides that a structure that meets the definition of a dam shall be considered an obstruction and not a dam if the primary purpose is to serve as a dry detention road fill for state, county or municipal government or low head dam that has a maximum height below the lowest stream bank.

Section 181 allows safety inspections on dams to be conducted by someone under the direct supervision of a licensed professional engineer rather than just the engineer.

Section 182 creates civil penalties for violations of the obstructions in streams act or any rules and regulations adopted pursuant to that act. The civil penalty shall be not less than \$100 nor more than \$1,000 per violation and continuing violations may count each day as a separate violation. Civil penalties shall not be imposed except upon written order by the Chief Engineer. Anyone aggrieved by the Chief Engineer's order can request a hearing as provided in K.S.A. 82a-1901. Finally, section 182 creates the water structures emergency fund where the civil penalties will be deposited. The fund can be used for the emergency repair or rehabilitation of any water structure when the Chief Engineer determines that other funds are not available and such repair or rehabilitation is necessary to protect the public's health, safety and welfare. The maximum unencumbered balance of the fund is \$300,000 and any money in excess of the cap will be deposited into the water structures fund.

Section 206

Section 206 increases water protection fees on public water supply systems, industrial use permit holders and stockwatering permit holders. The current fee for each entity is \$0.03 per 1,000 gallons of water. The increase would make the fee \$0.05 per 1,000 gallons of water. These water protection fees currently are deposited and will continue to be deposited into the State Water Plan fund.

Section 249

Section 249 amends K.S.A. 82a-1901 that contains procedures for the Chief Engineer to issue certain orders and the appeals procedures for those orders. The bill would provide that a hearing officer designated by the Chief Engineer to preside over all or part of any appeals proceedings can issue an initial order or provide recommendations to the Chief Engineer to issue a final order. The bill also states that the Chief Engineer shall be considered the agency head for purposes of the Kansas administrative procedure act and Kansas judicial review act, and the orders of the Chief Engineer are final orders and no longer subject to review by a department secretary.

The remainder of HB 2686 are statutory reference updates that correspond to the powers transferred in subsection (c) under sections 3, 4 and 5 and updating any statute not listed in those subsections (c) to reflect the new department and division names. Many of these statutes have not been amended for many years so there are multiple technical updates to conform to current drafting practices.