

Report of the Special Committee on Agriculture and Natural Resources to the 2016 Kansas Legislature

CHAIRPERSON: Representative Sharon Schwartz

VICE-CHAIRPERSON: Senator Garrett Love

OTHER MEMBERS: Senators Marci Francisco and Larry Powell; and Representatives Jack Thimesch, Ponka-We Victors, and Troy Waymaster

STUDY TOPIC

Review the administrative hearing procedures of the Division of Water Resources, including a comparison with similar processes in other Department of Agriculture programs; review of the guidelines associated with the selection of the Chief Engineer; and study the current administration of the Kansas Noxious Weed Law and proposed legislation, 2015 SB 134. This review would include:

- ***Kansas Water Appropriations Act—Administrative Hearings and Enforcement.*** Study of 2015 HB 2245 which addresses the administrative process of the Division of Water Resources, including establishing injunctions and admissible evidence and the testimony and input at a hearing related to water right impairment filings; and
- ***Noxious Weed Law.*** Consider the issues associated with 2015 SB 134, which relates to the current administration of the law, the function and format of the proposed advisory committee, and potential efficiencies and financial savings which might be gained by passage of the bill or similar legislation.

Special Committee on Agriculture and Natural Resources

REPORT

Conclusions and Recommendations

Water is and will continue to be an important and controversial issue in Kansas. While no single action will solve all the issues associated with water, it is important to continue to find ways to improve on current practices.

The Committee acknowledges that 2015 HB 2245 is not perfect, but it urges the 2016 Legislature to review the intent of the bill, make necessary changes, and move the bill forward during the upcoming Legislative Session. Potential issues recommended for discussion include requiring notification to be sent to water rights holders or landowners within a certain radius of a new drilling site when they might be impacted by the drilling, the use of telemetric monitoring of wells, and more timely evaluations of water use reports, resulting in more timely notice of violations and hearings.

The Committee also recommends the 2016 Legislature continue to consider changes to noxious weeds law contained in 2015 SB 134, to seek input from the Kansas Department of Health and Environment and persons potentially impacted by the proposed changes, and to work with these parties to compromise on the issues contained in the bill.

Proposed Legislation: None.

BACKGROUND

The Committee was established by the Legislative Coordinating Council and authorized to:

- Review the administrative hearing procedures of the Division of Water Resources (DWR), Kansas Department of Agriculture (KDA), including a study of 2015 HB 2245, which addresses the administrative process, including establishing injunctions and admissible evidence and the testimony and input at a hearing related to water right impairment filings; and
- Study the current administration of the

Kansas Noxious Weed Law and related proposed legislation, 2015 SB 134, which relates to the current administration of the law, the function and format of the proposed advisory committee, and potential efficiencies and financial savings which might be gained by the passage of the bill or similar legislation.

The Committee was authorized to meet for one day.

COMMITTEE ACTIVITIES

The Committee met on October 22, 2015. At this meeting, the Committee discussed the assigned study topics and received updates on other related issues.

Water Impairments

Current practice. The Director of the DWR provided information on the procedures followed in the event of a alleged water impairment. Currently, there are two parallel procedures available to claimants in such situations: claimants may choose an administrative hearing at DWR with the Chief Engineer or proceed directly to the district court for an injunction. If a claimant proceeds directly to the district court, the court can request that DWR participate in the case as a “referee.” However, once a case is within the jurisdiction of the district court, DWR can take actions only as directed by the court.

The Water Appropriations Program Manager, DWR, also discussed how other programs created by the Kansas Legislature, such as Intensive Groundwater Use Control Areas, Local Enhanced Management Areas, and Water Conservation Areas (WCAs), were developed as a result of water impairments and subsequently have been used as tools to resolve such conflicts.

2015 HB 2245. The Chief Legal Counsel for the KDA appeared before the committee to discuss the legislation. He reviewed the dual processes available to claimants under current law: (1) administrative hearing by the Chief Engineer or (2) proceeding directly to district court to seek an injunction. He noted the bill contained additional steps for the Chief Engineer to follow to make the requirements of the current water impairment hearing procedures more complete and add certainty to the process by putting those required steps in statute, since there is no administrative hearing procedure in statute currently.

The Executive Director of Groundwater Management District (GMD) No. 3 stated the bill was an attempt to preserve the beneficial aspects of the current administrative hearing process, but also expressed some concerns about the bill, including the lack of notice requirements and the potential impacts on neighboring property owners, and the fact that the standards used in the administrative process might not be identical to the standards applied by the court. He also stated the GMDs were not involved in the drafting of the provision of the bill requiring GMD approval and expressed concerns that the GMDs would be

required to be involved in every court case that was filed.

Governor’s Water Vision. An Assistant Secretary for KDA appeared before the Committee to provide an update on the Governor’s Water Vision, a 50-year plan put together by state agencies and stakeholders concerning conservation and allocation of water resources in Kansas. The Assistant Secretary stated that 70.0 percent of the action items in the Water Vision document are being implemented currently, adding that two items in particular, the creation the Governor’s Water Resources Subcabinet and the establishment of a Blue Ribbon Task Force on funding for water-related projects, are current priorities of KDA. The KDA also is seeking input from stakeholders on potential changes to the civil penalties for exceeding authorized water use and failing to submit required annual water reports.

The Director of Public Policy for the Farm Bureau expressed concern about how penalties for overuse of water are assessed, stating that because it takes a great deal of time for DWR to evaluate water use reports, someone who unintentionally over-pumped could have committed two or three violations and have the water right suspended before receiving the first notice of a violation from DWR.

Water conservation areas. WCAs are voluntary programs water rights holders can enter into together in an effort to implement water conservation measures, created by the 2015 Kansas Legislature as part of the Governor’s Water Vision. The Assistant Secretary noted that KDA is currently in discussions with 10 to 15 potential WCAs, mostly in the western part of the state.

Selection of the Chief Engineer. The Chief Legal Counsel for KDA appeared to discuss the method by which the Chief Engineer is selected. The Chief Engineer is the chief administrative officer of DWR. The position of Chief Engineer is currently a classified employment, which means the Chief Engineer can be hired and fired by the Secretary of Agriculture, subject to the nature of classified employment. The Chief Legal Counsel also noted that the passage of 2015 HB 2391 allows classified employees to become

unclassified employees, which means the nature of the Chief Engineer position may change. If the position of the Chief Engineer becomes unclassified, the Chief Engineer could be hired and fired by the Secretary of Agriculture without limitation.

Noxious weeds. The Deputy Secretary of Agriculture appeared before the Committee to comment on 2015 SB 134, which would remove the state noxious weed list from statute and require the Secretary of Agriculture to adopt the list in rules and regulations. It also would establish the State Noxious Weed Advisory Board to recommend changes to the noxious weed list by using a science-based risk assessment. The bill also would strengthen the ability of county weed departments to enforce the law and would require the use of certified weed-free forage on state lands. The Deputy Secretary stated the proposed advisory committee would streamline the administration of noxious weeds law, would provide the Secretary of Agriculture with more flexibility, and also would allow the Secretary to make science-based decisions regarding noxious weeds.

A representative of the Kansas Cooperative Council and the Kansas Agribusiness Retailers Association stated support for moving the state noxious weed list into rules and regulations and proposed an amendment to the bill that would allow the Kansas Cooperative Council to appoint a member of the proposed advisory committee.

The Vice-president of the County Weed Directors Association voiced support for the creation of the advisory committee on noxious weeds and stated that the bill would give counties more flexibility in dealing with noxious weeds.

The Director of the Gray County Noxious Weeds Department stated support for the portions of the bill granting more flexibility to the counties, but expressed concerns about shifting the list of noxious weeds from statute to rules and regulations and thereby shifting control over noxious weeds from the Legislature to the Executive Branch.

CONCLUSIONS AND RECOMMENDATIONS

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