

SESSION OF 2008

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE SUBSTITUTE FOR HOUSE BILL NO. 2860**

As Agreed to May 3, 2008

Brief*

Senate Sub. for HB 2860 would prevent the Chief Engineer of the Division of Water Resources, Kansas Department of Agriculture, from approving a permit to appropriate water submitted on or after January 1, 2008 by any public wholesale water supply district located in Douglas County or by any public agency, unless the district or public agency acquired legal access to the proposed point of diversion:

- Prior to January 1, 2008;
- By voluntary means including, but not limited to, purchase or gift; or
- By means other than voluntary not less than 10 years prior to application for a permit.

The provisions of the bill would be part of and supplemental to the Kansas Water Appropriation Act. In addition, the bill would require the Legislative Coordinating Council to designate a special committee in the 2008 and 2009 interim to study and investigate issues concerning the use of eminent domain as it relates to water rights and other issues concerning water rights.

The provisions of the bill would expire on June 30, 2010, and take effect upon publication in the *Kansas Register*.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/klrd>

Conference Committee Action

The Conference Committee agreed to amend the bill to apply to public wholesale water supply districts in Douglas County and delete the reference to a specific district. In addition, the Conference Committee agreed to limit the districts and public agencies to which the bill would apply by making the bill applicable to those applications for a permit to appropriate water on or after January 1, 2008. Finally, the Conference Committee agreed to modify the language dealing with the creation of an interim study by modifying the emphasis of the interim to issues concerning the use of eminent domain as it relates to water rights and other issues concerning water rights.

Background

The issue raised in the bill was initially brought before the Legislature in SB 559. The provisions of SB 559 were stricken and substitute language was brought for the members of the Senate Agriculture Committee to review. That new language was further amended and placed in HB 2860 after the original provisions of the House bill were removed.

SB 559, in its original form, would have amended current law regarding the acquisition of land by public wholesale water supply districts and restricted their eminent domain powers. Proponents of the original bill were concerned that a public wholesale water supply district was going to acquire its water through the use of eminent domain and would impact agricultural production in the Kansas River valley east of Lawrence. Proponents pointed to existing law which would allow land and interests in land to be taken by eminent domain. Opponents to the original bill included representatives from the Kansas Rural Water Association and Water District No. 1 of Johnson County. The opponents expressed concern about the limitation placed on water districts to use eminent domain to acquire interests in land. The spokesperson from Water District No. 1 asked for the first section of the bill to be removed since it is the only such entity in the state.

The Senate Committee of the Whole amended the bill to require that a special committee be appointed during the 2008 and 2009 Interims to study the issue of the use of eminent domain in condemnation of water rights. In addition, the Senate Committee of the Whole amended the bill to provide that the provisions of the bill would expire on June 30, 2010.

The Conference Committee agreed to make the language of the bill applicable to public wholesale water supply districts in Douglas County rather than to a specific district; to modify the language to make the bill applicable to those applications for a permit to appropriate water on or after January 1, 2008; and to clarify that the interim committee created is to study issues concerning the use of eminent domain as it relates to water rights and other issues concerning water rights.

The fiscal note on the original bill indicates no impact on state operations.

water rights; eminent domain