

SESSION OF 2008

**SUPPLEMENTAL NOTE ON
SUBSTITUTE FOR HOUSE BILL NO. 2625**

As Amended by Senate Committee of the Whole

Brief*

Sub. for HB 2625 would require that the Chief Engineer of the Division of Water Resources hold and conduct a public review hearing within seven years of the effective date of the bill to determine whether the designation of an Intensive Groundwater Use Control Area (IGUCA) should be continued for each IGUCA. This requirement would apply to IGUCAs designated prior and subsequent to July 1, 2008. The bill would require that the Chief Engineer have a subsequent designation review within ten years after the previous public review hearing or more frequently as determined by the Chief Engineer.

In addition, a public review hearing could be initiated by a petition signed by five percent of the affected water users in an IGUCA. A public review hearing initiated under this process could not occur more frequently than every four years.

When the Chief Engineer holds a public review hearing on the question of continuing the designation of the IGUCA, a written notice of the hearing would be given to every person holding a water right in the affected area. Notice of the hearing also would be made in a newspaper or newspapers of general circulation within the affected area.

Once the public review hearing has taken place, the Chief Engineer would consider whether any one or more of the circumstances set forth in KSA 82a-1036 exist and determine whether the public interest requires the IGUCA should be

*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>

continued. The State would have the burden of proving the need for continuance of the IGUCA designation. Based on the review, the Chief Engineer would be required to:

- Continue the IGUCA with its original or current corrective control provisions;
- Modify the corrective control provisions;
- Reduce the IGUCA boundaries;
- Change any allocations within the IGUCA;
- Address any other issues; or
- Dismiss the IGUCA and order alternative measures.

If the holder of a groundwater rights within an IGUCA applies for review of the order of designation, the provisions of the order may be stayed in accordance with the Kansas Administrative Procedure Act.

In addition, the Chief Engineer would be required to present an annual report on any IGUCA proceeding, review, or pending IGUCA to the House Committee on Agriculture and Natural Resources, the Senate Committee on Agriculture, and the Senate Committee on Natural Resources.

The proceedings of the public review hearings created by the bill as well as those required under KSA 82a-1037 (which requires a public hearing when proceedings to designate an IGUCA are initiated) would be determined by rules and regulations adopted by the Chief Engineer.

The bill would require the Chief Engineer to establish an advisory panel to include members from names submitted by affected water users and affected groundwater management districts for any public hearing under KSA 82a-1037 or under the review process established by the bill. The panel would be

required to represent all segments of water users in the proposed IGUCA.

In addition, the bill would amend KSA 82a-1036 to provide that an area within a groundwater management district (GMD) could become an IGUCA only when the GMD recommends that an IGUCA be recommended or when a petition is signed by 300 eligible voters or by not less than 5 percent of the eligible voters of a GMD requesting the Chief Engineer initiate on IGUCA proceeding. Outside the boundary of an IGUCA, the Chief Engineer may initiate an IGUCA whenever certain conditions (existing law) exist.

Background

The original bill was recommended by the 2007 Special Committee on Energy, Natural Resources and Environment. The original bill would have created IGUCA review advisory committees, created designation advisory committees, clarified current law to allow only groundwater management districts to initiate IGUCA proceedings for areas within their districts, and clarified existing law to limit the Chief Engineer from initiating proceedings for an IGUCA to those areas outside of a groundwater management district.

At the hearing on the original bill, representatives of the Kansas Livestock Association, the Kansas Farm Bureau, the Kansas Aggregate Producers' Association, the Kansas Corn Growers Association, Groundwater Management District #5, and Groundwater Management District # 3 all testified in favor of the bill. Representatives of the Kansas Department of Agriculture, Groundwater Management District #4, and Groundwater Management District #2 appeared in opposition to the bill. Written testimony in opposition to the bill was submitted by an individual from Overland Park. An individual from Mackville appeared as a neutral conferee.

The House Committee amended the bill by adopting a substitute bill.

The House Committee of the Whole amended the bill to eliminate language which would have:

- Permitted groundwater management districts to sign a petition to require the Chief Engineer to convene a review hearing on the designation of an IGUCA;
- Allowed individuals and organizations to be parties to public hearings;
- Allowed parties to present evidence and cross-examine other parties; and
- Allowed federal and state agencies to present information, but not be a party to the hearing.

The House Committee of the Whole also amended the bill to require the Chief Engineer to conduct a public hearing, not an adversarial hearing. The requirements for the proceedings would be determined by rules and regulations.

The Senate Committee on Natural Resources made amendments to the bill including the following:

- Clarifying that the review hearings are “public” hearings;
- Clarifying that a public review hearing could be initiated by a petition “signed by” 5 percent of the affected water users;
- Deleting the requirement for a public hearing and requiring it not to be adversarial;
- Making the proceedings for public hearings under KSA 82a-1037 and public review hearings created by the bill subject to rules and regulations of the Chief Engineer;
- Requiring the Chief Engineer to establish an advisory panel for the public hearings conducted under KSA 82a-1037 or public review hearings created by the bill;

- Clarifying that the Chief Engineer would submit annual reports on IGUCA proceedings or reviews to specified committees of the Legislature;
- Creating a procedure by which the Chief Engineer would designate an IGUCA within a GMD on his or her own initiative;
- As an alternative to the above requirements, permit GMDs to create a procedure specifying the manner in which the Chief Engineer may initiate an IGUCA within a GMD through the adoption of rules and regulations; and
- Adding amendments which are technical in nature to ensure these provisions are tied to existing provisions of law dealing with IGUCAs.

The Senate Committee of the Whole amended the bill to provide the conditions under which an IGUCA may be initiated within a GMD boundary and outside the boundary of a GMD. The Senate Committee of the Whole deleted provisions which established the criteria under which the Chief Engineer could initiate an IGUCA within a GMD.

The fiscal note on the original bill estimated the enactment of HB 2625 would increase the Department of Agriculture's expenditures for FY 2009 by approximately \$255,000 from the State General Fund and would require an additional 2.50 FTE positions. There currently are eight existing IGUCAs. On a seven-year cycle of reviews, the Department of Agriculture estimates in the fiscal note that there would be at least one IGUCA review per year on average. Based on previous IGUCA proceedings, the cost for the review of each IGUCA is estimated at \$255,000. The total expenditure for the eight IGUCAs over the seven-year review cycle would total \$2,040,000 from the State General Fund. The passage of HB 2625 also would require an additional 1.50 environmental scientist FTE positions and 1.00 FTE attorney position to

implement the provisions of the bill. Costs associated with designating or reviewing new IGUCAs in the future are not included in the Department's estimate because it is not known how many, if any, new IGUCAs would be established. Any fiscal effect associated with HB 2625 is not reflected in *The FY 2009 Governor's Budget Report*.