

SESSION OF 2023

**SUPPLEMENTAL NOTE ON SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 2302**

As Recommended by Senate Committee on  
Agriculture and Natural Resources

**Brief\***

Senate Sub. for HB 2302 would establish funding for the State Water Plan and water infrastructure projects, create the Water Technical Assistance Fund (Assistance Fund) and the Water Projects Grant Fund (Grant Fund), authorize the Kansas Water Office (KWO) to provide grants and adopt rules and regulations to establish criteria for grants, update reporting requirements for the Kansas Water Authority, and make technical amendments.

***Milford and Perry Reservoirs Debt Repayment and  
Investment (New Section 1-2)***

The bill would appropriate \$52.0 million in FY 2023 from the State General Fund (SGF) to the water supply storage debt payment (debt payment) on Milford and Perry Reservoirs into the Water Supply Storage Debt Payment for Milford and Perry Reservoirs Account (Reservoirs Account) in the State Treasury.

The bill would require the State Treasurer to invest all moneys in the Reservoirs Account in U.S. Treasury bills until the interest rate for the bills is equal to or less than the interest rate for the debt payments as determined by the State Treasurer. Upon this determination, the State Treasurer would be required to make debt payments from the Reservoirs Account.

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\*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>

The bill would provide that if, during FY 2023, the Director of the KWO certifies to the State Treasurer and the Governor, and at the same time provides certification to the Directors of the Budget and Legislative Research, that there is a need to call into service the water supply storage in Milford and Perry Reservoirs, the State Finance Council would authorize the State Treasurer to immediately make expenditures from the Reservoirs Account for debt payments. The bill would declare the State Finance Council action on this matter to be characterized as a matter of legislative delegation and subject to guidelines in continuing law and could take place during the Legislative Session.

The bill would authorize any unencumbered balance in the Reservoirs Account in excess of \$100 on June 30, 2023, to be reappropriated for FY 2024. The bill would reauthorize the investment of moneys in U.S. Treasury bills, the State Treasurer's determination on interest rates, the Director of the KWO's ability to call water storage into service and certification to the State Treasurer and Governor and the Directors of the Budget and Legislative Research, State Finance Council action and action during the Legislative Session, and characterization of the State Finance Council action as a matter of legislative delegation.

***State General Fund Transfer; State Water Plan Fund;  
Kansas Water Authority (New Section 3)***

*State General Fund Transfer to the State Water Plan Fund*

On July 1, 2023, the Director of Accounts and Reports would be required to transfer \$35.0 million from the SGF to the State Water Plan Fund (SWPF). The bill would state the intent of the Legislature to provide for the transfer of \$35.0 million from the SGF to the SWPF on July 1, 2024; July 1, 2025; July 1, 2026; and July 1, 2027.

[Note: The SWPF is a statutory fund that receives two statutory transfers each fiscal year, \$6.0 million from the SGF

and \$2.0 million from the Economic Development Initiatives Fund (EDIF), unless modified by the Legislature.]

The bill would state the SWPF would continue to be appropriated and expended for the purposes prescribed in law, with the following exceptions:

- If an appropriation is made for any fiscal year, as provided in New Section 3(a), on July 1 of such fiscal year or as soon thereafter when moneys are available:
  - \$5.0 million would be transferred from the SWPF to the Assistance Fund established by the bill; and
  - \$15.0 million would be transferred from the SWPF to the Grant Fund established by the bill.

#### *Stockwater Fee Use*

The bill would require, for FY 2024 through FY 2028, the priority of funds collected and remitted to the SWPF on stockwater use to be used for stockwatering conservation projects, and the type and scope of such projects would be identified by the Kansas Water Office in the formulation of the SWPF.

#### *Sunset*

The bill would sunset the provisions of New Section 3 on July 1, 2028. All moneys in and liabilities of the two funds established by the bill would be transferred to the SWPF, and the two funds would be abolished.

#### *Kansas Water Authority Recommendations to the Legislature*

The bill would allow, notwithstanding the provisions of the law that established the SWPF, the KWA to recommend

to the Legislature an appropriation of up to 10 percent of the unencumbered balance of the SWPF to be used to supplement the salaries of existing state agency full-time equivalent (FTE) employees and for funding new FTE positions created to implement the State Water Plan. The bill would allow moneys from the appropriation to be used to supplement existing positions, but the moneys could not be used to replace SGF or fee fund moneys or other funding for positions existing on July 1, 2023.

The bill would list the eligible FTE positions for which moneys could be used, to include engineers, geologists, hydrologists, environmental scientists, attorneys, resource planners, grant specialists, and any other similar positions.

The bill would allow the KWA to recommend that moneys be used to supplement salaries if at least two conservation districts present a joint proposal to the KWO for positions to provide shared services to the districts involved in the proposal.

The KWA would be required to encourage funding requests from state and local entities that cooperate with qualified nonprofit entities on projects that provide a direct benefit to water quantity and quality, including water infrastructures that are both natural and man-made, and include matching funds from non-state sources.

The bill would state that all reporting requirements in the SWPF law would continue and would apply to the two funds established in the bill.

***Water Technical Assistance Fund (New Section 4)***

The bill would establish the Assistance Fund, which would be administered by the KWO.

The bill would provide that when the unencumbered balance of the Assistance Fund exceeds \$15.0 million, the

Director of the KWO would certify the excess amount to the Director of Accounts and Reports. Upon receipt of the certification, the Director of Accounts and Reports would transfer the excess amount from the Assistance Fund to the SGF.

The bill would require the KWO to use the Assistance Fund to provide grants for planning, engineering, management, and other technical assistance that could be necessary in the development of plans for water infrastructure projects or for processing the grant and loan applications for such water infrastructure projects. The KWO could offer services directly, provide funding to other organizations to provide services at no cost to a municipality, unincorporated area with a national park site or state historic site, or special district related to water, or the KWO could provide grants directly to applicants to cover expenses related to the hiring of technical assistance.

The bill would allow any municipality, unincorporated area with a national park site or state historic site, or special district related to water organized under state law to apply for a grant. The KWO would be authorized to award full or partial grants to the applicants. Municipalities or unincorporated areas with fewer than 2,000 residents would be prioritized for the awarding of full grants. Watershed districts, conservation districts, groundwater management districts, and all special districts related to water would not be prioritized for the awarding of full grants for the purposes of New Section 4 of the bill.

The bill would require the KWO to adopt rules and regulations to establish any necessary criteria for administering the Assistance Fund and awarding grants for technical assistance. The bill would require the criteria to include, but not be limited to, factors applicable to:

- Municipalities and unincorporated areas of different populations, including the prioritization of small

municipalities and unincorporated areas as required by New Section 4(b)(2);

- Factors could include, but not be limited to, public health, socio-economic factors, and the ability for a municipality or unincorporated area to repay any loans without grant assistance; and
- Special districts, such as watershed districts, conservation districts, groundwater management districts, rural water districts, and any other similar districts formed for a special or single purpose related to water.

The bill would prohibit any single awarded grant for technical assistance exceeding \$1.0 million unless specified by an appropriation act of the Legislature.

#### ***Water Project Grant Fund (New Section 5)***

The bill would establish the Grant Fund, which would be administered by the KWO.

The bill would provide that when the unencumbered balance of the Grant Fund exceeds \$30.0 million, the Director of the KWO would certify the excess amount to the Director of Accounts and Reports. Upon receipt of the certification, the Director of Accounts and Reports would transfer the excess amount from the Grant Fund to the SGF.

The bill would allow the KWO to provide full or partial funding for grants to any municipality or special district related to water that is established under state law for the following:

- Construction, repair, maintenance, or replacement of water-related infrastructures and any related construction costs;

- Matching moneys for grant or loan applications for water-related infrastructure projects; and
- Grants that could be applied to an outstanding loan balance from the existing Public Water Supply Loan Fund or Kansas Pollution Control Revolving Fund.

The bill would require the KWO to adopt rules and regulations to establish any necessary criteria for grants from the Grant Fund. The bill would require the rules and regulations to include any necessary criteria that could be applied to the selection of projects with outstanding loan balances from the existing Public Water Supply Loan Fund or Kansas Pollution Control Revolving Fund.

The criteria would be based on the following factors:

- The planned construction on the project with the outstanding loan balance being complete;
- The municipality or special district having made at least five years of payments on the project loans;
- Awarding grants that provide repayment of up to:
  - 90 percent of any remaining project loan balance for cities with fewer than 2,000 residents;
  - 75 percent of any remaining project loan balance for cities with fewer than 5,000 residents;
  - 50 percent of any remaining project loan balance for cities with fewer than 10,000 residents; and
  - 25 percent of any remaining project loan balance for all other cities in Kansas; and
- Any other relevant criteria including, but not limited to, the socio-economic status of the residents of

any municipality, public health, and the ability of any municipality to repay a loan without further assistance.

The bill would prohibit any single grant awarded for a project greater than \$8.0 million unless specified by an appropriation of the Legislature.

The bill would require the KWO and Kansas Department of Health and Environment (KDHE) to coordinate the sharing of information about applicants to the Public Water Supply Loan Fund and the Kansas Pollution Control Revolving Fund, and require the agencies to take into consideration approval or likely approval of a grant by the KWO when considering the eligibility of any municipality to receive moneys from the funds.

#### ***Kansas Water Authority Report (Section 6)***

The bill would require the KWA to include in its annual report to the Governor and Legislature an account of all moneys expended from the Assistance Fund and the Grant Fund each year.

#### **Background**

The bill was introduced by the House Committee on Water at the request of Representative Blex.

#### ***House Committee on Water***

#### ***Proponent Testimony***

In the House Committee hearing, **proponent** testimony was provided by representatives of the cities of Caney and Wichita, Ducks Unlimited, Kansas Farm Bureau, Kansas Livestock Association, Kansas Municipal Utilities, League of



Kansas Municipalities, Regional Economic Area Partnership of South Central Kansas, Sierra Club – Kansas Chapter, The Nature Conservancy, and WaterOne. The proponents generally stated the legislation is a good start, more work needs to be done, and there is a willingness to have these discussions.

Written-only proponent testimony was provided by representatives of the cities of Arkansas City, Belle Plaine, Columbus, Ellsworth, Fredonia, Garden City, Greensburg, Haysville, Independence, Logan, Maize, McLouth, Mound Ridge, Olathe, Ottawa, Overland Park, Parsons, Valley Falls, and WaKeeney; Kansas Agribusiness Retailers Association, Kansas Grain and Feed Association, and Renew Kansas Biofuels Association; Kansas Association of Conservation Districts; Kansas Contractors Association; Kansas Cooperative Council; Kansas Corn Growers Association; Kansas Farmers Union; Kansas Rural Center; and Kansas Rural Water Association.

#### *Neutral Testimony*

Neutral testimony was provided by a representative of the Kansas Department of Agriculture, KDHE, and KWO, stating the agencies are committed to working with each other and the House Committee to move forward with the bill.

#### *Opponent Testimony*

Written-only **opponent** testimony was provided by a representative of the City of McPherson, stating the bill does not address certain groundwater management district and municipal water issues.

#### *House Committee Amendments*

The House Committee amended the bill to:

- Add provisions that would require the KWA to encourage funding requests from state and local entities that cooperate with qualified nonprofit entities on projects that provide a direct benefit to water quantity and quality, including water infrastructures that are both natural and man-made, and including matching funds from non-state sources;
- Delete municipalities as the sole receiver of grants from the KWO;
- Add special districts to various provisions of New Section 2 of the House Committee version of the bill;
- Add groundwater management districts to those that would not be prioritized for the awarding of full grants of New Section 2 of the House Committee version of the bill;
- Replace “municipalities with greater than 2,000 residents” with “municipalities of different populations and specify prioritization of small municipalities” with regard to criteria for awarding technical assistance grants;
- Require the KWO and KDHE to coordinate sharing information about applicants to the Public Water Supply Loan Fund and the Kansas Pollution Control Revolving Fund and take into consideration the approval or likely approval of a grant by the KWO when considering the eligibility of any municipality to receive moneys from the funds; and
- Make clarifying amendments.

## ***Senate Committee on Agriculture and Natural Resources***

### *Proponent Testimony*

In the Senate Committee hearing, **proponent** testimony was provided by Representative Titus, the Chairperson of the Kansas Water Authority, and representatives of Groundwater Management District No. 2, Kansas Farm Bureau, Kansas Livestock Association, Kansas Municipal Utilities, Kansas Rural Water Districts, League of Kansas Municipalities, The Nature Conservancy, and WaterOne.

Written-only proponent testimony was provided by representatives of American Council of Engineering Companies of Kansas and Kansas Society of Professional Engineers; the cities of Arkansas City, Greensburg, Independence, McLouth, Overland Park, Valley Falls, and WaKeeney; Ducks Unlimited; Groundwater Management District No. 1; Kansas Agribusiness Retailers Association, Kansas Grain and Feed Association, and Renew Kansas Biofuels Association; Kansas Association of Conservation Districts; Kansas Chapter of Backcountry Hunters and Anglers; Kansas Contractors Association; Kansas Cooperative Council; Kansas Corn Growers Association; Kansas Farmers Union; Kansans for Conservation; Regional Economic Area Partnership of South Central Kansas; and Sierra Club.

### *Neutral Testimony*

Neutral testimony was provided by a representative of the Department of Agriculture, KDHE, and KWO.

Written-only neutral testimony was provided by a representative of the Kansas Geological Survey.

No other testimony was provided.

### *Senate Committee Amendments*

The Senate Committee amended the bill to:

- Add an appropriation of \$52.0 million that would be transferred from the SGF to the SWPF that would be invested by the State Treasurer in U.S. Treasury bills until the interest rate on the bills is equal to or less than the interest rate on the storage debt;
- Authorize the Director of the KWO to certify to the State Treasurer and Governor, and provide certification at the same time to the Directors of the Budget and Legislative Research, that the water supply storage needs to be called into service, which would require the State Finance Council to authorize the State Treasurer to immediately make expenditures to pay storage debt;
- Characterize the State Finance Council action as a matter of legislative delegation that may take place during the legislative session and is subject to guidelines in continuing law;
- Allow for reappropriation of any unencumbered balance in the Reservoirs Account in excess of \$100 on June 30, 2023;
- Reauthorize for FY 2024 the allowance of investing moneys in the Reservoirs Account in U.S. Treasury bills, the ability of the Director of KWO to call into service the water supply in Milford and Perry reservoirs by sending certification to the State Treasurer and Governor and the Directors of the Budget and Legislative Research, State Finance Council action, allowance of action during the legislative session, characterization of State Finance Council action as legislative delegation, and transmission of certification;

- Remove all provisions related to sales tax revenue;
- Require the Director of Accounts and Reports on July 1, 2023, to transfer \$35.0 million from the SGF to the SWPF and state the intent of the Legislature is to transfer \$35.0 million from the SGF to SWPF each July 1 from 2024 to 2027;
- Require, for FY 2024 through FY 2028, priority for the use of funds collected from stockwater fees to be used for stockwatering conservation projects. The KWO would be required to identify the type and scope of such projects in the formulation of the SWPF;
- Require the Director of the KWO to certify to the Director of Accounts and Reports any excess funds in the Assistance Fund when its unencumbered balance exceeds \$15.0 million and, upon receipt of the certification, the Director of Accounts and Reports to transfer the certified excess amount from the Assistance Fund to the SGF;
- Include an unincorporated area with a national park site or state historic site to places to which the KWO could offer services or provide grants to cover expenses related to the hiring of technical assistance;
- Require the Director of the KWO to certify to the Director of Accounts and Reports any excess funds in the Grant Fund when its unencumbered balance exceeds \$30.0 million and, upon receipt of the certification, the Director of Accounts and Reports to transfer the certified excess amount from the Grant Fund to the SGF; and
- Make technical amendments.

The Senate Committee recommended a substitute bill.

## Fiscal Information

According to the revised fiscal note prepared by the Division of the Budget on the bill, as introduced, the Department of Revenue estimates the bill would decrease SGF revenues by \$48.1 million in FY 2024, including a reduction of \$54.1 million in retail sales and compensating use tax revenue and an increase of \$6.0 million by eliminating the SWPF transfer from the SGF. Based on the November 2022 Consensus Revenue Estimate, the Department of Revenue estimates the bill would result in distributing \$54.1 million in retail sales and compensating use tax revenue to the SWPF in FY 2024, including \$41.4 million of retail sales tax receipts and \$12.7 million of compensating use tax receipts.

In the original fiscal note issued, the distribution of retail sales and compensating use tax to the SWPF were identified as a transfer from the SGF instead of as reduction in SGF revenues. This distribution would replace the existing statutory transfers to the SWPF totaling \$8.0 million, resulting in a net funding increase of \$46.1 million for additional water infrastructure projects in FY 2024. The Department of Revenue indicates that the specific adjustments to the SGF in subsequent fiscal years would be as follows:

	<u>FY 2025</u>	<u>FY 2026</u>	<u>FY 2027</u>	<u>FY 2028</u>
Sales Tax	(\$42.0 million)	(\$42.7 million)	(\$43.2 million)	(\$43.6 million)
Comp. Use Tax	(\$13.5 million)	(\$14.2 million)	(\$14.9 million)	(\$15.6 million)
Net Transfers	\$6.0 million	\$6.0 million	\$6.0 million	\$6.0 million
<b>TOTAL</b>	<b>(\$49.5 million)</b>	<b>(\$50.9 million)</b>	<b>(\$52.1 million)</b>	<b>(\$53.2 million)</b>

The suspension of the existing statutory transfer from the EDIF to the SWPF would increase EDIF revenues by \$2.0 million per year from FY 2024 through FY 2028. The Department of Agriculture, KDHE, and KWO are the primary

recipients of the SWPF appropriations, so enactment of the bill would likely increase the expenditures of all three agencies by unknown amounts. According to KWO, administration of the bill would cost \$246,650 in FY 2024 and \$200,000 in subsequent fiscal years. These expenditures would be made to fill 2.0 FTE positions and contract with outside counsel to draft rules and regulations.

KDHE indicates that enactment of the bill could decrease agency revenues from loan service fees as water storage debt is paid, but the size of this reduction is unknown.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2024 Governor's Budget Report*.

The League of Kansas Municipalities indicates the new local grant opportunities authorized by the bill would increase municipal revenues by unknown amounts.

The Kansas Association of Counties indicates the bill would not have a fiscal effect on counties.

A revised fiscal note reflecting the Senate Committee's amendments was not available when the Senate Committee took action on the bill.

Water; State Water Plan Fund; State Water Plan; water infrastructure projects; Water Technical Assistance Fund; Water Projects Grant Fund; rules and regulations; Kansas Water Office; Kansas Water Authority; Kansas Department of Health and Environment; municipalities; national parks; unincorporated areas; stockwater; water supply storage debt; Milford Reservoir; Perry Reservoir