

SESSION OF 2023

SUPPLEMENTAL NOTE ON SENATE BILL NO. 205

As Amended by Senate Committee on
Agriculture and Natural Resources

Brief*

SB 205, as amended, would amend law concerning water rights, the establishment of multi-year flex accounts, and participation in a water bank.

Multi-year Flex Account Participation

The bill would require the Chief Engineer, Division of Water Resources, Kansas Department of Agriculture (KDA), to approve a complete application for the establishment of a multi-year flex account (MYFA) that was submitted to the Chief Engineer on or before December 31, 2022, if a water right participating in a water bank meets the requirements of the MYFA statute and would have been approved if not for the water right's participation in a water bank. This portion of the bill would sunset on December 31, 2023.

Prohibition of Participation in a Multi-year Flex Account

The bill would prohibit a water right, or any portion of a water right, that has been deposited, enrolled, or placed in a safe deposit account associated with a water bank from enrolling in a MYFA that begins during a calendar year when the water from the water right was withdrawn from a safe deposit account.

*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 also prohibit water from a water right that has been deposited, enrolled, or placed in a safe deposit account from being withdrawn while the water right is enrolled in a MYFA.

Enrollment in a Multi-year Flex Account

The bill would state that a water right would be considered enrolled in a MYFA until the end of the calendar year in which the MYFA permit expires, even if the MYFA allocation is exhausted prior to the expiration of the MYFA permit.

Water Bank

The bill would expand the criteria for a water right to be bankable by requiring the water right to not currently be enrolled in an active MYFA. The bill would also state if the allocation under the MYFA is exhausted prior to the end of a calendar year, the water right would be considered enrolled in an MYFA until the end of the calendar year in which the MYFA permit expires.

Technical and Clarification Changes

The bill would make technical changes and add clarifying language regarding the water users in Sections 1 and 2 of the bill.

Effective Date

The bill would be in effect upon publication in the *Kansas Register*.

Background

The bill was introduced by the Senate Committee on Agriculture and Natural Resources at the request of the Chief Engineer.

Senate Committee on Agriculture and Natural Resources

In the Senate Committee hearing, Chief Engineer and the Manager of the Central Kansas Water Bank Association provided **proponent** testimony on the bill.

The proponents explained the Central Kansas Water Bank (Water Bank) operates within the boundaries of Big Bend Groundwater Management No. 5 under the authority of the Kansas Water Banking Act. The Water Bank has two programs, one of which is called a “Savings Account,” in which a user can “deposit” a portion of unused water to be preserved for future use at the same location. When the “Savings Account” water is needed later on, the water can be “withdrawn” from the Water Bank by pumping it under the authority of a term permit. An issue arose during the 2022 drought where Water Bank users pumped water from their Savings Accounts and pumped more water through enrollment in a MYFA. The Division of Water Resources staff reviewed the two laws regarding water banks and MYFAs and found there was a lack of clarity on whether a water bank account holder could also enroll in a MYFA at the same time as “withdrawing” water from a water bank. An Attorney General’s opinion was requested and received. The bill would allow a one-time fix to assist the water bank users who sought MYFAs in 2022 and make other changes based on the Attorney General’s opinion.

No other testimony was provided.

The Senate Committee amended the bill to add clarifying language regarding the water users in Sections 1 and 2 of the bill.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the KDA indicates that enactment of the bill could decrease agency revenues due to a potential reduction of MYFA applications and the reimbursement of fees for certain MYFA applications filed after December 11, 2022. The Kansas Water Office indicates that enactment of the bill would not have a fiscal effect on agency operations. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2024 Governor's Budget Report*.

Water; water rights; water bank; multi-year flex account