

**SENATE BILL No. 124**

By Committee on Natural Resources

2-7

1 AN ACT concerning water; relating to water supply storage access and  
2 creating the lower smoky hill water supply access program.

3  
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. As used in sections 1 through 24, and amendments  
6 thereto, unless the context otherwise requires:

7 (a) "Access water" means water stored in water supply access  
8 storage of a reservoir under a water reservation right and provided as  
9 supplemental water to eligible water right holders.

10 (b) "Chief engineer" means the chief engineer of the Kansas  
11 department of agriculture, division of water resources.

12 (c) "District" means the lower smoky hill water supply access  
13 district.

14 (d) "Eligible water right holder" means a person holding a water  
15 right or permit, pursuant to K.S.A. 82a-701 et seq., and amendments  
16 thereto, to appropriate surface water from the program area for municipal,  
17 industrial, irrigation or recreation purposes as determined by the Kansas  
18 water office. Eligible water right holders for irrigation purposes shall be  
19 limited to the lower smoky hill river special irrigation district.

20 (e) "Landowner" means a person who is the record owner of any real  
21 estate within the boundaries of the district or who has an interest therein  
22 as contract purchaser of 40 or more contiguous acres in the district not  
23 within the corporate limits of any municipality. Owners of oil leases, gas  
24 leases, mineral rights, easements, or mortgages shall not be considered  
25 landowners by reason of such ownership.

26 (f) "Member" means an eligible water right holder who participates  
27 in and is subject to the rules and regulations of a water supply access  
28 district.

29 (g) "Person" means any natural person, private corporation,  
30 municipality or other public corporation.

31 (h) "Program" means the lower smoky hill water supply access  
32 program.

33 (i) "Program area" means the area of the smoky hill river below the  
34 kanopolis reservoir dam to the confluence of the smoky hill and saline  
35 rivers.

36 (j) "Special irrigation district" means the lower smoky hill river

1 special irrigation district.

2 (k) "Water supply access storage" means water held by the Kansas  
3 water office in kanopolis reservoir under contract with the United States  
4 army corps of engineers and so designated by the Kansas water office as  
5 water supply access storage for the purposes of the lower smoky hill  
6 water supply access program.

7 Sec. 2. There is hereby established the lower smoky hill water  
8 supply access program within the Kansas water office. The Kansas water  
9 office, with approval of the Kansas water authority, may negotiate and  
10 enter into contracts for water supply access storage to be used for the  
11 purposes of this act. The water office may designate all or any portion of  
12 such water so held in the kanopolis reservoir to water supply access  
13 storage to meet the needs of the district.

14 Sec. 3. (a) There is hereby established in the state treasury the  
15 lower smoky hill water supply access fund which shall be administered  
16 by the Kansas water office. All expenditures from the lower smoky hill  
17 water supply access fund shall be for the purposes of this act. All  
18 expenditures from the lower smoky hill water supply access fund shall be  
19 made in accordance with appropriation acts upon warrants of the director  
20 of accounts and reports pursuant to vouchers approved by the director of  
21 the Kansas water office or the director's designee. All moneys received  
22 for the purposes of this act shall be deposited in the state treasury in  
23 accordance with the provisions of K.S.A. 75-4215, and amendments  
24 thereto, and shall be credited to the lower smoky hill water supply access  
25 fund. The director of the Kansas water office may accept or receive  
26 moneys from the district into the lower smoky hill water supply access  
27 fund.

28 Sec. 4. (a) There is hereby authorized the lower smoky hill water  
29 supply access district.

30 (b) Upon receipt of an application for membership within the  
31 district, the director of the Kansas water office may determine the need to  
32 create an incorporating governing body for the district, and upon such  
33 determination, shall certify to the secretary of state and the members of  
34 the district that such district is eligible for formation and should be  
35 incorporated. The notice of certification should fix a date, time and place  
36 for an organizational meeting of such district.

37 (c) The members of the district shall meet on the date and time set  
38 by such director to form the incorporating governing body of such  
39 district.

40 (d) The incorporating governing body, if created, shall consist of  
41 five directors. Eligible water rights holders, or their representatives, who  
42 apply for membership, shall be the incorporating entities and shall  
43 determine the articles of incorporation. Upon incorporation of the

1 district, such incorporating governing body shall dissolve and shall be  
2 replaced by the governing body as determined by the articles of  
3 incorporation and bylaws of the district.

4 (e) The directors of the incorporating governing body shall elect an  
5 incorporating chairperson. The chairperson, on behalf of the  
6 incorporating governing body, shall attest to all documents necessary for  
7 incorporation of the district by the secretary of state and for the business  
8 of the district. The secretary of state shall issue a certificate of  
9 incorporation for the district, which shall be filed of record in the office  
10 of the register of deeds of each county in which all or a portion of the  
11 district lies.

12 (f) Upon recordation of such certificate of incorporation, the district  
13 shall be authorized to function in accordance with the provision of this act  
14 and its certificate of incorporation. No action attacking the legal  
15 incorporation of any district organized under this section shall be  
16 maintained unless filed within 30 days after the issuance of such  
17 certificate of incorporation for such district by the secretary of state, nor  
18 shall the alleged illegality of the incorporation of any such district be  
19 interposed as a defense to any action brought after such time.

20 Sec. 5. (a) A prospective member may join the district if the  
21 prospective member:

22 (1) Applies to the Kansas water office for water supply access  
23 storage, for the purposes of this act; and

24 (2) has or applies for a water right eligible for membership under  
25 this act.

26 (b) Prospective members may be approved for membership by the  
27 director of the Kansas water office, after consultation with the chief  
28 engineer, if the director finds that:

29 (1) The proposed membership is in the public interest or has a public  
30 benefit sufficient for membership;

31 (2) there is adequate water supply access storage to meet the  
32 additional demand; and

33 (3) such other issues as may be determined by such director have  
34 been resolved.

35 Sec. 6. All powers granted to the district shall be exercised by the  
36 board of directors. A majority of the directors shall constitute a quorum  
37 for the transaction of business. A majority of those directors present and  
38 voting shall determine all actions taken by the governing body.

39 Sec. 7. After the initial meeting to elect the governing body, an  
40 annual meeting shall be held to elect such directors whose terms shall  
41 expire, to render a report on the financial condition and activities of the  
42 district and to adopt a budget in the manner provided by K.S.A. 79-2925  
43 *et seq.*, and amendments thereto. Notice of the annual meeting shall be

1 given to all members of the district by first class mail, postage prepaid, at  
2 least 10 days prior to the date of the annual meeting.

3 Sec. 8. (a) Regular meetings of the board of directors shall be held  
4 no less than quarterly at a place, day and time established by the board of  
5 directors. Notice of such meetings shall be given to all members of the  
6 district by first class mail, postage prepaid, at least five days prior to the  
7 date of such meetings.

8 (b) Special meetings may be held at any time on the call of the  
9 chairperson of the district governing body. Notice shall be provided to  
10 each director at least one day prior to the time fixed for such special  
11 meeting. The notice of any special meeting may be accomplished by any  
12 means calculated to provide adequate notice to each director.

13 Sec. 9. The district incorporated under the provisions of this act shall  
14 be a body politic and corporate and shall have the power to:

15 (a) Adopt a seal;

16 (b) issue and be sued by its corporate name;

17 (c) purchase, hold, sell and convey land and personal property and to  
18 execute such contracts as the board of directors deems necessary or  
19 convenient to enable it to carry out the purpose for which it was  
20 organized;

21 (d) employ such professional, technical and clerical services and  
22 other assistance as deemed necessary by the board of directors;

23 (e) acquire personal property by gift or purchase;

24 (f) impose charges as provided by this act;

25 (g) select a residence or home office for the district, which shall be  
26 at a place in a county in which the district or any part thereof is located  
27 and may be either within or without the program area as may be  
28 designated by the board of directors; and

29 (h) take any other action necessary to achieve the purposes of the  
30 district.

31 Sec. 10. (a) The district shall impose charges against each member  
32 for the purposes of the district.

33 (1) The total of such charges shall be sufficient to enable the district  
34 to pay the Kansas water office the full annual amortized cost incurred by  
35 the Kansas water office for the operation, administration and enforcement  
36 of the program, including, but not limited to, the costs of acquiring the  
37 water supply access storage from the federal government by purchase or  
38 trade and the cost of operation and maintenance of such water supply  
39 access storage.

40 (2) The district may also impose charges against each member of the  
41 district in an amount sufficient to cover district operating costs.

42 (3) The district shall impose any charges necessary for the payment  
43 of the principal of and interest on revenue bonds issued by the Kansas

1 water office pursuant to K.S.A. 82a-1360 *et seq.*, and amendments  
2 thereto.

3 (4) The district shall determine the amount of the charges for each  
4 member and shall remit all moneys collected to the Kansas water office  
5 for deposit in the lower smoky hill water supply access fund created  
6 pursuant to this act. Charges to be paid by such members may vary and  
7 shall be based on the principle of having each member pay for the pro  
8 rata quantity authorized to each member by the district. In determining  
9 the charge, the board of directors of the district shall adopt guidelines for  
10 such members.

11 (b) The director of the Kansas water office shall request releases of  
12 water supply access water by the federal government from the kanopolis  
13 reservoir under such agreements with the federal government that govern  
14 operations of such reservoir. The chairperson of the governing body of  
15 the district or designee shall communicate with the Kansas water office  
16 regarding any member's need for such releases by the district.

17 (c) The director and the chief engineer each shall adopt any rules  
18 and regulations necessary to carry out the purposes and procedures of this  
19 act. The director and the chief engineer shall consider the advice of the  
20 Kansas water authority and stakeholders in the program area, in the  
21 preparation of any rules and regulations adopted pursuant to this  
22 subsection.

23 (d) Any holder of an eligible water right aggrieved by a decision of  
24 the Kansas water office under this act by being excluded as a member in  
25 the program may appeal to the district court under K.S.A. 82a-724, and  
26 amendments thereto.

27 (e) Payments required under a contract between the district and the  
28 Kansas water office shall be for storage capacity contracted in a federal  
29 reservoir.

30 (f) Nothing in this act shall be deemed to authorize any suit against the  
31 state or any agency of the state or person employed by the state on or  
32 under a claim for implied contract, negligence or any other tort. The  
33 director of the Kansas water office may sue to enforce any claim arising  
34 out of a contract. Payment of the charges shall be a condition imposed on  
35 every member and the director is authorized to declare the suspension of  
36 any use of water supply access water where a payment is not made.

37 (g) Rights of members to receive access water may not be  
38 transferred without the approval of the Kansas water office.

39 Sec. 11. If any member of the district requests an opportunity to  
40 renegotiate any existing contracts for the purchase of water supply, as  
41 described in K.S.A. 82a-1301 *et seq.*, and amendments thereto, the  
42 Kansas water authority and the Kansas water office shall conduct such  
43 negotiations on a timely basis and on the provisions for which

1 negotiations are requested.

2 Sec. 12. (a) The chief engineer shall protect releases of water from  
3 the kanopolis reservoir for water supply access storage as may be  
4 necessary to effectuate the purposes of the releases made pursuant to this  
5 act and for the benefit of the district members for whom such releases are  
6 made.

7 (b) The Kansas water office shall communicate to the chief engineer  
8 the date and quantity of such release, the district member or members for  
9 whom such release is made and such other information as the chief  
10 engineer may request to insure protection of the release.

11 Sec. 13. Each member of the district shall adopt conservation plans  
12 and practices for such member. Such plans and practices shall be  
13 consistent with the guidelines for conservation plans and practices  
14 developed and maintained by the Kansas water office as provided in  
15 K.S.A. 74-2608, and amendments thereto. Prior to entering into a contract  
16 the district and the director of the Kansas water office, in consultation  
17 with the chief engineer, shall determine whether such plans and practices  
18 are consistent with the guidelines for conversation plans and practices  
19 adopted by the Kansas water office.

20 Sec. 14. (a) The Kansas water office is hereby authorized to issue  
21 and sell revenue bonds for the purpose of paying all or part of the cost of  
22 acquiring a site or sites, constructing, reconstructing, improving and  
23 expanding projects within the program area or to finance the purchase of  
24 storage in the reservoir using procedures established for issuing such  
25 bonds as described in K.S.A. 82a-1360 et seq., and amendments thereto.

26 (b) The district may negotiate to make annual payments over a  
27 period of not to exceed 20 years for any access storage water purchased  
28 under this act.

29 Sec. 15. If the district authorized pursuant to this act is not formed  
30 by December 31, 2020, the provisions of this act shall expire.

31 Sec. 16. There is hereby authorized the lower smoky hill special  
32 irrigation district for the purpose of participating in the lower smoky hill  
33 water supply access program. Such special irrigation district shall be a  
34 single member of the lower smoky hill water supply access district.

35 Sec. 17. (a) The lower smoky hill river irrigation special district  
36 shall be formed upon petition by eligible irrigation water right holders to  
37 the director of the Kansas water office, demonstrating a need for and  
38 requesting purchase of 500 acre feet or more for water supply access  
39 storage for the proposed special irrigation district. The petition shall  
40 provide contact information for each person signing, information on the  
41 land proposed for membership in the district, information necessary for  
42 verification of the water rights held on the eligible land and the amount of  
43 water requested from kanopolis reservoir water supply access storage by

1 each person so signing. The Kansas water office may request additional  
2 information from each person signing such petition.

3 (b) The director of the Kansas water office, in consultation with the  
4 chief engineer, shall verify the ownership of subject land within the  
5 proposed special irrigation district for the lands noted in the petition, the  
6 water rights held for subject land by each person so signing and other  
7 matters the Kansas water office may deem necessary. Upon verification  
8 of the eligibility of those signing such petition the director of the Kansas  
9 water office shall set a date, time and place for the first meeting of such  
10 district for the purposes of electing a governing board for the special  
11 irrigation district.

12 Sec. 18. (a) Membership of the special irrigation district shall  
13 consist of all landowners holding eligible irrigation water rights  
14 participating in the petition as described in section 17, and amendments  
15 thereto. Additional interested eligible landowners with irrigation surface  
16 water rights within the program area may apply for membership in  
17 accordance with rules and procedures to be determined by the governing  
18 board as provided in section 19, and amendments thereto.

19 (b) All qualified applicants for membership in the special irrigation  
20 district shall become members and shall be able to use water supply  
21 access storage under the rules and by-laws of the lower smoky hill water  
22 access supply district and the special irrigation district. All members  
23 shall be liable to the district and the special irrigation district for costs,  
24 fees, assessments and charges.

25 Sec. 19. (a) There shall be created a governing board of the  
26 special irrigation district. Such governing board shall have the authority  
27 to:

28 (1) Purchase, allocate, determine, charge fees and assessments  
29 for and allow the use, for the benefit of members of the special irrigation  
30 district, of water supply access storage;

31 (2) contract for real and personal, property;

32 (3) contract with employees and consultants; and

33 (4) buy, sell, lease, rent and purchase water supply access  
34 storage pursuant to the provisions of this act.

35 (b) The governing board of the special district shall:

36 (1) Designate one or more members to serve as a  
37 representative of the special irrigation district before the directors of the  
38 lower smoky hill water supply access district. Such member shall speak  
39 for the special irrigation district on matters before the directors of the  
40 district;

41 (2) provide for a fee structure sufficient to pay for such water  
42 supply access storage and any additional costs as determined by the  
43 special irrigation district and set a fee schedule for all members of the

1 special irrigation district; and

2 (3) create an agreement to be entered into with each person  
3 who desires to become a member of the special irrigation district, with  
4 the requirements for membership, duties, payment obligations, provisions  
5 for withdrawal or transfer of any single membership and any other  
6 matters as the governing board of the special irrigation district may deem  
7 necessary and prudent.

8 (c) In the event of extraordinary, special or emergency costs  
9 associated with membership in the district or special irrigation district,  
10 the governing board may assess additional costs to such members at a  
11 rate to be determined by the board, in any year. Notice of such assessment  
12 shall be provided to members by first class mail, postage prepaid by the  
13 special irrigation district.

14 Sec. 20. (a) All powers granted to the special irrigation district  
15 under the provisions of this act shall be exercised by an elected governing  
16 board. Such governing board shall consist of an odd number of no less  
17 than three and no more than nine directors. Elections for board members  
18 by the members of the special irrigation district shall be held at a meeting  
19 held each calendar year.

20 (b) At the initial election of the governing board, half of the board  
21 members of the special irrigation district, rounded down, shall be elected  
22 for a term of one year, and the remaining board members shall be elected  
23 for a term of two years. For each subsequent appointment, each board  
24 member shall be elected for a term of two years.

25 (c) The governing board of the special irrigation district, after being  
26 duly elected, shall elect from its number a president, vice-president,  
27 secretary, and treasurer. If the special irrigation district has three board  
28 members, such board shall elect one board member to hold the offices of  
29 both secretary and treasurer.

30 (d) Each member of the governing board of the special irrigation  
31 district shall continue in such position until a successor is elected and  
32 qualified. Members of such board shall have no term limits. Whenever  
33 the vacancy of a board member position occurs before the expiration of  
34 such board member's term, a successor shall be elected by such governing  
35 board to fill such vacancy for the unexpired term, except that such  
36 governing board may elect to call a special meeting of the membership  
37 for purposes of electing a board member to serve an unexpired term.

38 (e) The governing board of the special irrigation district shall meet  
39 no less than quarterly during any calendar year and shall meet upon call  
40 of the president as necessary to carry out its duties under this act.

41 (f) The governing board of the special irrigation district shall set an  
42 annual meeting for the district, and provide notice of the same to all  
43 members. At such annual meeting the membership may consider any



1 matters such governing board may wish to present for consideration.

2 (g) A majority of the governing board of the special irrigation  
3 district shall constitute a quorum for the transaction of business. A  
4 majority of those board members present and voting shall determine all  
5 actions taken by such governing board.

6 Sec. 21. (a) The costs of the water supply access storage shall be  
7 paid from funds of the special irrigation district, and from any fees and  
8 assessments of members. In order to finance the operations of the special  
9 irrigation district, the governing board may assess an annual water use  
10 charge against every member. Such governing board shall base such  
11 charge upon the amount of water allocated for such member's use  
12 pursuant to that member's water right.

13 (b) Before any assessment is made or user charge imposed, the  
14 governing board shall submit the proposed budget for the ensuing year to  
15 the eligible voters of such district at a hearing to be held during the  
16 annual meeting. Following the hearing, the governing board shall, by  
17 resolution, adopt either the proposed budget or a modified budget and  
18 determine the amount of land assessment or user charge, or both, needed  
19 to support such budget.

20 (c) All dues, charges, fees and assessments against lands within the  
21 special irrigation district shall be certified to the proper county clerks and  
22 collected the same as other taxes in accordance with K.S.A. 79-1801, and  
23 amendments thereto, and the amount thereof shall attach to the real  
24 property involved as a lien in accordance with K.S.A. 79-1804, and  
25 amendments thereto. All moneys so collected shall be remitted by the  
26 county treasurer to the treasurer of the special district who shall deposit  
27 them to the credit of the general fund of the special irrigation district. The  
28 accounts of the special irrigation district shall be audited annually by a  
29 public accountant or certified public accountant.

30 Sec. 22. A fund shall be created by the special irrigation district for  
31 payment of the costs of water supply access storage. Any moneys  
32 received by such special irrigation district for charges, fees, assessments  
33 and sales of water shall be credited to such fund. Such fund shall be used  
34 solely to pay the costs related to acquiring water supply access storage  
35 and the operation of the special irrigation district.

36 Sec. 23. If the special irrigation district authorized pursuant to this  
37 act is not formed by December 31, 2020, the provisions of section 15  
38 through 22, and amendments thereto, shall expire.

39 Sec. 24. The Kansas water office shall adopt rules and regulations to  
40 implement the lower smoky hill water supply access program.

41 Sec. 25. This act shall take effect and be in force from and after its  
42 publication in the statute book.