

As Amended by Senate Committee

Session of 2011

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
17 municipal, industrial, irrigation or recreation purposes as determined by
18 the Kansas water office. Eligible water right holders for irrigation
19 purposes shall be limited to the lower smoky hill river special irrigation
20 district.

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

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

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

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

1 (i) "Program area" means the area of the smoky hill river below
2 the kanopolis reservoir dam to the confluence of the smoky hill and
3 saline rivers.

4 (j) "Special irrigation district" means the lower smoky hill river
5 special irrigation district.

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

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

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

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

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

1 time and place for an organizational meeting of such district.

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

5 (d) The incorporating governing body, if created, shall consist of
6 five directors. Eligible water rights holders, or their representatives,
7 who apply for membership, shall be the incorporating entities and shall
8 determine the articles of incorporation. ***Such articles of incorporation***
9 ***shall provide the board of directors of the lower smoky hill access***
10 ***district so formed, shall have an odd number of directors and shall***
11 ***include a provision that no less than one representative of the lower***
12 ***smoky hill special irrigation district serve as a member of the lower***
13 ***smoky hill access district board, if such special irrigation district is***
14 ***formed under the provisions of this act.*** Upon incorporation of the
15 district, such incorporating governing body shall dissolve and shall be
16 replaced by the governing body as determined by the articles of
17 incorporation and bylaws of the district.

18 (e) The directors of the incorporating governing body shall elect
19 an incorporating chairperson. The chairperson, on behalf of the
20 incorporating governing body, shall attest to all documents necessary
21 for incorporation of the district by the secretary of state and for the
22 business of the district. The secretary of state shall issue a certificate of
23 incorporation for the district, which shall be filed of record in the office
24 of the register of deeds of each county in which all or a portion of the
25 district lies.

26 (f) Upon recordation of such certificate of incorporation, the
27 district shall be authorized to function in accordance with the provision
28 of this act and its certificate of incorporation. No action attacking the
29 legal incorporation of any district organized under this section shall be
30 maintained unless filed within 30 days after the issuance of such
31 certificate of incorporation for such district by the secretary of state,
32 nor shall the alleged illegality of the incorporation of any such district
33 be interposed as a defense to any action brought after such time.

34 Sec. 5. (a) A prospective member may join the district if the
35 prospective member:

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

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

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

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

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

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

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

14 Sec. 7. After the initial meeting to elect the governing body, an
15 annual meeting shall be held to elect such directors whose terms shall
16 expire, to render a report on the financial condition and activities of the
17 district and to adopt a budget in the manner provided by K.S.A. 79-
18 2925 *et seq.*, and amendments thereto. Notice of the annual meeting
19 shall be given to all members of the district by first class mail, postage
20 prepaid, at least 10 days prior to the date of the annual meeting.

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

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

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

33 (a) Adopt a seal;

34 (b) ~~issue~~ *sue* and be sued by its corporate name;

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

39 (d) employ such professional, technical and clerical services and

- 1 other assistance as deemed necessary by the board of directors;
- 2 (e) acquire personal property by gift or purchase;
- 3 (f) impose charges as provided by this act;
- 4 (g) select a residence or home office for the district, which shall be
5 at a place in a county in which the district or any part thereof is located
6 and may be either within or without the program area as may be
7 designated by the board of directors; and
- 8 (h) take any other action necessary to achieve the purposes of the
9 district.
- 10 Sec. 10. (a) The district shall impose charges against each
11 member for the purposes of the district.
- 12 (1) The total of such charges shall be sufficient to enable the
13 district to pay the Kansas water office the full annual amortized cost
14 incurred by the Kansas water office for the operation, administration
15 and enforcement of the program, including, but not limited to, the costs
16 of acquiring the water supply access storage from the federal
17 government by purchase or trade and the cost of operation and
18 maintenance of such water supply access storage.
- 19 (2) The district may also impose charges against each member of
20 the district in an amount sufficient to cover district operating costs.
- 21 (3) The district shall impose any charges necessary for the
22 payment of the principal of and interest on revenue bonds issued by the
23 Kansas water office pursuant to K.S.A. 82a-1360 et seq., and
24 amendments thereto.
- 25 (4) The district shall determine the amount of the charges for each
26 member and shall remit all moneys collected to the Kansas water office
27 for deposit in the lower smoky hill water supply access fund created
28 pursuant to this act. Charges to be paid by such members may vary and
29 shall be based on the principle of having each member pay for the pro
30 rata quantity authorized to each member by the district. In determining
31 the charge, the board of directors of the district shall adopt guidelines
32 for such members.
- 33 (b) The director of the Kansas water office shall request releases
34 of water supply access water by the federal government from the
35 kanopolis reservoir under such agreements with the federal government
36 that govern operations of such reservoir. The chairperson of the
37 governing body of the district or designee shall communicate with the
38 Kansas water office regarding any member's need for such releases by
39 the district.

1 (c) The director and the chief engineer each shall adopt any rules
2 and regulations necessary to carry out the purposes and procedures of
3 this act. The director and the chief engineer shall consider the advice of
4 the Kansas water authority and stakeholders in the program area, in the
5 preparation of any rules and regulations adopted pursuant to this
6 subsection.

7 (d) Any holder of an eligible water right aggrieved by a decision
8 of the Kansas water office under this act by being excluded as a
9 member in the program may appeal to the district court under K.S.A.
10 82a-724, and amendments thereto.

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

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

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

24 Sec. 11. If any member of the district requests an opportunity to
25 renegotiate any existing contracts for the purchase of water supply, as
26 described in K.S.A. 82a-1301 *et seq.*, and amendments thereto, the
27 Kansas water authority and the Kansas water office shall conduct such
28 negotiations on a timely basis and on the provisions for which
29 negotiations are requested.

30 Sec. 12. (a) The chief engineer shall protect releases of water
31 from the Kanopolis reservoir for water supply access storage as may be
32 necessary to effectuate the purposes of the releases made pursuant to
33 this act and for the benefit of the district members for whom such
34 releases are made.

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

39 Sec. 13. Each member of the district shall adopt conservation

1 plans and practices for such member. Such plans and practices shall be
2 consistent with the guidelines for conservation plans and practices
3 developed and maintained by the Kansas water office as provided in
4 K.S.A. 74-2608, and amendments thereto. Prior to entering into a
5 contract the district and the director of the Kansas water office, in
6 consultation with the chief engineer, shall determine whether such
7 plans and practices are consistent with the guidelines for conversation
8 plans and practices adopted by the Kansas water office.

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

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

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

21 Sec. 16. There is hereby authorized the lower smoky hill special
22 irrigation district for the purpose of participating in the lower smoky
23 hill water supply access program. Such special irrigation district shall
24 be a single member of the lower smoky hill water supply access
25 district.

26 Sec. 17. (a) The lower smoky hill river irrigation special district
27 shall be formed upon petition by eligible irrigation water right holders
28 to the director of the Kansas water office, demonstrating a need for and
29 requesting purchase of 500 acre feet or more for water supply access
30 storage for the proposed special irrigation district. The petition shall
31 provide contact information for each person signing, information on the
32 land proposed for membership in the district, information necessary for
33 verification of the water rights held on the eligible land and the amount
34 of water requested from Kanopolis reservoir water supply access
35 storage by each person so signing. The Kansas water office may request
36 additional information from each person signing such petition.

37 (b) The director of the Kansas water office, in consultation with
38 the chief engineer, shall verify the ownership of subject land within the
39 proposed special irrigation district for the lands noted in the petition,

1 the water rights held for subject land by each person so signing and
2 other matters the Kansas water office may deem necessary. Upon
3 verification of the eligibility of those signing such petition the director
4 of the Kansas water office shall set a date, time and place for the first
5 meeting of such district for the purposes of electing a governing board
6 for the special irrigation district.

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

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

20 Sec. 19. (a) There shall be created a governing board of the
21 special irrigation district. Such governing board shall have the
22 authority to:

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

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

27 (3) contract with employees and consultants; and

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

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

31 (1) ~~Designate one or more members to serve as a representative of~~
32 ~~the special irrigation district before the directors of the lower smoky~~
33 ~~hill water supply access district, *as described in the articles of*~~
34 ~~*incorporation of the lower smoky hill water supply access district, to*~~
35 ~~*serve on the governing board of the lower smoky hill river water*~~
36 ~~*supply access district.*~~ Such member shall speak for the special
37 irrigation district on matters before the directors of the *lower smoky*
38 *hill water supply access* district;

39 (2) provide for a fee structure sufficient to pay for such water

1 supply access storage and any additional costs as determined by the
2 special irrigation district and set a fee schedule for all members of the
3 special irrigation district; and

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

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

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

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

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

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

1 unexpired term.

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

5 (f) The governing board of the special irrigation district shall set
6 an annual meeting for the district, and provide notice of the same to all
7 members. At such annual meeting the membership may consider any
8 matters such governing board may wish to present for consideration.

9 (g) A majority of the governing board of the special irrigation
10 district shall constitute a quorum for the transaction of business. A
11 majority of those board members present and voting shall determine all
12 actions taken by such governing board.

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

20 (b) Before any assessment is made or user charge imposed, the
21 governing board shall submit the proposed budget for the ensuing year
22 to the eligible voters of such district at a hearing to be held during the
23 annual meeting. Following the hearing, the governing board shall, by
24 resolution, adopt either the proposed budget or a modified budget and
25 determine the amount of land assessment or user charge, or both,
26 needed to support such budget.

27 (c) All dues, charges, fees and assessments against lands within
28 the special irrigation district shall be certified to the proper county
29 clerks and collected the same as other taxes in accordance with K.S.A.
30 79-1801, and amendments thereto, and the amount thereof shall attach
31 to the real property involved as a lien in accordance with K.S.A. 79-
32 1804, and amendments thereto. All moneys so collected shall be
33 remitted by the county treasurer to the treasurer of the special district
34 who shall deposit them to the credit of the general fund of the special
35 irrigation district. The accounts of the special irrigation district shall be
36 audited annually by a public accountant or certified public accountant.

37 Sec. 22. A fund shall be created by the special irrigation district
38 for payment of the costs of water supply access storage. Any moneys
39 received by such special irrigation district for charges, fees,

1 assessments and sales of water shall be credited to such fund. Such
2 fund shall be used solely to pay the costs related to acquiring water
3 supply access storage and the operation of the special irrigation district.

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

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

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

11