

**As Amended by House Committee**

*Session of 2015*

**HOUSE BILL No. 2069**

By Committee on Agriculture and Natural Resources

1-21

1 AN ACT concerning water; relating to multi-year flex accounts; amending  
2 K.S.A. 2014 Supp. 82a-708c and 82a-736 and repealing the existing  
3 sections.

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

6 Section 1. K.S.A. 2014 Supp. 82a-708c is hereby amended to read as  
7 follows: 82a-708c. (a) A term permit is a permit to appropriate water for a  
8 limited specified period of time in excess of six months. At the end of the  
9 specified time, or any authorized extension approved by the chief engineer,  
10 the permit shall be automatically dismissed, and any priority it may have  
11 had shall be forfeited. No water right shall be perfected pursuant to a term  
12 permit.

13 (b) Each application for a term permit to appropriate water shall be  
14 made on a form prescribed by the chief engineer and shall be accompanied  
15 by an application fee fixed by this section for the appropriate category of  
16 acre feet in accordance with the following:

Acre Feet	Fee
17 0 to 100.....	\$200
18 101 to 320.....	\$300
19 More than 320.....	\$300 + \$20
	20 for each additional 100
	21 acre feet or any part thereof
	22
	23

24 On and after July 1, 2018, the application fee shall be set forth in the  
25 schedule below:

Acre Feet	Fee
26 0 to 100.....	\$100
27 101 to 320.....	\$100
28 More than 320.....	\$150 + \$10
	29 for each additional 100
	30 acre feet or any part thereof
	31
	32

33 The chief engineer shall render a decision on such term permit  
34 applications within 150 days of receiving a complete application except  
35 when the application cannot be processed due to the standards established  
36 in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of

1 receipt of a complete application, the application fee is subject to refund  
 2 upon request.

3 (c) Each application for a term permit to appropriate water for  
 4 storage, except applications for permits for domestic use, shall be  
 5 accompanied by an application fee fixed by this section for the appropriate  
 6 category of storage-acre feet in accordance with the following:

7 Storage-Acre Feet	Fee
8 0 to 250.....	\$200
9 More than 250.....	\$200 + \$20
	for each additional 250
	acre feet or any part thereof

10  
 11  
 12  
 13 On and after July 1, 2018, the application fee shall be set forth in the  
 14 schedule below:

15 Storage-Acre Feet	Fee
16 0 to 250.....	\$100
17 More than 250.....	\$100 + \$10
	for each additional 250
	acre feet or any part thereof

18  
 19  
 20  
 21 The chief engineer shall render a decision on such term permit  
 22 applications within 150 days of receiving a complete application except  
 23 when the application cannot be processed due to the standards established  
 24 in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of  
 25 receipt of a complete application, the application fee is subject to refund  
 26 upon request.

27 (d) Each application for a term permit pursuant to K.S.A. 2014 Supp.  
 28 82a-736, and amendments thereto, shall be accompanied by an application  
 29 fee established by rules and regulations adopted by the chief engineer in an  
 30 amount not to exceed \$400 for the five-year period covered by the permit.

31 (e) Notwithstanding the provisions of K.S.A. 82a-714, and  
 32 amendments thereto, the applicant is not required to file a notice of  
 33 completion of diversion works nor pay a field inspection fee. The chief  
 34 engineer shall not conduct a field inspection of the diversion works  
 35 required by statute for purposes of certification nor issue a certificate of  
 36 appropriation for a term permit.

37 (f) A request to extend the term of a term permit in accordance with  
 38 the rules and regulations adopted by the chief engineer shall be  
 39 accompanied by the same filing fee applicable to other requests for  
 40 extensions of time as set forth in K.S.A. 82a-714, and amendments thereto.

41 (g) An application to change the place of use, point of diversion, use  
 42 made of water, or any combination thereof, pursuant to K.S.A. 82a-708b,  
 43 and amendments thereto, shall not be approved for a term permit, *except a*

1 *change in place of use for a term permit approved pursuant to K.S.A. 82a-*  
2 *736, and amendments thereto, for irrigation use may be approved by the*  
3 *chief engineer for an increase of up to 10 acres or 10% of the authorized*  
4 *place of use, whichever is less. **If such place of use is changed, the***  
5 **amount of water authorized for use by the term permit shall be**  
6 **reduced by 10%.**

7 (h) The chief engineer shall adopt rules and regulations to effectuate  
8 and administer the provisions of this section.

9 Sec. 2. K.S.A. 2014 Supp. 82a-736 is hereby amended to read as  
10 follows: 82a-736. (a) It is hereby recognized that an opportunity exists to  
11 improve water management by enabling multi-year flexibility in the use of  
12 water authorized to be diverted under a groundwater water right, provided,  
13 that such flexibility neither impairs existing water rights, nor increases the  
14 total amount of water diverted, so that such flexibility has no long-term  
15 negative effect on the source of supply. It is therefore declared necessary  
16 and advisable to permit the establishment of multi-year flex accounts for  
17 groundwater water rights, together with commensurate protections for  
18 existing water rights and their source of supply.

19 (b) As used in this section:

20 (1) "Base water right" means a water right under which an applicant  
21 applies to the chief engineer to establish a multi-year flex account and  
22 where all of the following conditions exist:

23 (A) The authorized source of supply is groundwater; and

24 (B) the water right has not been the subject of a change approval to  
25 implement the provisions of K.A.R. 5-5-9(a)(2), K.A.R. 5-5-11(b)(2) or  
26 K.A.R. 5-5-11(b)(3), in effect upon the effective date of this act.

27 (2) "Multi-year flex account" means a term permit which suspends a  
28 base water right during its term, except when the term permit may be no  
29 longer exercised because of an order of the chief engineer, and is subject to  
30 the terms and conditions as provided in subsection (e).

31 (3) "Base average usage" means: (A) The average amount of water  
32 actually diverted for a beneficial use under the base water right during  
33 calendar years 2000 through 2009, excluding any amount diverted in any  
34 such year that exceeded the maximum annual quantity of water authorized  
35 by the base water right; or (B) if the holder of the base water right shows  
36 to the satisfaction of the chief engineer that water conservation reduced  
37 water use under the base water right during calendar years 2000 through  
38 2009, then the average amount of water actually diverted for a beneficial  
39 use under the base water right during the five calendar years immediately  
40 before the calendar year when water conservation began, excluding any  
41 amount used in any such year that exceeded the amount authorized by the  
42 base water right.

43 (4) "Chief engineer" means the chief engineer of the division of water

1 resources of the department of agriculture.

2 (5) "Flex account acreage" means the maximum number of acres  
3 lawfully irrigated during a calendar year when no term, condition or  
4 limitation of the base water right has been violated and either of the  
5 following conditions is met:

6 (A) The calendar year is 2000 through 2009; or

7 (B) if water conservation reduced water use under the base water  
8 right during calendar years 2000 through 2009, the calendar year is a year  
9 within the five calendar years immediately prior to the calendar year when  
10 water conservation began.

11 (6) "Net irrigation requirement" means the net irrigation requirement  
12 for 50% chance rainfall of the county that corresponds with the location of  
13 the authorized place of use of the base water right as provided in K.A.R. 5-  
14 5-12, on the effective date of this act.

15 (c) (1) Any holder of a base water right that has not been deposited or  
16 placed in a safe deposit account in a chartered water bank may establish a  
17 multi-year flex account where the holder may deposit, in advance, the  
18 authorized quantity of water from such water right for any five consecutive  
19 calendar years, subject to all of the following:

20 (A) The water right must be vested or shall have been issued a  
21 certificate of appropriation;

22 (B) the withdrawal of water pursuant to the water right shall be  
23 properly and adequately metered;

24 (C) the water right is not deemed abandoned and is in compliance  
25 with the terms and conditions of its certificate of appropriation, all  
26 applicable provisions of law and orders of the chief engineer;

27 (D) the amount of water deposited in the multi-year flex account shall  
28 not exceed the greatest of the following:

29 (i) 500% of the base average usage;

30 (ii) 500% of the product of the annual net irrigation requirement  
31 multiplied by the flex account acreage, multiplied by 110%, but not greater  
32 than five times the maximum annual quantity authorized by the base water  
33 right; ~~or~~

34 (iii) if the authorized place of use is located wholly within the  
35 boundaries of a groundwater management district, an amount that shall not  
36 increase the long-term average use of the groundwater right as specified by  
37 rule or regulation promulgated pursuant to ~~subsection (e)~~ of K.S.A. 82a-  
38 1028(o), and amendments thereto; ~~and~~ or

39 (iv) *pursuant to subparagraph (E), the amount computed in (i), (ii) or*  
40 *(iii) plus any deposited water remaining in a multi-year flex account up to*  
41 *100% of the base average usage;*

42 (E) *any deposited water remaining in a multi-year flex account up to*  
43 *100% 75% of the base average usage may be added to the deposit amount*

1 *calculated in subparagraph (D) if the base water right is enrolled in*  
2 *another multi-year flex account during the calendar year in which the*  
3 *existing multi-year flex account expires. The total amount of water*  
4 *deposited in any multi-year flex account shall not exceed 500% of the*  
5 *authorized quantity of the base water right; and*

6 (F) notwithstanding any other provisions of this subsection, except  
7 when the base water right is suspended due to the issuance of a two-year  
8 term permit in a designated drought emergency area for 2011 and 2012,  
9 the quantity of water deposited into a multi-year flex account shall be  
10 reduced by the quantity of water used in excess of the maximum annual  
11 quantity of the base water right during 2011 if the application for a multi-  
12 year flex account is filed with the chief engineer on or before July 15,  
13 2012.

14 (2) The provisions of K.A.R. 5-5-11 are limited to changes in annual  
15 authorized quantity and shall not apply to this subsection.

16 (d) The chief engineer shall implement a program providing for the  
17 issuance of term permits to holders of groundwater water rights who have  
18 established flex accounts in accordance with this section. Such term  
19 permits shall authorize the use of water in a flex account at any time  
20 during the five consecutive calendar years for which the application for the  
21 term permit authorizing a multi-year flex account is made, without annual  
22 limits on such use.

23 (e) Term permits provided for by this section shall be subject to the  
24 following:

25 (1) A separate term permit shall be required for each point of  
26 diversion authorized by the base water right.

27 (2) The quantity of water authorized for diversion shall be limited to  
28 the amount deposited pursuant to subsection (c)(1)(D).

29 (3) The rate of diversion for each point of diversion authorized under  
30 the term permit shall not exceed the rate of diversion for each point of  
31 diversion authorized under the base water right.

32 (4) The authorized place of use shall be the place of use or a  
33 subdivision of the place of use for the base water right.

34 (5) The point of diversion authorized by the term permit shall be  
35 specified by referencing one point of diversion authorized by the base  
36 water right at the time the multi-year flex account term permit application  
37 is filed with the chief engineer or at the time any approvals changing such  
38 referenced point of diversion of the base water right are approved during  
39 the multi-year flex account period. For a base water right with multiple  
40 points of diversion, each point of diversion authorized by a term permit  
41 shall receive a specific assignment of a maximum authorized quantity of  
42 water, assigned proportionately to the authorized annual quantities of the  
43 respective points of diversion under the base water right.

1 (6) The chief engineer may establish, by rules and regulations, criteria  
2 for such term permits.

3 (7) Except as explicitly provided for by this section, such term  
4 permits shall be subject to all provisions of the Kansas water appropriation  
5 act, and rules and regulations adopted under such act, and nothing in this  
6 section shall authorize impairment of any vested right or prior  
7 appropriation right by the exercise of such term permit.

8 (f) An application for a multi-year flex account shall be filed with the  
9 chief engineer on or before October 1 of the first year of the multi-year  
10 flex account term for which the application is being made.

11 (g) All costs of administration of this section shall be paid from fees  
12 for term permits provided for by this section. Any appropriation or transfer  
13 from any fund other than the water appropriation certification fund for the  
14 purpose of paying such costs shall be repaid to the fund from which such  
15 appropriation or transfer is made. At the time of repayment, the secretary  
16 of agriculture shall certify to the director of accounts and reports the  
17 amount to be repaid and the fund to be repaid. Upon receipt of such  
18 certification, the director of accounts and reports shall promptly transfer  
19 the amount certified to the specified fund.

20 (h) The fee for a multi-year flex account term permit shall be the  
21 same as specified for other term permits in K.S.A. 82a-708c, and  
22 amendments thereto, except as follows:

23 (1) If the base water right is currently suspended due to the issuance  
24 of a two-year term permit in a designated drought emergency area for 2011  
25 and 2012, then a holder of such term permit shall be subject to a \$200  
26 application fee for a multi-year flex account term permit if the application  
27 is filed on or before July 15, 2012; or

28 (2) if water use under the authority of the base water right exceeded  
29 the maximum annual quantity authorized by the base water right during  
30 2011 and the holder of the base water right files an application for  
31 approval of a multi-year flex account term permit on or before July 15,  
32 2012, then the application fee shall be \$600.

33 (i) The chief engineer shall have full authority pursuant to K.S.A.  
34 82a-706c, and amendments thereto, to require any additional measuring  
35 devices and any additional reporting of water use for term permits issued  
36 pursuant to this section. Failure to comply with any measuring or reporting  
37 requirement may result in a penalty, up to and including the revocation of  
38 the term permit and the suspension of the base water right for the duration  
39 of the term permit period.

40 (j) The chief engineer shall submit a written report on the  
41 implementation of this section to the house standing committee on  
42 agriculture and natural resources and the senate standing committee on  
43 natural resources on or before February 1 of each year.

1       (k) This section shall be part of and supplemental to the Kansas water  
2 appropriation act.

3       Sec. 3. K.S.A. 2014 Supp. 82a-708c and 82a-736 are hereby repealed.

4       Sec. 4. This act shall take effect and be in force from and after its  
5 publication in the statute book.