

SENATE BILL No. 52

By Committee on Natural Resources

1-22

1 AN ACT concerning water; ~~related~~ relating to the diversion of water;
2 chief engineer; **multi-year flex accounts; local enhanced**
3 **management areas;** amending K.S.A. 82a-706b and K.S.A. 2014
4 **Supp. 82a-708c, 82a-736 and 82a-1041** and repealing the existing
5 section sections.
6

7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 82a-706b is hereby amended to read as follows:
9 82a-706b. (a) It shall be unlawful for any person to prevent, by diversion
10 or otherwise, any waters of this state from moving to a person having a
11 prior right to use the same, or for any person without an agreement with
12 the state of Kansas to divert or take any water that has been released from
13 storage under authority of **water reservation rights held by the state of**
14 **Kansas** ~~or that has been released from storage pursuant to an agreement~~
15 ~~between the state and federal government~~. Upon making a determination
16 of an unlawful diversion, the chief engineer or ~~his or her~~ *the chief*
17 *engineer's* authorized agents, shall, *as may be necessary to secure water to*
18 *the person having the prior right to its use, or to secure water for the*
19 *purpose for which it was released from storage under authority of the state*
20 *of Kansas* ~~or pursuant to an agreement between the state and federal~~
21 ~~government~~ **water reservation rights held by the state of Kansas:**

22 (1) Direct that the headgates, valves; or other controlling works of
23 any ditch, canal, conduit, pipe, well; or structure be opened, closed,
24 adjusted; or regulated; or

25 (2) ~~within the rattlesnake creek subbasin located in hydrologic unit~~
26 ~~code H030009;~~ *allow augmentation for the replacement in time, location*
27 *and quantity of the unlawful diversion, if available such replacement is*
28 *available and offered voluntarily.* ~~as may be necessary to secure water to~~
29 ~~the person having the prior right to its use, or to secure water for the~~
30 ~~purpose for which it was released from storage under authority of the state~~
31 ~~of Kansas or pursuant to an agreement between the state and federal~~
32 ~~government.~~

33 (b) The chief engineer, or ~~his or her~~ *the chief engineer's* authorized
34 agents, shall deliver a copy of such a directive to the persons involved

1 either personally or by mail or by attaching a copy ~~thereof~~ to such
 2 headgates, valves; or other controlling works to which it applies and such
 3 directive shall be legal notice to all persons involved in the diversion and
 4 distribution of the water of the ditch, canal, conduit, pipe, well; or
 5 structure. For the purpose of making investigations of diversions and
 6 delivering directives as provided herein and determining compliance
 7 therewith, the chief engineer or ~~his or her~~ *the chief engineer's* authorized
 8 agents shall have the right of access and entry upon private property.

9 **Sec. 2. K.S.A. 2014 Supp. 82a-708c is hereby amended to read as**
 10 **follows: 82a-708c. (a) A term permit is a permit to appropriate water**
 11 **for a limited specified period of time in excess of six months. At the**
 12 **end of the specified time, or any authorized extension approved by the**
 13 **chief engineer, the permit shall be automatically dismissed, and any**
 14 **priority it may have had shall be forfeited. No water right shall be**
 15 **perfected pursuant to a term permit.**

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

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

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

Acre Feet	Fee
0 to 100.....	\$100
101 to 320.....	\$100
More than 320.....	\$150 + \$10
	for each additional 100
	acre feet or any part thereof

32
 33
 34 **The chief engineer shall render a decision on such term permit**
 35 **applications within 150 days of receiving a complete application**
 36 **except when the application cannot be processed due to the standards**
 37 **established in K.A.R. 5-3-4c. Upon failure to render a decision within**
 38 **180 days of receipt of a complete application, the application fee is**
 39 **subject to refund upon request.**

40 (c) Each application for a term permit to appropriate water for
 41 storage, except applications for permits for domestic use, shall be
 42 accompanied by an application fee fixed by this section for the
 43 appropriate category of storage-acre feet in accordance with the

1 following:

2	Storage-Acre Feet	Fee
3	0 to 250.....	\$200
4	More than 250.....	\$200 + \$20
5		for each additional 250
6		acre feet or any part thereof

7 **On and after July 1, 2018, the application fee shall be set forth in**
8 **the schedule below:**

9	Storage-Acre Feet	Fee
10	0 to 250.....	\$100
11	More than 250.....	\$100 + \$10
12		for each additional 250
13		acre feet or any part thereof

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

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

25 **(e) Notwithstanding the provisions of K.S.A. 82a-714, and**
26 **amendments thereto, the applicant is not required to file a notice of**
27 **completion of diversion works nor pay a field inspection fee. The chief**
28 **engineer shall not conduct a field inspection of the diversion works**
29 **required by statute for purposes of certification nor issue a certificate**
30 **of appropriation for a term permit.**

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

36 **(g) An application to change the place of use, point of diversion,**
37 **use made of water, or any combination thereof, pursuant to K.S.A.**
38 **82a-708b, and amendments thereto, shall not be approved for a term**
39 **permit, except a change in place of use for a term permit approved**
40 **pursuant to K.S.A. 82a-736, and amendments thereto, for irrigation use**
41 **may be approved by the chief engineer for an increase of up to 10 acres or**
42 **10% of the authorized place of use whichever is less.**

43 **(h) The chief engineer shall adopt rules and regulations to**

1 effectuate and administer the provisions of this section.

2 Sec. 3. K.S.A. 2014 Supp. 82a-736 is hereby amended to read as
3 follows: 82a-736. (a) It is hereby recognized that an opportunity exists
4 to improve water management by enabling multi-year flexibility in the
5 use of water authorized to be diverted under a groundwater water
6 right, provided, that such flexibility neither impairs existing water
7 rights, nor increases the total amount of water diverted, so that such
8 flexibility has no long-term negative effect on the source of supply. It is
9 therefore declared necessary and advisable to permit the
10 establishment of multi-year flex accounts for groundwater water
11 rights, together with commensurate protections for existing water
12 rights and their source of supply.

13 (b) As used in this section:

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

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

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

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

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

39 (4) "Chief engineer" means the chief engineer of the division of
40 water resources of the department of agriculture.

41 (5) "Flex account acreage" means the maximum number of acres
42 lawfully irrigated during a calendar year when no term, condition or
43 limitation of the base water right has been violated and either of the

1 following conditions is met:

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

3 (B) if water conservation reduced water use under the base water
4 right during calendar years 2000 through 2009, the calendar year is a
5 year within the five calendar years immediately prior to the calendar
6 year when water conservation began.

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

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

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

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

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

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

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

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

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

36 (iv) pursuant to subparagraph (E), the amount computed in (i), (ii) or
37 (iii) plus any deposited water remaining in a multi-year flex account up to
38 100% of the base average usage;

39 (E) any deposited water remaining in a multi-year flex account up to
40 100% of the base average usage may be added to the deposit amount
41 calculated in subparagraph (D) if the base water right is enrolled in
42 another multi-year flex account during the calendar year in which the
43 existing multi-year flex account expires. The total amount of water

1 *deposited in any multi-year flex account shall not exceed 500% of the*
2 *authorized quantity of the base water right; and*

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

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

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

20 **(e) Term permits provided for by this section shall be subject to**
21 **the following:**

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

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

26 **(3) The rate of diversion for each point of diversion authorized**
27 **under the term permit shall not exceed the rate of diversion for each**
28 **point of diversion authorized under the base water right.**

29 **(4) The authorized place of use shall be the place of use or a**
30 **subdivision of the place of use for the base water right.**

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

42 **(6) The chief engineer may establish, by rules and regulations,**
43 **criteria for such term permits.**

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

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

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

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

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

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

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

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

43 (k) This section shall be part of and supplemental to the Kansas

1 **water appropriation act.**

2 **Sec. 4. K.S.A. 2014 Supp. 82a-1041 is hereby amended to read as**
3 **follows: 82a-1041. (a) Whenever a groundwater management district**
4 **recommends the approval of a local enhanced management plan**
5 **within the district to address any of the conditions set forth in**
6 **subsections ~~(a) through (d)~~ of K.S.A. 82a-1036(a) through (d), and**
7 **amendments thereto, the chief engineer shall review the local**
8 **enhanced management plan submitted by the groundwater**
9 **management district. The chief engineer's review shall be limited to**
10 **whether the plan:**

11 **(1) Proposes clear geographic boundaries;**

12 **(2) pertains to an area wholly within the groundwater**
13 **management district;**

14 **(3) proposes goals and corrective control provisions as provided**
15 **in subsection (f) adequate to meet the stated goals;**

16 **(4) gives due consideration to water users who already have**
17 **implemented reductions in water use resulting in voluntary conservation**
18 **measures;**

19 **(5) includes a compliance monitoring and enforcement element;**
20 **and**

21 ~~(5)-(6)~~ **is consistent with state law.**

22 **If, based on such review, the chief engineer finds that the local**
23 **enhanced management plan is acceptable for consideration, the chief**
24 **engineer shall initiate, as soon as practicable thereafter, proceedings to**
25 **designate a local enhanced management area.**

26 **(b) In any case where proceedings to designate a local enhanced**
27 **management area are initiated, the chief engineer shall conduct an**
28 **initial public hearing on the question of designating such an area as a**
29 **local enhanced management area according to the local enhanced**
30 **management plan. The initial public hearing shall resolve the**
31 **following findings of fact:**

32 **(1) Whether one or more of the circumstances specified in**
33 **subsection ~~(a) through (d)~~ of K.S.A. 82a-1036(a) through (d), and**
34 **amendments thereto, exist;**

35 **(2) whether the public interest of K.S.A. 82a-1020, and**
36 **amendments thereto, requires that one or more corrective control**
37 **provisions be adopted; and**

38 **(3) whether the geographic boundaries are reasonable.**

39 **The chief engineer shall conduct a subsequent hearing or hearings**
40 **only if the initial public hearing is favorable on all three issues of fact**
41 **and the expansion of geographic boundaries is not recommended. At**
42 **least 30 days prior to the date set for any hearing, written notice of**
43 **such hearing shall be given to every person holding a water right of**

1 record within the area in question and by one publication in any
2 newspaper of general circulation within the area in question. The
3 notice shall state the question and shall denote the time and place of
4 the hearing. At every such hearing, documentary and oral evidence
5 shall be taken and a complete record of the same shall be kept.

6 (c) The subject matter of the hearing or hearings set forth in
7 subsection (b) shall be limited to the local enhanced management plan
8 that the chief engineer previously reviewed pursuant to subsection (a)
9 and set for hearing.

10 (d) Within 120 days of the conclusion of the final public hearing
11 set forth in subsections (b) and (c), the chief engineer shall issue an
12 order of decision:

13 (1) Accepting the local enhanced management plan as sufficient
14 to address any of the conditions set forth in ~~subsections (a) through (d)~~
15 ~~of K.S.A. 82a-1036(a) through (d)~~, and amendments thereto;

16 (2) rejecting the local enhanced management plan as insufficient
17 to address any of the conditions set forth in ~~subsections (a) through (d)~~
18 ~~of K.S.A. 82a-1036(a) through (d)~~, and amendments thereto;

19 (3) returning the local enhanced management plan to the
20 groundwater management district, giving reasons for the return and
21 providing the district with the opportunity to resubmit a revised plan
22 for public hearing within 90 days of the return of the deficient plan; or

23 (4) returning the local enhanced management plan to the
24 groundwater management district and proposing modifications to the
25 plan, based on testimony at the hearing or hearings, that will improve
26 the administration of the plan, but will not impose reductions in
27 groundwater withdrawals that exceed those contained in the plan. If
28 the groundwater management district approves of the modifications
29 proposed by the chief engineer, the district shall notify the chief
30 engineer within 90 days of receipt of return of the plan. Upon receipt
31 of the groundwater management district's approval of the
32 modifications, the chief engineer shall accept the modified local
33 management plan. If the groundwater management district does not
34 approve of the modifications proposed by the chief engineer, the local
35 management plan shall not be accepted.

36 (e) In any case where the chief engineer issues an order of
37 decision accepting the local enhanced management plan pursuant to
38 subsection (d), the chief engineer, within a reasonable time, shall issue
39 an order of designation that designates the area in question as a local
40 enhanced management area.

41 (f) The order of designation shall define the boundaries of the
42 local enhanced management area and shall indicate the circumstances
43 upon which the findings of the chief engineer are made. The order of

1 designation may include any of the following corrective control
2 provisions set forth in the local enhanced management plan:

3 (1) Closing the local enhanced management area to any further
4 appropriation of groundwater. In which event, the chief engineer shall
5 thereafter refuse to accept any application for a permit to appropriate
6 groundwater located within such area;

7 (2) determining the permissible total withdrawal of groundwater
8 in the local enhanced management area each day, month or year, and,
9 insofar as may be reasonably done, the chief engineer shall apportion
10 such permissible total withdrawal among the valid groundwater right
11 holders in such area in accordance with the relative dates of priority
12 of such rights;

13 (3) reducing the permissible withdrawal of groundwater by any
14 one or more appropriators thereof, or by wells in the local enhanced
15 management area;

16 (4) requiring and specifying a system of rotation of groundwater
17 use in the local enhanced management area; or

18 (5) any other provisions making such additional requirements as
19 are necessary to protect the public interest.

20 The chief engineer is hereby authorized to delegate the
21 enforcement of any corrective control provisions ordered for a local
22 enhanced management area to the groundwater management district
23 in which that area is located, upon written request by the district.

24 (g) The order of designation shall follow, insofar as may be
25 reasonably done, the geographical boundaries recommended by the
26 local enhanced management plan.

27 (h) Except as provided in subsection (f), the order of designation
28 of a local enhanced management area shall be in full force and effect
29 from the date of its entry in the records of the chief engineer's office
30 unless and until its operation shall be stayed by an appeal from an
31 order entered on review of the chief engineer's order pursuant to
32 K.S.A. 2014 Supp. 82a-1901, and amendments thereto, and in
33 accordance with the provisions of the Kansas judicial review act. The
34 chief engineer upon request shall deliver a copy of such order to any
35 interested person who is affected by such order and shall file a copy of
36 the same with the register of deeds of any county within which any
37 part of the local enhanced management area lies.

38 (i) If the holder of a groundwater right within the local enhanced
39 management area applies for review of the order of designation
40 pursuant to K.S.A. 2014 Supp. 82a-1901, and amendments thereto, the
41 provisions of the order with respect to the inclusion of the holder's
42 water right within the area may be stayed in accordance with the
43 Kansas administrative procedure act.

1 (j) Unless otherwise specified in the proposed enhanced
2 management plan and included in the order of designation, a public
3 hearing to review the designation of a local enhanced management
4 area shall be conducted by the chief engineer within seven years after
5 the order of designation is final. A subsequent review of the
6 designation shall occur within 10 years after the previous public
7 review hearing or more frequently as determined by the chief
8 engineer. Upon the request of a petition signed by at least 10% of the
9 affected water users in a local enhanced management area, a public
10 review hearing to review the designation shall be conducted by the
11 chief engineer. This requested public review hearing shall not be
12 conducted more frequently than every four years.

13 (k) The chief engineer shall adopt rules and regulations to
14 effectuate and administer the provisions of this section.

15 (l) The provisions of this section shall be part of and
16 supplemental to the provisions of K.S.A. 82a-1020 through K.S.A. 82a-
17 1040, and amendments thereto.

18 New Sec. 5. (a) The chief engineer shall give due consideration to
19 water management or conservation measures previously implemented
20 by a water right holder when implementing any further limitations on
21 a water right pursuant to any program established or implemented on
22 and after July 1, 2015. The chief engineer shall take into account
23 reductions in water use, changes in water management practices and
24 other measures undertaken by such water right holder.

25 (b) This section shall be part of and supplemental to the Kansas
26 water appropriation act.

27 Sec. ~~2~~ 6. K.S.A. 82a-706b~~is~~ and K.S.A. 2014 Supp. 82a-708c, 82a-
28 736 and 82a-1041 are hereby repealed.

29 Sec. ~~3~~ 7. This act shall take effect and be in force from and after its
30 publication in the statute book.