

HOUSE BILL No. 2732

By Committee on Water and Environment

2-9

1 AN ACT concerning water; relating to the division of conservation of the
2 Kansas department of agriculture; relating to water banks, creation and
3 administration of; creating the water bank administration fee fund;
4 amending K.S.A. 2017 Supp. 82a-762 and repealing the existing
5 section.
6

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

8 New Section 1. (a) The division of conservation of the Kansas
9 department of agriculture shall be authorized to create and administer
10 water banks pursuant to the Kansas water banking act, K.S.A. 2017 Supp.
11 82a-761 et seq., and amendments thereto. The division of conservation
12 shall comply with the provisions of the Kansas water banking act and any
13 rules and regulations adopted by the chief engineer pursuant to the Kansas
14 water banking act that are not in conflict with sections 1 through 4, and
15 amendments thereto.

16 (b) A water bank administered by the division of conservation shall
17 be authorized to conduct all activities set forth in K.S.A. 2017 Supp. 82a-
18 763, and amendments thereto, except that a water bank administered by
19 the division of conservation shall not provide services to facilitate the sale
20 of any water right.

21 (c) Sections 1 through 4, and amendments thereto, shall be part of
22 and supplemental to the Kansas water banking act, K.S.A. 2017 Supp.
23 82a-761 et seq., and amendments thereto.

24 New Sec. 2. (a) Before a water bank administered by the division of
25 conservation is authorized to operate in the state, a bank charter for each
26 water bank must be submitted to and approved by the chief engineer. The
27 chief engineer shall approve a bank charter for a water bank administered
28 by the division of conservation, if the chief engineer determines:

29 (1) That the operations and policies of the water bank will be
30 consistent with the provisions of this act, the Kansas water appropriation
31 act, the state water plan and all other applicable statutes, rules and
32 regulations, findings and orders of the chief engineer, rules and regulations
33 of groundwater management districts located within the boundaries of the
34 proposed water bank and water assurance district operations plans located
35 within the boundaries of the proposed water bank;

36 (2) there is sufficient participation by water right holders and water

1 users to make the operations of the water bank practical and feasible;

2 (3) the water bank would not lease or accept for placement in a safe
3 deposit account water from the same hydrologic unit as another chartered
4 water bank or accept for deposit a water right that authorizes diversion of
5 water from the same hydrologic unit as another chartered water bank;

6 (4) the bank charter ensures that, for each calendar year, the aggregate
7 amount of all deposits to the water bank, determined by multiplying the
8 amount of each water right deposited by the length of time of the deposit
9 and then adding together the resulting amounts for all deposits, will equal
10 or exceed the sum of the aggregate amount of water leased by the water
11 bank, determined by multiplying the amount of each lease by the length of
12 the lease and then adding together the resulting amounts for all leases, plus
13 the aggregate conservation element of all leases, determined by
14 multiplying the conservation element of each lease by the length of the
15 lease and then adding together the resulting amounts for all leases;

16 (5) the bank charter ensures that the operations of the water bank will
17 not result in impairment of existing water rights or an increase in depletion
18 of severely depleted groundwater aquifers or stream courses;

19 (6) the bank charter ensures that the operations of the water bank will
20 result in a savings of 10% or more in the total amount of groundwater
21 consumed for a representative past period pursuant to water rights
22 deposited in the water bank, excluding groundwater located in an intensive
23 groundwater use control area where corrective control provisions have
24 reduced the allocation of groundwater to less than the quantity previously
25 authorized by water rights in the area;

26 (7) the bank charter provides a procedure for resolution of complaints
27 by water bank participants and others impacted by the water bank policies,
28 practices and operations;

29 (8) the bank charter provides procedures to determine if a water right
30 is bankable and what portion thereof is bankable, subject to the following:

31 (A) The determination shall be primarily based on a representative
32 period of average water consumption for the hydrologic unit from which
33 water is authorized to be diverted under the water right; and

34 (B) the method of determination shall not penalize past
35 implementation of water conservation practices;

36 (9) the bank charter ensures that the total amount of groundwater
37 leased each year from each hydrologic unit does not exceed 90% of the
38 historic average annual amount collectively diverted pursuant to all
39 deposited water rights or portions of water rights from such unit for a
40 representative past period;

41 (10) the bank charter provides the proposed boundaries of the water
42 bank and includes information showing that the boundaries of the
43 proposed water bank do not overlap the boundaries of another water bank;

1 (11) that for a water bank administering groundwater, the bank
2 charter includes an enumeration of all the hydrologic units and sources of
3 water supply within the proposed water bank boundaries, including
4 alluviums, terrace deposits and regional aquifers, both confined and
5 unconfined, that have similar aquifer properties, including the saturated
6 thickness and water level changes over the representative past period;

7 (12) that for a water bank administering surface water, the bank
8 charter includes a list of the streams and their tributaries that are to
9 comprise the water bank and a methodology to limit the leasing of surface
10 water so that it does not impair senior surface water rights and minimum
11 desirable streamflow;

12 (13) the bank charter provides the designation of a representative past
13 period;

14 (14) the bank charter provides a comprehensive method to account
15 for the following:

16 (A) The amount of water deposited and the length of the contracts for
17 deposit;

18 (B) the amount of water leased from the water bank and the length of
19 the lease contracts; and

20 (C) the identification of the hydrologic units from which deposits and
21 leases are being made;

22 (15) that for a water bank administering groundwater, the bank
23 charter includes a proposed plan to ensure that the net amount of water
24 consumed by the deposited water rights leased will be at least 10% less
25 than the average net amount of water consumed by the deposited water
26 rights for the representative past period, and shall require the comparison
27 of the average annual net consumption for the deposited water rights for
28 the five-year period after a water bank is chartered or after the bank's
29 charter is extended with the average net consumptive use for the deposited
30 water rights for the representative past period;

31 (16) the bank charter includes a list of any severely depleted
32 groundwater aquifers or severely depleted stream courses located within
33 the boundaries of the proposed water bank;

34 (17) the bank charter provides a plan to ensure that there will be no
35 increase in the depletion of severely depleted groundwater aquifers or
36 severely depleted stream courses located within the boundaries of the
37 proposed water bank;

38 (18) that for a water bank administering groundwater, the bank
39 charter includes a methodology for ensuring that the total quantity of
40 groundwater leased each year does not exceed 90% of the average annual
41 quantity collectively diverted pursuant to all deposited water rights or
42 portions of water rights from each hydrologic unit for the representative
43 past period; and

1 (19) that for a water bank authorizing safe deposit accounts, the bank
2 charter includes the following:

3 (A) A methodology to ensure that the users of safe deposit accounts
4 will not increase the consumption of groundwater within the boundaries of
5 the proposed water bank; and

6 (B) a provision setting the maximum percentage of unused water
7 from the previous year that may be deposited in a safe deposit account.

8 (b) The division of conservation shall be permitted to cease
9 operations of any water bank that it administers after providing
10 notification to the chief engineer. The bank charter of each water bank
11 administered by the division of conservation shall set forth the procedure
12 for water right holders to obtain any remaining deposits and safe deposit
13 accounts if a water bank ceases operation.

14 (c) Bank charters for any water bank administered by the division of
15 conservation shall not be subject to the provisions of K.S.A. 2017 Supp.
16 82a-765, and amendments thereto. The division of conservation may
17 include any additional provisions in bank charters for water banks
18 administered by the division of conservation, as the division of
19 conservation deems necessary. Any amendment to the charter of a water
20 bank administered by the division of conservation must be approved by the
21 chief engineer prior to adoption of the amendment. The division of
22 conservation shall not be required to provide articles of incorporation for
23 any water bank it administers.

24 (d) The division of conservation shall provide the proposed bank
25 charter and a petition declaring an intent to establish a water bank
26 administered by the division of conservation to the chief engineer for
27 review and approval. The petition shall be signed by at least 5% of the
28 water right owners located within the proposed bank boundaries.

29 (e) Upon receipt of the petition and proposed bank charter, the chief
30 engineer shall provide the proposed bank charter to any groundwater
31 management districts and water assurance districts located within the
32 boundaries of the proposed water bank and to the Kansas water office for
33 comments as to whether the proposed water bank charter complies with
34 the provisions of this section. Comments regarding the proposed water
35 bank charter shall be due within 30 days after comments are requested by
36 the chief engineer, unless an extension of time is requested within the time
37 allowed and granted by the chief engineer for good cause shown.

38 (f) Each water bank administered by the division of conservation
39 shall be chartered for an initial period of not more than seven years, at
40 which time the water bank shall be subject to review in accordance with
41 K.S.A. 2017 Supp. 82a-767, and amendments thereto.

42 New Sec. 3. There is hereby created in the state treasury the water
43 bank administration fee fund. The division of conservation shall remit to

1 the state treasurer in accordance with the provisions of K.S.A. 75-4215,
2 and amendments thereto, all moneys received by the division of
3 conservation for the administration of water banks pursuant to the Kansas
4 water banking act. Upon receipt of each such remittance, the state treasurer
5 shall deposit the entire amount in the state treasury to the credit of the
6 water bank administration fee fund. All expenditures from the water bank
7 administration fee fund shall be made in accordance with appropriation
8 acts upon warrants of the director of accounts and reports issued pursuant
9 to vouchers approved by the secretary or the secretary's designee for the
10 purposes set forth in this act.

11 New Sec. 4. The chief engineer may exclude any water bank
12 administered by the division of conservation from rules and regulations
13 promulgated by the chief engineer regarding the administration of a water
14 bank pursuant to K.S.A. 2017 Supp. 82a-1904, and amendments thereto.

15 Sec. 5. K.S.A. 2017 Supp. 82a-762 is hereby amended to read as
16 follows: 82a-762. As used in this act:

17 (a) "Bank boundary" means the geographic area where a water bank
18 operates and conducts the functions of a water bank and may encompass
19 more than one hydrologic unit.

20 (b) "Bank charter" means a document that sets out the articles of
21 incorporation and principal functions of a water bank.

22 (c) "Bankable water right" means a water right that has been
23 determined pursuant to K.S.A. 2017 Supp. 82a-764, and amendments
24 thereto, to be bankable.

25 (d) "Chief engineer" means the chief engineer of the division.

26 (e) "Conservation element" means the portion of a deposit that is
27 taken out of use for the duration of the deposit and is not allowed to be
28 withdrawn and used by subsequent users.

29 (f) "Deposit," other than as used in "safe deposit account," refers to
30 the deposit of a water right, or portion of a water right, in a water bank for
31 the purpose of having the bank lease water from such water right, or
32 portion of a water right, to another person or entity.

33 (g) "Division" means the division of water resources of the Kansas
34 department of agriculture.

35 (h) *"Division of conservation" means the division of conservation of*
36 *the Kansas department of agriculture.*

37 (h)(i) "Hydrologic unit" means a defined area from which water
38 rights authorizing diversion of water from a source of supply may be
39 deposited and from which water from the same source of supply may be
40 leased, in accordance with the provisions of this act, without causing
41 impairment of existing water rights or a significantly different
42 hydrological effect to other users of water from the same source or
43 hydraulically connected sources of supply.

1 ~~(j)~~ "Linked water rights" means two or more water rights that
2 authorize common points of diversion or a common place of use, or both.

3 ~~(k)~~ "Safe deposit account" means a personal account held in a
4 water bank where unused water from a bankable water right is placed for
5 use in future years.

6 ~~(l)~~ "*Secretary*" means *the secretary of the Kansas department of*
7 *agriculture.*

8 ~~(m)~~ "Term permit" means a permit to appropriate water for a
9 specified period of time.

10 ~~(n)~~ "Water bank" means a private not-for-profit corporation that:
11 (1) Leases water from water rights that have been deposited in the bank;
12 and (2) provides safe deposit accounts. A water bank may be a
13 groundwater bank or a surface water bank, or both.

14 Sec. 6. K.S.A. 2017 Supp. 82a-762 is hereby repealed.

15 Sec. 7. This act shall take effect and be in force from and after its
16 publication in the statute book.