

1 ***As Amended by Senate Committee***

2  
3 ***As Amended by House Committee***

4 *Session of 2001*

5  
6 **HOUSE BILL No. 2047**

7  
8 By Committee on Environment

9  
10 1-17

11  
12 AN ACT concerning water rights; relating to water banking; enacting the  
13 Kansas water banking act.

14  
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. This act may be cited as the Kansas water banking act.

17 Sec. 2. As used in this act:

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

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

23 (c) "Bankable water right" means a water right that has been deter-  
24 mined pursuant to section 4, and amendments 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28 withdrawn and used by subsequent users.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  
31 for 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) "Hydrologic unit" means a defined area from which water rights  
36 authorizing diversion of water from a source of supply may be deposited  
37 and from which water from the same source of supply may be leased, in  
38 accordance with the provisions of this act, without causing impairment of  
39 existing water rights or a significantly different hydrological effect to other  
40 users of water from the same source or hydraulically connected sources  
41 of supply.

42 (i) "Linked water rights" means two or more water rights that au-  
43 thorize common points of diversion or a common place of use, or both.

1 (j) “Safe deposit account” means a personal account held in a water  
2 bank where unused water from a bankable water right is placed for use  
3 in future years.

4 (k) “Term permit” means a permit to appropriate water for a speci-  
5 fied period of time.

6 (l) “Water bank” means a private not-for-profit corporation that: (1)  
7 Leases water from water rights that have been deposited in the bank; and  
8 (2) ~~provides~~ **is authorized to provide** safe deposit accounts. A water  
9 bank may be a groundwater bank or a surface water bank, or both.

10 Sec. 3. (a) A water bank shall be authorized to enter into contracts  
11 with holders of water rights for deposit in the bank of all or a portion of  
12 any water right from a hydrologic unit within the bank boundary, subject  
13 to the following:

14 (1) The bank shall accept for deposit only a water right, or portion of  
15 a water right, that has been determined to be a bankable water right under  
16 section 4, and amendments thereto;

17 (2) a deposit of a groundwater water right shall be for a period of not  
18 more than five years;

19 (3) a deposit shall be subject to such terms and conditions as provided  
20 by the contract between the bank and the depositor, including penalty  
21 provisions for breach of any contract conditions; and

22 (4) a deposit shall be subject to such terms and conditions, and such  
23 approval by the chief engineer, as provided by rules and regulations of  
24 the chief engineer.

25 (b) A water bank shall be authorized to lease water from any water  
26 right, or portion of a water right, that has been deposited in the bank,  
27 subject to the following:

28 (1) Any water leased must be used within the bank boundary and in  
29 the same hydrologic unit from which the water right authorizing diversion  
30 of the water is deposited;

31 (2) use of leased water shall be subject to all provisions of the Kansas  
32 water appropriation act, including but not limited to all requirements  
33 relating to term permits;

34 (3) a lease shall be subject to such terms and conditions as provided  
35 by the contract between the bank and the lessor, including penalty pro-  
36 visions for breach of any contract conditions;

37 (4) a lease shall be subject to such terms and conditions, and such  
38 approval by the chief engineer, as provided by rules and regulations of  
39 the chief engineer; and

40 (5) a water bank’s decision of whether or not to lease water shall not  
41 be based on the proposed use of the water.

42 (c) A water bank ~~shall~~ **may shall** provide safe deposit accounts where  
43 a holder of a water right may place unused water from the water right

1 for future withdrawal, subject to the following:

2 (1) A water right holder shall place in a safe deposit account only  
3 water from a water right that has been determined to be a bankable water  
4 right under section 4 and amendments thereto;

5 (2) only water that was unused in the immediate past calendar year  
6 may be placed in a safe deposit account and the amount that shall be  
7 placed in such account shall be less than the total amount of unused water  
8 from the bankable water right in that year;

9 (3) only water from one water right shall be placed in a safe deposit  
10 account and water from a water right shall not be placed in more than  
11 one safe deposit account, except that water from linked water rights may  
12 be placed in a single safe deposit account;

13 (4) each calendar year that water remains in a safe deposit account,  
14 the amount of water held in the account shall decrease by a percentage  
15 established by the charter of the bank but in no case less than 10% an-  
16 nually of all amounts placed in the account;

17 (5) the total amount of water accumulated in a safe deposit account  
18 shall not exceed the maximum annual quantity authorized to be diverted  
19 under the water right or the aggregate maximum quantity authorized to  
20 be diverted under all linked water rights from which water is deposited  
21 in the account;

22 (6) use of water withdrawn from a safe deposit account shall be sub-  
23 ject to all provisions of the Kansas water appropriation act, including but  
24 not limited to all requirements relating to term permits;

25 (7) a safe deposit account shall be subject to such terms and condi-  
26 tions as provided by the contract between the bank and the account  
27 holder, including penalty provisions for breach of any contract conditions;  
28 ~~and~~

29 (8) a safe deposit account shall be subject to such terms and condi-  
30 tions, and such approval by the chief engineer, as provided by rules and  
31 regulations of the chief engineer; **and**

32 **(9) the operation of safe deposit accounts by the bank shall not**  
33 **result in an increase in the amount of net consumptive use of water**  
34 **in any hydrologic unit, computed on a long-term rolling average**  
35 **compared to a representative past period.**

36 (d) A water bank may provide services to facilitate the sale or lease  
37 of water rights.

38 (e) A water bank shall not own, buy or sell water rights.

39 Sec. 4. Before a water right or portion of a water right shall be ac-  
40 cepted for deposit in a water bank or water from a water right shall be  
41 placed in a safe deposit account, the bank, with the assistance of the  
42 division, shall determine whether the water right is bankable, as follows:

43 (a) The right is vested or has been issued a certificate of appropriation;

1 and (b) the right has not been abandoned and is in good standing, based  
2 on past water usage and compliance with the terms of the holder's permit  
3 and all applicable provisions of law and orders of the chief engineer.

4 Sec. 5. (a) Before a water bank is authorized to operate in the state,  
5 the bank's charter must be approved by the chief engineer. Prior to ap-  
6 proval, the body wishing to charter the bank shall submit to the chief  
7 engineer the proposed bank charter and any other information required  
8 by rules and regulations of the chief engineer to determine whether the  
9 bank shall be chartered to operate in the state.

10 (b) The chief engineer shall approve the charter of a water bank only  
11 if the chief engineer determines that:

12 (1) The charter ensures that the operations and policies of the bank  
13 will be consistent with the provisions of this act, the state water plan and  
14 all applicable statutes, rules and regulations, findings and orders of the  
15 chief engineer, groundwater management district policies and water as-  
16 surance district operations plans;

17 (2) there is sufficient participation by water right holders and water  
18 users to make the operations of the bank practical and feasible;

19 (3) the governing body of the bank has at least five members and is  
20 reasonably representative of public and private interests in water within  
21 the bank boundary;

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

26 (5) the charter ensures that, for each calendar year, the aggregate  
27 amount of all bank deposits (determined by multiplying the amount of  
28 each water right deposited by the length of time of the deposit and then  
29 adding together the resulting amounts for all deposits) will equal or ex-  
30 ceed the sum of the aggregate amount of water leased by the bank (de-  
31 termined by multiplying the amount of each lease by the length of time  
32 of the lease and then adding together the resulting amounts for all leases)  
33 plus the aggregate conservation element of all leases (determined by mul-  
34 tiplying the conservation element of each lease by the length of the lease  
35 and then adding together the resulting amounts for all leases);

36 (6) the charter ensures that the operations of the bank will not result  
37 in impairment of existing water rights or an increase in depletion of se-  
38 verely depleted groundwater aquifers or stream courses;

39 (7) the charter ensures that the operations of the bank will result in  
40 a savings of 10% or more in the total amount of groundwater consumed  
41 **for a representative past period** pursuant to water rights deposited in  
42 the bank, ~~excluding groundwater located in an intensive groundwater use~~  
43 ~~control area where corrective control provisions have reduced the allo-~~

1 ~~cation of groundwater to less than the quantity previously authorized by~~  
2 ~~water rights in the area;~~

3 (8) the charter provides a procedure for resolution of complaints by  
4 bank participants and others impacted by the bank policies, practices and  
5 operations; ~~and~~

6 (9) the charter ensures that the determination of the portion of a  
7 water right that is bankable shall be subject to the following:

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

11 (B) the method of determination shall not penalize past implemen-  
12 tation of water conservation practices;

13 ~~(C) deposit of a portion of a water right for irrigation pursuant to~~  
14 ~~subsection (a) of section 3, and amendments thereto, shall not be allowed~~  
15 ~~unless: (i) A proportional amount of the authorized place of use of water~~  
16 ~~diverted under the water right will not receive water during the period~~  
17 ~~that the water right is deposited in the bank; or (ii) the conservation~~  
18 ~~element is applied to the portion of the water right that is not deposited;~~  
19 ~~and~~

20 ~~(D) the method of determining the portion of a water right that is~~  
21 ~~bankable for purposes of placing of water in a safe deposit account pur-~~  
22 ~~suant to subsection (c) of section 3, and amendments thereto, shall in-~~  
23 ~~clude: (i) Consideration of the reasons why such water was unused, in-~~  
24 ~~cluding, but not limited to, adequate rainfall and the supply of water's~~  
25 ~~being unavailable for use; and (ii) criteria that assure the bank's safe de-~~  
26 ~~posit account operations do not result in a net increase in consumptive~~  
27 ~~use in the affected hydrologic unit; **and**~~

28 **(10) the charter ensures that the total amount of groundwater**  
29 **leased each year from each hydrologic unit does not exceed 90%**  
30 **of the historic average annual amount collectively diverted pur-**  
31 **suant to all deposited water rights or portions of water rights from**  
32 **such unit for a representative past period; *and***

33 ***(11) the charter provides a procedure for the dissolution of the***  
34 ***bank, specifically stating how the remaining deposits and safe de-***  
35 ***posit accounts will be distributed.***

36 (c) Prior to July 1, 2002, not more than one water bank shall be  
37 chartered to operate in the state. **Such water bank shall be a ground-**  
38 **water bank.** On or after July 1, 2002, and before July 1, 2003, not more  
39 than two additional water banks shall be chartered to operate in the state.  
40 On or after July 1, 2003, and before July 1, 2004, not more than two  
41 additional water banks shall be chartered to operate in the state. On and  
42 after July 1, 2004, no additional water banks shall be chartered to operate  
43 in the state until the first report of an evaluation team is submitted pur-

1 ~~suant to section 7, and amendments thereto~~ **one additional water bank**  
2 **shall may be chartered to operate in the state. Such water bank**  
3 **shall be a surface water bank or a surface water and groundwater**  
4 **bank.**

5 (d) A water bank shall be chartered for a period of not more than  
6 seven years, at which time the bank shall be subject to review in accord-  
7 ance with section 7, and amendments thereto, to determine whether the  
8 bank's charter shall be extended.

9 (e) Any amendment to the charter of a water bank must be approved  
10 by the chief engineer prior to adoption of the amendment.

11 Sec. 6. (a) On or before February 10 of each year, each water bank  
12 shall submit to the chief engineer a report containing the following:

13 (1) With regard to water rights or portions of water rights on deposit  
14 in the bank during the last year: (A) The total quantity of water authorized  
15 to be diverted annually pursuant to each such water right or portion of a  
16 water right; (B) the total quantity of water used, by purpose of use, and  
17 acres irrigated for the portion authorized to be used for irrigation, during  
18 the last year as a result of leases of such water rights or portions of water  
19 rights; and (C) the total quantity of water used, by purpose of use, and  
20 acres irrigated for the portion authorized for irrigation pursuant to such  
21 water rights or portions of water rights during the two years preceding  
22 the last year; and

23 (2) with regard to water in each safe deposit account in the bank: (A)  
24 An accounting of the total quantity of water placed in such accounts dur-  
25 ing the past year and a balance at year end; (B) the total quantity of water  
26 used during the past year, and acres irrigated if an irrigation water right,  
27 from the account; (C) the total quantity of water authorized to be diverted  
28 annually, the quantity actually used and the acres irrigated, if an irrigation  
29 water right, during the past year pursuant to the water rights or linked  
30 water rights related to such account; and (D) the total quantity of water  
31 used and acres irrigated pursuant to such water rights during the two  
32 years preceding the last year.

33 (b) The chief engineer may require owners of water rights deposited  
34 in a water bank, owners of water rights that have placed water in safety  
35 deposit accounts in a water bank and persons leasing water from a water  
36 bank to file annual water use reports at a date earlier than that provided  
37 by K.S.A. 82a-732, and amendments thereto.

38 (c) The report required by this section shall be in the form prescribed  
39 by the chief engineer.

40 Sec. 7. (a) Not later than five years after the establishment of a water  
41 bank, the director of the Kansas ~~geological survey~~ **water office** shall con-  
42 vene a team to evaluate the operation of the bank. The team shall consist  
43 of:

1 (1) The director of the Kansas ~~geological survey~~ **water office**, or the  
2 director's designee, who shall serve as chairperson of the team;

3 (2) ~~two~~ **the director of the Kansas geological survey, or the di-**  
4 **rector's designee;**

5 (3) **four** members who represent water right holders and water users  
6 who have used the bank's services, which members shall be selected by  
7 the governing body of the bank; ~~and~~

8 ~~(3) (4)~~ members selected by the chief engineer as follows: (A) ~~Two~~  
9 ~~members engaged in teaching or research at institutions of postsecondary~~  
10 ~~education in subjects involving water resources, including but not limited~~  
11 ~~to water resources engineering and hydrology;~~ (B) a **A** member who is

12 an economist with knowledge and experience in water resources; ~~(C) (B)~~  
13 one member having knowledge and experience in water law; ~~(D) (C)~~ two

14 members having knowledge and experience in water policy issues and  
15 residing outside the bank boundary, who shall represent the public in-  
16 terest; ~~(E) one~~ (5) **one** representative of each groundwater management  
17 district located in whole or in part within the bank boundary; ~~and (F) one~~  
18 **selected by the board of directors of such district; and**

19 (6) **one** representative of each water assurance district located in  
20 whole or in part within the bank boundary **selected by the board of**  
21 **directors of such district.**

22 (b) The staff of the Kansas ~~geological survey~~ **water office** shall pro-  
23 vide staff assistance to the evaluation team.

24 (c) Not more than one year after a team is convened pursuant to this  
25 section, the team shall submit a report of its evaluation and recommen-  
26 dations to the governor, the Kansas water office, the Kansas water au-  
27 thority, the secretary of agriculture, the chief engineer and the senate  
28 standing committee on energy and natural resources and the house stand-  
29 ing committee on environment, or the successors to such committees  
30 regarding:

31 (1) The operations and policies of the bank and whether they are  
32 consistent with the provisions of this act, the state water plan and all  
33 applicable statutes, rules and regulations, findings and orders of the chief  
34 engineer, groundwater management district policies and water assurance  
35 district operations plans;

36 (2) whether the operations of the bank are achieving the goals and  
37 objectives of water banking as set out in the state water plan and whether  
38 changes could be made to further those goals and objectives;

39 (3) whether the charter of the bank should be extended;

40 (4) the terms under which the bank's charter should be allowed to  
41 lapse, if the team recommends that the charter not be extended; ~~and~~

42 (5) **the bank's impact on the entire area of all hydrologic units**  
43 **any parts of which are encompassed in the bank's boundary; and**

1     **(6)** any other matters that the team determines relevant to the future  
2 of water banking in the state.

3     (d) Unless otherwise provided by law, the chief engineer, in accord-  
4 ance with the recommendations of the team, may extend the charter of  
5 the bank for an additional period not to exceed seven years or may allow  
6 the bank charter to lapse under the terms recommended by the team.

7     Sec. 8. Depositing a water right in a water bank or placement of  
8 water in a safe deposit account in a water bank shall constitute due and  
9 sufficient cause pursuant to K.S.A. 82a-718, and amendments thereto, for  
10 failure to use water for a lawful, beneficial use for the term of the deposit  
11 or the placement.

12     Sec. 9. The chief engineer may adopt rules and regulations to ad-  
13 minister and enforce the provisions of this act.

14     Sec. 10. (a) In addition to any other provision of this act or the Kansas  
15 water appropriation act, and subject to the provisions of subsection (b),  
16 the chief engineer may suspend the use of water under a term permit,  
17 an approved application for a permit to appropriate water for beneficial  
18 use, an appropriation right or a vested right, acquired pursuant to the  
19 provisions of the Kansas water appropriation act, for the failure to comply  
20 with the provisions of this act. The suspension may be for a defined period  
21 in a subsequent calendar year or years but does not include or prevent  
22 the enforcement of the terms, conditions and limitations of a water right  
23 or permit during the current year of use.

24     (b) The chief engineer shall suspend the use of water under a permit  
25 or water right pursuant to subsection (a) only upon notice and hearing in  
26 accordance with the provisions of the Kansas administrative procedure  
27 act.

28     (c) Orders of the chief engineer issued pursuant to this section are  
29 subject to review in accordance with the provisions of K.S.A. 2000 Supp.  
30 82a-1901, and amendments thereto.

31     Sec. 11. Each water bank shall pay all costs incurred by the division  
32 ~~and by the Kansas geological survey~~ for assistance and services provided  
33 pursuant to this act, including, but not limited to, costs for personnel  
34 necessary to provide such assistance and services.

35     Sec. 12. (a) There is hereby created in the state treasury the water  
36 resources cost fund. The chief engineer shall remit to the state treasurer  
37 all moneys received by the division to reimburse costs as required by  
38 section 11, and amendments thereto. Upon receipt, the state treasurer  
39 shall deposit the entire amount in the state treasury and credit it to the  
40 water resources cost fund.

41     (b) Moneys in the water resources cost fund shall be expended only  
42 for the division's costs of providing assistance and services as provided by  
43 this act.



1 (c) On or before the 10th of each month, the director of accounts  
2 and reports shall transfer from the state general fund to the water re-  
3 sources cost fund interest earnings based on:

4 (1) The average daily balance of moneys in the water resources cost  
5 fund for the preceding month; and

6 (2) the net earnings rate for the pooled money investment portfolio  
7 for the preceding month.

8 (d) All expenditures from the water resources cost fund shall be made  
9 in accordance with appropriation acts upon warrants of the director of  
10 accounts and reports issued pursuant to vouchers approved by the chief  
11 engineer for the purposes set forth in this section.

12 ~~Sec. 13. (a) There is hereby created in the state treasury the geolog-~~  
13 ~~ical survey cost fund. The director of the Kansas geological survey shall~~  
14 ~~remit to the state treasurer all moneys received by the geological survey~~  
15 ~~to reimburse costs as required by section 11, and amendments thereto.~~  
16 ~~Upon receipt, the state treasurer shall deposit the entire amount in the~~  
17 ~~state treasury and credit it to the geological survey cost fund.~~

18 ~~(b) Moneys in the geological survey cost fund shall be expended only~~  
19 ~~for the Kansas geological survey's costs of providing assistance and serv-~~  
20 ~~ices as provided by this act.~~

21 ~~(c) On or before the 10th of each month, the director of accounts~~  
22 ~~and reports shall transfer from the state general fund to the geological~~  
23 ~~survey cost fund interest earnings based on:~~

24 ~~(1) The average daily balance of moneys in the geological survey cost~~  
25 ~~fund for the preceding month; and~~

26 ~~(2) the net earnings rate for the pooled money investment portfolio~~  
27 ~~for the preceding month.~~

28 ~~(d) All expenditures from the geological survey cost fund shall be~~  
29 ~~made in accordance with appropriation acts upon warrants of the director~~  
30 ~~of accounts and reports issued pursuant to vouchers approved by the~~  
31 ~~director of the Kansas geological survey for the purposes set forth in this~~  
32 ~~section.~~

33 ~~Sec. 14. 13.~~ This act shall take effect and be in force from and after  
34 its publication in the statute book.

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