

Substitute for HOUSE BILL No. 2050

AN ACT concerning water; relating to certain fees and disbursement thereof; concerning certain water permits; amending K.S.A. 2008 Supp. 82a-708a, 82a-708b, 82a-714 and 82a-727 and repealing the existing sections.

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

New Section 1. (a) A term permit is a permit to appropriate water for a limited specified period of time in excess of six months. At the end of the specified time, or any authorized extension approved by the chief engineer, the permit shall be automatically dismissed, and any priority it may have had shall be forfeited. No water right shall be perfected pursuant to a term permit.

(b) Each application for a term permit to appropriate water shall be made on a form prescribed by the chief engineer and shall be accompanied by an application fee fixed by this section for the 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 |

On and after July 1, 2015, the application fee shall be set forth in 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 |

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

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

| Storage-Acre Feet | Fee |
|--------------------|--------------|
| 0 to 250..... | \$200 |
| More than 250..... | \$200 + \$20 |

On and after July 1, 2015, the application fee shall be set forth in the schedule below:

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

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

(d) Each application for a term permit pursuant to K.S.A. 2008 Supp. 82a-736, and amendments thereto, shall be accompanied by an application fee established by rules and regulations adopted by the chief engineer in an amount not to exceed \$400 for the five-year period covered by the permit.

(e) Notwithstanding the provisions of K.S.A. 82a-714, and amendments thereto, the applicant is not required to file a notice of completion of diversion works nor pay a field inspection fee. The chief engineer shall not conduct a field inspection of the diversion works required by statute

for purposes of certification nor issue a certificate of appropriation for a term permit.

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

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

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

Sec. 2. K.S.A. 2008 Supp. 82a-708a is hereby amended to read as follows: 82a-708a. (a) Any person may apply for a permit to appropriate water to a beneficial use, notwithstanding that the application pertains to the use of water by another, or upon or in connection with the lands of another. Any rights to the beneficial use of water perfected under such application shall attach to the lands on or in connection with which the water is used and shall remain subject to the control of the owners of the lands as in other cases provided by law.

(b) Except as otherwise provided in subsections (d), (e) and (f), each application for a permit to appropriate water, except applications for permits for domestic use, shall be accompanied by an application fee fixed by this section for the appropriate category of acre feet in accordance with the following:

| Acre Feet | Fee |
|---------------------|--|
| 0 to 100..... | \$100 \$200 |
| 101 to 320..... | \$150 \$300 |
| More than 320 | \$150 \$300 + \$10 \$20 for each additional 100 acre feet or any part thereof |

~~Commencing July 1, 2002, and ending June 30, 2010, On and after July 1, 2015,~~ the application fee shall be fixed by this section for the appropriate category of acre feet in accordance with the following:

| Acre Feet | Fee |
|---------------------|--|
| 0 to 100..... | \$200 \$100 |
| 101 to 320..... | \$300 \$150 |
| More than 320 | \$300 \$150 + \$20 \$10 for each additional 100 acre feet or any part thereof |

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

(c) Except as otherwise provided in subsections (d), (e) and (f), each application for a permit to appropriate water for storage, except applications for permits for domestic use, shall be accompanied by an application fee fixed by this section for the appropriate category of storage-acre feet in accordance with the following:

| Storage-Acre Feet | Fee |
|---------------------|--|
| 0 to 250..... | \$100 \$200 |
| More than 250 | \$100 \$200 + \$10 \$20 for each additional 250 storage-acre feet or any part thereof |

~~Commencing July 1, 2002, and ending June 30, 2010, On and after July 1, 2015,~~ the application fee shall be fixed by this section for the appropriate category of storage-acre feet in accordance with the following:

| | |
|---------------------|--|
| Storage-Acre Feet | Fee |
| 0 to 250..... | \$200 \$100 |
| More than 250 | \$200 \$100 + \$20 \$10 |
| | for each additional 250 storage-acre feet or any part thereof |

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

(d) Each application for a term permit pursuant to K.S.A. 2008 Supp. 82a-736, and amendments thereto, shall be accompanied by an application fee established by rules and regulations of the chief engineer in an amount not to exceed \$400 for the five-year period covered by the permit.

(e) For any application for a permit to appropriate water, except applications for permits for domestic use, which proposes to appropriate by both direct flow and storage, the fee charged shall be the fee under subsection (b) or subsection (c), whichever is larger, but not both fees.

(f) Each application for a permit to appropriate water for water power or dewatering purposes shall be accompanied by an application fee of \$100 plus \$200 for each 100 cubic feet per second, or part thereof, of the diversion rate requested in the application for the proposed project.

(g) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731 and amendments thereto.

Sec. 3. K.S.A. 2008 Supp. 82a-708b is hereby amended to read as follows: 82a-708b. (a) Any owner of a water right may change the place of use, the point of diversion or the use made of the water, without losing priority of right, provided such owner shall: (1) Apply in writing to the chief engineer for approval of any proposed change; (2) demonstrate to the chief engineer that any proposed change is reasonable and will not impair existing rights; (3) demonstrate to the chief engineer that any proposed change relates to the same local source of supply as that to which the water right relates; and (4) receive the approval of the chief engineer with respect to any proposed change. The chief engineer shall approve or reject the application for change in accordance with the provisions and procedures prescribed for processing original applications for permission to appropriate water. If the chief engineer disapproves the application for change, the rights, priorities and duties of the applicant shall remain unchanged. Any person aggrieved by an order or decision by the chief engineer relating to an application for change may petition for review thereof in accordance with the provisions of K.S.A. 2008 Supp. 82a-1901 and amendments thereto.

(b) Each application to change the place of use, the point of diversion or the use made of the water under this section shall be accompanied by the application fee set forth in the schedule below:

| | |
|--|-----------------------|
| (1) Application to change a point of diversion 300 feet or less | \$50 \$100 |
| (2) Application to change a point of diversion more than 300 feet..... | 100 200 |
| (3) Application to change the place of use..... | 100 200 |
| (4) Application to change the use made of water..... | 150 300 |

~~Commencing July 1, 2002, and ending June 30, 2010; On and after July 1, 2015,~~ the application fee shall be set forth in the schedule below:

| | |
|--|-----------------------|
| (1) Application to change a point of diversion 300 feet or less | \$100 \$50 |
| (2) Application to change a point of diversion more than 300 feet..... | 200 100 |
| (3) Application to change the place of use..... | 200 100 |
| (4) Application to change the use made of the water | 300 150: |

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

request. ~~Any application submitted which requests two of the types of changes set forth above shall be accompanied by a fee of \$150, or commencing July 1, 2002, and ending June 30, 2010, a fee of not to exceed \$300. Any application which requests three types of changes shall be accompanied by a fee of \$250, or commencing July 1, 2002, and ending June 30, 2010, a fee of not to exceed \$500.~~

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731 and amendments thereto.

Sec. 4. K.S.A. 2008 Supp. 82a-714 is hereby amended to read as follows: 82a-714. (a) Upon the completion of the construction of the works and the actual application of water to the proposed beneficial use within the time allowed, the applicant shall notify the chief engineer to that effect. The chief engineer or the chief engineer's duly authorized representative shall then examine and inspect the appropriation diversion works and, if it is determined that the appropriation diversion works have been completed and the appropriation right perfected in conformity with the approved application and plans, the chief engineer shall issue a certificate of appropriation in duplicate. The original of such certificate shall be sent to the owner and shall be recorded with the register of deeds in the county or counties wherein the point of diversion is located, as are other instruments affecting real estate, and the duplicate shall be made a matter of record in the office of the chief engineer.

(b) Not later than 60 days before the expiration of the time allowed in the permit to complete the construction of the appropriation diversion works or the time allowed in the permit to actually apply water to the proposed beneficial use, the chief engineer shall notify the permit holder by certified mail that any request for extension of such time must be filed with the chief engineer before the expiration of the time allowed in the permit.

(c) Unless the applicant requests an extension or the certificate has not been issued due to the applicant's failure to comply with reasonable requests for information or to allow the opportunity to examine and inspect the appropriation diversion works, as necessary for certification, the chief engineer shall certify an appropriation:

(1) Before July 1, 2004, if the time allowed in the permit to perfect the water right expired before July 1, 1999, except in those cases in which abandonment proceedings pursuant to K.S.A. 82a-718, and amendments thereto, are pending on July 1, 2004;

(2) before July 1, 2006, in such cases in which an abandonment proceeding was pending pursuant to K.S.A. 82a-718, and amendments thereto, on July 1, 2004; or

(3) not later than five years after the date the applicant notifies the chief engineer of the completion of construction of the works and the actual application of water to the proposed beneficial use within the time allowed, in all other cases.

If the chief engineer fails to issue a certificate within the time provided by this subsection, the applicant may request review, pursuant to K.S.A. 2008 Supp. 82a-1901 and amendments thereto, of the chief engineer's failure to act.

(d) Except for works constructed to appropriate water for domestic use, each notification to the chief engineer under subsection (a) shall be accompanied by a field inspection fee of ~~\$200 \$400, or commencing July 1, 2002, and ending June 30, 2010, on and after July 1, 2015, a fee of \$400 \$200, except that for applications filed on or after July 1, 2009, for works constructed for sediment control use and for evaporation from a groundwater pit for industrial use shall be accompanied by a field inspection fee of \$200.~~ Failure to pay the field inspection fee, after reasonable notice by the chief engineer of such failure, shall result in the permit to appropriate water being revoked, forfeiture of the priority date and revocation of any appropriation right that may exist.

(e) A request for an extension of time to: (1) Complete the diversion

works; or (2) perfect the water right, shall be accompanied by a fee of \$50, or commencing July 1, 2002, and ending June 30, ~~2010~~ 2015, a fee of \$100.

(f) A request to reinstate a water right or a permit to appropriate water which has been dismissed shall be filed with the chief engineer within 60 days of the date dismissed and shall be accompanied by a fee of \$100, or commencing July 1, 2002, and ending June 30, ~~2010~~ 2015, a fee of \$200.

(g) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.

Sec. 5. K.S.A. 2008 Supp. 82a-727 is hereby amended to read as follows: 82a-727. (a) Subject to existing water rights and the principle of beneficial use, the chief engineer may grant upon application made therefor temporary permits and extensions thereof to appropriate water in any case where the public interest in such water will not be unreasonably or prejudicially affected, except that the chief engineer shall not grant any such permit to appropriate fresh water in any case where other waters are available for the proposed use and the use thereof is technologically and economically feasible. No such temporary permit or any extension thereof shall be granted for a period of time in excess of six months. Each application submitted for a temporary permit or extension thereof shall be accompanied by an application fee of ~~\$100~~ \$200, or commencing on and after July 1, ~~2002~~ 2015, and ending June 30, ~~2010~~, a fee of ~~\$200~~ \$100.

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

(c) Nothing in this section shall be deemed to vest in the holder of any permit granted pursuant to provisions of this section any permanent right to appropriate water except as is provided by such permit.

(d) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731 and amendments thereto.

Sec. 6. K.S.A. 2008 Supp. 82a-708a, 82a-708b, 82a-714 and 82a-727 are hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.