

CHAPTER 142  
HOUSE BILL No. 2018

AN ACT concerning water; relating to providing procedures for acquisition of certain rural water districts' water supply and distribution systems by other rural water districts and providing procedures for the acquisition of the area within the boundaries of such districts by other rural water districts; relating to multi-year flex accounts for deposit of certain water under a water right; relating to disposition of certain fees pertaining to public water supply systems; amending K.S.A. 2004 Supp. 82a-647, 82a-736 and 82a-2101 and repealing the existing sections.

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

New Section 1. (a) As used in this section, unless the context clearly requires otherwise:

(1) "Acquired district" means a rural water district organized under K.S.A. 82a-612 et seq., and amendments thereto, that wishes to transfer its assets, liabilities and the area contained within its boundaries to another rural water district organized under K.S.A. 82a-612 et seq., and amendments thereto.

(2) "Acquiring district" means a rural water district organized under K.S.A. 82a-612 et seq., and amendments thereto, that wishes to receive from an acquired district, the acquired district's assets, liabilities and the area contained within the acquired district's boundaries.

(b) The board of directors of an acquiring district and the board of directors of an acquired district may enter into a memorandum of understanding containing, but not necessarily limited to, terms and conditions for: (1) The transfer to the acquiring district of control and ownership of the acquired district's water supply and distribution system, including all property, equipment, contracts, records, reports and funds; (2) continued service, at an agreed upon rate, by the acquiring district to customers served by such system; (3) assumption by the acquiring district of all of the revenue bond liability and other outstanding obligations of the acquired district; (4) establishment of a policy for connecting new customers to the acquired water distribution system; and (5) the acquisition by the acquiring district of the area within the acquired district's boundaries.

(c) The terms contained in a memorandum of understanding entered into pursuant to this act shall take effect by operation of law when: (1) The board of directors of the acquiring district and the board of directors of the acquired district each adopt a resolution approving such terms; (2) a copy of the memorandum of understanding is filed for public inspection in the office of the county clerk of each county where there is located any portion of the area served by the acquired district; (3) the board of directors of the acquired district causes notice of the approval of the terms of the memorandum of understanding, the reasons for such approval and a copy of the memorandum of understanding to be mailed to each participating member of the acquired district; (4) the board of directors of the acquired district causes to be published once in a newspaper or newspapers of general circulation in the areas served by the acquired district's water supply and distribution system notice of the approval of the memorandum of understanding and the reasons for such approval, together with a statement that the terms of the memorandum of understanding shall take effect unless there is presented to the board of directors of the acquired district a petition as provided by subsection (d); and (5) if a petition is presented as provided by subsection (d), a majority of the participating members of the acquired district approve the memorandum of understanding as provided by subsection (d).

(d) If, within 60 days after publication of notice pursuant to subsection (c), there is presented to the board of directors of the acquired district a written petition which is signed by participating members of the acquired district equal in number to not less than 10% of the total number of participating members of the acquired district according to the records of the acquired district and requests an election on whether the terms of the memorandum of understanding shall take effect, the board of directors of the acquired district shall call an election on the approval of the terms of such memorandum. The election may be held at a meeting called for that purpose or may be by mail ballot. If such an election is held, the terms of the memorandum of understanding shall not take effect unless they are approved by a majority of the participating members voting at

the election to approve such terms.

(e) Notwithstanding the provisions of K.S.A. 82a-629, and amendments thereto, an acquired district shall be dissolved whenever that district enters into a memorandum of understanding pursuant to this section, such memorandum shall take effect by operation of law pursuant to this section, and such memorandum provides for: (1) Total transfer of the acquired district's water supply and distribution system and all other assets of the acquired district; (2) continuation of water supply and distribution service to all customers of the acquired district; (3) assumption by an acquiring district of all revenue bond liability and all other obligations of the acquired district; (4) a policy for connecting new customers to the water supply and distribution system; and (5) acquisition by an acquiring district of the area within the acquired district's boundaries.

(f) At the time of the effective date of the acquisition, and unless otherwise provided by the memorandum of understanding: (1) All the property of the acquired district shall be combined and administered as one unit with that of the acquiring district, and the acquiring district shall thereupon be invested with all the property benefits, franchises and privileges of the acquired and acquiring districts and shall have all of the powers of rural water districts; (2) all revenue bonds, promissory notes or other liabilities theretofore incurred by the acquired district shall be paid in accordance with the terms thereof from revenues and facilities of both the acquired and acquiring districts; and (3) a copy of the memorandum of understanding and a map showing the boundaries of the consolidated rural water district shall be filed with the chief engineer and the secretary of state.

Sec. 2. K.S.A. 2004 Supp. 82a-647 is hereby amended to read as follows: 82a-647. (a) As an alternative to the procedure contained in K.S.A. ~~82a-630~~ 82a-646, and amendments thereto, the owners of land located in a rural water district who desire for their land to be released from such district and attached to a different district may proceed in accordance with this section. A petition to release such land shall be filed with the board of directors of the district in which such land is located. The petition shall:

- (1) Describe the land sought to be released;
- (2) state the name and number of the rural water district to which the owners seek to have such land attached; and
- (3) state that such release is sought conditioned upon the attachment thereof by such other rural water district.

Such petition shall be signed by at least 75% of the owners of the land affected. The ownership shall be determined by an enumeration of landowners taken from the tax rolls of the county in which the land is located.

Within 30 days of receipt of such petition the board of directors of the district shall call and hold a hearing on the advisability of granting such petition. The board shall give notice of such hearing in the same manner provided by K.S.A. ~~82a-640~~ 82a-646, and amendments thereto. On the date of such hearing, the board shall approve or disapprove such release based on its determination of the best interests of the district and the petitioning landowners.

(b) Following approval of such petition for release, a petition for attachment of such lands shall be filed with the board of directors of the district to which such land is sought to be attached. The petition shall:

- (1) Describe the land sought to be attached;
- (2) request that the owners thereof seek to have such land attached to the district; and
- (3) have attached to it a copy of the approval of release of such land by the board of directors of the district in which such land was conditionally released. Such petition shall be signed by at least 75% of the owners of the land affected. Ownership shall be determined by an enumeration of landowners taken from the tax rolls of the county in which the land is located.

Within 30 days of receipt of such petition the board of directors of the district shall call and hold a hearing on the advisability of granting such petition. Notice of such hearing shall be provided in the manner provided by K.S.A. ~~82a-640~~ 82a-646, and amendments thereto, by the board of directors. On the date of such hearing, the board shall approve or disapprove such attachment based on its determination of the best interests of the district and the petitioning landowners. If the board does not approve of such attachment, it shall notify the district from which release

had been sought, which district shall then declare such release to be void.

(c) If the district to which release is sought approves of the release of such lands and the district to which attachment is sought approves of attachment of such lands, copies of the approval of such action by the boards of directors of each district shall be transmitted to the chief engineer. Copies also shall be filed with the county clerk, who shall note the change of such district's boundaries.

(d) Nothing in this section shall be construed as limiting landowners from using the procedures for attachment or release of property otherwise provided in K.S.A. 82a-622 et seq., and amendments thereto.

Sec. 3. K.S.A. 2004 Supp. 82a-736 is hereby amended to read as follows: 82a-736. (a) As used in this section:

(1) "Base average usage" means: (A) The average amount of water actually used for a beneficial use under a groundwater water right during calendar years ~~1996 through 2000~~ 1992 through 2002, excluding any amount used in any such year in excess of the amount authorized by such water right; or (B) if the holder of a groundwater water right shows to the satisfaction of the chief engineer that the holder has implemented significant water conservation measures during calendar years ~~1996 through 2000~~ 1992 through 2002, the average amount of water actually used for a beneficial use under such right during the five calendar years immediately before the calendar year when such measures were implemented, excluding any amount used in any such year in excess of the amount authorized by such water right.

(2) "Chief engineer" means the chief engineer of the division of water resources of the department of agriculture.

(b) Any holder of a groundwater water right which has not been deposited or placed in a safe deposit account in a chartered water bank may establish a flex account where the holder may deposit, in advance, water from such water right for any five consecutive calendar years, subject to the following:

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

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

(3) the water right shall not have been abandoned and shall be in good standing, based on past water usage and compliance with the terms of the holder's permit and all applicable provisions of law and orders of the chief engineer; and

(4) the amount of water that shall be deposited in the account shall ~~be not exceed~~ 90% of the amount of the holder's base average usage times five.

(c) The chief engineer shall implement a program providing for the issuance of term permits to holders of groundwater water rights who have established flex accounts in accordance with this section. Such term permits shall authorize the use of water in a flex account at any time during the five consecutive calendar years for which the application for the term permit is made, without annual limits on such use. Application for any such term permit shall be filed not later than October 10, of the year preceding the first year for which the application is made.

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

(1) A separate term permit shall be required for each point of diversion.

(2) The quantity of water authorized for diversion shall be limited to the amount deposited pursuant to subsection (b)(4).

(3) The authorized place of use for the term permit shall not be greater than that authorized by the existing groundwater right.

(4) The chief engineer may establish, by rules and regulations, criteria for such term permits when the water right authorizes multiple points of diversion or multiple water rights authorize a single point of diversion or overlapping places of use.

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

(e) All costs of administration of this section shall be paid from fees for term permits provided for by this section. Any appropriation or trans-

fer from any fund other than the water appropriation certification fund for the purpose of paying such costs shall be repaid to the fund from which such appropriation or transfer is made. At the time of repayment, the secretary of agriculture shall certify to the director of accounts and reports the amount to be repaid and the fund to be repaid. Upon receipt of such certification, the director of accounts and reports shall promptly transfer the amount certified to the specified fund.

(f) The chief engineer shall submit a written report on the implementation of this section to the house standing committee on environment and the senate standing committee on natural resources on or before February 1 of each year.

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

Sec. 4. K.S.A. 2004 Supp. 82a-2101 is hereby amended to read as follows: 82a-2101. (a) On and after January 1, 2002, there is hereby imposed a clean drinking water fee at the rate of \$.03 per 1,000 gallons of water sold at retail by a public water supply system and delivered through mains, lines or pipes. Such fee shall be paid, administered, enforced and collected in the manner provided for the fee imposed by subsection (a)(1) of K.S.A. 82a-954, and amendments thereto. The price to the consumer of water sold at retail by any such system shall not include the amount of such fee.

(b) (1) A public water supply system may elect to opt out of the fee imposed by this section by notifying, before October 1, 2001, the Kansas water office and the department of revenue of the election to opt out. Except as provided by subsection (b)(2), such election shall be irrevocable. Such public water supply system shall continue to pay all applicable sales tax on direct and indirect purchases of tangible personal property and services purchased by such system.

(2) On and after January 1, 2005, any public water supply system which elected to opt out of the fee imposed by subsection (a) may elect to collect such fee as provided by subsection (a) and direct and indirect purchases of tangible personal property and services by such system shall be exempt from sales tax as provided by K.S.A. 79-3606, and amendments thereto. Such election shall be irrevocable.

(c) The director of taxation shall remit to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys received or collected from the fee imposed pursuant to this section. Upon receipt thereof, the state treasurer shall deposit the entire amount in the state treasury and credit ~~5/106~~ it as follows:

(1) *5/106 of such amount shall be credited to the state highway fund and the remainder to the state general fund; and*

(2) *on and after July 1, 2007, 5/106 of such amount shall be credited to the state highway fund and the remaining amount shall be credited to the state water plan fund created by K.S.A. 82a-951, and amendments thereto, for use as follows: (A) Not less than 15% shall be used to provide on-site technical assistance for public water supply systems, as defined in K.S.A. 65-162a, and amendments thereto, to aid such systems in conforming to responsible management practices and complying with regulations of the United States environmental protection agency and rules and regulations of the department of health and environment; and (B) the remainder shall be used to renovate and protect lakes which are used directly as a source of water for such public water supply systems, so long as where appropriate, watershed restoration and protection practices are planned or in place.*

(d) *The state conservation commission shall promulgate rules and regulations in coordination with the Kansas water office establishing the project application evaluation criteria for the use of such moneys under subsection (c)(2)(B).*

Sec. 5. K.S.A. 2004 Supp. 82a-647, 82a-736 and 82a-2101 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.