

HOUSE BILL No. 2111

By Committee on Water

Requested by Earl Lewis on behalf of the Kansas Department of Agriculture

1-28

1 AN ACT concerning water; relating to the Kansas conservation reserve
2 enhancement program; increasing the acreage cap for CREPs from
3 40,000 to 60,000 acres; clarifying the county acreage cap for CREPs
4 and that the last eligible offer for enrollment exceeding applicable
5 acreage caps may be approved; removing the limitation on acres
6 eligible for CREP enrollment based on expired federal contracts;
7 adding a general ineligibility criterion based on federal ineligibility;
8 allowing CREP contracts for dryland farming or limited irrigation for
9 water quantity goals; removing the prohibition on participation in
10 CREP for government-owned water rights; clarifying current CREP
11 criteria related to water right usage, sanctions and reporting; allowing
12 exceptions to eligibility criteria based on factors such as location in
13 high-priority water conservation areas, high-flow capacity wells,
14 circumstances like bankruptcy or probate and enrollment in other water
15 conservation programs; modifying the reporting requirements to cover
16 the preceding five years; amending K.S.A. 2-1933 and repealing the
17 existing section.

18

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

20 Section 1. K.S.A. 2-1933 is hereby amended to read as follows: 2-
21 1933. (a) As used in this section, "division" means the division of
22 conservation established within the Kansas department of agriculture in
23 K.S.A. 74-5,126, and amendments thereto.

24 (b) The division shall administer the conservation reserve
25 enhancement program (CREP) on behalf of the state of Kansas pursuant to
26 agreements with the United States department of agriculture for the
27 purpose of implementing beneficial water quality and water quantity
28 projects concerning *agricultural lands within* targeted watersheds to be
29 enrolled in CREP.

30 (c) There is hereby established in the state treasury the Kansas
31 conservation reserve enhancement program fund, which shall be
32 administered by the division. All expenditures from the Kansas
33 conservation reserve enhancement program fund shall be for the
34 implementation of CREP pursuant to agreements between the state of
35 Kansas and the United States department of agriculture. All expenditures

1 from such fund shall be made in accordance with appropriation acts upon
2 warrants of the director of accounts and reports issued pursuant to
3 vouchers approved by the secretary of agriculture or by the secretary's
4 designee.

5 (d) The division may request the assistance of other state agencies,
6 Kansas state university, local governments and private entities in the
7 implementation of CREP.

8 (e) The division may receive and expend moneys from the federal or
9 state government or private sources for the purpose of carrying out the
10 provisions of this section. All moneys received shall be remitted to the
11 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
12 amendments thereto. Upon receipt of each such remittance, the state
13 treasurer shall deposit the entire amount in the state treasury to the credit
14 of the Kansas conservation reserve enhancement program fund. The
15 division shall carry over unexpended moneys in the Kansas conservation
16 reserve enhancement program fund from one fiscal year to the next.

17 (f) The division may enter into cost-share contracts with landowners
18 that will result in fulfilling specific objectives of projects approved in
19 agreements between the United States department of agriculture and the
20 state of Kansas.

21 (g) The division shall administer all CREPs in Kansas subject to the
22 following criteria:

23 (1) The aggregate total number of acres enrolled in Kansas in all
24 CREPs shall not exceed ~~40,000~~ 60,000 acres, *except that the last eligible*
25 *offer for enrollment that will exceed the 60,000-acre cap may be approved;*

26 (2) ~~the number of acres eligible for enrollment in CREP in Kansas~~
27 ~~shall be limited to $\frac{1}{2}$ of the number of acres represented by federal~~
28 ~~contracts in the federal conservation reserve program that have expired in~~
29 ~~the prior year in counties within the particular CREP area, except that if~~
30 ~~federal law permits the lands enrolled in the CREP program to be used for~~
31 ~~agricultural purposes, such as planting agricultural commodities,~~
32 ~~including, but not limited to, grains, cellulosic or biomass materials,~~
33 ~~alfalfa, grasses or legumes, but not including cover crops, then the number~~
34 ~~of acres eligible for enrollment shall be limited to the number of acres~~
35 ~~represented by contracts in the federal conservation reserve program that~~
36 ~~have expired in the prior year in counties within the specific CREP area;~~

37 (3) ~~no more than 25% of the acreage in CREP may be in any one~~
38 ~~county, except that the last eligible offer to exceed the number of acres~~
39 ~~constituting a 25% acreage cap in any one county shall be approved~~
40 *the aggregate total number of acres enrolled in all CREPs in any one Kansas*
41 *county shall not exceed 25% of the statewide acreage cap set forth in*
42 *paragraph (1), except that the last eligible offer to exceed such cap in any*
43 *one county may be approved;*

1 ~~(4)(3)~~ no whole-field enrollments shall be accepted into a CREP
2 established for water quality purposes; and

3 ~~(5)~~ lands enrolled in the federal conservation reserve program as of
4 January 1, 2008;

5 (4) an acreage shall not be eligible for enrollment in CREP if it is
6 otherwise ineligible for enrollment under federal law.

7 ~~(h)-(1)~~ For a CREP established with the purpose of meeting water
8 quantity goals; If approved by the United States department of
9 agriculture, the division may, in accordance with subsection (i), approve a
10 CREP contract that allows for the establishment of native grasses, routine
11 grazing, dryland farming or limited irrigation practices for the purpose of
12 meeting water quantity goals.

13 (i) The division shall administer ~~such~~ each CREP established for the
14 purpose of meeting water quantity goals in accordance with the following
15 additional criteria: ~~(A) No water right that is owned by a governmental~~
16 ~~entity shall be purchased or retired by the state or federal government~~
17 ~~pursuant to CREP; and~~

18 ~~(B) only water rights in good standing are eligible for inclusion under~~
19 ~~CREP.~~

20 ~~(2) To be a water right in good standing:~~

21 ~~(A) At least 50% of the maximum annual quantity authorized to be~~
22 ~~diverted under the water right that has been used in any three years within~~
23 ~~the most recent five-year period preceding the submission for which~~
24 ~~irrigation water use reports are approved and made available by the~~
25 ~~division of water resources of the Kansas department of agriculture;~~

26 ~~(B) the water rights used for the acreage in CREP during the most~~
27 ~~recent five-year period preceding the submission for which irrigation water~~
28 ~~use reports are approved and made available by the division of water~~
29 ~~resources shall not have: (i) Exceeded the maximum annual quantity~~
30 ~~authorized to be diverted; and (ii) been the subject of enforcement~~
31 ~~sanctions by the division of water resources; and~~

32 ~~(C) the water right holder has submitted the required annual water use~~
33 ~~report required under K.S.A. 82a-732, and amendments thereto, for each~~
34 ~~of the most recent 10 years~~

35 (1) All acreage that is an authorized place of use of an irrigation
36 water right and is proposed to be enrolled in CREP shall have been
37 irrigated at a rate of not less than $\frac{1}{2}$ acre-foot per acre per year for three
38 out of the five years immediately preceding the year that the acreage is
39 offered for enrollment, as determined by the division;

40 (2) the water right or water rights used for the acreage proposed to
41 be enrolled in CREP shall not have been the subject of any sanctions or
42 penalties by the division of water resources that are in effect or pending
43 determination at the time that the acreage is offered for enrollment; and

1 (3) *the owner of the water right or water rights for which the acreage*
 2 *that is proposed to be enrolled in CREP is an authorized place of use or*
 3 *the water use correspondent for such water right shall have submitted the*
 4 *annual water use report required pursuant to K.S.A. 82a-732, and*
 5 *amendments thereto, for each of the most recent 10 years.*

6 ~~(i)~~~~(j)~~ *The secretary, in consultation with the commission and the*
 7 *Kansas farm service agency office, may grant exceptions to the eligibility*
 8 *criteria outlined in subsections (g)(1) and (g)(2) if the acreage proposed*
 9 *to be enrolled in CREP satisfies one or more of the following conditions:*

10 (1) *Is located in an area designated as a high-priority area for water*
 11 *conservation pursuant to K.S.A. 2024 Supp. 82a-1044, and amendments*
 12 *thereto;*

13 (2) *is an authorized place of use of a high flow capacity water well;*

14 (3) *is an authorized place of use of a water right that was not utilized*
 15 *in accordance with subsection (i)(1) within the timeframe referenced in*
 16 *subsection (i)(1) due to circumstances involving bankruptcy, probate or*
 17 *other legal matters, excluding those related to any enforcement sanctions*
 18 *or penalties by the division of water resources that are in effect or pending*
 19 *determination at the time that the acreage is offered for enrollment in*
 20 *CREP; or*

21 (4) *is an authorized place of use of a water right that is or has been*
 22 *enrolled in a water conservation program, including, but not limited to,*
 23 *the United States department of agriculture environmental quality*
 24 *incentives program or a water conservation area pursuant to K.S.A. 82a-*
 25 *745, and amendments thereto, or has been assigned a water quantity*
 26 *allocation pursuant to an intensive groundwater use control area*
 27 *designated in accordance with K.S.A. 82a-1036, and amendments thereto,*
 28 *or a local enhanced management area designated in accordance with*
 29 *K.S.A. 82a-1041, and amendments thereto.*

30 (k) (1) *The Kansas department of agriculture shall, at the beginning*
 31 *of each annual regular session of the legislature, submit a CREP report to*
 32 *the senate committee on agriculture and natural resources and the house*
 33 *committee on agriculture—~~at the beginning of each annual regular session~~*
 34 *of the legislature and natural resources, and any successor committees,*
 35 *containing a description of program activities for each CREP administered*
 36 *in the state—and including. Such report shall include:*

37 (A) *The acreage enrolled in CREP during ~~fiscal year 2008 through~~*
 38 *~~the most current fiscal year to date the preceding five years;~~*

39 (B) *the dollar amounts received and expended for CREP during ~~fiscal~~*
 40 *~~year 2008 through the most current fiscal year to date the preceding five~~*
 41 *~~years; and~~*

42 (C) *an assessment of ~~meeting whether~~ each of the program objectives*
 43 *identified in the agreement with the farm services agency; ~~and~~*

1 ~~(D) such other information specified by the Kansas department of~~
2 ~~agriculture has been met.~~

3 (2) For ~~a~~ each CREP established with the purpose of meeting water
4 quantity goals, the following *additional* information shall be included in
5 such annual report:

6 (A) The total *amount of water rights*, measured in acre-feet, ~~retired in~~
7 ~~CREP from fiscal year 2008 through the current fiscal year to date that~~
8 ~~was permanently retired in CREP during the preceding five years;~~

9 (B) the change in groundwater water levels in the CREP area during
10 ~~fiscal year 2008 through the most current fiscal year to date the preceding~~
11 ~~five years;~~

12 (C) the *total annual amount* of water usage in the CREP area ~~from~~
13 ~~fiscal year 2008 through the most current fiscal year to date during the~~
14 ~~preceding five years;~~ and

15 (D) the average *annual* water use, measured in acre-feet, ~~for each of~~
16 ~~the five years preceding enrollment for each water right enrolled under~~
17 ~~each water right for which an authorized place of use is enrolled in CREP~~
18 ~~during the preceding five years.~~

19 ~~(j)(l)~~ The Kansas department of agriculture shall submit a report on
20 the economic impact of each specific CREP to the senate committee on
21 agriculture and natural resources and the house ~~of representatives~~
22 committee on agriculture *and natural resources, and any successor*
23 *committees*, every five years, ~~beginning in 2017~~. The report shall include
24 economic impacts to businesses located within each specific CREP region.

25 Sec. 2. K.S.A. 2-1933 is hereby repealed.

26 Sec. 3. This act shall take effect and be in force from and after its
27 publication in the statute book.