

SENATE BILL No. 58

By Committee on Agriculture and Natural Resources

1-22

1 AN ACT concerning water; relating to multi-year flex accounts; modifying
2 the requirements for and authorized allocations from such accounts;
3 amending K.S.A. 2024 Supp. 82a-736 and repealing the existing
4 section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2024 Supp. 82a-736 is hereby amended to read as
8 follows: 82a-736. (a) ~~It is hereby recognized that an opportunity exists~~ *The*
9 *chief engineer is authorized to establish multi-year flex accounts to*
10 *improve water management by enabling multi-year flexibility in the use of*
11 *water authorized to be diverted under a groundwater water right, provided*
12 ~~that if~~ *such flexibility neither impairs existing water rights; nor increases*
13 *the total amount of water diverted, so that such flexibility has no long-term*
14 *negative effect on the source of supply. It is therefore declared necessary*
15 *and advisable to permit the establishment of multi-year flex accounts for*
16 *groundwater water rights, together with commensurate protections for*
17 *existing water rights and their source of supply.*

18 (b) As used in this section:

19 (1) ~~"Alternative base average usage" means an allocation based on~~
20 ~~net irrigation requirements calculated pursuant to subsection (c)(1)(D)(ii)~~
21 ~~that may be used in place of the base average usage.~~

22 (2) "Base water right" means a water right ~~under which an applicant~~
23 ~~applies to the chief engineer to establish a multi-year flex account and~~
24 ~~where all of the following conditions exist~~ *that is vested or has been*
25 *issued a certificate of appropriation and:*

26 (A) ~~The water right's~~ authorized source of supply is groundwater; ~~and~~

27 (B) the water right is not ~~currently the subject of~~ *to* a multi-year
28 allocation ~~due to a change approval that allows an expansion of the~~
29 ~~authorized place of use pursuant to any other program or order issued by~~
30 *the chief engineer;*

31 (C) *the water right is not subject to any order issued by the chief*
32 *engineer pursuant to K.S.A. 82a-703a, 82a-706b or 82a-717a, and*
33 *amendments thereto;*

34 (D) *neither the water right nor any portion thereof has been*
35 *deposited or placed in a safe deposit account in a chartered water bank;*

36 (E) *the water right is not deemed abandoned and is in compliance*

1 *with all provisions of any order of the chief engineer; and*

2 *(F) the chief engineer determines that no other conditions exist that*
3 *make establishment of a multi-year flex account for such water right*
4 *contrary to the public interest.*

5 ~~(3)(2) "Multi-year flex account" means a term permit for up to five~~
6 ~~years that suspends a base water right during its term, except when the~~
7 ~~term permit may be no longer exercised because of an order of the chief~~
8 ~~engineer, and is subject to the terms and conditions as provided in~~
9 ~~subsection (e).~~

10 ~~(4) "Base average usage" means:~~

11 ~~(A) The average amount of water actually diverted for the authorized~~
12 ~~beneficial use under the base water right during calendar years 2000-~~
13 ~~through 2009, excluding:~~

14 ~~(i) Any amount diverted in any such year that exceeded the amount~~
15 ~~authorized by the base water right;~~

16 ~~(ii) any amount applied to an unauthorized place of use; and~~

17 ~~(iii) diversions in calendar years when water was diverted under a~~
18 ~~multi-year allocation with an expansion of the authorized place of use due~~
19 ~~to a change approval;~~

20 ~~(B) if water use records are inadequate to accurately determine actual~~
21 ~~water use or upon demonstration of good cause by the applicant, the chief~~
22 ~~engineer may calculate the base average usage with less than all 10~~
23 ~~calendar years during 2000 and 2009. In no case shall the base average~~
24 ~~usage be calculated with less than five calendar years during 2000 and~~
25 ~~2009; or~~

26 ~~(C) if the holder of the base water right shows to the satisfaction of~~
27 ~~the chief engineer that water conservation reduced water use under the~~
28 ~~base water right during calendar years 2000 through 2009, then the base~~
29 ~~average usage shall be calculated with the five calendar years immediately~~
30 ~~before the calendar year when water conservation began.~~

31 ~~(5) "Chief engineer" means the chief engineer of the division of water~~
32 ~~resources of the department of agriculture.~~

33 ~~(6) "Flex account acreage" means the maximum number of acres~~
34 ~~lawfully irrigated during a calendar year, except for any acres irrigated~~
35 ~~under a multi-year allocation that allowed for an expansion of the~~
36 ~~authorized place of use due to a change approval and any of the following~~
37 ~~conditions are met:~~

38 ~~(A) The calendar year is 2000 through 2009;~~

39 ~~(B) if water conservation reduced water use under the base water~~
40 ~~right during calendar years 2000 through 2009, the calendar year is a year~~
41 ~~within the five calendar years immediately prior to the calendar year when~~
42 ~~water conservation began; or~~

43 ~~(C) if an application to appropriate water was approved after-~~

1 December 31, 2004, the calendar year is any during the perfection period
 2 and assigns a multi-year quantity allocation to such base water right in
 3 place of the base water right's annual quantity limitation for the duration
 4 of the term permit.

5 ~~(7)(3)~~ "Net irrigation requirement" means the net irrigation
 6 requirement for 50% chance rainfall of the county that corresponds with
 7 the location of the authorized place of use of the base water right—
 8 provided in K.A.R. 5-5-12, on the effective date of this act.

9 (c) ~~(1)~~ Except as provided in K.S.A. 2024 Supp. 82a-774 and section
 10 ~~1~~ of chapter 76 of the 2023 Session Laws of Kansas, and amendments
 11 thereto, any holder of a base water right that has not been deposited or
 12 placed in a safe deposit account in a chartered water bank *Any holder of a*
 13 *base water right* may establish a multi-year flex account where the holder
 14 may deposit, in advance, the authorized quantity of water from such *a*
 15 *base water right* for ~~any~~ *in advance for a period of up to* five consecutive
 16 calendar years, except when the chief engineer determines a shorter period
 17 is necessary for compliance with a local enhanced management area or an
 18 intensive groundwater use control area and the corrective controls in the
 19 area do not prohibit the use of multi-year flex accounts, and subject to all
 20 of the following:

21 ~~(A)~~ The water right must be vested or shall have been issued a
 22 certificate of appropriation;

23 ~~(B)~~ the withdrawal of water pursuant to the water right shall be
 24 properly and adequately metered;

25 ~~(C)~~ the water right is not deemed abandoned and is in compliance
 26 with the terms and conditions of its certificate of appropriation, all
 27 applicable provisions of law and orders of the chief engineer;

28 ~~(D)~~ *Each multi-year flex account shall meet the following*
 29 *requirements:*

30 *(1)* The amount of water deposited in the multi-year flex account
 31 shall not exceed ~~the greatest of the following:~~

32 ~~(i)~~ 500% of the base average usage;

33 ~~(ii)~~ 500% of the product of the annual net irrigation requirement
 34 multiplied by the ~~flex account base water right's authorized~~ acreage,
 35 multiplied by 110%, ~~but and such amount shall not greater than exceed~~
 36 five times the maximum annual quantity authorized by the base water
 37 right;

38 ~~(iii)~~ if the authorized place of use is located wholly within the
 39 boundaries of a groundwater management district, an amount that shall not
 40 increase the long-term average use of the groundwater right as specified by
 41 rule or regulation promulgated pursuant to K.S.A. 82a-1028(o), and
 42 amendments thereto; or

43 ~~(iv)~~ pursuant to subparagraph (F), the amount computed in (i), (ii) or

1 (iii) plus any deposited water remaining in a multi-year flex account up to
2 100% of the base average usage or alternative base average usage;

3 (E) if the multi-year flex account is approved for less than five
4 calendar years, the amount of water deposited in the multi-year flex
5 account shall be prorated based on the number of calendar years approved
6 and otherwise calculated as required by subsection (c)(1)(D)(i), (ii) or (iii);
7 and

8 (F) any deposited water remaining in a multi-year flex account up to
9 100% of the base average usage or alternative base average usage may be
10 added to the deposit amount calculated in subparagraph (D) if the base
11 water right is enrolled in another multi-year flex account during the
12 calendar year in which the existing multi-year flex account expires. The
13 total amount of water deposited in any multi-year flex account shall not
14 exceed 500% of the authorized quantity of the base water right.

15 (2) The provisions of K.A.R. 5-5-11 are limited to changes in annual
16 authorized quantity and shall not apply to this subsection.

17 (d) The chief engineer shall implement a program providing for the
18 issuance of term permits to holders of groundwater water rights who have
19 established flex accounts in accordance with this section. Such term
20 permits shall authorize the use of water in a flex account at any time
21 during the consecutive calendar years for which the application for the
22 term permit authorizing a multi-year flex account is made, without annual
23 limits on such use.

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

26 (1) A separate term permit shall be required for each point of
27 diversion authorized by the base water right.

28 (2) The quantity of water authorized for diversion shall be limited to
29 the amount deposited pursuant to subsection (c)(1)(D).

30 (3) The rate of diversion for each point of diversion authorized under
31 the term permit shall not exceed the rate of diversion for each point of
32 diversion authorized under the base water right.

33 (4) The authorized place of use shall be the place of use or a
34 subdivision of the place of use for the base water right. Any approval of an
35 application to change the place of use of the base water right shall
36 automatically result in a change to the place of use for the term permit.

37 (5) The point of diversion authorized by the term permit shall be
38 specified by referencing one point of diversion authorized by the base
39 water right at the time the multi-year flex account term permit application
40 is filed with the chief engineer or at the time any approvals changing such
41 referenced point of diversion of the base water right are approved during
42 the multi-year flex account period. For a base water right with multiple
43 points of diversion, each point of diversion authorized by a term permit

1 shall receive a specific assignment of a maximum authorized quantity of
2 water, assigned proportionately to the authorized annual quantities of the
3 respective points of diversion under the base water right.

4 ~~(6) The chief engineer may establish, by rules and regulations, criteria~~
5 ~~for such term permits.~~

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

11 ~~(f) A~~(2) *for each multi-year flex account that overlaps in place of*
12 *use with other water rights, including other multi-year flex accounts or*
13 *other term permits, the multi-year flex account's authorized quantity shall*
14 *be further limited by the net irrigation requirement for the common place*
15 *of use when combined with the quantities authorized by the overlapping*
16 *water rights or term permits;*

17 *(3) a separate multi-year flex account application shall be required*
18 *for each point of diversion authorized by the base water right;*

19 *(4) the authorized rate of diversion of each multi-year flex account*
20 *shall be the maximum authorized rate of diversion for the point of*
21 *diversion authorized by the base water right; and*

22 *(5) the authorized point of diversion and place of use shall be the*
23 *point of diversion and place of use for the base water right. Any approval*
24 *of an application to change the point of diversion or place of use of the*
25 *base water right shall automatically result in a change to the point of*
26 *diversion or place of use for the multi-year flex account.*

27 *(d) Each application for a multi-year flex account shall be filed with*
28 *the chief engineer on or before December 31 of the first year of the multi-*
29 *year flex account term for which the application is being made. Such*
30 *application shall be subject to the same fee required for other term permits*
31 *pursuant to K.S.A. 82a-708c, and amendments thereto.*

32 *(e) If there is deposited water remaining in a multi-year flex account*
33 *upon the expiration of such account's term, an amount of water not to*
34 *exceed the lesser of the annual net irrigation requirement for the base*
35 *water right's authorized acres or the base water right's authorized annual*
36 *quantity may be added to the deposit amount determined in paragraph (c)*

37 *(1) for a subsequent multi-year flex account term if such addition does not*
38 *result in the multi-year allocation for the subsequent multi-year flex*
39 *account term exceeding the base water right's authorized annual quantity*
40 *multiplied by the number of years of the subsequent multi-year flex*
41 *account term and the base water right is enrolled in the subsequent multi-*
42 *year flex account during the calendar year in which the existing multi-*
43 *year flex account term expires.*

1 (f) *Except as otherwise provided in this section, multi-year flex*
2 *accounts shall be subject to all provisions of the Kansas water*
3 *appropriation act and any rules and regulations adopted thereunder.*

4 (g) All costs of administration of this section shall be paid from fees
5 ~~for term permits provided for by this section~~ *the water appropriation*
6 *certification fund when moneys are available in such fund.* Any
7 appropriation or transfer from any fund other than the water appropriation
8 certification fund for the purpose of paying such costs shall be repaid to
9 the fund from where such appropriation or transfer is made. At the time of
10 repayment, the secretary of agriculture shall certify to the director of
11 accounts and reports the amount to be repaid and the fund to be repaid.
12 Upon receipt of such certification, the director of accounts and reports
13 shall promptly transfer the amount certified to the specified fund.

14 (h) ~~The fee for a multi-year flex account term permit shall be the~~
15 ~~same as specified for other term permits in K.S.A. 82a-708e, and~~
16 ~~amendments thereto.~~

17 (i) ~~The chief engineer shall have full authority pursuant to K.S.A.~~
18 ~~82a-706e, and amendments thereto, to require any additional measuring~~
19 ~~devices and any additional reporting of water use for term permits issued~~
20 ~~pursuant to this section. Failure to comply with any measuring or reporting~~
21 ~~requirement may result in a penalty, up to and including the revocation of~~
22 ~~the term permit and the suspension of the base water right for the duration~~
23 ~~of the term permit period may adopt rules and regulations to implement,~~
24 ~~administer and enforce this section.~~

25 (i) The chief engineer shall submit a written report on the
26 implementation of this section to the house standing ~~committee~~
27 ~~committees~~ on agriculture and natural resources *and water* and the senate
28 standing committee on ***agriculture and*** natural resources *or any successor*
29 *committees* on or before ~~February 1 of each year, 2028~~ ***January 15, 2029,***
30 *and every ~~three~~ four years thereafter.*

31 (j) This section shall be a part of and supplemental to the Kansas
32 water appropriation act.

33 Sec. 2. K.S.A. 2024 Supp. 82a-736 is hereby repealed.

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