

As Amended by House Committee

Session of 2012

HOUSE BILL No. 2516

By Committee on Agriculture and Natural Resources

1-24

1 AN ACT concerning water; relating to the Kansas water banking act;  
2 amending K.S.A. 2011 Supp. 82a-765, **82a-766** and 82a-767 and  
3 repealing the existing sections.  
4

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

6 Section 1. K.S.A. 2011 Supp. 82a-765 is hereby amended to read as  
7 follows: 82a-765. (a) Before a water bank is authorized to operate in the  
8 state, the bank's charter must be approved by the chief engineer. Prior to  
9 approval, the body wishing to charter the bank shall submit to the chief  
10 engineer the proposed bank charter and any other information required by  
11 rules and regulations of the chief engineer to determine whether the bank  
12 shall be chartered to operate in the state.

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

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

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

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

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

29 (5) the charter ensures that, for each calendar year, the aggregate  
30 amount of all bank deposits~~),~~ determined by multiplying the amount of  
31 each water right deposited by the length of time of the deposit and then  
32 adding together the resulting amounts for all deposits~~),~~ will equal or  
33 exceed the sum of the aggregate amount of water leased by the bank~~),~~  
34 determined by multiplying the amount of each lease by the length of time  
35 of the lease and then adding together the resulting amounts for all leases~~),~~  
36 plus the aggregate conservation element of all leases~~),~~ determined by

1 multiplying the conservation element of each lease by the length of the  
2 lease and then adding together the resulting amounts for all leases);

3 (6) the charter ensures that the operations of the bank will not result  
4 in impairment of existing water rights or an increase in depletion of  
5 severely depleted groundwater aquifers or stream courses;

6 (7) the charter ensures that the operations of the bank will result in a  
7 savings of 10% or more in the total amount of groundwater consumed for  
8 a representative past period pursuant to water rights deposited in the bank,  
9 excluding groundwater located in an intensive groundwater use control  
10 area where corrective control provisions have reduced the allocation of  
11 groundwater to less than the quantity previously authorized by water rights  
12 in the area;

13 (8) the charter provides a procedure for resolution of complaints by  
14 bank participants and others impacted by the bank policies, practices and  
15 operations;

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

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

21 (B) the method of determination shall not penalize past  
22 implementation of water conservation practices;

23 (10) the charter ensures that the total amount of groundwater leased  
24 each year from each hydrologic unit does not exceed 90% of the historic  
25 average annual amount collectively diverted pursuant to all deposited  
26 water rights or portions of water rights from such unit for a representative  
27 past period; and

28 (11) the charter provides a procedure for the dissolution of the bank,  
29 specifically stating how the remaining deposits and safe deposit accounts  
30 will be distributed.

31 ~~(c) Prior to July 1, 2002, not more than one water bank shall be~~  
32 ~~chartered to operate in the state. Such water bank shall be a groundwater~~  
33 ~~bank. On or after July 1, 2002, one additional water bank may be chartered~~  
34 ~~to operate in the state. Such water bank shall be a surface water bank or a~~  
35 ~~surface water and groundwater bank.~~

36 ~~(d)~~ A water bank shall be chartered for a *an initial* period of not more  
37 than seven years, at which time the bank shall be subject to review in  
38 accordance with K.S.A. 2011 Supp. 82a-767, and amendments thereto, to  
39 determine whether the bank's charter shall be ~~permanently extended~~ **initial**  
40 **charter shall lapse or the bank shall be chartered.**

41 ~~(e)~~ *(d)* Any amendment to the charter of a water bank must be  
42 approved by the chief engineer prior to adoption of the amendment.

43 **Sec. 2. K.S.A. 2011 Supp. 82a-766 is hereby amended to read as**

1 follows: 82a-766. (a) On or before ~~February 10~~ *April 15* of each year,  
2 each water bank shall submit to the chief engineer a report containing  
3 the following:

4 (1) With regard to water rights or portions of water rights on  
5 deposit in the bank during the last year: (A) The total quantity of  
6 water authorized to be diverted annually pursuant to each such water  
7 right or portion of a water right; (B) the total quantity of water used,  
8 by purpose of use, and acres irrigated for the portion authorized to be  
9 used for irrigation, during the last year as a result of leases of such  
10 water rights or portions of water rights; and (C) the total quantity of  
11 water used, by purpose of use, and acres irrigated for the portion  
12 authorized for irrigation pursuant to such water rights or portions of  
13 water rights during the two years preceding the last year; and

14 (2) with regard to water in each safe deposit account in the bank:  
15 (A) An accounting of the total quantity of water placed in such  
16 accounts during the past year and a balance at year end; (B) the total  
17 quantity of water used during the past year, and acres irrigated if an  
18 irrigation water right, from the account; (C) the total quantity of  
19 water authorized to be diverted annually, the quantity actually used  
20 and the acres irrigated, if an irrigation water right, during the past  
21 year pursuant to the water rights or linked water rights related to  
22 such account; and (D) the total quantity of water used and acres  
23 irrigated pursuant to such water rights during the two years  
24 preceding the last year.

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

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

33 Sec. 2. 3. K.S.A. 2011 Supp. 82a-767 is hereby amended to read as  
34 follows: 82a-767. (a) Not later than five years after the establishment of a  
35 water bank *or pursuant to subsection (e)*, the director of the Kansas water  
36 office shall convene a team to evaluate the operation of the bank. The team  
37 shall consist of:

38 (1) The director of the Kansas water office, or the director's designee,  
39 who shall serve as chairperson of the team;

40 (2) the director of the Kansas geological survey, or the director's  
41 designee;

42 (3) two members who represent water right holders and water users  
43 who have used the bank's services, which members shall be selected by the

1 governing body of the bank;

2 (4) members selected by the chief engineer as follows: (A) Two  
3 members engaged in teaching or research at institutions of postsecondary  
4 education in subjects involving water resources, including but not limited  
5 to water resources engineering and hydrology; (B) a member who is an  
6 economist with knowledge and experience in water resources; (C) one  
7 member having knowledge and experience in water law; and (D) two  
8 members having knowledge and experience in water policy issues and  
9 residing outside the bank boundary, who shall represent the public interest;

10 (5) one representative of each groundwater management district  
11 located in whole or in part within the bank boundary selected by the board  
12 of directors of such district; and

13 (6) one representative of each water assurance district located in  
14 whole or in part within the bank boundary selected by the board of  
15 directors of such district.

16 (b) The staff of the Kansas water office shall provide staff assistance  
17 to the evaluation team.

18 (c) Not more than one year after a team is convened pursuant to this  
19 section, the team shall submit a report of its evaluation and  
20 recommendations to the governor, the Kansas water office, the Kansas  
21 water authority, the secretary of agriculture, the chief engineer and the  
22 senate standing committee on natural resources and the house standing  
23 committee on environment, or the successors to such committees  
24 regarding:

25 (1) The operations and policies of the bank and whether they are  
26 consistent with the provisions of this act, the state water plan and all  
27 applicable statutes, rules and regulations, findings and orders of the chief  
28 engineer, groundwater management district policies and water assurance  
29 district operations plans;

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

33 (3) *the bank's impact on the entire area of all hydrologic units, any*  
34 *parts of which are encompassed in the bank's boundary;*

35 (4) *any other matters the team determines relevant to the future of*  
36 *water banking in the state;*

37 ~~(3) (5) whether the charter of the bank should be permanently~~  
38 ~~extended lapse, or the bank should become chartered; and~~

39 ~~(4) (6) the terms under which the bank's charter should be allowed to~~  
40 ~~lapse, if the team recommends that the charter not be extended;~~

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

43 ~~(6) any other matters that the team determines relevant to the future~~

1 of water banking in the state.

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

7 (e) ~~If a bank charter is made permanent~~ **is chartered**, such charter  
8 shall be subject to review not less than every five years by a team  
9 convened as prescribed in subsection (a). ~~Such~~ **The review** team shall  
10 submit a report on the matters listed in subsections (c)(1) through (c)(4).

11 ~~Sec.-3.~~ **4.** K.S.A. 2011 Supp. 82a-765, **82a-766** and 82a-767 are  
12 hereby repealed.

13 ~~Sec.-4.~~ **5.** This act shall take effect and be in force from and after its  
14 publication in the statute book.

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