

As Amended by House Committee

Session of 2012

SENATE BILL No. 310

By Committee on Natural Resources

1-19

1 AN ACT concerning water; relating to local enhanced management areas;
2 groundwater management districts.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Whenever a groundwater management district
6 recommends the approval of a local enhanced management plan within the
7 district to address any of the conditions set forth in subsections (a) through
8 (d) of K.S.A. 82a-1036, and amendments thereto, the chief engineer shall
9 review the local enhanced management plan submitted by the groundwater
10 management district. The chief engineer's review shall be limited to
11 whether the plan:

- 12 (1) Proposes clear geographic boundaries;
13 (2) pertains to an area wholly within the groundwater management
14 district;
15 (3) proposes goals and corrective control provisions as provided in
16 subsection (f) adequate to meet the stated goals;
17 (4) includes a compliance monitoring and enforcement element; and
18 (5) is consistent with state law.

19 If, based on such review, the chief engineer finds that the local
20 enhanced management plan is acceptable for consideration, the chief
21 engineer shall initiate, as soon as practicable thereafter, proceedings to
22 designate a local enhanced management area.

23 (b) In any case where proceedings to designate a local enhanced
24 management area are initiated, the chief engineer shall conduct an initial
25 public hearing on the question of designating such an area as a local
26 enhanced management area according to the local enhanced management
27 plan. The initial public hearing shall resolve the following findings of fact:

- 28 (1) Whether one or more of the circumstances specified in subsection
29 (a) through (d) of K.S.A. 82a-1036, and amendments thereto, exist;
30 (2) whether the public interest of K.S.A. 82a-1020, and amendments
31 thereto, requires that one or more corrective control provisions be adopted;
32 and
33 (3) whether the geographic boundaries are reasonable.

34 The chief engineer shall conduct a subsequent hearing or hearings only
35 if the initial public hearing is favorable on all three issues of fact and the
36 expansion of geographic boundaries is not recommended. At least 30 days

1 prior to the date set for any hearing, written notice of such hearing shall
2 be given to every person holding a water right of record within the area in
3 question and by one publication in any newspaper of general circulation
4 within the area in question. The notice shall state the question and shall
5 denote the time and place of the hearing. At every such hearing,
6 documentary and oral evidence shall be taken and a complete record of the
7 same shall be kept. **The cost of the initial public hearing and any**
8 **subsequent hearings may be paid by the groundwater management**
9 **district.**

10 (c) The subject matter of the hearing or hearings set forth in
11 subsection (b) shall be limited to the local enhanced management plan that
12 the chief engineer previously reviewed pursuant to subsection (a) and set
13 for hearing.

14 (d) Within 120 days of the conclusion of the final public hearing set
15 forth in subsections (b) and (c), the chief engineer shall issue an order of
16 decision:

17 (1) Accepting the local enhanced management plan as sufficient to
18 address any of the conditions set forth in subsections (a) through (d) of
19 K.S.A. 82a-1036, and amendments thereto;

20 (2) rejecting the local enhanced management plan as insufficient to
21 address any of the conditions set forth in subsections (a) through (d) of
22 K.S.A. 82a-1036, and amendments thereto;

23 (3) returning the local enhanced management plan to the groundwater
24 management district, giving reasons for the return and providing the
25 district with the opportunity to resubmit a revised plan for public hearing
26 within 90 days of the return of the deficient plan; or

27 (4) returning the local enhanced management plan to the groundwater
28 management district and proposing modifications to the plan, based on
29 testimony at the hearing or hearings, that will improve the administration
30 of the plan, but will not impose reductions in groundwater withdrawals
31 that exceed those contained in the plan. If the groundwater management
32 district approves of the modifications proposed by the chief engineer, the
33 district shall notify the chief engineer within 90 days of receipt of return of
34 the plan. Upon receipt of the groundwater management district's approval
35 of the modifications, the chief engineer shall accept the modified local
36 management plan. If the groundwater management district does not
37 approve of the modifications proposed by the chief engineer, the local
38 management plan shall not be accepted.

39 (e) In any case where the chief engineer issues an order of decision
40 accepting the local enhanced management plan pursuant to subsection (d),
41 the chief engineer, within a reasonable time, shall issue an order of
42 designation that designates the area in question as a local enhanced
43 management area.

1 (f) The order of designation shall define the boundaries of the local
2 enhanced management area and shall indicate the circumstances upon
3 which the findings of the chief engineer are made. The order of
4 designation may include any of the following corrective control provisions
5 set forth in the local enhanced management plan:

6 (1) Closing the local enhanced management area to any further
7 appropriation of groundwater. In which event, the chief engineer shall
8 thereafter refuse to accept any application for a permit to appropriate
9 groundwater located within such area;

10 (2) determining the permissible total withdrawal of groundwater in
11 the local enhanced management area each day, month or year, and, insofar
12 as may be reasonably done, the chief engineer shall apportion such
13 permissible total withdrawal among the valid groundwater right holders in
14 such area in accordance with the relative dates of priority of such rights;

15 (3) reducing the permissible withdrawal of groundwater by any one
16 or more appropriators thereof, or by wells in the local enhanced
17 management area;

18 (4) requiring and specifying a system of rotation of groundwater use
19 in the local enhanced management area; or

20 (5) any other provisions making such additional requirements as are
21 necessary to protect the public interest.

22 The chief engineer is hereby authorized to delegate the enforcement of
23 any corrective control provisions ordered for a local enhanced
24 management area to the groundwater management district in which that
25 area is located, upon written request by the district.

26 (g) The order of designation shall follow, insofar as may be
27 reasonably done, the geographical boundaries recommended by the local
28 enhanced management plan.

29 (h) Except as provided in subsection (f), the order of designation of a
30 local enhanced management area shall be in full force and effect from the
31 date of its entry in the records of the chief engineer's office unless and
32 until its operation shall be stayed by an appeal from an order entered on
33 review of the chief engineer's order pursuant to K.S.A. 2011 Supp. 82a-
34 1901, and amendments thereto, and in accordance with the provisions of
35 the Kansas judicial review act. The chief engineer upon request shall
36 deliver a copy of such order to any interested person who is affected by
37 such order and shall file a copy of the same with the register of deeds of
38 any county within which any part of the local enhanced management area
39 lies.

40 (i) If the holder of a groundwater right within the local enhanced
41 management area applies for review of the order of designation pursuant to
42 K.S.A. 2011 Supp. 82a-1901, and amendments thereto, the provisions of
43 the order with respect to the inclusion of the holder's water right within the

1 area may be stayed in accordance with the Kansas administrative
2 procedure act.

3 (j) Unless otherwise specified in the proposed enhanced management
4 plan and included in the order of designation, a public hearing to review
5 the designation of a local enhanced management area shall be conducted
6 by the chief engineer within seven years after the order of designation is
7 final. A subsequent review of the designation shall occur within 10 years
8 after the previous public review hearing or more frequently as determined
9 by the chief engineer. Upon the request of a petition signed by at least 10%
10 of the affected water users in a local enhanced management area, a public
11 review hearing to review the designation shall be conducted by the chief
12 engineer. This requested public review hearing shall not be conducted
13 more frequently than every four years. **The cost of public review**
14 **hearings under this subsection may be paid by the local enhanced**
15 **management area.**

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

18 (l) The provisions of this section shall be part of and supplemental to
19 the provisions of K.S.A. 82a-1020 through K.S.A. 82a-1040, and
20 amendments thereto.

21 Sec. 2. This act shall take effect and be in force from and after its
22 publication in the Kansas register.