

Substitute for HOUSE BILL No. 2051

By Committee on Agriculture and Natural Resources

2-19

Proposed Amendments for Sub for HB 2051  
March 21, 2013  
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Office of the Revisor of Statutes

SEN. NATURAL RESOURCES

Date 3-22-13  
Attachment # 1-1

1 AN ACT concerning water; ~~relating to streams, dams and obstructions~~  
2 relating to water rights; ~~relating to water flex accounts~~ amending  
3 ~~K.S.A. 82a-307 and K.S.A. 2012 Supp. [82a-301, 82a-302, 82a-303b,~~  
4 ~~82a-326, 82a-736 and] 82a-1901 and repealing the existing [sections,~~  
5 ~~also repealing K.S.A. 24-105, 24-107, 82a-312, 82a-313 and 82a-314~~  
6 ~~and K.S.A. 2012 Supp. 24-106, 74-509, 82a-307a, 82a-326a and 82a-~~  
7 ~~734.~~

section

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

9 New Section 1. (a) Subject to existing water rights and the principle  
10 of beneficial use, the chief engineer may grant, upon application made  
11 therefor, limited transfer permits to authorize the use of up to 4,000,000  
12 gallons from an existing water right. The term of such limited transfer  
13 permit will be limited to a single calendar year. Each application submitted  
14 for a limited transfer permit shall be on a form prescribed by the chief  
15 engineer and accompanied by an application fee of \$200.

16 (b) (1) If the base water right is groundwater, the use of water can be  
17 transferred to another well within the same source of supply within two  
18 miles.  
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20 (2) If the base water right is surface water, the use can be transferred  
21 to another surface water use within the same surface water system.

22 (c) The chief engineer shall adopt rules and regulations to effectuate  
23 and administer the provisions of this section. Such rules and regulations  
24 shall require that there is no increase in consumptive use enabled by the  
25 transfer permit, prescribe necessary recordkeeping and reporting  
26 requirements, prevent impairment of existing rights and address any other  
27 matter deemed necessary by the chief engineer to protect the public  
28 interest.

29 (d) Nothing in this section shall be deemed to vest in the holder of  
30 any permit granted pursuant to provisions of this section any permanent  
31 right to appropriate water except as is provided by such permit.

32 (e) All fees collected by the chief engineer pursuant to this section  
33 shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and  
34 amendments thereto.

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

1 [Sec. 2, K.S.A. 2012 Supp. 82a-301 is hereby amended to read as  
 2 follows: 82a-301. (a) (1) Except as provided in subsection (c) and (d),  
 3 without the prior written consent or permit of the chief engineer of the  
 4 division of water resources of the Kansas department of agriculture, it  
 5 shall be unlawful for any person, partnership, association, corporation or  
 6 agency or political subdivision of the state government to: (1)

7 (4) Construct, modify or add to any dam or other water obstruction;  
 8 (2)(B) make, construct, modify or permit to be made or constructed  
 9 any change in any dam or other water obstruction in a  
 10 designated stream;

11 (2) make or permit to be made any change in or addition to any existing  
 12 water obstruction; or

13 (4)(C) change or diminish the course, current or cross section of any  
 14 designated stream within this state.

15 (2) Any application for any permit or consent shall be made in  
 16 writing in such form as specified by the chief engineer.

17 (3) Lettice or Revetments for the purpose of stabilizing a cutting bank  
 18 which are properly placed shall not be construed as obstructions for the  
 19 purposes of this section.

20 (b) As used in K.S.A. 82a-301 et seq, and amendments thereto:

21 (1) "Dam" means any artificial barrier including appurtenant works  
 22 with the ability to impound water, waste water or other liquids that has a  
 23 height of 25 feet or more; or has a height of six feet or greater and also has  
 24 the capacity to impound a storage volume at the top of the dam elevation  
 25 of 50 or more acre feet. The height of a dam or barrier shall be determined  
 26 as follows: (1) A barrier or dam that extends across the natural bed of a  
 27 stream or watercourse shall be measured from the down stream toe of the  
 28 barrier or dam to the top of the barrier or dam; or (2) a barrier or dam that  
 29 does not extend across a stream or watercourse shall be measured from the  
 30 lowest elevation of the outside limit of the barrier or dam to the top of the  
 31 barrier or dam measured from the lowest elevation of the streambed,  
 32 downstream toe or outside limit of the dam to the elevation of the top of  
 33 the dam.

34 (2) "Designated stream" means a natural or man-made channel that  
 35 conveys drainage or runoff from a watershed having an area of:

36 (A) One or more square miles in zone one, which includes all  
 37 geographic points located in or east of Washington, Clay, Dickinson,  
 38 Marion, Harvey, Sedgwick or Sumner counties;

39 (B) two or more square miles in zone two, which includes all  
 40 geographic points located west of zone one and in or east of Smith,  
 41 Osborne, Russell, Barton, Stafford, Pratt or Barber counties; or

42 (C) three or more square miles in zone three, which includes all  
 43 geographic points located west of zone two]

~~Same as specified for other term permits in K.S.A. 82a-708c, and amendments thereto, except as follows:~~

~~(1) If the base water right is currently suspended due to the issuance of a two-year term permit in a designated drought emergency area for 2011 and 2012, then a holder of such term permit shall be subject to a \$200 application fee for a multi-year flex-account term permit if the application is filed on or before July 15, 2012; or~~

~~(2) if water use under the authority of the base water right exceeded the maximum annual quantity authorized by the base water right during 2011 and the holder of the base water right files an application for approval of a multi-year flex-account term permit on or before July 15, 2012, then the application fee shall be \$600.~~

~~(i) Any holder of a groundwater base water right that has participated for the full five years in the multi-year flex-account program that re-enrolls the same groundwater base water right in a succeeding contiguous multi-year flex-account shall be credited with water not used under the preceding multi-year flex-account, during the succeeding multi-year flex-account. Such credit shall not exceed 1/3 of the amount of water calculated pursuant to subsection (c)(1)(D).~~

~~(f) The chief engineer shall have full authority pursuant to K.S.A. 82a-706c, and amendments thereto, to require any additional measuring devices and any additional reporting of water use for term permits issued pursuant to this section. Failure to comply with any measuring or reporting requirement may result in a penalty, up to and including the revocation of the term permit and the suspension of the base water right for the duration of the term permit period.~~

~~(g)(4) The chief engineer shall submit a written report on the implementation of this section to the house standing committee on agriculture and natural resources and the senate standing committee on natural resources on or before February 1 of each year.~~

~~(h)(1) This section shall be part of and supplemental to the Kansas water appropriation act.~~

~~Sec. [8] K.S.A. 2012 Supp. 82a-1901 is hereby amended to read as follows: 82a-1901. (a) Orders of the chief engineer of the division of water resources of the department of agriculture pursuant to K.S.A. 42-703, 42-722, 42-722a, 82a-708b, 82a-711, 82a-718 and 82a-1038, and K.S.A. 2012 Supp. 82a-1041, and amendments thereto, and failure of the chief engineer to act pursuant to K.S.A. 82a-714, and amendments thereto, shall be subject to review in accordance with the provisions of the Kansas administrative procedure act.~~

~~Such review shall be conducted by the secretary of agriculture or a presiding officer from the office of administrative hearings within the department of administration. The secretary of agriculture shall not have~~

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1 the authority otherwise to designate a presiding officer to conduct such  
2 review unless at the party's request pursuant to K.S.A. 75-37,121, and  
3 amendments thereto.

4 (b) The order of the secretary of agriculture or the administrative law  
5 judge or presiding officer upon review pursuant to subsection (a) shall be a  
6 final order under the Kansas administrative procedure act. Such order shall  
7 not be subject to reconsideration pursuant to K.S.A. 77-529, and  
8 amendments thereto, and shall be subject to review in accordance with the  
9 Kansas judicial review act.

10 (c) This act shall not affect any administrative proceeding pending  
11 before the chief engineer of the division of water resources of the  
12 department of agriculture, the secretary of agriculture or any  
13 administrative hearing officer on July 1, 1999, and such matter shall  
14 proceed as though no change in the law had been made with regard to such  
15 proceeding.

16 Sec. ~~19~~ ~~K.S.A. 24-105, 24-107, 82a-307, 82a-312, 82a-313 and 82a-~~  
17 ~~314 and~~ ~~K.S.A. 2012 Supp. 24-106, 74-509, 82a-301, 82a-302, 82a-303b,~~  
18 ~~82a-307a, 82a-326, 82a-326a, 82a-735 and 82a-736 and~~ hereby repealed.

19 Sec. ~~140~~ This act shall take effect and be in force from and after its  
20 publication in the statute book.

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82a-1901 is

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