

HOUSE BILL No. 2121

By Committee on Agriculture and Natural Resources

1 AN ACT concerning water; relating to well spacing requirements for users
2 of water; amending K.S.A. 2012 Supp. 82a-708a, 82a-708b, 82a-708c
3 and 82a-711 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2012 Supp. 82a-708a is hereby amended to read as
7 follows: 82a-708a. (a) Any person may apply for a permit to appropriate
8 water to a beneficial use, notwithstanding that the application pertains to
9 the use of water by another, or upon or in connection with the lands of
10 another. Any rights to the beneficial use of water perfected under such
11 application shall attach to the lands on or in connection with which the
12 water is used and shall remain subject to the control of the owners of the
13 lands as in other cases provided by law.

14 (b) Except as otherwise provided in subsections (d), (e) and (f), each
15 application for a permit to appropriate water, except applications for
16 permits for domestic use, shall be accompanied by an application fee fixed
17 by this section for the appropriate category of acre feet in accordance with
18 the following:

19 Acre Feet	Fee
20 0 to 100.....	\$200
21 101 to 320.....	\$300
22 More than 320.....	\$300 + \$20
23	for each additional 100
24	acre feet or any part thereof

25 On and after July 1, 2015, the application fee shall be fixed by this
26 section for the appropriate category of acre feet in accordance with the
27 following:

28 Acre Feet	Fee
29 0 to 100.....	\$100
30 101 to 320.....	\$150
31 More than 320.....	\$150 + \$10
32	for each additional 100
33	acre feet or any part thereof

34 The chief engineer shall render a decision on such permit applications
35 within 150 days of receiving a complete application except when the
36 application cannot be processed due to the standards established in K.A.R.

1 5-3-4c. Upon failure to render a decision within 180 days of receipt of a
 2 complete application, the application fee is subject to refund upon request.

3 (c) Except as otherwise provided in subsections (d), (e) and (f), each
 4 application for a permit to appropriate water for storage, except
 5 applications for permits for domestic use, shall be accompanied by an
 6 application fee fixed by this section for the appropriate category of
 7 storage-acre feet in accordance with the following:

8 Storage-Acre Feet	Fee
9 0 to 250.....	\$200
10 More than 250.....	\$200 + \$20
11	for each additional 250
12	storage-acre feet or any part thereof

13 On and after July 1, 2015, the application fee shall be fixed by this
 14 section for the appropriate category of storage-acre feet in accordance with
 15 the following:

16 Storage-Acre Feet	Fee
17 0 to 250.....	\$100
18 More than 250.....	\$100 + \$10
19	for each additional 250
20	storage-acre feet or any part thereof

21 The chief engineer shall render a decision on such permit applications
 22 within 150 days of receiving a complete application except when the
 23 application cannot be processed due to the standards established in K.A.R.
 24 5-3-4c. Upon failure to render a decision within 180 days of receipt of a
 25 complete application, the application fee is subject to refund upon request.

26 (d) Each application for a term permit pursuant to K.S.A. 2012 Supp.
 27 82a-736, and amendments thereto, shall be accompanied by an application
 28 fee established by rules and regulations of the chief engineer in an amount
 29 not to exceed \$400 for the five-year period covered by the permit.

30 (e) For any application for a permit to appropriate water, except
 31 applications for permits for domestic use, which proposes to appropriate
 32 by both direct flow and storage, the fee charged shall be the fee under
 33 subsection (b) or subsection (c), whichever is larger, but not both fees.

34 (f) Each application for a permit to appropriate water for water power
 35 or dewatering purposes shall be accompanied by an application fee of
 36 \$100 plus \$200 for each 100 cubic feet per second, or part thereof, of the
 37 diversion rate requested in the application for the proposed project.

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

41 (h) *An application made pursuant to this section must comply with*
 42 *the well spacing requirements as provided in subsection (d) of K.S.A. 82a-*
 43 *711, and amendments thereto.*

1 Sec. 2. K.S.A. 2012 Supp. 82a-708b is hereby amended to read as
 2 follows: 82a-708b. (a) Any owner of a water right may change the place of
 3 use, the point of diversion or the use made of the water, without losing
 4 priority of right, provided such owner shall: (1) Apply in writing to the
 5 chief engineer for approval of any proposed change; (2) demonstrate to the
 6 chief engineer that any proposed change is reasonable and will not impair
 7 existing rights; (3) demonstrate to the chief engineer that any proposed
 8 change relates to the same local source of supply as that to which the water
 9 right relates; and (4) receive the approval of the chief engineer with
 10 respect to any proposed change. The chief engineer shall approve or reject
 11 the application for change in accordance with the provisions and
 12 procedures prescribed for processing original applications for permission
 13 to appropriate water. If the chief engineer disapproves the application for
 14 change, the rights, priorities and duties of the applicant shall remain
 15 unchanged. Any person aggrieved by an order or decision by the chief
 16 engineer relating to an application for change may petition for review
 17 thereof in accordance with the provisions of K.S.A. 2012 Supp. 82a-1901,
 18 and amendments thereto.

19 (b) Each application to change the place of use, the point of diversion
 20 or the use made of the water under this section shall be accompanied by
 21 the application fee set forth in the schedule below:

- 22 (1) Application to change a point of diversion 300
 23 feet or less.....\$100
 24 (2) Application to change a point of diversion more
 25 than 300 feet.....200
 26 (3) Application to change the place of use.....200
 27 (4) Application to change the use made of water.....300

28 On and after July 1, 2015, the application fee shall be set forth in the
 29 schedule below:

- 30 (1) Application to change a point of diversion 300
 31 feet or less..... \$50
 32 (2) Application to change a point of diversion more
 33 than 300 feet..... 100
 34 (3) Application to change the place of use..... 100
 35 (4) Application to change the use made of the water..... 150

36 The chief engineer shall render a decision on such permit applications
 37 within 150 days of receiving a complete application except when the
 38 application cannot be processed due to the standards established in K.A.R.
 39 5-3-4c. Upon failure to render a decision within 180 days of receipt of a
 40 complete application, the application fee is subject to refund upon request.

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

1 (d) *An application made pursuant to this section must comply with*
 2 *the well spacing requirements as provided in subsection (d) of K.S.A. 82a-*
 3 *711, and amendments thereto.*

4 Sec. 3. K.S.A. 2012 Supp. 82a-708c is hereby amended to read as
 5 follows: 82a-708c. (a) A term permit is a permit to appropriate water for a
 6 limited specified period of time in excess of six months. At the end of the
 7 specified time, or any authorized extension approved by the chief engineer,
 8 the permit shall be automatically dismissed, and any priority it may have
 9 had shall be forfeited. No water right shall be perfected pursuant to a term
 10 permit.

11 (b) Each application for a term permit to appropriate water shall be
 12 made on a form prescribed by the chief engineer and shall be accompanied
 13 by an application fee fixed by this section for the appropriate category of
 14 acre feet in accordance with the following:

Acre Feet	Fee
15 0 to 100.....	\$200
16 101 to 320.....	\$300
17 More than 320.....	\$300 + \$20
	for each additional 100
	acre feet or any part thereof

18 On and after July 1, 2015, the application fee shall be set forth in the
 19 schedule below:

Acre Feet	Fee
20 0 to 100.....	\$100
21 101 to 320.....	\$100
22 More than 320.....	\$150 + \$10
	for each additional 100
	acre feet or any part thereof

23 The chief engineer shall render a decision on such term permit
 24 applications within 150 days of receiving a complete application except
 25 when the application cannot be processed due to the standards established
 26 in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of
 27 receipt of a complete application, the application fee is subject to refund
 28 upon request.

29 (c) Each application for a term permit to appropriate water for
 30 storage, except applications for permits for domestic use, shall be
 31 accompanied by an application fee fixed by this section for the appropriate
 32 category of storage-acre feet in accordance with the following:

Storage-Acre Feet	Fee
33 0 to 250.....	\$200
34 More than 250.....	\$200 + \$20
	<i>for each additional 250</i>
	<i>acre feet or any part thereof</i>

1 On and after July 1, 2015, the application fee shall be set forth in the
 2 schedule below:

3 Storage-Acre Feet	Fee
4 0 to 250.....	\$100
5 More than 250.....	\$100 + \$10
6	for each additional 250
7	acre feet or any part thereof

8 The chief engineer shall render a decision on such term permit
 9 applications within 150 days of receiving a complete application except
 10 when the application cannot be processed due to the standards established
 11 in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of
 12 receipt of a complete application, the application fee is subject to refund
 13 upon request.

14 (d) Each application for a term permit pursuant to K.S.A. 2012 Supp.
 15 82a-736, and amendments thereto, shall be accompanied by an application
 16 fee established by rules and regulations adopted by the chief engineer in an
 17 amount not to exceed \$400 for the five-year period covered by the permit.

18 (e) Notwithstanding the provisions of K.S.A. 82a-714, and
 19 amendments thereto, the applicant is not required to file a notice of
 20 completion of diversion works nor pay a field inspection fee. The chief
 21 engineer shall not conduct a field inspection of the diversion works
 22 required by statute for purposes of certification nor issue a certificate of
 23 appropriation for a term permit.

24 (f) A request to extend the term of a term permit in accordance with
 25 the rules and regulations adopted by the chief engineer shall be
 26 accompanied by the same filing fee applicable to other requests for
 27 extensions of time as set forth in K.S.A. 82a-714, and amendments thereto.

28 (g) An application to change the place of use, point of diversion, use
 29 made of water, or any combination thereof, pursuant to K.S.A. 82a-708b,
 30 and amendments thereto, shall not be approved for a term permit.

31 (h) *An application made pursuant to this section must comply with*
 32 *the well spacing requirements as provided in subsection (d) of K.S.A. 82a-*
 33 *711, and amendments thereto.*

34 (h)(i) The chief engineer shall adopt rules and regulations to
 35 effectuate and administer the provisions of this section.

36 Sec. 4. K.S.A. 2012 Supp. 82a-711 is hereby amended to read as
 37 follows: 82a-711. (a) If a proposed use neither impairs a use under an
 38 existing water right nor prejudicially and unreasonably affects the public
 39 interest, the chief engineer shall approve all applications for such use made
 40 in good faith in proper form which contemplate the utilization of water for
 41 beneficial purpose, within reasonable limitations except that the chief
 42 engineer shall not approve any application submitted for the proposed use
 43 of fresh water in any case where other waters are available for such

1 proposed use and the use thereof is technologically and economically
2 feasible. Otherwise, the chief engineer shall make an order rejecting such
3 application or requiring its modification to conform to the public interest
4 to the end that the highest public benefit and maximum economical
5 development may result from the use of such water.

6 (b) In ascertaining whether a proposed use will prejudicially and
7 unreasonably affect the public interest, the chief engineer shall take into
8 consideration:

9 (1) Established minimum desirable streamflow requirements;

10 (2) the area, safe yield and recharge rate of the appropriate water
11 supply;

12 (3) the priority of existing claims of all persons to use the water of the
13 appropriate water supply;

14 (4) the amount of each claim to use water from the appropriate water
15 supply; and

16 (5) all other matters pertaining to such question.

17 (c) With regard to whether a proposed use will impair a use under an
18 existing water right, impairment shall include the unreasonable raising or
19 lowering of the static water level or the unreasonable increase or decrease
20 of the streamflow or the unreasonable deterioration of the water quality at
21 the water user's point of diversion beyond a reasonable economic limit.
22 Any person aggrieved by any order or decision by the chief engineer
23 relating to that person's application for a permit to appropriate water may
24 petition for review thereof in accordance with the provisions of K.S.A.
25 2012 Supp. 82a-1901, and amendments thereto.

26 *(d) For any applications submitted on or after July 1, 2013, the*
27 *minimum distance from the well which is the subject of the application to*
28 *any adjacent property owned by another shall be 500 feet, or 600 feet from*
29 *the geographic center of a battery of wells, unless the adjacent property*
30 *owner has given the applicant written permission to reduce the spacing*
31 *interval.*

32 Sec. 5. K.S.A. 2012 Supp. 82a-708a, 82a-708b, 82a-708c and 82a-
33 711 are hereby repealed.

34 Sec. 6. This act shall take effect and be in force from and after its
35 publication in the statute book.