

SENATE BILL NO. 491

By Committee on Ways and Means

3-7

Balloon Amendments for SB 491
Senate Committee on Natural Resources
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Office of Revisor of Statutes
March 17, 2016

1 AN ACT concerning water; relating to the division of water resources;
2 groundwater, amending K.S.A. [82a-712, 82a-716, 82a-747a and 82a-
3 725] and K.S.A. 2015 Supp. 75-2935 and repealing the existing
4 sections.

74-506d

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

6 New Section 1. To further implement the provisions of the
7 groundwater management act, if the secretary of agriculture or the chief
8 engineer of the division of water resources of the Kansas department of
9 agriculture propose rules and regulations that may change an adopted local
10 groundwater management program or impact water use in a groundwater
11 management district, the secretary or chief engineer shall notify the
12 groundwater management district board of directors of such requested
13 management program change or proposed rules and regulations and
14 provide a copy of such requested management program change or
15 proposed rules and regulations to the board. Upon such notice, the board
16 of directors shall prepare a [revised management program statement to
17 submit to the chief engineer for approval]. The board of directors shall
18 follow the provisions of K.S.A. 82a-1029, and amendments thereto, for
19 revising active groundwater management programs. [Upon completion of
20 the groundwater management program revision under this section, the
21 board of directors shall notify and submit to the secretary of agriculture
22 and the chief engineer the adopted revised management program and any
23 recommended rules and regulations necessary to implement the revised
24 management program.

25 New Sec. 2. No cause of action arising out of any order or decision of
26 the chief engineer shall accrue in any court to any party until such party
27 shall petition for reconsideration in accordance with the provisions of
28 K.S.A. 77-529, and amendments thereto, and the chief engineer issues an
29 order on reconsideration. The chief engineer shall have 30 days to issue an
30 order on reconsideration. No party shall, in any court, urge or rely upon
31 any ground not set forth in the petition. An order made after
32 reconsideration, abrogating, changing or modifying the original order or
33 decision, shall have the same force and effect as an original order or
34 decision, including the obligation to file a petition for reconsideration, as
35 provided in this section, as a condition precedent to filing an action for
36

response of intended board actions

~~Review thereof. The time for filing an appeal of any order or decision in a proceeding shall run from the date that all petitions for reconsideration in such proceeding have been denied or such petitions for reconsideration are deemed denied pursuant to K.S.A. 77-529(b), and amendments thereto.~~

New Sec. 3. (a) The division of water resources of the Kansas department of agriculture shall provide notice of the following on its official website:

(1) All filings and orders issued by the division; and

~~(2) all initial complaints filed in a Kansas court and published opinions issued by a Kansas court regarding water rights, water appropriations or the division;~~

(b) The division shall directly notify any person who has an interest that may be adversely affected by any order or formal action of the division.

Sec. 4. ~~K.S.A. 2015 Supp. 75-2935~~ is hereby amended to read as follows: 75-2935. The civil service of the state of Kansas is hereby divided into the unclassified and the classified services.

(1) The unclassified service comprises positions held by state officers or employees who are:

(a) Chosen by election or appointment to fill an elective office;

(b) members of boards and commissions, heads of departments required by law to be appointed by the governor or by other elective officers, and the executive or administrative heads of offices, departments, divisions and institutions specifically established by law;

(c) except as otherwise provided under this section, one personal secretary to each elective officer of this state, and in addition thereto, 10 deputies, clerks or employees designated by such elective officer;

(d) all employees in the office of the governor;

(e) officers and employees of the senate and house of representatives of the legislature and of the legislative coordinating council and all officers and employees of the office of revisor of statutes, of the legislative research department, of the division of legislative administrative services, of the division of post audit and the legislative counsel;

(f) chancellor, president, deans, administrative officers, student health service physicians, pharmacists, teaching and research personnel, health care employees and student employees in the institutions under the state board of regents, the executive officer of the board of regents and the executive officer's employees other than clerical employees, and, at the discretion of the state board of regents, directors or administrative officers of departments and divisions of the institution and county extension agents, except that this subsection (1)(f) shall not be construed to include the custodial, clerical or maintenance employees, or any employees performing duties in connection with the business operations of any such

all final orders issued by the division

, in conjunction with the groundwater management district within which such water right is situated, shall directly notify any water right owner with a point of diversion within half a mile, or further if deemed necessary by a rule and regulation of the chief engineer, of a water right subject to any order issued pursuant to K.S.A. 82a-706b, 82a-708a and 82a-708b, and amendments thereto, of such order.

K.S.A. 74-506d is hereby amended to read as follows: 74-506d. The secretary of agriculture is hereby authorized to employ a chief engineer of the division of water resources and such expert assistants, clerical and other help as may be necessary to properly carry out the provisions of this act, and to fix their compensation, all of whom. The chief engineer shall be under the classified service of the Kansas civil service act, but any vacant position of such expert assistants, clerical and other help necessary to carry out the provisions of this act may be converted by the secretary of agriculture to an unclassified position.

1 thereunder by the federal government or any agency thereof, shall adopt a
2 binding statement of agency policy pursuant to K.S.A. 77-415, and
3 amendments thereto, to satisfy such requirements if the appointing
4 authority has made any such position unclassified.

5 ~~[Sec. 5. K.S.A. 82a-712 is hereby amended to read as follows: 82a-~~
6 ~~712. The chief engineer shall notify the applicant of the approval or~~
7 ~~disapproval of the application. Upon approving the application the chief~~
8 ~~engineer shall authorize the applicant to proceed with the construction of~~
9 ~~the proposed diversion works and to proceed with all steps necessary for~~
10 ~~the application of the water to the approved and proposed beneficial use~~
11 ~~and otherwise perfect the or her such applicant's proposed appropriation.~~
12 ~~The chief engineer may approve an application for a smaller amount of~~
13 ~~water than requested and he or she may approve an application upon such~~
14 ~~terms, conditions, and limitations as he or she the chief engineer shall~~
15 ~~deem necessary for the protection of the public interest. The approval of~~
16 ~~the application by the chief engineer, subject to the terms and conditions~~
17 ~~thereof, upon issuance, constitutes a permit to proceed with construction of~~
18 ~~diversion or other authorized works and with the diversion and use of~~
19 ~~water in accordance with the terms and conditions of the or her the permit~~
20 ~~and no common-law claimant without a vested right or other person~~
21 ~~without a vested right, a prior appropriation right, or an earlier permit shall~~
22 ~~prevent, restrain or enjoin an applicant from proceeding in accordance~~
23 ~~with the terms and conditions of his or her such permit or from~~
24 ~~diminishing the water supply.~~

25 ~~Sec. 6. K.S.A. 82a-716 is hereby amended to read as follows: 82a-~~
26 ~~716. If any appropriation of the construction and operation of authorized~~
27 ~~diversion works, results in an injury to any common-law claimant person,~~
28 ~~such person shall be entitled to due compensation in a suitable action at~~
29 ~~law against the appropriator for damages proved for any property taken~~
30 ~~Any person with a valid water right or permit to divert and use water may~~
31 ~~restrain or enjoin a subsequent diversion in any court of competent~~
32 ~~jurisdiction a subsequent diversion by a common-law claimant person~~
33 ~~without vested rights without first condemning those common-law such~~
34 ~~rights. An appropriator shall have the right to injunctive relief to protect~~
35 ~~his or her such appropriator's prior right of beneficial use as against use by~~
36 ~~an appropriator with a later priority of right.~~

37 ~~Sec. 7. K.S.A. 82a-717a is hereby amended to read as follows: 82a-~~
38 ~~717a. (a) No common-law claimant without a vested right or other person~~
39 ~~without a vested right, a prior appropriation right, or an earlier permit shall~~
40 ~~divert or threaten to divert water if such diversion or threatened diversion~~
41 ~~impairs or would impair any vested right appropriation right, or right~~
42 ~~under a permit to appropriate water. But any common-law claimant with a~~
43 ~~vested right or other person with a vested right, a prior appropriation right,~~

1 ~~[an earlier permit may divert water in accordance with any such right or~~
2 ~~permit, although such diversion or use thereunder conflicts with the~~
3 ~~diversion, use, proposed diversion, or proposed use made or proposed by a~~
4 ~~common law claimant who does not have a vested right or other person~~
5 ~~who does not have a vested right, a prior appropriation right or an earlier~~
6 ~~permit. Moreover any common law claimant with a vested right or other~~
7 ~~permit as provided in subsection (b), any person with a vested right, a~~
8 ~~prior appropriation right, or an earlier permit may restrain or enjoin in any~~
9 ~~court of competent jurisdiction any diversion or proposed diversion that~~
10 ~~impair or would impair such right in the event that any such diversion or~~
11 ~~proposed diversion is made or is threatened to be made by any common~~
12 ~~law claimant, or other person who does not have a vested right, a prior~~
13 ~~appropriation right or an earlier permit.~~

14 ~~(b) (1) Any person with a vested right, a prior appropriation right, or~~
15 ~~an earlier permit who claims impairment as the result of the interference~~
16 ~~caused by the use of water by any other person without a prior right to the~~
17 ~~same shall first submit a complaint to the chief engineer in accordance~~
18 ~~with rules and regulations of the chief engineer. The chief engineer shall~~
19 ~~investigate such complaint. Following such investigation, the chief~~
20 ~~engineer may issue an order that limits the diversion and use of water by~~
21 ~~any person without a prior right to the same or disposes of the complaint.~~

22 ~~(2) The chief engineer shall complete any investigation initiated~~
23 ~~pursuant to paragraph (1) within 12 months of the date the complaint was~~
24 ~~submitted to the chief engineer. The chief engineer may take more time to~~
25 ~~complete the investigation if the chief engineer notifies all parties in~~
26 ~~writing of the need for more time. While such investigation is pending, the~~
27 ~~person making the claim may petition a court of competent jurisdiction to~~
28 ~~temporarily restrain or enjoin diversion of water by any person without a~~
29 ~~prior right to such water.~~

30 ~~(3) Any order issued by the chief engineer pursuant to this subsection~~
31 ~~is subject to review in accordance with the Kansas judicial review act,~~
32 ~~except that on review, the court may, at its discretion, permit any party a~~
33 ~~groundwater management district, the chief engineer or the chief~~
34 ~~engineer's designee to submit additional evidence on any issue.~~

35 ~~(c) For purposes of this section, "impair" includes, but is not limited~~
36 ~~to, the unreasonable raising or lowering of the static water level, the~~
37 ~~unreasonable increase or decrease of the streamflow or the unreasonable~~
38 ~~deterioration of the water quality at the water user's point of diversion,~~
39 ~~beyond a reasonable economic limit.~~

40 ~~Sec. 8. K.S.A. 82a-725 is hereby amended to read as follows: 82a-~~
41 ~~725. (a) In any suit to which the state is not a proper party brought in any~~
42 ~~court of competent jurisdiction in this state for determination of rights to~~
43 ~~water, the court may order a reference to the division of water resources or]~~

1 [the chief engineer, as referee, for investigation of and report upon any or all
2 of the physical facts involved and The division or its chief engineer
3 shall thereupon make such an investigation investigate and report as
4 ordered by the court. The report shall set forth state such findings of fact
5 as may be required by the court's order of reference in numbered
6 paragraphs and may contain such opinions upon the facts as it deems
7 proper in view of the issues submitted. In cases involving groundwater
8 within the confines of a groundwater management district, the chief
9 engineer shall consult with and may receive comment from such
10 groundwater management district on the findings and opinions set forth in
11 such report. Before filing its report with the court, the division or its
12 chief engineer shall mail notice of its report together with a copy of it to
13 the parties or their attorneys of record.

14 (b) Within thirty (30) 30 days from the date of the mailing of the copy
15 of the report, any party may file objections to it with the division of water
16 resources or its chief engineer. After the division or its chief engineer
17 has considered the objections, it shall file its report as referee, with the
18 clerk of the court and give notice by registered or certified mail of the
19 filing of its report to the parties or their attorneys. The court shall review
20 the report upon exceptions thereto filed with the clerk of the court within
21 thirty (30) 30 days after date of mailing registered notice of the filing of
22 the report. Except in its discretion or for good cause shown, the court shall
23 not consider any exception to the report unless it appears that the
24 excepting party presented the matter of the exception to the division or its
25 chief engineer in the form of an objection. The report shall be evidence of
26 the physical facts found therein, but the court shall hear such evidence as
27 may be offered by any party to rebut the report or the evidence. If suit is
28 brought in a federal court for determination of rights to water within, or
29 partially within, the state, the division or its chief engineer may accept a
30 reference of such suit as master or referee for the court.

31 (c) ~~When making a report for cases involving groundwater, nothing in~~
32 ~~this section shall be construed to permit the division, the chief engineer or~~
33 ~~the court to alter, amend, change or modify any existing water right or~~
34 ~~appropriation right.~~

35 Sec. 9. K.S.A. [82a-712, 82a-716, 82a-717a and 82a-725] and K.S.A.
36 2015 Supp. 75-2935 are hereby repealed.

37 Sec. 10. This act shall take effect and be in force from and after its
38 publication in the statute book.

74-506d