

SENATE BILL No. 491

By Committee on Ways and Means

3-7

1 AN ACT concerning water; relating to the division of water resources;
2 groundwater; amending K.S.A. 82a-712, 82a-716, 82a-717a and 82a-
3 725 and K.S.A. 2015 Supp. 75-2935 and repealing the existing
4 sections.
5

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 institution, except administrative officers and directors; as used in this
2 subsection (1)(f), "health care employees" means employees of the
3 university of Kansas medical center who provide health care services at
4 the university of Kansas medical center and who are medical technicians
5 or technologists or respiratory therapists, who are licensed professional
6 nurses or licensed practical nurses, or who are in job classes which are
7 designated for this purpose by the chancellor of the university of Kansas
8 upon a finding by the chancellor that such designation is required for the
9 university of Kansas medical center to recruit or retain personnel for
10 positions in the designated job classes; and employees of any institution
11 under the state board of regents who are medical technologists;

12 (g) operations, maintenance and security personnel employed to
13 implement agreements entered into by the adjutant general and the federal
14 national guard bureau, and officers and enlisted persons in the national
15 guard and the naval militia;

16 (h) persons engaged in public work for the state but employed by
17 contractors when the performance of such contract is authorized by the
18 legislature or other competent authority;

19 (i) persons temporarily employed or designated by the legislature or
20 by a legislative committee or commission or other competent authority to
21 make or conduct a special inquiry, investigation, examination or
22 installation;

23 (j) officers and employees in the office of the attorney general and
24 special counsel to state departments appointed by the attorney general,
25 except that officers and employees of the division of the Kansas bureau of
26 investigation shall be in the classified or unclassified service as provided
27 in K.S.A. 75-711, and amendments thereto;

28 (k) all employees of courts;

29 (l) client, patient and inmate help in any state facility or institution;

30 (m) all attorneys for boards, commissions and departments;

31 (n) the secretary and assistant secretary of the Kansas state historical
32 society;

33 (o) physician specialists, dentists, dental hygienists, pharmacists,
34 medical technologists and long term care workers employed by the Kansas
35 department for aging and disability services;

36 (p) physician specialists, dentists and medical technologists employed
37 by any board, commission or department or by any institution under the
38 jurisdiction thereof;

39 (q) student employees enrolled in public institutions of higher
40 learning;

41 (r) administrative officers, directors and teaching personnel of the
42 state board of education and the state department of education and of any
43 institution under the supervision and control of the state board of

1 education, except that this subsection (1)(r) shall not be construed to
2 include the custodial, clerical or maintenance employees, or any
3 employees performing duties in connection with the business operations of
4 any such institution, except administrative officers and directors;

5 (s) all officers and employees in the office of the secretary of state;

6 (t) one personal secretary and one special assistant to the following:
7 The secretary of administration, the secretary for aging and disability
8 services, the secretary of agriculture, the secretary of commerce, the
9 secretary of corrections, the secretary of health and environment, the
10 superintendent of the Kansas highway patrol, the secretary of labor, the
11 secretary of revenue, the secretary for children and families, the secretary
12 of transportation, the secretary of wildlife, parks and tourism and the
13 commissioner of juvenile justice;

14 (u) one personal secretary and one special assistant to the chancellor
15 and presidents of institutions under the state board of regents;

16 (v) one personal secretary and one special assistant to the executive
17 vice chancellor of the university of Kansas medical center;

18 (w) one public information officer and one chief attorney for the
19 following: The department of administration, the Kansas department for
20 aging and disability services, the department of agriculture, the department
21 of commerce, the department of corrections, the department of health and
22 environment, the department of labor, the department of revenue, the
23 Kansas department for children and families, the department of
24 transportation, the Kansas department of wildlife, parks and tourism and
25 the commissioner of juvenile justice;

26 (x) if designated by the appointing authority, persons in newly hired
27 positions, including any employee who is rehired into such position and
28 any current state employee who voluntarily transfers into, or is voluntarily
29 promoted or demoted into such position, on and after July 1, 2015, in any
30 state agency;

31 (y) one executive director, one general counsel and one director of
32 public affairs and consumer protection in the office of the state corporation
33 commission;

34 (z) specifically designated by law as being in the unclassified service;

35 (aa) any position that is classified as a position in the information
36 resource manager job class series, that is the chief position responsible for
37 all information resources management for a state agency, and that becomes
38 vacant on or after the effective date of this act. Nothing in this section shall
39 affect the classified status of any employee in the classified service who is
40 employed on the date immediately preceding the effective date of this act
41 in any position that is a classified position in the information resource
42 manager job class series and the unclassified status as prescribed by this
43 subsection shall apply only to a person appointed to any such position on

1 or after the effective date of this act that is the chief position responsible
2 for all information resources management for a state agency;

3 (bb) positions at state institutions of higher education that have been
4 converted to unclassified positions pursuant to K.S.A. 2015 Supp. 76-
5 715a, and amendments thereto; and

6 (cc) notwithstanding the provisions of K.S.A. 22-4524, 32-802, 44-
7 510g, 44-551, 44-552, 48-205, 48-919, 49-402e, 58-4105, 58-4503, 65-
8 2878, 65-6103, 73-1210a, 73-1234, ~~74-506d~~, 74-515b, 74-561, 74-569,
9 74-631, 74-1106, 74-1704, 74-1806, 74-2435, 74-2614, 74-2702, 74-
10 2906a, 74-5014, 74-5210, 74-6707, 74-6901, 74-6904, 74-7008, 74-7501,
11 74-8704, 74-8805, 74-9804, 75-118, 75-1202d, 75-2537, 75-2944, 75-
12 3148, 75-3702c, 75-4222, 75-5005, 75-5015, 75-5016, 75-5122, 75-5157,
13 75-5309, 75-5310, 75-5378, 75-5610, 75-5702, 75-5708, 75-5733, 75-
14 5910, 75-7028, 75-7054, 75-7304, 76-1002a, 76-1116, 76-12a04, 76-
15 12a05, 76-12a08, 76-12a16, 76-3202 and 82a-1205 and K.S.A. 2015 Supp.
16 39-1911, and amendments thereto, any vacant position within the
17 classified service may be converted by the appointing authority to an
18 unclassified position.

19 (2) The classified service comprises all positions now existing or
20 hereafter created which are not included in the unclassified service.
21 Appointments in the classified service shall be made according to merit
22 and fitness from eligible pools which so far as practicable shall be
23 competitive. No person shall be appointed, promoted, reduced or
24 discharged as an officer, clerk, employee or laborer in the classified
25 service in any manner or by any means other than those prescribed in the
26 Kansas civil service act and the rules adopted in accordance therewith.

27 (3) For positions involving unskilled, or semiskilled duties, the
28 secretary of administration, as provided by law, shall establish rules and
29 regulations concerning certifications, appointments, layoffs and
30 reemployment which may be different from the rules and regulations
31 established concerning these processes for other positions in the classified
32 service.

33 (4) Officers authorized by law to make appointments to positions in
34 the unclassified service, and appointing officers of departments or
35 institutions whose employees are exempt from the provisions of the
36 Kansas civil service act because of the constitutional status of such
37 departments or institutions shall be permitted to make appointments from
38 appropriate pools of eligibles maintained by the division of personnel
39 services.

40 (5) On and after the effective date of this act, any state agency that
41 has positions in the classified service within the Kansas civil service act to
42 satisfy any requirement of maintaining personnel standards on a merit
43 basis pursuant to federal law or the rules and regulations promulgated

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 ~~his 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 ~~his 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, or 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 or 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 *Except 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 *impairs 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 its chief engineer, as referee, for investigation of and report upon any or all
2 of the physical facts involved ~~and~~. The division or ~~its~~ the 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~~ the
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~~ the 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.