

As Amended by House Committee

As Amended by Senate Committee

Session of 2011

SENATE BILL No. 124

By Committee on Natural Resources

2-7

1 AN ACT concerning water; relating to water supply storage access and
2 creating the lower smoky hill water supply access program.

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

5 Section 1. As used in sections 1 through 24, and amendments thereto,
6 unless the context otherwise requires:

7 (a) "Access water" means water stored in water supply access storage
8 of a reservoir under a water reservation right and provided as supplemental
9 water to eligible water right holders.

10 (b) "Chief engineer" means the chief engineer of the Kansas
11 department of agriculture, division of water resources.

12 (c) "District" means the lower smoky hill water supply access district.

13 (d) "Eligible water right holder" means a person holding a water right
14 or permit, pursuant to K.S.A. 82a-701 et seq., and amendments thereto, to
15 appropriate surface water from the program area for municipal, industrial,
16 irrigation or recreation purposes as determined by the Kansas water office.
17 Eligible water right holders for irrigation purposes shall be limited to the
18 lower smoky hill river special irrigation district.

19 (e) "Landowner" means a person who is the record owner of any real
20 estate within the boundaries of the district or who has an interest therein as
21 contract purchaser of 40 or more contiguous acres in the district not within
22 the corporate limits of any municipality. Owners of oil leases, gas leases,
23 mineral rights, easements, or mortgages shall not be considered
24 landowners by reason of such ownership.

25 (f) "Member" means an eligible water right holder who participates in
26 and is subject to the rules and regulations of a water supply access district.

27 (g) "Person" means any natural person, private corporation,
28 municipality or other public corporation.

29 (h) "Program" means the lower smoky hill water supply access
30 program.

31 (i) "Program area" means the area of the smoky hill river below the
32 kanopolis reservoir dam to the confluence of the smoky hill and saline
33 rivers.

34 (j) "Special irrigation district" means the lower smoky hill ~~river~~

1 **water supply** special irrigation district.

2 (k) "Water supply access storage" means water held by the Kansas
3 water office in kanopolis reservoir under contract with the United States
4 army corps of engineers and so designated by the Kansas water office as
5 water supply access storage for the purposes of the lower smoky hill water
6 supply access program.

7 Sec. 2. There is hereby established the lower smoky hill water supply
8 access program within the Kansas water office. The Kansas water office,
9 with approval of the Kansas water authority, may negotiate and enter into
10 contracts for water supply access storage to be used for the purposes of
11 this act. The water office may designate all or any portion of such water
12 so held in the kanopolis reservoir to water supply access storage to meet
13 the needs of the district.

14 Sec. 3. (a) There is hereby established in the state treasury the lower
15 smoky hill water supply access fund which shall be administered by the
16 Kansas water office. All expenditures from the lower smoky hill water
17 supply access fund shall be for the purposes of this act. All expenditures
18 from the lower smoky hill water supply access fund shall be made in
19 accordance with appropriation acts upon warrants of the director of
20 accounts and reports pursuant to vouchers approved by the director of the
21 Kansas water office or the director's designee. All moneys received for the
22 purposes of this act shall be deposited in the state treasury in accordance
23 with the provisions of K.S.A. 75-4215, and amendments thereto, and shall
24 be credited to the lower smoky hill water supply access fund. The
25 director of the Kansas water office may accept or receive moneys from the
26 district into the lower smoky hill water supply access fund.

27 Sec. 4. (a) There is hereby authorized the lower smoky hill water
28 supply access district.

29 (b) Upon receipt of an application for membership within the district,
30 the director of the Kansas water office may determine the need to create an
31 incorporating governing body for the district, and upon such
32 determination, shall certify to the secretary of state and the members of the
33 district that such district is eligible for formation and should be
34 incorporated. The notice of certification should fix a date, time and place
35 for an organizational meeting of such district.

36 (c) The members of the district shall meet on the date and time set by
37 such director to form the incorporating governing body of such district.

38 (d) The incorporating governing body, if created, shall consist of five
39 directors. Eligible water rights holders, or their representatives, who apply
40 for membership, shall be the incorporating entities and shall determine the
41 articles of incorporation. ***Such articles of incorporation shall provide the
42 board of directors of the lower smoky hill water supply access district so
43 formed, shall have an odd number of directors and shall include a***

1 *provision that no less than one representative of the lower smoky hill*
2 *special irrigation district serve as a member of the lower smoky hill*
3 *water supply access district board, if such special irrigation district is*
4 *formed under the provisions of this act.* Upon incorporation of the
5 district, such incorporating governing body shall dissolve and shall be
6 replaced by the governing body as determined by the articles of
7 incorporation and bylaws of the district.

8 (e) The directors of the incorporating governing body shall elect an
9 incorporating chairperson. The chairperson, on behalf of the incorporating
10 governing body, shall attest to all documents necessary for incorporation
11 of the district by the secretary of state and for the business of the district.
12 The secretary of state shall issue a certificate of incorporation for the
13 district, which shall be filed of record in the office of the register of deeds
14 of each county in which all or a portion of the district lies.

15 (f) Upon recordation of such certificate of incorporation, the district
16 shall be authorized to function in accordance with the provision of this act
17 and its certificate of incorporation. No action attacking the legal
18 incorporation of any district organized under this section shall be
19 maintained unless filed within 30 days after the issuance of such certificate
20 of incorporation for such district by the secretary of state, nor shall the
21 alleged illegality of the incorporation of any such district be interposed as
22 a defense to any action brought after such time.

23 Sec. 5. (a) A prospective member may join the district if the
24 prospective member:

25 (1) Applies to the Kansas water office for water supply access
26 storage, for the purposes of this act; and

27 (2) has or applies for a water right eligible for membership under this
28 act.

29 (b) Prospective members may be approved for membership by the
30 director of the Kansas water office, after consultation with the chief
31 engineer, if the director finds that:

32 (1) The proposed membership is in the public interest or has a public
33 benefit sufficient for membership;

34 (2) there is adequate water supply access storage to meet the
35 additional demand; and

36 (3) such other issues as may be determined by such director have
37 been resolved.

38 Sec. 6. All powers granted to the district shall be exercised by the
39 board of directors. A majority of the directors shall constitute a quorum for
40 the transaction of business. A majority of those directors present and
41 voting shall determine all actions taken by the governing body.

42 Sec. 7. After the initial meeting to elect the governing body, an
43 annual meeting shall be held to elect such directors whose terms shall

1 expire, to render a report on the financial condition and activities of the
2 district and to adopt a budget in the manner provided by K.S.A. 79-2925 *et*
3 *seq.*, and amendments thereto. Notice of the annual meeting shall be given
4 to all members of the district by first class mail, postage prepaid, at least
5 10 days prior to the date of the annual meeting.

6 Sec. 8. (a) Regular meetings of the board of directors shall be held
7 no less than quarterly at a place, day and time established by the board of
8 directors. Notice of such meetings shall be given to all members of the
9 district by first class mail, postage prepaid, at least five days prior to the
10 date of such meetings.

11 (b) Special meetings may be held at any time on the call of the
12 chairperson of the district governing body. Notice shall be provided to
13 each director at least one day prior to the time fixed for such special
14 meeting. The notice of any special meeting may be accomplished by any
15 means calculated to provide adequate notice to each director.

16 Sec. 9. The district incorporated under the provisions of this act shall
17 be a body politic and corporate and shall have the power to:

18 (a) Adopt a seal;

19 (b) ~~issue~~ *sue* and be sued by its corporate name;

20 (c) purchase, hold, sell and convey land and personal property and to
21 execute such contracts as the board of directors deems necessary or
22 convenient to enable it to carry out the purpose for which it was organized;

23 (d) employ such professional, technical and clerical services and
24 other assistance as deemed necessary by the board of directors;

25 (e) acquire personal property by gift or purchase;

26 (f) impose charges as provided by this act;

27 (g) select a residence or home office for the district, which shall be at
28 a place in a county in which the district or any part thereof is located and
29 may be either within or without the program area as may be designated by
30 the board of directors; and

31 (h) take any other action necessary to achieve the purposes of the
32 district.

33 Sec. 10. (a) The district shall impose charges against each member
34 for the purposes of the district.

35 (1) The total of such charges shall be sufficient to enable the district
36 to pay the Kansas water office the full annual amortized cost incurred by
37 the Kansas water office for the operation, administration and enforcement
38 of the program, including, but not limited to, the costs of acquiring the
39 water supply access storage from the federal government by purchase or
40 trade and the cost of operation and maintenance of such water supply
41 access storage.

42 (2) The district may also impose charges against each member of the
43 district in an amount sufficient to cover district operating costs.

1 (3) The district shall impose any charges necessary for the payment
2 of the principal of and interest on revenue bonds issued by the Kansas
3 water office pursuant to K.S.A. 82a-1360 *et seq.*, and amendments thereto.

4 (4) The district shall determine the amount of the charges for each
5 member and shall remit all moneys collected to the Kansas water office for
6 deposit in the lower smoky hill water supply access fund created pursuant
7 to this act. Charges to be paid by such members may vary and shall be
8 based on the principle of having each member pay for the pro rata quantity
9 authorized to each member by the district. In determining the charge, the
10 board of directors of the district shall adopt guidelines for such members.

11 (b) The director of the Kansas water office shall request releases of
12 water supply access water by the federal government from the kanopolis
13 reservoir under such agreements with the federal government that govern
14 operations of such reservoir. The chairperson of the governing body of the
15 district or designee shall communicate with the Kansas water office
16 regarding any member's need for such releases by the district.

17 (c) The director and the chief engineer each shall adopt any rules and
18 regulations necessary to carry out the purposes and procedures of this act.
19 The director and the chief engineer shall consider the advice of the Kansas
20 water authority and stakeholders in the program area, in the preparation of
21 any rules and regulations adopted pursuant to this subsection.

22 (d) Any holder of an eligible water right aggrieved by a decision of
23 the Kansas water office under this act by being excluded as a member in
24 the program may appeal to the district court under K.S.A. 82a-724, and
25 amendments thereto.

26 (e) Payments required under a contract between the district and the
27 Kansas water office shall be for storage capacity contracted in a federal
28 reservoir.

29 (f) Nothing in this act shall be deemed to authorize any suit against the
30 state or any agency of the state or person employed by the state on or
31 under a claim for implied contract, negligence or any other tort. The
32 director of the Kansas water office may sue to enforce any claim arising
33 out of a contract. Payment of the charges shall be a condition imposed on
34 every member and the director is authorized to declare the suspension of
35 any use of water supply access water where a payment is not made.

36 (g) Rights of members to receive access water may not be transferred
37 without the approval of the Kansas water office.

38 Sec. 11. If any member of the district requests an opportunity to
39 renegotiate any existing contracts for the purchase of water supply, as
40 described in K.S.A. 82a-1301 *et seq.*, and amendments thereto, the Kansas
41 water authority and the Kansas water office shall conduct such
42 negotiations on a timely basis and on the provisions for which negotiations
43 are requested.

1 Sec. 12. (a) The chief engineer shall protect releases of water from
2 the Kanopolis reservoir for water supply access storage as may be
3 necessary to effectuate the purposes of the releases made pursuant to this
4 act and for the benefit of the district members for whom such releases are
5 made.

6 (b) The Kansas water office shall communicate to the chief engineer
7 the date and quantity of such release, the district member or members for
8 whom such release is made and such other information as the chief
9 engineer may request to insure protection of the release.

10 Sec. 13. Each member of the district shall adopt conservation plans
11 and practices for such member. Such plans and practices shall be
12 consistent with the guidelines for conservation plans and practices
13 developed and maintained by the Kansas water office as provided in
14 K.S.A. 74-2608, and amendments thereto. Prior to entering into a contract
15 the district and the director of the Kansas water office, in consultation with
16 the chief engineer, shall determine whether such plans and practices are
17 consistent with the guidelines for conversation plans and practices adopted
18 by the Kansas water office.

19 Sec. 14. (a) The Kansas water office is hereby authorized to issue
20 and sell revenue bonds for the purpose of paying all or part of the cost of
21 acquiring a site or sites, constructing, reconstructing, improving and
22 expanding projects within the program area or to finance the purchase of
23 storage in the reservoir using procedures established for issuing such
24 bonds as described in K.S.A. 82a-1360 et seq., and amendments thereto.

25 (b) The district may negotiate to make annual payments over a period
26 of not to exceed 20 years for any access storage water purchased under this
27 act.

28 Sec. 15. If the district authorized pursuant to this act is not formed by
29 December 31, 2020, the provisions of this act shall expire.

30 Sec. 16. There is hereby authorized the lower smoky hill special
31 irrigation district for the purpose of participating in the lower smoky hill
32 water supply access program. Such special irrigation district shall be a
33 single member of the lower smoky hill water supply access district.

34 Sec. 17. (a) The lower smoky hill river ~~irrigation~~ special **irrigation**
35 district shall be formed upon petition by eligible irrigation water right
36 holders to the director of the Kansas water office, demonstrating a need for
37 and requesting purchase of 500 acre feet or more for water supply access
38 storage for the proposed special irrigation district. The petition shall
39 provide contact information for each person signing, information on the
40 land proposed for membership in the district, information necessary for
41 verification of the water rights held on the eligible land and the amount of
42 water requested from Kanopolis reservoir water supply access storage by
43 each person so signing. The Kansas water office may request additional

1 information from each person signing such petition.

2 (b) The director of the Kansas water office, in consultation with the
3 chief engineer, shall verify the ownership of subject land within the
4 proposed special irrigation district for the lands noted in the petition, the
5 water rights held for subject land by each person so signing and other
6 matters the Kansas water office may deem necessary. Upon verification of
7 the eligibility of those signing such petition the director of the Kansas
8 water office shall set a date, time and place for the first meeting of such
9 district for the purposes of electing a governing board for the special
10 irrigation district.

11 Sec. 18. (a) Membership of the special irrigation district shall
12 consist of all landowners holding eligible irrigation water rights
13 participating in the petition as described in section 17, and amendments
14 thereto. Additional interested eligible landowners with irrigation surface
15 water rights within the program area may apply for membership in
16 accordance with rules and procedures to be determined by the governing
17 board as provided in section 19, and amendments thereto.

18 (b) All qualified applicants for membership in the special irrigation
19 district shall become members and shall be able to use water supply access
20 storage under the rules and by-laws of the lower smoky hill water access
21 supply district and the special irrigation district. All members shall be
22 liable to the district and the special irrigation district for costs, fees,
23 assessments and charges.

24 Sec. 19. (a) There shall be created a governing board of the special
25 irrigation district. Such governing board shall have the authority to:

26 (1) Purchase, allocate, determine, charge fees and assessments for
27 and allow the use, for the benefit of members of the special irrigation
28 district, of water supply access storage;

29 (2) contract for real and personal, property;

30 (3) contract with employees and consultants; and

31 (4) buy, sell, lease, rent and purchase water supply access storage
32 pursuant to the provisions of this act.

33 (b) The governing board of the special **irrigation** district shall:

34 (1) ~~Designate one or more members to serve as a representative of~~
35 ~~the special irrigation district before the directors of the lower smoky hill~~
36 ~~water supply access district, as described in the articles of incorporation~~
37 **of the lower smoky hill water supply access district, to serve on the**
38 **governing board of the lower smoky hill ~~river~~ water supply access**
39 **district.** Such member shall speak for the special irrigation district on
40 matters before the directors of the **lower smoky hill water supply access**
41 district;

42 (2) provide for a fee structure sufficient to pay for such water supply
43 access storage and any additional costs as determined by the special

1 irrigation district and set a fee schedule for all members of the special
2 irrigation district; and

3 (3) create an agreement to be entered into with each person who
4 desires to become a member of the special irrigation district, with the
5 requirements for membership, duties, payment obligations, provisions for
6 withdrawal or transfer of any single membership and any other matters as
7 the governing board of the special irrigation district may deem necessary
8 and prudent.

9 (c) In the event of extraordinary, special or emergency costs
10 associated with membership in the district or special irrigation district, the
11 governing board may assess additional costs to such members at a rate to
12 be determined by the board, in any year. Notice of such assessment shall
13 be provided to members by first class mail, postage prepaid by the special
14 irrigation district.

15 Sec. 20. (a) All powers granted to the special irrigation district
16 under the provisions of this act shall be exercised by an elected governing
17 board. Such governing board shall consist of an odd number of no less
18 than three and no more than nine directors. Elections for board members
19 by the members of the special irrigation district shall be held at a meeting
20 held each calendar year.

21 (b) At the initial election of the governing board, half of the board
22 members of the special irrigation district, rounded down, shall be elected
23 for a term of one year, and the remaining board members shall be elected
24 for a term of two years. For each subsequent appointment, each board
25 member shall be elected for a term of two years.

26 (c) The governing board of the special irrigation district, after being
27 duly elected, shall elect from its number a president, vice-president,
28 secretary, and treasurer. If the special irrigation district has three board
29 members, such board shall elect one board member to hold the offices of
30 both secretary and treasurer.

31 (d) Each member of the governing board of the special irrigation
32 district shall continue in such position until a successor is elected and
33 qualified. Members of such board shall have no term limits. Whenever the
34 vacancy of a board member position occurs before the expiration of such
35 board member's term, a successor shall be elected by such governing board
36 to fill such vacancy for the unexpired term, except that such governing
37 board may elect to call a special meeting of the membership for purposes
38 of electing a board member to serve an unexpired term.

39 (e) The governing board of the special irrigation district shall meet no
40 less than quarterly during any calendar year and shall meet upon call of the
41 president as necessary to carry out its duties under this act.

42 (f) The governing board of the special irrigation district shall set an
43 annual meeting for the district, and provide notice of the same to all

1 members. At such annual meeting the membership may consider any
2 matters such governing board may wish to present for consideration.

3 (g) A majority of the governing board of the special irrigation district
4 shall constitute a quorum for the transaction of business. A majority of
5 those board members present and voting shall determine all actions taken
6 by such governing board.

7 Sec. 21. (a) The costs of the water supply access storage shall be
8 paid from funds of the special irrigation district, and from any fees and
9 assessments of members. In order to finance the operations of the special
10 irrigation district, the governing board may assess an annual water use
11 charge against every member. Such governing board shall base such
12 charge upon the amount of water allocated for such member's use pursuant
13 to that member's water right.

14 (b) Before any assessment is made or user charge imposed, the
15 governing board shall submit the proposed budget for the ensuing year to
16 the eligible voters of such district at a hearing to be held during the annual
17 meeting. Following the hearing, the governing board shall, by resolution,
18 adopt either the proposed budget or a modified budget and determine the
19 amount of land assessment or user charge, or both, needed to support such
20 budget.

21 (c) All dues, charges, fees and assessments against lands within the
22 special irrigation district shall be certified to the proper county clerks and
23 collected the same as other taxes in accordance with K.S.A. 79-1801, and
24 amendments thereto, and the amount thereof shall attach to the real
25 property involved as a lien in accordance with K.S.A. 79-1804, and
26 amendments thereto. All moneys so collected shall be remitted by the
27 county treasurer to the treasurer of the special district who shall deposit
28 them to the credit of the general fund of the special irrigation district. The
29 accounts of the special irrigation district shall be audited annually by a
30 public accountant or certified public accountant.

31 Sec. 22. A fund shall be created by the special irrigation district for
32 payment of the costs of water supply access storage. Any moneys received
33 by such special irrigation district for charges, fees, assessments and sales
34 of water shall be credited to such fund. Such fund shall be used solely to
35 pay the costs related to acquiring water supply access storage and the
36 operation of the special irrigation district.

37 Sec. 23. If the special irrigation district authorized pursuant to this act
38 is not formed by December 31, 2020, the provisions of section 15 through
39 22, and amendments thereto, shall expire.

40 Sec. 24. The Kansas water office shall adopt rules and regulations to
41 implement the lower smoky hill water supply access program.

42 Sec. 25. This act shall take effect and be in force from and after its
43 publication in the statute book.

