

As Amended by House Committee

As Amended by Senate Committee

Session of 2012

SENATE BILL No. 272

By Committee on Agriculture

1-12

1 AN ACT concerning water; relating to ~~administrative division of water~~
2 ~~right; fee; multi-year flex accounts; amending K.S.A. 2011 Supp. 82a-~~
3 ~~736 and repealing the existing section.~~
4

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

6 ~~New Section 1. (a) Any owner of a water right that is not deemed~~
7 ~~abandoned may divide that water right into two or more distinct water~~
8 ~~rights without losing priority of right, if such owner:~~

9 ~~(1) Applies in writing to the chief engineer for approval of the~~
10 ~~proposed division with the written consent of all persons having an~~
11 ~~ownership interest in the water right;~~

12 ~~(2) designates the relative priority of the divided water rights;~~

13 ~~(3) demonstrates to the chief engineer that the division is reasonable,~~
14 ~~will not increase consumptive use and will not impair existing rights; and~~

15 ~~(4) receives approval from the chief engineer with respect to the~~
16 ~~requested division. If the chief engineer disapproves the application for~~
17 ~~division, the rights, priorities and duties of the applicant shall remain~~
18 ~~unchanged.~~

19 ~~(b) In the event of a judicial determination of ownership interests~~
20 ~~resulting in a partition of a water right that is not deemed abandoned, the~~
21 ~~chief engineer may administratively divide such water right in a manner~~
22 ~~consistent with the terms of the judicial determination to the extent it does~~
23 ~~not violate the provisions of the Kansas water appropriation act.~~

24 ~~(c) Any approval of an application to divide a water right pursuant to~~
25 ~~this section shall not authorize any change in the place of use, point of~~
26 ~~diversion or use made of water, as provided in K.S.A. 82a-708b, and~~
27 ~~amendments thereto.~~

28 ~~(d) Each application to divide a water right, pursuant to subsection (a)~~
29 ~~or (b), shall be made on a form prescribed by the chief engineer and shall~~
30 ~~be accompanied by an application fee of \$300.~~

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

34 ~~(f) The chief engineer shall adopt rules and regulations to effectuate~~

1 and administer the provisions of this section:

2 ~~(g)~~ This section shall be part of and supplemental to the Kansas water
3 appropriation act.

4 ~~Sec. 2.~~ **Section 1.** K.S.A. 2011 Supp. 82a-736 is hereby amended to
5 read as follows: 82a-736. *(a) It is hereby recognized that an opportunity*
6 *exists to improve water management by enabling multi-year flexibility in*
7 *the use of water authorized to be diverted under a groundwater water*
8 *right, provided, that such flexibility neither impairs existing water rights,*
9 *nor increases the total amount of water diverted, so that such flexibility*
10 *has no long-term negative effect on the source of supply. It is therefore*
11 *declared necessary and advisable to permit the establishment of multi-*
12 *year flex accounts for groundwater water rights, together with*
13 *commensurate protections for existing water rights and their source of*
14 *supply.*

15 ~~(a)~~ (b) As used in this section:

16 (1) "Base water right" means a water right under which an applicant
17 applies to the chief engineer to establish a multi-year flex account and
18 where all of the following conditions exist:

19 (A) The authorized source of supply is groundwater; and

20 (B) the water right has not been the subject of a change approval to
21 implement the provisions of K.A.R. 5-5-9(a)(2), K.A.R. 5-5-11(b)(2) or
22 K.A.R. 5-5-11(b)(3), ~~and amendments thereto~~ **in effect upon the effective**
23 **date of this act.**

24 (2) "Multi-year flex account" means a term permit which suspends a
25 base water right during its term, **except when the term permit may be no**
26 **longer exercised because of an order of the chief engineer,** and is subject
27 to the terms and conditions as provided in subsection (e).

28 ~~(+)~~ (3) "Base average usage" means: (A) The average amount of
29 water actually ~~used~~ *diverted* for a beneficial use under ~~a groundwater~~ *the*
30 *base water right* during calendar years 2000 through 2009, excluding any
31 amount ~~used~~ *diverted* in any such year ~~in excess of the amount that~~
32 ~~exceeded the maximum annual quantity of water authorized by~~ *such the*
33 *base water right*; or (B) if the holder of ~~a groundwater~~ *the base water right*
34 shows to the satisfaction of the chief engineer that ~~the holder has~~
35 ~~implemented significant~~ *water conservation measures reduced water use*
36 *under the base water right* during calendar years 2000 through 2009, *then*
37 the average amount of water actually ~~used~~ *diverted* for a beneficial use
38 under ~~such the base water right~~ *during the five calendar years immediately*
39 *before the calendar year when such measures were implemented* *water*
40 *conservation began,* excluding any amount used in any such year ~~in excess~~
41 ~~of that exceeded the amount authorized by~~ *such the base water right.*

42 ~~(2)~~(4) "Chief engineer" means the chief engineer of the division of
43 water resources of the department of agriculture.

1 (5) “Flex account acreage” means the maximum number of acres
 2 lawfully irrigated during a calendar year when no term, condition or
 3 limitation of the base water right has been violated and either of the
 4 following conditions is met:

5 (A) The calendar year is 2000 through 2009; or

6 (B) if water conservation reduced water use under the base water
 7 right during calendar years 2000 through 2009, the calendar year is a
 8 year within the five calendar years immediately prior to the calendar year
 9 when water conservation began.

10 (6) “Net irrigation requirement” means the net irrigation
 11 requirement for 50% chance rainfall of the county that corresponds with
 12 the location of the authorized place of use of the base water right as
 13 provided in K.A.R. 5-5-12, ~~and amendments thereto~~ **on the effective date**
 14 **of this act.**

15 ~~(b)~~(c) (1) Any holder of a ~~groundwater~~ base water right ~~which~~ that
 16 has not been deposited or placed in a safe deposit account in a chartered
 17 water bank may establish a *multi-year* flex account where the holder may
 18 deposit, in advance, *the authorized quantity* of water from such water right
 19 for any five consecutive calendar years, subject to *all of* the following:

20 ~~(+)~~(A) The water right must be vested or shall have been issued a
 21 certificate of appropriation;

22 ~~(2)~~(B) the withdrawal of water pursuant to the water right shall be
 23 properly and adequately metered;

24 ~~(3)~~(C) the water right ~~shall not be~~ *is not* deemed abandoned and ~~shall~~
 25 ~~be in good standing, based on past water usage and is in~~ compliance with
 26 the terms of ~~the holder's permit~~ and *conditions of its certificate of*
 27 *appropriation*, all applicable provisions of law and orders of the chief
 28 engineer; ~~and~~

29 ~~(4)~~(D) the amount of water ~~that shall be~~ deposited in the *multi-year*
 30 *flex* account shall not exceed ~~90% of the amount of the holder's base~~
 31 ~~average usage times five the greatest of the following:~~

32 (i) 500% of the base average usage;

33 (ii) **500% of the product of the *annual* net irrigation requirement**
 34 **multiplied by the flex account acreage, multiplied by 110%, but not greater**
 35 **than five times the maximum annual quantity authorized by the base water**
 36 **right; or**

37 (iii) *if the authorized place of use is located wholly within the*
 38 *boundaries of a groundwater management district, an amount that shall*
 39 *not increase the long-term average use of the groundwater right as*
 40 *specified by rule or regulation promulgated pursuant to subsection (o) of*
 41 *K.S.A. 82a-1028, and amendments thereto; and*

42 (E) *notwithstanding any other provisions of this subsection, **except***
 43 ***when the base water right is suspended due to the issuance of a two-year***

1 *term permit in a designated drought emergency area for 2011 and 2012,*
 2 *the quantity of water deposited into a multi-year flex account shall be*
 3 *reduced by the quantity of water used in excess of the maximum annual*
 4 *quantity of the base water right during 2011 if the application for a multi-*
 5 *year flex account is filed with the chief engineer on or before July 15,*
 6 *2012.*

7 (2) *The provisions of K.A.R. 5-5-11 are limited to changes in annual*
 8 *authorized quantity and shall not apply to this subsection.*

9 ~~(e)~~(d) The chief engineer shall implement a program providing for
 10 the issuance of term permits to holders of groundwater water rights who
 11 have established flex accounts in accordance with this section. Such term
 12 permits shall authorize the use of water in a flex account at any time
 13 during the five consecutive calendar years for which the application for the
 14 term permit *authorizing a multi-year flex account* is made, without annual
 15 limits on such use.

16 ~~(d)~~(e) Term permits provided for by this section shall be subject to the
 17 following:

18 (1) A separate term permit shall be required for each point of
 19 diversion *authorized by the base water right.*

20 (2) The quantity of water authorized for diversion shall be limited to
 21 the amount deposited pursuant to subsection ~~(b)(4)~~(c)(1)(D).

22 (3) *The rate of diversion for each point of diversion authorized under*
 23 *the term permit shall not exceed the rate of diversion for each point of*
 24 *diversion authorized under the base water right.*

25 ~~(3)~~ (4) The authorized place of use ~~for the term permit shall not be~~
 26 ~~greater than that authorized by the existing groundwater right shall be the~~
 27 *place of use or a subdivision of the place of use for the base water right.*

28 (5) *The point of diversion authorized by the term permit shall be*
 29 *specified by referencing one point of diversion authorized by the base*
 30 *water right at the time the multi-year flex account term permit application*
 31 *is filed with the chief engineer or at the time any approvals changing such*
 32 *referenced point of diversion of the base water right are approved during*
 33 *the multi-year flex account period. For a base water right with multiple*
 34 *points of diversion, each point of diversion authorized by ~~the~~ a term*
 35 *permit shall receive a specific assignment of a maximum authorized*
 36 *quantity of water, assigned proportionately to the authorized annual*
 37 *quantities of the respective points of diversion under the base water right.*

38 ~~(4)~~ (6) The chief engineer may establish, by rules and regulations,
 39 criteria for such term permits ~~when the water right authorizes multiple~~
 40 ~~points of diversion or multiple water rights authorize a single point of~~
 41 ~~diversion or overlapping places of use.~~

42 ~~(5)~~(7) Except as explicitly provided for by this section, such term
 43 permits shall be subject to all provisions of the Kansas water appropriation

1 act, and rules and regulations adopted under such act, and nothing in this
2 section shall authorize impairment of any vested right or prior
3 appropriation right by the exercise of such term permit.

4 ~~(e) Unless a term permit is issued pursuant to an application filed~~
5 ~~before November 1 of the year prior to the first year for which the~~
6 ~~application is made, the quantity of water used under the water right~~
7 ~~during the year in which the application for the term permit is filed shall~~
8 ~~be deducted from the amount of water deposited into the account~~
9 ~~authorized by the term permit~~ (f) *An application for a multi-year flex*
10 *account shall be filed with the chief engineer on or before October 1 of the*
11 *first year of the multi-year flex account term for which the application is*
12 *being made.*

13 ~~(f)~~(g) All costs of administration of this section shall be paid from
14 fees for term permits provided for by this section. Any appropriation or
15 transfer from any fund other than the water appropriation certification fund
16 for the purpose of paying such costs shall be repaid to the fund from which
17 such appropriation or transfer is made. At the time of repayment, the
18 secretary of agriculture shall certify to the director of accounts and reports
19 the amount to be repaid and the fund to be repaid. Upon receipt of such
20 certification, the director of accounts and reports shall promptly transfer
21 the amount certified to the specified fund.

22 (h) *The fee for a multi-year flex account term permit shall be the*
23 *same as specified for other term permits in K.S.A. 82a-708c, and*
24 *amendments thereto, except as follows:*

25 (1) *If the base water right is currently suspended due to the issuance*
26 *of a two-year term permit in a designated drought emergency area for*
27 *2011 and 2012, then a holder of such term permit shall be subject to a*
28 *\$200 application fee for a multi-year flex account term permit if the*
29 *application is filed on or before July 15, 2012; or*

30 (2) *if water use under the authority of the base water right exceeded*
31 *the maximum annual quantity authorized by the base water right during*
32 *2011 and the holder of the base water right files an application for*
33 *approval of a multi-year flex account term permit on or before July 15,*
34 *2012, then the application fee shall be \$600.*

35 (i) *The chief engineer shall have full authority pursuant to K.S.A.*
36 *82a-706c, and amendments thereto, to require any additional measuring*
37 *devices and any additional reporting of water use for term permits issued*
38 *pursuant to this section. Failure to comply with any measuring or*
39 *reporting requirement may result in a penalty, up to and including the*
40 *revocation of the term permit and the suspension of the base water right*
41 *for the duration of the term permit period.*

42 ~~(g)~~(j) The chief engineer shall submit a written report on the
43 implementation of this section to the house standing committee on

1 ~~environment~~ *agriculture and natural resources* and the senate standing
2 committee on natural resources on or before February 1 of each year.

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

5 ~~Sec. 3.~~ 2. K.S.A. 2011 Supp. 82a-736 is hereby repealed.

6 ~~Sec. 4.~~ 3. This act shall take effect and be in force from and after its
7 publication in the ~~statute book~~ *Kansas register*.

8