

**As Amended by House Committee**

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*Session of 2013*

**HOUSE BILL No. 2363**

By Committee on Agriculture and Natural Resources

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1 AN ACT concerning water; relating to wastewater regulations; relating to  
2 aggregate mining operations; amending K.S.A. 2012 Supp. 82a-734  
3 and repealing the existing section.  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. Any rules and regulations adopted by the secretary of  
7 health and environment pursuant to K.S.A. 65-171d, and amendments  
8 thereto, shall not apply to land-based sand and gravel pits or aggregate  
9 mining operations utilizing washwater ponds if the only water or  
10 wastewater directed to the dredge pit or washwater pond consists of the  
11 following:

12 (a) Dredge return flows;  
13 (b) flows generated from aggregate classification; or  
14 (c) flows from washing aggregate, if water used in such flows is  
15 returned to the dredge pit or washwater pond.

16 Sec. 2. K.S.A. 2012 Supp. 82a-734 is hereby amended to read as  
17 follows: 82a-734. (a) An operator shall notify the chief engineer of the  
18 location and area extent of any existing or proposed sand and gravel pit to  
19 be excavated, expanded or operated by the operator.

20 (b) The net evaporation of water exposed as the result of the opening  
21 or operation of sand and gravel pits shall be construed to be a beneficial  
22 use or diversion of water for the purposes of the Kansas water  
23 appropriation act, K.S.A. 82a-701 et seq., and amendments thereto, if the  
24 sand and gravel pit is opened or operated in a township where the average  
25 annual potential net evaporation is greater than 18 inches per year, as  
26 determined by the chief engineer.

27 (c) If the chief engineer determines that an existing or proposed sand  
28 and gravel pit operation is a beneficial use of water, the operator shall  
29 apply to the chief engineer for a permit to appropriate water in accordance  
30 with the Kansas water appropriation act or otherwise acquire ownership or  
31 control of sufficient water rights, or by other methods pursuant to rules and  
32 regulations adopted by the chief engineer, or both, to offset net evaporation  
33 for the operation. The chief engineer may reduce this required offset based  
34 on the estimated use of groundwater by the existing vegetation.

35 (d) (1) The permit shall authorize net evaporation as the primary use,  
36 and hydraulic dredging and sand washing as secondary uses of water if

1 such secondary uses are located within the same source of supply and are  
2 associated with the operation. Any secondary uses shall use water in a  
3 manner in which there is no significant net consumptive use. The permit  
4 shall not be subject to the installation of a water flow meter or  
5 administration of minimum desirable stream flow. ~~In areas of the state not~~  
6 ~~subject to subsection (b), the chief engineer shall only issue a permit for~~  
7 ~~secondary uses~~ **Where the average potential net evaporation is less**  
8 **than 18 inches per year as determined by the chief engineer, the chief**  
9 **engineer shall issue a single term permit for the life of the project, not**  
10 **to exceed 80 years, for such secondary uses.**

11 (2) The secondary uses shall be granted for the proposed life of the  
12 project or until the exhaustion of sand and gravel reserves. At the end of  
13 the industrial project, the owner shall file an application authorized by  
14 K.S.A. 82a-708b, and amendments thereto, to change the primary use  
15 made of water to recreational use to authorize the net evaporation use  
16 caused by the exposed groundwater.

17 (3) If a permit is denied, the chief engineer shall set forth all reasons  
18 for such denial.

19 (4) Any applicant who is denied a project permit by a final order of  
20 the chief engineer under this section may appeal such order in the manner  
21 provided by the Kansas judicial review act.

22 (5) Any application for a project permit shall be accompanied by a  
23 filing fee of \$500 and any request for modification shall be accompanied  
24 by a fee of \$250. Applicants for a project permit under this section shall  
25 not be required to pay fees pursuant to K.S.A. 82a-708a and 82a-708c, and  
26 amendments thereto, as part of such application.

27 (e) (1) The initial period of time allowed to complete construction of  
28 diversion works pursuant to an approved application to appropriate water  
29 for the purpose of net evaporation from a sand and gravel pit operation  
30 shall be reasonable and consistent with the proposed use. The chief  
31 engineer may allow extension of such period by not to exceed two 10-year  
32 extensions if it can be shown that the operation requires the additional time  
33 for the operator to satisfy the operator's market demand in the area. The  
34 two 10-year extensions may be granted at the same time, to run  
35 consecutively, if the applicant submits to the chief engineer a written  
36 development plan.

37 (2) The period of time allowed to perfect an approved application to  
38 appropriate water for the purpose of net evaporation from a sand and  
39 gravel pit operation shall be not less than 20 years and, for good cause  
40 shown, the chief engineer may allow one or more 10-year extensions of  
41 such period. The chief engineer shall consider the time needed until  
42 exhaustion of proven reserves, closure in accordance with the surface land  
43 reclamation and mining act, K.S.A. 49-601 et seq., and amendments

1 thereto, and the availability of water for the proposed use, but in no case  
2 shall allow longer than 80 years for perfection.

3 (3) Nothing herein shall require an extension of time to construct  
4 diversion works or to perfect a water right if there is demonstrable  
5 impairment of a use under an existing water right from the same source of  
6 supply, as determined pursuant to K.S.A. 82a-711, and amendments  
7 thereto.

8 (4) Upon examination of the diversion works for sand and gravel  
9 operations, the chief engineer or the chief engineer's duly authorized  
10 representative shall, within 90 days of the examination, notify the  
11 applicant if there was a failure to construct the diversion works at the  
12 authorized location or any deficiency of the terms and conditions of the  
13 permit. This notice will provide steps necessary to gain compliance with  
14 state law. If the chief engineer fails to examine the diversion works within  
15 two years of the notice of completion for any sand and gravel operation  
16 diversion works, the applicant shall not be required to forfeit priority date  
17 as a result of failure to construct a diversion works at the authorized  
18 location or any deficiency of the terms and conditions of the permit.

19 (f) Net evaporation from sand and gravel pits, as calculated by the  
20 chief engineer, will be reported as an industrial use to the director of  
21 taxation for the purpose of assessing the water protection fee pursuant to  
22 K.S.A. 82a-954, and amendments thereto.

23 (g) This section shall be part of and supplemental to the Kansas water  
24 appropriations act.

25 Sec. 3. K.S.A. 2012 Supp. 82a-734 is hereby repealed.

26 Sec. 4. This act shall take effect and be in force from and after its  
27 publication in the statute book.