

HOUSE BILL No. 2069

By Committee on Agriculture and Natural Resources

1 AN ACT concerning water; relating to multi-year flex accounts; amending
2 K.S.A. 2014 Supp. 82a-708c and 82a-736 and repealing the existing
3 sections.

4

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

6 Section 1. K.S.A. 2014 Supp. 82a-708c is hereby amended to read as
7 follows: 82a-708c. (a) A term permit is a permit to appropriate water for a
8 limited specified period of time in excess of six months. At the end of the
9 specified time, or any authorized extension approved by the chief engineer,
10 the permit shall be automatically dismissed, and any priority it may have
11 had shall be forfeited. No water right shall be perfected pursuant to a term
12 permit.

13 (b) Each application for a term permit to appropriate water shall be
14 made on a form prescribed by the chief engineer and shall be accompanied
15 by an application fee fixed by this section for the appropriate category of
16 acre feet in accordance with the following:

17 Acre Feet	Fee
18 0 to 100.....	\$200
19 101 to 320.....	\$300
20 More than 320.....	\$300 + \$20
	for each additional 100
	acre feet or any part thereof

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24 On and after July 1, 2018, the application fee shall be set forth in the
25 schedule below:

26 Acre Feet	Fee
27 0 to 100.....	\$100
28 101 to 320.....	\$100
29 More than 320.....	\$150 + \$10
	for each additional 100
	acre feet or any part thereof

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33 The chief engineer shall render a decision on such term permit
34 applications within 150 days of receiving a complete application except
35 when the application cannot be processed due to the standards established
36 in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of

1 receipt of a complete application, the application fee is subject to refund
 2 upon request.

3 (c) Each application for a term permit to appropriate water for
 4 storage, except applications for permits for domestic use, shall be
 5 accompanied by an application fee fixed by this section for the appropriate
 6 category of storage-acre feet in accordance with the following:

7 Storage-Acre Feet	Fee
8 0 to 250.....	\$200
9 More than 250.....	\$200 + \$20
	for each additional 250
	acre feet or any part thereof

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 13 On and after July 1, 2018, the application fee shall be set forth in the
 14 schedule below:

15 Storage-Acre Feet	Fee
16 0 to 250.....	\$100
17 More than 250.....	\$100 + \$10
	for each additional 250
	acre feet or any part thereof

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 21 The chief engineer shall render a decision on such term permit
 22 applications within 150 days of receiving a complete application except
 23 when the application cannot be processed due to the standards established
 24 in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of
 25 receipt of a complete application, the application fee is subject to refund
 26 upon request.

27 (d) Each application for a term permit pursuant to K.S.A. 2014 Supp.
 28 82a-736, and amendments thereto, shall be accompanied by an application
 29 fee established by rules and regulations adopted by the chief engineer in an
 30 amount not to exceed \$400 for the five-year period covered by the permit.

31 (e) Notwithstanding the provisions of K.S.A. 82a-714, and
 32 amendments thereto, the applicant is not required to file a notice of
 33 completion of diversion works nor pay a field inspection fee. The chief
 34 engineer shall not conduct a field inspection of the diversion works
 35 required by statute for purposes of certification nor issue a certificate of
 36 appropriation for a term permit.

37 (f) A request to extend the term of a term permit in accordance with
 38 the rules and regulations adopted by the chief engineer shall be
 39 accompanied by the same filing fee applicable to other requests for
 40 extensions of time as set forth in K.S.A. 82a-714, and amendments thereto.

41 (g) An application to change the place of use, point of diversion, use
 42 made of water, or any combination thereof, pursuant to K.S.A. 82a-708b,
 43 and amendments thereto, shall not be approved for a term permit, *except a*

1 *change in place of use for a term permit approved pursuant to K.S.A. 82a-*
2 *736, and amendments thereto, for irrigation use may be approved by the*
3 *chief engineer for an increase of up to 10 acres or 10% of the authorized*
4 *place of use, whichever is less.*

5 (h) The chief engineer shall adopt rules and regulations to effectuate
6 and administer the provisions of this section.

7 Sec. 2. K.S.A. 2014 Supp. 82a-736 is hereby amended to read as
8 follows: 82a-736. (a) It is hereby recognized that an opportunity exists to
9 improve water management by enabling multi-year flexibility in the use of
10 water authorized to be diverted under a groundwater water right, provided,
11 that such flexibility neither impairs existing water rights, nor increases the
12 total amount of water diverted, so that such flexibility has no long-term
13 negative effect on the source of supply. It is therefore declared necessary
14 and advisable to permit the establishment of multi-year flex accounts for
15 groundwater water rights, together with commensurate protections for
16 existing water rights and their source of supply.

17 (b) As used in this section:

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

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

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

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

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

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

43 (5) "Flex account acreage" means the maximum number of acres

1 lawfully irrigated during a calendar year when no term, condition or
2 limitation of the base water right has been violated and either of the
3 following conditions is met:

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

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

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

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

18 (A) The water right must be vested or shall have been issued a
19 certificate of appropriation;

20 (B) the withdrawal of water pursuant to the water right shall be
21 properly and adequately metered;

22 (C) the water right is not deemed abandoned and is in compliance
23 with the terms and conditions of its certificate of appropriation, all
24 applicable provisions of law and orders of the chief engineer;

25 (D) the amount of water deposited in the multi-year flex account shall
26 not exceed the greatest of the following:

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

28 (ii) 500% of the product of the annual net irrigation requirement
29 multiplied by the flex account acreage, multiplied by 110%, but not greater
30 than five times the maximum annual quantity authorized by the base water
31 right; ~~or~~

32 (iii) if the authorized place of use is located wholly within the
33 boundaries of a groundwater management district, an amount that shall not
34 increase the long-term average use of the groundwater right as specified by
35 rule or regulation promulgated pursuant to ~~subsection (c) of K.S.A. 82a-~~
36 ~~1028(o), and amendments thereto; and or~~

37 (iv) *pursuant to subparagraph (E), the amount computed in (i), (ii) or*
38 *(iii) plus any deposited water remaining in a multi-year flex account up to*
39 *100% of the base average usage;*

40 (E) *any deposited water remaining in a multi-year flex account up to*
41 *100% of the base average usage may be added to the deposit amount*
42 *calculated in subparagraph (D) if the base water right is enrolled in*
43 *another multi-year flex account during the calendar year in which the*

1 *existing multi-year flex account expires. The total amount of water*
2 *deposited in any multi-year flex account shall not exceed 500% of the*
3 *authorized quantity of the base water right; and*

4 (F) notwithstanding any other provisions of this subsection, except
5 when the base water right is suspended due to the issuance of a two-year
6 term permit in a designated drought emergency area for 2011 and 2012,
7 the quantity of water deposited into a multi-year flex account shall be
8 reduced by the quantity of water used in excess of the maximum annual
9 quantity of the base water right during 2011 if the application for a multi-
10 year flex account is filed with the chief engineer on or before July 15,
11 2012.

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

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

21 (e) Term permits provided for by this section shall be subject to the
22 following:

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

25 (2) The quantity of water authorized for diversion shall be limited to
26 the amount deposited pursuant to subsection (c)(1)(D).

27 (3) The rate of diversion for each point of diversion authorized under
28 the term permit shall not exceed the rate of diversion for each point of
29 diversion authorized under the base water right.

30 (4) The authorized place of use shall be the place of use or a
31 subdivision of the place of use for the base water right.

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

42 (6) The chief engineer may establish, by rules and regulations, criteria
43 for such term permits.

1 (7) Except as explicitly provided for by this section, such term
2 permits shall be subject to all provisions of the Kansas water appropriation
3 act, and rules and regulations adopted under such act, and nothing in this
4 section shall authorize impairment of any vested right or prior
5 appropriation right by the exercise of such term permit.

6 (f) An application for a multi-year flex account shall be filed with the
7 chief engineer on or before October 1 of the first year of the multi-year
8 flex account term for which the application is being made.

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

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

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

26 (2) if water use under the authority of the base water right exceeded
27 the maximum annual quantity authorized by the base water right during
28 2011 and the holder of the base water right files an application for
29 approval of a multi-year flex account term permit on or before July 15,
30 2012, then the application fee shall be \$600.

31 (i) The chief engineer shall have full authority pursuant to K.S.A.
32 82a-706c, and amendments thereto, to require any additional measuring
33 devices and any additional reporting of water use for term permits issued
34 pursuant to this section. Failure to comply with any measuring or reporting
35 requirement may result in a penalty, up to and including the revocation of
36 the term permit and the suspension of the base water right for the duration
37 of the term permit period.

38 (j) The chief engineer shall submit a written report on the
39 implementation of this section to the house standing committee on
40 agriculture and natural resources and the senate standing committee on
41 natural resources on or before February 1 of each year.

42 (k) This section shall be part of and supplemental to the Kansas water
43 appropriation act.

- 1 Sec. 3. K.S.A. 2014 Supp. 82a-708c and 82a-736 are hereby repealed.
- 2 Sec. 4. This act shall take effect and be in force from and after its
- 3 publication in the statute book.