

HOUSE BILL No. 2351

By Committee on Agriculture and Natural Resources

2-13

1 AN ACT concerning water; related local enhanced management areas;
2 amending K.S.A. 2014 Supp. 82a-1041 and repealing the existing
3 section.

4

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

6 New Section 1. (a) The chief engineer shall give due consideration to
7 water management or conservation measures previously implemented by a
8 water right holder pursuant to a local enhanced management area,
9 intensive groundwater use control area or other similar program when
10 implementing any further limitations on a water right pursuant to any
11 program established or implemented on and after July 1, 2015. The chief
12 engineer shall take into account reductions in water use, changes in water
13 management practices and other measures undertaken by such water right
14 holder.

15 (b) This section shall be part of and supplemental to the Kansas water
16 appropriation act.

17 Sec. 2. K.S.A. 2014 Supp. 82a-1041 is hereby amended to read as
18 follows: 82a-1041. (a) Whenever a groundwater management district
19 recommends the approval of a local enhanced management plan within the
20 district to address any of the conditions set forth in ~~subsections (a) through~~
21 ~~(d)~~ of K.S.A. 82a-1036(a) through (d), and amendments thereto, the chief
22 engineer shall review the local enhanced management plan submitted by
23 the groundwater management district. The chief engineer's review shall be
24 limited to whether the plan:

25 (1) Proposes clear geographic boundaries;

26 (2) pertains to an area wholly within the groundwater management
27 district;

28 (3) proposes goals and corrective control provisions as provided in
29 subsection (f) adequate to meet the stated goals;

30 (4) *gives due consideration to water users who already have*
31 *implemented reductions in water use resulting in voluntary conservation*
32 *measures;*

33 (5) includes a compliance monitoring and enforcement element; and

34 ~~(5)~~ (6) is consistent with state law.

35 If, based on such review, the chief engineer finds that the local
36 enhanced management plan is acceptable for consideration, the chief

1 engineer shall initiate, as soon as practicable thereafter, proceedings to
2 designate a local enhanced management area.

3 (b) In any case where proceedings to designate a local enhanced
4 management area are initiated, the chief engineer shall conduct an initial
5 public hearing on the question of designating such an area as a local
6 enhanced management area according to the local enhanced management
7 plan. The initial public hearing shall resolve the following findings of fact:

8 (1) Whether one or more of the circumstances specified in ~~subsection~~
9 ~~(a) through (d) of K.S.A. 82a-1036(a) through (d)~~, and amendments
10 thereto, exist;

11 (2) whether the public interest of K.S.A. 82a-1020, and amendments
12 thereto, requires that one or more corrective control provisions be adopted;
13 and

14 (3) whether the geographic boundaries are reasonable.

15 The chief engineer shall conduct a subsequent hearing or hearings only
16 if the initial public hearing is favorable on all three issues of fact and the
17 expansion of geographic boundaries is not recommended. At least 30 days
18 prior to the date set for any hearing, written notice of such hearing shall be
19 given to every person holding a water right of record within the area in
20 question and by one publication in any newspaper of general circulation
21 within the area in question. The notice shall state the question and shall
22 denote the time and place of the hearing. At every such hearing,
23 documentary and oral evidence shall be taken and a complete record of the
24 same shall be kept.

25 (c) The subject matter of the hearing or hearings set forth in
26 subsection (b) shall be limited to the local enhanced management plan that
27 the chief engineer previously reviewed pursuant to subsection (a) and set
28 for hearing.

29 (d) Within 120 days of the conclusion of the final public hearing set
30 forth in subsections (b) and (c), the chief engineer shall issue an order of
31 decision:

32 (1) Accepting the local enhanced management plan as sufficient to
33 address any of the conditions set forth in ~~subsections (a) through (d) of~~
34 K.S.A. 82a-1036(a) through (d), and amendments thereto;

35 (2) rejecting the local enhanced management plan as insufficient to
36 address any of the conditions set forth in ~~subsections (a) through (d) of~~
37 K.S.A. 82a-1036(a) through (d), and amendments thereto;

38 (3) returning the local enhanced management plan to the groundwater
39 management district, giving reasons for the return and providing the
40 district with the opportunity to resubmit a revised plan for public hearing
41 within 90 days of the return of the deficient plan; or

42 (4) returning the local enhanced management plan to the groundwater
43 management district and proposing modifications to the plan, based on

1 testimony at the hearing or hearings, that will improve the administration
2 of the plan, but will not impose reductions in groundwater withdrawals
3 that exceed those contained in the plan. If the groundwater management
4 district approves of the modifications proposed by the chief engineer, the
5 district shall notify the chief engineer within 90 days of receipt of return of
6 the plan. Upon receipt of the groundwater management district's approval
7 of the modifications, the chief engineer shall accept the modified local
8 management plan. If the groundwater management district does not
9 approve of the modifications proposed by the chief engineer, the local
10 management plan shall not be accepted.

11 (e) In any case where the chief engineer issues an order of decision
12 accepting the local enhanced management plan pursuant to subsection (d),
13 the chief engineer, within a reasonable time, shall issue an order of
14 designation that designates the area in question as a local enhanced
15 management area.

16 (f) The order of designation shall define the boundaries of the local
17 enhanced management area and shall indicate the circumstances upon
18 which the findings of the chief engineer are made. The order of
19 designation may include any of the following corrective control provisions
20 set forth in the local enhanced management plan, *provided that if any*
21 *corrective control measure includes administration of one or more water*
22 *rights based on past water use data, such corrective control measures*
23 *shall be based on water use data from calendar years 2003 through 2012:*

24 (1) Closing the local enhanced management area to any further
25 appropriation of groundwater. In which event, the chief engineer shall
26 thereafter refuse to accept any application for a permit to appropriate
27 groundwater located within such area;

28 (2) determining the permissible total withdrawal of groundwater in
29 the local enhanced management area each day, month or year, and, insofar
30 as may be reasonably done, the chief engineer shall apportion such
31 permissible total withdrawal among the valid groundwater right holders in
32 such area in accordance with the relative dates of priority of such rights;

33 (3) reducing the permissible withdrawal of groundwater by any one
34 or more appropriators thereof, or by wells in the local enhanced
35 management area;

36 (4) requiring and specifying a system of rotation of groundwater use
37 in the local enhanced management area; or

38 (5) any other provisions making such additional requirements as are
39 necessary to protect the public interest.

40 The chief engineer is hereby authorized to delegate the enforcement of
41 any corrective control provisions ordered for a local enhanced
42 management area to the groundwater management district in which that
43 area is located, upon written request by the district.

1 (g) The order of designation shall follow, insofar as may be
2 reasonably done, the geographical boundaries recommended by the local
3 enhanced management plan.

4 (h) Except as provided in subsection (f), the order of designation of a
5 local enhanced management area shall be in full force and effect from the
6 date of its entry in the records of the chief engineer's office unless and
7 until its operation shall be stayed by an appeal from an order entered on
8 review of the chief engineer's order pursuant to K.S.A. 2014 Supp. 82a-
9 1901, and amendments thereto, and in accordance with the provisions of
10 the Kansas judicial review act. The chief engineer upon request shall
11 deliver a copy of such order to any interested person who is affected by
12 such order and shall file a copy of the same with the register of deeds of
13 any county within which any part of the local enhanced management area
14 lies.

15 (i) If the holder of a groundwater right within the local enhanced
16 management area applies for review of the order of designation pursuant to
17 K.S.A. 2014 Supp. 82a-1901, and amendments thereto, the provisions of
18 the order with respect to the inclusion of the holder's water right within the
19 area may be stayed in accordance with the Kansas administrative
20 procedure act.

21 (j) Unless otherwise specified in the proposed enhanced management
22 plan and included in the order of designation, a public hearing to review
23 the designation of a local enhanced management area shall be conducted
24 by the chief engineer within seven years after the order of designation is
25 final. A subsequent review of the designation shall occur within 10 years
26 after the previous public review hearing or more frequently as determined
27 by the chief engineer. Upon the request of a petition signed by at least 10%
28 of the affected water users in a local enhanced management area, a public
29 review hearing to review the designation shall be conducted by the chief
30 engineer. This requested public review hearing shall not be conducted
31 more frequently than every four years.

32 (k) The chief engineer shall adopt rules and regulations to effectuate
33 and administer the provisions of this section.

34 (l) The provisions of this section shall be part of and supplemental to
35 the provisions of K.S.A. 82a-1020 through K.S.A. 82a-1040, and
36 amendments thereto.

37 Sec. 3. K.S.A. 2014 Supp. 82a-1041 is hereby repealed.

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