

As Amended by House Committee

Session of 2024

HOUSE BILL No. 2678

By Committee on Water

Requested by Randy Stookey on behalf of Groundwater Management District 5

2-5

1 AN ACT concerning water; relating to the Kansas water banking act;
2 extending the period for how long a groundwater right can be deposited
3 in a water bank; requiring that water withdrawn from an account be
4 authorized by the water bank on or before December 1 of the calendar
5 year in which the withdrawn water is to be used; **requiring an**
6 **evaluation by an independent consultant on the central Kansas**
7 **water bank before July 1, 2025; establishing a maximum length for**
8 **an extension of a water bank charter; amending K.S.A. 82a-763 and**
9 **82a-765 and repealing the existing section sections.**

10
11 *Be it enacted by the Legislature of the State of Kansas:*

12 **New Section 1. (a) Notwithstanding the provisions of K.S.A. 82a-**
13 **767, and amendments thereto, concerning the length of time for**
14 **conducting water bank evaluations, in lieu of the next regularly**
15 **scheduled five-year evaluation of the central Kansas water bank, the**
16 **director of the Kansas water office shall, in consultation with the chief**
17 **engineer, develop a request for proposal and select an independent**
18 **consultant to conduct the evaluation, as described in K.S.A. 82a-767,**
19 **and amendments thereto, of the operations of the central Kansas**
20 **water bank. Such evaluation shall include specific findings regarding**
21 **the consumptive use and potential impairment impacts involved with**
22 **the use of safe deposit accounts in the Rattlesnake Creek hydrologic**
23 **unit. Such evaluation shall be initiated before July 1, 2025.**

24 **(b) The evaluation required by this section shall be funded from**
25 **existing resources of the Kansas department of agriculture.**

26 **(c) This section shall be a part of and supplemental to the Kansas**
27 **water banking act.**

28 **(d) This section shall expire on July 1, 2027.**

29 ~~Section 1.~~ **Sec. 2.** K.S.A. 82a-763 is hereby amended to read as
30 follows: 82a-763. (a) A water bank shall be authorized to enter into
31 contracts with holders of water rights for deposit in the bank of all or a
32 portion of any water right from a hydrologic unit within the bank
33 boundary, subject to the following:

34 (1) The bank shall accept for deposit only a water right, or portion of
35 a water right, that has been determined to be a bankable water right under

1 K.S.A. 82a-764, and amendments thereto;

2 (2) a deposit of a groundwater water right shall be for a period of not
3 more than ~~five~~ 10 years;

4 (3) a deposit shall be subject to such terms and conditions as provided
5 by the contract between the bank and the depositor, including penalty
6 provisions for breach of any contract conditions; and

7 (4) a deposit shall be subject to such terms and conditions, and ~~such~~
8 approval by the chief engineer, as provided by rules and regulations of the
9 chief engineer.

10 (b) A water bank shall be authorized to lease water from any water
11 right, or portion of a water right, that has been deposited in the bank,
12 subject to the following:

13 (1) Any water leased ~~must~~ shall be used within the bank boundary
14 and in the same hydrologic unit from which the water right authorizing
15 diversion of the water is deposited;

16 (2) use of leased water shall be subject to all provisions of the Kansas
17 water appropriation act, including, but not limited to, all requirements
18 relating to term permits;

19 (3) a lease shall be subject to such terms and conditions as provided
20 by the contract between the bank and the lessor, including penalty
21 provisions for breach of any contract conditions;

22 (4) a lease shall be subject to such terms and conditions, and ~~such~~
23 approval by the chief engineer, as provided by rules and regulations of the
24 chief engineer; and

25 (5) a water bank's decision of whether or not to lease water shall not
26 be based on the proposed use of the water.

27 (c) A water bank shall provide safe deposit accounts where a holder
28 of a water right may place unused water from the water right for future
29 withdrawal, subject to the following:

30 (1) A water right holder shall place in a safe deposit account only
31 water from a water right that has been determined to be a bankable water
32 right under K.S.A. 82a-764, and amendments thereto;

33 (2) only water that was unused in the immediate past calendar year
34 may be placed in a safe deposit account and the amount that shall be
35 placed in such account shall be less than the total amount of unused water
36 from the bankable water right in that year;

37 (3) only water from one water right shall be placed in a safe deposit
38 account and water from a water right shall not be placed in more than one
39 safe deposit account, except that water from linked water rights may be
40 placed in a single safe deposit account;

41 (4) each calendar year that water remains in a safe deposit account,
42 the amount of water held in the account shall decrease by a percentage
43 established by the charter of the bank but in no case less than 10%

1 annually of all amounts placed in the account;

2 (5) the total amount of water accumulated in a safe deposit account
3 shall not exceed the maximum annual quantity authorized to be diverted
4 under the water right or the aggregate maximum quantity authorized to be
5 diverted under all linked water rights from which water is deposited in the
6 account;

7 (6) use of water withdrawn from a safe deposit account shall be
8 subject to all provisions of the Kansas water appropriation act, including,
9 but not limited to, all requirements relating to term permits;

10 (7) *water withdrawn from a safe deposit account shall be authorized*
11 *by the water bank on or before December 1 of the calendar year in which*
12 *the withdrawn water is to be used;*

13 (8) a safe deposit account shall be subject to such terms and
14 conditions as provided by the contract between the bank and the account
15 holder, including penalty provisions for breach of any contract conditions;

16 ~~(8)~~(9) a safe deposit account shall be subject to such terms and
17 conditions, and ~~such~~ approval by the chief engineer, as provided by rules
18 and regulations of the chief engineer; and

19 ~~(9)~~(10) the operation of safe deposit accounts by the bank shall not
20 result in an increase in the amount of net consumptive use of water in any
21 hydrologic unit, computed on a long-term rolling average compared to a
22 representative past period.

23 (d) A water bank may provide services to facilitate the sale or lease of
24 water rights.

25 (e) A water bank shall not own, buy or sell water rights.

26 **Sec. 3. K.S.A. 82a-765 is hereby amended to read as follows: 82a-**
27 **765. (a) Before a water bank is authorized to operate in the state, the**
28 **bank's charter ~~must~~ shall be approved by the chief engineer. Prior to**
29 **approval, the body wishing to charter the bank shall submit to the**
30 **chief engineer the proposed bank charter and any other information**
31 **required by rules and regulations of the chief engineer to determine**
32 **whether the bank shall be chartered to operate in the state.**

33 **(b) The chief engineer shall approve the charter of a water bank**
34 **only if the chief engineer determines that:**

35 **(1) The charter ensures that the operations and policies of the**
36 **bank will be consistent with the provisions of this act, the state water**
37 **plan and all applicable statutes, rules and regulations, findings and**
38 **orders of the chief engineer, groundwater management district policies**
39 **and water assurance district operations plans;**

40 **(2) there is sufficient participation by water right holders and**
41 **water users to make the operations of the bank practical and feasible;**

42 **(3) the governing body of the bank has at least five members and**
43 **is reasonably representative of public and private interests in water**

1 within the bank boundary;

2 (4) the bank would not lease or accept for placement in a safe
3 deposit account water from the same hydrologic unit as another
4 chartered bank or accept for deposit a water right that authorizes
5 diversion of water from the same hydrologic unit as another chartered
6 water bank;

7 (5) the charter ensures that, for each calendar year, the aggregate
8 amount of all bank deposits, determined by multiplying the amount of
9 each water right deposited by the length of time of the deposit and
10 then adding together the resulting amounts for all deposits, will equal
11 or exceed the sum of the aggregate amount of water leased by the
12 bank, determined by multiplying the amount of each lease by the
13 length of time of the lease and then adding together the resulting
14 amounts for all leases, plus the aggregate conservation element of all
15 leases, determined by multiplying the conservation element of each
16 lease by the length of the lease and then adding together the resulting
17 amounts for all leases;

18 (6) the charter ensures that the operations of the bank will not
19 result in impairment of existing water rights or an increase in
20 depletion of severely depleted groundwater aquifers or stream
21 courses;

22 (7) the charter ensures that the operations of the bank will result
23 in a savings of 10% or more in the total amount of groundwater
24 consumed for a representative past period pursuant to water rights
25 deposited in the bank, excluding groundwater located in an intensive
26 groundwater use control area where corrective control provisions have
27 reduced the allocation of groundwater to less than the quantity
28 previously authorized by water rights in the area;

29 (8) the charter provides a procedure for resolution of complaints
30 by bank participants and others impacted by the bank policies,
31 practices and operations;

32 (9) the charter ensures that the determination of the portion of a
33 water right that is bankable shall be subject to the following:

34 (A) The determination shall be primarily based on a
35 representative period of average water consumption for the hydrologic
36 unit from which water is authorized to be diverted under the water
37 right; and

38 (B) the method of determination shall not penalize past
39 implementation of water conservation practices;

40 (10) the charter ensures that the total amount of groundwater
41 leased each year from each hydrologic unit does not exceed 90% of the
42 historic average annual amount collectively diverted pursuant to all
43 deposited water rights or portions of water rights from such unit for a

1 representative past period; and

2 **(11) the charter provides a procedure for the dissolution of the**
3 **bank, specifically stating how the remaining deposits and safe deposit**
4 **accounts will be distributed.**

5 **(c) A water bank shall be chartered for an initial period of not**
6 **more than seven years, at which time, the bank shall be subject to**
7 **review in accordance with K.S.A. 82a-767, and amendments thereto,**
8 **to determine whether the initial charter shall lapse or the bank shall be**
9 ~~chartered~~ *be extended. A water bank's charter shall not be extended for*
10 *more than seven years. For any water bank charter previously extended*
11 *permanently or for a period of more than seven years after the review*
12 *required by K.S.A. 82a-767, and amendments thereto, the chief engineer*
13 *shall determine whether the bank's charter shall lapse or be extended for a*
14 *period of not more than seven years at the water bank's next evaluation in*
15 *accordance with the recommendations of the evaluation team.*

16 **(d) Any amendment to the charter of a water bank must shall be**
17 **approved by the chief engineer prior to adoption of the amendment.**

18 ~~Sec. 2.~~ **4.** K.S.A. 82a-763 ~~is~~ **and 82a-765** are hereby repealed.

19 ~~Sec. 3.~~ **5.** This act shall take effect and be in force from and after its
20 publication in the statute book.