

SENATE BILL No. 205

By Committee on Agriculture and Natural Resources

2-8

1 AN ACT concerning water; relating to water rights; authorizing certain
2 water rights in a water bank to participate in multi-year flex accounts
3 on a temporary basis; amending K.S.A. 82a-764 and ***K.S.A. 2022***
4 ***Supp. 82a-736 and*** repealing the existing ~~section~~ ***sections***.
5

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

7 New Section 1. (a) Notwithstanding any prohibition or restriction on
8 the establishment of multi-year flex accounts due to participation of a base
9 water right in a water bank established pursuant to the Kansas water
10 banking act, K.S.A. 82a-761 et seq., and amendments thereto, the chief
11 engineer shall approve a complete application for the establishment of a
12 multi-year flex account pursuant to K.S.A. 82a-736, and amendments
13 thereto, that was submitted to the chief engineer on or before December
14 31, 2022, if such right otherwise meets the requirements of K.S.A. 82a-
15 736, and amendments thereto, and could have been approved if not for the
16 relevant base water right's participation in a water bank.

17 (b) This section shall expire on December 31, 2023.

18 New Sec. 2. (a) For purposes of K.S.A. 82a-736, and amendments
19 thereto, a water right or any portion of a water right that has been
20 deposited, enrolled or placed in a safe deposit account associated with a
21 water bank established pursuant to the Kansas water banking act, K.S.A.
22 82a-761 et seq., and amendments thereto, shall not be eligible to be
23 enrolled in a multi-year flex account that begins during a calendar year in
24 which water from such water right or portion of a water right was
25 withdrawn from a safe deposit account. Water from a water right that has
26 been deposited, enrolled or placed in a safe deposit account associated
27 with a water bank established pursuant to the Kansas water banking act,
28 K.S.A. 82a-761 et seq., and amendments thereto, shall not be withdrawn
29 from a safe deposit account while such water right is enrolled in a multi-
30 year flex account.

31 (b) A water right shall be considered enrolled in a multi-year flex
32 account until the end of the calendar year in which the multi-year flex
33 account permit expires, even if the allocation under the multi-year flex
34 account is exhausted prior to the expiration of the multi-year flex account
35 permit.

36 Sec. 3. K.S.A. 82a-764 is hereby amended to read as follows: 82a-

1 764. Before a water right or portion of a water right shall be accepted for
2 deposit in a water bank or water from a water right shall be placed in a
3 safe deposit account, the bank, with the assistance of the division, shall
4 determine whether the water right is bankable, ~~as follows~~. *A water right*
5 *is bankable if the right:*

6 ~~(a) The right~~ Is vested or has been issued a certificate of
7 appropriation; ~~and~~

8 ~~(b) the right~~ has not been abandoned and is in good standing, based
9 on past water usage and compliance with the terms of the holder's permit
10 and all applicable provisions of law and orders of the chief engineer; *and*

11 *(c) is not currently enrolled in an active multi-year flex account*
12 *pursuant to K.S.A. 82a-736, and amendments thereto. If the allocation*
13 *under the multi-year flex account is exhausted prior to the end of a*
14 *calendar year, the water right shall be considered enrolled in a multi-year*
15 *flex account until the end of the calendar year in which the multi-year flex*
16 *account permit expires.*

17 **Sec. 4. K.S.A. 2022 Supp. 82a-736 is hereby amended to read as**
18 **follows: 82a-736. (a) It is hereby recognized that an opportunity exists to**
19 **improve water management by enabling multi-year flexibility in the use**
20 **of water authorized to be diverted under a groundwater water right,**
21 **provided that such flexibility neither impairs existing water rights, nor**
22 **increases the total amount of water diverted, so that such flexibility has**
23 **no long-term negative effect on the source of supply. It is therefore**
24 **declared necessary and advisable to permit the establishment of multi-**
25 **year flex accounts for groundwater water rights, together with**
26 **commensurate protections for existing water rights and their source of**
27 **supply.**

28 **(b) As used in this section:**

29 **(1) "Alternative base average usage" means an allocation based on**
30 **net irrigation requirements calculated pursuant to subsection (c)(1)(D)**
31 **(ii) that may be used in place of the base average usage.**

32 **(2) "Base water right" means a water right under which an**
33 **applicant applies to the chief engineer to establish a multi-year flex**
34 **account and where all of the following conditions exist:**

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

36 **(B) the water right is not currently the subject of a multi-year**
37 **allocation due to a change approval that allows an expansion of the**
38 **authorized place of use.**

39 **(3) "Multi-year flex account" means a term permit that suspends a**
40 **base water right during its term, except when the term permit may be no**
41 **longer exercised because of an order of the chief engineer, and is subject**
42 **to the terms and conditions as provided in subsection (e).**

43 **(4) "Base average usage" means:**

1 (A) *The average amount of water actually diverted for the*
2 *authorized beneficial use under the base water right during calendar*
3 *years 2000 through 2009, excluding:*

4 (i) *Any amount diverted in any such year that exceeded the amount*
5 *authorized by the base water right;*

6 (ii) *any amount applied to an unauthorized place of use; and*

7 (iii) *diversions in calendar years when water was diverted under a*
8 *multi-year allocation with an expansion of the authorized place of use*
9 *due to a change approval;*

10 (B) *if water use records are inadequate to accurately determine*
11 *actual water use or upon demonstration of good cause by the applicant,*
12 *the chief engineer may calculate the base average usage with less than*
13 *all 10 calendar years during 2000 and 2009. In no case shall the base*
14 *average usage be calculated with less than five calendar years during*
15 *2000 and 2009; or*

16 (C) *if the holder of the base water right shows to the satisfaction of*
17 *the chief engineer that water conservation reduced water use under the*
18 *base water right during calendar years 2000 through 2009, then the base*
19 *average usage shall be calculated with the five calendar years*
20 *immediately before the calendar year when water conservation began.*

21 (5) *"Chief engineer" means the chief engineer of the division of*
22 *water resources of the department of agriculture.*

23 (6) *"Flex account acreage" means the maximum number of acres*
24 *lawfully irrigated during a calendar year, except for any acres irrigated*
25 *under a multi-year allocation that allowed for an expansion of the*
26 *authorized place of use due to a change approval and any of the*
27 *following conditions are met:*

28 (A) *The calendar year is 2000 through 2009;*

29 (B) *if water conservation reduced water use under the base water*
30 *right during calendar years 2000 through 2009, the calendar year is a*
31 *year within the five calendar years immediately prior to the calendar*
32 *year when water conservation began; or*

33 (C) *if an application to appropriate water was approved after*
34 *December 31, 2004, the calendar year is any during the perfection*
35 *period.*

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

40 (c) (I) *Except as provided in sections 1 and 2, and amendments*
41 *thereto, any holder of a base water right that has not been deposited or*
42 *placed in a safe deposit account in a chartered water bank may establish*
43 *a multi-year flex account where the holder may deposit, in advance, the*

1 *authorized quantity of water from such water right for any five*
2 *consecutive calendar years, except when the chief engineer determines a*
3 *shorter period is necessary for compliance with a local enhanced*
4 *management area or an intensive groundwater use control area and the*
5 *corrective controls in the area do not prohibit the use of multi-year flex*
6 *accounts, and subject to all of the following:*

7 *(A) The water right must be vested or shall have been issued a*
8 *certificate of appropriation;*

9 *(B) the withdrawal of water pursuant to the water right shall be*
10 *properly and adequately metered;*

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

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

16 *(i) 500% of the base average usage;*

17 *(ii) 500% of the product of the annual net irrigation requirement*
18 *multiplied by the flex account acreage, multiplied by 110%, but not*
19 *greater than five times the maximum annual quantity authorized by the*
20 *base water right;*

21 *(iii) if the authorized place of use is located wholly within the*
22 *boundaries of a groundwater management district, an amount that shall*
23 *not increase the long-term average use of the groundwater right as*
24 *specified by rule or regulation promulgated pursuant to K.S.A. 82a-*
25 *1028(o), and amendments thereto; or*

26 *(iv) pursuant to subparagraph (F), the amount computed in (i), (ii)*
27 *or (iii) plus any deposited water remaining in a multi-year flex account*
28 *up to 100% of the base average usage or alternative base average usage;*

29 *(E) if the multi-year flex account is approved for less than five*
30 *calendar years, the amount of water deposited in the multi-year flex*
31 *account shall be prorated based on the number of calendar years*
32 *approved and otherwise calculated as required by subsection (c)(1)(D)*
33 *(i), (ii) or (iii); and*

34 *(F) any deposited water remaining in a multi-year flex account up*
35 *to 100% of the base average usage or alternative base average usage*
36 *may be added to the deposit amount calculated in subparagraph (D) if*
37 *the base water right is enrolled in another multi-year flex account*
38 *during the calendar year in which the existing multi-year flex account*
39 *expires. The total amount of water deposited in any multi-year flex*
40 *account shall not exceed 500% of the authorized quantity of the base*
41 *water right.*

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

1 (d) *The chief engineer shall implement a program providing for the*
2 *issuance of term permits to holders of groundwater water rights who*
3 *have established flex accounts in accordance with this section. Such*
4 *term permits shall authorize the use of water in a flex account at any*
5 *time during the consecutive calendar years for which the application for*
6 *the term permit authorizing a multi-year flex account is made, without*
7 *annual limits on such use.*

8 (e) *Term permits provided for by this section shall be subject to the*
9 *following:*

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

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

14 (3) *The rate of diversion for each point of diversion authorized*
15 *under the term permit shall not exceed the rate of diversion for each*
16 *point of diversion authorized under the base water right.*

17 (4) *The authorized place of use shall be the place of use or a*
18 *subdivision of the place of use for the base water right. Any approval of*
19 *an application to change the place of use of the base water right shall*
20 *automatically result in a change to the place of use for the term permit.*

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

32 (6) *The chief engineer may establish, by rules and regulations,*
33 *criteria for such term permits.*

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

39 (f) *An application for a multi-year flex account shall be filed with*
40 *the chief engineer on or before December 31 of the first year of the*
41 *multi-year flex account term for which the application is being made.*

42 (g) *All costs of administration of this section shall be paid from fees*
43 *for term permits provided for by this section. Any appropriation or*

1 *transfer from any fund other than the water appropriation certification*
2 *fund for the purpose of paying such costs shall be repaid to the fund*
3 *from where such appropriation or transfer is made. At the time of*
4 *repayment, the secretary of agriculture shall certify to the director of*
5 *accounts and reports the amount to be repaid and the fund to be repaid.*
6 *Upon receipt of such certification, the director of accounts and reports*
7 *shall promptly transfer the amount certified to the specified fund.*

8 *(h) The fee for a multi-year flex account term permit shall be the*
9 *same as specified for other term permits in K.S.A. 82a-708c, and*
10 *amendments thereto.*

11 *(i) The chief engineer shall have full authority pursuant to K.S.A.*
12 *82a-706c, and amendments thereto, to require any additional measuring*
13 *devices and any additional reporting of water use for term permits issued*
14 *pursuant to this section. Failure to comply with any measuring or*
15 *reporting requirement may result in a penalty, up to and including the*
16 *revocation of the term permit and the suspension of the base water right*
17 *for the duration of the term permit period.*

18 *(j) The chief engineer shall submit a written report on the*
19 *implementation of this section to the house standing committee on*
20 *agriculture and natural resources and the senate standing committee on*
21 *natural resources on or before February 1 of each year.*

22 *(k) This section shall be a part of and supplemental to the Kansas*
23 *water appropriation act.*

24 ~~Sec.-4- 5.~~ *K.S.A. 82a-764-is and K.S.A. 2022 Supp. 82a-736 are*
25 *hereby repealed.*

26 ~~Sec.-5- 6.~~ *This act shall take effect and be in force from and after its*
27 *publication in the Kansas register.*