

HOUSE BILL No. 2513

By Committee on Water and Environment

1-22

1 AN ACT concerning water; relating to surface water protection fees;
2 relating to water assurance districts; creating the surface water
3 protection fee fund; relating to authorized expenditures from the
4 surface water protection fee fund; amending K.S.A. 82a-1345 and
5 repealing the existing section.
6

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

8 New Section 1. (a) On and after January 1, 2019, there is hereby
9 imposed a surface water protection fee at the rate of \$.05 per 1,000 gallons
10 of surface water that is:

11 (1) Sold at retail by a public water supply system and delivered
12 through mains, lines or pipes; and

13 (2) appropriated for industrial use pursuant to a permit granted in
14 accordance with the Kansas water appropriation act and assessed in the
15 same manner as provided in K.S.A. 82a-954(c), and amendments thereto.

16 (b) The fee imposed by subsection (a)(1) shall be paid quarterly by
17 the public water supplier and shall be transmitted to the department of
18 revenue not later than 45 days following the end of each quarter. The
19 public water supplier may collect the fee directly from each consumer to
20 which water is sold at retail or may pay the amount owed to the
21 department from moneys in its operating fund or other fund available for
22 that purpose. The fee imposed by subsection (a)(2) shall be paid annually
23 by the owner of the permit.

24 (c) If any retailer or permit owner fails to pay the fee required to be
25 collected and paid pursuant to this section, there shall be added to the
26 unpaid balance of the fee, penalty and interest as prescribed under K.S.A.
27 79-3615, and amendments thereto, for the late payment of sales tax.

28 (d) The director of taxation shall administer, enforce and collect the
29 fee imposed pursuant to this section. All laws and rules and regulations of
30 the secretary relating to the administration, enforcement and collection of
31 the retailers' sales tax shall apply to such fee insofar as they can be made
32 applicable, and the secretary shall adopt rules and regulations as necessary
33 for the efficient and effective administration, enforcement and collection
34 of such fee.

35 (e) The director of taxation shall remit all moneys collected from the
36 fee imposed pursuant to this section to the state treasurer in accordance

1 with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
2 receipt of each such remittance, the state treasurer shall deposit the entire
3 amount in the state treasury to the credit of the surface water protection fee
4 fund created by section 2, and amendments thereto.

5 (f) (1) Subject to the provisions of paragraph (3), the fee imposed
6 pursuant to this section shall not be imposed or collected in the calendar
7 year after the director of taxation receives certification pursuant to
8 paragraph (2) or in any calendar year after December 31, 2029.

9 (2) On or before August 1, 2018, and each year thereafter until
10 August 1, 2029, the director of the Kansas water office in consultation
11 with the secretary of revenue, shall certify to the director of taxation the
12 total aggregate amount transferred in the immediately preceding fiscal year
13 to the state water plan fund pursuant to K.S.A. 79-4804 and 82a-953a, and
14 amendments thereto, and any other amount transferred to the state water
15 plan fund from the state general fund or from the state economic
16 development initiatives fund. Upon receiving certification that an
17 aggregate annual amount of \$8,000,000 has been transferred to the state
18 water plan fund from the state general fund or the state economic
19 development initiatives fund for two consecutive fiscal years, the director
20 of taxation shall discontinue collection of the fee imposed pursuant to
21 subsection (a) on and after January 1 of the calendar year following such
22 certification.

23 (3) If collection of the fee is discontinued pursuant to paragraph (2),
24 upon receiving a subsequent certification that an aggregate annual amount
25 of \$8,000,000 has not been transferred to the state water plan fund from
26 the state general fund or the state economic development initiatives fund in
27 any fiscal year, the director of taxation shall recommence collection of the
28 fee imposed by this section on and after January 1 of the calendar year
29 following such certification until such time that the fee is again
30 discontinued pursuant to the provisions of this subsection.

31 New Sec. 2. (a) There is hereby created in the state treasury the
32 surface water protection fee fund. All expenditures from the surface water
33 protection fee fund shall be made in accordance with appropriation acts
34 upon warrants of the director of accounts and reports pursuant to vouchers
35 approved by the director of the Kansas water office or the director's
36 designee. All moneys received from the fees imposed pursuant to K.S.A.
37 82a-1345(i), and amendments thereto, and section 1, and amendments
38 thereto, shall be deposited in the state treasury in accordance with the
39 provisions of K.S.A. 75-4215, and amendments thereto, and shall be
40 credited to the surface water protection fee fund.

41 (b) The moneys in the surface water protection fee fund shall be
42 expended to support programs and projects that benefit surface water users
43 or municipal aquifer recharge programs for municipalities that use surface

1 water. The moneys in the surface water protection fee fund shall be
2 expended on a priority basis to:

3 (1) Acquire reservoir water storage and pay the attributable operation
4 and maintenance costs;

5 (2) fund research, that otherwise would not be funded by moneys
6 from the state water plan fund, that focuses on issues that include, but are
7 not limited to:

8 (A) Identifying and treating water quality issues that could impact
9 downstream water treatment operations;

10 (B) identifying changes in reservoir storage capacity and sediment
11 composition; or

12 (C) factors affecting sediment entering streams during high and low
13 flow events.

14 Sec. 3. K.S.A. 82a-1345 is hereby amended to read as follows: 82a-
15 1345. (a) The water assurance district shall impose a charge against each
16 member of the water assurance district. The total of such charges shall be
17 sufficient to enable the district to pay *the amount required pursuant to*
18 *subsection (i) and to pay* the state the full annual amortized cost to the
19 state of acquiring the assurance storage from the federal government by
20 purchase or trade, the cost of operation and maintenance of the assurance
21 storage, the cost of state administration and enforcement of the assurance
22 program. The water assurance district also may impose a charge against
23 each member of the district in an amount sufficient to cover district
24 operating costs. The water assurance district shall impose any charges
25 necessary for the payment of the principal of and interest on revenue
26 bonds issued by the Kansas water office pursuant to the provisions of
27 chapter 394 of the ~~Laws of~~ 1986 *session laws of Kansas*. The water
28 assurance district shall determine the amount of the charge for each
29 member and shall remit moneys collected to the Kansas water office for
30 deposit in the fund created pursuant to K.S.A. 82a-1364, *and amendments*
31 *thereto*. Charges to be paid by members of a water assurance district may
32 vary and shall be based on the principle of having each member pay for
33 the pro rata quantity authorized to each member from the assurance
34 program. In determining the charge, the governing body of the district
35 shall adopt rules which establish guidelines for prospective members.

36 (b) The director of the Kansas water office shall request releases of
37 assurance water by the federal government under the agreements with the
38 federal government that govern operations of reservoirs containing
39 assurance storage.

40 (c) No member below a reservoir shall divert water from releases of
41 assurance water unless the member has a conservation plan which has
42 been approved in the manner provided by K.S.A. 82a-1348, *and*
43 *amendments thereto*, and which is in effect at the time of the desired

1 diversion.

2 (d) An entity which becomes a holder of a water right in a river basin
3 after an assurance program is in place for that basin shall become a
4 member if the chief engineer determines that sufficient additional water
5 may be yielded from assurance reservoirs to benefit the potential new
6 member.

7 (e) The director of the Kansas water office and the chief engineer
8 each shall adopt any rules and regulations necessary to carry out the
9 purposes and procedures of this act. The director and the chief engineer
10 shall consider the advice of any existing assurance districts in the
11 preparation of any rules and regulations adopted pursuant to this
12 subsection.

13 (f) Any holder of a water right below a reservoir aggrieved by a
14 decision of the chief engineer under this act by being either included or
15 excluded as a member in the assurance program may appeal to the district
16 court under K.S.A. 82a-724, and amendments thereto.

17 (g) Payments required under a contract between a water assurance
18 district and the Kansas water office shall be for storage capacity contracted
19 in federal reservoirs. Nothing in this act shall be deemed to authorize any
20 suit against the state or any agency of the state or person employed by the
21 state on an implied contract or for negligence or any other tort. The
22 director of the Kansas water office may sue to enforce any claim arising
23 out of a contract. Payment of the assessment shall be a condition imposed
24 on every member and the chief engineer is authorized to declare the
25 suspension of any use of assurance water where a payment is not made.

26 (h) Rights of members to receive assurance water may not be
27 transferred separately from their water rights.

28 (i) (1) *On and after January 1, 2019, a water assurance district shall*
29 *impose a charge against each member of such water assurance district*
30 *that is sufficient for the district to remit annually to the director of taxation*
31 *an amount equal to \$.002 per 1,000 gallons of assurance storage capacity*
32 *in reservoirs as reported by the Kansas water office. If any district fails to*
33 *pay the fee required to be collected and paid pursuant to this subsection,*
34 *there shall be added to the unpaid balance of the fee a penalty and interest*
35 *as prescribed under K.S.A. 79-3615, and amendments thereto, for the late*
36 *payment of sales tax. The director of taxation shall collect the fee imposed*
37 *pursuant to this subsection. All laws and rules and regulations of the*
38 *secretary of revenue relating to the collection of the retailers' sales tax*
39 *shall apply to such fee insofar as they can be made applicable, and the*
40 *secretary of revenue shall adopt rules and regulations as necessary for the*
41 *efficient and effective collection of such fee.*

42 (2) *The director of taxation shall remit all moneys collected from the*
43 *fee imposed pursuant to this subsection to the state treasurer in*

1 accordance with the provisions of K.S.A. 75-4215, and amendments
2 thereto. Upon receipt of each such remittance, the state treasurer shall
3 deposit the entire amount in the state treasury to the credit of the surface
4 water protection fee fund created by section 2, and amendments thereto.

5 (3) (A) The fee imposed pursuant to this subsection shall not be
6 imposed or collected in the calendar year after the director of taxation
7 receives the certification requirements pursuant to paragraph (3)(B) or in
8 any calendar year after December 31, 2029.

9 (B) On or before August 1, 2018, and each year thereafter until
10 August 1, 2029, the director of the Kansas water office in consultation
11 with the secretary of revenue, shall certify to the director of taxation the
12 total aggregate amount transferred in the immediately preceding fiscal
13 year to the state water plan fund pursuant to K.S.A. 79-4804 and 82a-
14 953a, and amendments thereto, and any other amount transferred to the
15 state water plan fund from the state general fund or from the state
16 economic development initiatives fund. Upon receiving certification that
17 an aggregate annual amount of \$8,000,000 has been transferred to the
18 state water plan fund from the state general fund or the state economic
19 development initiatives fund for two consecutive fiscal years, the director
20 of taxation shall discontinue collection of the fee imposed pursuant to this
21 subsection on and after January 1 of the calendar year following such
22 certification.

23 (C) If collection of the fee is discontinued pursuant to paragraph (3)
24 (B), upon receiving a subsequent certification that an aggregate annual
25 amount of \$8,000,000 has not been transferred to the state water plan
26 fund from the state general fund or the state economic development
27 initiatives fund in any fiscal year, the director of taxation shall
28 recommence collection of the fee imposed by this section on and after
29 January 1 of the calendar year following such certification until such time
30 that the fee is again discontinued pursuant to the provisions of this
31 paragraph.

32 Sec. 4. K.S.A. 82a-1345 is hereby repealed.

33 Sec. 5. This act shall take effect and be in force from and after its
34 publication in the statute book.