

HOUSE BILL No. 2516

By Committee on Agriculture and Natural Resources

1-24

1 AN ACT concerning water; relating to the Kansas water banking act;
2 amending K.S.A. 2011 Supp. 82a-765, **82a-766** and 82a-767 and
3 repealing the existing sections.
4

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

6 Section 1. K.S.A. 2011 Supp. 82a-765 is hereby amended to read as
7 follows: 82a-765. (a) Before a water bank is authorized to operate in the
8 state, the bank's charter must be approved by the chief engineer. Prior to
9 approval, the body wishing to charter the bank shall submit to the chief
10 engineer the proposed bank charter and any other information required by
11 rules and regulations of the chief engineer to determine whether the bank
12 shall be chartered to operate in the state.

13 (b) The chief engineer shall approve the charter of a water bank only
14 if the chief engineer determines that:

15 (1) The charter ensures that the operations and policies of the bank
16 will be consistent with the provisions of this act, the state water plan and
17 all applicable statutes, rules and regulations, findings and orders of the
18 chief engineer, groundwater management district policies and water
19 assurance district operations plans;

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

22 (3) the governing body of the bank has at least five members and is
23 reasonably representative of public and private interests in water within
24 the bank boundary;

25 (4) the bank would not lease or accept for placement in a safe deposit
26 account water from the same hydrologic unit as another chartered bank or
27 accept for deposit a water right that authorizes diversion of water from the
28 same hydrologic unit as another chartered water bank;

29 (5) the charter ensures that, for each calendar year, the aggregate
30 amount of all bank deposits~~),~~ determined by multiplying the amount of
31 each water right deposited by the length of time of the deposit and then
32 adding together the resulting amounts for all deposits~~),~~ will equal or
33 exceed the sum of the aggregate amount of water leased by the bank~~),~~
34 determined by multiplying the amount of each lease by the length of time

1 of the lease and then adding together the resulting amounts for all leases),
2 plus the aggregate conservation element of all leases—(, determined by
3 multiplying the conservation element of each lease by the length of the
4 lease and then adding together the resulting amounts for all leases);

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

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

15 (8) the charter provides a procedure for resolution of complaints by
16 bank participants and others impacted by the bank policies, practices and
17 operations;

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

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

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

25 (10) the charter ensures that the total amount of groundwater leased
26 each year from each hydrologic unit does not exceed 90% of the historic
27 average annual amount collectively diverted pursuant to all deposited
28 water rights or portions of water rights from such unit for a representative
29 past period; and

30 (11) the charter provides a procedure for the dissolution of the bank,
31 specifically stating how the remaining deposits and safe deposit accounts
32 will be distributed.

33 ~~(c) Prior to July 1, 2002, not more than one water bank shall be~~
34 ~~chartered to operate in the state. Such water bank shall be a groundwater~~
35 ~~bank. On or after July 1, 2002, one additional water bank may be chartered~~
36 ~~to operate in the state. Such water bank shall be a surface water bank or a~~
37 ~~surface water and groundwater bank.~~

38 ~~(d) A water bank shall be chartered for a *an initial* period of not more~~
39 ~~than seven years, at which time the bank shall be subject to review in~~
40 ~~accordance with K.S.A. 2011 Supp. 82a-767, and amendments thereto, to~~
41 ~~determine whether the bank's charter shall be *permanently extended* **initial**~~
42 ~~**charter shall lapse or the bank shall be chartered.**~~

43 ~~(e) (d) Any amendment to the charter of a water bank must be~~

1 approved by the chief engineer prior to adoption of the amendment.

2 **Sec. 2. K.S.A. 2011 Supp. 82a-766 is hereby amended to read as**
3 **follows: 82a-766. (a) On or before February 10 April 15 of each year,**
4 **each water bank shall submit to the chief engineer a report containing**
5 **the following:**

6 (1) With regard to water rights or portions of water rights on
7 deposit in the bank during the last year: (A) The total quantity of
8 water authorized to be diverted annually pursuant to each such water
9 right or portion of a water right; (B) the total quantity of water used,
10 by purpose of use, and acres irrigated for the portion authorized to be
11 used for irrigation, during the last year as a result of leases of such
12 water rights or portions of water rights; and (C) the total quantity of
13 water used, by purpose of use, and acres irrigated for the portion
14 authorized for irrigation pursuant to such water rights or portions of
15 water rights during the two years preceding the last year; and

16 (2) with regard to water in each safe deposit account in the bank:
17 (A) An accounting of the total quantity of water placed in such
18 accounts during the past year and a balance at year end; (B) the total
19 quantity of water used during the past year, and acres irrigated if an
20 irrigation water right, from the account; (C) the total quantity of
21 water authorized to be diverted annually, the quantity actually used
22 and the acres irrigated, if an irrigation water right, during the past
23 year pursuant to the water rights or linked water rights related to
24 such account; and (D) the total quantity of water used and acres
25 irrigated pursuant to such water rights during the two years
26 preceding the last year.

27 ~~(b) The chief engineer may require owners of water rights~~
28 ~~deposited in a water bank, owners of water rights that have placed~~
29 ~~water in safety deposit accounts in a water bank and persons leasing~~
30 ~~water from a water bank to file annual water use reports at a date~~
31 ~~earlier than that provided by K.S.A. 82a-732, and amendments~~
32 ~~thereto.~~

33 (e) The report required by this section shall be in the form
34 prescribed by the chief engineer.

35 ~~Sec. 2.~~ 3. K.S.A. 2011 Supp. 82a-767 is hereby amended to read as
36 follows: 82a-767. (a) Not later than five years after the establishment of a
37 water bank *or pursuant to subsection (e)*, the director of the Kansas water
38 office shall convene a team to evaluate the operation of the bank. The team
39 shall consist of:

40 (1) The director of the Kansas water office, or the director's designee,
41 who shall serve as chairperson of the team;

42 (2) the director of the Kansas geological survey, or the director's
43 designee;

1 (3) two members who represent water right holders and water users
2 who have used the bank's services, which members shall be selected by the
3 governing body of the bank;

4 (4) members selected by the chief engineer as follows: (A) Two
5 members engaged in teaching or research at institutions of postsecondary
6 education in subjects involving water resources, including but not limited
7 to water resources engineering and hydrology; (B) a member who is an
8 economist with knowledge and experience in water resources; (C) one
9 member having knowledge and experience in water law; and (D) two
10 members having knowledge and experience in water policy issues and
11 residing outside the bank boundary, who shall represent the public interest;

12 (5) one representative of each groundwater management district
13 located in whole or in part within the bank boundary selected by the board
14 of directors of such district; and

15 (6) one representative of each water assurance district located in
16 whole or in part within the bank boundary selected by the board of
17 directors of such district.

18 (b) The staff of the Kansas water office shall provide staff assistance
19 to the evaluation team.

20 (c) Not more than one year after a team is convened pursuant to this
21 section, the team shall submit a report of its evaluation and
22 recommendations to the governor, the Kansas water office, the Kansas
23 water authority, the secretary of agriculture, the chief engineer and the
24 senate standing committee on natural resources and the house standing
25 committee on environment, or the successors to such committees
26 regarding:

27 (1) The operations and policies of the bank and whether they are
28 consistent with the provisions of this act, the state water plan and all
29 applicable statutes, rules and regulations, findings and orders of the chief
30 engineer, groundwater management district policies and water assurance
31 district operations plans;

32 (2) whether the operations of the bank are achieving the goals and
33 objectives of water banking as set out in the state water plan and whether
34 changes could be made to further those goals and objectives;

35 (3) *the bank's impact on the entire area of all hydrologic units, any*
36 *parts of which are encompassed in the bank's boundary;*

37 (4) *any other matters the team determines relevant to the future of*
38 *water banking in the state;*

39 ~~(5) whether the charter of the bank should be permanently~~
40 ~~extended lapse, or the bank should become chartered; and~~

41 ~~(6) the terms under which the bank's charter should be allowed to~~
42 ~~lapse, if the team recommends that the charter not be extended;~~

43 ~~(5) the bank's impact on the entire area of all hydrologic units any~~

1 parts of which are encompassed in the bank's boundary; and

2 ~~(6) any other matters that the team determines relevant to the future~~
3 ~~of water banking in the state.~~

4 (d) Unless otherwise provided by law, the chief engineer, in
5 accordance with the recommendations of the team, may extend the charter
6 of the bank ~~for an additional period not to exceed seven years~~ *permanently*
7 or may allow the bank charter to lapse under the terms recommended by
8 the team.

9 ~~(e) If a bank charter is made permanent~~ **is chartered**, such charter
10 shall be subject to review not less than every five years by a team
11 convened as prescribed in subsection (a). ~~Such~~ **The review** team shall
12 submit a report on the matters listed in subsections (c)(1) through (c)(4).

13 ~~Sec. 3.~~ **4.** K.S.A. 2011 Supp. 82a-765, **82a-766** and 82a-767 are
14 hereby repealed.

15 ~~Sec. 4.~~ **5.** This act shall take effect and be in force from and after its
16 publication in the statute book.

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