

HOUSE BILL No. 2516

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

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

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

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

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

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

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

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

(5) the charter ensures that, for each calendar year, the aggregate amount of all bank deposits—, determined by multiplying the amount of each water right deposited by the length of time of the deposit and then adding together the resulting amounts for all deposits—, will equal or exceed the sum of the aggregate amount of water leased by the bank—, determined by multiplying the amount of each lease by the length of time of the lease and then adding together the resulting amounts for all leases—, plus the aggregate conservation element of all leases—, determined by multiplying the conservation element of each lease by the length of the lease and then adding together the resulting amounts for all leases—;

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

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

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

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

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

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

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

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

(c) ~~Prior to July 1, 2002, not more than one water bank shall be chartered to operate in the state. Such water bank shall be a groundwater bank. On or after July 1, 2002, one additional water bank may be char-~~

~~tered to operate in the state. Such water bank shall be a surface water bank or a surface water and groundwater bank.~~

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

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

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

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

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

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

~~(c)~~—The report required by this section shall be in the form prescribed by the chief engineer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(5) the bank's impact on the entire area of all hydrologic units any parts of which are encompassed in the bank's boundary; and~~

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

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

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

Sec. 4. K.S.A. 2011 Supp. 82a-765, 82a-766 and 82a-767 are hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.