

As Amended by House Committee

Session of 2012

HOUSE BILL No. 2517

By Committee on Agriculture and Natural Resources

1-24

1 AN ACT concerning water; relating to the water right transition assistance  
2 program; amending K.S.A. 2011 Supp. 2-1930 and 2-1931 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. 2-1930 is hereby amended to read as  
7 follows: 2-1930. (a) *As used in this section:*

8 (1) "Division" means the Kansas department of agriculture division  
9 of conservation;

10 (2) "historic consumptive water use" means an amount of use of a  
11 water right as calculated pursuant to subsection (k); and

12 (3) "program" means the water right transition assistance program.

13 (b) There is hereby established the water right transition assistance  
14 ~~pilot project~~ program. The program shall be administered by the ~~state~~  
15 ~~conservation commission~~ Kansas department of agriculture division of  
16 conservation. The Kansas department of agriculture; division of water  
17 resources and recognized local governing agencies, including groundwater  
18 management districts, shall cooperate in program implementation. The  
19 program shall be administered for the purpose of reducing *historic*  
20 *consumptive water* use in the target or high priority areas of the state by  
21 issuing water right transition grants *based on competitive bids* for privately  
22 held water rights.

23 ~~(b)~~ (c) (1) The ~~state conservation commission~~ division may receive  
24 and expend funds from the federal or state government, or private source  
25 for the purpose of carrying out the provisions of this section. The ~~state~~  
26 ~~conservation commission and the participating groundwater management~~  
27 ~~districts~~ division shall carry over unexpended funds from one fiscal year to  
28 the next.

29 (2) ~~Federal and state funds shall not exceed \$1,500,000 per year~~ *The*  
30 *maximum amount paid by the division shall not exceed a base rate per*  
31 *acre-foot of historic consumptive water use made available under the*  
32 *water right to be dismissed or permanently reduced. The state*  
33 *conservation commission shall establish an annual base rate after*  
34 *considering recommendations from the chief engineer and the*  
35 *groundwater management districts regarding market conditions.*

36 (3) ~~State conservation commission expenditures for permanent partial~~

1 ~~water right retirements shall not exceed 30% of the total amount of funds~~  
2 ~~for the water right transition assistance pilot project program.~~

3 ~~(e) (d) The state conservation commission division may enter into~~  
4 ~~water right transition assistance pilot project program contracts with~~  
5 ~~landowners that will result in the permanent retirement reduction of part or~~  
6 ~~all of landowner a landowner's historic consumptive water use water~~  
7 ~~rights by action of the chief engineer as provided for in subsection (f) of~~  
8 ~~this section.~~

9 ~~(d) (e) All applications for permanent irrigation water right~~  
10 ~~retirements shall be considered for funding. Permanent retirement of~~  
11 ~~partial water rights shall only be approved by the Kansas department of~~  
12 ~~agriculture division of water resources when the local groundwater~~  
13 ~~management district has the metering and monitoring capabilities~~  
14 ~~necessary to ensure compliance with the program.~~

15 ~~(e) (f) Permanent retirement of partial water rights shall only be~~  
16 ~~approved by the Kansas department of agriculture division of water~~  
17 ~~resources when the groundwater management district has the metering and~~  
18 ~~monitoring capabilities necessary to ensure compliance with the program.~~  
19 ~~When prioritizing among water right applications for acceptance under the~~  
20 ~~water right transition assistance pilot project, Applications for permanent~~  
21 ~~water right retirement shall be prioritized for payment based on the~~  
22 ~~following criteria:~~

23 ~~(1) The applicant's bid price;~~

24 ~~(2) the timing and extent of the impact of the application on aquifer~~  
25 ~~restoration or stream recovery;~~

26 ~~(3) the impact on local water management strategies designated by~~  
27 ~~the board of each groundwater management district or by the chief~~  
28 ~~engineer for each target area; and~~

29 ~~(4) where rights with similar hydrologic impacts are considered,~~  
30 ~~priority should be given to the senior right as determined under the Kansas~~  
31 ~~water appropriation act.~~

32 ~~(f) (g) Water rights enrolled in the water right transition assistance~~  
33 ~~pilot project program for permanent retirement shall require the written~~  
34 ~~consent of all landowners and authorized agents to voluntarily request~~  
35 ~~permanent reduction or permanent dismissal and forfeiture of priority of~~  
36 ~~the enrolled water right. Upon enrollment of the water right into the water~~  
37 ~~right transition assistance pilot project program, the chief engineer of the~~  
38 ~~Kansas department of agriculture division of water resources shall~~  
39 ~~concurrently permanently reduce or permanently dismiss and terminate the~~  
40 ~~water right in accordance with the terms of the contract.~~

41 ~~(g) (h) (1) The state conservation commission division shall make~~  
42 ~~water right transition grants available only in areas that have been~~  
43 ~~designated as:~~

1       (A) Target ~~or high-priority~~ areas by the groundwater management  
2 districts and the chief engineer of the Kansas department of agriculture  
3 division of water resources; or ~~priority~~

4       (B) ~~target~~ areas outside the groundwater management districts as  
5 ~~designated~~ by the chief engineer of the Kansas department of agriculture  
6 division of water resources.

7       (2) ~~Two of the target or high-priority Initial target areas shall be the~~  
8 ~~prairie dog creek area located in hydrologic unit code 10250015 and , the~~  
9 ~~rattlesnake creek subbasin located in hydrologic unit code 11030009 and~~  
10 ~~the six high priority areas of the northwest Kansas groundwater-~~  
11 ~~management district no. 4.~~

12       ~~(3)~~ Each target area shall be in a groundwater aquifer, aquifer sub-  
13 unit, surface water basin, subbasin or stream reach that the chief engineer  
14 has closed to further appropriations except for domestic use, temporary  
15 permits, term permits for five years or less and small-use exemptions for  
16 15 acre-feet or less, if the use, permit or exemption does not conflict with  
17 this program.

18       ~~(4)~~ (3) The designation of each target area shall include the  
19 identification of a historic consumptive water use retirement goal. When  
20 such goal is reached, the target area will be delisted.

21       ~~(5)~~ (4) The designation of each target area shall include the  
22 identification of sub-regions which are to be prioritized for retirements  
23 among competing bids.

24       ~~(h)~~ (i) Contracts accepted under the ~~water right transition assistance~~  
25 program shall result in a net reduction in ~~historic~~ consumptive water use  
26 equivalent to the amount of ~~historic~~ consumptive use of the water right or  
27 rights enrolled in the program based on the average ~~historic~~ consumptive  
28 ~~water use in the target area~~. Except as provided for in subsections ~~(i)~~ and  
29 ~~(j)~~ (l) and (m), once a water right transition assistance ~~pilot project~~  
30 program grant has been provided, the land authorized to be irrigated by the  
31 water right or water rights associated with that grant shall not be irrigated  
32 permanently. Water right transition assistance ~~pilot project~~ program  
33 contracts shall be subject to such terms, conditions and limitations as may  
34 be necessary to ensure that such reduction in ~~historic~~ consumptive water  
35 use occurs and can be adequately monitored and enforced.

36       (j) "Historic consumptive water use" means ~~Only vested or certified~~  
37 ~~water rights which are in good standing shall be eligible for water right~~  
38 ~~retirement grants. No water right with more than four consecutive years~~  
39 ~~of nonuse without due and sufficient cause shall be eligible for a water-~~  
40 ~~right retirement grant.~~ the average amount of water consumed by crops as  
41 a result of the lawful beneficial use of water for irrigation during four of  
42 the six preceding calendar years, with the highest and lowest years  
43 removed from the analysis. For purposes of this program, historic-

1 consumptive water use will be determined by multiplying the average  
2 reported water use for the four selected years by a factor of 0.85 for center  
3 pivot sprinkler irrigation systems, 0.75 for flood or gravity irrigation  
4 systems and 0.95 for subsurface drip irrigation systems, but not to exceed  
5 the net irrigation requirements for the 50% chance rainfall for the  
6 appropriate county as shown in K.A.R. 5-5-12.

7 (k) (1) *The historic consumptive water use of a water right shall be*  
8 *determined by either:*

9 (A) *Calculating the average amount of water consumed by crops as a*  
10 *result of the lawful beneficial use of water during the 10 preceding*  
11 *calendar years of actual irrigation and multiplying the average reported*  
12 *water use for the 10 selected years by a factor of 0.85 for center pivot*  
13 *sprinkler irrigation systems, 0.75 for flood or gravity irrigation systems*  
14 *and 0.95 for subsurface drip irrigation systems, but not to exceed the net*  
15 *irrigation requirements for the 50% chance rainfall for the appropriate*  
16 *county as shown in K.A.R. 5-5-12; or*

17 (B) *calculating the available pumping capacity of a water right by*  
18 *multiplying a flow rate test for each point of diversion applied to be*  
19 *retired under the water right by a theoretical pumping duration of 100*  
20 *days multiplied by an efficiency factor of 0.85 for center pivot sprinkler*  
21 *irrigation systems, 0.75 for flood or gravity irrigation systems and 0.95 for*  
22 *subsurface drip irrigation systems, but not to exceed the authorized*  
23 *quantity of the water right or the net irrigation requirements for the 50%*  
24 *chance rainfall for the appropriate county as shown in K.A.R. 5-5-12.*  
25 *Flow rate tests must have been conducted not less than one year prior to*  
26 *the application date and certified as acceptable by the local groundwater*  
27 *management district or the chief engineer; or*

28 (2) The applicant may also submit an engineering study that  
29 determines the average historic consumptive water use as an alternative  
30 method if it is demonstrated to be more accurate for the water right or  
31 water rights involved.

32 (†)(l) *Enrollment of an entire water right or a portion of a water right*  
33 *where land associated with the quantity is being permanently reduced*  
34 *from the water right, in the water right transition assistance pilot project*  
35 *program shall not subsequently prohibit irrigation of the land that, prior to*  
36 *enrollment, was authorized by the water right or water rights if irrigation*  
37 *can be lawfully allowed by another water right or permit pursuant to the*  
38 *rules and regulations and consideration of any future changes to other*  
39 *water rights that may be proposed to be transferred to such land.*

40 (†)(m) If more than one water right overlaps the place of use  
41 authorized by the water right proposed to be enrolled in the ~~water right~~  
42 ~~transition assistance pilot project~~ program, then all overlapping water  
43 rights shall be enrolled in *the water right transition assistance pilot project*

1 program or the landowners shall take the necessary lawful steps to  
2 eliminate the overlap with the water right to be enrolled. The burden shall  
3 be on the landowner to provide sufficient information to substantiate that  
4 the proposed use of water by the resulting exercise of all water rights  
5 involved will result in the net reduction amount of historic consumptive  
6 water use by the water right or water rights to be enrolled. The ~~state~~  
7 ~~conservation commission~~ *division* may require such documentation to be  
8 provided by someone with special knowledge or experience related to  
9 water rights and such operations.

10 ~~(k)(n)~~ The ~~state conservation commission~~ *division* shall adopt rules  
11 and regulations as necessary for the administration of this section. When  
12 adopting such rules and regulations the ~~state conservation commission~~  
13 *division* shall consider cropping, system design, metered water use and all  
14 other pertinent information that will permit a verifiable reduction in ~~annual~~  
15 ~~water historic~~ consumptive ~~water~~ use and permit alternative crop or other  
16 use of the land so that the landowner's economic opportunities are taken  
17 into account.

18 ~~(l)~~ ~~The state conservation commission shall report annually to the~~  
19 ~~senate standing committee on natural resources and the house standing~~  
20 ~~committee on environment on the economic impact studies being~~  
21 ~~conducted on the reduction of water consumption and the financial impact~~  
22 ~~on the communities within the program areas. Such studies shall include~~  
23 ~~comparative data for areas and communities outside the program areas.~~

24 ~~(m)~~ ~~The water right transition assistance pilot project program shall~~  
25 ~~expire five years from the effective date of the fiscal year for which state~~  
26 ~~moneys are appropriated thereof and approval of program rules and~~  
27 ~~regulations.~~

28 ~~(n)~~ ~~Water right transition assistance grants for water rights to remain~~  
29 ~~unused for the contract period shall constitute due and sufficient cause for~~  
30 ~~nonuse pursuant to K.S.A. 82a-718 and amendments thereto pursuant to~~  
31 ~~the determination of the chief engineer for the duration of the water right~~  
32 ~~transition assistance pilot project program contract.~~

33 ~~(o)~~ The ~~state conservation commission~~ *division* shall hold at least two  
34 meetings *a meeting* in each water right transition assistance pilot project  
35 ~~program area~~ *target area designated after July 1, 2012*, prior to entering  
36 into any water right transition assistance ~~pilot project~~ program contract for  
37 the permanent retirement of part or all of landowner ~~historic consumptive~~  
38 ~~use~~ water rights *in such target area*. Such meetings shall inform the public  
39 of the possible economic and hydrologic impacts of the program. The ~~state~~  
40 ~~conservation commission~~ *division* shall provide notice of such meetings  
41 through publication in local newspapers of record and in the Kansas  
42 register.

43 Sec. 2. K.S.A. 2011 Supp. 2-1931 is hereby amended to read as

1 follows: 2-1931. (a) Any person who commits any of the following may  
2 incur a civil penalty as provided by this section:

3 (1) Any violation of the Kansas water right transition assistance ~~pilot~~  
4 ~~project~~ program act or any rule and regulation adopted thereunder; and

5 (2) any violation of term, condition or limitation defined and or  
6 imposed within the contractual agreement between the ~~state conservation~~  
7 ~~commission~~ *Kansas department of agriculture division of conservation*  
8 and the water right owner.

9 (b) Any participant who violates any section of a water right  
10 transition assistance ~~pilot project~~ program contract shall be subject to  
11 either one or both of the following:

12 (1) A civil penalty of not less than \$100 nor more than \$1,000 per  
13 violation. Each day shall constitute a separate violation for purposes of this  
14 section; and

15 (2) repayment of the grant amount in its entirety plus a penalty at ~~six~~  
16 ~~percent~~ 6% of the full grant amount.

17 (c) Any penalties or reimbursements received under this act shall be  
18 reappropriated for use in the water right transition assistance ~~pilot project~~  
19 program.

20 Sec. 3. K.S.A. 2011 Supp. 2-1930 and 2-1931 are hereby repealed.

21 Sec. 4. This act shall take effect and be in force from and after its  
22 publication in the statute book.