

Substitute for HOUSE BILL No. 2051

By Committee on Agriculture and Natural Resources

2-19

Proposed Amendments for Sub for HB 2051
For Committee on Natural Resources
March 15, 2013
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Office of Revisor of Statutes

1 AN ACT concerning water; relating to streams, dams and obstructions;
2 relating to water rights; relating to water flex accounts; amending
3 K.S.A. 82a-307 and K.S.A. 2012 Supp. 82a-301, 82a-302, 82a-303b,
4 82a-326, 82a-736 and 82a-1901 and repealing the existing sections;
5 also repealing K.S.A. 24-105, 24-107, 82a-312, 82a-313 and 82a-314
6 and K.S.A. 2012 Supp. 24-106, 74-509, 82a-307a, 82a-326a and 82a-
7 735.

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

9
10 New Section 1. (a) Subject to existing water rights and the principle
11 of beneficial use, the chief engineer may grant, upon application made
12 therefor, limited transfer permits to authorize the use of up to 4,000,000
13 gallons from an existing water right. The term of such limited transfer
14 permit will be limited to a single calendar year. Each application submitted
15 for a limited transfer permit shall be on a form prescribed by the chief
16 engineer and accompanied by an application fee of \$200.

17 (b) (1) If the base water right is groundwater, the use of water can be
18 transferred to another well within the same source of supply within two
19 miles.
20 (2) If the base water right is surface water, the use can be transferred
21 to another surface water use within the same surface water system.

22 (c) The chief engineer shall adopt rules and regulations to effectuate
23 and administer the provisions of this section. Such rules and regulations
24 shall require that there is no increase in consumptive use enabled by the
25 transfer permit, prescribe necessary recordkeeping and reporting
26 requirements, prevent impairment of existing rights and address any other
27 matter deemed necessary by the chief engineer to protect the public
28 interest.

29 (d) Nothing in this section shall be deemed to vest in the holder of
30 any permit granted pursuant to provisions of this section any permanent
31 right to appropriate water except as is provided by such permit.

32 (e) All fees collected by the chief engineer pursuant to this section
33 shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and
34 amendments thereto.

35 (f) This section shall be part of and supplemental to the Kansas water
36 appropriation act

(d) and (e)

emergency spillway

emergency spillway

1 Sec. 2. K.S.A. 2012 Supp. 82a-301 is hereby amended to read as
 2 follows: 82a-301. (a) (1) Except as provided in subsection (c) ~~and (d)~~,
 3 without the prior written consent or permit of the chief engineer of the
 4 division of water resources of the Kansas department of agriculture, it
 5 shall be unlawful for any person, partnership, association, corporation or
 6 agency or political subdivision of the state government to: (1)
 7 (A) Construct, modify or add to any dam or other water obstruction;
 8 (2)(B) make, construct, modify or permit to be made or constructed
 9 any change in any dam or other add to any water obstruction in a
 10 designated stream;
 11 (3) make or permit to be made any change in or addition to any existing
 12 water obstruction or
 13 (4)(C) change or diminish the course, current, or cross section of any
 14 designated stream within this state.
 15 (2) Any application for any permit or consent shall be made in
 16 writing in such form as specified by the chief engineer.
 17 (3) fettes or Revertments for the purpose of stabilizing a caving bank
 18 which are properly placed shall not be construed as obstructions for the
 19 purposes of this section.
 20 (b) As used in K.S.A. 82a-301 et seq., and amendments thereto:
 21 (1) "Dam" means any artificial barrier including appurtenant works
 22 with the ability to impound water, waste water or other liquids that has a
 23 height of 2.5 feet or more, or has a height of six feet or greater and also has
 24 the capacity to impound a storage volume at the top of the ~~dam~~ elevation
 25 of 50 or more acre feet. The height of a dam or barrier shall be determined
 26 as follows: (1) A barrier or dam that extends across the natural bed of a
 27 stream or watercourse shall be measured from the down stream toe of the
 28 barrier or dam to the top of the barrier or dam; or (2) a barrier or dam that
 29 does not extend across a stream or watercourse shall be measured from the
 30 lowest elevation of the outside limit of the barrier or dam to the top of the
 31 barrier or dam measured from the lowest elevation of the streambed.
 32 downstream toe or outside limit of the dam to the elevation of the top of
 33 the ~~dam~~
 34 (2) "Designated stream" means a natural or man-made channel that
 35 conveys drainage or runoff from a watershed having an area of:
 36 (A) One or more square miles in zone one, which includes all
 37 geographic points located in or east of Washington, Clay, Dickinson,
 38 Marion, Harvey, Sedgwick or Sumner counties;
 39 (B) two or more square miles in zone two, which includes all
 40 geographic points located west of zone one and in or east of Smith,
 41 Osborne, Russell, Barton, Stafford, Pratt or Barber counties; or

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1 (c) (1) The prior written consent or permit of the chief engineer shall
2 not apply to water obstructions that meet the following requirements:
3 (A) The change in the cross section of a designated stream is
4 obstructed less than 5% and the water obstruction or change is contained
5 within a land area measuring 25 feet or less along the stream length; or
6 (B) (i) the water obstruction is not a dam as defined in subsection (b);
7 (ii) the water obstruction is not located within an incorporated
8 area;
9 (iii) every part of the water obstruction, and any water impounded
10 by such obstruction, is located more than 300 feet from any property
11 boundary; and
12 (iv) the watershed area above the water obstruction is 640 acres
13 five square miles or less.
14 (2) If the water obstruction does not meet the requirements of
15 subsection (c)(1)(B)(iii), but meets all other requirements of subsection
16 (c)(1)(B), such water obstruction may be exempted from the permitting
17 requirements of subsection (a) if the chief engineer determines such water
18 obstruction has minimal impact upon safety and property based upon a
19 review of the information, to be provided by the owner, including:
20 (i) An aerial photo or topographic map depicting the location of
21 the proposed project, the location of the stream, the layout of the water
22 obstruction, the property lines and names and addresses of adjoining
23 property owners; and
24 (ii) (B) the principal dimensions of the project including, but not
25 limited to, the height above streambed.
26 (3) Notwithstanding any other provision of this section, the chief
27 engineer may require a permit for any water obstruction described in this
28 subsection if the chief engineer determines such permit is necessary for the
29 protection of life or property.
30 (d) The prior written consent or permit of the chief engineer shall not
31 be required for construction or modification of a hazard class A dam that
32 (i) Has a height of less than 25 feet and a storage volume at the top
33 of the dam elevation of less than 25 acre feet, and the dam location and
34 dimensions have been registered with the division of water resources in a
35 written form prescribed by the chief engineer; or
36 (ii) is a wastewater storage structure for a confined feeding facility
37 that has been approved by the secretary of health and environment
38 pursuant to K.S.A. 65-171d, and amendments thereto, and such
39 impoundment is designed to hold a storage volume at the top of the dam
40 elevation of 150 acre feet or less.
41 Sec. 3. K.S.A. 2012 Supp. 82a-302 is hereby amended to read as
42 follows: 82a-302. (a) Except as otherwise provided for general permits,
43 each application for the consent or permit required by K.S.A. 82a-301, and

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emergency spillway

(e) The prior written consent or permit of the chief engineer shall not be required for construction or modification of

1 amendments thereto, shall be accompanied by complete maps, plans,
2 profiles and specifications of such dam or other water obstruction or of
3 the changes ~~construction, modification~~ or additions ~~addition~~ proposed to
4 be made to such dam or other water obstruction, the required application
5 fee as provided in subsection (b) unless otherwise exempted, and such
6 other data and information as the chief engineer may require. The chief
7 engineer shall maintain a list of licensed professional engineers who may
8 conduct the review of any application for the consent or permit required by
9 K.S.A. 82a-301 and amendments thereto. Such list may include licensed
10 professional engineers employed by a local unit of government.
11 Notwithstanding any law to the contrary, an applicant for the consent or
12 permit required by K.S.A. 82a-301 and amendments thereto may have the
13 application reviewed by a licensed professional engineer approved by the
14 chief engineer pursuant to this subsection provided such engineer is not an
15 employee of the applicant. If such licensed professional engineer finds that
16 such dam or other water obstruction meets established standards for the
17 construction, modification, operation and maintenance of dams and other
18 water obstructions, such findings shall be submitted in complete form to
19 the chief engineer. Upon such submittance, the chief engineer shall grant
20 such consent or permit within 45 days unless the chief engineer finds to
21 the contrary that such dam or other water obstruction does not meet
22 established standards for the construction, modification, operation and
23 maintenance of dams and other water obstructions. If the chief engineer
24 declines to grant such consent or permit based upon a contrary finding, the
25 chief engineer shall provide to the applicant within 15 days a written
26 explanation setting forth the basis for the chief engineer's contrary finding.
27 The chief engineer's action in declining to grant such consent or permit
28 and any hearing related thereto shall be conducted in accordance with the
29 provisions of the Kansas administrative procedure act. Any person
30 aggrieved by any order or decision of the chief engineer shall be entitled to
31 appellate review in accordance with the provisions of the Kansas judicial
32 review act. Such applicant shall pay all costs associated with the review by
33 the licensed professional engineer. The chief engineer shall adopt rules
34 and regulations for the issuance of a general permit which may be issued
35 for projects which require limited supervision and review.

36 (b) (1) The application fee for a permit to construct, modify or add to
37 a dam shall be \$200. shall be based upon the stage of construction at the
38 time that a complete application has been submitted. The construction in
39 progress fee shall be applicable for construction begun prior to approval by
40 the chief engineer. Such fee shall be in addition to any other penalty for an
41 unpermitted structure. Such fees shall be as follows:

~~\$200~~ ~~\$500~~

1 ~~_____~~ ~~\$200~~ ~~\$500~~
2 (2) Permit fees for stream obstructions/channel changes application
3 fee is based upon two criteria and are as follows:

4 (A) ~~The drainage area category; and~~

5 (B) ~~the stage of construction when the application is submitted.~~

6 ~~Pre Construction~~

7 ~~Drainage Area Category~~ ~~Construction~~ ~~In Progress~~

8 ~~Major (Drainage area greater~~

9 ~~than 50 square miles) _____ \$500 _____ \$1000~~

10 ~~Moderate (Drainage area 5 to 50~~

11 ~~square miles) _____ \$200 _____ \$400~~

12 ~~Minor (Drainage area less than~~

13 ~~5 square miles) _____ \$100 _____ \$200~~

14 ~~General Permit _____ \$100 _____ \$200~~

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16 *The application fee for a permit to construct, modify, or add to a water*
17 *obstruction or to change or diminish the course, current or cross section*
18 *of a stream shall be based on the watershed area.*

19 *Watershed Area Above the Project Permit Application Fee*

20 *Less than 5 square miles \$100*

21 *Between 5 and 50 square miles \$200*

22 *More than 50 square miles \$500*

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24 (3) *The application fee for a general permit shall be \$100.*

25 (c) All fees collected by the chief engineer pursuant to this section
26 shall be remitted to the state treasurer as provided in K.S.A. 2012 Supp.
27 82a-328, and amendments thereto.

28 Sec. 4. K.S.A. 2012 Supp. 82a-303b is hereby amended to read as
29 follows: 82a-303b. (a) (1) In order to secure conformity with adopted rules
30 and regulations and to assure compliance with the terms, conditions or
31 restrictions of any consent or permit granted pursuant to the provisions of
32 K.S.A. 82a-301 through 82a-303, and amendments thereto, the chief
33 engineer or an authorized representative of the chief engineer shall have
34 the power and the duty to inspect any dam or other water obstruction.
35 Upon a finding pursuant to subsection (a) of K.S.A. 82a-303c, and
36 amendments thereto, by the chief engineer that a dam is unsafe, the chief
37 engineer shall order an annual inspection of the dam until it is either in
38 compliance with all applicable provisions of this act, any rules and
39 regulations promulgated pursuant to this act, permit conditions and orders
40 of the chief engineer; or the dam is removed. The safety inspection shall be
41 conducted by the chief engineer or authorized representative and the cost
42 shall be paid by the dam owner. The class and size of a dam provided for
43 ~~by the provisions of this act shall be defined by rules and regulations~~

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1 adopted by the chief engineer pursuant to K.S.A. 82a-303a, and
2 amendments thereto. Inspection fees are as follows:

3	Size of Dam	Inspection fee
4	Class 1	\$1,500
5	Class 2	\$1,500
6	Class 3	\$2,500
7	Class 4	\$4,000

8 (2) Each hazard class C dam shall be required to have a safety
9 inspection conducted by a licensed professional engineer qualified in
10 design, construction, maintenance and operation of dams once every three
11 years, unless otherwise ordered by the chief engineer.

12 (3) Each hazard class B dam shall be required to have a safety
13 inspection conducted by a licensed professional engineer qualified in
14 design, construction, maintenance and operation of dams once every five
15 years unless otherwise ordered by the chief engineer.

16 (4) Within 60 days of the date of inspection, a report of the inspection
17 shall be provided to the chief engineer by the licensed professional
18 engineer who conducted the inspection. The report shall document the
19 physical condition of the dam, describing any deficiencies observed, an
20 analysis of the capacity of the dam and its spillway works, compliance of
21 the dam with approved plans and permit conditions, changes observed in
22 the condition of the dam since the previous inspection, an assessment of
23 the hazard classification of the dam including a statement that the engineer
24 either agrees or disagrees with the current classification, and any other
25 information relevant to the safety of the dam or specifically requested by
26 the chief engineer.

27 (5) Upon failure of a dam owner to comply with the applicable
28 inspection interval, the chief engineer or such chief engineer's authorized
29 representative shall conduct a mandatory inspection of the dam and the
30 costs as established by this act for the inspection shall be paid by the
31 owner, in addition to any other remedies provided for violations of this act.

32 (6) The failure to file a complete and timely report as required by the
33 provisions of this act, or the failure to submit the fees assessed for
34 inspections conducted by the chief engineer or ~~such~~ *the* chief engineer's
35 authorized representative shall be deemed a violation of this act and
36 subject to the penalties provided by K.S.A. 82a-305a, and amendments
37 thereto.

38 (b) For the purpose of inspecting any dam or other water obstruction,
39 the chief engineer or an authorized representative of the chief engineer
40 shall have the right of access to private property. Costs for any work which
41 may be required by the chief engineer or the authorized representative

1 or other water obstruction.

2 (c) All fees collected by the chief engineer pursuant to this section
3 shall be remitted to the state treasurer as provided in K.S.A. 2012 Supp.
4 82a-328, and amendments thereto.

5 Sec. 5. K.S.A. 82a-307 is hereby amended to read as follows: 82a-
6 307. Upon petition of ~~five (5) 50~~ taxpayers of any county of this state,
7 owning land in the flood plain of any river in such county, or upon
8 enactment of a resolution by the county commission of such county, the
9 board of county commissioners of each county in this state are hereby
10 authorized within their respective jurisdictions to clean and maintain the
11 banks and channels of the streams and watercourses within definitely
12 established bank lines, ~~as provided in K.S.A. 82a-307a~~, and to keep ~~and~~
13 such streams free of drift, trees and other obstructions, for the purpose of
14 reducing floods and overflows; ~~and for the purposes aforesaid~~. The ~~said~~
15 board of county commissioners, ~~having obtained written permission from~~
16 the landowner, may enter upon private property, if necessary, to clean and
17 maintain such streams, doing as little damage as possible thereto; ~~and~~
18 When if material damage shall be is done to any property, ~~said the~~
19 commissioners shall allow reasonable compensation therefor; ~~when~~
20 ~~obtained by the owner thereof~~, if ~~said the landowner presents a claim is~~
21 ~~presented in writing to said the board within ten (10) 60~~ days from the date
22 of the ~~removal of said obstruction; and that such alleged material~~
23 damage. Nothing in this act shall be construed to permit the board of
24 county commissioners of any county to remove or destroy any permanent
25 improvement, including dams and bridges, in and over such streams,
26 providing such improvements, dams or bridges have been lawfully placed
27 thereon.

28 Sec. 6. K.S.A. 2012 Supp. 82a-326 is hereby amended to read as
29 follows: 82a-326. When used in this act:

30 (a) "Water development project" means any project or plan which
31 ~~may be allowed or permitted requires a permit~~ pursuant to K.S.A. 24-126,
32 24-1213, 82a-301 et seq., and amendments thereto, or the multipurpose
33 small lakes program act; ~~and amendments thereto~~;

34 (b) "environmental review agencies" means the:
35 (1) Kansas department of wildlife, parks and tourism;

36 (2) Kansas forest service;

37 (3) state biological survey;

38 (4) Kansas department of health and environment;

39 (5) state historical society;

40 (6) Kansas department of agriculture division of conservation; and
41 (7) state corporation commission.
42 Sec. 7. K.S.A. 2012 Supp. 82a-736 is hereby amended to read as
43 follows: 82a-736. (a) It is hereby recognized that an opportunity exists to

1 improve water management by enabling multi-year flexibility in the use of
2 water authorized to be diverted under a groundwater water right, provided,
3 that such flexibility neither impairs existing water rights, nor increases the
4 total amount of water diverted, so that such flexibility has no long-term
5 negative effect on the source of supply. It is therefore declared necessary
6 and advisable to permit the establishment of multi-year flex accounts for
7 groundwater water rights, together with commensurate protections for
8 existing water rights and their source of supply.

9 (b) As used in this section:

10 (1) "Base water right" means a water right under which an applicant
11 applies to the chief engineer to establish a multi-year flex account and
12 ~~[where all of the following conditions exist:~~

13 (A) ~~]~~The authorized source of supply is groundwater; and
14 ~~(B) the water right has not been the subject of a change approved to~~
15 ~~implement the provisions of K.A.R. 5-5-9(a)(2), K.A.R. 5-5-11(b)(2) or~~
16 ~~K.A.R. 5-5-11(b)(3), in effect upon the effective date of this act.]~~

17 (2) "Multi-year flex account" means a term permit which suspends a
18 base water right during its term, except when the term permit may be no
19 longer exercised because of an order of the chief engineer, and is subject to
20 the terms and conditions as provided in subsection (e).

21 (3) "Base average usage" means: (A) The average amount of water
22 actually diverted for a beneficial use under the base water right during
23 calendar years 2000 through 2009, excluding any amount diverted in any
24 such year that exceeded the maximum annual quantity of water authorized
25 by the base water right; or (B) if the holder of the base water right shows
26 to the satisfaction of the chief engineer that water conservation reduced
27 water use under the base water right during calendar years 2000 through
28 2009, then the average amount of water actually diverted for a beneficial
29 use under the base water right during the five calendar years immediately
30 before the calendar year when water conservation began, excluding any
31 amount used in any such year that exceeded the amount authorized by the
32 base water right.

33 (4) "Chief engineer" means the chief engineer of the division of water
34 resources of the department of agriculture.

35 (5) "Flex account acreage" means the maximum number of acres
36 lawfully irrigated during a calendar year when no term, condition or
37 limitation of the base water right has been violated and either of the
38 following conditions is met:

39 (A) The calendar year is 2000 through 2009; or

40 (B) if water conservation reduced water use under the base water
41 right during calendar years 2000 through 2009, the calendar year is a year

1 (6) "Net irrigation requirement" means the net irrigation requirement
2 for 50% chance rainfall of the county that corresponds with the location of
3 the authorized place of use of the base water right as provided in K.A.R. 5-
4 5-12, on the effective date of this act.

5 (c) (1) Any holder of a base water right that has not been deposited or
6 placed in a safe deposit account in a chartered water bank may establish a
7 multi-year flex account where the holder may deposit, in advance, the
8 authorized quantity of water from such water right for any five consecutive
9 calendar years, subject to all of the following:

10 (A) The water right must be vested or shall have been issued a
11 certificate of appropriation;

12 (B) the withdrawal of water pursuant to the water right shall be
13 properly and adequately metered;

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

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

19 (i) 500% of the base average usage;

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

24 (iii) if the authorized place of use is located wholly within the
25 boundaries of a groundwater management district, an amount that shall not
26 increase the long-term average use of the groundwater right as specified by
27 rule or regulation promulgated pursuant to subsection (o) of K.S.A. 82a-
28 1028, and amendments thereto; and

29 (E) notwithstanding any other provisions of this subsection, except
30 when the base water right is suspended due to the issuance of a two-year
31 term permit in a designated drought emergency area for 2011 and 2012,
32 the quantity of water deposited into a multi-year flex account shall be
33 reduced by the quantity of water used in excess of the maximum annual
34 quantity of the base water right during 2011 if the application for a multi-
35 year flex account is filed with the chief engineer on or before July 15,
36 2012.

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

39 (d) The chief engineer shall implement a program providing for the
40 issuance of term permits to holders of groundwater water rights who have
41 established flex accounts in accordance with this section. Such term
42 permits shall authorize the use of water in a flex account at any time
43 during the five consecutive calendar years for which the application for the

(7) When used in reference to a groundwater right, which has as its local supply an aquifer area that has been closed to new appropriations by rule, regulation or order of the chief engineer, "water conservation" shall include non-use.