

HOUSE BILL No. 2657

By Representative Claeys

2-9

1 AN ACT concerning private water utilities; creating the water consumer
2 protection act; requiring water quality maintenance funds; creating the
3 water quality assurance fund.
4

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

6 Section 1. Sections 1 through 10, and amendments thereto, shall be
7 known and may be cited as the water consumer protection act.

8 Sec. 2. As used in the water consumer protection act:

9 (a) "Funding requirement" means 5% of the gross amount of the
10 monthly rates and charges paid by customers served by the private water
11 utility.

12 (b) "Private water utility" means any miscellaneous public utility as
13 defined in K.S.A. 66-1,230, and amendments thereto, that is a for-profit
14 corporation organized under the laws of the state of Kansas and has been
15 issued a certificate of public convenience and necessity under K.S.A. 66-
16 131, and amendments thereto, to provide potable drinking water to
17 customers in a specific service area.

18 (c) "Rates and charges" means those rates, joint rates, tolls, charges,
19 classifications and divisions of rates subject to the jurisdiction of the
20 commission and charged to customers of private water utilities. The term
21 "rates and charges" shall not include such taxes, fees or other
22 miscellaneous charges which are not subject to the jurisdiction of the
23 commission.

24 (d) "Trustee" means:

25 (1) A bank, savings and loan association, savings bank or credit union
26 organized under the laws of this state with the authority to provide trust
27 services;

28 (2) a federally chartered bank, savings and loan association, savings
29 bank or credit union having a physical location within the state of Kansas
30 and the authority to provide trust services; or

31 (3) a trust company organized under the laws of this state.

32 (e) "Trustor" means the private water utility responsible for making
33 payments in a water quality maintenance fund.

34 (f) "Water quality maintenance fund" means a certificate of deposit, a
35 business savings account or an irrevocable trust fund whose proceeds are
36 derived from not less than the funding requirement.

1 Sec. 3. (a) On or before July 1, 2018, each private water utility shall
2 place and maintain at least \$50,000 in a water quality maintenance fund.
3 Any private water utility that refuses or neglects to establish or maintain a
4 water quality maintenance fund for a period of 60 days after such utility is
5 ordered to do so by the state corporation commission shall be deemed to
6 have forfeited its private water utility. The attorney general, upon such
7 forfeiture, and upon the request of the state corporation commission, shall
8 begin action for the appointment of a receiver for such private water utility
9 and to dissolve such private water utility.

10 (b) A private water utility shall make monthly deposits of the funding
11 requirement in a water quality maintenance fund. Such deposits to the
12 water quality maintenance fund shall be made within 30 days following
13 each calendar month end.

14 (c) The primary purpose of the water quality maintenance fund is to
15 maintain the corpus of the fund. The income earned from the water quality
16 maintenance fund may be dispersed to the private water utility.

17 (d) The private water utility shall obtain prior written approval from
18 the commission before the water quality maintenance fund shall be
19 terminated, transferred or amended. The private water utility shall provide
20 the commission copies of any amendments to the water quality
21 maintenance fund before the amendments shall become effective.

22 (e) All funds held in a water quality maintenance fund shall not be
23 subject to attachment, garnishment or other legal process and shall not be
24 seized, taken, appropriated or applied to pay any debt or liability of the
25 private water utility, buyer or beneficiary, by any legal or equitable process
26 or by operation of law.

27 Sec. 4. (a) If the water quality maintenance fund is less than
28 \$100,000, the water quality maintenance fund may be held in a Kansas
29 financial institution, in either certificates of deposit or a business savings
30 account that is insured by the federal deposit insurance corporation, as
31 long as the fund assets are maintained in a segregated account.

32 (b) (1) If the water quality maintenance fund is \$100,000 or more, the
33 private water utility shall establish and maintain the water quality
34 maintenance fund in an irrevocable trust with a trustee. The trustee may
35 appoint one or more agents to provide administrative or investment
36 advisory services, but the trustee shall not assign or delegate the liability
37 and fiduciary responsibilities owed to the water quality maintenance fund
38 to another financial institution or agent. The trustee may invest, reinvest,
39 exchange, retain, sell and manage the moneys within such fund, pursuant
40 to K.S.A. 58-24a02(a) through (f), and amendments thereto. Such trustee
41 may be reasonably compensated for the trustee's services out of the income
42 of the fund. It shall be a provision of any such trust agreement that no
43 moneys, other than income from the trust, shall be paid over to the private

1 water utility by the trustee, except upon the written permission of the state
2 corporation commission. Nothing in this act shall prohibit a trustee from
3 entering into a co-trustee relationship with another trustee, who would not
4 independently satisfy the requirements of this section, provided the co-
5 trustee: (A) Is authorized to do business in Kansas; and (B) submits
6 personally to the jurisdiction of the courts of this state. Under no
7 circumstances shall any trustee assign or delegate their liability or
8 fiduciary responsibilities under the provisions of this act. Both trustees and
9 co-trustees are jointly and severally liable for the actions of the trustee. All
10 contractual agreements shall be subject to, governed by and construed
11 according to the laws of the state of Kansas.

12 (2) The trustee may recover from the earnings of the water quality
13 maintenance fund all reasonable costs incurred in serving as trustee,
14 including a reasonable fee for services. The taxes and costs may be paid
15 from earnings of the fund prior to the distribution of the income, except
16 that the taxes from capital gains may be paid from the realized capital
17 gains proceeds.

18 (3) The trustee shall be solely responsible for the investment of the
19 moneys held under a water quality maintenance fund. The trust instrument
20 must state that control of the trust funds by the trustor is prohibited.

21 (4) All capital gains shall be allocated to principal after liability for
22 any capital gains tax has been paid.

23 (c) The trust instrument shall be effective upon written approval by
24 the state corporation commission.

25 (1) The names of the trustee, the private water utility as trustor and
26 the date the trust instrument shall become effective shall be provided to the
27 state corporation commission.

28 (2) The trustee shall submit a quarterly report to the commission. The
29 report shall be in a form and manner approved by the commission and
30 shall contain the following:

- 31 (A) Deposits to principal;
- 32 (B) any withdrawals from principal;
- 33 (C) all interest, dividends and income earned;
- 34 (D) income withdrawn;
- 35 (E) capital gains or capital losses; and
- 36 (F) capital gains taxes paid from capital gains.

37 (3) The trustee shall use deposit and withdrawal forms approved by
38 the state corporation commission.

39 (4) The trustee shall invest the trust funds subject to the requirements
40 of K.S.A. 58-24a02(a) through (f), and amendments thereto.

41 (5) By accepting the trusteeship of the water quality maintenance
42 fund, the trustee submits personally to the jurisdiction of the courts of this
43 state. All contractual agreements shall be subject to, governed by and

1 construed according to the laws of the state of Kansas.

2 (6) The trustee acknowledges the primary purpose of the water
3 quality maintenance fund is to maintain the corpus of the trust.

4 (7) The trustee shall retain all liability and fiduciary responsibility for
5 managing and administering the water quality maintenance fund.

6 (8) The trustee shall sign an affirmation under penalty of perjury,
7 declaring the trustee has read, understands and agrees to comply with the
8 requirements of the water consumer protection act.

9 (9) Control of the trust funds by the trustor is prohibited.

10 (d) In no event shall any loan of the funds be made to any
11 stockholder, officer or employee of such private water utility, or to any
12 person related, by blood or marriage, to a stockholder, officer or employee.

13 (e) Misuse of the water quality maintenance fund or any money
14 belonging thereto is knowingly using, lending or permitting another to use
15 moneys in the fund in a manner not authorized by law. Misuse of the water
16 quality maintenance fund is a severity level 7, nonperson felony.

17 Sec. 5. (a) Within 30 days following each end of the quarter, the
18 private water utility shall provide the trustee and the state corporation
19 commission a report of all rates and charges collected. The report shall be
20 in a form and manner approved by the state corporation commission and
21 shall contain the name and address of the trustee where the water utility
22 maintenance fund is located and the amount deposited into the water utility
23 maintenance fund. The report shall be in a form and manner approved by
24 the commission.

25 (b) Within 30 days following the end of each quarter, the trustee shall
26 provide the state corporation commission a report of all deposits to, and
27 distributions from, the water utility maintenance fund. The report shall be
28 in a form and manner approved by the commission and shall contain the
29 total amount of the deposits, distributions and the name and contact
30 information of the trust officer in charge of the account.

31 (c) (1) At least annually, the trustee of the water utility maintenance
32 fund shall determine the income for the water utility maintenance fund,
33 less reasonable costs, taxes and fees, and pay the income to the private
34 water utility. The trustee shall report to the state corporation commission
35 the calculation of the income paid to the private water utility within 30
36 days, in a form and manner approved by the state corporation commission.

37 (2) When a private water utility accepts payment from a trustee of
38 income from the water quality maintenance fund, the private water utility
39 shall disburse such income to the customers of such private water utility.
40 Disbursement of income generated from the water quality maintenance
41 fund shall be credited to the accounts of the customers of the private water
42 utility in the proportion of the amount directly attributable to a customer's
43 most recent annual utility charges that were directed into the water utility

1 maintenance fund. The private water utility shall report to the state
2 corporation commission the income paid to customers within 90 days
3 following payment of income from a trustee, in a form and manner
4 approved by the state corporation commission.

5 Sec. 6. (a) Whenever and as often as deemed necessary, the state
6 corporation commission, or an assistant or examiner designated by the
7 state corporation commission, may audit or otherwise examine any private
8 water utility books and accounts for compliance with the water consumer
9 protection act. For such purpose, the commission, or assistants or
10 examiners, are authorized to administer oaths and to examine under oath
11 the directors, officers, employees and agents of any private water utility.
12 Such examination may be reduced to writing by the person making it and
13 may contain a statement of the condition of each water quality
14 maintenance fund examined.

15 (b) Whenever any officer of any private water utility shall refuse to
16 submit the books, records, papers and instruments of such private water
17 utility to the examination and inspection of the state corporation
18 commission, or the commission's assistants or examiners, or in any manner
19 obstructs or interferes with the examination or audit of such utility's water
20 quality maintenance fund, or refuses to be examined under oath
21 concerning any of the affairs of the utility's water quality maintenance
22 fund, the commission, with the concurrence of the attorney general, may
23 institute proceedings for the appointment of a receiver for such private
24 water utility.

25 (c) All information which the state corporation commission shall
26 gather or record in making an investigation and examination of any private
27 water utility, or the reporting by the private water utility or the trustee,
28 shall be deemed to be confidential information, and shall not be disclosed
29 by the commission, any assistant, examiner or employee thereof, except to:
30 (1) The private water utility being audited; and (2) the attorney general.

31 (d) Upon request, the state corporation commission may disclose to
32 any person whether a private water utility maintains a water quality
33 maintenance fund and whether such funds are maintained in compliance
34 with the provisions of the water consumer protection act.

35 (e) The provisions of subsection (c) shall expire on July 1, 2021,
36 unless the legislature acts to reauthorize such provisions. The provisions of
37 subsection (c) shall be reviewed by the legislature prior to July 1, 2021.

38 Sec. 7. (a) Private water utilities shall file with the state corporation
39 commission a copy of the agreement or document which establishes the
40 trust between the private water utility and the trustee. The trust agreement
41 shall acknowledge all contractual agreements and shall be subject to and
42 governed by the water consumer protection act.

43 (b) The attorney general, at the request of the state corporation

1 commission, may initiate an action for an accounting by a trustee of an
2 account required under the water consumer protection act. If it is
3 determined that a water quality maintenance fund is underfunded due to
4 inadequate deposits or unauthorized distributions, the private water utility
5 may propose and implement a plan for correcting the fund's deficiencies,
6 subject to the approval of the commission.

7 Sec. 8. (a) Upon a determination by the state corporation commission
8 that public health and safety is sufficiently jeopardized due to the
9 mismanagement of a private water utility, the commission shall order the
10 trustee to transfer all funds held in a water quality maintenance fund to the
11 water quality assurance fund established under section 9, and amendments
12 thereto.

13 (b) Upon notification from the state corporation commission that a
14 determination has been made that public health and safety is sufficiently
15 jeopardized due to the mismanagement of a private water utility and
16 ordering all funds to be transferred, the trustee shall transfer all funds held
17 in a water quality maintenance fund to the water quality assurance fund
18 established under section 9, and amendments thereto, and shall revoke
19 such private water utility's certificate of public convenience and necessity.

20 (c) The state corporation commission shall promulgate rules and
21 regulations to implement the provisions of the water consumer protection
22 act which shall include rules and regulations for the oversight and audits of
23 the water quality maintenance funds.

24 Sec. 9. (a) There is hereby established in the state treasury the water
25 quality assurance fund which shall be administered by the secretary of the
26 department of health and environment. All moneys recovered pursuant to
27 section 8, and amendments thereto, shall be remitted to the state treasurer
28 in accordance with the provisions of K.S.A. 75-4215, and amendments
29 thereto. Upon receipt of each such remittance, the state treasurer shall
30 deposit the entire amount in the state treasury to the credit of the water
31 quality assurance fund. All expenditures from the water quality assurance
32 fund shall be made in accordance with appropriation acts upon warrants of
33 the director of accounts and reports issued pursuant to vouchers approved
34 by the secretary.

35 (b) The secretary of health and environment shall maintain an
36 accounting of all such funds that are in the water quality assurance fund. If
37 two or more water quality maintenance funds have been transferred to and
38 are located in the water quality assurance fund, the secretary shall only
39 expend or distribute those funds that are attributable to the service area of
40 the private water utility that contributed to a water quality maintenance
41 fund.

42 (c) The secretary is authorized to use funds transferred to the water
43 quality assurance fund to provide water service to the customers within the

1 service area of the private water utility. The secretary is authorized to
2 expend or distribute such funds in any manner as determined to be in the
3 best interest of the customers in the private water utility's service area.

4 (d) The secretary of health and environment may promulgate any
5 rules and regulations necessary to enforce the provisions of this act.

6 Sec. 10. The provisions of sections 1 through 9, and amendments
7 thereto, shall not apply to a municipally owned or operated utility or a
8 rural water district organized under K.S.A. 82a-601 et seq., and
9 amendments thereto.

10 Sec. 11. This act shall take effect and be in force from and after its
11 publication in the statute book.