AN ACT concerning water; relating to the division of water resources; groundwater; amending K.S.A. 82a-712, 82a-716, 82a-717a and 82a-725 and K.S.A. 2015 Supp. 75-2935 and repealing the existing sections.

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

New Section 1. To further implement the provisions of the groundwater management act, if the secretary of agriculture or the chief engineer of the division of water resources of the Kansas department of agriculture propose rules and regulations that may change an adopted local groundwater management program or impact water use in a groundwater management district, the secretary or chief engineer shall notify the groundwater management district board of directors of such requested management program change or proposed rules and regulations and provide a copy of such requested management program change or proposed rules and regulations to the board. Upon such notice, the board of directors shall prepare a revised management program statement to submit to the chief engineer for approval. The board of directors shall follow the provisions of K.S.A. 82a-1029, and amendments thereto, for revising active groundwater management programs. Upon completion of the groundwater management program revision under this section, the board of directors shall notify and submit to the secretary of agriculture and the chief engineer the adopted revised management program and any recommended rules and regulations necessary to implement the revised management program.

New Sec. 2. No cause of action arising out of any order or decision of the chief engineer shall accrue in any court to any party until such party shall petition for reconsideration in accordance with the provisions of K.S.A. 77-529, and amendments thereto, and the chief engineer issues an order on reconsideration. The chief engineer shall have 30 days to issue an order on reconsideration. No party shall, in any court, urge or rely upon any ground not set forth in the petition. An order made after reconsideration, abrogating, changing or modifying the original order or decision, shall have the same force and effect as an original order or decision, including the obligation to file a petition for reconsideration, as provided in this section, as a condition precedent to filing an action for
review thereof. The time for filing an appeal of any order or decision in a proceeding shall run from the date that all petitions for reconsideration in such proceeding have been denied or such petitions for reconsideration are deemed denied pursuant to K.S.A. 77-529(b), and amendments thereto.

New Sec. 3. (a) The division of water resources of the Kansas department of agriculture shall provide notice of the following on its official website:

(1) All filings and orders issued by the division; and
(2) all initial complaints filed in a Kansas court and published opinions issued by a Kansas court regarding water rights, water appropriations or the division.

(b) The division shall directly notify any person who has an interest that may be adversely affected by any order or formal action of the division.

Sec. 4. K.S.A. 2015 Supp. 75-2935 is hereby amended to read as follows: 75-2935. The civil service of the state of Kansas is hereby divided into the unclassified and the classified services.

(1) The unclassified service comprises positions held by state officers or employees who are:

(a) Chosen by election or appointment to fill an elective office;
(b) members of boards and commissions, heads of departments required by law to be appointed by the governor or by other elective officers, and the executive or administrative heads of offices, departments, divisions and institutions specifically established by law;
(c) except as otherwise provided under this section, one personal secretary to each elective officer of this state, and in addition thereto, 10 deputies, clerks or employees designated by such elective officer;
(d) all employees in the office of the governor;
(e) officers and employees of the senate and house of representatives of the legislature and of the legislative coordinating council and all officers and employees of the office of revisor of statutes, of the legislative research department, of the division of legislative administrative services, of the division of post audit and the legislative counsel;
(f) chancellor, president, deans, administrative officers, student health service physicians, pharmacists, teaching and research personnel, health care employees and student employees in the institutions under the state board of regents, the executive officer of the board of regents and the executive officer's employees other than clerical employees, and, at the discretion of the state board of regents, directors or administrative officers of departments and divisions of the institution and county extension agents, except that this subsection (1)(f) shall not be construed to include the custodial, clerical or maintenance employees, or any employees performing duties in connection with the business operations of any such
institution, except administrative officers and directors; as used in this subsection (1)(f), "health care employees" means employees of the university of Kansas medical center who provide health care services at the university of Kansas medical center and who are medical technicians or technologists or respiratory therapists, who are licensed professional nurses or licensed practical nurses, or who are in job classes which are designated for this purpose by the chancellor of the university of Kansas upon a finding by the chancellor that such designation is required for the university of Kansas medical center to recruit or retain personnel for positions in the designated job classes; and employees of any institution under the state board of regents who are medical technologists; (g) operations, maintenance and security personnel employed to implement agreements entered into by the adjutant general and the federal national guard bureau, and officers and enlisted persons in the national guard and the naval militia; (h) persons engaged in public work for the state but employed by contractors when the performance of such contract is authorized by the legislature or other competent authority; (i) persons temporarily employed or designated by the legislature or by a legislative committee or commission or other competent authority to make or conduct a special inquiry, investigation, examination or installation; (j) officers and employees in the office of the attorney general and special counsel to state departments appointed by the attorney general, except that officers and employees of the division of the Kansas bureau of investigation shall be in the classified or unclassified service as provided in K.S.A. 75-711, and amendments thereto; (k) all employees of courts; (l) client, patient and inmate help in any state facility or institution; (m) all attorneys for boards, commissions and departments; (n) the secretary and assistant secretary of the Kansas state historical society; (o) physician specialists, dentists, dental hygienists, pharmacists, medical technologists and long term care workers employed by the Kansas department for aging and disability services; (p) physician specialists, dentists and medical technologists employed by any board, commission or department or by any institution under the jurisdiction thereof; (q) student employees enrolled in public institutions of higher learning; (r) administrative officers, directors and teaching personnel of the state board of education and the state department of education and of any institution under the supervision and control of the state board of
education, except that this subsection (1)(r) shall not be construed to include the custodial, clerical or maintenance employees, or any employees performing duties in connection with the business operations of any such institution, except administrative officers and directors;

(s) all officers and employees in the office of the secretary of state;
(t) one personal secretary and one special assistant to the following: The secretary of administration, the secretary for aging and disability services, the secretary of agriculture, the secretary of commerce, the secretary of corrections, the secretary of health and environment, the superintendent of the Kansas highway patrol, the secretary of labor, the secretary of revenue, the secretary for children and families, the secretary of transportation, the secretary of wildlife, parks and tourism and the commissioner of juvenile justice;
(u) one personal secretary and one special assistant to the chancellor and presidents of institutions under the state board of regents;
(v) one personal secretary and one special assistant to the executive vice chancellor of the university of Kansas medical center;
(w) one public information officer and one chief attorney for the following: The department of administration, the Kansas department for aging and disability services, the department of agriculture, the department of commerce, the department of corrections, the department of health and environment, the department of labor, the department of revenue, the Kansas department for children and families, the department of transportation, the Kansas department of wildlife, parks and tourism and the commissioner of juvenile justice;
(x) if designated by the appointing authority, persons in newly hired positions, including any employee who isrehired into such position and any current state employee who voluntarily transfers into, or is voluntarily promoted or demoted into such position, on and after July 1, 2015, in any state agency;
(y) one executive director, one general counsel and one director of public affairs and consumer protection in the office of the state corporation commission;
(z) specifically designated by law as being in the unclassified service;
(aa) any position that is classified as a position in the information resource manager job class series, that is the chief position responsible for all information resources management for a state agency, and that becomes vacant on or after the effective date of this act. Nothing in this section shall affect the classified status of any employee in the classified service who is employed on the date immediately preceding the effective date of this act in any position that is a classified position in the information resource manager job class series and the unclassified status as prescribed by this subsection shall apply only to a person appointed to any such position on
or after the effective date of this act that is the chief position responsible for all information resources management for a state agency;

(bb) positions at state institutions of higher education that have been converted to unclassified positions pursuant to K.S.A. 2015 Supp. 76-715a, and amendments thereto; and

(cc) notwithstanding the provisions of K.S.A. 22-4524, 32-802, 44-510g, 44-551, 44-552, 48-205, 48-919, 49-402c, 58-4105, 58-4503, 65-2878, 65-6103, 73-1210a, 73-1234, 74-506d, 74-515b, 74-561, 74-569, 74-631, 74-1106, 74-1704, 74-1806, 74-2435, 74-2614, 74-2702, 74-2906a, 74-5014, 74-5210, 74-6707, 74-6901, 74-6904, 74-7008, 74-7501, 74-8704, 74-8805, 74-9804, 75-118, 75-1202d, 75-2537, 75-2944, 75-3148, 75-3702c, 75-4222, 75-5005, 75-5015, 75-5016, 75-5122, 75-5157, 75-5309, 75-5310, 75-5378, 75-5610, 75-5702, 75-5708, 75-5733, 75-5910, 75-7028, 75-7054, 75-7304, 76-1002a, 76-1116, 76-12a04, 76-12a05, 76-12a08, 76-12a16, 76-3202 and 82a-1205 and K.S.A. 2015 Supp. 39-111, and amendments thereto, any vacant position within the classified service may be converted by the appointing authority to an unclassified position.

(2) The classified service comprises all positions now existing or hereafter created which are not included in the unclassified service. Appointments in the classified service shall be made according to merit and fitness from eligible pools which so far as practicable shall be competitive. No person shall be appointed, promoted, reduced or discharged as an officer, clerk, employee or laborer in the classified service in any manner or by any means other than those prescribed in the Kansas civil service act and the rules adopted in accordance therewith.

(3) For positions involving unskilled, or semiskilled duties, the secretary of administration, as provided by law, shall establish rules and regulations concerning certifications, appointments, layoffs and reemployment which may be different from the rules and regulations established concerning these processes for other positions in the classified service.

(4) Officers authorized by law to make appointments to positions in the unclassified service, and appointing officers of departments or institutions whose employees are exempt from the provisions of the Kansas civil service act because of the constitutional status of such departments or institutions shall be permitted to make appointments from appropriate pools of eligibles maintained by the division of personnel services.

(5) On and after the effective date of this act, any state agency that has positions in the classified service within the Kansas civil service act to satisfy any requirement of maintaining personnel standards on a merit basis pursuant to federal law or the rules and regulations promulgated
thereunder by the federal government or any agency thereof, shall adopt a
binding statement of agency policy pursuant to K.S.A. 77-415, and
amendments thereto, to satisfy such requirements if the appointing
authority has made any such position unclassified.

Sec. 5. K.S.A. 82a-712 is hereby amended to read as follows: 82a-
712. The chief engineer shall notify the applicant of the approval or
disapproval of the application. Upon approving the application the chief
engineer shall authorize the applicant to proceed with the construction of
the proposed diversion works and to proceed with all steps necessary for
the application of the water to the approved and proposed beneficial use
and otherwise perfect his or her such applicant’s proposed appropriation.
The chief engineer may approve an application for a smaller amount of
water than requested and he or she may approve an application upon such
terms, conditions, and limitations as he or she the chief engineer shall
deem necessary for the protection of the public interest. The approval of
the application by the chief engineer, subject to the terms and conditions
thereof, upon issuance, constitutes a permit to proceed with construction of
diversion or other authorized works and with the diversion and use of
water in accordance with the terms and conditions of his or her the permit
and no common-law claimant without a vested right, or other person
without a vested right, a prior appropriation right, or an earlier permit shall
prevent, restrain, or enjoin an applicant from proceeding in accordance
with the terms and conditions of his or her such permit or from
diminishing the water supply.

Sec. 6. K.S.A. 82a-716 is hereby amended to read as follows: 82a-
716. If any appropriation, or the construction and operation of authorized
diversion works, results in an injury to any common-law claimant person,
such person shall be entitled to due compensation in a suitable action at
law against the appropriator for damages proved for any property taken.
Any person with a valid water right or permit to divert and use water may
restrain or enjoin a subsequent diversion in any court of competent
jurisdiction a subsequent diversion by a common-law claimant person
without vested rights without first condemning those common-law such
inghts. An appropriator shall have the right to injunctive relief to protect
his or her such appropriator’s prior right of beneficial use as against use by
an appropriator with a later priority of right.

Sec. 7. K.S.A. 82a-717a is hereby amended to read as follows: 82a-
717a. (a) No common-law claimant without a vested right, or other person
without a vested right, a prior appropriation right, or an earlier permit shall
divert or threaten to divert water if such diversion or threatened diversion
impairs or would impair any vested right, appropriation right, or right
under a permit to appropriate water. But any common-law claimant with a
vested right, or other person with a vested right, a prior appropriation right,
or an earlier permit may divert water in accordance with any such right or permit although such diversion or use thereunder conflicts with the diversion, use, proposed diversion, or proposed use made or proposed by a common law claimant who does not have a vested right, or other person who does not have a vested right, a prior appropriation right or an earlier permit. Moreover, any common law claimant with a vested right, or other person who does not have a vested right, a prior appropriation right, or an earlier permit may restrain or enjoin in any court of competent jurisdiction any diversion or proposed diversion that impairs or would impair such right in the event that any such diversion or proposed diversion is made or is threatened to be made by any common law claimant, or other person who does not have a vested right, a prior appropriation right, or an earlier permit.

Except as provided in subsection (b), any person with a vested right, a prior appropriation right, or an earlier permit may restrain or enjoin in any court of competent jurisdiction any diversion or proposed diversion that impairs or would impair such right in the event that any such diversion or proposed diversion is made or is threatened to be made by any common law claimant, or other person who does not have a vested right, a prior appropriation right, or an earlier permit.

(b) (1) Any person with a vested right, a prior appropriation right, or an earlier permit who claims impairment as the result of the interference caused by the use of water by any other person without a prior right to the same shall first submit a complaint to the chief engineer in accordance with rules and regulations of the chief engineer. The chief engineer shall investigate such complaint. Following such investigation, the chief engineer may issue an order that limits the diversion and use of water by any person without a prior right to the same or disposes of the complaint.

(2) The chief engineer shall complete any investigation initiated pursuant to paragraph (1) within 12 months of the date the complaint was submitted to the chief engineer. The chief engineer may take more time to complete the investigation if the chief engineer notifies all parties in writing of the need for more time. While such investigation is pending, the person making the claim may petition a court of competent jurisdiction to temporarily restrain or enjoin diversion of water by any person without a prior right to such water.

(3) Any order issued by the chief engineer pursuant to this subsection is subject to review in accordance with the Kansas judicial review act, except that on review, the court may, at its discretion, permit any party, a groundwater management district, the chief engineer or the chief engineer's designee to submit additional evidence on any issue.

(c) For purposes of this section, "impair" includes, but is not limited to, the unreasonable raising or lowering of the static water level, the unreasonable increase or decrease of the streamflow or the unreasonable deterioration of the water quality at the water user's point of diversion, beyond a reasonable economic limit.

Sec. 8. K.S.A. 82a-725 is hereby amended to read as follows: 82a-725. (a) In any suit to which the state is not a proper party brought in any court of competent jurisdiction in this state for determination of rights to water, the court may order a reference to the division of water resources or
its chief engineer, as referee, for investigation of and report upon any or all of the physical facts involved and, the division or its chief engineer shall thereupon make such an investigation and report as ordered by the court. The report shall set forth such findings of fact as may be required by the court's order of reference in numbered paragraphs and may contain such opinions upon the facts as it deems proper in view of the issues submitted. In cases involving groundwater within the confines of a groundwater management district, the chief engineer shall consult with and may receive comment from such district on the findings and opinions set forth in such report. Before filing its report with the court, the division or its chief engineer shall mail notice of its report together with a copy of it, to the parties or their attorneys of record.

(b) Within thirty (30) days from the date of the mailing of the copy of the report, any party may file objections to it with the division of water resources or its chief engineer. After the division, or its chief engineer, has considered the objections, it shall file its report, as referee, with the clerk of the court and give notice by registered or certified mail of the filing of its report to the parties or their attorneys. The court shall review the report upon exceptions thereto filed with the clerk of the court within thirty (30) days after date of mailing registered notice of the filing of the report. Except in its discretion or for good cause shown, the court shall not consider any exception to the report unless it appears that the excepting party presented the matter of the exception to the division or its chief engineer in the form of an objection. The report shall be evidence of the physical facts found therein, but the court shall hear such evidence as may be offered by any party to rebut the report or the evidence. If suit is brought in a federal court for determination of rights to water within, or partially within, the state, the division or its chief engineer may accept a reference of such suit as master or referee for the court.

(c) When making a report for cases involving groundwater, nothing in this section shall be construed to permit the division, the chief engineer or the court to alter, amend, change or modify any existing water right or appropriation right.

Sec. 9. K.S.A. 82a-712, 82a-716, 82a-717a and 82a-725 and K.S.A. 2015 Supp. 75-2935 are hereby repealed.

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