AN ACT concerning water; relating to surface water protection fees; relating to water assurance districts; creating the surface water protection fee fund; relating to authorized expenditures from the surface water protection fee fund; amending K.S.A. 82a-1345 and repealing the existing section.

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

New Section 1. (a) On and after January 1, 2019, there is hereby imposed a surface water protection fee at the rate of $.05 per 1,000 gallons of surface water that is:

(1) Sold at retail by a public water supply system and delivered through mains, lines or pipes; and

(2) appropriated for industrial use pursuant to a permit granted in accordance with the Kansas water appropriation act and assessed in the same manner as provided in K.S.A. 82a-954(c), and amendments thereto.

(b) The fee imposed by subsection (a)(1) shall be paid quarterly by the public water supplier and shall be transmitted to the department of revenue not later than 45 days following the end of each quarter. The public water supplier may collect the fee directly from each consumer to which water is sold at retail or may pay the amount owed to the department from moneys in its operating fund or other fund available for that purpose. The fee imposed by subsection (a)(2) shall be paid annually by the owner of the permit.

(c) If any retailer or permit owner fails to pay the fee required to be collected and paid pursuant to this section, there shall be added to the unpaid balance of the fee, penalty and interest as prescribed under K.S.A. 79-3615, and amendments thereto, for the late payment of sales tax.

(d) The director of taxation shall administer, enforce and collect the fee imposed pursuant to this section. All laws and rules and regulations of the secretary relating to the administration, enforcement and collection of the retailers' sales tax shall apply to such fee insofar as they can be made applicable, and the secretary shall adopt rules and regulations as necessary for the efficient and effective administration, enforcement and collection of such fee.

(e) The director of taxation shall remit all moneys collected from the fee imposed pursuant to this section to the state treasurer in accordance
with the provisions of K.S.A. 75-4215, and amendments thereto. Upon
receipt of each such remittance, the state treasurer shall deposit the entire
amount in the state treasury to the credit of the surface water protection fee
fund created by section 2, and amendments thereto.

(f) (1) Subject to the provisions of paragraph (3), the fee imposed
pursuant to this section shall not be imposed or collected in the calendar
year after the director of taxation receives certification pursuant to
paragraph (2) or in any calendar year after December 31, 2029.

(2) On or before August 1, 2018, and each year thereafter until
August 1, 2029, the director of the Kansas water office in consultation
with the secretary of revenue, shall certify to the director of taxation the
total aggregate amount transferred in the immediately preceding fiscal year
to the state water plan fund pursuant to K.S.A. 79-4804 and 82a-953a, and
amendments thereto, and any other amount transferred to the state water
plan fund from the state general fund or from the state economic
development initiatives fund. Upon receiving certification that an
aggregate annual amount of $8,000,000 has been transferred to the state
water plan fund from the state general fund or the state economic
development initiatives fund for two consecutive fiscal years, the director
of taxation shall discontinue collection of the fee imposed pursuant to
subsection (a) on and after January 1 of the calendar year following such
certification.

(3) If collection of the fee is discontinued pursuant to paragraph (2),
on receiving a subsequent certification that an aggregate annual amount
of $8,000,000 has not been transferred to the state water plan fund from
the state general fund or the state economic development initiatives fund in
any fiscal year, the director of taxation shall recommence collection of the
fee imposed by this section on and after January 1 of the calendar year
following such certification until such time that the fee is again
discontinued pursuant to the provisions of this subsection.

New Sec. 2. (a) There is hereby created in the state treasury the
surface water protection fee fund. All expenditures from the surface water
protection fee fund shall be made in accordance with appropriation acts
upon warrants of the director of accounts and reports pursuant to vouchers
approved by the director of the Kansas water office or the director's
designee. All moneys received from the fees imposed pursuant to K.S.A.
82a-1345(i), and amendments thereto, and section 1, and amendments
thereto, shall be deposited in the state treasury in accordance with the
provisions of K.S.A. 75-4215, and amendments thereto, and shall be
credited to the surface water protection fee fund.

(b) The moneys in the surface water protection fee fund shall be
expended to support programs and projects that benefit surface water users
or municipal aquifer recharge programs for municipalities that use surface
water. The moneys in the surface water protection fee fund shall be
expended on a priority basis to:
(1) Acquire reservoir water storage and pay the attributable operation
and maintenance costs;
(2) fund research, that otherwise would not be funded by moneys
from the state water plan fund, that focuses on issues that include, but are
not limited to:
(A) Identifying and treating water quality issues that could impact
downstream water treatment operations;
(B) identifying changes in reservoir storage capacity and sediment
composition; or
(C) factors affecting sediment entering streams during high and low
flow events.

Sec. 3. K.S.A. 82a-1345 is hereby amended to read as follows: 82a-
1345. (a) The water assurance district shall impose a charge against each
member of the water assurance district. The total of such charges shall be
sufficient to enable the district to pay the amount required pursuant to
subsection (i) and to pay the state the full annual amortized cost to the
state of acquiring the assurance storage from the federal government by
purchase or trade, the cost of operation and maintenance of the assurance
storage, the cost of state administration and enforcement of the assurance
program. The water assurance district also may impose a charge against
each member of the district in an amount sufficient to cover district
operating costs. The water assurance district shall impose any charges
necessary for the payment of the principal of and interest on revenue
bonds issued by the Kansas water office pursuant to the provisions of
chapter 394 of the Laws of 1986 session laws of Kansas. The water
assurance district shall determine the amount of the charge for each
member and shall remit moneys collected to the Kansas water office for
deposit in the fund created pursuant to K.S.A. 82a-1364, and amendments
thereto. Charges to be paid by members of a water assurance district may
vary and shall be based on the principle of having each member pay for
the pro rata quantity authorized to each member from the assurance
program. In determining the charge, the governing body of the district
shall adopt rules which establish guidelines for prospective members.
(b) The director of the Kansas water office shall request releases of
assurance water by the federal government under the agreements with the
federal government that govern operations of reservoirs containing
assurance storage.
(c) No member below a reservoir shall divert water from releases of
assurance water unless the member has a conservation plan which has
been approved in the manner provided by K.S.A. 82a-1348, and
amendments thereto, and which is in effect at the time of the desired
diversion.

(d) An entity which becomes a holder of a water right in a river basin after an assurance program is in place for that basin shall become a member if the chief engineer determines that sufficient additional water may be yielded from assurance reservoirs to benefit the potential new member.

(e) The director of the Kansas water office and the chief engineer each shall adopt any rules and regulations necessary to carry out the purposes and procedures of this act. The director and the chief engineer shall consider the advice of any existing assurance districts in the preparation of any rules and regulations adopted pursuant to this subsection.

(f) Any holder of a water right below a reservoir aggrieved by a decision of the chief engineer under this act by being either included or excluded as a member in the assurance program may appeal to the district court under K.S.A. 82a-724, and amendments thereto.

(g) Payments required under a contract between a water assurance district and the Kansas water office shall be for storage capacity contracted in federal reservoirs. Nothing in this act shall be deemed to authorize any suit against the state or any agency of the state or person employed by the state on an implied contract or for negligence or any other tort. The director of the Kansas water office may sue to enforce any claim arising out of a contract. Payment of the assessment shall be a condition imposed on every member and the chief engineer is authorized to declare the suspension of any use of assurance water where a payment is not made.

(h) Rights of members to receive assurance water may not be transferred separately from their water rights.

(i) (1) On and after January 1, 2019, a water assurance district shall impose a charge against each member of such water assurance district that is sufficient for the district to remit annually to the director of taxation an amount equal to $.002 per 1,000 gallons of assurance storage capacity in reservoirs as reported by the Kansas water office. If any district fails to pay the fee required to be collected and paid pursuant to this subsection, there shall be added to the unpaid balance of the fee a penalty and interest as prescribed under K.S.A. 79-3615, and amendments thereto, for the late payment of sales tax. The director of taxation shall collect the fee imposed pursuant to this subsection. All laws and rules and regulations of the secretary of revenue relating to the collection of the retailers' sales tax shall apply to such fee insofar as they can be made applicable, and the secretary of revenue shall adopt rules and regulations as necessary for the efficient and effective collection of such fee.

(2) The director of taxation shall remit all moneys collected from the fee imposed pursuant to this subsection to the state treasurer in
accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the surface water protection fee fund created by section 2, and amendments thereto.

(3) (A) The fee imposed pursuant to this subsection shall not be imposed or collected in the calendar year after the director of taxation receives the certification requirements pursuant to paragraph (3)(B) or in any calendar year after December 31, 2029.

(B) On or before August 1, 2018, and each year thereafter until August 1, 2029, the director of the Kansas water office in consultation with the secretary of revenue, shall certify to the director of taxation the total aggregate amount transferred in the immediately preceding fiscal year to the state water plan fund pursuant to K.S.A. 79-4804 and 82a-953a, and amendments thereto, and any other amount transferred to the state water plan fund from the state general fund or from the state economic development initiatives fund. Upon receiving certification that an aggregate annual amount of $8,000,000 has been transferred to the state water plan fund from the state general fund or the state economic development initiatives fund for two consecutive fiscal years, the director of taxation shall discontinue collection of the fee imposed pursuant to this subsection on and after January 1 of the calendar year following such certification.

(C) If collection of the fee is discontinued pursuant to paragraph (3)(B), upon receiving a subsequent certification that an aggregate annual amount of $8,000,000 has not been transferred to the state water plan fund from the state general fund or the state economic development initiatives fund in any fiscal year, the director of taxation shall recommence collection of the fee imposed by this section on and after January 1 of the calendar year following such certification until such time that the fee is again discontinued pursuant to the provisions of this paragraph.

Sec. 4. K.S.A. 82a-1345 is hereby repealed.

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