

**SENATE BILL No. 36**

By Committee on Natural Resources

1-20

1 AN ACT concerning water; relating to multi-year flex accounts; amending  
2 K.S.A. 2014 Supp. 82a-708c and 82a-736 and repealing the existing  
3 sections.

4

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

6 Section 1. K.S.A. 2014 Supp. 82a-708c is hereby amended to read as  
7 follows: 82a-708c. (a) A term permit is a permit to appropriate water for a  
8 limited specified period of time in excess of six months. At the end of the  
9 specified time, or any authorized extension approved by the chief engineer,  
10 the permit shall be automatically dismissed, and any priority it may have  
11 had shall be forfeited. No water right shall be perfected pursuant to a term  
12 permit.

13 (b) Each application for a term permit to appropriate water shall be  
14 made on a form prescribed by the chief engineer and shall be accompanied  
15 by an application fee fixed by this section for the appropriate category of  
16 acre feet in accordance with the following:

17 Acre Feet	18 Fee
18 0 to 100.....	19 \$200
19 101 to 320.....	20 \$300
20 More than 320.....	21 \$300 + \$20
	22 for each additional 100
	23 acre feet or any part thereof

24 On and after July 1, 2018, the application fee shall be set forth in the  
25 schedule below:

25 Acre Feet	26 Fee
26 0 to 100.....	27 \$100
27 101 to 320.....	28 \$100
28 More than 320.....	29 \$150 + \$10
	30 for each additional 100
	31 acre feet or any part thereof

32 The chief engineer shall render a decision on such term permit  
33 applications within 150 days of receiving a complete application except  
34 when the application cannot be processed due to the standards established  
35 in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of  
36 receipt of a complete application, the application fee is subject to refund  
upon request.

1 (c) Each application for a term permit to appropriate water for  
 2 storage, except applications for permits for domestic use, shall be  
 3 accompanied by an application fee fixed by this section for the appropriate  
 4 category of storage-acre feet in accordance with the following:

5 Storage-Acre Feet	Fee
6 0 to 250.....	\$200
7 More than 250.....	\$200 + \$20
8	for each additional 250
9	acre feet or any part thereof

10 On and after July 1, 2018, the application fee shall be set forth in the  
 11 schedule below:

12 Storage-Acre Feet	Fee
13 0 to 250.....	\$100
14 More than 250.....	\$100 + \$10
15	for each additional 250
16	acre feet or any part thereof

17 The chief engineer shall render a decision on such term permit  
 18 applications within 150 days of receiving a complete application except  
 19 when the application cannot be processed due to the standards established  
 20 in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of  
 21 receipt of a complete application, the application fee is subject to refund  
 22 upon request.

23 (d) Each application for a term permit pursuant to K.S.A. 2014 Supp.  
 24 82a-736, and amendments thereto, shall be accompanied by an application  
 25 fee established by rules and regulations adopted by the chief engineer in an  
 26 amount not to exceed \$400 for the five-year period covered by the permit.

27 (e) Notwithstanding the provisions of K.S.A. 82a-714, and  
 28 amendments thereto, the applicant is not required to file a notice of  
 29 completion of diversion works nor pay a field inspection fee. The chief  
 30 engineer shall not conduct a field inspection of the diversion works  
 31 required by statute for purposes of certification nor issue a certificate of  
 32 appropriation for a term permit.

33 (f) A request to extend the term of a term permit in accordance with  
 34 the rules and regulations adopted by the chief engineer shall be  
 35 accompanied by the same filing fee applicable to other requests for  
 36 extensions of time as set forth in K.S.A. 82a-714, and amendments thereto.

37 (g) An application to change the place of use, point of diversion, use  
 38 made of water, or any combination thereof, pursuant to K.S.A. 82a-708b,  
 39 and amendments thereto, shall not be approved for a term permit, *except a*  
 40 *change in place of use for a term permit approved pursuant to K.S.A. 82a-*  
 41 *736, and amendments thereto, for irrigation use may be approved by the*  
 42 *chief engineer for an increase of up to 10 acres or 10% of the authorized*  
 43 *place of use whichever is less.*

1 (h) The chief engineer shall adopt rules and regulations to effectuate  
2 and administer the provisions of this section.

3 Sec. 2. K.S.A. 2014 Supp. 82a-736 is hereby amended to read as  
4 follows: 82a-736. (a) It is hereby recognized that an opportunity exists to  
5 improve water management by enabling multi-year flexibility in the use of  
6 water authorized to be diverted under a groundwater water right, provided,  
7 that such flexibility neither impairs existing water rights, nor increases the  
8 total amount of water diverted, so that such flexibility has no long-term  
9 negative effect on the source of supply. It is therefore declared necessary  
10 and advisable to permit the establishment of multi-year flex accounts for  
11 groundwater water rights, together with commensurate protections for  
12 existing water rights and their source of supply.

13 (b) As used in this section:

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

17 (A) The authorized source of supply is groundwater; and

18 (B) the water right has not been the subject of a change approval to  
19 implement the provisions of K.A.R. 5-5-9(a)(2), K.A.R. 5-5-11(b)(2) or  
20 K.A.R. 5-5-11(b)(3), in effect upon the effective date of this act.

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

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

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

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

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

1 (B) if water conservation reduced water use under the base water  
2 right during calendar years 2000 through 2009, the calendar year is a year  
3 within the five calendar years immediately prior to the calendar year when  
4 water conservation began.

5 (6) "Net irrigation requirement" means the net irrigation requirement  
6 for 50% chance rainfall of the county that corresponds with the location of  
7 the authorized place of use of the base water right as provided in K.A.R. 5-  
8 5-12, on the effective date of this act.

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

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

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

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

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

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

24 (ii) 500% of the product of the annual net irrigation requirement  
25 multiplied by the flex account acreage, multiplied by 110%, but not greater  
26 than five times the maximum annual quantity authorized by the base water  
27 right; ~~or~~

28 (iii) if the authorized place of use is located wholly within the  
29 boundaries of a groundwater management district, an amount that shall not  
30 increase the long-term average use of the groundwater right as specified by  
31 rule or regulation promulgated pursuant to ~~subsection (e) of~~ K.S.A. 82a-  
32 1028(o), and amendments thereto; ~~and or~~

33 (iv) *pursuant to subparagraph (E), the amount computed in (i), (ii) or*  
34 *(iii) plus any deposited water remaining in a multi-year flex account up to*  
35 *100% of the base average usage;*

36 (E) *any deposited water remaining in a multi-year flex account up to*  
37 *100% of the base average usage may be added to the deposit amount*  
38 *calculated in subparagraph (D) if the base water right is enrolled in*  
39 *another multi-year flex account during the calendar year in which the*  
40 *existing multi-year flex account expires. The total amount of water*  
41 *deposited in any multi-year flex account shall not exceed 500% of the*  
42 *authorized quantity of the base water right; and*

43 (F) notwithstanding any other provisions of this subsection, except

1 when the base water right is suspended due to the issuance of a two-year  
2 term permit in a designated drought emergency area for 2011 and 2012,  
3 the quantity of water deposited into a multi-year flex account shall be  
4 reduced by the quantity of water used in excess of the maximum annual  
5 quantity of the base water right during 2011 if the application for a multi-  
6 year flex account is filed with the chief engineer on or before July 15,  
7 2012.

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

10 (d) The chief engineer shall implement a program providing for the  
11 issuance of term permits to holders of groundwater water rights who have  
12 established flex accounts in accordance with this section. Such term  
13 permits shall authorize the use of water in a flex account at any time  
14 during the five consecutive calendar years for which the application for the  
15 term permit authorizing a multi-year flex account is made, without annual  
16 limits on such use.

17 (e) Term permits provided for by this section shall be subject to the  
18 following:

19 (1) A separate term permit shall be required for each point of  
20 diversion authorized by the base water right.

21 (2) The quantity of water authorized for diversion shall be limited to  
22 the amount deposited pursuant to subsection (c)(1)(D).

23 (3) The rate of diversion for each point of diversion authorized under  
24 the term permit shall not exceed the rate of diversion for each point of  
25 diversion authorized under the base water right.

26 (4) The authorized place of use shall be the place of use or a  
27 subdivision of the place of use for the base water right.

28 (5) The point of diversion authorized by the term permit shall be  
29 specified by referencing one point of diversion authorized by the base  
30 water right at the time the multi-year flex account term permit application  
31 is filed with the chief engineer or at the time any approvals changing such  
32 referenced point of diversion of the base water right are approved during  
33 the multi-year flex account period. For a base water right with multiple  
34 points of diversion, each point of diversion authorized by a term permit  
35 shall receive a specific assignment of a maximum authorized quantity of  
36 water, assigned proportionately to the authorized annual quantities of the  
37 respective points of diversion under the base water right.

38 (6) The chief engineer may establish, by rules and regulations, criteria  
39 for such term permits.

40 (7) Except as explicitly provided for by this section, such term  
41 permits shall be subject to all provisions of the Kansas water appropriation  
42 act, and rules and regulations adopted under such act, and nothing in this  
43 section shall authorize impairment of any vested right or prior

1 appropriation right by the exercise of such term permit.

2 (f) An application for a multi-year flex account shall be filed with the  
3 chief engineer on or before October 1 of the first year of the multi-year  
4 flex account term for which the application is being made.

5 (g) All costs of administration of this section shall be paid from fees  
6 for term permits provided for by this section. Any appropriation or transfer  
7 from any fund other than the water appropriation certification fund for the  
8 purpose of paying such costs shall be repaid to the fund from which such  
9 appropriation or transfer is made. At the time of repayment, the secretary  
10 of agriculture shall certify to the director of accounts and reports the  
11 amount to be repaid and the fund to be repaid. Upon receipt of such  
12 certification, the director of accounts and reports shall promptly transfer  
13 the amount certified to the specified fund.

14 (h) The fee for a multi-year flex account term permit shall be the  
15 same as specified for other term permits in K.S.A. 82a-708c, and  
16 amendments thereto, except as follows:

17 (1) If the base water right is currently suspended due to the issuance  
18 of a two-year term permit in a designated drought emergency area for 2011  
19 and 2012, then a holder of such term permit shall be subject to a \$200  
20 application fee for a multi-year flex account term permit if the application  
21 is filed on or before July 15, 2012; or

22 (2) if water use under the authority of the base water right exceeded  
23 the maximum annual quantity authorized by the base water right during  
24 2011 and the holder of the base water right files an application for  
25 approval of a multi-year flex account term permit on or before July 15,  
26 2012, then the application fee shall be \$600.

27 (i) The chief engineer shall have full authority pursuant to K.S.A.  
28 82a-706c, and amendments thereto, to require any additional measuring  
29 devices and any additional reporting of water use for term permits issued  
30 pursuant to this section. Failure to comply with any measuring or reporting  
31 requirement may result in a penalty, up to and including the revocation of  
32 the term permit and the suspension of the base water right for the duration  
33 of the term permit period.

34 (j) The chief engineer shall submit a written report on the  
35 implementation of this section to the house standing committee on  
36 agriculture and natural resources and the senate standing committee on  
37 natural resources on or before February 1 of each year.

38 (k) This section shall be part of and supplemental to the Kansas water  
39 appropriation act.

40 Sec. 3. K.S.A. 2014 Supp. 82a-708c and 82a-736 are hereby repealed.

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