

HOUSE BILL No. 2517

By Committee on Agriculture and Natural Resources

1-24

1 AN ACT concerning water; relating to the water right transition assistance
2 program; amending K.S.A. 2011 Supp. 2-1930 and 2-1931 and
3 repealing the existing sections.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2011 Supp. 2-1930 is hereby amended to read as
7 follows: 2-1930. (a) *As used in this section:*

8 (1) *"Division" means the Kansas department of agriculture division*
9 *of conservation;*

10 (2) *"historic consumptive water use" means an amount of use of a*
11 *water right as calculated pursuant to subsection (k); and*

12 (3) *"program" means the water right transition assistance program.*

13 (b) There is hereby established the water right transition assistance
14 ~~pilot project~~ program. The program shall be administered by the ~~state~~
15 ~~conservation commission~~ *Kansas department of agriculture division of*
16 *conservation*. The Kansas department of agriculture; division of water
17 resources and recognized local governing agencies, including groundwater
18 management districts, shall cooperate in program implementation. The
19 program shall be administered for the purpose of reducing *historic*
20 *consumptive water* use in the target or high priority areas of the state by
21 issuing water right transition grants *based on competitive bids* for privately
22 held water rights.

23 ~~(b) (c)~~ (1) The ~~state conservation commission~~ *division* may receive
24 and expend funds from the federal or state government, or private source
25 for the purpose of carrying out the provisions of this section. The ~~state~~
26 ~~conservation commission and the participating groundwater management~~
27 ~~districts~~ *division* shall carry over unexpended funds from one fiscal year to
28 the next.

29 ~~(2) Federal and state funds shall not exceed \$1,500,000 per year~~ *The*
30 *maximum amount paid by the division shall not exceed a base rate per*
31 *acre-foot of historic consumptive water use made available under the*
32 *water right to be dismissed or permanently reduced. The state*
33 *conservation commission shall establish an annual base rate after*
34 *considering recommendations from the chief engineer and the*

1 *groundwater management districts regarding market conditions.*

2 ~~(3) State conservation commission expenditures for permanent partial~~
3 ~~water right retirements shall not exceed 30% of the total amount of funds~~
4 ~~for the water right transition assistance pilot project program.~~

5 ~~(e) (d) The state conservation commission division may enter into~~
6 ~~water right transition assistance pilot project program contracts with~~
7 ~~landowners that will result in the permanent retirement reduction of part or~~
8 ~~all of landowner a landowner's historic consumptive water use water~~
9 ~~rights by action of the chief engineer as provided for in subsection (f) of~~
10 ~~this section.~~

11 ~~(d) (e) All applications for permanent irrigation water right~~
12 ~~retirements shall be considered for funding. Permanent retirement of~~
13 ~~partial water rights shall only be approved by the Kansas department of~~
14 ~~agriculture division of water resources when the local groundwater~~
15 ~~management district has the metering and monitoring capabilities~~
16 ~~necessary to ensure compliance with the program.~~

17 ~~(e) (f) Permanent retirement of partial water rights shall only be~~
18 ~~approved by the Kansas department of agriculture division of water~~
19 ~~resources when the groundwater management district has the metering and~~
20 ~~monitoring capabilities necessary to ensure compliance with the program.~~
21 ~~When prioritizing among water right applications for acceptance under the~~
22 ~~water right transition assistance pilot project, Applications for permanent~~
23 ~~water right retirement shall be prioritized for payment based on the~~
24 ~~following criteria:~~

25 ~~(1) The applicant's bid price;~~

26 ~~(2) the timing and extent of the impact of the application on aquifer~~
27 ~~restoration or stream recovery;~~

28 ~~(3) the impact on local water management strategies designated by~~
29 ~~the board of each groundwater management district or by the chief~~
30 ~~engineer for each target area; and~~

31 ~~(4) where rights with similar hydrologic impacts are considered,~~
32 ~~priority should be given to the senior right as determined under the Kansas~~
33 ~~water appropriation act.~~

34 ~~(f) (g) Water rights enrolled in the water right transition assistance~~
35 ~~pilot project program for permanent retirement shall require the written~~
36 ~~consent of all landowners and authorized agents to voluntarily request~~
37 ~~permanent reduction or permanent dismissal and forfeiture of priority of~~
38 ~~the enrolled water right. Upon enrollment of the water right into the water~~
39 ~~right transition assistance pilot project program, the chief engineer of the~~
40 ~~Kansas department of agriculture division of water resources shall~~
41 ~~concurrently permanently reduce or permanently dismiss and terminate the~~
42 ~~water right in accordance with the terms of the contract.~~

43 ~~(g) (h) (1) The state conservation commission division shall make~~

1 water right transition grants available only in areas that have been
2 designated as:

3 (A) Target ~~or high priority~~ areas by the groundwater management
4 districts and the chief engineer of the Kansas department of agriculture
5 division of water resources; or ~~priority~~

6 (B) ~~target~~ areas outside the groundwater management districts as
7 ~~designated~~ by the chief engineer of the Kansas department of agriculture
8 division of water resources.

9 (2) ~~Two of the target or high priority Initial target areas shall be the~~
10 ~~prairie dog creek area located in hydrologic unit code 10250015 and , the~~
11 ~~rattlesnake creek subbasin located in hydrologic unit code 11030009 and~~
12 ~~the six high priority areas of the northwest Kansas groundwater~~
13 ~~management district no. 4.~~

14 ~~(3) Each target area shall be in a groundwater aquifer, aquifer sub-~~
15 ~~unit, surface water basin, subbasin or stream reach that the chief engineer~~
16 ~~has closed to further appropriations except for domestic use, temporary~~
17 ~~permits, term permits for five years or less and small-use exemptions for~~
18 ~~15 acre-feet or less, if the use, permit or exemption does not conflict with~~
19 ~~this program.~~

20 ~~(4) (3) The designation of each target area shall include the~~
21 ~~identification of a historic consumptive water use retirement goal. When~~
22 ~~such goal is reached, the target area will be delisted.~~

23 ~~(5) (4) The designation of each target area shall include the~~
24 ~~identification of sub-regions which are to be prioritized for retirements~~
25 ~~among competing bids.~~

26 ~~(h) (i) Contracts accepted under the water right transition assistance~~
27 ~~program shall result in a net reduction in historic consumptive water use~~
28 ~~equivalent to the amount of historic consumptive use of the water right or~~
29 ~~rights enrolled in the program based on the average historic consumptive~~
30 ~~water use in the target area. Except as provided for in subsections (i) and~~
31 ~~(j) (l) and (m), once a water right transition assistance pilot project~~
32 ~~program grant has been provided, the land authorized to be irrigated by the~~
33 ~~water right or water rights associated with that grant shall not be irrigated~~
34 ~~permanently. Water right transition assistance pilot project program~~
35 ~~contracts shall be subject to such terms, conditions and limitations as may~~
36 ~~be necessary to ensure that such reduction in historic consumptive water~~
37 ~~use occurs and can be adequately monitored and enforced.~~

38 ~~(j) "Historic consumptive water use" means Only vested or certified~~
39 ~~water rights which are in good standing shall be eligible for water right~~
40 ~~retirement grants. No water right with more than four consecutive years~~
41 ~~of nonuse without due and sufficient cause shall be eligible for a water~~
42 ~~right retirement grant. the average amount of water consumed by crops as~~
43 ~~a result of the lawful beneficial use of water for irrigation during four of~~

1 the six preceding calendar years, with the highest and lowest years
2 removed from the analysis. For purposes of this program, historic
3 consumptive water use will be determined by multiplying the average
4 reported water use for the four selected years by a factor of 0.85 for center
5 pivot sprinkler irrigation systems, 0.75 for flood or gravity irrigation
6 systems and 0.95 for subsurface drip irrigation systems, but not to exceed
7 the net irrigation requirements for the 50% chance rainfall for the
8 appropriate county as shown in K.A.R. 5-5-12.

9 (k) (1) *The historic consumptive water use of a water right shall be*
10 *determined by either:*

11 (A) *Calculating the average amount of water consumed by crops as a*
12 *result of the lawful beneficial use of water during the 10 preceding*
13 *calendar years of actual irrigation and multiplying the average reported*
14 *water use for the 10 selected years by a factor of 0.85 for center pivot*
15 *sprinkler irrigation systems, 0.75 for flood or gravity irrigation systems*
16 *and 0.95 for subsurface drip irrigation systems, but not to exceed the net*
17 *irrigation requirements for the 50% chance rainfall for the appropriate*
18 *county as shown in K.A.R. 5-5-12; or*

19 (B) *calculating the available pumping capacity of a water right by*
20 *multiplying a flow rate test for each point of diversion applied to be*
21 *retired under the water right by a theoretical pumping duration of 100*
22 *days multiplied by an efficiency factor of 0.85 for center pivot sprinkler*
23 *irrigation systems, 0.75 for flood or gravity irrigation systems and 0.95 for*
24 *subsurface drop irrigation systems, but not to exceed the authorized*
25 *quantity of the water right or the net irrigation requirements for the 50%*
26 *chance rainfall for the appropriate county as shown in K.A.R. 5-5-12.*
27 *Flow rate tests must have been conducted not less than one year prior to*
28 *the application date and certified as acceptable by the local groundwater*
29 *management district or the chief engineer; or*

30 (2) The applicant may also submit an engineering study that
31 determines the average historic consumptive water use as an alternative
32 method if it is demonstrated to be more accurate for the water right or
33 water rights involved.

34 (†)(l) *Enrollment of an entire water right or a portion of a water right*
35 *where land associated with the quantity is being permanently reduced*
36 *from the water right, in the water right transition assistance pilot project*
37 *program shall not subsequently prohibit irrigation of the land that, prior to*
38 *enrollment, was authorized by the water right or water rights if irrigation*
39 *can be lawfully allowed by another water right or permit pursuant to the*
40 *rules and regulations and consideration of any future changes to other*
41 *water rights that may be proposed to be transferred to such land.*

42 (†)(m) *If more than one water right overlaps the place of use*
43 *authorized by the water right proposed to be enrolled in the water right*

1 ~~transition assistance pilot project~~ program, then all overlapping water
2 rights shall be enrolled in ~~the water right transition assistance pilot project~~
3 program or the landowners shall take the necessary lawful steps to
4 eliminate the overlap with the water right to be enrolled. The burden shall
5 be on the landowner to provide sufficient information to substantiate that
6 the proposed use of water by the resulting exercise of all water rights
7 involved will result in the net reduction amount of historic consumptive
8 water use by the water right or water rights to be enrolled. The ~~state~~
9 ~~conservation commission division~~ may require such documentation to be
10 provided by someone with special knowledge or experience related to
11 water rights and such operations.

12 ~~(k)(n)~~ The ~~state conservation commission division~~ shall adopt rules
13 and regulations as necessary for the administration of this section. When
14 adopting such rules and regulations the ~~state conservation commission~~
15 ~~division~~ shall consider cropping, system design, metered water use and all
16 other pertinent information that will permit a verifiable reduction in ~~annual~~
17 ~~water historic~~ consumptive ~~water~~ use and permit alternative crop or other
18 use of the land so that the landowner's economic opportunities are taken
19 into account.

20 ~~(l)~~ The ~~state conservation commission~~ shall report annually to the
21 ~~senate standing committee on natural resources and the house standing~~
22 ~~committee on environment on the economic impact studies being~~
23 ~~conducted on the reduction of water consumption and the financial impact~~
24 ~~on the communities within the program areas. Such studies shall include~~
25 ~~comparative data for areas and communities outside the program areas.~~

26 ~~(m)~~ The ~~water right transition assistance pilot project~~ program shall
27 ~~expire five years from the effective date of the fiscal year for which state~~
28 ~~moneys are appropriated thereof and approval of program rules and~~
29 ~~regulations.~~

30 ~~(n)~~ ~~Water right transition assistance grants for water rights to remain~~
31 ~~unused for the contract period shall constitute due and sufficient cause for~~
32 ~~nonuse pursuant to K.S.A. 82a-718 and amendments thereto pursuant to~~
33 ~~the determination of the chief engineer for the duration of the water right~~
34 ~~transition assistance pilot project program contract.~~

35 ~~(o)~~ The ~~state conservation commission division~~ shall hold at least two
36 ~~meetings a meeting~~ in each ~~water right transition assistance pilot project~~
37 ~~program area target area designated after July 1, 2012~~, prior to entering
38 into any water right transition assistance ~~pilot project~~ program contract for
39 the permanent retirement of part or all of landowner ~~historic consumptive~~
40 ~~use water rights in such target area~~. Such meetings shall inform the public
41 of the possible economic and hydrologic impacts of the program. The ~~state~~
42 ~~conservation commission division~~ shall provide notice of such meetings
43 through publication in local newspapers of record and in the Kansas

1 register.

2 **(p) The provisions of this section shall expire on July 1, 2022.**

3 Sec. 2. K.S.A. 2011 Supp. 2-1931 is hereby amended to read as
4 follows: 2-1931. (a) Any person who commits any of the following may
5 incur a civil penalty as provided by this section:

6 (1) Any violation of the Kansas water right transition assistance ~~pilot~~
7 ~~project~~ program act or any rule and regulation adopted thereunder; and

8 (2) any violation of term, condition or limitation defined and or
9 imposed within the contractual agreement between the ~~state conservation~~
10 ~~commission~~ *Kansas department of agriculture division of conservation*
11 and the water right owner.

12 (b) Any participant who violates any section of a water right
13 transition assistance ~~pilot~~ ~~project~~ program contract shall be subject to
14 either one or both of the following:

15 (1) A civil penalty of not less than \$100 nor more than \$1,000 per
16 violation. Each day shall constitute a separate violation for purposes of this
17 section; and

18 (2) repayment of the grant amount in its entirety plus a penalty at ~~six~~
19 ~~percent~~ 6% of the full grant amount.

20 (c) Any penalties or reimbursements received under this act shall be
21 reappropriated for use in the water right transition assistance ~~pilot~~ ~~project~~
22 program.

23 **(d) The provisions of this section shall expire on July 1, 2022.**

24 Sec. 3. K.S.A. 2011 Supp. 2-1930 and 2-1931 are hereby repealed.

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