

[As Amended by Senate Committee of the Whole]

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[As Amended by House Committee of the Whole]

Session of 2008

Substitute for HOUSE BILL No. 2625

By Committee on Agriculture and Natural Resources

2-27

14 AN ACT concerning ~~existing~~ intensive groundwater use control areas;
15 relating to ~~review~~ hearings ~~of such areas~~; establishing advisory panels;
16 **amending K.S.A. 82a-928, 82a-1036 and 82a-1040 and K.S.A.**
17 **2007 Supp. 82a-1038 and repealing the existing sections.**
18

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

20 Section 1. (a) (1) For each intensive groundwater use control area
21 designated by order of the chief engineer prior to July 1, 2008, the chief
22 engineer shall hold and conduct a **public** review hearing, within seven
23 years after the effective date of this act, to review such designation. ~~Each~~
24 **A** subsequent review of such designation shall occur within ten years after
25 the previous **public** review hearing or more frequently as determined by
26 the chief engineer.

27 (2) For each intensive groundwater use control area designated by
28 the order of the chief engineer on or after July 1, 2008, the chief engineer
29 shall hold and conduct a **public** review hearing, within seven years after
30 the effective date of such order, to review such designation. ~~Each~~ **A** sub-
31 sequent review of such designation shall occur within ten years after the
32 previous **public** review hearing or more frequently as determined by the
33 chief engineer.

34 (3) Upon the request of a petition ~~signed by members of a ground-~~
35 ~~water management district and~~ **signed by** 5% of the affected water users
36 in an intensive groundwater use control area designated by order of the
37 chief engineer, the chief engineer shall hold and conduct a **public** review
38 hearing to review such designation. Such requested **public** review hear-
39 ing shall not be conducted more frequently than every four years.

40 (b) ~~(1)~~ The chief engineer shall hold and conduct a public **review**
41 hearing on the question of continuing the designation of the intensive
42 groundwater use control area. Written notice of the hearing shall be given
43 to every person holding a water right in the affected area. Notice of the

1 hearing shall also be given by publication in a newspaper or newspapers
2 of general circulation within the affected area at least 30 days prior to the
3 date set for such hearing. Such notice shall indicate the reason for the
4 hearing and shall denote the time and place of the hearing. At the hearing,
5 documentary and oral evidence shall be taken, and a full and complete
6 record of the same shall be kept.

7 ~~(2) Individuals and organizations may request in writing to the chief
8 engineer to be a party to the public hearing. The chief engineer shall
9 determine whether individuals and organizations have appropriate stand-
10 ing to be granted party status. Parties will be allowed to present evidence
11 and cross-examine other parties during the public hearing. Federal agen-
12 cies and agencies of the state of Kansas may present information at the
13 request of the advisory panel, established pursuant to the provisions of
14 section 2, and amendments thereto. Federal agencies and agencies of the
15 state of Kansas shall not be party to the public hearing.~~

16 (c) The chief engineer shall consider whether any one or more of the
17 circumstances set forth in K.S.A. 82a-1036, and amendments thereto,
18 exist and whether the public interest requires that the intensive ground-
19 water use control area designation be continued. The state shall have the
20 burden of proving the need for continuance of the intensive groundwater
21 use control area designation. Based on this review, the chief engineer
22 shall:

- 23 (1) Continue the intensive groundwater use control area with its orig-
24 inal or current corrective control provisions;
- 25 (2) modify the corrective control provisions;
- 26 (3) reduce the intensive groundwater use control area boundaries;
- 27 (4) change any allocations within the intensive groundwater use con-
28 trol area;
- 29 (5) address any other issues that have been identified in the review;
- 30 or
- 31 (6) dismiss the intensive groundwater use control area and order al-
32 ternative measures, if necessary, to address the water issues in the af-
33 fected area.

34 (d) Except as provided in subsection (e), such order shall be in full
35 force and effect from the date of its entry in the records of the chief
36 engineer's office unless and until its operation shall be stayed by an appeal
37 from an order entered on review of the chief engineer's order pursuant
38 to K.S.A. 2007 Supp. 82a-1901, and amendments thereto, in accordance
39 with the provisions of the act for judicial review and civil enforcement of
40 agency actions. The chief engineer upon request shall deliver a copy of
41 such order to any interested person who is affected by such order, and
42 shall file a copy of the same with the register of deeds of any county
43 within which such designated control area lies.

1 (e) If the holder of a groundwater right within the area designated as
2 an intensive groundwater use control area applies for review of the order
3 of designation pursuant to K.S.A. 2007 Supp. 82a-1901, and amendments
4 thereto, the provisions of the order with respect to the inclusion of the
5 holder's right within the area may be stayed in accordance with the Kansas
6 administrative procedure act.

7 Sec. 2. (a) ~~(1) [The chief engineer shall conduct a public hear-~~
8 ~~ing and not an adversarial hearing.]~~ The proceedings of an intensive
9 groundwater use control area ~~[such hearing]~~ ***an intensive groundwa-***
10 ***ter use control area public hearing conducted pursuant to K.S.A.***
11 ***82a-1037, and amendments thereto, and a public review hearing***
12 ***conducted pursuant to section 1, and amendments thereto,*** shall be
13 determined by rules and regulations ***adopted by the chief engineer.***

14 ~~(2) The chief engineer shall present a report on any intensive ground-~~
15 ~~water use control area proceedings, reviews or pending intensive ground-~~
16 ~~water control use areas to the appropriate standing committees for the~~
17 ~~Kansas legislature.~~

18 (b) ~~Any order designating an intensive groundwater use control area~~
19 ~~must~~ ***The chief engineer shall*** establish an advisory panel ***for each pub-***
20 ***lic hearing conducted pursuant to K.S.A. 82a-1037, and amend-***
21 ***ments thereto, and each public review hearing conducted pursuant***
22 ***to section 1, and amendments thereto,*** which shall include members
23 from names submitted by affected water users and groundwater man-
24 agement districts. Such panel shall represent all segments of water users
25 in the proposed intensive groundwater use control area.

26 ***New Sec. 3. The chief engineer shall present an annual report***
27 ***on any intensive groundwater use control area proceedings or re-***
28 ***views and any pending intensive groundwater use control areas to***
29 ***the house of representatives standing committee on agriculture and***
30 ***natural resources, the senate standing committee on agriculture and***
31 ***the senate standing committee on natural resources.***

32 ***Sec. 4. K.S.A. 82a-928 is hereby amended to read as follows:***
33 ***82a-928. The policies of the state of Kansas that are deemed desir-***
34 ***able for the achievement of the long-range goals and objectives as***
35 ***set forth in K.S.A. 82a-927, and amendments thereto, and that shall***
36 ***serve as guidelines for public corporations and all agencies of the***
37 ***state, relative to their responsibilities with respect to the water re-***
38 ***sources of the state whenever physical and economic conditions per-***
39 ***mit, are hereby declared to be:***

40 (a) ***The utilization of nonstructural methods, including flood-***
41 ***plain regulation, and structural measures for the reduction of flood***
42 ***damage;***

43 (b) ***the design of proposed levees and dikes so as to reduce flood***

- 1 *risks in agricultural areas to a chance of occurrence in any one year*
2 *of 10% or less;*
- 3 *(c) the design of proposed levees and dikes so as to reduce flood*
4 *risks in urban areas to a chance of occurrence in any one year of*
5 *1% or less;*
- 6 *(d) the design of proposed storage structures for the protection*
7 *of agricultural areas so as to provide sufficient capacity to control*
8 *the volume of a flood having a chance of occurrence in any one year*
9 *of 4% or less;*
- 10 *(e) the design of proposed storage structures for the protection*
11 *of urban areas to provide sufficient capacity to control the volume*
12 *of a flood having a chance of occurrence in any one year of 2% or*
13 *less;*
- 14 *(f) the development of adequate water storage to meet, as nearly*
15 *as practicable, present and anticipated water uses through planning*
16 *and construction of multipurpose reservoirs and through the ac-*
17 *quisition from the federal government of storage in federal reser-*
18 *voirs and by agreements with the federal government regarding the*
19 *use of storage;*
- 20 *(g) the inclusion in publicly financed structures for the conser-*
21 *vation, management and development of the water resources of the*
22 *state of reasonable amounts of storage capacity for the regulation*
23 *of the low flows of the watercourses of the state;*
- 24 *(h) the achievement of the primary drinking water standards*
25 *promulgated by the secretary of health and environment pursuant*
26 *to K.S.A. 65-171m, and amendments thereto;*
- 27 *(i) the identification of minimum desirable streamflows to pre-*
28 *serve, maintain or enhance baseflows for in-stream water uses rel-*
29 *ative to water quality, fish, wildlife, aquatic life, recreation, general*
30 *aesthetics and domestic uses and for the protection of existing water*
31 *rights;*
- 32 *(j) the maintenance of the surface waters of the state within the*
33 *water quality standards adopted by the secretary of health and en-*
34 *vironment as provided by K.S.A. 65-164 to 65-171t, inclusive, and*
35 *amendments thereto;*
- 36 *(k) the protection of the quality of the groundwaters of the state*
37 *as provided by the Kansas groundwater exploration and protection*
38 *act and other acts relating thereto;*
- 39 *(l) the management of the groundwaters of the state as provided*
40 *by the Kansas water appropriation act and the provisions of K.S.A.*
41 *82a-1020 ~~to~~ through 82a-1040, inclusive sections 1, 2 and 3, and*
42 *amendments thereto;*
- 43 *(m) the provision of financial and technical assistance to public*

- 1 *corporations concerned with management, conservation and devel-*
 2 *opment of water resources;*
- 3 *(n) the review and coordination of financial assistance for re-*
 4 *search that may be provided by federal or state agencies to public*
 5 *corporations concerned with management, conservation and devel-*
 6 *opment of water resources to prevent duplication of effort;*
- 7 *(o) the development of groundwater recharge projects;*
- 8 *(p) the encouragement of local initiative in the planning, imple-*
 9 *mentation, funding and operation of local water programs to the*
 10 *extent that the same are supportive of state water programs;*
- 11 *(q) the design of municipal water systems to provide an ade-*
 12 *quate water supply to meet the needs during a drought having a 2%*
 13 *chance of occurrence; and*
- 14 *(r) the encouragement of the use of agricultural soil and water*
 15 *conservation practices and structures to control erosion and to ef-*
 16 *fectively utilize precipitation and runoff.*
- 17 **Sec. 5. K.S.A. 82a-1036 is hereby amended to read as follows:**
 18 **82a-1036. (a) ~~Whenever~~ [In an area which is located within the**
 19 **boundaries of an existing groundwater management district or dis-**
 20 **tricts, only when] a groundwater management district recommends**
 21 **the same or whenever a petition signed by not less than ~~three hun-~~**
 22 **~~ded (300)~~ 300 or by not less than ~~five percent (5%)~~ 5% of the eligible**
 23 **voters of a groundwater management district, whichever is less, is**
 24 **submitted to the chief engineer, the chief engineer shall initiate, as**
 25 **soon as practicable thereafter, proceedings for the designation of a**
 26 **specifically defined area within such district [or districts] as an**
 27 **intensive groundwater use control area.**
- 28 **(b) ~~Except as provided in subsection (c)~~ [In an area which is lo-**
 29 **cated outside the boundaries of an existing groundwater manage-**
 30 **ment district], the chief engineer, upon his or her own investigation,**
 31 **may initiate such proceedings; ~~either inside or outside a groundwater~~**
 32 **~~management district,~~ whenever ~~said~~ the chief engineer has reason to**
 33 **believe that any one or more of the following conditions exist ~~in a~~**
 34 **groundwater use area which is located outside the boundaries of an**
 35 **existing groundwater management district: (a) (1) Groundwater levels**
 36 **in the area in question are declining or have declined excessively;**
 37 **~~or (b)~~ (2) the rate of withdrawal of groundwater within the area in**
 38 **question equals or exceeds the rate of recharge in such area; ~~or (c)~~**
 39 **(3) preventable waste of water is occurring or may occur within the**
 40 **area in question; ~~(d)~~ (4) unreasonable deterioration of the quality**
 41 **of water is occurring or may occur within the area in question; or**
 42 **~~(e)~~ (5) other conditions exist within the area in question which re-**
 43 **quire regulation in the public interest.**

1 ~~(c) Except as provided in subsection (d), the chief engineer may initiate such proceedings within a groundwater management district upon~~
2 ~~the chief engineer's own initiative only if all of the following criteria have~~
3 ~~also been met:~~

4 ~~(1) The chief engineer has notified the affected groundwater management~~
5 ~~district that the chief engineer has reason to believe that one or more~~
6 ~~of the conditions set forth in subsection (b) exists within that groundwater~~
7 ~~management district;~~

8 ~~(2) the chief engineer has provided such district with a description of~~
9 ~~the area in question and data and analysis that documents the existence~~
10 ~~of one or more such conditions;~~

11 ~~(3) the chief engineer has made a preliminary determination that~~
12 ~~strict application of the priority system under the Kansas water appro-~~
13 ~~riation act to address such conditions will be significantly less effective~~
14 ~~in solving or reducing such conditions, or will result in significantly more~~
15 ~~permits and water rights being ordered to completely cease diverting wa-~~
16 ~~ter than if an intensive groundwater use area is created, and provided a~~
17 ~~report to the affected groundwater management district explaining how~~
18 ~~administration of water rights under the priority system would impact~~
19 ~~water rights in the area in question;~~

20 ~~(4) the chief engineer has provided 120 days, or greater time specified~~
21 ~~by the chief engineer, for the groundwater management district to develop~~
22 ~~a plan to address the problem;~~

23 ~~(5) the affected groundwater management district has failed to submit~~
24 ~~the plan to address the problem within the time period, or any extension~~
25 ~~thereof, authorized by the chief engineer;~~

26 ~~(6) the chief engineer has given the groundwater management district~~
27 ~~90 days, or greater time specified by the chief engineer, to request initi-~~
28 ~~ation of an intensive groundwater use control area; and~~

29 ~~(7) the groundwater management district has failed to request initi-~~
30 ~~ation of an intensive groundwater use control area within the time period~~
31 ~~authorized by the chief engineer.~~

32 ~~(d) If a groundwater management district regulation specifying the~~
33 ~~manner in which the chief engineer may initiate an intensive groundwater~~
34 ~~use control area within a specific groundwater management district has~~
35 ~~been adopted by the chief engineer, such procedure shall be the procedure~~
36 ~~the chief engineer shall use to initiate an intensive groundwater use con-~~
37 ~~trol area within such groundwater management district.~~

38 **Sec. 6. K.S.A. 2007 Supp. 82a-1038 is hereby amended to read**
39 **as follows: 82a-1038. (a) In any case where the chief engineer finds**
40 **that any one or more of the circumstances set forth in K.S.A. 82a-**
41 **1036 and amendments thereto exist and that the public interest re-**
42 **quires that any one or more corrective controls be adopted, the chief**
43

1 *engineer shall designate, by order, the area in question, or any part*
2 *thereof, as an intensive groundwater use control area.*

3 *(b) The order of the chief engineer shall define specifically the*
4 *boundaries of the intensive groundwater use control area and shall*
5 *indicate the circumstances upon which the findings of the chief en-*
6 *gineer are made. The order of the chief engineer may include any*
7 *one or more of the following corrective control provisions: (1) A*
8 *provision closing the intensive groundwater use control area to any*
9 *further appropriation of groundwater in which event the chief en-*
10 *gineer shall thereafter refuse to accept any application for a permit*
11 *to appropriate groundwater located within such area; (2) a provi-*
12 *sion determining the permissible total withdrawal of groundwater*
13 *in the intensive groundwater use control area each day, month or*
14 *year, and, insofar as may be reasonably done, the chief engineer*
15 *shall apportion such permissible total withdrawal among the valid*
16 *groundwater right holders in such area in accordance with the rel-*
17 *ative dates of priority of such rights; (3) a provision reducing the*
18 *permissible withdrawal of groundwater by any one or more appro-*
19 *priators thereof, or by wells in the intensive groundwater use con-*
20 *trol area; (4) a provision requiring and specifying a system of ro-*
21 *tation of groundwater use in the intensive groundwater use control*
22 *area; (5) any one or more other provisions making such additional*
23 *requirements as are necessary to protect the public interest. The*
24 *chief engineer is hereby authorized to delegate the enforcement of*
25 *any corrective control provisions ordered for an intensive ground-*
26 *water use control area to groundwater management district number*
27 *4 or to any city, if such district or city is located within or partially*
28 *within the boundaries of such area.*

29 *(c) Except as provided by subsection (d) and except as provided*
30 *by section 1, and amendments thereto, the order of designation of an*
31 *intensive groundwater use control area shall be in full force and*
32 *effect from the date of its entry in the records of the chief engineer's*
33 *office unless and until its operation shall be stayed by an appeal*
34 *from an order entered on review of the chief engineer's order pur-*
35 *suant to K.S.A. 2007 Supp. 82a-1901 and amendments thereto in*
36 *accordance with the provisions of the act for judicial review and*
37 *civil enforcement of agency actions. The chief engineer upon re-*
38 *quest shall deliver a copy of such order to any interested person*
39 *who is affected by such order, and shall file a copy of the same with*
40 *the register of deeds of any county within which such designated*
41 *control area lies.*

42 *(d) If the holder of a groundwater right within the area desig-*
43 *nated as an intensive groundwater use control area applies for re-*

1 *view of the order of designation pursuant to K.S.A. 2007 Supp. 82a-*
2 *1901 and amendments thereto, the provisions of the order with*
3 *respect to the inclusion of the holder's right within the area may be*
4 *stayed in accordance with the Kansas administrative procedure act.*

5 **Sec. 7. K.S.A. 82a-1040 is hereby amended to read as follows:**
6 **82a-1040. The provisions of K.S.A. 82a-1036 to 82a-1039, inclusive,**
7 **of this act through 82a-1040, sections 1, 2 and 3, and amendments thereto,**
8 **shall be part of and supplemental to the provisions of K.S.A. 82a-**
9 **1020 to through 82a-1035, inclusive, and acts amendatory thereof or**
10 **supplemental thereto.**

11 **Sec. 8. K.S.A. 82a-928, 82a-1036 and 82a-1040 and K.S.A. 2007**
12 **Supp. 82a-1038 are hereby repealed.**

13 **Sec. ~~9~~ 9.** This act shall take effect and be in force from and after its
14 publication in the statute book.