

SENATE BILL No. 187

By Committee on Natural Resources

2-10

1 AN ACT concerning water; relating to the Kansas water banking act;
2 amending K.S.A. 2010 Supp. 82a-765 and 82a-767 and repealing the
3 existing sections.
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2010 Supp. 82a-765 is hereby amended to read as
7 follows: 82a-765. (a) Before a water bank is authorized to operate in the
8 state, the bank's charter must be approved by the chief engineer. Prior to
9 approval, the body wishing to charter the bank shall submit to the chief
10 engineer the proposed bank charter and any other information required by
11 rules and regulations of the chief engineer to determine whether the bank
12 shall be chartered to operate in the state.

13 (b) The chief engineer shall approve the charter of a water bank only
14 if the chief engineer determines that:

15 (1) The charter ensures that the operations and policies of the bank
16 will be consistent with the provisions of this act, the state water plan and
17 all applicable statutes, rules and regulations, findings and orders of the
18 chief engineer, groundwater management district policies and water
19 assurance district operations plans;

20 (2) there is sufficient participation by water right holders and water
21 users to make the operations of the bank practical and feasible;

22 (3) the governing body of the bank has at least five members and is
23 reasonably representative of public and private interests in water within
24 the bank boundary;

25 (4) the bank would not lease or accept for placement in a safe
26 deposit account water from the same hydrologic unit as another chartered
27 bank or accept for deposit a water right that authorizes diversion of water
28 from the same hydrologic unit as another chartered water bank;

29 (5) the charter ensures that, for each calendar year, the aggregate
30 amount of all bank deposits (determined by multiplying the amount of
31 each water right deposited by the length of time of the deposit and then
32 adding together the resulting amounts for all deposits) will equal or
33 exceed the sum of the aggregate amount of water leased by the bank
34 (determined by multiplying the amount of each lease by the length of
35 time of the lease and then adding together the resulting amounts for all
36 leases) plus the aggregate conservation element of all leases (determined

1 by multiplying the conservation element of each lease by the length of the
2 lease and then adding together the resulting amounts for all leases);

3 (6) the charter ensures that the operations of the bank will not result
4 in impairment of existing water rights or an increase in depletion of
5 severely depleted groundwater aquifers or stream courses;

6 (7) the charter ensures that the operations of the bank will result in a
7 savings of 10% or more in the total amount of groundwater consumed for
8 a representative past period pursuant to water rights deposited in the
9 bank, excluding groundwater located in an intensive groundwater use
10 control area where corrective control provisions have reduced the
11 allocation of groundwater to less than the quantity previously authorized
12 by water rights in the area;

13 (8) the charter provides a procedure for resolution of complaints by
14 bank participants and others impacted by the bank policies, practices and
15 operations;

16 (9) the charter ensures that the determination of the portion of a
17 water right that is bankable shall be subject to the following:

18 (A) The determination shall be primarily based on a representative
19 period of average water consumption for the hydrologic unit from which
20 water is authorized to be diverted under the water right; and

21 (B) the method of determination shall not penalize past
22 implementation of water conservation practices;

23 (10) the charter ensures that the total amount of groundwater leased
24 each year from each hydrologic unit does not exceed 90% of the historic
25 average annual amount collectively diverted pursuant to all deposited
26 water rights or portions of water rights from such unit for a representative
27 past period; and

28 (11) the charter provides a procedure for the dissolution of the bank,
29 specifically stating how the remaining deposits and safe deposit accounts
30 will be distributed.

31 (c) Prior to July 1, 2002, not more than one water bank shall be
32 chartered to operate in the state. Such water bank shall be a groundwater
33 bank. On or after July 1, 2002, one additional water bank may be
34 chartered to operate in the state. Such water bank shall be a surface water
35 bank or a surface water and groundwater bank.

36 (d) A water bank shall be chartered for a *an initial* period of not
37 more than seven years, at which time the bank shall be subject to review
38 in accordance with K.S.A. 2010 Supp. 82a-767, and amendments thereto,
39 to determine whether the bank's charter shall be extended *permanently*.

40 (e) Any amendment to the charter of a water bank must be approved
41 by the chief engineer prior to adoption of the amendment.

42 Sec. 2. K.S.A. 2010 Supp. 82a-767 is hereby amended to read as
43 follows: 82a-767. (a) Not later than five years after the establishment of a

1 water bank, the director of the Kansas water office shall convene a team
2 to evaluate the operation of the bank. The team shall consist of:

3 (1) The director of the Kansas water office, or the director's
4 designee, who shall serve as chairperson of the team;

5 (2) the director of the Kansas geological survey, or the director's
6 designee;

7 (3) two members who represent water right holders and water users
8 who have used the bank's services, which members shall be selected by
9 the governing body of the bank;

10 (4) members selected by the chief engineer as follows: (A) Two
11 members engaged in teaching or research at institutions of postsecondary
12 education in subjects involving water resources, including but not limited
13 to water resources engineering and hydrology; (B) a member who is an
14 economist with knowledge and experience in water resources; (C) one
15 member having knowledge and experience in water law; and (D) two
16 members having knowledge and experience in water policy issues and
17 residing outside the bank boundary, who shall represent the public
18 interest;

19 (5) one representative of each groundwater management district
20 located in whole or in part within the bank boundary selected by the
21 board of directors of such district; and

22 (6) one representative of each water assurance district located in
23 whole or in part within the bank boundary selected by the board of
24 directors of such district.

25 (b) The staff of the Kansas water office shall provide staff assistance
26 to the evaluation team.

27 (c) Not more than one year after a team is convened pursuant to this
28 section, the team shall submit a report of its evaluation and
29 recommendations to the governor, the Kansas water office, the Kansas
30 water authority, the secretary of agriculture, the chief engineer and the
31 senate standing committee on natural resources and the house standing
32 committee on environment, or the successors to such committees
33 regarding:

34 (1) The operations and policies of the bank and whether they are
35 consistent with the provisions of this act, the state water plan and all
36 applicable statutes, rules and regulations, findings and orders of the chief
37 engineer, groundwater management district policies and water assurance
38 district operations plans;

39 (2) whether the operations of the bank are achieving the goals and
40 objectives of water banking as set out in the state water plan and whether
41 changes could be made to further those goals and objectives;

42 ~~(3) whether the charter of the bank should be extended;~~

43 ~~(4) the terms under which the bank's charter should be allowed to~~

- 1 ~~lapse, if the team recommends that the charter not be extended;~~
2 (5)(3) the bank's impact on the entire area of all hydrologic units any
3 parts of which are encompassed in the bank's boundary; ~~and~~
4 (6)(4) any other matters that the team determines relevant to the
5 future of water banking in the state-;
6 (5) *whether the charter of the bank should be extended permanently;*
7 *and*
8 (6) *the terms under which the bank's charter should be allowed to*
9 *lapse, if the team recommends that the charter not be extended.*
10 (d) Unless otherwise provided by law, the chief engineer, in
11 accordance with the recommendations of the team, may extend the
12 charter of the bank *permanently*. ~~for an additional period not to exceed~~
13 ~~seven years or may allow the bank charter to lapse under the terms~~
14 ~~recommended by the team.~~
15 (e) *If made permanent, the charter shall be subject to review not less*
16 *than every five years by a team convened in accordance with subsection*
17 *(a). Such team shall submit a report involving matters listed in*
18 *subsections (c)(1) through (c)(4).*
19 Sec. 3. K.S.A. 2010 Supp. 82a-765 and 82a-767 are hereby repealed.
20 Sec. 4. This act shall take effect and be in force from and after its
21 publication in the statute book.
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