

SENATE BILL No. 412

By Committee on Ways and Means

2-18

1 AN ACT concerning bonding authority for water projects; relating to the
2 power to issue bonds by the Kansas development finance authority;
3 duties of the Kansas water authority; amending K.S.A. 74-2609, 82a-
4 1345, 82a-1360, 82a-1361 and 82a-1362 and K.S.A. 2013 Supp. 82a-
5 2310 and 82a-2314 and repealing the existing sections; also repealing
6 K.S.A. 82a-1363 and K.S.A. 2013 Supp. 82a-1365.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 74-2609 is hereby amended to read as follows: 74-
10 2609. The Kansas water office may:

11 (a) Seek and accept grants and other financial assistance that the
12 federal government and other public or private sources make available and
13 utilize the same for any purpose which the office is required or authorized
14 to study or make recommendations concerning.

15 (b) Contract with public agencies or with qualified private persons or
16 agencies to accomplish any purpose which the office is required or
17 authorized to study or make recommendations concerning.

18 (c) For the purpose of providing public water supply storage in either
19 federally funded or nonfederally funded multipurpose small lakes, acquire
20 water rights under the Kansas water appropriation act.

21 ~~(d) Authorize the issuance of revenue bonds for the purpose of paying~~
22 ~~all or part of the cost of acquiring a site, constructing, reconstructing,~~
23 ~~improving and expanding large reservoir projects or to finance the~~
24 ~~purchase of storage in existing reservoirs as provided by K.S.A. 82a-1360~~
25 ~~to 82a-1368, inclusive.~~

26 Sec. 2. K.S.A. 82a-1345 is hereby amended to read as follows: 82a-
27 1345. (a) The water assurance district shall impose a charge against each
28 member of the water assurance district. The total of such charges shall be
29 sufficient to enable the district to pay the state the full annual amortized
30 cost to the state of acquiring the assurance storage from the federal
31 government by purchase or trade, the cost of operation and maintenance of
32 the assurance storage, the cost of state administration and enforcement of
33 the assurance program. The water assurance district also may impose a
34 charge against each member of the district in an amount sufficient to cover
35 district operating costs. The water assurance district shall impose any
36 charges necessary for the payment of the principal of and interest on

1 revenue bonds issued by the Kansas water office pursuant to the provisions
2 of Chapter 394 of the Laws of 1986 *development finance authority*
3 *pursuant to K.S.A. 82a-1360 through 82a-1368, and amendments thereto.*

4 The water assurance district shall determine the amount of the charge for
5 each member and shall remit moneys collected to the Kansas water office
6 for deposit in the fund created pursuant to K.S.A. 82a-1364, *and*
7 *amendments thereto.* Charges to be paid by members of a water assurance
8 district may vary and shall be based on the principle of having each
9 member pay for the pro rata quantity authorized to each member from the
10 assurance program. In determining the charge, the governing body of the
11 district shall adopt rules which establish guidelines for prospective
12 members.

13 (b) The director of the Kansas water office shall request releases of
14 assurance water by the federal government under the agreements with the
15 federal government that govern operations of reservoirs containing
16 assurance storage.

17 (c) No member below a reservoir shall divert water from releases of
18 assurance water unless the member has a conservation plan which has
19 been approved in the manner provided by K.S.A. 82a-1348, *and*
20 *amendments thereto,* and which is in effect at the time of the desired
21 diversion.

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

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

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

37 (g) Payments required under a contract between a water assurance
38 district and the Kansas water office shall be for storage capacity contracted
39 in federal reservoirs. Nothing in this act shall be deemed to authorize any
40 suit against the state or any agency of the state or person employed by the
41 state on an implied contract or for negligence or any other tort. The
42 director of the Kansas water office may sue to enforce any claim arising
43 out of a contract. Payment of the assessment shall be a condition imposed

1 on every member and the chief engineer is authorized to declare the
2 suspension of any use of assurance water where a payment is not made.

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

5 Sec. 3. K.S.A. 82a-1360 is hereby amended to read as follows: 82a-
6 1360. As used in K.S.A. 82a-1360 ~~to through~~ 82a-1368, ~~inclusive and~~
7 ~~amendments thereto~~, unless the context otherwise requires:

8 (a) "Director" means the director of the Kansas water office.

9 (b) "Revenue bonds" means bonds issued pursuant to this act *and the*
10 *Kansas development finance authority act, K.S.A. 74-8901 et seq., and*
11 *amendments thereto*, and payable as to both principal and interest from:
12 (1) *Appropriations from the state general fund or from any appropriate*
13 *special revenue fund or funds;* (2) the revenue derived from water supply
14 contracts with water users who will derive benefits from the construction
15 of a large reservoir project or from the purchase of space in existing
16 reservoirs; ~~(2) (3) the revenue from participants in water assurance~~
17 ~~programs;~~ ~~(3) (4) in the discretion of the director, the proceeds of any~~
18 ~~grant-in-aid which may be received from any source; or~~ ~~(4) (5) any one or~~
19 ~~more of the foregoing.~~

20 (c) "Large reservoir project" or "project" means a structure that has
21 been planned, authorized and constructed by the federal government or the
22 state of Kansas which contains waters for conservation storage water
23 supply.

24 Sec. 4. K.S.A. 82a-1361 is hereby amended to read as follows: 82a-
25 1361. ~~(a) The Kansas water office is hereby authorized to issue and sell~~
26 ~~revenue bonds~~ *Subject to the provisions of this section, the Kansas*
27 *development finance authority is hereby authorized to issue bonds in*
28 *accordance with the Kansas development finance authority act, K.S.A. 74-*
29 *8901 et seq., and amendments thereto*, for the purpose of paying all or part
30 of the cost of acquiring a site or sites, *acquiring water rights*, constructing,
31 reconstructing, improving and expanding large reservoir projects or to
32 finance the purchase of storage or additional capacity in existing
33 reservoirs. The revenue bonds may be issued from time to time and sold in
34 amounts *as may be approved by the state finance council*, which the
35 director deems necessary for such purposes, *except that no bonds shall be*
36 *issued pursuant to this section prior to the review and approval by*
37 *resolution of the state finance council.*

38 (b) Prior to the issuance of the revenue bonds, the director shall adopt
39 a resolution ~~or resolutions in the name and~~ *requesting the issuance of the*
40 *bonds by the Kansas development finance authority* on behalf of the
41 Kansas water office, which resolution ~~or resolutions~~, unless otherwise
42 provided therein, shall take effect ~~immediately and~~ *upon approval of any*
43 *proposed bonds by the state finance council. Projects which are approved*

1 by the Kansas water office pursuant to K.S.A. 82a-1360 through 82a-1368
2 et seq., and amendments thereto, are hereby approved for the Kansas
3 water office for purposes of subsection (b) of K.S.A. 74-8905, and
4 amendments thereto. The state finance council shall approve a maximum
5 amount of bonds issued to finance any project or projects as requested by
6 the director, plus all amounts required for costs of bond issuance, costs of
7 interest on the bonds issued for a project or projects during the time such
8 improvements are being made, and any required reserves for the payment
9 of the principal and interest on the bonds. All moneys received from the
10 issuance of such bonds shall be deposited and accounted for as prescribed
11 by applicable bond covenants which shall also prescribe the following:

12 (1) ~~Determine an~~ The interest rate or rates to be paid on the principal
13 of the revenue bonds not in excess of the maximum rate of interest
14 prescribed by K.S.A. 10-1009, and amendments thereto;

15 (2) ~~determine provide~~ that the revenue bonds will be term or serial
16 bonds or any combination thereof maturing not later than 40 years from
17 the date of issuance;

18 ~~(3) make provision for charges in water supply contracts with water~~
19 ~~users who will derive benefits from the construction of a large reservoir~~
20 ~~project or from the purchase of space in existing reservoirs and fix charges~~
21 ~~to participants in water assurance programs in an amount necessary to~~
22 ~~assure the prompt payment of the principal of and interest on the revenue~~
23 ~~bonds as they become due, to maintain any required reserves and to~~
24 ~~provide for any deficits resulting from failure to receive sums payable to~~
25 ~~the Kansas water office by such water users or participants in water~~
26 ~~assurance programs or resulting from any other cause, and shall sell the~~
27 ~~revenue bonds in the manner provided by K.S.A. 10-106, and amendments~~
28 ~~thereto, at a price of not less than 90% of the par value thereof; and~~

29 ~~(4) register the revenue bonds with the state treasurer.~~

30 ~~(e) Prior to the issuance of the revenue bonds, the director may:~~

31 (c) *The debt service for any such bonds issued for any project shall*
32 *be paid by appropriations from the state general fund or any appropriate*
33 *special revenue fund or funds, as may be necessary to pay debt service on*
34 *the bonds. Subject to the provisions of appropriations acts, and as*
35 *requested by the Kansas development finance authority, payment of the*
36 *principal and interest on the bonds shall be made by the Kansas*
37 *department of administration or by the Kansas water office from annual*
38 *appropriations of the legislature or from any other moneys as may be*
39 *made available by law from the Kansas water office in amounts sufficient*
40 *to pay the principal and interest on the bonds until the bonds are finally*
41 *paid.*

42 (d) *The Kansas water office is authorized and instructed to enter into*
43 *loans, contracts or other agreements with water users and loans, and into*

1 *contracts or agreements with the Kansas department of administration for*
 2 *the payment or repayment of debt service on any bonds issued and to:*

3 *(1) Make provision for charges in water supply contracts with water*
 4 *users who will derive benefits from the construction of a large reservoir*
 5 *project or from the purchase of space in existing reservoirs and fix charges*
 6 *to participants in water assurance programs in an amount necessary to*
 7 *assure the prompt payment of the principal of and interest on the revenue*
 8 *bonds as they become due, or to repay amounts paid pursuant to pledge or*
 9 *loan agreements entered into with the department of administration,*
 10 *appropriated from state general funds to pay the principal and interest on*
 11 *the bonds, and to maintain any required reserves and to provide for any*
 12 *deficits resulting from failure to receive sums payable to the Kansas water*
 13 *office by such water users or participants in water assurance programs or*
 14 *resulting from any other cause.*

15 ~~(+)~~ (2) *Pledge to the payment of the principal and interest on the*
 16 *revenue bonds, or the repayment of state general funds appropriated to*
 17 *pay the principal and interest on the bonds, the gross revenues derived*
 18 *from water supply contracts with water users from revenue from*
 19 *participants in water assurance programs or from any one or more or all of*
 20 *such sources;*

21 ~~(2)~~ (3) *pledge to the payment of the principal of and interest on the*
 22 *revenue bonds, or the repayment of state general funds appropriated to*
 23 *pay the principal and interest on the bonds, the proceeds of any grant-in-*
 24 *aid, gift, donation, bequest or other such fund, or the income from any of*
 25 *such sources obtained by the Kansas water office directly or in trust;*

26 ~~(3)~~ (4) *pledge to the payment of the, or the repayment of state*
 27 *general funds appropriated to pay the principal of and interest on any*
 28 *revenue bonds issued to acquire conservation water supply storage*
 29 *capacity in federal reservoirs, if moneys otherwise authorized to be*
 30 *pledged are insufficient, moneys appropriated from the following, in*
 31 *descending order of priority: The state water plan fund created by K.S.A.*
 32 *82a-951, and amendments thereto, the state economic development*
 33 *initiatives fund created by K.S.A. 79-4804, and amendments thereto, or the*
 34 *state general fund; and*

35 ~~(4)~~ (5) *in accordance with applicable bond contracts, agreements*
 36 *and covenants, create and maintain (A) revenue bond funds adequate to*
 37 *promptly pay or repay state general fund appropriations made to pay both*
 38 *the principal of and interest on the revenue bonds when they become due*
 39 *and (B) a reasonable reserve fund; and as may be required by the bond*
 40 *covenants.*

41 ~~(5)~~ *covenant or contract with respect to any and all matters consistent*
 42 *with the authority granted herein necessary and convenient in the*
 43 *determination of the director to sell the revenue bonds and obtain the most*

1 favorable interest rate thereon, including, but not limited to, maturities,
2 priority of liens, number of issuances, special funds for security,
3 redemption privileges, investments of the proceeds of the revenue bonds
4 and any other funds pledged to the payment thereof or held as security
5 therefor, security agreements, trust indentures, paying agencies,
6 registration provisions and conversion privileges.

7 (e) All moneys received pursuant to such agreements in subsection
8 (c) shall be deposited in the state treasury in accordance with the
9 provisions of K.S.A. 75-4215, and amendments thereto, and shall be
10 credited to the state general fund in such amounts necessary to pay any
11 debt service on bonds issued pursuant to this section.

12 (f) Subject to the provisions of appropriation acts, the secretary of
13 administration shall enter into agreements with the Kansas water office
14 and the Kansas development finance authority to pledge moneys
15 appropriated by the state general fund, or as may be received from the
16 Kansas water office, as may be necessary for the payment of bonds issued
17 in accordance with the provisions of this section.

18 (g) The approvals of the state finance council required by subsection
19 (a), are hereby characterized as matters of legislative delegation and
20 subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c,
21 and amendments thereto. Such approvals may be given by the state finance
22 council when the legislature is in session.

23 Sec. 5. K.S.A. 82a-1362 is hereby amended to read as follows: 82a-
24 1362. (a) Revenue bonds issued hereunder, including refunding revenue
25 bonds authorized hereunder, shall be special obligations of the Kansas
26 ~~water office development finance authority~~ in accordance with their terms
27 and shall not constitute an indebtedness of the state of Kansas or the
28 Kansas water office, nor shall they constitute indebtedness within the
29 meaning of any ~~constitutional or~~ statutory provision limiting the incurring
30 of indebtedness *and shall not be considered a debt or obligation of the*
31 *state for the purpose of section 6 of article 11 of the constitution of the*
32 *state of Kansas.*

33 (b) All contracts, agreements and covenants contained in the *bond*
34 *resolution and any other bond documents* authorizing the issuance of
35 revenue bonds shall be binding in all respects upon the Kansas water
36 office, its officials, agents, employees and successors. Such agreements,
37 contracts and covenants shall be enforceable by appropriate legal action
38 brought pursuant to the terms of the resolution authorizing the issuance of
39 revenue bonds.

40 Sec. 6. K.S.A. 2013 Supp. 82a-2310 is hereby amended to read as
41 follows: 82a-2310. (a) The district shall impose charges against each
42 member for the purposes of the district.

43 (1) The total of such charges shall be sufficient to enable the district

1 to pay the Kansas water office the full annual amortized cost incurred by
2 the Kansas water office for the operation, administration and enforcement
3 of the program, including, but not limited to, the costs of acquiring the
4 water supply access storage from the federal government by purchase or
5 trade and the cost of operation and maintenance of such water supply
6 access storage.

7 (2) The district may also impose charges against each member of the
8 district in an amount sufficient to cover district operating costs.

9 (3) The district shall impose any charges necessary for the payment
10 of the principal of and interest on revenue bonds issued by the Kansas
11 ~~water office~~ *development finance authority* pursuant to K.S.A. 82a-1360 et
12 seq., and amendments thereto.

13 (4) The district shall determine the amount of the charges for each
14 member and shall remit all moneys collected to the Kansas water office for
15 deposit in the lower smoky hill water supply access fund created pursuant
16 to this act. Charges to be paid by such members may vary and shall be
17 based on the principle of having each member pay for the pro rata quantity
18 authorized to each member by the district. In determining the charge, the
19 board of directors of the district shall adopt guidelines for such members.

20 (b) The director of the Kansas water office shall request releases of
21 water supply access water by the federal government from the kanopolis
22 reservoir under such agreements with the federal government that govern
23 operations of such reservoir. The chairperson of the governing body of the
24 district or designee shall communicate with the Kansas water office
25 regarding any member's need for such releases by the district.

26 (c) The director and the chief engineer each shall adopt any rules and
27 regulations necessary to carry out the purposes and procedures of this act.
28 The director and the chief engineer shall consider the advice of the Kansas
29 water authority and stakeholders in the program area, in the preparation of
30 any rules and regulations adopted pursuant to this subsection.

31 (d) Any holder of an eligible water right aggrieved by a decision of
32 the Kansas water office under this act by being excluded as a member in
33 the program may appeal to the district court under K.S.A. 82a-724, and
34 amendments thereto.

35 (e) Payments required under a contract between the district and the
36 Kansas water office shall be for storage capacity contracted in a federal
37 reservoir.

38 (f) Nothing in this act shall be deemed to authorize any suit against
39 the state or any agency of the state or person employed by the state on or
40 under a claim for implied contract, negligence or any other tort. The
41 director of the Kansas water office may sue to enforce any claim arising
42 out of a contract. Payment of the charges shall be a condition imposed on
43 every member and the director is authorized to declare the suspension of

1 any use of water supply access water where a payment is not made.

2 (g) Rights of members to receive access water may not be transferred
3 without the approval of the Kansas water office.

4 Sec. 7. K.S.A. 2013 Supp. 82a-2314 is hereby amended to read as
5 follows: 82a-2314. (a) The ~~Kansas water office~~ *development finance*
6 *authority* is hereby authorized to issue and sell revenue bonds for the
7 purpose of paying all or part of the cost of acquiring a site or sites,
8 constructing, reconstructing, improving and expanding projects within the
9 program area or to finance the purchase of storage in the reservoir using
10 procedures established for issuing such bonds as described in K.S.A. 82a-
11 1360 et seq., and amendments thereto.

12 (b) The district may negotiate to make annual payments over a period
13 of not to exceed 20 years for any access storage water purchased under this
14 act.

15 Sec. 8. K.S.A. 74-2609, 82a-1345, 82a-1360, 82a-1361, 82a-1362
16 and 82a-1363 and K.S.A. 2013 Supp. 82a-1365, 82a-2310 and 82a-2314
17 are hereby repealed.

18 Sec. 9. This act shall take effect and be in force from and after its
19 publication in the statute book.