

## Substitute for HOUSE BILL No. 2051

By Committee on Agriculture and Natural Resources

2-19

1 AN ACT concerning water; relating to streams, dams and obstructions;  
2 relating to water rights; relating to water flex accounts; amending  
3 K.S.A. 82a-307 and K.S.A. 2012 Supp. 82a-301, 82a-302, 82a-303b,  
4 82a-326, 82a-736 and 82a-1901 and repealing the existing sections;  
5 also repealing K.S.A. 24-105, 24-107, 82a-312, 82a-313 and 82a-314  
6 and K.S.A. 2012 Supp. 24-106, 74-509, 82a-307a, 82a-326a and 82a-  
7 735.

8

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

10 New Section 1. (a) Subject to existing water rights and the principle  
11 of beneficial use, the chief engineer may grant, upon application made  
12 therefor, limited transfer permits to authorize the use of up to 4,000,000  
13 gallons from an existing water right. The term of such limited transfer  
14 permit will be limited to a single calendar year. Each application submitted  
15 for a limited transfer permit shall be on a form prescribed by the chief  
16 engineer and accompanied by an application fee of \$200.

17 (b) (1) If the base water right is groundwater, the use of water can be  
18 transferred to another well within the same source of supply within two  
19 miles.

20 (2) If the base water right is surface water, the use can be transferred  
21 to another surface water use within the same surface water system.

22 (c) The chief engineer shall adopt rules and regulations to effectuate  
23 and administer the provisions of this section. Such rules and regulations  
24 shall require that there is no increase in consumptive use enabled by the  
25 transfer permit, prescribe necessary recordkeeping and reporting  
26 requirements, prevent impairment of existing rights and address any other  
27 matter deemed necessary by the chief engineer to protect the public  
28 interest.

29 (d) Nothing in this section shall be deemed to vest in the holder of  
30 any permit granted pursuant to provisions of this section any permanent  
31 right to appropriate water except as is provided by such permit.

32 (e) All fees collected by the chief engineer pursuant to this section  
33 shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and  
34 amendments thereto.

35 (f) This section shall be part of and supplemental to the Kansas water  
36 appropriation act.

1 Sec. 2. K.S.A. 2012 Supp. 82a-301 is hereby amended to read as  
2 follows: 82a-301. (a) *(1)* Except as provided in subsection (c) *and (d)*,  
3 without the prior written consent or permit of the chief engineer of the  
4 division of water resources of the Kansas department of agriculture, it  
5 shall be unlawful for any person, partnership, association, corporation or  
6 agency or political subdivision of the state government to: ~~(1)-~~

7 *(A)* Construct, *modify or add to* any dam ~~or other water obstruction~~;

8 ~~(2)(B) make~~; construct, *modify or permit to be made or constructed*  
9 ~~any change in any dam or other add to any~~ water obstruction *in a*  
10 *designated stream*;

11 ~~(3) make or permit to be made any change in or addition to any existing~~  
12 ~~water obstruction~~; or

13 ~~(4)(C)~~ change or diminish the course, current, or cross section of any  
14 *designated* stream within this state.

15 *(2)* Any application for any permit or consent shall be made in  
16 writing in such form as specified by the chief engineer.

17 *(3)* ~~Jetties or~~ Revetments for the purpose of stabilizing a caving bank  
18 which are properly placed shall not be construed as obstructions for the  
19 purposes of this section.

20 *(b)* As used in K.S.A. 82a-301 et seq., and amendments thereto;:

21 *(1)* "Dam" means any artificial barrier including appurtenant works  
22 with the ability to impound water, waste water or other liquids that has a  
23 height of 25 feet or more; or has a height of six feet or greater and ~~also has~~  
24 ~~the capacity to impound a storage volume at the top of the dam elevation~~  
25 ~~of 50 or more acre feet. The height of a dam or barrier shall be determined~~  
26 ~~as follows: (1) A barrier or dam that extends across the natural bed of a~~  
27 ~~stream or watercourse shall be measured from the down stream toe of the~~  
28 ~~barrier or dam to the top of the barrier or dam; or (2) a barrier or dam that~~  
29 ~~does not extend across a stream or watercourse shall be measured from the~~  
30 ~~lowest elevation of the outside limit of the barrier or dam to the top of the~~  
31 ~~barrier or dam measured from the lowest elevation of the streambed,~~  
32 ~~downstream toe or outside limit of the dam to the elevation of the top of~~  
33 ~~the dam.~~

34 *(2)* "Designated stream" means a natural or man-made channel that  
35 conveys drainage or runoff from a watershed having an area of:

36 *(A)* One or more square miles in zone one, which includes all  
37 geographic points located in or east of Washington, Clay, Dickinson,  
38 Marion, Harvey, Sedgwick or Sumner counties;

39 *(B)* two or more square miles in zone two, which includes all  
40 geographic points located west of zone one and in or east of Smith,  
41 Osborne, Russell, Barton, Stafford, Pratt or Barber counties; or

42 *(C)* three or more square miles in zone three, which includes all  
43 geographic points located west of zone two.

1 (c) (1) The prior written consent or permit of the chief engineer shall  
2 not apply to water obstructions that meet the following requirements:

3 (A) *The change in the cross section of a designated stream is*  
4 *obstructed less than 5% and the water obstruction or change is contained*  
5 *within a land area measuring 25 feet or less along the stream length; or*

6 (B) (i) the water obstruction is not a dam as defined in subsection (b);

7 ~~(B)~~(ii) the water obstruction is not located within an incorporated  
8 area;

9 ~~(C)~~(iii) every part of the water obstruction, *and any water impounded*  
10 *by such obstruction*, is located more than 300 feet from any property  
11 boundary; and

12 ~~(D)~~(iv) the watershed area above the water obstruction is ~~640 acres~~  
13 *five square miles* or less.

14 (2) If the water obstruction does not meet the requirements of  
15 subsection (c)(1)~~(C)~~(B)(iii), but meets all other requirements of subsection  
16 (c)(1)(B), such water obstruction may be exempted from the permitting  
17 requirements of subsection (a) if the chief engineer determines such water  
18 obstruction has minimal impact upon safety and property based upon a  
19 review of the information, to be provided by the owner, including:

20 ~~(i)~~ (A) An aerial photo or topographic map depicting the location of  
21 the proposed project, the location of the stream, the layout of the water  
22 obstruction, the property lines and names and addresses of adjoining  
23 property owners; and

24 ~~(ii)~~ (B) the principal dimensions of the project including, but not  
25 limited to, the height above streambed.

26 (3) Notwithstanding any other provision of this section, the chief  
27 engineer may require a permit for any water obstruction described in this  
28 subsection if the chief engineer determines such permit is necessary for the  
29 protection of life or property.

30 (d) *The prior written consent or permit of the chief engineer shall not*  
31 *be required for construction or modification of a hazard class A dam that:*

32 (1) *Has a height of less than 25 feet and a storage volume at the top*  
33 *of the dam elevation of less than 75 acre feet, and the dam location and*  
34 *dimensions have been registered with the division of water resources in a*  
35 *written form prescribed by the chief engineer; or*

36 (2) *is a wastewater storage structure for a confined feeding facility*  
37 *that has been approved by the secretary of health and environment*  
38 *pursuant to K.S.A. 65-171d, and amendments thereto, and such*  
39 *impoundment is designed to hold a storage volume at the top of the dam*  
40 *elevation of 150 acre feet or less.*

41 Sec. 3. K.S.A. 2012 Supp. 82a-302 is hereby amended to read as  
42 follows: 82a-302. (a) *Except as otherwise provided for general permits,*  
43 *each application for the consent or permit required by K.S.A. 82a-301, and*

1 amendments thereto, shall be accompanied by complete maps, plans,  
2 profiles and specifications of such dam or other water obstruction, or of  
3 ~~the changes construction, modification or additions~~ addition proposed to  
4 be made in such dam or other water obstruction, the required application  
5 fee as provided in subsection (b) unless otherwise exempted, and such  
6 other data and information as the chief engineer may require. ~~The chief~~  
7 ~~engineer shall maintain a list of licensed professional engineers who may~~  
8 ~~conduct the review of any application for the consent or permit required by~~  
9 ~~K.S.A. 82a-301, and amendments thereto. Such list may include licensed~~  
10 ~~professional engineers employed by a local unit of government.~~  
11 Notwithstanding any law to the contrary, an applicant for the consent or  
12 permit required by K.S.A. 82a-301, and amendments thereto, may have the  
13 application reviewed by a licensed professional engineer approved by the  
14 chief engineer pursuant to this subsection provided such engineer is not an  
15 employee of the applicant. If such licensed professional engineer finds that  
16 such dam or other water obstruction meets established standards for the  
17 construction, modification, operation and maintenance of dams and other  
18 water obstructions, such findings shall be submitted in complete form to  
19 the chief engineer. Upon such submittance, the chief engineer shall grant  
20 such consent or permit within 45 days unless the chief engineer finds to  
21 the contrary that such dam or other water obstruction does not meet  
22 established standards for the construction, modification, operation and  
23 maintenance of dams and other water obstructions. If the chief engineer  
24 declines to grant such consent or permit based upon a contrary finding, the  
25 chief engineer shall provide to the applicant within 15 days a written  
26 explanation setting forth the basis for the chief engineer's contrary finding.  
27 The chief engineer's action in declining to grant such consent or permit  
28 and any hearing related thereto shall be conducted in accordance with the  
29 provisions of the Kansas administrative procedure act. Any person  
30 aggrieved by any order or decision of the chief engineer shall be entitled to  
31 appellate review in accordance with the provisions of the Kansas judicial  
32 review act. Such applicant shall pay all costs associated with the review by  
33 the licensed professional engineer. *The chief engineer shall adopt rules*  
34 *and regulations for the issuance of a general permit which may be issued*  
35 *for projects which require limited supervision and review.*

36 (b) (1) *The application fee for a permit to construct, modify or add to*  
37 *a dam shall be \$200.* shall be based upon the stage of construction at the  
38 time that a complete application has been submitted. The construction in  
39 progress fee shall be applicable for construction begun prior to approval by  
40 the chief engineer. Such fee shall be in addition to any other penalty for an  
41 unpermitted structure. Such fees shall be as follows:

42 Fees for new dam or dam modification applications  
43 ——— Pre-Construction ——— Construction In Progress

1	<del>_____</del>	<del>\$200</del>	<del>_____</del>	<del>\$500</del>
2	(2) <del>Permit fees for stream obstructions/channel changes application</del>			
3	<del>fee is based upon two criteria and are as follows:</del>			
4	<del>(A) The drainage area category; and</del>			
5	<del>(B) the stage of construction when the application is submitted.</del>			
6	<del>_____</del>	<del>_____</del>	<del>Pre-_____</del>	<del>Construction</del>
7	<del>Drainage Area Category</del>	<del>_____</del>	<del>Construction</del>	<del>In Progress</del>
8	<del>Major (Drainage area greater</del>			
9	<del>than 50 square miles) _____ \$500 _____ \$1000</del>			
10	<del>Moderate (Drainage area 5 to 50</del>			
11	<del>square miles) _____ \$200 _____ \$400</del>			
12	<del>Minor (Drainage area less than</del>			
13	<del>5 square miles) _____ \$100 _____ \$200</del>			
14	<del>General Permit _____ \$100 _____ \$200</del>			

15  
 16 *The application fee for a permit to construct, modify, or add to a water*  
 17 *obstruction or to change or diminish the course, current or cross section*  
 18 *of a stream shall be based on the watershed area.*

19	<i>Watershed Area Above the Project</i>	<i>Permit Application Fee</i>
20	<i>Less than 5 square miles</i>	<i>\$100</i>
21	<i>Between 5 and 50 square miles</i>	<i>\$200</i>
22	<i>More than 50 square miles</i>	<i>\$500</i>

23  
 24 (3) *The application fee for a general permit shall be \$100.*

25 (c) All fees collected by the chief engineer pursuant to this section  
 26 shall be remitted to the state treasurer as provided in K.S.A. 2012 Supp.  
 27 82a-328, and amendments thereto.

28 Sec. 4. K.S.A. 2012 Supp. 82a-303b is hereby amended to read as  
 29 follows: 82a-303b. (a) (1) In order to secure conformity with adopted rules  
 30 and regulations and to assure compliance with the terms, conditions or  
 31 restrictions of any consent or permit granted pursuant to the provisions of  
 32 K.S.A. 82a-301 through 82a-303, and amendments thereto, the chief  
 33 engineer or an authorized representative of the chief engineer shall have  
 34 the power and the duty to inspect any dam or other water obstruction.  
 35 Upon a finding pursuant to subsection (a) of K.S.A. 82a-303c, and  
 36 amendments thereto, by the chief engineer that a dam is unsafe, the chief  
 37 engineer shall order an annual inspection of the dam until it is either in  
 38 compliance with all applicable provisions of this act, any rules and  
 39 regulations promulgated pursuant to this act, permit conditions and orders  
 40 of the chief engineer; or the dam is removed. The safety inspection shall be  
 41 conducted by the chief engineer or authorized representative and the cost  
 42 shall be paid by the dam owner. The class and size of a dam ~~provided for~~  
 43 ~~by the provisions of this act~~ shall be defined by rules and regulations

1 adopted by the chief engineer pursuant to K.S.A. 82a-303a, and  
 2 amendments thereto. Inspection fees are as follows:

3	Size of Dam	Inspection fee
4	Class 1	\$1,500
5	Class 2	\$1,500
6	Class 3	\$2,500
7	Class 4	\$4,000

8 (2) Each hazard class C dam shall be required to have a safety  
 9 inspection conducted by a licensed professional engineer qualified in  
 10 design, construction, maintenance and operation of dams once every three  
 11 years, unless otherwise ordered by the chief engineer.

12 (3) Each hazard class B dam shall be required to have a safety  
 13 inspection conducted by a licensed professional engineer qualified in  
 14 design, construction, maintenance and operation of dams once every five  
 15 years unless otherwise ordered by the chief engineer.

16 (4) Within 60 days of the date of inspection, a report of the inspection  
 17 shall be provided to the chief engineer by the licensed professional  
 18 engineer who conducted the inspection. The report shall document the  
 19 physical condition of the dam, describing any deficiencies observed, an  
 20 analysis of the capacity of the dam and its spillway works, compliance of  
 21 the dam with approved plans and permit conditions, changes observed in  
 22 the condition of the dam since the previous inspection, an assessment of  
 23 the hazard classification of the dam including a statement that the engineer  
 24 either agrees or disagrees with the current classification, and any other  
 25 information relevant to the safety of the dam or specifically requested by  
 26 the chief engineer.

27 (5) Upon failure of a dam owner to comply with the applicable  
 28 inspection interval, the chief engineer or such chief engineer's authorized  
 29 representative shall conduct a mandatory inspection of the dam and the  
 30 costs as established by this act for the inspection shall be paid by the  
 31 owner, in addition to any other remedies provided for violations of this act.

32 (6) The failure to file a complete and timely report as required by the  
 33 provisions of this act, or the failure to submit the fees assessed for  
 34 inspections conducted by the chief engineer or ~~such~~ the chief engineer's  
 35 authorized representative shall be deemed a violation of this act and  
 36 subject to the penalties provided by K.S.A. 82a-305a, and amendments  
 37 thereto.

38 (b) For the purpose of inspecting any dam or other water obstruction,  
 39 the chief engineer or an authorized representative of the chief engineer  
 40 shall have the right of access to private property. Costs for any work which  
 41 may be required by the chief engineer or the authorized representative  
 42 prior to or as a result of the inspection of a dam or other water obstruction  
 43 shall be paid by the owner, governmental agency or operator of such dam

1 or other water obstruction.

2 (c) All fees collected by the chief engineer pursuant to this section  
3 shall be remitted to the state treasurer as provided in K.S.A. 2012 Supp.  
4 82a-328, and amendments thereto.

5 Sec. 5. K.S.A. 82a-307 is hereby amended to read as follows: 82a-  
6 307. Upon petition of  ~~fifty (50)~~  50 taxpayers of any county of this state,  
7 owning land in the flood plain of any river in such county, *or upon*  
8 *enactment of a resolution by the county commission of such county*, the  
9 board of county commissioners of each county in this state are hereby  
10 authorized within their respective jurisdictions to clean and maintain the  
11 banks and channels of the streams and watercourses within definitely  
12 established bank lines,  ~~as provided in K.S.A. 82a-307a~~, and to keep  ~~said~~  
13  ~~such~~ streams free of drift, trees and other obstructions, for the purpose of  
14 reducing floods and overflows;  ~~and for the purposes aforesaid~~. The  ~~said~~  
15 board of county commissioners, *having obtained written permission from*  
16 *the landowner*, may enter upon private property, if necessary, to clean and  
17 maintain such streams, doing as little damage as possible thereto,  ~~and~~  
18  ~~when~~.  ~~If material damage shall be~~  *is* done to any property,  ~~said the~~  
19  ~~commissioners shall allow reasonable compensation therefor; when~~  
20  ~~claimed by the owner thereof; if said the landowner presents a claim is~~  
21  ~~presented in writing to said the board within ten (10) 60 days from the date~~  
22  ~~of the removal of said obstruction; and that such alleged material~~  
23  ~~damage~~. Nothing in this act shall be construed to permit the board of  
24 county commissioners of any county to remove or destroy any permanent  
25 improvement, including dams and bridges, in and over such streams,  
26 providing such improvements, dams or bridges have been lawfully placed  
27 thereon.

28 Sec. 6. K.S.A. 2012 Supp. 82a-326 is hereby amended to read as  
29 follows: 82a-326. When used in this act:

30 (a) "Water development project" means any project or plan which  
31  ~~may be allowed or permitted~~  *requires a permit* pursuant to K.S.A. 24-126,  
32 24-1213, 82a-301 et seq., and amendments thereto, or the multipurpose  
33 small lakes program act,  ~~and amendments thereto~~;

34 (b) "environmental review agencies" means the:

- 35 (1) Kansas department of wildlife, parks and tourism;
- 36 (2) Kansas forest service;
- 37 (3) state biological survey;
- 38 (4) Kansas department of health and environment;
- 39 (5) state historical society;
- 40 (6) Kansas department of agriculture division of conservation; and
- 41 (7) state corporation commission.

42 Sec. 7. K.S.A. 2012 Supp. 82a-736 is hereby amended to read as  
43 follows: 82a-736. (a) It is hereby recognized that an opportunity exists to

1 improve water management by enabling multi-year flexibility in the use of  
2 water authorized to be diverted under a groundwater water right, provided,  
3 that such flexibility neither impairs existing water rights, nor increases the  
4 total amount of water diverted, so that such flexibility has no long-term  
5 negative effect on the source of supply. It is therefore declared necessary  
6 and advisable to permit the establishment of multi-year flex accounts for  
7 groundwater water rights, together with commensurate protections for  
8 existing water rights and their source of supply.

9 (b) As used in this section:

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

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

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

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

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

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

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

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

40 (B) if water conservation reduced water use under the base water  
41 right during calendar years 2000 through 2009, the calendar year is a year  
42 within the five calendar years immediately prior to the calendar year when  
43 water conservation began.



1 (6) "Net irrigation requirement" means the net irrigation requirement  
2 for 50% chance rainfall of the county that corresponds with the location of  
3 the authorized place of use of the base water right as provided in K.A.R. 5-  
4 5-12, on the effective date of this act.

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

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

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

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

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

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

20 (ii) 500% of the product of the annual net irrigation requirement  
21 multiplied by the flex account acreage, multiplied by 110%, but not greater  
22 than five times the maximum annual quantity authorized by the base water  
23 right; or

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

29 (E) notwithstanding any other provisions of this subsection, except  
30 when the base water right is suspended due to the issuance of a two-year  
31 term permit in a designated drought emergency area for 2011 and 2012,  
32 the quantity of water deposited into a multi-year flex account shall be  
33 reduced by the quantity of water used in excess of the maximum annual  
34 quantity of the base water right during 2011 if the application for a multi-  
35 year flex account is filed with the chief engineer on or before July 15,  
36 2012.

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

39 (d) The chief engineer shall implement a program providing for the  
40 issuance of term permits to holders of groundwater water rights who have  
41 established flex accounts in accordance with this section. Such term  
42 permits shall authorize the use of water in a flex account at any time  
43 during the five consecutive calendar years for which the application for the

1 term permit authorizing a multi-year flex account is made, without annual  
2 limits on such use.

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

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

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

9 (3) The rate of diversion for each point of diversion authorized under  
10 the term permit shall not exceed the rate of diversion for each point of  
11 diversion authorized under the base water right.

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

14 (5) The point of diversion authorized by the term permit shall be  
15 specified by referencing one point of diversion authorized by the base  
16 water right at the time the multi-year flex account term permit application  
17 is filed with the chief engineer or at the time any approvals changing such  
18 referenced point of diversion of the base water right are approved during  
19 the multi-year flex account period. For a base water right with multiple  
20 points of diversion, each point of diversion authorized by a term permit  
21 shall receive a specific assignment of a maximum authorized quantity of  
22 water, assigned proportionately to the authorized annual quantities of the  
23 respective points of diversion under the base water right.

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

26 (7) Except as explicitly provided for by this section, such term  
27 permits shall be subject to all provisions of the Kansas water appropriation  
28 act, and rules and regulations adopted under such act, and nothing in this  
29 section shall authorize impairment of any vested right or prior  
30 appropriation right by the exercise of such term permit.

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

34 (g) All costs of administration of this section shall be paid from fees  
35 for term permits provided for by this section. Any appropriation or transfer  
36 from any fund other than the water appropriation certification fund for the  
37 purpose of paying such costs shall be repaid to the fund from which such  
38 appropriation or transfer is made. At the time of repayment, the secretary  
39 of agriculture shall certify to the director of accounts and reports the  
40 amount to be repaid and the fund to be repaid. Upon receipt of such  
41 certification, the director of accounts and reports shall promptly transfer  
42 the amount certified to the specified fund.

43 (h) The fee for a multi-year flex account term permit shall be the

1 same as specified for other term permits in K.S.A. 82a-708c, and  
2 amendments thereto, except as follows:

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

8 (2) if water use under the authority of the base water right exceeded  
9 the maximum annual quantity authorized by the base water right during  
10 2011 and the holder of the base water right files an application for  
11 approval of a multi-year flex account term permit on or before July 15,  
12 2012, then the application fee shall be \$600.

13 (i) *Any holder of a groundwater base water right that has*  
14 *participated for the full five years in the multi-year flex account program*  
15 *that re-enrolls the same groundwater base water right in a succeeding,*  
16 *contiguous multi-year flex account shall be credited with water not used*  
17 *under the concluding multi-year flex account, during the succeeding multi-*  
18 *year flex account. Such credit shall not exceed 1/5 of the amount of water*  
19 *calculated pursuant to subsection (c)(1)(D).*

20 (j) The chief engineer shall have full authority pursuant to K.S.A.  
21 82a-706c, and amendments thereto, to require any additional measuring  
22 devices and any additional reporting of water use for term permits issued  
23 pursuant to this section. Failure to comply with any measuring or reporting  
24 requirement may result in a penalty, up to and including the revocation of  
25 the term permit and the suspension of the base water right for the duration  
26 of the term permit period.

27 ~~(j)~~(k) The chief engineer shall submit a written report on the  
28 implementation of this section to the house standing committee on  
29 agriculture and natural resources and the senate standing committee on  
30 natural resources on or before February 1 of each year.

31 ~~(k)~~(l) This section shall be part of and supplemental to the Kansas  
32 water appropriation act.

33 Sec. 8. K.S.A. 2012 Supp. 82a-1901 is hereby amended to read as  
34 follows: 82a-1901. (a) Orders of the chief engineer of the division of water  
35 resources of the department of agriculture pursuant to K.S.A. 42-703, 42-  
36 722, 42-722a, 82a-708b, 82a-711, 82a-718 and 82a-1038, *and K.S.A. 2012*  
37 *Supp. 82a-1041*, and amendments thereto, and failure of the chief engineer  
38 to act pursuant to K.S.A. 82a-714, and amendments thereto, shall be  
39 subject to review in accordance with the provisions of the Kansas  
40 administrative procedure act.

41 Such review shall be conducted by the secretary of agriculture or a  
42 presiding officer from the office of administrative hearings within the  
43 department of administration. The secretary of agriculture shall not have

1 the authority otherwise to designate a presiding officer to conduct such  
2 review unless at the party's request pursuant to K.S.A. 75-37,121, and  
3 amendments thereto.

4 (b) The order of the secretary of agriculture or the administrative law  
5 judge or presiding officer upon review pursuant to subsection (a) shall be a  
6 final order under the Kansas administrative procedure act. Such order shall  
7 not be subject to reconsideration pursuant to K.S.A. 77-529, and  
8 amendments thereto, and shall be subject to review in accordance with the  
9 Kansas judicial review act.

10 (c) This act shall not affect any administrative proceeding pending  
11 before the chief engineer of the division of water resources of the  
12 department of agriculture, the secretary of agriculture or any  
13 administrative hearing officer on July 1, 1999, and such matter shall  
14 proceed as though no change in the law had been made with regard to such  
15 proceeding.

16 Sec. 9. K.S.A. 24-105, 24-107, 82a-307, 82a-312, 82a-313 and 82a-  
17 314 and K.S.A. 2012 Supp. 24-106, 74-509, 82a-301, 82a-302, 82a-303b,  
18 82a-307a, 82a-326, 82a-326a, 82a-735 and 82a-736 are hereby repealed.

19 Sec. 10. This act shall take effect and be in force from and after its  
20 publication in the statute book.