

**Substitute for SENATE BILL No. 412**

By Committee on Agriculture

3-15

1 AN ACT concerning water; relating to appropriation of water for sand and  
2 gravel projects; amending K.S.A. 2011 Supp. 82a-734 and repealing  
3 the existing section.

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

6 Section 1. K.S.A. 2011 Supp. 82a-734 is hereby amended to read as  
7 follows: 82a-734. (a) An operator ~~will~~ *shall* notify the chief engineer of the  
8 location and area extent of any existing or proposed sand and gravel pit to  
9 be excavated, expanded or operated by the operator.

10 (b) The net evaporation of water exposed as the result of the opening  
11 or operation of sand and gravel pits shall be construed to be a beneficial  
12 use or diversion of water for the purposes of the Kansas water  
13 appropriation act, K.S.A. 82a-701 *et seq.*, and amendments thereto, if the  
14 sand and gravel pit is opened or operated in a township where the average  
15 annual potential net evaporation is greater than 18 inches per year, as  
16 determined by the chief engineer.

17 (c) If the chief engineer determines that an existing or proposed sand  
18 and gravel pit operation is a beneficial use of water, the operator shall  
19 apply to the chief engineer for a permit to appropriate water in accordance  
20 with the Kansas water appropriation act or otherwise acquire ownership or  
21 control of sufficient water rights, or by other methods pursuant to rules and  
22 regulations adopted by the chief engineer, or both, to offset net evaporation  
23 for the operation.

24 (d) (1) *The permit shall authorize net evaporation as the primary*  
25 *use, and hydraulic dredging and sand washing as secondary uses of water*  
26 *if the uses are located within the same source of supply and are associated*  
27 *with the project. The secondary uses must use water in a manner so there*  
28 *is no significant net consumptive use. The permit shall not be subject to*  
29 *the installation of a water flow meter or administration of minimum*  
30 *desirable stream flow.*

31 (2) *The secondary uses shall be granted for the proposed life of the*  
32 *project or until the exhaustion of sand and gravel reserves. At the end of*  
33 *the industrial project, the owner shall file an application authorized by*  
34 *K.S.A. 82a-708b, and amendments thereto, to change the use made of*  
35 *water to recreational use to authorize the net evaporation use caused by*  
36 *the exposed groundwater.*

1       ~~(3) The chief engineer may approve a permit in a closed area or~~  
2 ~~waive safe-yield in an area that is over appropriated if the applicant~~  
3 ~~demonstrates to the chief engineer that the operation is required in the~~  
4 ~~proposed area and an off-set water right cannot be obtained within three~~  
5 ~~and one half miles of the operation.~~

6       ~~(4) {(3)}~~ If the permit is denied, the chief engineer shall set forth all  
7 pertinent reasons for such denial. The applicant may appeal such denial  
8 as a final order in accordance with the Kansas judicial review act.

9       ~~(5) {(4)}~~ Any application for a project permit shall be accompanied  
10 by a filing fee of \$500 and any request for modification shall be  
11 accompanied by a fee of \$250. Such fees shall replace fees authorized by  
12 KSA 82a-708a and KSA 82a-708c, and amendments thereto.

13       ~~(d)~~(e) (1) The initial period of time allowed to complete construction  
14 of diversion works pursuant to an approved application to appropriate  
15 water for the purpose of net evaporation from a sand and gravel pit  
16 operation shall be reasonable and consistent with the proposed use, ~~but not~~  
17 ~~less than five years~~. The chief engineer may allow extension of such  
18 period by not to exceed two ~~five-year~~ 10-year extensions if it can be  
19 shown that the operation requires the additional time for the operator to  
20 satisfy the operator's market demand in the area. The two ~~five-year~~ 10-  
21 year extensions may be granted at the same time, to run consecutively, if  
22 the applicant submits to the chief engineer a written development plan.

23       (2) The period of time allowed to perfect an approved application to  
24 appropriate water for the purpose of net evaporation from a sand and  
25 gravel pit operation shall be not less than 20 years and, for good cause  
26 shown, the chief engineer may allow one or more 10-year extensions of  
27 such period. The chief engineer shall consider the time needed until  
28 exhaustion of proven reserves, closure in accordance with the surface land  
29 reclamation and mining act, K.S.A. 49-601 *et seq.*, and amendments  
30 thereto, and the availability of water for the proposed use, but in no case  
31 shall allow longer than ~~60~~ 80 years for perfection.

32       (3) Nothing herein shall require an extension of time to construct  
33 diversion works or to perfect a water right if there is demonstrable  
34 impairment of a use under an existing water right from the same source of  
35 supply, as determined pursuant to K.S.A. 82a-711, and amendments  
36 thereto.

37       (4) Upon examination of the diversion works for sand and gravel  
38 operations, the chief engineer or the chief engineer's duly authorized  
39 representative shall, within 90 days of the examination, notify the  
40 applicant if there was a failure to construct the diversion works at the  
41 authorized location or any deficiency of the terms and conditions of the  
42 permit. This notice will provide steps necessary to gain compliance with  
43 state law. If the chief engineer fails to examine the diversion works within

1 two years of the notice of completion for any sand and gravel operation  
2 diversion works, the applicant shall not be required to forfeit priority date  
3 as a result of failure to construct a diversion works at the authorized  
4 location or any deficiency of the terms and conditions of the permit.

5 ~~(e)~~(f) *Net* evaporation from sand and gravel pits, as calculated by the  
6 chief engineer, will be reported as an industrial use to the director of  
7 taxation for the purpose of assessing the water protection fee pursuant to  
8 K.S.A. 82a-954, and amendments thereto.

9 ~~(f)~~(g) This section shall be part of and supplemental to the Kansas  
10 water appropriations act.

11 Sec. 2. K.S.A. 2011 Supp. 82a-734 is hereby repealed.

12 Sec. 3. This act shall take effect and be in force from and after its  
13 publication in the statute book.