

KANSAS WATER BANKING ACT
K.S.A. 82a-761 through 82a-773
2001

K.S.A. 82a-761. Title; implementation. (a) K.S.A. 2004 Supp. 82a-761 through 82a-773, and amendments thereto, may be cited as the Kansas water banking act.

(b) Implementation of the provisions of the water banking act shall be subject to the availability of appropriations for that purpose. **(History:** L. 2001, ch. 160, § 1; July 1.)

K.S.A. 82a-762. Definitions. As used in this act:

(a) “Bank boundary” means the geographic area where a water bank operates and conducts the functions of a water bank and may encompass more than one hydrologic unit.

(b) “Bank charter” means a document that sets out the articles of incorporation and principal functions of a water bank.

(c) “Bankable water right” means a water right that has been determined pursuant to K.S.A. 2004 Supp. 82a-764, and amendments thereto, to be bankable.

(d) “Chief engineer” means the chief engineer of the division.

(e) “Conservation element” means the portion of a deposit that is taken out of use for the duration of the deposit and is not allowed to be withdrawn and used by subsequent users.

(f) “Deposit,” other than as used in “safe deposit account,” refers to the deposit of a water right, or portion of a water right, in a water bank for the purpose of having the bank lease water from such water right, or portion of a water right, to another person or entity.

(g) “Division” means the division of water resources of the Kansas department of agriculture.

(h) “Hydrologic unit” means a defined area from which water rights authorizing diversion of water from a source of supply may be deposited and from which water from the same source of supply may be leased, in accordance with the provisions of this act, without causing impairment of existing water rights or a significantly different hydrological effect to other users of water from the same source or hydraulically connected sources of supply.

(i) “Linked water rights” means two or more water rights that authorize common points of diversion or a common place of use, or both.

(j) “Safe deposit account” means a personal account held in a water bank where unused water from a bankable water right is placed for use in future years.

(k) “Term permit” means a permit to appropriate water for a specified period of time.

(1) “Water bank” means a private not-for-profit corporation that: (1) Leases water from water rights that have been deposited in the bank; and (2) provides safe deposit accounts. A water bank may be a groundwater bank or a surface water bank, or both. (**History:** L. 2001, ch. 160 § 2; July 1.)

K.S.A. 82a-763. Water bank authority; deposits and leases; safe deposit accounts; restrictions. (a) A water bank shall be authorized to enter into contracts with holders of water rights for deposit in the bank of all or a portion of any water right from a hydrologic unit within the bank boundary, subject to the following:

(1) The bank shall accept for deposit only a water right, or portion of a water right, that has been determined to be a bankable water right under K.S.A. 2004 Supp. 82a-764, and amendments thereto;

(2) a deposit of a groundwater right shall be for a period of not more than five years;

(3) a deposit shall be subject to such terms and conditions as provided by the contract between the bank and the depositor, including penalty provisions for breach of any contract conditions; and

(4) a deposit shall be subject to such terms and conditions, and such approval by the chief engineer, as provided by rules and regulations of the chief engineer.

(b) A water bank shall be authorized to lease water from any water right, or portion of a water right, that has been deposited in the bank, subject to the following:

(1) Any water leased must be used within the bank boundary and in the same hydrologic unit from which the water right authorizing diversion of the water is deposited;

(2) use of leased water shall be subject to all provisions of the Kansas water appropriation act, including but not limited to all requirements relating to term permits;

(3) a lease shall be subject to such terms and conditions as provided by the contract between the bank and the lessor, including penalty provisions for breach of any contract conditions;

(4) a lease shall be subject to such terms and conditions, and such approval by the chief engineer, as provided by rules and regulations of the chief engineer; and

(5) a water bank’s decision of whether or not to lease water shall not be based on the proposed use of the water.

(c) A water bank shall provide safe deposit accounts where a holder of a water right may place unused water from the water right for future withdrawal, subject to the following:

(1) A water right holder shall place in a safe deposit account only water from a water right that has been determined to be a bankable water right under K.S.A. 2004 Supp. 82a-764 and amendments thereto;

(2) only water that was unused in the immediate past calendar year may be placed in a safe deposit account and the amount that shall be placed in such account shall be less than the total amount of unused water from the bankable water right in that year;

(3) only water from one water right shall be placed in a safe deposit account and water from a water right shall not be placed in more than one safe deposit account, except that water from linked water rights may be placed in a single safe deposit account;

(4) each calendar year that water remains in a safe deposit account, the amount of water held in the account shall decrease by a percentage established by the charter of the bank but in no case less than 10% annually of all amounts placed in the account;

(5) the total amount of water accumulated in a safe deposit account shall not exceed the maximum annual quantity authorized to be diverted under the water right or the aggregate maximum quantity authorized to be diverted under all linked water rights from which water is deposited in the account;

(6) use of water withdrawn from a safe deposit account shall be subject to all provisions of the Kansas water appropriation act, including but not limited to all requirements relating to term permits;

(7) a safe deposit account shall be subject to such terms and conditions as provided by the contract between the bank and the account holder, including penalty provisions for breach of any contract conditions;

(8) a safe deposit account shall be subject to such terms and conditions, and such approval by the chief engineer, as provided by rules and regulations of the chief engineer; and

(9) the operation of safe deposit accounts by the bank shall not result in an increase in the amount of net consumptive use of water in any hydrologic unit, computed on a long-term rolling average compared to a representative past period.

(d) A water bank may provide services to facilitate the sale or lease of water rights.

(e) A water bank shall not own, buy or sell water rights. (**History:** L. 2001, ch. 160, § 3; July 1.)

K.S.A. 82a-764. Bankable water right, determination of. Before a water right or portion of a water right shall be accepted for deposit in a water bank or water from a water right shall be placed in a safe deposit account, the bank, with the assistance of the division, shall determine whether the water right is bankable, as follows: (a) The right is vested or has been issued a certificate of appropriation; and (b) the right has not been abandoned and is in good standing, based on past water usage and compliance with the terms of the holder's permit and all applicable provisions of law and orders of the chief engineer. (**History:** L. 2001, ch. 160 § 4; July 1.)

K.S.A. 82a-765. Water bank charter; approval; requirements. (a) Before a water bank is authorized to operate in the state, the bank's charter must be approved by the chief engineer. Prior to approval, the body wishing to charter the bank shall submit to the chief engineer the proposed bank charter and any other information required by rules and regulations of the chief engineer to determine whether the bank shall be chartered to operate in the state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A water bank shall be chartered for a period of not more than seven years, at which time the bank shall be subject to review in accordance with K.S.A. 2004 Supp. 82a-767, and amendments thereto, to determine whether the bank's charter shall be extended.

(e) Any amendment to the charter of a water bank must be approved by the chief engineer prior to adoption of the amendment. (**History: L:** 2001, ch. 160, § 5; July 1.)

K.S.A. 82a-766. Annual reports; water bank; water users. (a) On or before February 10 of each year, each water bank shall submit to the chief engineer a report containing the following:

(1) With regard to water rights or portions of water rights on deposit in the bank during the last year: (A) The total quantity of water authorized to be diverted annually pursuant to each such water right or portion of a water right; (B) the total quantity of water used, by purpose of use, and acres irrigated for the portion authorized to be used for irrigation, during the last year as a result of leases of such water rights or portions of water rights; and (C) the total quantity of water used, by purpose of use, and acres irrigated for the portion authorized for irrigation pursuant to such water rights or portions of water rights during the two years preceding the last year; and

(2) with regard to water in each safe deposit account in the bank: (A) An accounting of the total quantity of water placed in such accounts during the past year and a balance at year end; (B) the total quantity of water used during the past year, and acres irrigated if an irrigation water right, from the account; (C) the total quantity of water authorized to be diverted annually, the quantity actually used and the acres irrigated, if an irrigation water right, during the past year pursuant to the water rights or linked water rights related to such account; and (D) the total quantity of water used and acres irrigated pursuant to such water rights during the two years preceding the last year.

(b) The chief engineer may require owners of water rights deposited in a water bank, owners of water rights that have placed water in safety deposit accounts in a water bank and persons leasing water from a water bank to file annual water use reports at a date earlier than that provided by K.S.A. 82a-732, and amendments thereto.

(c) The report required by this section shall be in the form prescribed by the chief engineer. (**History: L:** 2001, ch. 160, § 6; July 1.)

K.S.A. 82a-767. Evaluation of water bank; evaluation team; extension or lapse of charter. (a) Not later than five years after the establishment of a water bank, the director of the Kansas water office shall convene a team to evaluate the operation of the bank. The team shall consist of:

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

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

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

(4) members selected by the chief engineer as follows: (A) Two members engaged in teaching or research at institutions of postsecondary education in subjects involving water

resources, including but not limited to water resources engineering and hydrology; (B) a member who is an economist with knowledge and experience in water resources; (C) one member having knowledge and experience in water law; and (D) two members having knowledge and experience in water policy issues and residing outside the bank boundary, who shall represent the public interest;

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

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

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

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

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

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

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

(4) the terms under which the bank's charter should be allowed to lapse, if the team recommends that the charter not be extended;

(5) the bank's impact on the entire area of all hydrologic units any parts of which are encompassed in the bank's boundary; and

(6) any other matters that the team determines relevant to the future of water banking in the state.

(d) Unless otherwise provided by law, the chief engineer, in accordance with the recommendations of the team, may extend the charter of the bank for an additional period not to exceed seven years or may allow the bank charter to lapse under the terms recommended by the team. (**History:** L. 2001, ch. 160, § 7; July 1.)

K.S.A. 82a-768. Application of law relating to abandonment of water right. Depositing a water right in a water bank or placement of water in a safe deposit account in a water bank shall constitute due and sufficient cause pursuant to K.S.A. 82a-718, and amendments thereto, for failure to use water for a lawful, beneficial use for the term of the deposit or the placement. (**History:** L. 2001, ch. 160, § 8; July.)

K.S.A. 82a-769. Rules and regulations. The chief engineer may adopt rules and regulations to administer and enforce the provisions of this act. (**History:** L. 2001, ch. 160, § 9; July 1.)

K.S.A. 82a-770. Enforcement of act. (a) In addition to any other provision of this act or the Kansas water appropriation act, and subject to the provisions of subsection (b), the chief engineer may suspend the use of water under a term permit, an approved application for a permit to appropriate water for beneficial use, an appropriation right or a vested right, acquired pursuant to the provisions of the Kansas water appropriation act, for the failure to comply with the provisions of this act. The suspension may be for a defined period in a subsequent calendar year or years but does not include or prevent the enforcement of the terms, conditions and limitations of a water right or permit during the current year of use.

(b) The chief engineer shall suspend the use of water under a permit or water right pursuant to subsection (a) only upon notice and hearing in accordance with the provisions of the Kansas administrative procedure act.

(c) Orders of the chief engineer issued pursuant to this section are subject to review in accordance with the provisions of K.S.A. 2004 Supp. 82a-1901, and amendments thereto. (**History:** L. 2001, ch. 160, § 10; July 1.)

K.S.A. 82a-771. Payment of certain costs of water bank. Each water bank shall pay all costs incurred by the division and by the Kansas water office for assistance and services provided pursuant to this act, including, but not limited to, costs for personnel necessary to provide such assistance and services. (**History:** L. 2001, ch. 160, § 11; July 1.)

K.S.A. 82a-772. Water resources cost fund. (a) There is hereby created in the state treasury the water resources cost fund. The chief engineer shall remit to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys received by the division to reimburse costs as required by K.S.A. 2004 Supp. 82a-771, and amendments thereto. Upon receipt, the state treasurer shall deposit the entire amount in the state treasury and credit it to the water resources cost fund.

(b) Moneys in the water resources cost fund shall be expended only for the division's costs of providing assistance and services as provided by this act.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the water resources cost fund interest earnings based on:

(1) The average daily balance of moneys in the water resources cost fund for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

(d) All expenditures from the water resources cost fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to

vouchers approved by the chief engineer for the purposes set forth in this section. (**History:** L. 2001, ch. 160, § 12; July 1.)

K.S.A. 82a-773. Water office cost fund. (a) There is hereby created in the state treasury the water office cost fund. The director of the Kansas water office shall remit to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, all moneys received by the water office to reimburse costs as required by K.S.A. 2004 Supp. 82a-771, and amendments thereto. Upon receipt, the state treasurer shall deposit the entire amount in the state treasury and credit it to the water office cost fund.

(b) Moneys in the water office cost fund shall be expended only for the Kansas water office's costs of providing assistance and services as provided by this act.

(c) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the water office cost fund interest earnings based on:

(1) The average daily balance of moneys in the water office cost fund for the preceding month; and

(2) the net earnings rate for the pooled money investment portfolio for the preceding month.

(d) All expenditures from the water office cost fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the director of the Kansas water office for the purposes set forth in this section. (**History:** L. 2001, ch. 160, § 13; July 1.)