

HOUSE BILL No. 2710

AN ACT concerning water; creating the water right transition assistance pilot project program.

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

Section 1. (a) There is hereby established the water right transition assistance pilot project program. The program shall be administered by the state conservation commission. The Kansas department of agriculture, division of water resources and recognized local governing agencies, including groundwater management districts, shall cooperate in program implementation. The program shall be administered for the purpose of reducing consumptive use in the target or high priority areas of the state by issuing water right transition grants for privately held water rights.

(b) (1) The state conservation commission may receive and expend funds from the federal or state government, or private source for the purpose of carrying out the provisions of this section. The state conservation commission and the participating groundwater management districts shall carry over unexpended funds from one fiscal year to the next.

(2) Federal and state funds shall not exceed \$1,500,000 per year.

(3) State conservation commission expenditures for permanent partial water right retirements shall not exceed 30% of the total amount of funds for the water right transition assistance pilot project program.

(c) The state conservation commission may enter into water right transition assistance pilot project program contracts with landowners that will result in the permanent retirement of part or all of landowner historic consumptive use water rights by action of the chief engineer as provided for in subsection (f) of this section.

(d) All applications for permanent water right retirements shall be considered for funding.

(e) Permanent retirement of partial water rights shall only be approved by the Kansas department of agriculture division of water resources when the groundwater management district has the metering and monitoring capabilities necessary to ensure compliance with the program. When prioritizing among water right applications for acceptance under the water right transition assistance pilot project, where rights with similar hydrologic impacts are considered, priority should be given to the senior right as determined under the Kansas water appropriation act.

(f) Water rights enrolled in the water right transition assistance pilot project program for permanent retirement shall require the written consent of all landowners and authorized agents to voluntarily request dismissal and forfeiture of priority of the enrolled water right. Upon enrollment of the water right into the water right transition assistance pilot project program, the chief engineer of the Kansas department of agriculture division of water resources shall concurrently dismiss and terminate the water right in accordance with the terms of the contract.

(g) (1) The state conservation commission shall make water right transition grants available only in areas that have been designated as target or high priority areas by the groundwater management districts and the chief engineer of the Kansas department of agriculture division of water resources or priority areas outside the groundwater management districts as designated by the chief engineer of the Kansas department of agriculture division of water resources.

(2) Two of the target or high priority areas shall be the prairie dog creek area located in hydrologic unit code 10250015 and the rattlesnake creek subbasin located in hydrologic unit code 11030009.

(h) Contracts accepted under the water right transition assistance pilot project program shall result in a net reduction in consumptive use equivalent to the amount of historic consumptive use of the water right or rights enrolled in the program based on the average historic consumptive water use. Except as provided for in subsections (i) and (j), once a water right transition assistance pilot project program grant has been provided, the land authorized to be irrigated by the water right or water rights associated with that grant shall not be irrigated permanently. Water right transition assistance pilot project program contracts shall be subject to such terms, conditions and limitations as may be necessary to ensure that such reduction in consumptive use occurs and can be adequately monitored and enforced.

“Historic consumptive water use” means the average amount of water consumed by crops as a result of the lawful beneficial use of water for irrigation during four of the six preceding calendar years, with the highest

and lowest years removed from the analysis. For purposes of this program, historic consumptive water use will be determined by multiplying the average reported water use for the four selected years by a factor of 0.85 for center pivot sprinkler irrigation systems, 0.75 for flood or gravity irrigation systems and 0.95 for subsurface drip irrigation systems, but not to exceed the net irrigation requirements for the 50% chance rainfall for the appropriate county as shown in K.A.R. 5-5-12. The applicant may also submit an engineering study that determines the average historic consumptive water use as an alternative method if it is demonstrated to be more accurate for the water right or water rights involved.

(i) Enrollment in the water right transition assistance pilot project program shall not subsequently prohibit irrigation of the land that, prior to enrollment, was authorized by the water right or water rights if irrigation can be lawfully allowed by another water right or permit pursuant to the rules and regulations and consideration of any future changes to other water rights that may be proposed to be transferred to such land.

(j) If more than one water right overlaps the place of use authorized by the water right proposed to be enrolled in the water right transition assistance pilot project program, then all overlapping water rights shall be enrolled in water right transition assistance pilot project program or the landowners shall take the necessary lawful steps to eliminate the overlap with the water right to be enrolled. The burden shall be on the landowner to provide sufficient information to substantiate that the proposed use of water by the resulting exercise of all water rights involved will result in the net reduction amount of historic consumptive water use by the water right or water rights to be enrolled. The state conservation commission may require such documentation to be provided by someone with special knowledge or experience related to water rights and such operations.

(k) The state conservation commission shall adopt rules and regulations as necessary for the administration of this section. When adopting such rules and regulations the state conservation commission shall consider cropping, system design, metered water use and all other pertinent information that will permit a verifiable reduction in annual water consumptive use and permit alternative crop or other use of the land so that the landowner's economic opportunities are taken into account.

(l) The state conservation commission shall report annually to the senate standing committee on natural resources and the house standing committee on environment on the economic impact studies being conducted on the reduction of water consumption and the financial impact on the communities within the program areas. Such studies shall include comparative data for areas and communities outside the program areas.

(m) The water right transition assistance pilot project program shall expire five years from the effective date of the fiscal year for which state moneys are appropriated thereof and approval of program rules and regulations.

(n) Water right transition assistance grants for water rights to remain unused for the contract period shall constitute due and sufficient cause for nonuse pursuant to K.S.A. 82a-718 and amendments thereto pursuant to the determination of the chief engineer for the duration of the water right transition assistance pilot project program contract.

(o) The state conservation commission shall hold at least two meetings in each water right transition assistance pilot project program area prior to entering into any water right transition assistance pilot project program contract for the permanent retirement of part or all of landowner historic consumptive use water rights. Such meetings shall inform the public of the possible economic and hydrologic impacts of the program. The state conservation commission shall provide notice of such meetings through publication in local newspapers of record and in the Kansas register.

Sec. 2. (a) Any person who commits any of the following may incur a civil penalty as provided by this section:

(1) Any violation of the Kansas water right transition assistance pilot project program act or any rule and regulation adopted thereunder; and

(2) any violation of term, condition or limitation defined and or imposed within the contractual agreement between the state conservation commission and the water right owner.

(b) Any participant who violates any section of a water right transition assistance pilot project program contract shall be subject to either one or both of the following:

(1) A civil penalty of not less than \$100 nor more than \$1,000 per violation. Each day shall constitute a separate violation for purposes of this section; and

(2) repayment of the grant amount in its entirety plus a penalty at six percent of the full grant amount.

(c) Any penalties or reimbursements received under this act shall be reappropriated for use in the water right transition assistance pilot project program.

New Sec. 3. (a) During the fiscal year ending June 30, 2007, no expenditures shall be made for the conservation reserve enhancement program unless authorized by the 2007 session of the legislature.

(b) The state conservation commission and Kansas water office shall prepare a program for the retirement of water rights under the conservation reserve enhancement program to be submitted to the senate committee on natural resources and the house committee on environment during the 2007 regular session prior to expenditure of any funds for such program.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.