

HOUSE Substitute for SENATE BILL No. 15

By Committee on Agriculture and Natural Resources

3-26

9 AN ACT concerning intensive groundwater use control areas; relating to
10 hearings; establishing advisory panels; amending K.S.A. 82a-928, 82a-
11 1036 and 82a-1040 and K.S.A. 2007 Supp. 82a-1038 and repealing the
12 existing sections.
13

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

15 New Section 1. (a) (1) For each intensive groundwater use control
16 area designated by order of the chief engineer prior to July 1, 2008, the
17 chief engineer shall hold and conduct a public review hearing, within
18 seven years after the effective date of this act, to review such designation.
19 A subsequent review of such designation shall occur within ten years after
20 the previous public review hearing or more frequently as determined by
21 the chief engineer.

22 (2) For each intensive groundwater use control area designated by
23 the order of the chief engineer on or after July 1, 2008, the chief engineer
24 shall hold and conduct a public review hearing, within seven years after
25 the effective date of such order, to review such designation. A subsequent
26 review of such designation shall occur within ten years after the previous
27 public review hearing or more frequently as determined by the chief
28 engineer.

29 (3) Upon the request of a petition signed by 5% of the affected water
30 users in an intensive groundwater use control area designated by order
31 of the chief engineer, the chief engineer shall hold and conduct a public
32 review hearing to review such designation. Such requested public review
33 hearing shall not be conducted more frequently than every four years.

34 (b) The chief engineer shall hold and conduct a public review hearing
35 on the question of continuing the designation of the intensive ground-
36 water use control area. Written notice of the hearing shall be given to
37 every person holding a water right in the affected area. Notice of the
38 hearing shall also be given by publication in a newspaper or newspapers
39 of general circulation within the affected area at least 30 days prior to the
40 date set for such hearing. Such notice shall indicate the reason for the
41 hearing and shall denote the time and place of the hearing. At the hearing,
42 documentary and oral evidence shall be taken, and a full and complete
43 record of the same shall be kept.

- 1 (c) The chief engineer shall consider whether any one or more of the
2 circumstances set forth in K.S.A. 82a-1036, and amendments thereto,
3 exist and whether the public interest requires that the intensive ground-
4 water use control area designation be continued. The state shall have the
5 burden of proving the need for continuance of the intensive groundwater
6 use control area designation. Based on this review, the chief engineer
7 shall:
- 8 (1) Continue the intensive groundwater use control area with its orig-
9 inal or current corrective control provisions;
 - 10 (2) modify the corrective control provisions;
 - 11 (3) reduce the intensive groundwater use control area boundaries;
 - 12 (4) change any allocations within the intensive groundwater use con-
13 trol area;
 - 14 (5) address any other issues that have been identified in the review;
 - 15 or
 - 16 (6) dismiss the intensive groundwater use control area and order al-
17 ternative measures, if necessary, to address the water issues in the af-
18 fected area.
- 19 (d) Except as provided in subsection (e), such order shall be in full
20 force and effect from the date of its entry in the records of the chief
21 engineer's office unless and until its operation shall be stayed by an appeal
22 from an order entered on review of the chief engineer's order pursuant
23 to K.S.A. 2007 Supp. 82a-1901, and amendments thereto, in accordance
24 with the provisions of the act for judicial review and civil enforcement of
25 agency actions. The chief engineer upon request shall deliver a copy of
26 such order to any interested person who is affected by such order, and
27 shall file a copy of the same with the register of deeds of any county
28 within which such designated control area lies.
- 29 (e) If the holder of a groundwater right within the area designated as
30 an intensive groundwater use control area applies for review of the order
31 of designation pursuant to K.S.A. 2007 Supp. 82a-1901, and amendments
32 thereto, the provisions of the order with respect to the inclusion of the
33 holder's right within the area may be stayed in accordance with the Kansas
34 administrative procedure act.
- 35 New Sec. 2. (a) The proceedings of an intensive groundwater use
36 control area public hearing conducted pursuant to K.S.A. 82a-1037, and
37 amendments thereto, and a public review hearing conducted pursuant to
38 section 1, and amendments thereto, shall be determined by rules and
39 regulations adopted by the chief engineer.
- 40 (b) The chief engineer shall establish an advisory panel for each pub-
41 lic hearing conducted pursuant to K.S.A. 82a-1037, and amendments
42 thereto, and each public review hearing conducted pursuant to section 1,
43 and amendments thereto, which shall include members from names sub-

1 mitted by affected water users and groundwater management districts.
2 Such panel shall represent all segments of water users in the proposed
3 intensive groundwater use control area.

4 New Sec. 3. The chief engineer shall present an annual report on
5 any intensive groundwater use control area proceedings or reviews and
6 any pending intensive groundwater use control areas to the house of rep-
7 resentatives standing committee on agriculture and natural resources, the
8 senate standing committee on agriculture and the senate standing com-
9 mittee on natural resources.

10 Sec. 4. K.S.A. 82a-928 is hereby amended to read as follows: 82a-
11 928. The policies of the state of Kansas that are deemed desirable for the
12 achievement of the long-range goals and objectives as set forth in K.S.A.
13 82a-927, and amendments thereto, and that shall serve as guidelines for
14 public corporations and all agencies of the state, relative to their respon-
15 sibilities with respect to the water resources of the state whenever phys-
16 ical and economic conditions permit, are hereby declared to be:

17 (a) The utilization of nonstructural methods, including floodplain reg-
18 ulation, and structural measures for the reduction of flood damage;

19 (b) the design of proposed levees and dikes so as to reduce flood risks
20 in agricultural areas to a chance of occurrence in any one year of 10% or
21 less;

22 (c) the design of proposed levees and dikes so as to reduce flood risks
23 in urban areas to a chance of occurrence in any one year of 1% or less;

24 (d) the design of proposed storage structures for the protection of
25 agricultural areas so as to provide sufficient capacity to control the volume
26 of a flood having a chance of occurrence in any one year of 4% or less;

27 (e) the design of proposed storage structures for the protection of
28 urban areas to provide sufficient capacity to control the volume of a flood
29 having a chance of occurrence in any one year of 2% or less;

30 (f) the development of adequate water storage to meet, as nearly as
31 practicable, present and anticipated water uses through planning and con-
32 struction of multipurpose reservoirs and through the acquisition from the
33 federal government of storage in federal reservoirs and by agreements
34 with the federal government regarding the use of storage;

35 (g) the inclusion in publicly financed structures for the conservation,
36 management and development of the water resources of the state of rea-
37 sonable amounts of storage capacity for the regulation of the low flows
38 of the watercourses of the state;

39 (h) the achievement of the primary drinking water standards prom-
40 ulgated by the secretary of health and environment pursuant to K.S.A.
41 65-171m, and amendments thereto;

42 (i) the identification of minimum desirable streamflows to preserve,
43 maintain or enhance baseflows for in-stream water uses relative to water

- 1 quality, fish, wildlife, aquatic life, recreation, general aesthetics and do-
2 mestic uses and for the protection of existing water rights;
- 3 (j) the maintenance of the surface waters of the state within the water
4 quality standards adopted by the secretary of health and environment as
5 provided by K.S.A. 65-164 to 65-171t, inclusive, and amendments thereto;
- 6 (k) the protection of the quality of the groundwaters of the state as
7 provided by the Kansas groundwater exploration and protection act and
8 other acts relating thereto;
- 9 (l) the management of the groundwaters of the state as provided by
10 the Kansas water appropriation act and the provisions of K.S.A. 82a-1020
11 ~~to through 82a-1040, inclusive sections 1, 2 and 3,~~ and amendments
12 thereto;
- 13 (m) the provision of financial and technical assistance to public cor-
14 porations concerned with management, conservation and development of
15 water resources;
- 16 (n) the review and coordination of financial assistance for research
17 that may be provided by federal or state agencies to public corporations
18 concerned with management, conservation and development of water
19 resources to prevent duplication of effort;
- 20 (o) the development of groundwater recharge projects;
- 21 (p) the encouragement of local initiative in the planning, implemen-
22 tation, funding and operation of local water programs to the extent that
23 the same are supportive of state water programs;
- 24 (q) the design of municipal water systems to provide an adequate
25 water supply to meet the needs during a drought having a 2% chance of
26 occurrence; and
- 27 (r) the encouragement of the use of agricultural soil and water con-
28 servation practices and structures to control erosion and to effectively
29 utilize precipitation and runoff.
- 30 Sec. 5. K.S.A. 82a-1036 is hereby amended to read as follows: 82a-
31 1036. (a) Whenever a groundwater management district recommends the
32 same or whenever a petition signed by not less than ~~three hundred (300)~~
33 ~~300~~ or by not less than ~~five percent (5%)~~ 5% of the eligible voters of a
34 groundwater management district, whichever is less, is submitted to the
35 chief engineer, the chief engineer shall initiate, as soon as practicable
36 thereafter, proceedings for the designation of a specifically defined area
37 within such district as an intensive groundwater use control area.
- 38 (b) ~~Except as provided in subsection (c),~~ the chief engineer, upon ~~his~~
39 ~~or her own~~ investigation, may initiate such proceedings, *either inside or*
40 *outside a groundwater management district,* whenever ~~said~~ the chief en-
41 gineer has reason to believe that any one or more of the following con-
42 ditions exist in a groundwater use area ~~which is located outside the bound-~~
43 ~~aries of an existing groundwater management district:~~ (a) (1)

1 Groundwater levels in the area in question are declining or have declined
2 excessively; ~~or (b)~~ (2) the rate of withdrawal of groundwater within the
3 area in question equals or exceeds the rate of recharge in such area; ~~or~~
4 ~~(c)~~ (3) preventable waste of water is occurring or may occur within the
5 area in question; ~~(d)~~ (4) unreasonable deterioration of the quality of water
6 is occurring or may occur within the area in question; or ~~(e)~~ (5) other
7 conditions exist within the area in question which require regulation in
8 the public interest.

9 *(c) Except as provided in subsection (d), the chief engineer may initi-*
10 *ate such proceedings within a groundwater management district upon*
11 *the chief engineer's own initiative only if all of the following criteria have*
12 *also been met:*

13 *(1) The chief engineer has notified the affected groundwater manage-*
14 *ment district that the chief engineer has reason to believe that one or more*
15 *of the conditions set forth in subsection (b) exists within that groundwater*
16 *management district;*

17 *(2) the chief engineer has provided such district with a description of*
18 *the area in question and data and analysis that documents the existence*
19 *of one or more such conditions. Agreement to such conditions shall be*
20 *obtained from the groundwater management district. If no such agree-*
21 *ment is obtained after a period of 120 days, or a mutually agreed to*
22 *extension of time, then the groundwater management district and the chief*
23 *engineer shall enter into mediation proceedings. Parties to the mediation*
24 *proceedings shall consist of: One representative appointed by the chief*
25 *engineer, one representative appointed by the board of the groundwater*
26 *management district and one mutually agreed to third party;*

27 *(3) the chief engineer has made a preliminary determination that*
28 *strict application of the priority system under the Kansas water appro-*
29 *riation act to address such conditions will be significantly less effective*
30 *in solving or reducing such conditions, or will result in significantly more*
31 *permits and water rights being ordered to completely cease diverting wa-*
32 *ter than if an intensive groundwater use area is created, and provided a*
33 *report to the affected groundwater management district explaining how*
34 *administration of water rights under the priority system would impact*
35 *water rights in the area in question;*

36 *(4) the chief engineer has provided 120 days, or greater time specified*
37 *by the chief engineer, for the groundwater management district to develop*
38 *a plan to address the problem;*

39 *(5) the affected groundwater management district has failed to submit*
40 *the plan to address the problem within the time period, or any extension*
41 *thereof, authorized by the chief engineer;*

42 *(6) the chief engineer has given the groundwater management district*
43 *90 days, or greater time specified by the chief engineer, to request initi-*

1 *ation of an intensive groundwater use control area; and*
2 *(7) the groundwater management district has failed to request initi-*
3 *ation of an intensive groundwater use control area within the time period*
4 *authorized by the chief engineer.*

5 *(d) If a groundwater management district regulation specifying the*
6 *manner in which the chief engineer may initiate an intensive groundwater*
7 *use control area within a specific groundwater management district has*
8 *been adopted by the chief engineer, such procedure shall be the procedure*
9 *the chief engineer shall use to initiate an intensive groundwater use con-*
10 *trol area within such groundwater management district.*

11 Sec. 6. K.S.A. 2007 Supp. 82a-1038 is hereby amended to read as
12 follows: 82a-1038. (a) In any case where the chief engineer finds that any
13 one or more of the circumstances set forth in K.S.A. 82a-1036 and amend-
14 ments thereto exist and that the public interest requires that any one or
15 more corrective controls be adopted, the chief engineer shall designate,
16 by order, the area in question, or any part thereof, as an intensive ground-
17 water use control area.

18 (b) The order of the chief engineer shall define specifically the
19 boundaries of the intensive groundwater use control area and shall indi-
20 cate the circumstances upon which the findings of the chief engineer are
21 made. The order of the chief engineer may include any one or more of
22 the following corrective control provisions: (1) A provision closing the
23 intensive groundwater use control area to any further appropriation of
24 groundwater in which event the chief engineer shall thereafter refuse to
25 accept any application for a permit to appropriate groundwater located
26 within such area; (2) a provision determining the permissible total with-
27 drawal of groundwater in the intensive groundwater use control area each
28 day, month or year, and, insofar as may be reasonably done, the chief
29 engineer shall apportion such permissible total withdrawal among the
30 valid groundwater right holders in such area in accordance with the re-
31 lative dates of priority of such rights; (3) a provision reducing the permis-
32 sible withdrawal of groundwater by any one or more appropriators
33 thereof, or by wells in the intensive groundwater use control area; (4) a
34 provision requiring and specifying a system of rotation of groundwater
35 use in the intensive groundwater use control area; (5) any one or more
36 other provisions making such additional requirements as are necessary to
37 protect the public interest. The chief engineer is hereby authorized to
38 delegate the enforcement of any corrective control provisions ordered for
39 an intensive groundwater use control area to groundwater management
40 district number 4 or to any city, if such district or city is located within
41 or partially within the boundaries of such area.

42 (c) Except as provided by subsection (d) *and except as provided by*
43 *section 1, and amendments thereto*, the order of designation of an inten-

1 sive groundwater use control area shall be in full force and effect from
2 the date of its entry in the records of the chief engineer's office unless
3 and until its operation shall be stayed by an appeal from an order entered
4 on review of the chief engineer's order pursuant to K.S.A. 2007 Supp.
5 82a-1901 and amendments thereto in accordance with the provisions of
6 the act for judicial review and civil enforcement of agency actions. The
7 chief engineer upon request shall deliver a copy of such order to any
8 interested person who is affected by such order, and shall file a copy of
9 the same with the register of deeds of any county within which such
10 designated control area lies.

11 (d) If the holder of a groundwater right within the area designated
12 as an intensive groundwater use control area applies for review of the
13 order of designation pursuant to K.S.A. 2007 Supp. 82a-1901 and amend-
14 ments thereto, the provisions of the order with respect to the inclusion
15 of the holder's right within the area may be stayed in accordance with the
16 Kansas administrative procedure act.

17 Sec. 7. K.S.A. 82a-1040 is hereby amended to read as follows: 82a-
18 1040. The provisions of K.S.A. 82a-1036 ~~to 82a-1039, inclusive, of this~~
19 ~~act through 82a-1040, sections 1, 2 and 3, and amendments thereto,~~ shall
20 be part of and supplemental to the provisions of K.S.A. 82a-1020 ~~to~~
21 ~~through 82a-1035, inclusive,~~ and acts amendatory thereof or supplemen-
22 tal thereto.

23 Sec. 8. K.S.A. 82a-928, 82a-1036 and 82a-1040 and K.S.A. 2007
24 Supp. 82a-1038 are hereby repealed.

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