

SENATE BILL No. 165

By Committee on Ways and Means

2-2

9 AN ACT concerning the state water plan fund; relating to increasing fees
10 that contribute to the fund; amending K.S.A. 70a-102 and K.S.A. 2008
11 Supp. 2-1205, 2-2204, 82a-954 and 82a-2101 and repealing the existing
12 sections.
13

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

15 Section 1. K.S.A. 2008 Supp. 2-1205 is hereby amended to read as
16 follows: 2-1205. An inspection fee shall be collected upon all commercial
17 fertilizers sold, offered or exposed for sale, or distributed in Kansas, which
18 shall be at a rate per ton of 2,000 pounds fixed by rules and regulations
19 adopted by the secretary of agriculture, except that such rate shall not
20 exceed ~~\$1.67~~ \$2.37 per ton of 2,000 pounds. The secretary of agriculture
21 may adopt rules and regulations establishing the inspection fee rate under
22 this section. Each person registering any commercial fertilizer shall pay
23 the inspection fee on such commercial fertilizer sold, offered or exposed
24 for sale, or distributed in Kansas. Each such person shall keep adequate
25 records showing the tonnage of each commercial fertilizer shipped to or
26 sold, offered or exposed for sale, or distributed in Kansas. The secretary,
27 and duly authorized representatives of the secretary, shall have authority
28 to examine such records and other pertinent records necessary to verify
29 the statement of tonnage.

30 Each person registering any commercial fertilizer shall file an affidavit
31 semiannually, with the secretary, within 30 days after each January 1 and
32 each July 1, showing the tonnage of commercial fertilizer sold or distrib-
33 uted in Kansas for the preceding six-month period. Each such person
34 shall pay to the secretary the inspection fee due for such six-month period,
35 except that the registrant shall not be required to pay the inspection fee
36 or report the tonnage of commercial fertilizers or fertilizer materials sold
37 and shipped directly to fertilizer manufacturers or mixers. The fertilizer
38 manufacturers or mixers shall keep adequate records of the commercial
39 fertilizers sold or distributed in this state, and report to the secretary the
40 tonnage and pay the inspection fee due. If the affidavit is not filed and
41 the inspection fee is not paid within the 30-day period, or if the report
42 of tonnage is false, the secretary may revoke the registrations filed by
43 such person. If the affidavit is not filed and the inspection fee is not paid

1 within the 30-day period, or any extension thereof granted by the secre-
2 tary, a penalty of \$5 per day, or commencing on July 1, 2002, and ending
3 on June 30, 2010, a penalty of \$10 per day shall be assessed against the
4 registrant and the inspection fee and penalty shall constitute a debt and
5 become the basis for a judgment against such person. The secretary may
6 grant a reasonable extension of time.

7 The secretary of agriculture is hereby authorized and empowered to
8 reduce the inspection fee by adopting rules and regulations under this
9 section whenever the secretary determines that the inspection fee is yield-
10 ing more than is necessary for the purpose of administering the provisions
11 of this act as listed below and the plant pest act. The secretary is hereby
12 authorized and empowered to increase the inspection fee by adopting
13 rules and regulations under this section when it finds that such is nec-
14 essary to produce sufficient revenues for the purposes of administering
15 the provisions of this act, except that the inspection fee shall not be in-
16 creased in excess of the maximum fee prescribed by this section. The
17 secretary shall remit all moneys received by or for the secretary under
18 article 12 of chapter 2 of Kansas Statutes Annotated, and amendments
19 thereto, to the state treasurer in accordance with the provisions of K.S.A.
20 75-4215, and amendments thereto. Upon receipt of each such remittance,
21 the state treasurer shall deposit the entire amount in the state treasury
22 and shall credit such remittance as follows: (1) An amount equal to ~~\$1.40~~
23 ~~\$2.10~~ per ton shall be credited to the state water plan fund created by
24 K.S.A. 82a-951, and amendments thereto; (2) an amount equal to \$.04
25 per ton shall be credited to the fertilizer research fund; (3) commencing
26 July 1, 2002, and ending on June 30, 2010, an amount equal to \$.05 per
27 ton shall be credited to the fertilizer and pesticide compliance and ad-
28 ministration fund; and (4) the remainder shall be credited to the fertilizer
29 fee fund. All expenditures from the fertilizer fee fund shall be made in
30 accordance with appropriation acts upon warrants of the director of ac-
31 counts and reports issued pursuant to vouchers approved by the secretary
32 of agriculture or by a person or persons designated by the secretary.

33 Sec. 2. K.S.A. 2008 Supp. 2-2204 is hereby amended to read as fol-
34 lows: 2-2204. (a) Every agricultural chemical which is distributed, sold or
35 offered for sale within this state or delivered for transportation or trans-
36 ported in intrastate commerce or between points within this state through
37 any point outside this state shall be registered in the office of the secre-
38 tary. The secretary may adopt rules and regulations to allow products to
39 be registered for a period not to exceed three years. All registration of
40 products shall expire on December 31 of the year the registration is set
41 to expire, unless such registration shall be renewed, in which event ex-
42 piration date shall be extended for each year of renewal registration, or
43 until otherwise terminated. Products which have the same formula, and

1 are manufactured by the same person, the labeling of which contains the
2 same claims, and the labels of which bear a designation identifying the
3 product as the same agricultural chemical may be registered as a single
4 product and additional names and labels shall be added by supplement
5 statements during the current period of registration. Within the discretion
6 of the secretary, or an authorized representative of the secretary, a change
7 in the labeling or formulas of an agricultural chemical may be made within
8 the current period of registration without requiring a reregistration of the
9 product. Any agricultural chemical imported into this state which is sub-
10 ject to the provisions of any federal act providing for the registration and
11 which has been duly registered under the provisions of such federal act,
12 in the discretion of the secretary, may be exempted from registration
13 under this act when such agricultural chemical is sold or distributed in
14 the unbroken immediate container in which such agricultural chemical
15 was originally shipped.

16 (b) The registrant shall file with the secretary, a statement including:
17 (1) The name and address of the registrant and the name and address of
18 the person whose name will appear on the label if other than the regis-
19 trant; (2) the name of the agricultural chemical; (3) a complete copy of
20 the labeling accompanying the agricultural chemical and a statement of
21 all claims made and to be made for it and a statement of directions for
22 use; and (4) if requested by the secretary, or an authorized representative
23 of the secretary, a full description of the tests made and the results thereof
24 upon which the claims are based. In the case of renewal of registration,
25 a statement shall be required only with respect to information which is
26 different from that furnished when the product was registered or last
27 reregistered.

28 (c) On the date of registration, the registrant shall pay a fee fixed by
29 rules and regulations adopted by the secretary of agriculture. Such fee
30 shall equal an amount per registered agricultural chemical, not to exceed
31 ~~\$150~~ \$200, multiplied by the number of years registered. Such fee shall
32 be deposited in the state treasury and credited as follows: (1) An amount
33 equal to ~~\$100~~ \$150 for each year of registration shall be credited to the
34 state water plan fund created by K.S.A. 82a-951, and amendments
35 thereto; and (2) the remainder shall be credited to the agricultural chem-
36 ical fee fund to be used for carrying out the provisions of this act. The
37 annual fee for each agricultural chemical registered which is in effect on
38 the day preceding the effective date of this act shall continue in effect
39 until the secretary of agriculture adopts rules and regulations fixing a
40 different fee therefor under this subsection. The secretary of agriculture
41 is hereby authorized and empowered, whenever it determines that the
42 fee imposed by this subsection and paid into the state treasury as provided
43 by law is yielding more revenue than is required for the purposes to which

1 such fee is devoted by law, to reduce the fee imposed by this subsection
2 for such period as the secretary shall deem justified by adopting rules and
3 regulations under this subsection but not for less than one year. In the
4 event that the secretary, after reducing such fee, finds that sufficient
5 revenues are not being produced by such reduced fee, the secretary is
6 authorized and empowered by adopting rules and regulations under this
7 subsection, to restore in full or in part such fee to an amount which, in
8 the judgment of the secretary, will produce sufficient revenues for the
9 purposes as provided in this section, but not exceeding the maximum
10 amount of the fee imposed by this subsection.

11 (d) The secretary, or an authorized representative of the secretary,
12 whenever it is deemed essential in the administration of this act, may
13 require the submission of the complete formula of any agricultural chem-
14 ical. If it appears to the secretary, or an authorized representative of the
15 secretary, that the composition of the product is such as to warrant the
16 proposed claims for the product and if the product and its labeling and
17 other material required to be submitted comply with the requirements
18 of this act, the secretary shall register the product.

19 (e) If it does not appear to the secretary, or an authorized represen-
20 tative of the secretary, that the product is such as to warrant the proposed
21 claims for it or if the product and its labeling and other material required
22 to be submitted do not comply with the provisions of this act, the secretary
23 shall notify the registrant of the manner in which the product, labeling,
24 or other material required to be submitted fail to comply with the act so
25 as to afford the registrant an opportunity to make the necessary
26 corrections.

27 (f) In order to protect the public, the secretary, or a duly authorized
28 representative of the secretary, on the secretary's own motion, may at any
29 time, after written notice to the registrant, cancel the registration of an
30 agricultural chemical. Any person so notified shall be given an opportunity
31 for a hearing in accordance with the provisions of the Kansas administra-
32 tive procedure act with regard to the secretary's contemplated action,
33 before any registration is canceled or revoked.

34 (g) Notwithstanding any other provisions of this act, registration is
35 not required in the case of an agricultural chemical shipped from one
36 plant within this state to another plant within this state operated by the
37 same person.

38 Sec. 3. K.S.A. 70a-102 is hereby amended to read as follows: 70a-
39 102. (a) Whenever any person desires to take any sand, gravel, oil, gas,
40 mineral, hay, timber or other materials from any river owned by the state
41 or from any land in such river, the person shall obtain the consent of the
42 director of taxation upon such terms of payment to the state of Kansas
43 and under such terms and conditions as the director of taxation deter-

1 mines to be just and proper. Compensation for such products shall be
2 paid to the state of Kansas at such times and under such terms as the
3 director of taxation directs. With respect to river sand, the compensation
4 shall be computed at the rate of ~~\$.15~~ \$.225 per ton removed. The sec-
5 retary of revenue shall determine, by rule and regulation, the amount of
6 compensation to be paid for other materials removed from rivers owned
7 by the state or from land in such rivers.

8 (b) No contract shall be entered into giving any person, company or
9 corporation any exclusive privilege of making purchases under this act.

10 (c) Nothing herein shall prevent the taking without payment of any
11 sand or gravel to be used exclusively for a person's own domestic use.

12 Sec. 4. K.S.A. 2008 Supp. 82a-954 is hereby amended to read as
13 follows: 82a-954. (a) On and after July 1, ~~1989~~ 2009, there is hereby
14 imposed a water protection fee at the rate of:

15 (1) ~~Three~~ Six cents per 1,000 gallons of water sold at retail by a public
16 water supply system and delivered through mains, lines or pipes;

17 (2) subject to the provisions of subsection (c), ~~three~~ six cents per
18 1,000 gallons of water appropriated for industrial use pursuant to a permit
19 granted in accordance with the Kansas water appropriation act; and

20 (3) ~~three~~ six cents per 1,000 gallons of water appropriated for stock-
21 watering pursuant to a permit granted in accordance with the Kansas
22 water appropriation act.

23 (b) As used in this section, "industrial use" and "stockwatering" have
24 the meanings provided by rules and regulations of the chief engineer of
25 the division of water resources of the Kansas department of agriculture
26 and the determination of gallons used shall be based upon figures sup-
27 plied to the secretary of revenue by the division of water resources.

28 (c) The fees imposed by subsections (a)(2) and (3) shall be based on
29 the actual amount used for industrial use or stockwatering during the
30 preceding calendar year as reported to the chief engineer of the division
31 of water resources of the Kansas department of agriculture in accordance
32 with the provisions of K.S.A. 82a-732, and amendments thereto, except
33 that: (1) The amount of surface water used for flow through cooling pur-
34 poses for electric power generating plants shall be based on an average
35 consumptive factor as determined by the division of water resources; and
36 (2) no such fee shall be imposed on the amount of water used for com-
37 mercial fish farming. If no water use report is filed for such year, the fee
38 shall be based on the amount authorized for industrial use or stockwa-
39 tering in such year.

40 (d) The fee imposed by subsection (a)(1) shall be paid quarterly by
41 the public water supplier and shall be transmitted to the department of
42 revenue not later than 45 days following the end of each quarter. The
43 public water supplier may collect the fee directly from each consumer to

1 which water is sold at retail or may pay the amount owed to the depart-
2 ment from moneys in its operating or other fund available for that pur-
3 pose. The fees imposed by subsections (a)(2) and (3) shall be paid by the
4 owner of the permit. If any retailer or permit owner fails to pay the fee
5 required to be collected and paid under this section, there shall be added,
6 to the unpaid balance of the fee, penalty and interest as prescribed under
7 K.S.A. 79-3615, and amendments thereto, for the late payment of sales
8 tax.

9 (e) The director of taxation shall administer, enforce and collect the
10 fees imposed by this section. All laws and rules and regulations of the
11 secretary relating to the administration, enforcement and collection of
12 the retailers' sales tax shall apply to such fee insofar as they can be made
13 applicable, and the secretary shall adopt such additional rules and regu-
14 lations as necessary for the efficient and effective administration, enforce-
15 ment and collection thereof.

16 (f) The director of taxation shall remit all moneys collected from fees
17 imposed pursuant to this section to the state treasurer in accordance with
18 the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt
19 of each such remittance, the state treasurer shall deposit the entire
20 amount in the state treasury to the credit of the state water plan fund
21 created by K.S.A. 82a-951, and amendments thereto.

22 (g) An owner of an industrial use permit who has a contract with the
23 state for withdrawal and use of water pursuant to K.S.A. 82a-1301 et seq.,
24 and amendments thereto, shall be exempt from the fee imposed by sub-
25 section (a)(2) on any water for which the permit owner is required to pay
26 charges under such contract.

27 Sec. 5. K.S.A. 2008 Supp. 82a-2101 is hereby amended to read as
28 follows: 82a-2101. (a) On and after ~~January 1, 2002~~ *July 1, 2009*, there is
29 hereby imposed a clean drinking water fee at the rate of ~~\$.03~~ *\$.06* per
30 1,000 gallons of water sold at retail by a public water supply system and
31 delivered through mains, lines or pipes. Such fee shall be paid, adminis-
32 tered, enforced and collected in the manner provided for the fee imposed
33 by subsection (a)(1) of K.S.A. 82a-954, and amendments thereto. The
34 price to the consumer of water sold at retail by any such system shall not
35 include the amount of such fee.

36 (b) (1) A public water supply system may elect to opt out of the fee
37 imposed by this section by notifying, before October 1, 2001, the Kansas
38 water office and the department of revenue of the election to opt out.
39 Except as provided by subsection (b)(2), such election shall be irrevoca-
40 ble. Such public water supply system shall continue to pay all applicable
41 sales tax on direct and indirect purchases of tangible personal property
42 and services purchased by such system.

43 (2) On and after January 1, 2005, any public water supply system

1 which elected to opt out of the fee imposed by subsection (a) may elect
2 to collect such fee as provided by subsection (a) and direct and indirect
3 purchases of tangible personal property and services by such system shall
4 be exempt from sales tax as provided by K.S.A. 79-3606, and amendments
5 thereto. Such election shall be irrevocable.

6 (c) The director of taxation shall remit to the state treasurer in ac-
7 cordance with the provisions of K.S.A. 75-4215, and amendments thereto,
8 all moneys received or collected from the fee imposed pursuant to this
9 section. Upon receipt thereof, the state treasurer shall deposit the entire
10 amount in the state treasury and credit it as follows:

11 (1) $\frac{5}{106}$ of such amount shall be credited to the state highway fund
12 and the remainder to the state general fund; and

13 (2) on and after July 1, 2007, $\frac{5}{106}$ of such amount shall be credited
14 to the state highway fund and the remaining amount shall be credited to
15 the state water plan fund created by K.S.A. 82a-951, and amendments
16 thereto, for use as follows: (A) Not less than 15% shall be used to provide
17 on-site technical assistance for public water supply systems, as defined in
18 K.S.A. 65-162a, and amendments thereto, to aid such systems in con-
19 forming to responsible management practices and complying with regu-
20 lations of the United States environmental protection agency and rules
21 and regulations of the department of health and environment; and (B)
22 the remainder shall be used to renovate and protect lakes which are used
23 directly as a source of water for such public water supply systems, so long
24 as where appropriate, watershed restoration and protection practices are
25 planned or in place.

26 (d) The state conservation commission shall promulgate rules and
27 regulations in coordination with the Kansas water office establishing the
28 project application evaluation criteria for the use of such moneys under
29 subsection (c)(2)(B).

30 Sec. 6. K.S.A. 70a-102 and K.S.A. 2008 Supp. 2-1205, 2-2204, 82a-
31 954 and 82a-2101 are hereby repealed.

32 Sec. 7. This act shall take effect and be in force from and after its
33 publication in the Kansas register.