

SENATE BILL No. 315

By Committee on Ways and Means

3-16

9 AN ACT concerning water; relating to tax exemptions; notification to
10 water rights holders; review of water development projects; amending
11 K.S.A. 79-201g, 82a-325, 82a-327, 82a-406 and 82a-407 and K.S.A.
12 2008 Supp. 82a-405, 82a-714 and 82a-718 and repealing the existing
13 sections.

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

16 Section 1. K.S.A. 79-201g is hereby amended to read as follows: 79-
17 201g. The following described property, to the extent herein specified,
18 shall be and is hereby exempt from all property or ad valorem taxes levied
19 under the laws of the state of Kansas:

20 (a) All real property which is contiguous to and a part of the same
21 tract of land upon which a dam or reservoir has been constructed and
22 ~~certified by the chief engineer of the division of water resources~~ *verified*
23 *by a licensed professional engineer* in compliance with requirements and
24 specifications prescribed by K.S.A. 82a-405 et seq., and amendments
25 thereto, in an amount equal to the increase in the value of such real estate
26 resulting from the construction of such dam or reservoir and in addition
27 thereto an amount computed according to the following schedule:

28	First ten acre-feet of storage capacity	\$100 per acre-foot
29	Next five acre-feet of storage capacity	300 per acre-foot
30	Next five acre-feet of storage capacity	200 per acre-foot
31	Next five acre-feet of storage capacity	100 per acre-foot
32	Remaining acre-feet of storage capacity	50 per acre-foot

33 The total amount of the exemption for any single tract of land shall not
34 exceed ~~five thousand dollars (\$5,000)~~ \$5,000 or ~~forty percent (40%)~~ 40%
35 of the assessed value thereof whichever is the lesser. No exemption shall
36 be granted hereunder unless the landowner shall apply *for such exemption*
37 ~~to the chief engineer of the division of water resources for certification~~
38 ~~of any dam or reservoir~~ *county clerk or county assessor of the county in*
39 *which the property is located* within one year after actual completion
40 ~~thereof~~ *of the dam or reservoir*. Such exemption shall be applicable to
41 such property for a period of ~~ten (10)~~ 10 years after ~~the original certifi-~~
42 ~~cation of the dam or reservoir~~ *approval of the exemption*; and

43 (b) All real property which is contiguous to and a part of the same

1 tract of land upon which a dam or reservoir has been constructed and
2 ~~certified by the chief engineer of the division of water resources~~ *verified*
3 *by a licensed professional engineer* in compliance with requirements and
4 specifications prescribed by K.S.A. 82a-405 et seq., and amendments
5 thereto, the owner of which ~~at the time of such certification~~ donated to
6 the state or to any of its agencies or subdivisions land or easements or
7 right-of-way for such erection or maintenance of such dam or reservoir
8 in an amount equal to twice the assessed value of the land or easements
9 or right-of-way donated. Such exemption shall be based upon a specific
10 description of the land donated, excluding any land the elevation of which
11 is higher than the top of the dam, as prepared and provided by ~~the chief~~
12 ~~engineer~~ *a licensed professional engineer* and the assessed value thereof,
13 as determined by the county assessor, for the year in which the exemption
14 is first granted. No exemption shall be granted hereunder unless the land-
15 owner shall apply to the ~~chief engineer of the division of water resources~~
16 ~~for certification~~ *county clerk or county assessor of the county in which*
17 *the property is located. Such application shall include the engineer's re-*
18 *port of verification* of such dam or reservoir and a description of the land
19 donated within five ~~(5)~~ years after actual completion of the dam or res-
20 ervoir or within two ~~(2)~~ years after such land is listed for taxation if such
21 land was exempt from taxation under the laws of the state of Kansas at
22 the time of the completion of the dam or reservoir whichever is later.
23 Such exemption shall be applicable to such property for a period of ~~twenty~~
24 ~~(20)~~ 20 years after ~~the original certification of such dam or reservoir by~~
25 ~~the chief engineer~~ *approval of the exemption by the county* except that
26 if the landowner shall apply for such exemption more than two ~~(2)~~ years
27 after the actual completion of the dam or reservoir such exemption shall
28 be applicable to such property for a period of ~~twenty (20)~~ 20 years after
29 the date of the actual completion of the dam or reservoir. *Approval of*
30 *such exemption shall not exceed two years from the date the application*
31 *was filed.*

32 The provisions of this section shall apply to all taxable years commenc-
33 ing after December 31, 1974.

34 Sec. 2. K.S.A. 82a-325 is hereby amended to read as follows: 82a-
35 325. (a) This act shall be known and may be cited as the water projects
36 environmental coordination act.

37 (b) In order to protect the environment while facilitating the use,
38 enjoyment, health and welfare of the people of the state of Kansas, ~~it is~~
39 ~~necessary that~~ the environmental effect of ~~any~~ a water development pro-
40 ject *may* be considered before such water development project is ap-
41 proved or permitted.

42 Sec. 3. K.S.A. 82a-327 is hereby amended to read as follows: 82a-
43 327. (a) Prior to approval or issuance of a permit for a proposed water

1 development project, the permitting agency ~~shall~~ *may* obtain a review of
2 the proposed project for environmental effects by the appropriate state
3 environmental review agencies, ~~and shall~~. *The permitting agency may*
4 ~~consider their comments such review~~ in determining whether to approve
5 or issue a permit for such project. The permitting agency may condition
6 the approval of or permit for the project in a manner to address the
7 environmental concerns of the environmental review agencies.

8 (b) In reviewing a proposed water development project, the environ-
9 mental review agency shall consider:

10 (1) The beneficial and adverse environmental effects of a proposed
11 project on water quality, fish and wildlife, forest and natural vegetation,
12 historic, cultural, recreational, aesthetic, agricultural and other natural
13 resources;

14 (2) the means and methods to reduce adverse environmental effects
15 of a proposed project; and

16 (3) alternatives to a proposed project with significant adverse envi-
17 ronmental effects.

18 (c) Each environmental review agency shall send its written com-
19 ments on the proposed project within 30 days ~~of receipt~~ *after receiving*
20 *a request for review* of the proposal from the permitting agency.

21 (d) Nothing in this act shall be construed as prohibiting a permitting
22 agency from approving or issuing a permit if an environmental review
23 agency determines adverse environmental effects will result if the project
24 is approved or permitted. Nothing in this act shall be construed as pre-
25 empting or duplicating any existing environmental review process oth-
26 erwise provided or authorized by law.

27 Sec. 4. K.S.A. 2008 Supp. 82a-405 is hereby amended to read as
28 follows: 82a-405. Any landowner owning land in the state of Kansas, not
29 within the corporate limits in any city in this state, who shall lawfully by
30 the construction of a dam across a dry watercourse or any stream or
31 watercourse draining an area not exceeding 10 square miles, form upon
32 such landowner's own land one or more reservoirs, having along the axis
33 of the dam at the lowest point in the natural bed of a stream or water-
34 course a depth of not less than 10 feet and a storage capacity at *the lowest*
35 *ungated* spillway level, including the volume of any excavation in the res-
36 ervoir area below such level, of not less than five acre feet, for the col-
37 lection and storage of surface water or flood detention storage, and who
38 shall maintain such dam or dams in a condition satisfactory to the chief
39 engineer of the division of water resources in the Kansas department of
40 agriculture, shall be entitled to an exemption from taxes levied upon such
41 land in the amount prescribed by K.S.A. 79-201g, and amendments
42 thereto.

43 Sec. 5. K.S.A. 82a-406 is hereby amended to read as follows: 82a-

1 406. In order to be entitled to the tax exemption provided in K.S.A. 79-
2 201g, *and amendments thereto, for a dam which requires the chief engi-*
3 *neer's approval under K.S.A. 82a-301 et seq., and amendments thereto,*
4 the landowner must ~~submit to the chief engineer of the division of water~~
5 ~~resources, complete plans for such dam showing the area of the drainage~~
6 ~~basin above the dam; plan, profile and cross sections of the dam and~~
7 ~~spillway; topographic map of the reservoir basin, and such other data and~~
8 ~~information as the chief engineer of the division of water resources may~~
9 ~~require, and such plans shall have the approval of the chief engineer and~~
10 ~~the dam be constructed in accordance with such plans~~ *comply with the*
11 *requirements of K.S.A. 82a-301 et seq., and amendments thereto, as well*
12 *as any promulgated rules and regulations. A copy of the permit granted*
13 *by the chief engineer shall be included with the application for exemption*
14 before such exemption can be claimed.

15 Sec. 6. K.S.A. 82a-407 is hereby amended to read as follows: 82a-
16 407. Upon the completion of any such dam ~~to the satisfaction of the chief~~
17 ~~engineer of the division of water resources, said chief~~ *a licensed profes-*
18 *sional engineer shall certify verify* the completion of the dam and the
19 capacity of the reservoir, giving a detailed ~~information~~ *report* concerning
20 the specific land area involved, to the county clerk or county assessor of
21 the county in which the dam is located, who shall annually make such
22 adjustment in the taxes levied against the land as the owner may be en-
23 titled to receive under the provisions of K.S.A. 79-201g, *and amendments*
24 *thereto*, beginning with the first period, following the date of ~~issue of the~~
25 ~~certificate of completion, on which taxes are regularly levied, and during~~
26 ~~the years which the landowner is entitled to such reduction~~ *approval of*
27 *the exemption by the county.*

28 Sec. 7. K.S.A. 2008 Supp. 82a-714 is hereby amended to read as
29 follows: 82a-714. (a) Upon the completion of the construction of the
30 works and the actual application of water to the proposed beneficial use
31 within the time allowed, the applicant shall notify the chief engineer to
32 that effect. The chief engineer or the chief engineer's duly authorized
33 representative shall then examine and inspect the appropriation diversion
34 works and, if it is determined that the appropriation diversion works have
35 been completed and the appropriation right perfected in conformity with
36 the approved application and plans, the chief engineer shall issue a cer-
37 tificate of appropriation in duplicate. The original of such certificate shall
38 be sent to the owner and shall be recorded with the register of deeds in
39 the county or counties wherein the point of diversion is located, as are
40 other instruments affecting real estate, and the duplicate shall be made
41 a matter of record in the office of the chief engineer.

42 (b) ~~Not later than 60 days before the expiration of the time allowed~~
43 ~~in the permit to complete the construction of the appropriation diversion~~

1 ~~works or the time allowed in the permit to actually apply water to the~~
 2 ~~proposed beneficial use, the chief engineer shall notify the permit holder~~
 3 ~~by certified mail that any request for extension of such time must be filed~~
 4 ~~with the chief engineer before the expiration of the time allowed in the~~
 5 ~~permit.~~

6 ~~(c)~~ Unless the applicant requests an extension or the certificate has
 7 not been issued due to the applicant's failure to comply with reasonable
 8 requests for information or to allow the opportunity to examine and in-
 9 spect the appropriation diversion works, as necessary for certification, the
 10 chief engineer shall certify an appropriation:

11 (1) Before July 1, 2004, if the time allowed in the permit to perfect
 12 the water right expired before July 1, 1999, except in those cases in which
 13 abandonment proceedings pursuant to K.S.A. 82a-718, and amendments
 14 thereto, are pending on July 1, 2004;

15 (2) before July 1, 2006, in such cases in which an abandonment pro-
 16 ceeding was pending pursuant to K.S.A. 82a-718, and amendments
 17 thereto, on July 1, 2004; or

18 (3) not later than five years after the date the applicant notifies the
 19 chief engineer of the completion of construction of the works and the
 20 actual application of water to the proposed beneficial use within the time
 21 allowed, in all other cases.

22 If the chief engineer fails to issue a certificate within the time provided
 23 by this subsection, the applicant may request review, pursuant to K.S.A.
 24 2008 Supp. 82a-1901, and amendments thereto, of the chief engineer's
 25 failure to act.

26 ~~(c)~~ (c) Except for works constructed to appropriate water for do-
 27 mestic use, each notification to the chief engineer under subsection (a)
 28 shall be accompanied by a field inspection fee of \$200, or commencing
 29 July 1, 2002, and ending June 30, 2010, a fee of \$400. Failure to pay the
 30 field inspection fee, after reasonable notice by the chief engineer of such
 31 failure, shall result in the permit to appropriate water being revoked,
 32 forfeiture of the priority date and revocation of any appropriation right
 33 that may exist.

34 ~~(d)~~ (d) A request for an extension of time to: (1) Complete the di-
 35 version works; or (2) perfect the water right, shall be accompanied by a
 36 fee of \$50, or commencing July 1, 2002, and ending June 30, 2010, a fee
 37 of \$100.

38 ~~(e)~~ (e) A request to reinstate a water right or a permit to appropriate
 39 water which has been dismissed shall be filed with the chief engineer
 40 within 60 days of the date dismissed and shall be accompanied by a fee
 41 of \$100, or commencing July 1, 2002, and ending June 30, 2010, a fee of
 42 \$200.

43 ~~(f)~~ (f) All fees collected by the chief engineer pursuant to this section

1 shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and
2 amendments thereto.

3 Sec. 8. K.S.A. 2008 Supp. 82a-718 is hereby amended to read as
4 follows: 82a-718. (a) All appropriations of water must be for some ben-
5 efiticial purpose. Every water right of every kind shall be deemed aban-
6 doned and shall terminate when without due and sufficient cause no
7 lawful, beneficial use is henceforth made of water under such right for
8 five successive years. Before any water right shall be declared abandoned
9 and terminated the chief engineer shall conduct a hearing thereon. Notice
10 shall be served on the user at least 30 days before the date of the hearing.
11 The determination of the chief engineer pursuant to this section shall be
12 subject to review in accordance with the provisions of K.S.A. 2008 Supp.
13 82a-1901, and amendments thereto.

14 The verified report of the chief engineer or such engineer's authorized
15 representative shall be prima facie evidence of the abandonment and
16 termination of any water right.

17 ~~(b) When no lawful, beneficial use of water under a water right has
18 been reported for three successive years, the chief engineer shall notify
19 the user, by certified mail, return receipt requested, that: (1) No lawful,
20 beneficial use of the water has been reported for three successive years;
21 (2) if no lawful, beneficial use is made of the water for five successive
22 years, the right may be terminated; and (3) the right will not be termi-
23 nated if the user shows that for one or more of the five consecutive years
24 the beneficial use of the water was prevented or made unnecessary by
25 circumstances that are due and sufficient cause for nonuse, which cir-
26 cumstances shall be included in the notice.~~

27 ~~—(c)~~ The provisions of subsection (a) shall not apply to a water right
28 that has not been declared abandoned and terminated before the effective
29 date of this act if the five years of successive nonuse occurred exclusively
30 and entirely before January 1, 1990. However, the provisions of subsec-
31 tion (a) shall apply if the period of five successive years of nonuse began
32 before January 1, 1990, and continued after that date.

33 Sec. 9. K.S.A. 79-201g, 82a-325, 82a-327, 82a-406 and 82a-407 and
34 K.S.A. 2008 Supp. 82a-405, 82a-714 and 82a-718 are hereby repealed.

35 Sec. 10. This act shall take effect and be in force from and after its
36 publication in the statute book.