

SENATE BILL No. 65

By Special Committee on Eminent Domain in Condemnation of
Water Rights

1-21

10 AN ACT concerning eminent domain; relating to water rights; amending
11 K.S.A. 19-3552, 24-1209 and 76-147 and K.S.A. 2008 Supp. 82a-1028
12 and repealing the existing sections.
13

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

15 Section 1. K.S.A. 19-3552 is hereby amended to read as follows: 19-
16 3552. For the purpose of providing a water supply or other services to
17 the participating public agencies the governing body of the district shall
18 have the following powers, authorities and privileges:

19 (1) To accept by gift or grant from any person, firm, corporation, trust
20 or foundation, or from this state or any other state or any political sub-
21 division or municipality thereof, or from the United States, any funds or
22 property or any interest therein for the uses and purposes of the district
23 and to hold title thereto in trust or otherwise and to bind the district to
24 apply the same according to the terms of such gift or grant;

25 (2) to sue and be sued;

26 (3) to enter into franchises, contracts and agreements with this or any
27 other state or the United States or any municipality, political subdivision
28 or district thereof, or any of their agencies or instrumentalities, or any
29 public or private person, partnership, association, or corporation of this
30 state or of any other state or the United States, and this state and any
31 such municipality, political subdivision, district, or any of their agencies
32 or instrumentalities, and any such public or private person, partnership,
33 association, or corporation is hereby authorized to enter into contracts
34 and agreements with such district for any term not exceeding 40 years
35 for the planning, development, construction, acquisition, or operation of
36 any facility or for any service rendered to, for, or by the district;

37 (4) to borrow money and evidence the same by warrants, notes, or
38 bonds as hereinafter provided in this act, and to refund the same by the
39 issuance of refunding obligations;

40 (5) to acquire land and interests in land by gift, purchase, or exchange
41 ~~or~~ and to acquire land and interests in land, not including water rights,
42 by eminent domain, such power of eminent domain to be exercised within
43 or without the boundaries of the district in accordance with provisions of

1 K.S.A. 26-501, and amendments thereto;

2 (6) to acquire by purchase or lease, construct, install, and operate
3 reservoirs, pipelines, wells, check dams, pumping stations, water purifi-
4 cation plants, and other facilities for the production, wholesale distribu-
5 tion and utilization of water and to own and hold such real and personal
6 property as may be necessary to carry out the purposes of its organization;

7 (7) to provide, by contract, to participating public agencies for the
8 construction, installation and operation of pipelines, wells, pumping sta-
9 tions and other facilities and services relating to the distribution of water
10 within the boundaries of the participating public agencies or retail distri-
11 bution and utilization of water and to own and hold such real and personal
12 property as may be necessary in relation thereto, except that, if the con-
13 tract amount for such services is \$10,000 or more, the district shall be
14 authorized to provide such services only if the award of the contract is
15 based on competitive bids;

16 (8) to provide, by contract, to participating public agencies for the
17 operation and maintenance of state-permitted wastewater treatment
18 works, systems and other facilities and services relating to the treatment
19 of wastewater within the boundaries of the participating public agencies;

20 (9) to have the general management, control, and supervision of all
21 the business, affairs, property, and facilities of the district, and of the
22 construction, installation, operation, and maintenance of district improve-
23 ments, and to establish regulations relating thereto;

24 (10) to hire and retain agents, employees, engineers and attorneys
25 and to determine their compensation. The governing body shall select
26 and appoint a general manager of the district who shall serve at the plea-
27 sure of the governing body. The general manager shall have training and
28 experience in the supervision and administration of water systems and
29 shall manage and control the water system under the general supervision
30 of the governing body. All employees, servants and agents of the district
31 shall be under the immediate control and management of the general
32 manager. The general manager shall perform all such other duties as may
33 be prescribed by the governing body and shall give the governing body a
34 good and sufficient surety company bond in a sum to be set and approved
35 by the governing body conditioned upon the satisfactory performance of
36 the general manager's duties. The governing body also may require that
37 any other employees be bonded in such amount as it shall determine.
38 The cost of such bonds shall be paid out of the funds of the district;

39 (11) to adopt and amend rules and regulations not in conflict with
40 the constitution and laws of this state, necessary for the carrying on of
41 the business, objects and affairs of the governing body and of the district;
42 and

43 (12) to have and exercise all rights and powers necessary or incidental

1 to or implied from the specific powers granted herein. Such specific pow-
2 ers shall not be considered as a limitation upon any power necessary or
3 appropriate to carry out the purposes of this act.

4 Sec. 2. K.S.A. 24-1209 is hereby amended to read as follows: 24-
5 1209. Each watershed district incorporated under the provisions of this
6 act shall be a body politic and corporate and shall have the power:

7 *First.* To adopt a seal.

8 *Second.* To sue and be sued by its corporate name.

9 *Third.* To purchase, hold, sell and convey land and personal property
10 and to execute such contracts as may, by its board of directors, be deemed
11 necessary or convenient to enable it to properly carry out the purpose for
12 which organized.

13 *Fourth.* To construct, improve, maintain and operate works of improve-
14 ment including such facilities and appurtenances as necessary for the
15 conservation of soil, prevention of floods, disposal of water and the con-
16 servation, development and utilization of water for domestic, municipal,
17 agricultural, industrial, recreational purposes and such other uses as may
18 be authorized by the provisions of K.S.A. 82a-701 to 82a-725, inclusive,
19 and any amendments thereto; and in any case where the construction,
20 improvement or operation of such works causes the substantial displace-
21 ment of a wildlife habitat and when required by the soil conservation
22 service of the United States department of agriculture as a condition
23 precedent to the release of federal funds for such works, to acquire land
24 for the purpose of restoring such wildlife habitat. The power of eminent
25 domain shall not be used for any such acquisition.

26 *Fifth.* To operate or lease any and all district properties and facilities
27 associated with the use of water and to collect reasonable fees, rentals,
28 tolls, and charges for the use of such facilities, said revenue to be placed
29 in the maintenance fund of the district. Where the property is leased the
30 lessee or anyone authorized to collect such fees, rentals, tolls and charges
31 shall conform to a schedule approved by the board of directors of the
32 district.

33 *Sixth.* To employ such professional services and other assistance as is,
34 by its board of directors, deemed essential. Soil conservation engineering
35 services may be used whenever available.

36 *Seventh.* To acquire personal property by gift or purchase.

37 *Eighth.* To acquire land and interests in land by gift, purchase, or
38 exchange ~~or~~ and to acquire land and interests in land, not including water
39 rights, by eminent domain; such power of eminent domain to be exer-
40 cised within or without the boundaries of the district in like manner as
41 provided by K.S.A. 26-501 to 26-516, inclusive, or any amendments
42 thereto.

43 *Ninth.* To levy taxes and assessments, issue bonds and incur indebt-

1 edness within the limitations prescribed by this act.

2 *Tenth.* To cooperate and contract with persons, firms, associations,
3 partnerships and private corporations, and with other watershed districts,
4 drainage districts, and cities of all classes of this state, and with drainage
5 districts, watershed districts, or other public corporations organized for
6 similar purposes in any adjoining state and with other local, state and
7 federal governmental agencies and to enter into co-operative contracts
8 and agreements with any such districts, corporations or agencies.

9 *Eleventh.* (a) To take appropriate actions to extend and transfer the
10 territory of the district, receive territory transferred from other districts,
11 and dissolve all or a portion of the district as provided for in this act; (b)
12 to merge with adjoining watershed districts, subject to approval of a ma-
13 jority of the qualified voters voting on the proposition in each of the
14 districts proposing to merge.

15 *Twelfth.* To select a residence or home office for the watershed district,
16 which shall be at a place in a county in which the watershed district or
17 any part thereof is located and may be either within or without the wa-
18 tershed district as may be designated by the board of directors. The board
19 shall thereupon designate the county in which said residence or home
20 office is located as the official county for the filing of all official acts and
21 levies. After an official county has been so designated, said county des-
22 ignation shall not be changed even though the residence or home office
23 of said watershed district may be changed at a later date.

24 Sec. 3. K.S.A. 76-147 is hereby amended to read as follows: 76-147.

25 (a) For the purpose of acquiring lands, easements or interests in land on
26 which to erect buildings or for laying and maintaining water mains, sew-
27 ers, roads, or for any other purpose necessary to properly maintain and
28 carry on any state institution or business thereof, the state board of re-
29 gents, or any other board or commission in charge of any state institution,
30 may purchase ~~or condemn~~ such lands, easements or interests in land *or*
31 *condemn such lands, easements or interests in land, not including water*
32 *rights.*

33 (b) If such lands, easements or interests in land, *not including water*
34 *rights*, are acquired by condemnation, the procedure followed shall be
35 that prescribed in chapter 26 of Kansas Statutes Annotated.

36 (c) If such lands, easements or interests in land are acquired by pur-
37 chase, any such board or commission shall first obtain appraisals by two
38 (2) competent real estate appraisers of the property to be purchased. The
39 appraisals obtained shall remain confidential until the purchase transac-
40 tion is completed. The purchase price shall not exceed the appraised value
41 as determined above.

42 Sec. 4. K.S.A. 2008 Supp. 82a-1028 is hereby amended to read as
43 follows: 82a-1028. Every groundwater management district organized un-

- 1 der this act shall be a body politic and corporate and shall have the power
2 to:
- 3 (a) Adopt a seal;
 - 4 (b) sue and be sued in its corporate name;
 - 5 (c) rent space, maintain and equip an office, and pay other adminis-
6 trative expenses;
 - 7 (d) employ such legal, engineering, technical, and clerical services as
8 may be deemed necessary by the board;
 - 9 (e) purchase, hold, sell and convey land, water rights and personal
10 property, and execute such contracts as may, in the opinion of the board,
11 be deemed necessary or convenient;
 - 12 (f) acquire land and interests in land by gift; *or exchange or and ac-*
13 *quire land and interests in land, not including water rights, by* eminent
14 domain, the power of eminent domain to be exercised within the bound-
15 aries of the district in like manner as provided by the eminent domain
16 procedure act. ~~except that~~ Any land holdings acquired pursuant hereto
17 or in accordance with the provisions of the next preceding subsection
18 shall not in the aggregate exceed 1,000 acres. In any case where a district
19 has land holdings in excess of the described limitation, the district shall
20 dispose of such excess in a reasonable and expeditious manner;
 - 21 (g) construct, operate and maintain such works as may be determined
22 necessary for drainage, recharge, storage, distribution or importation of
23 water, and all other appropriate facilities of concern to the district;
 - 24 (h) levy water user charges and land assessments, issue general and
25 special bonds and incur indebtedness within the limitations prescribed by
26 this act;
 - 27 (i) contract with persons, firms, associations, partnerships, corpora-
28 tions or agencies of the state or federal government, and enter into co-
29 operative agreements with any of them;
 - 30 (j) take appropriate actions to extend or reduce the territories of the
31 district as prescribed by this act;
 - 32 (k) construct and establish research, development, and demonstra-
33 tion projects, and collect and disseminate research data and technical
34 information concerning the conservation of groundwater;
 - 35 (l) install or require the installation of meters, gauges, or other meas-
36 uring devices and read or require water users to read and report those
37 readings as may be necessary to determine the quantity of water
38 withdrawn;
 - 39 (m) provide advice and assistance in the management of drainage
40 problems, storage, groundwater recharge, surface water management,
41 and all other appropriate matters of concern to the district;
 - 42 (n) adopt administrative standards and policies relating to the man-
43 agement of the district which are not inconsistent with the provisions of

1 article 10 of chapter 82a of the Kansas Statutes Annotated, and amend-
2 ments thereto, or the Kansas water appropriation act;

3 (o) recommend to the chief engineer rules and regulations which
4 relate to the conservation and management of groundwater within the
5 district, are within the authority of the chief engineer and are not incon-
6 sistent with the provisions of article 10 of chapter 82a of the Kansas
7 Statutes Annotated, and amendments thereto, or the Kansas water ap-
8 propriation act. Within 90 days after receipt of a final draft of proposed
9 rules and regulations recommended by a groundwater management dis-
10 trict, the chief engineer shall: (1) Approve or reject the proposed rules
11 and regulations for adoption; and (2) either initiate procedures pursuant
12 to the rules and regulations filing act to adopt the approved proposed
13 rules and regulations or return the rejected proposed rules and regula-
14 tions, together with written reasons for the rejection, to the groundwater
15 management district. Proposed rules and regulations recommended to
16 the chief engineer shall be of no force and effect unless and until adopted
17 by the chief engineer to implement the provisions of article 7 of chapter
18 82a of the Kansas Statutes Annotated, and amendments thereto. All such
19 rules and regulations adopted shall be effective only within a specified
20 district;

21 (p) recommend to the department of health and environment, the
22 state corporation commission or other appropriate state agency such other
23 rules and regulations, not inconsistent with law, which relate to the con-
24 servation and management of groundwater within the district and are
25 within the authority of such department, commission or other agency.
26 Within 90 days after receipt of a final draft of proposed rules and regu-
27 lations recommended by a groundwater management district, the de-
28 partment, commission or other agency shall: (1) Approve or reject the
29 proposed rules and regulations for adoption; and (2) either initiate pro-
30 cedures pursuant to the rules and regulations filing act to adopt the ap-
31 proved proposed rules and regulations or return the rejected proposed
32 rules and regulations, together with written reasons for the rejection, to
33 the groundwater management district. Proposed rules and regulations
34 recommended to the department, commission or other agency shall be
35 of no force and effect unless and until adopted by the department, com-
36 mission or other such agency. All such rules and regulations adopted shall
37 be effective only within a specified district;

38 (q) enforce by suitable action, administrative or otherwise, rules and
39 regulations adopted as provided by subsection (o) or (p);

40 (r) enter upon private property within the district for inspection pur-
41 poses, to determine conformance of the use of water with established
42 rules and regulations, including measurements of flow, depth of water,
43 water wastage and for such other purposes as are necessary and not in-

1 consistent with the purposes of this act;

2 (s) select a residence or home office for the groundwater manage-
3 ment district which shall be at a place in a county in which the district or
4 any part thereof is located and may be either within or without the bound-
5 aries of the district. The board shall designate the county in which the
6 residence or home office is located as the official county for the filing of
7 all official acts and assessments;

8 (t) seek and accept grants or other financial assistance that the federal
9 government and other public or private sources shall make available and
10 to utilize the same to carry out the purposes and functions of the district;
11 and

12 (u) recommend to the chief engineer the initiation of proceedings for
13 the designation of a certain area within the district as an intensive ground-
14 water use control area.

15 Sec. 5. K.S.A. 19-3552, 24-1209 and 76-147 and K.S.A. 2008 Supp.
16 82a-1028 are hereby repealed.

17 Sec. 6. This act shall take effect and be in force from and after its
18 publication in the statute book.