

HOUSE BILL No. 2733

By Committee on Water and Environment

2-9

1 AN ACT concerning the Kansas water appropriation act; relating to water
2 rights for sand and gravel pits; amending K.S.A. 2017 Supp. 82a-734
3 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2017 Supp. 82a-734 is hereby amended to read as
7 follows: 82a-734. (a) An operator shall notify the chief engineer of the
8 location and area extent of any existing or proposed sand and gravel pit to
9 be excavated, expanded or operated by the operator.

10 (b) The net evaporation of water exposed as the result of the opening
11 or operation of sand and gravel pits shall be construed to be a beneficial
12 use or diversion of water for the purposes of the Kansas water
13 appropriation act, K.S.A. 82a-701 et seq., and amendments thereto, if the
14 sand and gravel pit is opened or operated in a township where the average
15 annual potential net evaporation is greater than 18 inches per year, as
16 determined by the chief engineer.

17 (c) If the chief engineer determines that an existing or proposed sand
18 and gravel pit operation is a beneficial use of water, the operator shall
19 apply to the chief engineer for a permit to appropriate water in accordance
20 with the Kansas water appropriation act or otherwise acquire ownership or
21 control of sufficient water rights, or by other methods pursuant to rules and
22 regulations adopted by the chief engineer, or both, to offset net evaporation
23 for the operation. The chief engineer may reduce this required offset based
24 on the estimated use of groundwater by the existing vegetation.

25 (d) (1) The permit shall authorize net evaporation as the primary use,
26 and hydraulic dredging and sand washing as secondary uses of water if
27 such secondary uses are located within the same source of supply and are
28 associated with the operation. *At the end of the industrial project, the*
29 *owner shall be authorized to change the place of use by filing an*
30 *application pursuant to K.S.A. 82a-708b, and amendments thereto, for the*
31 *remaining net evaporation use to be used for a similar primary use at a*
32 *different industrial project for the opening or operation of sand and gravel*
33 *pits.* Any secondary uses shall use water in a manner in which there is no
34 significant net consumptive use. The permit shall not be subject to the
35 installation of a water flow meter or administration of minimum desirable
36 stream flow. Where the average potential net evaporation is less than 18

1 inches per year as determined by the chief engineer, the chief engineer
2 shall issue a single term permit for the life of the project, not to exceed 80
3 years, for such secondary uses.

4 (2) The secondary uses shall be granted for the proposed life of the
5 project or until the exhaustion of sand and gravel reserves. At the end of
6 the industrial project, the owner ~~shall~~ *may* file an application authorized by
7 K.S.A. 82a-708b, and amendments thereto, to change the ~~primary~~ use
8 made of water to recreational use to authorize the net evaporation use
9 caused by the exposed groundwater.

10 (3) If a permit is denied, the chief engineer shall set forth all reasons
11 for such denial.

12 (4) Any applicant who is denied a project permit by a final order of
13 the chief engineer under this section may appeal such order in the manner
14 provided by the Kansas judicial review act.

15 (5) Any application for a project permit shall be accompanied by a
16 filing fee of \$500 and any request for modification shall be accompanied
17 by a fee of \$250. Applicants for a project permit under this section shall
18 not be required to pay fees pursuant to K.S.A. 82a-708a and 82a-708c, and
19 amendments thereto, as part of such application.

20 (e) (1) The initial period of time allowed to complete construction of
21 diversion works pursuant to an approved application to appropriate water
22 for the purpose of net evaporation from a sand and gravel pit operation
23 shall be reasonable and consistent with the proposed use. The chief
24 engineer may allow extension of such period by not to exceed two 10-year
25 extensions if it can be shown that the operation requires the additional time
26 for the operator to satisfy the operator's market demand in the area. The
27 two 10-year extensions may be granted at the same time, to run
28 consecutively, if the applicant submits to the chief engineer a written
29 development plan.

30 (2) The period of time allowed to perfect an approved application to
31 appropriate water for the purpose of net evaporation from a sand and
32 gravel pit operation shall be not less than 20 years and, for good cause
33 shown, the chief engineer may allow one or more 10-year extensions of
34 such period. The chief engineer shall consider the time needed until
35 exhaustion of proven reserves, closure in accordance with the surface land
36 reclamation and mining act, K.S.A. 49-601 et seq., and amendments
37 thereto, and the availability of water for the proposed use, but in no case
38 shall allow longer than 80 years for perfection.

39 (3) Nothing herein shall require an extension of time to construct
40 diversion works or to perfect a water right if there is demonstrable
41 impairment of a use under an existing water right from the same source of
42 supply, as determined pursuant to K.S.A. 82a-711, and amendments
43 thereto.

1 (4) Upon examination of the diversion works for sand and gravel
2 operations, the chief engineer or the chief engineer's duly authorized
3 representative shall, within 90 days of the examination, notify the
4 applicant if there was a failure to construct the diversion works at the
5 authorized location or any deficiency of the terms and conditions of the
6 permit. This notice will provide steps necessary to gain compliance with
7 state law. If the chief engineer fails to examine the diversion works within
8 two years of the notice of completion for any sand and gravel operation
9 diversion works, the applicant shall not be required to forfeit priority date
10 as a result of failure to construct a diversion works at the authorized
11 location or any deficiency of the terms and conditions of the permit.

12 (f) Net evaporation from sand and gravel pits, as calculated by the
13 chief engineer, will be reported as an industrial use to the director of
14 taxation for the purpose of assessing the water protection fee pursuant to
15 K.S.A. 82a-954, and amendments thereto.

16 (g) This section shall be part of and supplemental to the Kansas water
17 ~~appropriations~~ *appropriation* act.

18 Sec. 2. K.S.A. 2017 Supp. 82a-734 is hereby repealed.

19 Sec. 3. This act shall take effect and be in force from and after its
20 publication in the statute book.