

HOUSE BILL No. 2032

By Committee on Water and Environment

1-11

1 AN ACT concerning the state water plan fund; increasing certain fees
2 credited to such fund; amending K.S.A. 2016 Supp. 2-1205, 2-2204
3 and 82a-954 and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2016 Supp. 2-1205 is hereby amended to read as
7 follows: 2-1205. An inspection fee shall be collected upon all commercial
8 fertilizers sold, offered or exposed for sale, or distributed in Kansas, which
9 shall be at a rate per ton of 2,000 pounds fixed by rules and regulations
10 adopted by the secretary of agriculture, except that such rate shall not
11 exceed ~~\$1.67~~ \$2.37 per ton of 2,000 pounds. The secretary of agriculture
12 may adopt rules and regulations establishing the inspection fee rate under
13 this section. Each person registering any commercial fertilizer shall pay
14 the inspection fee on such commercial fertilizer sold, offered or exposed
15 for sale, or distributed in Kansas. Each such person shall keep adequate
16 records showing the tonnage of each commercial fertilizer shipped to or
17 sold, offered or exposed for sale, or distributed in Kansas. The secretary,
18 and duly authorized representatives of the secretary, shall have authority to
19 examine such records and other pertinent records necessary to verify the
20 statement of tonnage.

21 Each person registering any commercial fertilizer shall file an affidavit
22 semiannually, with the secretary, within 30 days after each January 1 and
23 each July 1, showing the tonnage of commercial fertilizer sold or
24 distributed in Kansas for the preceding six-month period. Each such
25 person shall pay to the secretary the inspection fee due for such six-month
26 period, except that the registrant shall not be required to pay the inspection
27 fee or report the tonnage of commercial fertilizers or fertilizer materials
28 sold and shipped directly to fertilizer manufacturers or mixers. The
29 fertilizer manufacturers or mixers shall keep adequate records of the
30 commercial fertilizers sold or distributed in this state, and report to the
31 secretary the tonnage and pay the inspection fee due. If the affidavit is not
32 filed and the inspection fee is not paid within the 30-day period, or if the
33 report of tonnage is false, the secretary may revoke the registrations filed
34 by such person. If the affidavit is not filed and the inspection fee is not
35 paid within the 30-day period, or any extension thereof granted by the
36 secretary, a penalty of \$10 per day shall be assessed against the registrant,

1 except that on and after July 1, 2015, a penalty of \$5 per day shall be
2 assessed against the registrant, and the inspection fee and penalty shall
3 constitute a debt and become the basis for a judgment against such person.
4 The secretary may grant a reasonable extension of time.

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

29 Sec. 2. K.S.A. 2016 Supp. 2-2204 is hereby amended to read as
30 follows: 2-2204. (a) Every agricultural chemical which is distributed, sold
31 or offered for sale within this state or delivered for transportation or
32 transported in intrastate commerce or between points within this state
33 through any point outside this state shall be registered by the secretary.
34 The secretary shall have the authority to classify or designate as restricted-
35 use any pesticide registered for sale, use or distribution in the state of
36 Kansas, according to rules and regulations promulgated by the secretary.
37 The secretary may adopt rules and regulations to allow products to be
38 registered for a period not to exceed three years. All registration of
39 products shall expire on December 31 of the year the registration is set to
40 expire, unless such registration shall be renewed, in which event expiration
41 date shall be extended for each year of renewal registration, or until
42 otherwise terminated. Products which have the same formula, and are
43 manufactured by the same person, the labeling of which contains the same

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

15 (b) The registrant shall file with the secretary, a statement including:
16 (1) The name and address of the registrant and the name and address of the
17 person whose name will appear on the label if other than the registrant; (2)
18 the name of the agricultural chemical; (3) a complete copy of the labeling
19 accompanying the agricultural chemical and a statement of all claims
20 made and to be made for it and a statement of directions for use; and (4) if
21 requested by the secretary, or an authorized representative of the secretary,
22 a full description of the tests made and the results thereof upon which the
23 claims are based.

24 (c) The secretary may require the registrant to submit a copy of the
25 product label registered by the EPA under the provisions of FIFRA.

26 (d) Any time the registrant modifies the label, the modified label shall
27 be submitted to the secretary for review and approval prior to
28 implementing the new label in Kansas.

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

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

11 (f) 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 or any other data in
14 support of the registration for any pesticide. The complete formula and any
15 other trade secrets submitted to support the registration application shall be
16 considered as confidential. If it appears to the secretary, or an authorized
17 representative of the secretary, that the composition of the product is such
18 as to warrant the proposed claims for the product and if the product and its
19 labeling and other material required to be submitted comply with the
20 requirements of this act, the secretary shall register the product.

21 (g) If it does not appear to the secretary, or an authorized
22 representative of the secretary, that the product is such as to warrant the
23 proposed claims for it or if the product and its labeling and other material
24 required to be submitted do not comply with the provisions of this act, the
25 secretary shall notify the registrant of the manner in which the product,
26 labeling, or other material required to be submitted fail to comply with the
27 act and rules and regulations adopted pursuant thereto so as to afford the
28 registrant an opportunity to make the necessary corrections. If, upon
29 receipt of such notice, the registrant does not make the required changes
30 within 30 days, the secretary may deny registration of the product. In
31 addition, the secretary may deny registration of a product if the application
32 for registration fails to comply with this act or any rule or regulation
33 adopted pursuant thereto. If the secretary denies a registration, the
34 registrant may request a hearing in accordance with the provisions of the
35 Kansas administrative procedure act.

36 (h) Any pesticide registration canceled or suspended under the
37 provisions of FIFRA shall be considered to be canceled or suspended
38 under provisions of the agricultural chemical act of 1947, unless such
39 cancellation is due to the nonpayment of registration fees required under
40 FIFRA.

41 (i) If the secretary determines that a registered product fails to meet
42 the claims made on its label, the secretary may suspend or revoke the
43 product registration after a hearing in accordance with the provisions of

1 the Kansas administrative procedure act. In addition, if the secretary
2 determines that a registered product or its labeling fails to comply with this
3 act, or a rule or regulation adopted pursuant to this act, the secretary may
4 suspend or revoke the product registration after a hearing in accordance
5 with the provisions of the Kansas administrative procedure act.

6 (j) In order to protect the public, the secretary, or a duly authorized
7 representative of the secretary, on the secretary's own motion, may at any
8 time, after written notice to the registrant, suspend or revoke the
9 registration of an agricultural chemical. Any person so notified shall be
10 given an opportunity for a hearing in accordance with the provisions of the
11 Kansas administrative procedure act with regard to the secretary's
12 contemplated action, before any registration is suspended or revoked.

13 (k) Notwithstanding any other provisions of this act, registration is
14 not required in the case of an agricultural chemical shipped from one plant
15 within this state to another plant within this state operated by the same
16 person.

17 (l) Any information required to be filed pursuant to this section, may
18 be filed electronically pursuant to rules and regulations promulgated by the
19 secretary.

20 Sec. 3. K.S.A. 2016 Supp. 82a-954 is hereby amended to read as
21 follows: 82a-954. (a) On and after July 1, 1989, there is hereby imposed a
22 water protection fee at the rate of:

23 (1) ~~Three cents~~ *\$.06* per 1,000 gallons of water sold at retail by a
24 public water supply system and delivered through mains, lines or pipes;

25 (2) subject to the provisions of subsection (c), ~~three cents~~ *\$.045* per
26 1,000 gallons of water appropriated for industrial use pursuant to a permit
27 granted in accordance with the Kansas water appropriation act; and

28 (3) ~~three cents~~ *\$.045* per 1,000 gallons of water appropriated for
29 stockwatering pursuant to a permit granted in accordance with the Kansas
30 water appropriation act.

31 (b) As used in this section, "industrial use" and "stockwatering" have
32 the meanings provided by rules and regulations of the chief engineer of the
33 division of water resources of the Kansas department of agriculture and the
34 determination of gallons used shall be based upon figures supplied to the
35 secretary of revenue by the division of water resources.

36 (c) The fees imposed by subsections (a)(2) and (3) shall be based on
37 the actual amount used for industrial use or stockwatering during the
38 preceding calendar year as reported to the chief engineer of the division of
39 water resources of the Kansas department of agriculture in accordance
40 with the provisions of K.S.A. 82a-732, and amendments thereto, except
41 that: (1) The amount of surface water used for flow through cooling
42 purposes for electric power generating plants shall be based on an average
43 consumptive factor as determined by the division of water resources; and

1 (2) no such fee shall be imposed on the amount of water used for
2 commercial fish farming. If no water use report is filed for such year, the
3 fee shall be based on the amount authorized for industrial use or
4 stockwatering in such year.

5 (d) The fee imposed by subsection (a)(1) shall be paid quarterly by
6 the public water supplier and shall be transmitted to the department of
7 revenue not later than 45 days following the end of each quarter. The
8 public water supplier may collect the fee directly from each consumer to
9 which water is sold at retail or may pay the amount owed to the
10 department from moneys in its operating or other fund available for that
11 purpose. The fees imposed by subsections (a)(2) and (3) shall be paid by
12 the owner of the permit. If any retailer or permit owner fails to pay the fee
13 required to be collected and paid under this section, there shall be added,
14 to the unpaid balance of the fee, penalty and interest as prescribed under
15 K.S.A. 79-3615, and amendments thereto, for the late payment of sales
16 tax.

17 (e) The director of taxation shall administer, enforce and collect the
18 fees imposed by this section. All laws and rules and regulations of the
19 secretary relating to the administration, enforcement and collection of the
20 retailers' sales tax shall apply to such fee insofar as they can be made
21 applicable, and the secretary shall adopt such additional rules and
22 regulations as necessary for the efficient and effective administration,
23 enforcement and collection thereof.

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

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

35 Sec. 4. K.S.A. 2016 Supp. 2-1205, 2-2204 and 82a-954 are hereby
36 repealed.

37 Sec. 5. This act shall take effect and be in force from and after its
38 publication in the statute book.