Dams and Water Obstructions; Sub. for HB 2114

Sub. for HB 2114 amends law regarding dams and water obstructions, safety inspections, fees, and civil penalties.

Definitions

The bill defines "modification" as any action the Chief Engineer, Division of Water Resources (DWR), Kansas Department of Agriculture (KDA), determines would change the physical dimensions or hydraulic characteristics of any dam, stream obstruction, or channel change that is under the jurisdiction of the Chief Engineer.

The bill states that any structure that is defined as a "dam" in continuing law is considered a water obstruction and not a dam if the primary purpose of the structure is to serve as:

- Dry detention road fill for state, county, or municipal government;
- A low head dam that has a maximum height below the lowest stream bank; or
- A wastewater storage structure for a confined feeding facility that has been approved by the Secretary of Health and Environment pursuant to continuing law regarding prevention of water pollution. [*Note:* This provision continues in law, but in a different part of the statute.]

The bill requires any structure that meets the requirements of a hazard class A dam to be considered a water obstruction and not a dam if the structure meets the following additional criteria:

- The structure impounds water under a vested right, water right, or permit to appropriate water for irrigation, stockwater, or sediment control use pursuant to the Kansas Water Appropriation Act or is required to obtain a permit to appropriate water for irrigation, stockwater, or sediment control use in order to lawfully impound water; and
- The structure has a height of less than 30 feet and a storage volume at the top of the emergency spillway elevation of less than 125 acre-feet.

Application Fees and Post-construction Permit Fees

The bill increases the application fee for a permit to construct, modify, or add to a dam from $200 to:

- $250 for a hazard class A dam that does not qualify for an exemption provided in continuing law;

- $500 for a hazard class B dam; and

- $1,000 for a hazard class C dam.

The bill also creates a post-construction permit fee based on the size of the watershed area in the following amounts:

- Less than 5 square miles – $200;
- Between 5 and 50 square miles – $400; and
- More than 50 square miles – $800.

[*Note:* According to the KDA's website, each dam in Kansas is assigned one of three hazard classifications:

- Class A – low hazard;
- Class B – significant hazard; and
- Class C – high hazard.

Hazard classification reflects the impact on downstream property and individuals in the event the dam should fail, but hazard classification does not reflect the physical condition of the dam. Low hazard dams are relatively unlikely to cause serious property damage or loss of life in the event of a failure, while high hazard dams are likely to cause loss of life or serious property damage.]

Inundation Map

Requirements of the Chief Engineer

The bill requires the Chief Engineer to permanently display an inundation map (map) for each permitted dam on KDA's website and provide copies of the maps to the zoning authority or county clerk, if a zoning authority does not exist, for each county where any land included on a map is located.

If current maps have not been provided to the Chief Engineer, the bill requires the Chief Engineer, if funding is available, to prepare or update maps for all permitted dams and display the maps on KDA's website and provide copies to the zoning authority or county clerk.

Landowner Notice

The bill requires, on and after July 1, 2026, a landowner to file a notice of inundation zone (notice) with the county register of deeds, if the landowner owns any land located in the inundation zone of a dam that is under the jurisdiction of the Chief Engineer and sells, subdivides, or otherwise transfers any land within the inundation zone that is separate from the dam.

The bill requires the notice to contain the following:

> On (date of sale, division, or transfer) this property is located in the inundation zone of a dam or structure located (insert legal description).

The bill states a landowner who fails to file a notice is responsible for paying the costs of inspections that exceed the inspection costs that would have been required by the dam's previous lower hazard classification if continuing law regarding inspection of dams by the Chief Engineer applies to the dam.

Dam Inspections

Inspector Requirements

The bill adds "licensed professional engineer approved by the Chief Engineer" (approved engineer) and "intern engineer," as defined in continuing law and under the supervision of an approved engineer, to the list of persons who have the power and duty to inspect any dam or other water obstruction.

Inspections, Fees, and Classification Scheme

The bill clarifies the purpose of rules and regulations adopted by the Chief Engineer regarding the class and size of a dam would be for assessing inspection fees as provided for in this section of the bill.

The bill requires the dam owner to pay inspection fees to the KDA for each inspection, other than an inspection that a dam owner elects to have conducted at the dam owner's own expense, and changes the amount of fees for specific sizes of dams:

Size of Dam	Inspection Fee in Former Law	Fee in Bill
Class 1	$1,500	$1,000
Class 2	$1,500	$1,000
Class 3	$2,500	$2,000
Class 4	$4,000	$3,000

The bill requires safety inspections to occur at the following times for the following classes of dams:

- For class A dams that do not qualify for exemptions in continuing law—every 10 years;
- For class B dams—every five years; and
- For class C dams—every three years.

The bill allows a watershed district to enter into an agreement with the Chief Engineer that provides for the district to conduct limited safety inspections in lieu of the safety inspections required for dam hazard classes A, B, and C.

The bill reorganizes this section of the law regarding safety inspections and requires safety inspections required by this act to be conducted by the Chief Engineer, or an authorized representative of the Chief Engineer who is an approved engineer or intern engineer.

A dam owner may elect to have any required safety inspection performed at the owner's own expense, provided the inspection is performed by an engineer authorized to perform inspections in accordance with this act.

The bill will not require a safety inspection to be conducted for any dam for which the owner has submitted an inundation map to the Chief Engineer that demonstrates the failure of the dam will only inundate real property or fixtures to real property owned by the owner.

The bill requires that if the Chief Engineer reclassifies a dam to a higher hazard classification and this has not occurred due to any actions of the owner, the dam will be subject to the inspection requirements for the higher hazard classification, but the owner will not be charged for inspections that exceed those that would have been required by the previous lower hazard classification.

The bill authorizes any engineer authorized to perform inspections in accordance with this act to have the right to access private property conditioned on seven days' prior notice of the inspection being provided to the owner, except for an instance when the Chief Engineer determines that emergency action, as defined in continuing law, is or may be necessary.

The bill makes other clarifying amendments regarding the addition of an approved engineer or intern engineer, the failure to provide a complete and timely report to the KDA, and who is responsible for paying for a safety inspection.

Penalties and Moneys to be Deposited

Penalties and Violations

The bill adds "intentionally" as a condition for violation of any provision of this act.

The bill sets penalties for violation of laws and rules and regulations regarding dams. A person could be subject to a civil penalty of no less than $100 and no more than $1,000 per violation. In the case of continuing violations, each notice provided by the Chief Engineer and the required corrective action will be considered a separate violation if the corrective action identified in the notice has not commenced within seven days of receiving the notice. The bill allows the civil penalty to be assessed in addition to any other penalty provided by law.

The bill prohibits any civil penalty to be imposed without written order of the Chief Engineer.

The bill allows any person aggrieved by an order of the Chief Engineer regarding this section of the law to appeal to a district court of competent jurisdiction in the manner provided by the Kansas Judicial Review Act.

Moneys to be Deposited

The bill requires all moneys collected by the Chief Engineer, except for penalties, to be deposited in the State Treasury and credited to the Water Structures Fund. All moneys collected for penalties are deposited in the State General Fund.