Session of 2025

HOUSE BILL No. 2114

By Committee on Water

Requested by Earl Lewis on behalf of the Kansas Department of Agriculture

1-28

AN ACT concerning water; relating to dams, levees and other water obstructions; clarifying which structures shall be considered water obstructions and not a dam; increasing application fees for a permit to construct, modify or add to a dam; requiring preconstruction permit fees to construct, modify or add to a water obstruction or to change or diminish the course, current or cross section of a stream; requiring any licensed professional engineer who conducts inspections required by the act to be approved by the chief engineer; adding a civil penalty of not less than $100 nor more than $1,000 per violation; remitting civil penalty amounts to the water structures fund; amending K.S.A. 82a-301, 82a-302, 82a-303b, 82a-305a and 82a-328 and repealing the existing sections.

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

Section 1. K.S.A. 82a-301 is hereby amended to read as follows: 82a-301. (a) (1) Except as provided in subsections (c) and (d), without the prior written consent or permit of the chief engineer of the division of water resources of the Kansas department of agriculture, it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to:

(A) Construct, modify or add to any dam;

(B) construct, modify or add to any water obstruction in a designated stream; or

(C) change or diminish the course, current~~,~~ or cross section of any designated stream within this state.

(2) Any application for any permit or consent shall be made in writing in such form as specified by the chief engineer.

(3) Revetments for the purpose of stabilizing a caving bank ~~which~~ *that* are properly placed shall not be construed as obstructions for the purposes of this section.

(b) As used in K.S.A. 82a-301 et seq., and amendments thereto:

(1) "Dam" means any artificial barrier including appurtenant works with the ability to impound water, waste water or other liquids that has a height of 25 feet or more; or has a height of six feet or greater and a storage volume at the top of the emergency spillway elevation of 50 or

more acre feet. The height of a dam or barrier shall be measured from the lowest elevation of the streambed, downstream toe or outside limit of the dam to the elevation of the top of the dam.

(2) "Designated stream" means a natural or man-made channel that conveys drainage or runoff from a watershed having an area of:

(A) One or more square miles in zone one, which includes all geographic points located in or east of Washington, Clay, Dickinson, Marion, Harvey, Sedgwick or Sumner counties;

(B) two or more square miles in zone two, which includes all geographic points located west of zone one and in or east of Smith, Osborne, Russell, Barton, Stafford, Pratt or Barber counties; or

(C) three or more square miles in zone three, which includes all geographic points located west of zone two.

(c) (1) The prior written consent or permit of the chief engineer shall not apply to water obstructions that meet the following requirements:

(A) The change in the cross section of a designated stream is obstructed less than 5% and the water obstruction or change is contained within a land area measuring 25 feet or less along the stream length; or

(B) (i) the water obstruction is not a dam as defined in subsection (b);

(ii) the water obstruction is not located within an incorporated area;

(iii) every part of the water obstruction, and any water impounded by such obstruction, is located more than 300 feet from any property boundary; and

(iv) the watershed area above the water obstruction is five square miles or less.

(2) If the water obstruction does not meet the requirements of subsection (c)(1)(B)(iii), but meets all other requirements of subsection (c)(1)(B), such water obstruction may be exempted from the permitting requirements of subsection (a) if the chief engineer determines such water obstruction has minimal impact upon safety and property based upon a review of the information, to be provided by the owner, including:

(A) An aerial photo or topographic map depicting the location of the proposed project, the location of the stream, the layout of the water obstruction, the property lines and names and addresses of adjoining property owners; and

(B) the principal dimensions of the project including, but not limited to, the height above streambed.

(3) Notwithstanding any other provision of this section, the chief engineer may require a permit for any water obstruction described in this subsection if the chief engineer determines such permit is necessary for the protection of life or property.

(d) The prior written consent or permit of the chief engineer shall not be required for construction or modification of a hazard class A dam that:

(1) 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, and the dam location and dimensions have been registered with the division of water resources in a written form prescribed by the chief engineer; or

(2) is a wastewater storage structure for a confined feeding facility that has been approved by the secretary of health and environment pursuant to K.S.A. 65-171d, and amendments thereto.

(e) Any structure that meets the provisions of subsection (b)(1) shall be considered a water obstruction and not a dam if the primary purpose of the structure is to serve as a:

(1) Dry detention road fill for state, county or municipal government; or

(2) low head dam that has a maximum height below the lowest stream bank.

Sec. 2. K.S.A. 82a-302 is hereby amended to read as follows: 82a-302. (a) Except as otherwise provided for general permits, each application for the consent or permit required by K.S.A. 82a-301, and amendments thereto, shall be accompanied by complete maps, plans, profiles and specifications of such construction, modification or addition proposed to be made, the required application fee as provided in subsection (b) unless otherwise exempted, and such other data and information as the chief engineer may require. The chief engineer shall adopt rules and regulations for the issuance of a general permit ~~which~~. *A general permit* may be issued for projects ~~which~~ *that* require limited supervision and review.

(b) (1) The application fee for a permit to construct~~, modify or add to a dam shall be $200~~ *a dam shall be:*

(A) $5,000 for a hazard class C dam;

(B) $3,000 for a hazard class B dam; and

(C) $1,500 for a hazard class A dam that does not qualify for the exemption provided for in K.S.A. 82a-301(d), and amendments thereto, or for either of the exemptions provided in K.S.A. 82a-301(e)(1) or (2), and amendments thereto.

(2) *The application fee for a permit to modify or add to a dam shall be:*

(A) $3,000 for a hazard class C dam;

(B) $2,000 for a hazard class B dam; and

(C) $1,000 for a hazard class A dam that does not qualify for the exemption provided for in K.S.A. 82a-301(d), and amendments thereto, or does not qualify for either of the exemptions provided in K.S.A. 82a-301(e) (1) or (2), and amendments thereto.

(3) The application fee for a permit to construct, modify~~,~~ or add to a water obstruction or to change or diminish the course, current or cross section of a stream shall be based on the watershed area.

Watershed Area Above the Project	Permit Application Fee	*Post-Construction Permit Fee*
Less than 5 square miles	$100	*$200*
Between 5 and 50 square miles	$200	*$400*
More than 50 square miles	$500	*$1,000*

~~(3)~~*(4)* The application fee for a general permit shall be $100.

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-328, and amendments thereto.

Sec. 3. K.S.A. 82a-303b is hereby amended to read as follows: 82a-303b. (a) (1) ~~In order to secure conformity with adopted rules and regulations and to assure compliance with the terms, conditions or restrictions of any consent or permit granted pursuant to the provisions of K.S.A. 82a-301 through 82a-303, and amendments thereto,~~ *(A)* The chief engineer or an authorized representative of the chief engineer*, including a licensed professional engineer approved by the chief engineer,* shall have the power and the duty to inspect any dam or other water obstruction.

(B) Upon a finding pursuant to K.S.A. 82a-303c(a), and amendments thereto, by the chief engineer that a dam is unsafe, the chief engineer shall order an annual inspection of the dam until ~~it~~*:*

(i) Such dam is either in compliance with all applicable provisions of this act, any rules and regulations promulgated pursuant to this act, permit conditions and orders of the chief engineer; or

(ii) the dam is removed.

(C) The safety inspection shall be conducted by the chief engineer or authorized representative ~~and~~ *of the chief engineer, including a licensed professional engineer approved by the chief engineer.*

(D) The ~~cost shall be paid by the~~ dam owner *shall pay the department the costs of any safety inspection that:*

(i) is conducted by the chief engineer or an authorized representative of the chief engineer who is an employee of the department; or

(ii) the department contracts for the performance of a licensed professional engineer approved by the chief engineer.

(E) The class and size of a dam *for the purpose of assessing inspection fees as provided for in this section* shall be defined by rules and regulations adopted by the chief engineer pursuant to K.S.A. 82a-303a, and amendments thereto.

(F) For inspections conducted by the chief engineer ~~or the chief engineer's authorized representative~~ *or an authorized representative of the chief engineer who is an employee of the department*, inspection fees are as follows:

Size of Dam	Inspection fee

Class 1	$1,500
Class 2	$1,500
Class 3	$2,500
Class 4	$4,000

(2) Each hazard class C dam shall be required to have a safety inspection conducted by ~~a licensed professional engineer qualified in design, construction, maintenance and operation of dams once every three years, unless otherwise ordered by~~ the chief engineer *or an authorized representative of the chief engineer, including a licensed professional engineer approved by the chief engineer, at least every three years*.

(3) Each hazard class B dam shall be required to have a safety inspection conducted by ~~a licensed professional engineer qualified in design, construction, maintenance and operation of dams once every five years unless otherwise ordered by~~ the chief engineer *or an authorized representative of the chief engineer, including a licensed professional engineer approved by the chief engineer, at least every five years*.

(4) *Each hazard class A dam that does not qualify for the exemption provided for in K.S.A. 82a-301(d), and amendments thereto, or meet the requirements for either of the exemptions provided for in K.S.A. 82a-301(e)(1) or (2), and amendments thereto, shall be required to have a safety inspection conducted by the chief engineer or an authorized representative of the chief engineer, including a licensed professional engineer approved by the chief engineer, at least every 10 years.*

(5) Within 60 days of the date of inspection, a report of the inspection shall be ~~provided to~~ *issued by* the chief engineer *or provided to the chief engineer* by the licensed professional engineer who conducted the inspection. The report shall document the physical condition of the dam, describing any deficiencies observed, an analysis of the capacity of the dam and its spillway works, compliance of the dam with approved plans and permit conditions, changes observed in the condition of the dam since the previous inspection, an assessment of the hazard classification of the dam including a statement that the engineer either agrees or disagrees with the current classification, and any other information relevant to the safety of the dam or specifically requested by the chief engineer.

~~(5) Upon failure of a dam owner to comply with the applicable inspection interval, the chief engineer or such chief engineer's authorized representative shall conduct a mandatory inspection of the dam and the costs as established by this act for the inspection shall be paid by the owner, in addition to any other remedies provided for violations of this act.~~

(6) The failure to ~~file~~ *provide* a complete and timely report as required by the provisions of this act, or the failure to submit ~~the~~ fees ~~assessed for inspections conducted by the chief engineer or the chief engineer's authorized representative~~ *to the department as required by this*

section, shall be deemed a violation of this act and subject to the penalties provided by K.S.A. 82a-305a, and amendments thereto.

(b) For the purpose of inspecting any dam or other water obstruction, the chief engineer or an authorized representative of the chief engineer*, including a licensed professional engineer approved by the chief engineer,* shall have the right of access to private property. Costs for any work ~~which~~ *that* may be required by the chief engineer or the authorized representative*, including a licensed professional engineer approved by the chief engineer,* prior to or as a result of the inspection of a dam or other water obstruction shall be paid by the owner, governmental agency or operator of such dam or other water obstruction.

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-328, and amendments thereto.

Sec. 4. K.S.A. 82a-305a is hereby amended to read as follows: 82a-305a. (a) Any person, partnership, association, corporation or agency or political subdivision of the state government who violates any provision of this act or of any rule and regulation or order issued pursuant thereto shall be deemed guilty of a class C misdemeanor. Each day that any such violation occurs after notice of the original violation is served upon the violator by the chief engineer by restricted mail shall constitute a separate offense.

(b) Upon request of the chief engineer, the attorney general shall bring suit in the name of the state of Kansas in any court of competent jurisdiction to enjoin (1) the unlawful construction, modification, operation or maintenance of any dam or other water obstruction, or (2) the unlawful change or diminution of the course, current or cross section of a river or stream. Such court may require the removal or modification of any such dam or other water obstruction by mandatory injunction.

(c) In addition to any other penalty provided for by law, any person who commits a violation of K.S.A. 82a-301 et seq., and amendments thereto, or any rule and regulation adopted thereunder, may be subject to a civil penalty not less than $100 nor more than $1,000 per violation. In the case of a continuing violation, each notice provided by the chief engineer of such continuing violation and the required corrective action thereof shall be considered a separate violation if not corrected within seven days of receiving such notice. Such civil penalty may be assessed in addition to any other penalty provided by law.

(d) No civil penalty shall be imposed pursuant to this section except on the written order of the chief engineer.

(e) Any person aggrieved by an order of the chief engineer pursuant to this section may appeal to a district court of competent jurisdiction in the manner provided by the Kansas judicial review act.

(f) All moneys collected by the chief engineer pursuant to this section shall be deposited in the state treasury in accordance with K.S.A. 75-4215, and amendments thereto, and shall be credited to the water structures fund pursuant to K.S.A. 82a-328, and amendments thereto.

Sec. 5. K.S.A. 82a-328 is hereby amended to read as follows: 82a-328. There is hereby created in the state treasury the water structures fund. The chief engineer of the division of water resources, Kansas department of agriculture shall remit all moneys received under K.S.A. 82a-302, 82a-303b*, 82a-305a* and 24-126, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the water structures fund. All expenditures from the water structures fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person designated by the secretary.

Sec. 6. K.S.A. 82a-301, 82a-302, 82a-303b, 82a-305a and 82a-328 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.