Approved March 13, 1990
Date

MINUTES OF THE Senate COMMITTEE ON ~~Energy and Natural Resources~~.

The meeting was called to order by Senator Ross Doyen at
Chairperson

8:00 a.m./~~p.m.~~ on March 6, 19~~90~~ in room ~~423-S~~ of the Capitol.

All members were present except: All present.

Committee staff present:
Raney Gilliland, Legislative Research Department
Don Hayward, Revisor of Statutes
Pat Mah, Legislative Research Department
Lila McClaflin, Committee Secretary

Conferees appearing before the committee:
David Pope, Division of Water Resources, Kansas State Board of Agriculture
George Austin, Kansas State Board of Agriculture

The Chairman opened the hearing on SB 344 - concerning obstructions in steams; establishing fees for consent or permit to construct dam or other water obstruction or channel change. He called on David Pope.

Mr. Pope presented written testimony in support of the bill (Attachment I).

George Austin told the committee what was involved in inspecting a dam to insure its safety.

Mr. Pope and Mr. Austin responded to questions.

The hearing on SB 344 was closed.

A motion was made by Senator Sallee to adopt the minutes of the February 27, 1990 meeting. Senator Daniels seconded the motion. Motion carried.

The meeting adjourned at 8:46 a.m. The next meeting will be March 13, 1990.

1990 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date March 6, 1990

PLEASE PRINT GUEST LIST

NAME	REPRESENTING
George Austin	Div. of Water Resources
Maylene J. Anderson	Ks. St. Bd. of Ag.
Dave Pope	DWR, KSBA

STATEMENT OF DAVID L. POPE
CHIEF ENGINEER-DIRECTOR
DIVISION OF WATER RESOURCES
KANSAS STATE BOARD OF AGRICULTURE
Before the
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
ON
SENATE BILL NO. 344

March 6, 1990

Mr. Chairman and members of the Committee, thank you for the opportunity to provide testimony on Senate Bill No. 344 pertaining to filing fees and inspection fees for projects regulated under the Obstruction in Streams Act (K.S.A. 82a-301 to 305a). This bill was introduced by the Senate Ways and Means Committee last year as a means of providing an additional source of revenue associated with this program. I am appearing today in support of this bill.

The bill addresses three different aspects of our administrative efforts in enforcing the Act, the permitting of dams, the permitting of other stream alterations and the safety inspection of existing dams. This is a revenue bill that seeks to recover a portion of the cost of performing these functions. Our request to initiate these new fees is not predicated on a desire to increase costs to construct projects, but rather on the need for additional resources to carry out current program functions in a timely and responsible manner.

The Obstructions in Streams Act requires the Chief Engineers' permit or consent for changes in the course, current or cross-section of a stream and to construct or change any dam or other stream obstruction in any stream in Kansas, with a few exceptions. Among the types of projects handled by this agency are stream crossings of all sizes and types including bridges, dams, channelization of streams and relocation of channels. Basically, anything that obstructs a stream or widens or narrows the stream or changes its location, requires a permit.

attachment I
E+NR
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As I mentioned there are some exceptions to the permit requirement. First, dams which do not store 30 acre-feet of water are exempt from application. Most of these small dams would be the average farm pond. Second, soil conservation projects, such as terraces and waterways, on small watercourses with relatively small drainage areas are also exempt. Third, properly-placed revetments and jetties for the protection of caving banks are exempted.

New Section 2(a) establishes a schedule for application fees in connection with dams. Attached to this statement is Table No. 1, along with a graph of the information that illustrates the twelve categories of dams which are based on size and downstream hazard area which a failure of the dam would impact. The fees are based upon the complexity and amount of care and processing the agency must exercise in connection with permitting a dam. For example, the plans for a small dam of 5 surface acres and less than 25 feet in height with little hazard potential takes much less time to review than a large development dam occupying a couple of hundred acres and 70 or 80 feet in height with homes immediately downstream. The fees would vary from $100 to over $1,000.

The majority of dams processed by the agency will be of size 3, low hazard classification. This would require an application fee of $400 for a dam which can cost anywhere from $40,000 to as much as $100,000. I would like to note that some of the costs associated with such fees include not only office plan reviews, but also three to four field inspections during construction to determine compliance with the permit and the approved plans and specifications so as to assure quality of construction and inspection. These include the inspection of the core trench of the dam, the installation of the principal spillway pipe, and the end-of-construction inspection, which are critical phases to the ultimate

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safety of the dam. The supervision of the construction and maintenance of the dams is a statutory responsibility of the Chief Engineer.

New Section 2(b) establishes fees related to other changes or obstructions in streams. The time spent on the review of stream changes and obstructions is mainly related to the size of the stream involved. Usually, the larger the stream the more complex the analysis must be. There are currently identified for regulatory reasons three sizes of streams in Kansas. First, the navigable streams whose channels are considered state-owned. In Kansas, these are the Arkansas, the Kansas and the Missouri. The streams which we consider to be in the moderate size class are the ones the federal government also regulates for water quality under Section 404 of the Clean Water Act. Finally, minor streams are those not falling in the other two categories.

New Section 2(e) establishes a fee of $250 for dam safety inspections. This fee would allow the State to recover a portion of the cost of inspecting existing dams to monitor conditions which may pose a hazard to public safety and to ensure maintenance is in a manner satisfactory to the Chief Engineer. Inspection of high and significant hazard dams are generally scheduled on a once per five year basis. Some dams with known safety problems are monitored on a much more frequent basis. The bill provides that no more than one $250 inspection fee per year be levied.

I believe each of these fees fairly represents the amount of effort required for these types of projects. It should be recognized that any given application or inspection can be more or less complex and therefore variable in cost depending on a wide range of circumstances.

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USE OF REVENUE

Since this is a revenue bill, I would call your attention to the use of the revenue to both fund additional positions and related program expenses. The agency is currently finding it very difficult to adequately process applications in an effective and timely fashion. The average processing time of applications for permits is now more than 110 days and may get worse. This can easily spell the difference between construction one year and having to wait until the next construction season. If you will look at the graph - entitled Water Structures Applications you will note that the workload of the Water Structure Section in connection with application handling has increased by two-fold in the past year and is still rising. Without staff increases, the agency's inability to timely process applications will have two major effects. First, the time to process will continue to increase making the permit process more and more an impediment to construction and development. This will lead to impatience and potential violations of the law. Enforcement and processing of after-the-fact situations are much more expensive to both the state and the potential violator. As a way to encourage compliance, the application fees will double under the bill in after-the-fact situations.

In addition, other public programs will also suffer. For instance, major elements of the workload increase are the result of the 1989 Highway Plan and increased watershed dam construction with the State Water Plan funding. Bridges, dams and other stream crossings require independent review and delays in our handling will delay elements of those plans. These delays add up to additional expense to the state.

The second major effect if additional resources are not provided, will be the negative impact to other staff from current duties with accompanying loss

of service to the public. Some statutory duties and necessary tasks could be extensively delayed as the load is spread out among other staff to attempt to address it. For example, dam safety inspections would have to be further deferred. Rather than inspecting high and significant hazard dams annually as nationally recommended, we are currently attempting to inspect them on a five year schedule. Since we already have a "bare bones" dam safety inspection program, further shifts from this area raise serious public safety concerns. Additionally, recent emphasis on environmental issues as indicated by the passage in 1987 of the Water Projects Environmental Coordination Act, have clearly identified the need for increased efforts to enforce the Stream Obstructions Act. Last year, the legislature provided some limited additional staff to address the environmental coordination and enforcement matters. Staff realignments would severely blunt this impetus.

Finally, it should be noted that the revenues generated will, for the most part, be from agencies such as the Department of Transportation and Department of Wildlife and Parks, cities and counties, from rural water districts, watershed districts, drainage districts, businesses and industry with very little estimated from private individuals. If you would look at Table No. 2 and its accompanying graph, you will have an idea of from where we estimate the revenue will be coming. The revenue generated if this bill would pass would be used to fund new positions to address the increased workload. One position would be a civil engineer to do the technical review. A second position would be a secretarial position to handle the increased typing and other secretarial duties, some now being performed by the higher paid technical staff. An intermittent, half-time clerical position would also be requested to handle the bookkeeping of this fee fund and other related duties for which we are understaffed.

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3/6

It is possible that some limited duties currently performed by this agency may be contracted out to others, further freeing staff to address the workload. This would be contingent on the revenue in excess of salary needs.

I hope I have not left you with the impression that adding staff is the only solution that we have investigated. I have, in fact, already begun instituting measures, which should improve our efficiency and simplify the review of projects, especially of routine or minor nature. One example is the planned implementation of a general permit system on April 1st to ease the processing of applications in connection with federally and state-funded bridge projects. This general permit would allow the staff to continue concentrating their efforts on major projects, but would retain the statutory duty of the Chief Engineer to "supervise" such projects for the public interest, safety and environmental considerations.

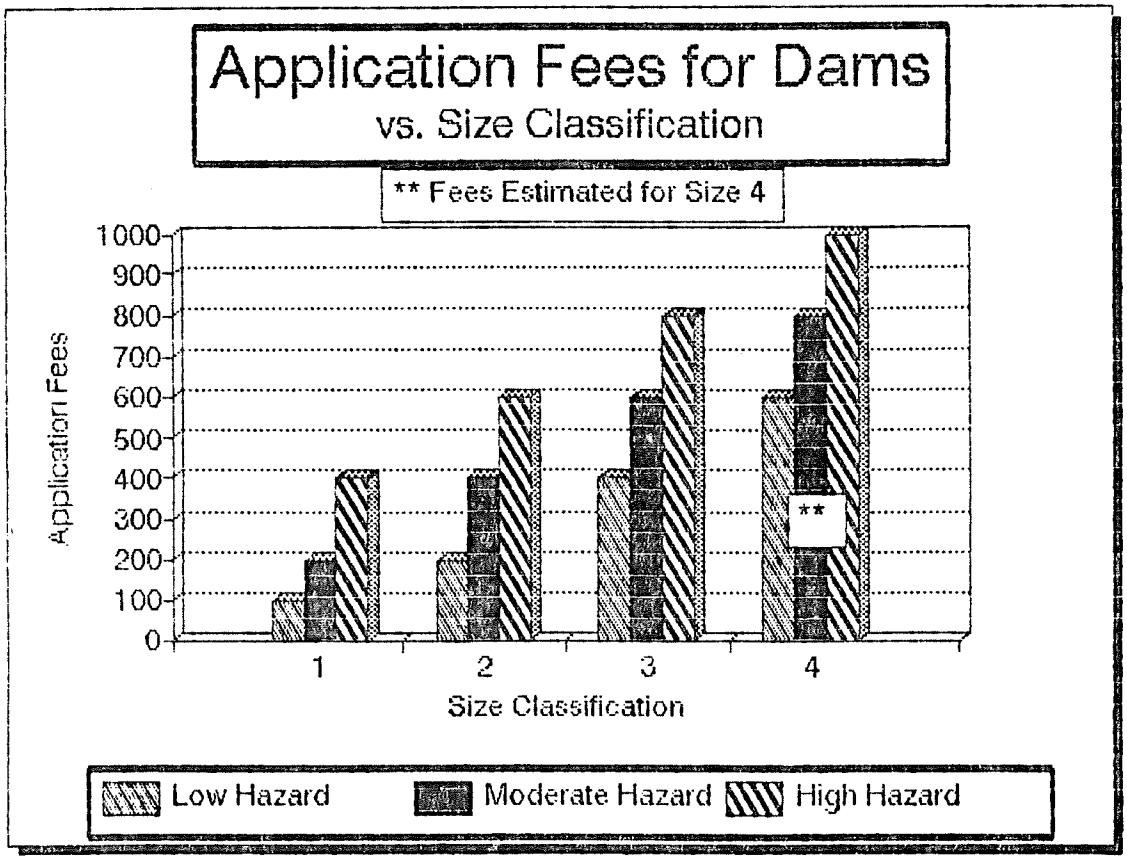
Other measures include computerization of records, the assistance of other non-program staff in areas within their skills and the consideration of other general permit possibilities; but these are not enough if we are to avoid the destructive influence this workload will have on other important programs.

Mr. Chairman and members of the Committee, I would appreciate your support of Senate Bill No. 344 and will be happy to answer any questions you have.

Table 1. Application Fees

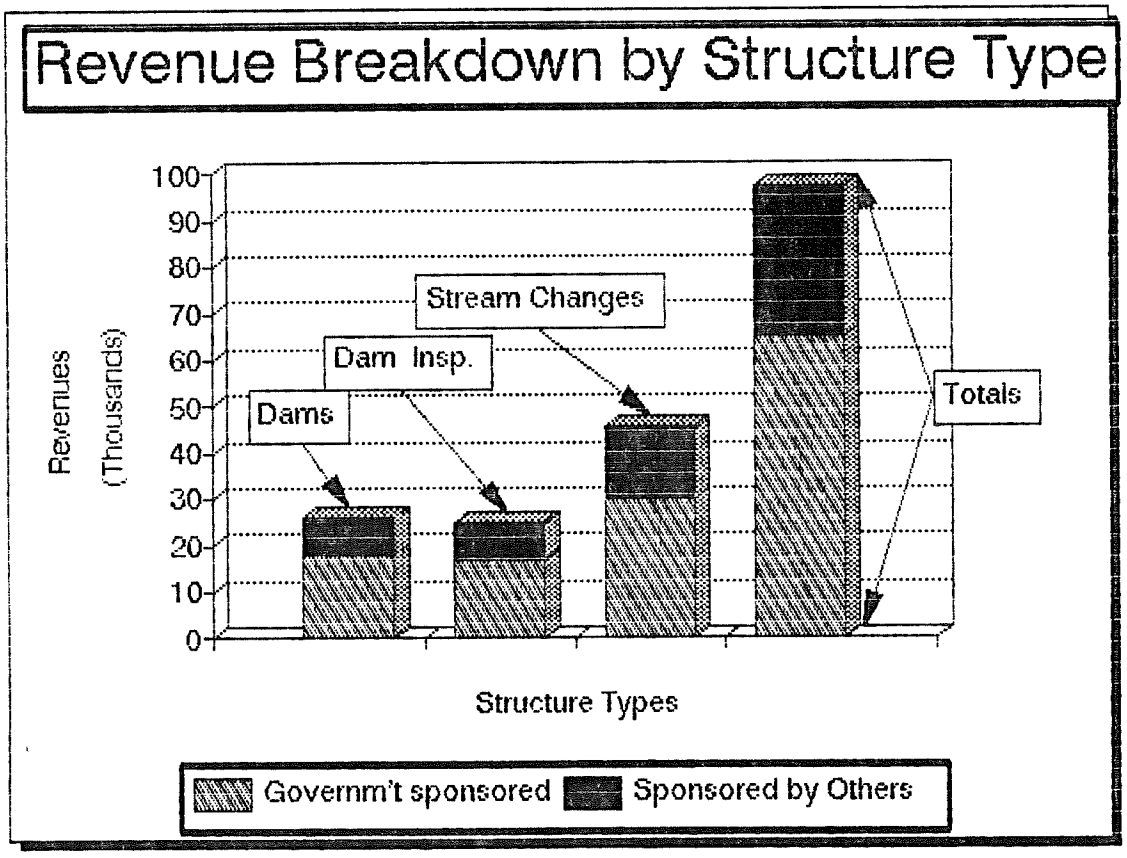
Size/	Hazard		
	a	b	c
1	100	200	400
2	200	400	600
3	400	600	800
4	400+.2V	600+.2V	800+.2V

**V is the total storage to the elevation of the emergency spillway



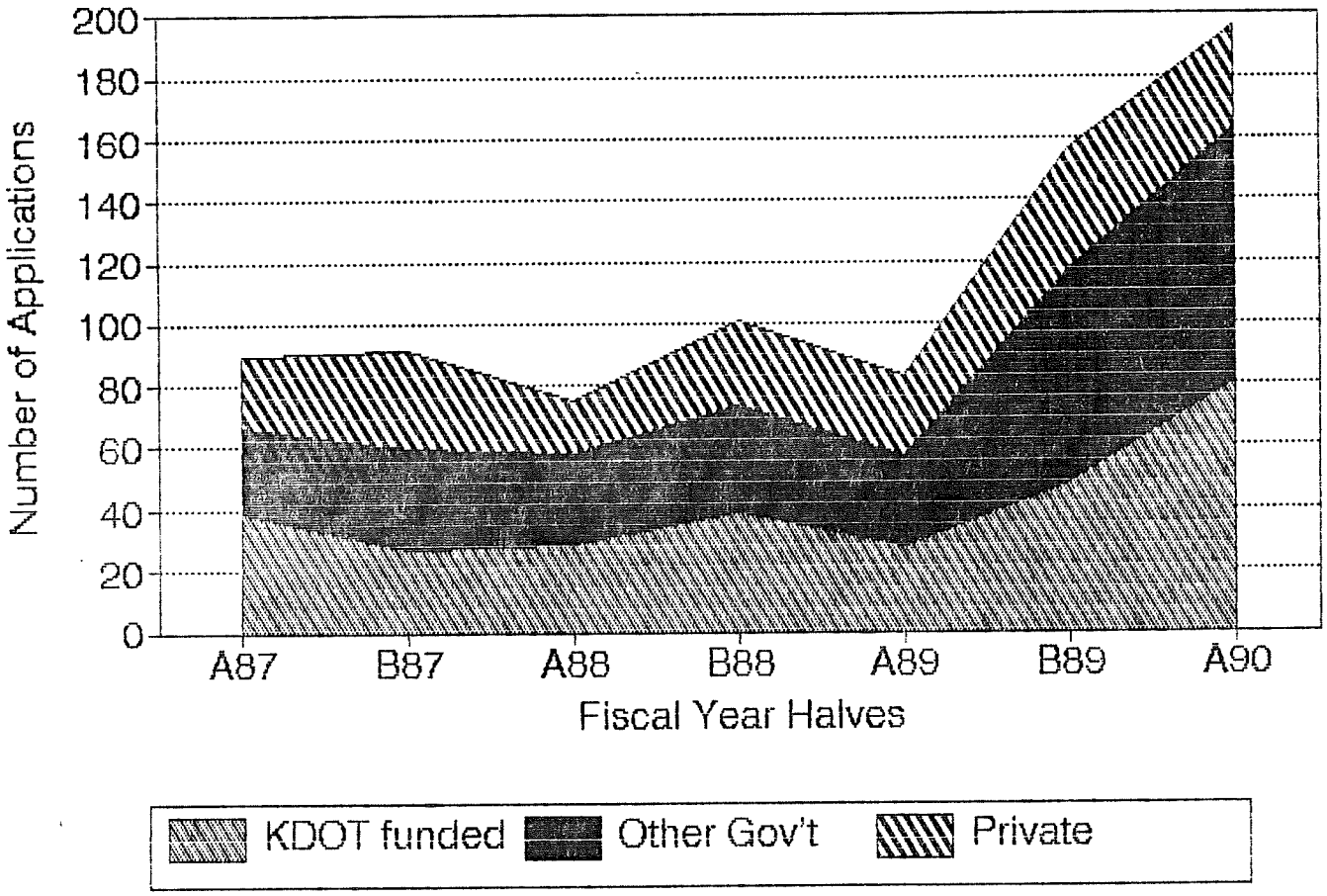
Revenue Breakdown by Structure Type

	Dams	Dam Insp.	Stream Changes	Totals
Governm'	17776	17000	30155	64931
Other	8484	8000	15485	31969
Totals	26260	25000	45640	96900



Water Structures Applications

by Fiscal Year Halves



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