

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT.

The meeting was called to order by Chairperson Joann Freeborn at 3:30 p.m. on March 21, 2002 in Room 231-N of the Capitol.

All members were present except: Representative Clay Aurand - excused
Representative Jeff Peterson - excused
Representative Ted Powers - excused
Representative Jonathan Wells - excused

Committee staff present: Raney Gilliland, Kansas Legislative Research Department
Mary Ann Graham, Committee Secretary

Conferees appearing before the committee: Joe Lawhon, Legislative Division of Post Audit, 800 SW Jackson, Suite 1200, Topeka, KS 66612-2212

Others attending: See Attached Sheet

Vice-Chair Don Myers called the meeting to order in Chairperson Joann Freeborn's brief absence. She was called out of committee for a short time to cast a vote in another committee. Chairman Myers announced that the Sub-Committee meeting on **HB3002** that had been scheduled for today was cancelled. Members of the Sub-Committee are; Rep. Don Myers, Chairman; Rep. Tom Sloan; Rep. Ray Merrick; Rep. Laura McClure; and Rep. Jonathan Wells. He also announced that minutes for committee meetings January 22 and 24, February 14, and March 7, have been distributed for the committee's review and a motion to approve or disapprove will be made in the next committee meeting.

Chairperson Freeborn asked Raney Gilliland, Legislative Research Department, to brief the committee on Dam and Water Impoundment Structure Safety and the State's Role in the Inspection of Dam and other Water Impoundment Structures. The Special Committee on Energy and Natural Resources/Environment has studied Kansas' current dam safety inspection programs and concludes that the Department of Agriculture can adequately oversee the inspection and repair of Kansas dams. (See attachment 1) He also provided copies of Kansas Statutes on Waters and Watercourses. (See attachment 2)

The Chairperson welcomed Joe Lawhon, Legislative Division of Post Audit, to the committee. He reviewed the Water Structures Program. The mission of the Water Structures Program is to inspect and regulate the safety of dams which, if they fail, could endanger lives and property. The Program also monitors the construction of dams, levees, and other projects that affect the flow of rivers and streams to ensure these activities are properly planned, constructed, operated, and maintained. The Program is funded with a mix of State General Fund moneys, federal grants, State Water Plan funds, and State highway funds. Fiscal year 2000 expenditures were about \$860,000, of which \$481,000 came from the State General Fund. The Program has 15.5 authorized positions.

According to Department of Agriculture officials, increasing populations near dams in Kansas and increasing numbers of such structures have stressed the processes and resources of the Water Structures Program. Recently, Department officials have discovered and begun to investigate potential problems with the expenditure of federal grant funds within the Program. In addition, Department officials have expressed concerns about Program staff being able to keep up with the workload, in particular their inability to get various permits issued in a reasonable time frame. A performance audit of this topic would address the following question. Is the Department of Agriculture's Water Structures Program able to issue permits for new water structures on a timely basis and complete timely inspections of existing structures, and if not, why not? Committee discussion and questions followed.

Greg Foley, Assistant Secretary, Kansas Department of Agriculture, and David Pope, Chief Engineer, Water Resources, Kansas Department of Agriculture, were in attendance and addressed committee questions in reference to the Water Structures Program. They also discussed proposed **SB436**, by the Department of

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON ENVIRONMENT, Room 231-N of the Capitol
at 3:30 p.m. on March 21, 2002.

Agriculture, regarding "Fees and inspections of dams, levees and other water obstructions".

Chairperson Freeborn thanked Mr. Lawhon for his presentation and other guests for their participation. She announced that an informal public discussion will be held immediately after adjournment of the committee meeting to discuss **House Substitute for SB430.**

The meeting adjourned at 4:50 p. m. The next meeting is scheduled for Tuesday, March 26, 2002.

SPECIAL COMMITTEE ON ENERGY AND NATURAL RESOURCES/ENVIRONMENT

Dam and Water Impoundment Structure Safety—the State's Role in the Inspection of Dam and Other Water Impoundment Structures

SUMMARY: The Special Committee on Energy and Natural Resources/Environment has studied Kansas' current dam safety inspection programs and concludes that the Department of Agriculture can adequately oversee the inspection and repair of Kansas dams.

BACKGROUND

State Dam Safety Program. In the 1970s, several dams failed in other parts of the country causing the loss of life. These tragedies increased public recognition of the need to inspect dams and to develop programs to protect public safety. As a result, the National Dam Inspection Act was passed in 1977. Kansas law was amended consistently with the federal Act in 1978.

Pursuant to the federal Act, the Corps of Engineers completed an inventory of potentially hazardous dams in 1981. The Corps of Engineers also completed a detailed inspection of all known high hazard dams at that time. After federal funding for inventory and inspections was discontinued, states were expected to establish dam safety programs.

In FY 1988, the Kansas Legislature appropriated funds to the Division of Water Resources, Department of Agriculture, to add two new positions for the dam safety program. Additionally, the current inspection program was established.

The Division of Water Resources, Department of Agriculture, under leadership of the Chief Engineer, administers Kansas' dam safety program pursuant to its authority under the Stream Obstruction Act (K.S.A. 82a-301 et seq.). The program includes:

- review of plans and specifications;
- issuance of permits, if appropriate, for the construction, operation, maintenance or modification of dams;
- inspection of important phases of dam construction;
- inspection of newly completed dams to determine compliance with approved plans; and
- inspection of existing dams constructed prior to the establishment of the agency's program.

In addition, the Division of Water Resources inspects structures constructed under one of the State Conservation Commission (SCC) cost share programs, as the SCC does not release final payment until the Division certifies, based on field inspection, that the dam was built according to approved plans.

The Division currently has four full-time equivalent engineering positions assigned to dam safety within the Water Structures Program. In addition to administrative, clerical, and legal support, these engineers are assisted by additional staff of the Division with field work when possible.

Kansas' dam safety program focuses on dams or water impoundment structures which hold 30 acre feet or more of water. Kansas currently has over 6,000 dams which meet this definition. These 6,000 dams do not include dams on federal property. Maintenance and operating safety of dams or water impoundment structures on federal property are the responsibility of officials from the federal government.

Dam Classification. According to the 1981 Corps of Engineers' inventory, most of the dams under regulation of the Division of Water Resources are not classified as having any risk associated with them. However, approximately 150 of these dams are classified as high hazard dams and 350 are classified as significant hazard. A high hazard dam is one which failure

would cause the loss of more than a few lives. In other words more than one residence, a major business development, or a transportation facility would be endangered by the failure of the dam. A significant hazard dam is one which failure would cause the loss of less than a few lives. For example, dam failure in this case would cause damage or disruption to property such as buildings, roads, railroads, water supplies, or other essential services.

The Corps of Engineers' hazard classification system has nothing to do with whether the dam or water impoundment structure is safe. Rather, the hazard classification reflects the risks that arise should the dam fail. Accordingly, more stringent design and construction criteria apply to dams where there is more risk of damage.

Unsafe Dams . In 1996, the Division of Water Resources completed screening inspections for all known dams with a hazard rating which had not previously been inspected. This information was used to assess the extent of the safety problems with existing dams and to set priorities for future actions.

Of the 500 dams classified as high hazard or significant hazard, the Division of Water Resources classified several structures as being unsafe. Some of these structures are considered unsafe because physical deficiencies exist which may lead to failure. Others have spillways inadequate to prevent overtopping of the dam embankment during flooding. Several structures are considered to be in an emergency unsafe condition and are in imminent danger of failure. Approximately one-half of the unsafe dams are privately owned by individuals or organizations while the remainder are owned by various governmental agencies, such as cities, counties, watershed districts, and the state.

If a dam is found to be in emergency unsafe condition, the Division deals with the situation on an immediate basis, or as soon as possible, through the issuance of appropriate orders or other steps required to resolve the problem. When an emergency exists, the Division of Water Resources notifies the Division of Emergency Management to coordinate any state or local response. According to agency officials, any dam found in an unsafe condition is inspected at least once a year until the condition no longer exists.

Current Inspection Program. The Division of Water Resources' current goal is to conduct periodic "follow-up" inspections of high hazard dams once every three years and significant hazard dams once every five years. The process of monitoring deficiencies is deemed important due to the potential for changing conditions of aging dams.

The Division of Water Resources notifies owners prior to the inspection of their dam or water impoundment structure and the Division provides the inspection results to the owner. This notice points out deficiencies found during the inspections, along with recommendations and requirements to correct any problems that are identified. It is the owner's responsibility to secure qualified engineering assistance as needed to consider alternatives and design an appropriate solution. The Division will review any proposed plans to repair or modify dams and provide assistance to resolve problems. If necessary, the agency issues formal orders requiring action.

While current records indicate that there are 13 high and 21 significant hazard dams that are also unsafe, the Division has identified a total of about 75 unsafe dams since the inspection program began. Of the total, approximately 25 have been rehabilitated and are considered in compliance with current dam safety requirements. Approximately 16 have been downgraded to a lower hazard classification due to construction changes below the dam.

Dam Safety—the issue. During the 1997 Legislative Session, the Secretary of Agriculture appeared before a legislative committee to review the status of her agency and to comment on several issues which her agency would be addressing in the future. One of the issues raised by the Secretary was the issue of the safety of dams and other water impoundment structures in the state.

The Secretary told legislators that staff of the Division of Water Resources were inspecting dams and water impoundment structures and were encouraging the repair of unsafe structures where necessary. She indicated that personnel of her agency were working with staff of other agencies to explore possible funding proposals to assist owners with the costly repair of unsafe water structures. Additionally she asserted that

The federal government may also be of assistance in this area. The Secretary stated that the Kansas Water Office and the Kansas Water Authority were in the process of studying the dam safety issue and that the agencies might recommend new expenditures from the State Water Plan Fund and relevant statutory changes to the Legislature.

As a result of the Secretary's comments to members of the Legislature, there was a request to the Legislative Coordinating Council to charge an interim committee with the task of reviewing this issue and making appropriate recommendations to the 1998 Legislature.

COMMITTEE ACTIVITIES

The Committee began to study this issue at its August meeting by hearing a review of the dam and water impoundment program of the Department of Agriculture from the Chief Engineer and his staff from the Division of Water Resources. The Chief Engineer described the inspection program and explained the process his office follows when an unsafe dam or water impoundment structure is found. The Committee learned that much of the criteria used to determine if a dam is unsafe comes from the National Dam Inspection Program.

The Chief Engineer identified funding as a problem for the dam inspection program. He told the Committee that the limited resources available, coupled with aging dams, will result in the identification of new hazardous dams before the currently unsafe dams are repaired. The Chief Engineer indicated that the Kansas Water Office and the Kansas Water Authority have studied the issue and are considering the development of a new policy section on this issue in the State Water Plan. When asked for recommendations from the agency, the Chief Engineer told the Committee that the agency was not prepared to make any proposals at this time.

During the deliberations on this issue, the Committee reviewed the list of 34 dams which the Division of Water Resources has classified as unsafe. The Chief Engineer explained that owners or operators of all 34 dams have been notified as to the condition of the structure.

Further, he explained that agency action with respect to corrective action varies from one structure to another depending on the circumstances of each dam. For example, if the structure is permitted, officials with the agency may seek to revoke the permit.

The Chief Engineer stated that the remaining 5,500 structures were originally classified as not hazardous primarily because of their location in rural areas. Due to the fact that it is unlikely that development has occurred downstream from these structures, these dams are not periodically inspected by the agency to determine their safety status.

Other conferees appearing before the Committee included representatives of Emergency Management, Adjutant General's Office; the Kansas Water Office; and the Department of Wildlife and Parks. The representative of Emergency Management explained to the members of the Committee that her office informs local emergency management coordinators of the results of the inspections of the dams and encourages the coordination between the emergency coordinators and the parties responsible for the dams.

The Director of the Kansas Water Office told the members of the Committee that the basin advisory committee has held public meetings and other public forums on the issue of dam and water impoundment safety. The Director also informed the Committee that the Kansas Water Authority chose not to include the issue of dam and water impoundment safety as a section in the State Water Plan. The Authority determined that there was current statutory authority provided to the Department of Agriculture to address the issue. The Director stated that the Kansas Water Authority decided it was not appropriate to recommend that moneys from the State Water Plan Fund be used to repair or maintain dams or water impoundment structures on private property. Nonetheless, the Director noted that this is an important issue and that the Legislature may have to deal with it more directly in the future.

The Secretary of the Department of Wildlife and Parks informed the members of the Committee that his agency is responsible for the maintenance of numerous water impoundment structures including dams at state fishing lakes, dikes

in wetland areas, and ponds on property owned or leased by the Department. He told the Committee that all of these structures were inspected in 1995, and he provided a list of these dams with an estimated cost for repair. The Secretary noted that of major concern were those dams located at state fishing lakes since many of those structures impound a large amount of water and are between 35 and 70 years of age. The Secretary informed the Committee that some of the dams have been repaired while others are scheduled for repair in future fiscal years. The schedule for future repairs was provided to the members of the Committee.

CONCLUSIONS AND RECOMMENDATIONS

The Special Committee on Energy and Natural Resources/Environment makes no recommendation regarding the issue of dam water impoundment structure safety. The Committee believes that officials with the Department of Agriculture should handle this issue and have initiated this process through notification to the owners of the 34 unsafe dams. However, the Committee requests that the Secretary of Agriculture appear before the House and Senate Agriculture Committees, the House Environment Committee, and the Senate Energy and Natural Resources Committee during the last part of March 1998 to update those Committees with respect to the progress the agency has made in addressing water impoundment structures which may be a threat to lives and property.

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82a-301

Chapter 82a.--WATERS AND WATERCOURSES Article 3.--OBSTRUCTIONS IN STREAMS

82a-301. Permit or consent of chief engineer required to construct dams or other water obstructions; exceptions. Without the prior written consent or permit of the chief engineer of the division of water resources of the state board of agriculture, it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to: (a) Construct any dam or other water obstruction, (b) make, construct or permit to be made or constructed any change in any dam or other water obstruction, (c) make or permit to be made any change in or addition to any existing water obstruction, or (d) change or diminish the course, current, or cross section of any stream within this state. Any application for any permit or consent shall be made in writing in such form as specified by the chief engineer. Jetties or revetments for the purpose of stabilizing a caving bank which are properly placed shall not be construed as obstructions for the purposes of this section.

History: L. 1929, ch. 203, § 1; L. 1978, ch. 431, § 6; April 11.

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*House Environment
3-21-02
Attachment 2*

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82a-301a

Chapter 82a.--WATERS AND WATERCOURSES Article 3.--OBSTRUCTIONS IN STREAMS

82a-301a. Exclusive regulation and supervision of dams and other water obstructions by chief engineer. It is the intent of the legislature by this act to provide for the exclusive regulation of construction, operation and maintenance of all dams or other water obstructions by the state to the extent required for the protection of public safety. All dams or other water obstructions are declared to be under the jurisdiction of the division of water resources of the state board of agriculture and the chief engineer thereof. The chief engineer or his or her authorized representative shall supervise the construction, modification, operation and maintenance of dams or other water obstructions for the protection of life and property.

History: L. 1978, ch. 431, § 1; April 11.

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82a-302

Chapter 82a.--WATERS AND WATERCOURSES Article 3.--OBSTRUCTIONS IN STREAMS

82a-302. Same; maps, plans, profiles and specifications to accompany application. Each application for the consent or permit required by K.S.A. 82a-301 shall be accompanied by complete maps, plans, profiles and specifications of such dam or other water obstruction, or of the changes or additions proposed to be made in such dam or other water obstruction, and such other data and information as the chief engineer may require.

History: L. 1929, ch. 203, § 2; L. 1978, ch. 431, § 7; April 11.

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82a-303a

Chapter 82a.--WATERS AND WATERCOURSES Article 3.--OBSTRUCTIONS IN STREAMS

82a-303a. Rules and regulations by chief engineer. The chief engineer of the division of water resources of the state board of agriculture shall adopt and may from time to time amend rules and regulations in order to establish standards for the construction, modification, operation and maintenance of dams and other water obstructions and to administer and enforce the provisions of this act.

History: L. 1978, ch. 431, § 2; April 11.

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82a-303b

Chapter 82a.--WATERS AND WATERCOURSES Article 3.--OBSTRUCTIONS IN STREAMS

82a-303b. Inspection of dams by chief engineer; access to private property; costs of inspection. 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 to 82a-303, inclusive, and any amendment thereof, the chief engineer or an authorized representative of the chief engineer shall have the power and it shall be his or her duty to inspect any dam or other water obstruction. For the purpose of inspecting any dam or other water obstruction, the chief engineer or an authorized representative of the chief engineer shall have the right of access to private property. Costs for any work which may be required by the chief engineer or the authorized representative 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 thereof.

History: L. 1978, ch. 431, § 3; April 11.

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82a-303c

Chapter 82a.--WATERS AND WATERCOURSES Article 3.--OBSTRUCTIONS IN STREAMS

82a-303c. Violations of conditions or restrictions of permit or of rules and regulations; orders of chief engineer; remedial measures; emergency situations. (a) Whenever the chief engineer finds that: (1) The construction, modification, operation or maintenance of a dam or other water obstruction is in violation of adopted rules and regulations or of terms, conditions or restrictions of a permit or consent granted by the chief engineer or, (2) conditions exist in the construction, modification, operation or maintenance of a dam or other water obstruction which may present a hazard to the public's safety, he or she shall issue an order to require the correction of any such violation or condition existing in the construction, modification, operation or maintenance of a dam or other water obstruction by the owner or operator thereof. An order may be issued to require the removal of a dam or other water obstruction. The order shall contain the chief engineer's findings concerning any violation or conditions existing and shall prescribe the corrective action to be taken.

(b) Whenever the condition of any dam or other water obstruction is so dangerous to the safety of life or property as not to permit time for the issuance and enforcement of an order relative to construction, modification, maintenance or operation thereof, or the passing of imminent floods threaten the safety of any dam or other water obstruction, the chief engineer shall immediately employ any remedial means necessary to protect the safety of life or property. The chief engineer shall continue in full charge and control of any such dam or other water obstruction until the same is rendered safe or the emergency occasioning the remedial action has ceased.

History: L. 1978, ch. 431, § 4; April 11.

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82a-304

Chapter 82a.--WATERS AND WATERCOURSES Article 3.--OBSTRUCTIONS IN STREAMS

82a-304. Same; exceptions. The provisions of this act shall not apply to any dam which impounds thirty (30) acre feet of water or less.

History: L. 1929, ch. 203, § 4; L. 1933, ch. 330, § 1; L. 1978, ch. 431, § 9; April 11.

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82a-305a

Chapter 82a.--WATERS AND WATERCOURSES Article 3.--OBSTRUCTIONS IN STREAMS

82a-305a. Unlawful acts; penalties; injunction. (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.

History: L. 1978, ch. 431, § 5; April 11.

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