

Substitute for HOUSE BILL No. 2114

By Committee on Agriculture and Natural Resources

2-16

1 AN ACT concerning water; relating to dams, levees and other water
2 obstructions; clarifying which structures shall be considered water
3 obstructions and not a dam; increasing application fees for a permit to
4 construct, modify or add to a dam; requiring preconstruction permit
5 fees to construct, modify or add to a water obstruction or to change or
6 diminish the course, current or cross section of a stream; requiring any
7 licensed professional engineer who conducts inspections required by
8 the act to be approved by the chief engineer or to be a certified intern
9 engineer who is under the supervision of such a licensed professional
10 engineer; adding a civil penalty of not less than \$100 or more than
11 \$1,000 per violation; remitting civil penalty amounts to the state
12 general fund; amending K.S.A. 82a-301, 82a-302, 82a-303b and 82a-
13 305a and repealing the existing sections.
14

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

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

- 22 (A) Construct, modify or add to any dam;
23 (B) construct, modify or add to any water obstruction in a designated
24 stream; or
25 (C) change or diminish the course, current; or cross section of any
26 designated stream within this state.

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

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

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

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

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

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

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

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

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

14 (3) *"Modification" means any action that the chief engineer*
15 *determines would change the physical dimensions or hydraulic*
16 *characteristics of any dam, stream obstruction or channel change that is*
17 *under the jurisdiction of the chief engineer pursuant to this act.*

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

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

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

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

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

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

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

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

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

42 (3) Notwithstanding any other provision of this section, the chief
43 engineer may require a permit for any water obstruction described in this

1 subsection if the chief engineer determines such permit is necessary for the
2 protection of life or property.

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

5 (1) Has a height of less than 30 feet and a storage volume at the top
6 of the emergency spillway elevation of less than 125 acre feet, and the dam
7 location and dimensions have been registered with the division of water
8 resources in a written form prescribed by the chief engineer; or

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (1) or (2), and amendments thereto.

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

5 Watershed Area Above the Project Permit Application Fee *Post-*
6 *Construction Permit Fee*

7 Less than 5 square miles	\$100	\$200
8 Between 5 and 50 square miles	\$200	\$400
9 More than 50 square miles	\$500	\$1,000

10 (3)(4) The application fee for a general permit shall be \$100.

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

14 (d) *The chief engineer shall prominently display an inundation map*
15 *for each permitted dam on the department's website and provide copies of*
16 *such inundation map to the zoning authority, or the county clerk if the*
17 *county does not have a zoning authority, of each county where any land*
18 *included on an inundation map is located. If additional funding is*
19 *available, the chief engineer shall prepare or update the inundation maps*
20 *of all permitted dams for which current inundation maps have not been*
21 *provided to the chief engineer, display such inundation maps on the*
22 *department's website and provide copies of such inundation maps to the*
23 *respective county governments as provided for in this section.*

24 Sec. 3. K.S.A. 82a-303b is hereby amended to read as follows: 82a-
25 303b. (a) ~~(1) In order to secure conformity with adopted rules and~~
26 ~~regulations and to assure compliance with the terms, conditions or~~
27 ~~restrictions of any consent or permit granted pursuant to the provisions of~~
28 ~~K.S.A. 82a-301 through 82a-303, and amendments thereto, (A) The chief~~
29 ~~engineer or an authorized representative of the chief engineer who is a~~
30 ~~licensed professional engineer approved by the chief engineer or an intern~~
31 ~~engineer who is certified pursuant to K.S.A. 74-7021(b), and amendment~~
32 ~~thereto, and is under the supervision of such a licensed professional~~
33 ~~engineer shall have the power and the duty to inspect any dam or other~~
34 ~~water obstruction.~~

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

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

41 (ii) the dam is removed.

42 (C) ~~The safety inspection shall be conducted by the chief engineer or~~
43 ~~authorized representative and the cost shall be paid by the dam owner. For~~

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

5 ~~(D) For inspections conducted by the chief engineer or the chief~~
 6 ~~engineer's authorized representative, inspection fees are each inspection~~
 7 ~~other than an inspection that a dam owner elects to have conducted at the~~
 8 ~~dam owner's own expense as provided for in this act, the dam owner shall~~
 9 ~~pay inspection fees to the department as follows:~~

10	Size of Dam	Inspection fee
11	Class 1	\$1,500
12	Class 2	\$1,500
13	Class 3	\$2,500
14	Class 4	\$4,000

15 (2) Each hazard class C dam shall be required to have a safety
 16 inspection conducted ~~by a licensed professional engineer qualified in~~
 17 ~~design, construction, maintenance and operation of dams once every three~~
 18 ~~years, unless otherwise ordered by the chief engineer every three years.~~

19 (3) Each hazard class B dam shall be required to have a safety
 20 inspection conducted ~~by a licensed professional engineer qualified in~~
 21 ~~design, construction, maintenance and operation of dams once every five~~
 22 ~~years unless otherwise ordered by the chief engineer every five years.~~

23 (4) *Each hazard class A dam that does not qualify for the exemption*
 24 *provided for in K.S.A. 82a-301(d), and amendments thereto, or meets the*
 25 *requirements for either of the exemptions provided for in K.S.A. 82a-*
 26 *301(e)(1) or (e)(2), and amendments thereto, shall be required to have a*
 27 *safety inspection conducted every 10 years.*

28 (5) *Safety inspections required by this act shall be conducted by the*
 29 *chief engineer or an authorized representative of the chief engineer who is*
 30 *a licensed professional engineer approved by the chief engineer or an*
 31 *intern engineer who is certified pursuant to K.S.A. 74-7021(b), and*
 32 *amendment thereto, and under the supervision of a licensed professional*
 33 *engineer. A dam owner may elect to have any required safety inspection*
 34 *performed at the dam owner's own expense, provided that such inspection*
 35 *is performed by an engineer authorized to perform inspections in*
 36 *accordance with this act.*

37 (6) *A safety inspection shall not be required to be conducted for any*
 38 *dam that the dam owner has submitted an inundation map to the chief*
 39 *engineer that demonstrates that failure of the dam would only inundate*
 40 *real property or fixtures to real property owned by the dam owner.*

41 (7) *If the chief engineer reclassifies a dam to a higher hazard*
 42 *classification and the reclassification is not necessitated by any actions of*
 43 *the dam owner, the dam shall be subject to the inspection requirements for*

1 *the higher hazard classification in accordance with this act, but the dam*
2 *owner shall not be charged for inspections that are in excess of those that*
3 *would have been required by the previous lower hazard classification.*

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

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

21 ~~(6)(9) The failure to file provide a complete and timely report as~~
22 ~~required by the provisions of this act, or and the failure to submit the fees~~
23 ~~assessed for inspections conducted by the chief engineer or the chief~~
24 ~~engineer's authorized representative to the department as required by this~~
25 ~~section shall be deemed a violation of this act and subject to the penalties~~
26 ~~provided by K.S.A. 82a-305a, and amendments thereto.~~

27 (b) For the purpose of inspecting any dam or other water obstruction,
28 the chief engineer or an authorized representative of the chief engineer,
29 *including any engineer authorized to perform inspections in accordance*
30 *with this act*, shall have the right of access to private property. *Except for*
31 *an instance when the chief engineer determines that emergency action*
32 *pursuant to K.S.A. 82a-303c(b), and amendments thereto, is or may be*
33 *necessary, the right of access to private property provided for in this*
34 *subsection shall be conditioned on seven days' prior notice of the*
35 *inspection having been provided to the dam owner.* Costs for any work
36 ~~which that~~ may be required by the chief engineer ~~or the authorized~~
37 ~~representative~~ prior to or as a result of ~~the an~~ inspection of a dam or other
38 ~~water obstruction required by this act~~ shall be paid by the owner,
39 ~~governmental agency~~ or operator of such dam or other water obstruction
40 *or by the department as provided for in this act.*

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

1 Sec. 4. K.S.A. 82a-305a is hereby amended to read as follows: 82a-
2 305a. (a) Any person, partnership, association, corporation or agency or
3 political subdivision of the state government who *intentionally* violates
4 any provision of this act or of any rule and regulation or order issued
5 pursuant thereto shall be deemed guilty of a class C misdemeanor. Each
6 day that any such violation occurs after notice of the original violation is
7 served upon the violator by the chief engineer by restricted mail shall
8 constitute a separate offense.

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

16 (c) *In addition to any other penalty provided for by law, any person*
17 *who commits a violation of K.S.A. 82a-301 et seq., and amendments*
18 *thereto, or any rule and regulation adopted thereunder, may be subject to*
19 *a civil penalty of not less than \$100 or more than \$1,000 per violation. In*
20 *the case of a continuing violation, each notice provided by the chief*
21 *engineer of such continuing violation and the required corrective action*
22 *thereof shall be considered a separate violation if such corrective action*
23 *identified in the notice has not commenced within seven days of receiving*
24 *such notice. Such civil penalty may be assessed in addition to any other*
25 *penalty provided by law.*

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

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

31 (f) *All moneys collected by the chief engineer pursuant to this section,*
32 *except civil penalties collected pursuant to subsection (c), shall be*
33 *deposited in the state treasury in accordance with K.S.A. 75-4215, and*
34 *amendments thereto, and shall be credited to the water structures fund*
35 *pursuant to K.S.A. 82a-328, and amendments thereto.*

36 (g) *All moneys collected by the chief engineer pursuant to subsection*
37 *(c) shall be deposited in the state treasury in accordance with K.S.A. 75-*
38 *4215, and amendments thereto, and shall be credited to the state general*
39 *fund.*

40 Sec. 5. K.S.A. 82a-301, 82a-302, 82a-303b and 82a-305a are hereby
41 repealed.

42 Sec. 6. This act shall take effect and be in force from and after its
43 publication in the statute book.