

Limited Transfer Permits; Aggregate Mining Operations; Dams and Water Obstructions; Stream Cleaning by County Commissions; Review of Water Development Projects; Local Enhancement Management Areas; HB 2363

HB 2363 addresses a number of water-related issues, including establishing limited transfer permits; granting land-based sand and gravel pits and aggregate mining operations utilizing washwater ponds term permits, amending various provisions of existing law dealing with dams and water obstructions providing for general permits, granting additional authority to boards of county commissions to clean and maintain banks and channels of streams, amending statutory language involving agency reviews of water development projects, repealing several obsolete statutes, and making orders of the Chief Engineer regarding Local Enhancement Management Areas subject to the Kansas Administrative Procedure Act.

Limited Transfer Permits

The bill allows the Chief Engineer of the Division of Water Resources (DWR) to grant limited transfer permits authorizing the use of up to 4,000,000 gallons from an existing water right. The permit is limited to a single calendar year and requires an application fee of \$200. If the base water right is groundwater, the bill allows its use to be transferred to another well from the same source of supply within two miles. If the base water right is for surface water, the use can be transferred to another surface water use within the same surface water system. The Chief Engineer is authorized to adopt rules and regulations to administer these provisions and to ensure there is no increase in consumptive use. These provisions are supplemental to the Kansas Water Appropriations Act.

Land-Based Sand and Gravel Pits and Aggregate Mining Operations Utilizing Washwater Ponds; Term Permits

The bill requires the rules and regulations adopted by the Secretary of Health and Environment pertaining to the prevention of surface water, subsurface water, and soil pollution to not apply to land-based sand and gravel pits or aggregate mining operations utilizing washwater ponds. This provision applies if the only water or wastewater directed to the dredge pit or washwater pond consists of dredge return flows; flows generated from aggregate classification; or flows from washing aggregate, if water used in the flows is returned to the dredge pit or washwater pond.

The bill also provides that locations in the state where the average potential net evaporation is less than 18 inches per year, as determined by the Chief Engineer, will be issued a single-term permit for the life of a sand or gravel pit project, not to exceed 80 years, for secondary uses of water. Continuing law states secondary beneficial uses includes hydraulic dredging and sand washing.

Dams

With respect to dams, the bill modifies the statutory definition of what constitutes a “dam” to those that have a height of 25 feet or more (continuing law), or has a height of six feet or greater (continuing law) and a storage volume at the top of the emergency spillway elevation of

50 or more acre feet (modification). The height of a dam will 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.

In addition, the bill exempts hazard Class A dams proposed for construction or modification from the requirement to acquire a permit or written consent unless the Chief Engineer determines it is necessary for the protection of life or property. Those hazard Class A dams generally not required to have a permit or written consent include:

- Those that have 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; **or**
- The dam is a wastewater storage structure for a confined feeding facility approved by the Secretary of Health and Environment.

The bill establishes the application fee for a permit to construct, modify, or add to a dam at \$200. The bill repeals law establishing fees based on their point in construction. Also, the bill repeals statutory language in instances where dam inspection fees were assessed by the size of the dam.

When a dam has been determined to be unsafe, the bill requires the safety inspection to be conducted by the Chief Engineer or authorized representative and the cost of the inspection be based upon the size of the dam. Inspection fees for class sizes 1 and 2 are repealed and inspection fees for dam sizes Class 3 and 4 are retained.

Language requiring the Chief Engineer to maintain a list of licensed professional engineers who may conduct the review of any application for the consent or permit is repealed.

Water Obstructions

With respect to a permit or consent of the Chief Engineer for a water obstruction, the bill no longer requires a permit or consent for a water obstruction or change in the cross section of a designated stream if the cross section area is obstructed for less than 5.0 percent and the water obstruction or change is contained within a land area measuring 25 feet or less along the stream length. In addition, no permit or consent is required if the water obstruction is not a dam (continuing law); is not located within an incorporated area (continuing law); every part is located more than 300 feet from any property boundary (continuing law), which includes any water impounded by the obstruction (new law); and if the watershed area above the water obstruction is 5 square miles or less (new law) (prior law was 640 acres).

The bill defines a “designated stream” to mean a natural or man-made channel that conveys drainage or runoff from a watershed having an area of one or more square miles in zone one, two or more square miles or more in zone two, or three or more square miles or more in zone three. Zone one includes all geographic points located in or east of Washington, Clay, Dickinson, Marion, Harvey, Sedgwick, or Sumner counties. Zone two includes all geographic

points located west of zone one, and in or east of Smith, Osborne, Russell, Barton, Stafford, Pratt, or Barber counties. Zone three includes all geographic points location west of zone two.

The bill establishes a new methodology for 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 based on the watershed area. For a permit with a watershed area above the project of less than five square miles, the permit application fee is \$100; for those areas above the project between five and fifty square miles, the fee is \$200; and for those areas above the project with greater than fifty square miles, the fee is \$500. The prior fee methodology is repealed.

General Permits

The bill authorizes the Chief Engineer to issue general permits for projects that require limited supervision and review. The fee for a general permit is \$100.

Authority of County Commissions and Review of Water Development Projects

The bill amends the law to allow boards of county commissioners, upon enactment of resolution or after having received a petition from 50 taxpayers of any county who own land in the floodplain in question, to clean and maintain the banks and channels of streams and watercourses. Upon petition or resolution, the boards could remove debris, but could not change or diminish the course, current, or cross sections of any stream. The boards can act if they have obtained written permission of the landowner to enter private property. If damage is done, the bill requires a landowner to make a claim within 60 days, rather than the current 10 days, of the alleged material damage.

The bill also subjects only those water development projects requiring a permit by the Chief Engineer to be reviewed by the “environmental review agencies” outlined in KSA 82a-326. The law defines a “water development project” to mean any project or plan that may be allowed or permitted.

Repeal of Statutes, Deletion of the Term “Jettie,” and Local Enhancement Management Areas

The bill repeals provisions of law relating to certain dams built under the federal agricultural conservation program, obstructing the flow of surface water, construction of drainage on private land by owners, authority of the former position titled “irrigation commissioner,” and water rights held by the former Sunflower Ammunition Plant.

In addition, the term “jettie” is removed from the law, since it is no longer a commonly used term.

Further, Local Enhancement Management Area orders are added to the list of orders made by the Chief Engineer that are subject to review in accordance with the Kansas Administrative Procedure Act.