

**SENATE BILL No. 268**

By Committee on Ways and Means

2-25

1 AN ACT concerning water; relating to stream maintenance and  
2 obstructions; amending K.S.A. 32-1012 and K.S.A. 2014 Supp. 82a-  
3 301 and 82a-307 and repealing the existing sections.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 32-1012 is hereby amended to read as follows: 32-  
7 1012. (a) Nothing in the nongame and endangered species conservation act  
8 shall be construed to:

9 (1) Apply retroactively to any occurrence prior to July 1, 1975;

10 (2) prohibit importation into the state of wildlife which may be  
11 lawfully imported into the United States or lawfully taken and removed  
12 from another state; ~~or~~

13 (3) prohibit entry into the state or possession, transportation,  
14 exportation, processing, sale or offer for sale or shipment of any species of  
15 wildlife which is deemed to be threatened or endangered in this state but  
16 not in the state where originally taken, if the person engaging therein  
17 demonstrates by circumstantial evidence that such species of wildlife was  
18 lawfully taken and lawfully removed from such state; *or*

19 (4) *apply to stream maintenance performed pursuant to K.S.A. 82a-*  
20 *307, and amendments thereto.*

21 (b) The provisions of this section shall not be construed to permit the  
22 possession, transportation, exportation, processing, sale or offer for sale or  
23 shipment within this state of any species of wildlife determined to be a  
24 threatened species or endangered species pursuant to Pub. L. No. 93-205  
25 (December 28, 1973), the endangered species act of 1973, and ~~aets-~~  
26 ~~amendatory thereof as in effect on July 1, 2015~~, except as permitted in  
27 K.S.A. 32-961, *and amendments thereto.*

28 Sec. 2. K.S.A. 2014 Supp. 82a-301 is hereby amended to read as  
29 follows: 82a-301. (a) (1) Except as provided in subsections (c) and (d),  
30 without the prior written consent or permit of the chief engineer of the  
31 division of water resources of the Kansas department of agriculture, it  
32 shall be unlawful for any person, partnership, association, corporation or  
33 agency or political subdivision of the state government to:

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

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

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

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

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

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

9 (1) "Dam" means any artificial barrier including appurtenant works  
10 with the ability to impound water, waste water or other liquids that has a  
11 height of 25 feet or more; or has a height of six feet or greater and a  
12 storage volume at the top of the emergency spillway elevation of 50 or  
13 more acre feet. The height of a dam or barrier shall be measured from the  
14 lowest elevation of the streambed, downstream toe or outside limit of the  
15 dam to the elevation of the top of the dam.

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

18 (A) One or more square miles in zone one, which includes all  
19 geographic points located in or east of Washington, Clay, Dickinson,  
20 Marion, Harvey, ~~Sedgewick~~ *Butler* or Sumner counties;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 Sec. 3. K.S.A. 2014 Supp. 82a-307 is hereby amended to read as  
21 follows: 82a-307. (a) Upon petition of 50 taxpayers of any county of this  
22 state, owning land in the flood plain of any river in such county, or upon  
23 enactment of a resolution by the county commission of such county, the  
24 board of county commissioners of each county in this state are hereby  
25 authorized within their respective jurisdictions to clean and maintain the  
26 banks and channels of the streams and watercourses within definitely  
27 established bank lines, and to keep such streams free of drift, trees and  
28 other debris, for the purpose of reducing floods and overflows. Upon such  
29 petition or resolution, the board of county commissioners may remove  
30 debris pursuant to this section, but shall not ~~change or~~ diminish the course,  
31 current or cross section of any stream *by more than 5%*.

32 (b) The board of county commissioners, having obtained written  
33 permission from the landowner, may enter upon private property, if  
34 necessary, to clean and maintain such streams, doing as little damage as  
35 possible thereto. If material damage is done to any property, the  
36 commissioners shall allow reasonable compensation therefor if the  
37 landowner presents a claim in writing to the board within 60 days from the  
38 date of such alleged material damage.

39 (c) Nothing in this act shall be construed to permit the board of  
40 county commissioners of any county to remove or destroy any permanent  
41 improvement, including dams and bridges, in and over such streams,  
42 providing such improvements, dams or bridges have been lawfully placed  
43 thereon.

1       Sec. 4. K.S.A. 32-1012 and K.S.A. 2014 Supp. 82a-301 and 82a-307  
2       are hereby repealed.

3       Sec. 5. This act shall take effect and be in force from and after its  
4       publication in the statute book.