

HOUSE BILL No. 2073

By Committee on Local Government

1-23

1 AN ACT concerning streams, dams and obstructions; amending K.S.A.
2 82a-307 and K.S.A. 2012 Supp. 82a-301, 82a-303b and 82a-326 and
3 repealing the existing sections; also repealing K.S.A. 2012 Supp. 82a-
4 326a.
5

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

7 Section 1. K.S.A. 2012 Supp. 82a-301 is hereby amended to read as
8 follows: 82a-301. (a) (1) Except as provided in *this subsection or*
9 *subsection (c)*, without the prior written consent or permit of the chief
10 engineer of the division of water resources of the Kansas department of
11 agriculture, it shall be unlawful for any person, partnership, association,
12 corporation or agency or political subdivision of the state government to:
13 ~~(1)~~ (A) Construct any dam or other water obstruction; ~~(2)~~ (B) make,
14 construct or permit to be made or constructed any change in any dam or
15 other water obstruction; ~~(3)~~ (C) make or permit to be made any change in
16 or addition to any existing water obstruction; or ~~(4)~~ (D) *substantially*
17 *change or diminish the course, current, or cross section of any stream*
18 *within this state. Any application for any permit or consent shall be made*
19 *in writing in such form as specified by the chief engineer.*

20 (2) *The following activities shall not require the prior written consent*
21 *or permit of the chief engineer of the division of water resources of the*
22 *Kansas department of agriculture: (A) Maintaining, repairing or replacing*
23 *crossings used for agricultural purposes; (B) routine cleaning and*
24 *maintaining of banks and channels by landowners in order to preserve the*
25 *status quo thereof; (C) constructing, changing, or making additions*
26 *pursuant to local stormwater regulations that are equal to or exceed the*
27 *requirements of the chief engineer; or (D) constructing jetties or*
28 *revetments for the purpose of stabilizing a caving bank which are properly*
29 ~~placed shall not be construed as obstructions for the purposes of this~~
30 ~~section.~~

31 (b) As used in K.S.A. 82a-301 et seq., and amendments thereto,
32 "dam" means any artificial barrier including appurtenant works with the
33 ability to impound water, waste water or other liquids that has a height of
34 25 feet or more; or has a height of six feet or greater and also has the
35 capacity to impound 50 or more acre feet. The height of a dam or barrier
36 shall be determined as follows: (1) A barrier or dam that extends across the

1 natural bed of a stream or watercourse shall be measured from the down
2 stream toe of the barrier or dam to the top of the barrier or dam; or (2) a
3 barrier or dam that does not extend across a stream or watercourse shall be
4 measured from the lowest elevation of the outside limit of the barrier or
5 dam to the top of the barrier or dam.

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

8 (A) The water obstruction is not a dam as defined in subsection (b);

9 (B) the water obstruction is not located within an incorporated area;

10 (C) every part of the water obstruction is located more than 300 feet
11 from any property boundary; and

12 (D) the watershed area above the water obstruction is 640 acres or
13 less.

14 (2) If the water obstruction does not meet the requirements of
15 subsection (c)(1)(C), but meets all other requirements of subsection (c)(1),
16 such water obstruction may be exempted from the permitting requirements
17 of subsection (a) if the chief engineer determines such water obstruction
18 has minimal impact upon safety and property based upon a review of the
19 information, to be provided by the owner, including:

20 (i) An aerial photo or topographic map depicting the location of the
21 proposed project, the location of the stream, the layout of the water
22 obstruction, the property lines and names and addresses of adjoining
23 property owners; and

24 (ii) the principal dimensions of the project including, but not limited to,
25 the height above streambed.

26 ~~(3) Notwithstanding any other provision of this section, the chief
27 engineer may require a permit for any water obstruction described in this
28 subsection if the chief engineer determines such permit is necessary for the
29 protection of life or property.~~

30 Sec. 2. K.S.A. 2012 Supp. 82a-303b is hereby amended to read as
31 follows: 82a-303b. (a) (1) In order to secure conformity with adopted rules
32 and regulations and to assure compliance with the terms, conditions or
33 restrictions of any consent or permit granted pursuant to the provisions of
34 K.S.A. 82a-301 through 82a-303, and amendments thereto, the chief
35 engineer or an authorized representative of the chief engineer shall have
36 the power and the duty to inspect any *permitted* dam or other water
37 obstruction. Upon a finding pursuant to subsection (a) of K.S.A. 82a-303c,
38 and amendments thereto, by the chief engineer that a dam is unsafe, the
39 chief engineer shall order an annual inspection of the dam until it is either
40 in compliance with all applicable provisions of this act, any rules and
41 regulations promulgated pursuant to this act, permit conditions and orders
42 of the chief engineer; or the dam is removed. The safety inspection shall be
43 conducted by the chief engineer or authorized representative and the cost

1 shall be paid by the dam owner. The class and size of a dam provided for
2 by the provisions of this act shall be defined by rules and regulations
3 adopted by the chief engineer pursuant to K.S.A. 82a-303a, and
4 amendments thereto. Inspection fees are as follows:

5	Size of Dam	Inspection fee
6	Class 1	\$1,500
7	Class 2	\$1,500
8	Class 3	\$2,500
9	Class 4	\$4,000

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

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

18 (4) Within 60 days of the date of inspection, a report of the inspection
19 shall be provided to the chief engineer by the licensed professional
20 engineer who conducted the inspection. The report shall document the
21 physical condition of the dam, describing any deficiencies observed, an
22 analysis of the capacity of the dam and its spillway works, compliance of
23 the dam with approved plans and permit conditions, changes observed in
24 the condition of the dam since the previous inspection, an assessment of
25 the hazard classification of the dam including a statement that the engineer
26 either agrees or disagrees with the current classification, and any other
27 information relevant to the safety of the dam or specifically requested by
28 the chief engineer.

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

34 (6) The failure to file a complete and timely report as required by the
35 provisions of this act, or the failure to submit the fees assessed for
36 inspections conducted by the chief engineer or ~~such~~*the* chief engineer's
37 authorized representative shall be deemed a violation of this act and
38 subject to the penalties provided by K.S.A. 82a-305a, and amendments
39 thereto.

40 (b) For the purpose of inspecting any *permitted* dam or other water
41 obstruction, the chief engineer or an authorized representative of the chief
42 engineer shall have the right of access to private property. Costs for any
43 work which may be required by the chief engineer or the authorized

1 representative prior to or as a result of the inspection of a dam or other
2 water obstruction shall be paid by the owner, governmental agency or
3 operator of such dam or other water obstruction.

4 (c) All fees collected by the chief engineer pursuant to this section
5 shall be remitted to the state treasurer as provided in K.S.A. 2012 Supp.
6 82a-328, and amendments thereto.

7 Sec. 3. K.S.A. 82a-307 is hereby amended to read as follows: 82a-
8 307. Upon petition of ~~fifty (50)~~50 taxpayers of any county of this state,
9 owning land in the flood plain of any river in such county, *or upon*
10 *enactment of a resolution by the county commission of such county*, the
11 board of county commissioners of each county in this state are hereby
12 authorized within their respective jurisdictions to clean and maintain the
13 banks and channels of the streams and watercourses within definitely
14 established bank lines, ~~as provided in K.S.A. 82a-307a~~, and to keep
15 ~~said~~*the* streams free of drift, trees and other obstructions, for the purpose
16 of reducing floods and overflows; and for the purposes aforesaid ~~the said~~
17 board of county commissioners, *having obtained written permission of the*
18 *landowner*, may enter upon private property, if necessary, to clean and
19 maintain ~~such~~*the* streams, doing as little damage as possible thereto, and
20 when material damage shall be done to any property, ~~said~~*the*
21 commissioners shall allow reasonable compensation ~~therefor~~, when
22 claimed by the owner ~~thereof~~, if ~~said~~ *the* claim is presented in writing to
23 ~~said~~*the* board within ~~ten (10)~~60 days from the date of the removal of
24 ~~said~~*the* obstruction; and that nothing in this act shall be construed to
25 permit the board of county commissioners of any county to remove or
26 destroy any permanent improvement, including dams and bridges, in and
27 over such streams, providing such improvements, dams or bridges have
28 been lawfully placed thereon.

29 Sec. 4. K.S.A. 2012 Supp. 82a-326 is hereby amended to read as
30 follows: 82a-326. When used in this act:

31 (a) "Water development project" means any project or plan which
32 ~~may be allowed or permitted~~*requires a permit* pursuant to K.S.A. 24-126,
33 24-1213, 82a-301 et seq., and amendments thereto, or the multipurpose
34 small lakes program act, and amendments thereto;

35 (b) "environmental review agencies" means the:

- 36 (1) Kansas department of wildlife, parks and tourism;
- 37 (2) Kansas forest service;
- 38 (3) state biological survey;
- 39 (4) Kansas department of health and environment;
- 40 (5) state historical society;
- 41 (6) Kansas department of agriculture division of conservation; and
- 42 (7) state corporation commission.

43 New Sec. 5. (a) Any county in this state may perform routine

1 maintenance on streams within the county on any stream where bank lines
2 have approved by the chief engineer of the division of water resources
3 under the requirements of K.S.A. 82a-307a, and amendments thereto, the
4 stream is publicly owned or the property owner has granted a permanent or
5 temporary easement to the public and the stated purposes of the easement
6 include maintenance of the stream.

7 (b) For the purpose of this section, "routine maintenance" means the
8 removal of drift, trees, shrubs, vegetation, rubble, debris and other such
9 natural or man-made material that is deemed by the county engineer of the
10 county to have created or have the potential to create any of the following
11 conditions: (1) An obstruction to the natural flow of the stream; (2) a
12 realignment of the stream channel; (3) an incision in the natural bank of
13 the channel; (4) endangerment of the structural integrity of a public road,
14 bridge or culvert; or (5) flooding of homes or other man-made structures.

15 (c) At least 14 days prior to performing routine maintenance work
16 under the provisions of this section, the county shall notify the chief
17 engineer in writing of the general location and nature of the work to be
18 performed. No permits or prior approval from the chief engineer are
19 required prior to commencement of the work. In the case of flooding or
20 other man-made or natural disasters the county may proceed with
21 emergency routine maintenance and shall notify the chief engineer of the
22 location and nature of the work within 14 days after the work has
23 commenced.

24 Sec. 6. K.S.A. 82a-307 and K.S.A. 2012 Supp. 82a-301, 82a-303b
25 and 82a-326 are hereby repealed.

26 Sec. 7. This act shall take effect and be in force from and after its
27 publication in the statute book.