

SENATE BILL No. 153

By Committee on Ways and Means

2-7

1 AN ACT concerning water; relating to dams; amending K.S.A. 2012 Supp.
2 82a-301, 82a-302 and 82a-303b and repealing the existing sections.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 2012 Supp. 82a-301 is hereby amended to read as
6 follows: 82a-301. (a) Except as provided in ~~subsection~~ *subsections (c) and*
7 *(d)*, without the prior written consent or permit of the chief engineer of the
8 division of water resources of the Kansas department of agriculture, it
9 shall be unlawful for any person, partnership, association, corporation or
10 agency or political subdivision of the state government to: (1) Construct
11 any dam or other water obstruction; (2) make, construct or permit to be
12 made or constructed any change in any dam or other water obstruction; (3)
13 make or permit to be made any change in or addition to any existing water
14 obstruction; or (4) change or diminish the course, current, or cross section
15 of any stream within this state. Any application for any permit or consent
16 shall be made in writing in such form as specified by the chief engineer.
17 Jetties or revetments for the purpose of stabilizing a caving bank which are
18 properly placed shall not be construed as obstructions for the purposes of
19 this section.

20 (b) As used in K.S.A. 82a-301 et seq., and amendments thereto,
21 "dam" means any artificial barrier including appurtenant works with the
22 ability to impound water, waste water or other liquids that has a height of
23 ~~25~~ 30 feet or more; or has a height of six feet or greater and also has the
24 capacity to impound ~~50~~ 150 or more acre feet. ~~The height of a dam or~~
25 ~~barrier shall be determined as follows: (1) A barrier or dam that extends~~
26 ~~across the natural bed of a stream or watercourse shall be measured from~~
27 ~~the down stream toe of the barrier or dam to the top of the barrier or dam;~~
28 ~~or (2) a barrier or dam that does not extend across a stream or watercourse~~
29 ~~shall be measured from the lowest elevation of the outside limit of the~~
30 ~~barrier or dam to the top of the barrier or dam~~ *The height of a dam shall be*
31 *measured from the lowest elevation of the streambed, downstream toe or*
32 *outside limit of the dam to the elevation of the top of the dam.*

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

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

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

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

3 (D) the watershed area above the water obstruction is 640 acres or
4 less.

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

11 (i) An aerial photo or topographic map depicting the location of the
12 proposed project, the location of the stream, the layout of the water
13 obstruction, the property lines and names and addresses of adjoining
14 property owners; and

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

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

21 (d) *The prior written consent or permit of the chief engineer shall not*
22 *be required for construction or modification of a dam that meets the*
23 *following provisions:*

24 (1) *The dam has a height of less than 30 feet and has the capacity to*
25 *impound less than 150 acre feet; and*

26 (2) *the dam is a hazard class A dam as defined by rules and*
27 *regulations adopted by the chief engineer pursuant to K.S.A. 82a-303, and*
28 *amendments thereto.*

29 Sec. 2. K.S.A. 2012 Supp. 82a-302 is hereby amended to read as
30 follows: 82a-302. (a) Each application for the consent or permit required
31 by K.S.A. 82a-301, and amendments thereto, shall be accompanied by
32 complete maps, plans, profiles and specifications of such dam or other
33 water obstruction, or of the changes or additions proposed to be made in
34 such dam or other water obstruction, the required application fee as
35 provided in subsection (b) unless otherwise exempted, and such other data
36 and information as the chief engineer may require. ~~The chief engineer shall~~
37 ~~maintain a list of licensed professional engineers who may conduct the~~
38 ~~review of any application for the consent or permit required by K.S.A.~~
39 ~~82a-301, and amendments thereto. Such list may include licensed~~
40 ~~professional engineers employed by a local unit of government.~~
41 ~~Notwithstanding any law to the contrary, an applicant for the consent or~~
42 ~~permit required by K.S.A. 82a-301, and amendments thereto, may have the~~
43 ~~application reviewed by a licensed professional engineer approved by the~~

1 chief engineer pursuant to this subsection provided such engineer is not an
 2 employee of the applicant. If such licensed professional engineer finds that
 3 such dam or other water obstruction meets established standards for the
 4 construction, modification, operation and maintenance of dams and other
 5 water obstructions, such findings shall be submitted in complete form to
 6 the chief engineer. Upon such submittance, the chief engineer shall grant
 7 such consent or permit within 45 days unless the chief engineer finds to
 8 the contrary that such dam or other water obstruction does not meet
 9 established standards for the construction, modification, operation and
 10 maintenance of dams and other water obstructions. If the chief engineer
 11 declines to grant such consent or permit based upon a contrary finding, the
 12 chief engineer shall provide to the applicant within 15 days a written
 13 explanation setting forth the basis for the chief engineer's contrary finding.
 14 The chief engineer's action in declining to grant such consent or permit
 15 and any hearing related thereto shall be conducted in accordance with the
 16 provisions of the Kansas administrative procedure act. Any person
 17 aggrieved by any order or decision of the chief engineer shall be entitled to
 18 appellate review in accordance with the provisions of the Kansas judicial
 19 review act. Such applicant shall pay all costs associated with the review by
 20 the licensed professional engineer.

21 (b) (1) The application shall be based upon the stage of construction
 22 at the time that a complete application has been submitted. The
 23 construction in progress fee shall be applicable for construction begun
 24 prior to approval by the chief engineer. Such fee shall be in addition to any
 25 other penalty for an unpermitted structure. Such fees shall be as follows:

26 Fees for new dam or dam modification applications

Pre-Construction	Construction In Progress
\$200	\$500

29 (2) Permit fees for stream obstructions/channel changes application
 30 fee is based upon two criteria and are as follows:

- 31 (A) The drainage area category; and
- 32 (B) the stage of construction when the application is submitted.

	Pre- Construction	Construction In Progress
34 Drainage Area Category		
35 Major (Drainage area greater 36 than 50 square miles)	\$500	\$1000
37 Moderate (Drainage area 5 to 50 38 square miles)	\$200	\$400
39 Minor (Drainage area less than 40 5 square miles)	\$100	\$200
41 General Permit	\$100	\$200

42 (c) All fees collected by the chief engineer pursuant to this section
 43 shall be remitted to the state treasurer as provided in K.S.A. 2012 Supp.

1 82a-328, and amendments thereto.

2 Sec. 3. K.S.A. 2012 Supp. 82a-303b is hereby amended to read as
 3 follows: 82a-303b. (a) (1) In order to secure conformity with adopted rules
 4 and regulations and to assure compliance with the terms, conditions or
 5 restrictions of any consent or permit granted pursuant to the provisions of
 6 K.S.A. 82a-301 through 82a-303, and amendments thereto, the chief
 7 engineer or an authorized representative of the chief engineer shall have
 8 the power and the duty to inspect any dam or other water obstruction.
 9 Upon a finding pursuant to subsection (a) of K.S.A. 82a-303c, and
 10 amendments thereto, by the chief engineer that a dam is unsafe, the chief
 11 engineer shall order an annual inspection of the dam until it is either in
 12 compliance with all applicable provisions of this act, any rules and
 13 regulations promulgated pursuant to this act, permit conditions and orders
 14 of the chief engineer; or the dam is removed. The safety inspection shall be
 15 conducted by the chief engineer or authorized representative and the cost
 16 *of the inspection, as determined by the chief engineer,* shall be paid by the
 17 dam owner. The *hazard class and size of a dam provided for by the*
 18 ~~provisions of this act~~ shall be defined by rules and regulations adopted by
 19 the chief engineer pursuant to K.S.A. 82a-303a, and amendments thereto.
 20 ~~Inspection fees are as follows:~~

21	Size of Dam	Inspection fee
22	Class 1	\$1,500
23	Class 2	\$1,500
24	Class 3	\$2,500
25	Class 4	\$4,000

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

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

34 (4) Within 60 days of the date of inspection, a report of the inspection
 35 shall be provided to the chief engineer by the licensed professional
 36 engineer who conducted the inspection. The report shall document the
 37 physical condition of the dam, describing any deficiencies observed, an
 38 analysis of the capacity of the dam and its spillway works, compliance of
 39 the dam with approved plans and permit conditions, changes observed in
 40 the condition of the dam since the previous inspection, an assessment of
 41 the hazard classification of the dam including a statement that the engineer
 42 either agrees or disagrees with the current classification, and any other
 43 information relevant to the safety of the dam or specifically requested by

1 the chief engineer.

2 (5) Upon failure of a dam owner to comply with the applicable
 3 inspection interval, the chief engineer or such chief engineer's authorized
 4 representative shall conduct a mandatory inspection of the dam and the
 5 costs ~~as established by this act for~~ of the inspection, *as determined by the*
 6 *chief engineer, plus the penalties established by this act*, shall be paid by
 7 the owner, in addition to any other remedies provided for violations of this
 8 act. *Penalties are as follows:*

9	<i>Hazard Class</i>	<i>Penalty</i>
10	<i>B</i>	<i>\$2,500</i>
11	<i>C</i>	<i>\$4,000</i>

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

18 (b) For the purpose of inspecting any dam or other water obstruction,
 19 the chief engineer or an authorized representative of the chief engineer
 20 shall have the right of access to private property. Costs for any work which
 21 may be required by the chief engineer or the authorized representative
 22 prior to or as a result of the inspection of a dam or other water obstruction
 23 shall be paid by the owner, governmental agency or operator of such dam
 24 or other water obstruction.

25 (c) All fees *and penalties* collected by the chief engineer pursuant to
 26 this section shall be remitted to the state treasurer as provided in K.S.A.
 27 2012 Supp. 82a-328, and amendments thereto.

28 Sec. 4. K.S.A. 2012 Supp. 82a-301, 82a-302 and 82a-303b are hereby
 29 repealed.

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