

HOUSE BILL No. 2689

By Committee on Agriculture

1-24

AN ACT concerning dams, levees and other water obstructions; fees; inspections; amending K.S.A. 24-126, 82a-302 and 82a-303b and repealing the existing sections.

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

Section 1. K.S.A. 24-126 is hereby amended to read as follows: 24-126. (a) It shall be unlawful for any person, corporation, drainage or levee district, county, city or township, without first obtaining the approval of plans for the same by the chief engineer of the division of water resources, to construct, cause to be constructed, maintain or cause to be maintained, any levee or other such improvement on, along or near any stream of this state which is subject to floods, freshets or overflows, so as to control, regulate or otherwise change the flood waters of such stream. Any person, corporation, county, city, township or district violating any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment in the county jail for a period of not more than one year, or by both such fine and imprisonment. Each day any structure is maintained or caused to be maintained shall constitute a separate offense.

(b) Subject to the provisions of subsection ~~(e)~~ (e), plans submitted for approval shall include maps, profiles, cross sections, data and information as to the effect upon upstream and downstream areas resulting from the proposed levee or other such improvement, *the required fee as provided in subsection (c)* and such other data and information as the chief engineer of the division of water resources may require.

(c) (1) *Fill and levee approval fees shall be as follows:*

Type		Pre-construction	Construction in progress
Major	(Fill in defined floodway class C levee)	\$500	\$1000
Moderate	(Fill in flood plain without defined floodway class B levee)	\$300	\$600
Minor	(Fill in floodway fringe class A levee)	\$100	\$200

1 (2) *The greater fee for projects where construction began prior to*
2 *approval by the chief engineer is applicable in addition to any other pen-*
3 *alty under law for unapproved fill or levee construction. Projects that*
4 *require approval under both this act and obstructions in streams act,*
5 *K.S.A. 82a-301 et seq., and amendments thereto, shall be required to pay*
6 *only the greater of the two fees when seeking approval from the chief*
7 *engineer.*

8 (d) If the chief engineer finds from an examination of such plans and
9 pertinent information that the construction of the proposed levee or other
10 such improvement is feasible and not adverse to the public interest, the
11 chief engineer shall approve the ~~same~~ *proposed levee or other such im-*
12 *provement.* In determining whether or not the construction of any pro-
13 posed levee or other such improvement designed so as to reduce flood
14 risks to a chance of occurrence in any one year of 1% or less is adverse
15 to the public interest, the chief engineer shall consider the following: (1)
16 The effect upon areas downstream or upstream as a result of the con-
17 struction of such proposed levee or other such improvement; and (2) the
18 effect of the proposed levee or other such improvement and any other
19 existing or proposed levees or other such improvements upon down-
20 stream and upstream areas. In the event any such levee or other such
21 improvement is about to be constructed, is constructed or maintained by
22 any person, corporation, county, city, township or district without ap-
23 proval of plans by the chief engineer, it shall be the duty of the attorney
24 general, to file suit in a court of competent jurisdiction, to enjoin the
25 construction or maintenance of such levee or other such improvement.

26 ~~(e)~~ (e) For fills other than levees located in the floodway fringe within
27 a participating community as defined and identified in the national flood
28 insurance act, all required data and information shall be specified by rules
29 and regulations adopted by the chief engineer. Within 90 days of receipt
30 of plans and such data and information as required by the chief engineer
31 for fills other than levees located in the floodway fringe within a partici-
32 pating community as defined and identified by the national flood insur-
33 ance act, the chief engineer shall approve or disapprove the plans for such
34 fills. If the chief engineer fails to approve or disapprove a plan within the
35 ~~ninety-day~~ *90-day* period required by this section, such plan shall be
36 deemed approved. The chief engineer shall provide, in writing, specific
37 reasons for any disapproval which shall include any hydrologic and hy-
38 draulic analyses or other data upon which such disapproval is based.

39 ~~(f)~~ (f) Prior to the adoption of a general plan of drainage and flood
40 protection, as provided in K.S.A. 24-901, and amendments thereto, and
41 the commencement of construction in carrying such plan into effect, the
42 chief engineer of the division of water resources may give temporary
43 approval for the repair and maintenance of any levee or other drainage

1 work in existence on May 28, 1929; but such approval for such temporary
 2 repair and maintenance shall be without prejudice to withdrawal of such
 3 approval when a general plan shall be adopted. Nothing contained in this
 4 section shall apply to any drainage district heretofore organized under
 5 K.S.A. 24-401 *et seq.*, and amendments thereto, and having ~~therein~~ prop-
 6 erty of an assessed valuation of \$50,000,000 or more.

7 ~~(e)~~ (g) The chief engineer shall adopt such rules and regulations
 8 deemed necessary to administer and enforce the provisions of this section.

9 (h) *All fees collected by the chief engineer pursuant to this section*
 10 *shall be remitted to the state treasurer as provided in section 4, and*
 11 *amendments thereto.*

12 Sec. 2. K.S.A. 82a-302 is hereby amended to read as follows: 82a-
 13 302. (a) Each application for the consent or permit required by K.S.A.
 14 82a-301, *and amendments thereto*, shall be accompanied by complete
 15 maps, plans, profiles and specifications of such dam or other water ob-
 16 struction, or of the changes or additions proposed to be made in such
 17 dam or other water obstruction, *the required application fee as provided*
 18 *in subsection (b) unless otherwise exempted*, and such other data and
 19 information as the chief engineer may require.

20 (b) (1) *The application fee is based upon three criteria and are as*
 21 *follows:*

22 (A) *The size of the dam expressed in volume and height of dam as*
 23 *defined by regulation;*

24 (B) *the hazard class of dam, as defined by regulation; and*

25 (C) *the stage of construction when application is submitted. The ad-*
 26 *ditional fees for permits for construction begun prior to obtaining a permit*
 27 *are in addition to any other applicable penalty for an unpermitted struc-*
 28 *ture.*

29 *Fees for new dam applications*

30 Size	31 Hazard classification	32 A-construction in progress	33 B	34 B	35 C	36 C
37 1	38 \$150	\$300	\$300	\$600	\$450	\$900
39 2	\$400	\$800	\$600	\$1200	\$800	\$1600
40 3	\$600	\$1200	\$800	\$1600	\$1000	\$2000
41 4	\$800	\$1600	\$1000	\$2000	\$1200	\$2400

38 *Fees for dam modification applications*

39 Size	40 Pre-Construction	41 Construction in Progress
42 1	\$150	\$300
43 2	\$400	\$800
44 3	\$600	\$1200
45 4	\$800	\$1600

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

- (A) *The classification of the stream; and*
- (B) *the stage of construction when the application is submitted.*

<i>Stream classification</i>	<i>Pre-Construction</i>	<i>In Progress</i>
<i>Major (Drainage area greater than 50 square miles)</i>	<i>\$500</i>	<i>\$1000</i>
<i>Moderate (Drainage area 5 to 50 square miles)</i>	<i>\$200</i>	<i>\$400</i>
<i>Minor Drainage area less than 5 square miles)</i>	<i>\$100</i>	<i>\$200</i>
<i>General Permit</i>	<i>\$100</i>	<i>\$200</i>

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in section 4, and amendments thereto.

Sec. 3. K.S.A. 82a-303b is hereby amended to read as follows: 82a-303b. *(a) (1) In order to secure conformity with adopted rules and regulations and to assure compliance with the terms, conditions or restrictions of any consent or permit granted pursuant to the provisions of K.S.A. 82a-301 to through 82a-303, inclusive, and any amendment thereof and amendments thereto, the chief engineer or an authorized representative of the chief engineer shall have the power and it shall be his or her the duty to inspect any dam or other water obstruction. Upon a finding pursuant to subsection (a) of K.S.A. 82a-303c, and amendments thereto, by the chief engineer that a dam is unsafe, the chief engineer shall order an annual inspection of the dam until it is either in compliance with all applicable provisions of this act, any rules and regulations promulgated pursuant to this act, permit conditions and orders of the chief engineer; or the dam is removed. The safety inspection shall be conducted by the chief engineer or authorized representative and the cost shall be paid by the dam owner. Inspection fees are as follows:*

<i>Size of Dam (As Defined by Regulation)</i>	<i>Inspection fee</i>
<i>Class 1</i>	<i>\$1,500</i>
<i>Class 2</i>	<i>\$1,500</i>
<i>Class 3</i>	<i>\$2,500</i>
<i>Class 4</i>	<i>\$4,000.</i>

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

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

1 (4) *Within 60 days of the date of inspection a report of the inspection*
2 *shall be provided to the chief engineer by the licensed professional engi-*
3 *neer who conducted the inspection. The report shall document the phys-*
4 *ical condition of the dam, describing any deficiencies observed, an analysis*
5 *of the capacity of the dam and its spillway works, compliance of the dam*
6 *with approved plans and permit conditions, changes observed in the con-*
7 *dition of the dam since the previous inspection, an assessment of the haz-*
8 *ard classification of the dam including a statement that the engineer either*
9 *agrees or disagrees with the current classification, and any other infor-*
10 *mation relevant to the safety of the dam or specifically requested by the*
11 *chief engineer.*

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

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

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

30 (c) *All fees collected by the chief engineer pursuant to this section*
31 *shall be remitted to the state treasurer as provided in section 4, and*
32 *amendments thereto.*

33 New Sec. 4. *There is hereby created in the state treasury the water*
34 *structures fund. The chief engineer of the division of water resources,*
35 *Kansas department of agriculture shall remit all moneys received under*
36 *K.S.A. 82a-302, 82a-303b and 24-126, and amendments thereto, to the*
37 *state treasurer in accordance with the provisions of K.S.A. 75-4215, and*
38 *amendments thereto. Upon receipt of each such remittance, the state*
39 *treasurer shall deposit the entire amount in the state treasury to the credit*
40 *of the water structures fund. All expenditures from the water structures*
41 *fund shall be made in accordance with appropriation acts upon warrants*
42 *of the director of accounts and reports issued pursuant to vouchers ap-*
43 *proved by the secretary of agriculture or by a person designated by the*

1 secretary.

2 Sec. 5. K.S.A. 24-126, 82a-302 and 82a-303b are hereby repealed.

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

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