

SENATE BILL No. 436

AN ACT concerning dams, levees and other water obstructions; fees; inspections; amending K.S.A. 24-126, 82a-301, 82a-302 and 82a-303b and repealing the existing sections; also repealing K.S.A. 82a-304.

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

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

(d) If the chief engineer finds from an examination of such plans and pertinent information that the construction of the proposed levee or other such improvement is feasible and not adverse to the public interest, the chief engineer shall approve the ~~same~~ *proposed levee or other such improvement*. In determining whether or not the construction of any proposed levee or other such improvement designed so as to reduce flood risks to a chance of occurrence in any one year of 1% or less is adverse to the public interest, the chief engineer shall consider the following: (1) The effect upon areas downstream or upstream as a result of the construction of such proposed levee or other such improvement; and (2) the effect of the proposed levee or other such improvement and any other existing or proposed levees or other such improvements upon downstream and upstream areas. In the event any such levee or other such improvement is about to be constructed, is constructed or maintained by any person, corporation, county, city, township or district without approval of plans by the chief engineer, it shall be the duty of the attorney general, to file suit in a court of competent jurisdiction, to enjoin the construction or maintenance of such levee or other such improvement.

~~(e)~~ (e) For fills other than levees located in the floodway fringe within a participating community as defined and identified in the national flood insurance act, all required data and information shall be specified by rules and regulations adopted by the chief engineer. Within 90 days of receipt of plans and such data and information as required by the chief engineer for fills other than levees located in the floodway fringe within a participating community as defined and identified by the national flood insurance act, the chief engineer shall approve or disapprove the plans for such fills. If the chief engineer fails to approve or disapprove a plan within the ~~ninety-day~~ 90-day period required by this section, such plan shall be deemed approved. The chief engineer shall provide, in writing, specific

reasons for any disapproval which shall include any hydrologic and hydraulic analyses or other data upon which such disapproval is based.

~~(d)~~ (f) Prior to the adoption of a general plan of drainage and flood protection, as provided in K.S.A. 24-901, and amendments thereto, and the commencement of construction in carrying such plan into effect, the chief engineer of the division of water resources may give temporary approval for the repair and maintenance of any levee or other drainage work in existence on May 28, 1929; but such approval for such temporary repair and maintenance shall be without prejudice to withdrawal of such approval when a general plan shall be adopted. Nothing contained in this section shall apply to any drainage district heretofore organized under K.S.A. 24-401 *et seq.*, and amendments thereto, and having ~~therein~~ property of an assessed valuation of \$50,000,000 or more.

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

(h) *All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in section 5, and amendments thereto.*

Sec. 2. K.S.A. 82a-301 is hereby amended to read as follows: 82a-301. (a) Without the prior written consent or permit of the chief engineer of the division of water resources of the ~~state board~~ *Kansas department* of agriculture, it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to: ~~(a)~~ (1) Construct any dam or other water obstruction; ~~(b)~~; (2) make, construct or permit to be made or constructed any change in any dam or other water obstruction; ~~(c)~~; (3) make or permit to be made any change in or addition to any existing water obstruction; or ~~(d)~~ (4) change or diminish the course, current, or cross section of any stream within this state. Any application for any permit or consent shall be made in writing in such form as specified by the chief engineer. Jetties or revetments for the purpose of stabilizing a caving bank which are properly placed shall not be construed as obstructions for the purposes of this section.

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

Sec. 3. K.S.A. 82a-302 is hereby amended to read as follows: 82a-302. (a) Each application for the consent or permit required by K.S.A. 82a-301, *and amendments thereto*, shall be accompanied by complete maps, plans, profiles and specifications of such dam or other water obstruction, or of the changes or additions proposed to be made in such dam or other water obstruction, *the required application fee as provided in subsection (b) unless otherwise exempted*, and such other data and information as the chief engineer may require. *The chief engineer shall maintain a list of licensed professional engineers who may conduct the review of any application for the consent or permit required by K.S.A. 82a-301, and amendments thereto. Such list may include licensed professional engineers employed by a local unit of government. Notwithstanding any law to the contrary, an applicant for the consent or permit required by K.S.A. 82a-301, and amendments thereto, may have the application reviewed by a licensed professional engineer approved by the chief engineer pursuant to this subsection provided such engineer is not an employee of the applicant. If such licensed professional engineer finds that such dam or other water obstruction meets established standards for the construction, modification, operation and maintenance of dams and other water obstructions, such findings shall be submitted in complete form to the chief engineer. Upon such submittance, the chief engineer shall grant such consent or permit within 45 days unless the chief engineer finds to the contrary that such dam or other water obstruction does not meet established standards for the construction, modification, operation and*

maintenance of dams and other water obstructions. If the chief engineer declines to grant such consent or permit based upon a contrary finding, the chief engineer shall provide to the applicant within 15 days a written explanation setting forth the basis for the chief engineer's contrary finding. The chief engineer's action in declining to grant such consent or permit and any hearing related thereto shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Any person aggrieved by any order or decision of the chief engineer shall be entitled to appellate review in accordance with the provisions of the act for judicial review and civil enforcement of agency actions. Such applicant shall pay all costs associated with the review by the licensed professional engineer.

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

Fees for new dam or dam modification applications

<i>Pre-Construction</i>	<i>Construction In Progress</i>
<i>\$200</i>	<i>\$500</i>

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

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

<i>Drainage Area Category</i>	<i>Pre-Construction</i>	<i>Construction 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 5, and amendments thereto.

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

<i>Size of Dam</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 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 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.

(4) Within 60 days of the date of inspection, a report of the inspection shall be provided to the chief engineer by the licensed professional engineer who conducted the inspection. The report shall document the physical condition of the dam, describing any deficiencies observed, an analysis

of the capacity of the dam and its spillway works, compliance of the dam with approved plans and permit conditions, changes observed in the condition of the dam since the previous inspection, an assessment of the hazard classification of the dam including a statement that the engineer either agrees or disagrees with the current classification, and any other information relevant to the safety of the dam or specifically requested by the chief engineer.

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

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

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

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in section 5, and amendments thereto.

New Sec. 5. There is hereby created in the state treasury the water structures fund. The chief engineer of the division of water resources, Kansas department of agriculture shall remit all moneys received under K.S.A. 82a-302, 82a-303b and 24-126, and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the water structures fund. All expenditures from the water structures fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of agriculture or by a person designated by the secretary.

New Sec. 6. On or before January 1, 2003, the secretary of agriculture shall submit and present a report to the committee on agriculture of the senate and house of representatives of the state of Kansas summarizing the department's efforts to affect changes in the water structures program, review of the structure of the water resources programs and actions related to the recommendations of the performance audit report of the legislative division of post audit submitted in March of 2002.

New Sec. 7. On or before January 1, 2003, the secretary of agriculture and the chief engineer shall evaluate the department's current policies and present a report outlining the strengths and weaknesses of a watershed approach to the permitting of proposed dams and other stream obstructions. Such report shall include a review of its permittance procedure in this area to evaluate both upstream and downstream impacts of the proposed stream obstruction. The chief engineer shall consult with counties, cities and other stakeholders and shall hold at least two public hearings as a component of the report development. The secretary and chief engineer shall make recommendations to the legislature with regard to clarifying the program's obligations to upstream and downstream landowners.

Sec. 8. K.S.A. 24-126, 82a-301, 82a-302, 82a-303b and 82a-304 are hereby repealed.

Sec. 9. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.