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4 **Senate Substitute for**
5
6 **Substitute for HOUSE BILL No. 2219**

7
8 By Committee on Natural Resources

9
10 3-25

11
12 AN ACT concerning classified stream segments; relating to recreational
13 use; amending K.S.A. 2002 Supp. 82a-2001 and repealing the existing
14 section.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 “Section. 1. K.S.A. 2002 Supp. 82a-2001 is hereby amended to read
18 as follows: 82a-2001. As used in this act:

19 (a) (1) “Classified stream segments” shall include all stream seg-
20 ments that are waters of the state as defined in subsection (a) of K.S.A.
21 65-161, and amendments thereto, and waters described in subsection (d)
22 of K.S.A. 65-171d, and amendments thereto, that:

23 (A) Are indicated on the federal environmental protection agency’s
24 reach file 1 (RF1) (1982) and have the most recent 10-year median flow
25 of equal to or in excess of \pm one cubic foot per second based on data
26 collected and evaluated by the United States geological survey or in the
27 absence of stream segment flow data, calculations of flow conducted by
28 extrapolation methods provided by the United States geological survey;

29 (B) have the most recent 10-year median flow of equal to or in excess
30 of \pm one cubic foot per second based on data collected and evaluated by
31 the United States geological survey or in the absence of stream segment
32 flow data, calculations of flow conducted by extrapolation methods pro-
33 vided by the United States geological survey;

34 (C) are actually inhabited by threatened or endangered aquatic spe-
35 cies listed in rules and regulations promulgated by the Kansas department
36 of wildlife and parks or the United States fish and wildlife service;

37 (D) (i) scientific studies conducted by the department show that
38 ~~pooling of water~~ during periods of ~~zero~~ *flow less than one cubic foot per*
39 *second stream segments provides provide* important refuges for aquatic
40 life and ~~permits~~ *permit* biological recolonization of intermittently flowing
41 segments; and

42 (ii) a cost/benefit analysis conducted by the department and taking
43 into account the economic and social impact of classifying the stream

1 segment indicates that the benefits of classifying the stream segment out-
2 weigh the costs of classifying the stream segment, as consistent with the
3 federal clean water act and federal regulations; or

4 (E) are at the point of discharge on the stream segment and down-
5 stream from such point where the department has issued a national pol-
6 lutant discharge elimination system permit other than a permit for a con-
7 fined feeding facility, as defined in K.S.A. 65-171d, and amendments
8 thereto.

9 (2) Classified stream segments other than those described in subsec-
10 tion (a)(1)(E) shall not include ephemeral streams; grass, vegetative or
11 other waterways; culverts; or ditches.

12 (3) Any definition of classified stream or “classified stream segment”
13 in rules and regulations or law that is inconsistent with this definition is
14 hereby declared null and void.

15 (b) “Department” means the department of health and environment.

16 (c) “Designated uses of classified stream segments” shall be defined
17 as follows:

18 (1) “Agricultural water supply use” means the use of a classified
19 stream segment for agricultural purposes, including the following:

20 (A) “Irrigation” means the withdrawal of water from a classified
21 stream segment for application onto land; or

22 (B) “livestock watering” means the provision of water from a classi-
23 fied stream segment to livestock for consumption.

24 (2) “Aquatic life support use” means the use of a classified stream
25 segment for the maintenance of the ecological integrity of streams, lakes
26 and wetlands, including the sustained growth and propagation of native
27 aquatic life; naturalized, important, recreational aquatic life; and indige-
28 nous or migratory ~~semi-aquatic~~ *semiaquatic* or terrestrial wildlife directly
29 or indirectly dependent on surface water for survival. Categories of
30 aquatic life support use include:

31 (A) “Special aquatic life use waters” means classified stream seg-
32 ments that contain combinations of habitat types and indigenous biota
33 not found commonly in the state, or classified stream segments that con-
34 tain representative populations of threatened or endangered species, that
35 are listed in rules and regulations promulgated by the Kansas department
36 of wildlife and parks or the United States fish and wildlife service.

37 (B) “Expected aquatic life use waters” means classified stream seg-
38 ments containing habitat types and indigenous biota commonly found or
39 expected in the state.

40 (C) “Restricted aquatic life use waters” means classified stream seg-
41 ments containing indigenous biota limited in abundance or diversity by
42 the physical quality or availability of habitat, due to natural deficiencies
43 or artificial modifications, compared to more suitable habitats in adjacent

1 waters.

2 (3) “Domestic water supply” means the use of a classified stream
3 segment, after appropriate treatment, for the production of potable water.

4 (4) “Food procurement use” means the use of a classified stream
5 segment for the obtaining of edible forms of aquatic or ~~semi-aquatic~~
6 *semiaquatic* life for human consumption.

7 (5) “Groundwater recharge use” means the use of a classified stream
8 segment for the replenishing of fresh or usable groundwater resources.
9 This use may involve the infiltration and percolation of surface water
10 through sediments and soils or the direct injection of surface water into
11 underground aquifers.

12 (6) “Industrial water supply use” means the use of a classified stream
13 segment for nonpotable purposes by industry, including withdrawals for
14 cooling or process water.

15 (7) (A) “Recreational use” means:

16 (i) Primary contact recreational use is use of a classified stream seg-
17 ment for recreation during the period from ~~April 1~~ ~~May 1~~ **[April 1]**
18 through October 31 of each year, provided such classified stream segment
19 ~~(a) by law or written permission of the landowner is open to and accessible~~
20 ~~by the public and (b) is capable of supporting the recreational activities~~
21 of swimming, skin diving, ~~water skiing~~ *water skiing*, wind surfing, ~~boating~~
22 *kayaking* or mussel harvesting where the body is intended to be immersed
23 in surface water to the extent that some inadvertent ingestion of water is
24 probable;

25 *(a) Primary contact recreational use-Class A: Use of a classified*
26 *stream segment for recreation during the period from* ~~May 1~~ **[April 1]**
27 *through October 31 of each year, and the classified stream segment is a*
28 *designated public swimming area. Water quality criterion for bacterial*
29 *indicator organisms applied to Class A waters shall be set at an illness*
30 *rate of eight or more per 1000 swimmers. If through routine monitoring,*
31 *a sample collected exceeds the primary* ~~recreation~~ **[contact reactional]**
32 *use-Class A single-sample criterion, then at least five more samples shall*
33 *be collected in separate 24-hour periods over a 30-day period to calculate*
34 *a geometric mean. The classified stream segment shall only be considered*
35 *impaired for primary* ~~recreation~~ **[contact reactional]** *use-Class A if the*
36 *geometric mean of the five samples exceeds the corresponding water qual-*
37 *ity criterion. The water quality criterion for primary contact* ~~recreation~~
38 **[reactional]** *use-Class A waters during the period November 1 through*
39 ~~April 30~~ **[March 31]** *of each year shall be equal to the criterion applied*
40 *to secondary contact* ~~recreation~~ **[reactional]** *use-Class A waters.*

41 *(b) Primary contact recreational use-Class B: Use of a classified*
42 *stream segment for recreation, where moderate full body contact recrea-*
43 *tion is expected, during the period from* ~~May 1~~ **[April 1]** *through October*

1 31 of each year, and the classified stream segment is by law or written
2 permission of the landowner open to and accessible by the public. Water
3 quality criterion for bacterial indicator organisms applied to Class B wa-
4 ters shall be set at an illness rate of 10 or more per 1000 swimmers. If
5 through routine monitoring, a sample collected exceeds the primary ~~re-
6 creation~~ **[contact reactional]** use-Class B single-sample criterion, then at
7 least five more samples shall be collected in separate 24-hour periods over
8 a 30-day period to calculate a geometric mean. The classified stream seg-
9 ment shall only be considered impaired for primary ~~recreation~~ **[contact**
10 **reactional]** use-Class B if the geometric mean of the five samples exceeds
11 the corresponding water quality criterion. The water quality criterion for
12 primary contact ~~recreation~~ **[reactional]** use-Class B waters during the
13 period November 1 through ~~April 30~~ **[March 31]** of each year shall be
14 equal to the criterion applied to secondary contact ~~recreation~~ **[reac-**
15 **tional]** use-Class A waters.

16 (c) Primary contact recreational use-Class C: Use of a classified
17 stream segment for recreation, where full body contact recreation is in-
18 frequent during the period from ~~May 1~~ **[April 1]** through October 31 of
19 each year, and is not open to and accessible by the public under Kansas
20 law and is capable of supporting the recreational activities of swimming,
21 skin diving, water-skiing, wind surfing, boating, mussel harvesting, wad-
22 ing or fishing. Water quality criterion for bacterial indicator organisms
23 applied to Class C waters shall be set at an illness rate of 12 or more per
24 1000 swimmers. If through routine monitoring, a sample collected exceeds
25 the primary ~~recreation~~ **[contact reactional]** use-Class C single-sample
26 criterion, then at least five more samples shall be collected in separate 24-
27 hour periods over a 30-day period to calculate a geometric mean. The
28 classified stream segment shall only be considered impaired for primary
29 ~~recreation~~ **[contact reactional]** use-Class C if the geometric mean of the
30 five samples exceeds the corresponding water quality criterion. The water
31 quality criterion for primary contact ~~recreation~~ **[reactional]** use-Class C
32 waters during the period November 1 through ~~April 30~~ **[March 31]** of
33 each year shall be equal to the criterion applied to secondary contact
34 ~~recreation~~ **[reactional]** use-Class B waters.

35 (ii) Secondary contact recreational use:
36 —(a) is use of a classified stream segment for recreation, provided such
37 classified stream segment (1) by law or by written permission of the land-
38 owner is open to and accessible by the public and (2) is capable of sup-
39 porting the recreational activities of wading ~~or~~, fishing, canoeing, motor
40 boating, rafting or other types of boating where the body is not intended
41 to be immersed and where ingestion of surface water is not probable; ~~or~~.

42 (a) Secondary contact recreational use-Class A: Use of a classified
43 stream segment for recreation capable of supporting the recreational ac-

1 *tivities of wading or fishing and the classified stream segment is by law*
2 *or written permission of the landowner open to and accessible by the*
3 *public. Water quality criterion for bacterial indicator organisms applied*
4 *to secondary contact recreational use-Class A waters shall be nine times*
5 *the criterion applied to primary contact recreational use-Class B waters.*
6 *If through routine monitoring, a sample collected exceeds the secondary*
7 ~~*recreation*~~ **[contact recreational]** *use-Class A single-sample criterion,*
8 *then at least five more samples shall be collected in separate 24-hour*
9 *periods over a 30-day period to calculate a geometric mean. The classified*
10 *stream segment shall only be considered impaired for secondary ~~recrea-~~*
11 ~~*tion*~~ **[contact reactional]** *use-Class A if the geometric mean of the five*
12 *samples exceeds the corresponding water quality criterion.*

13 (b) *Secondary contact recreational use-Class B: Use of a classified*
14 *stream segment for recreation capable of supporting the recreational ac-*
15 *tivities of wading or fishing and the classified stream segment is not open*
16 *to and accessible by the public under Kansas law. Water quality criterion*
17 *for bacterial indicator organisms applied to secondary contact recrea-*
18 *tional use-Class B waters shall be nine times the criterion applied to pri-*
19 *mary contact recreational-Class C use waters. If through routine moni-*
20 *toring, a sample collected exceeds the secondary ~~recreation~~ **[contact***
21 ***reactional]*** *use-Class B single-sample criterion, then at least five more*
22 *samples shall be collected in separate 24-hour periods over a 30-day pe-*
23 *riod to calculate a geometric mean. The classified stream segment shall*
24 *only be considered impaired for secondary ~~recreation~~ **[contact reac-***
25 ***tional]*** *use-Class B if the geometric mean of the five samples exceeds the*
26 *corresponding water quality criterion.*

27 ~~(b) is use of a classified stream segment for recreation, provided such~~
28 ~~classified stream segment (1) is not open to and accessible by the public~~
29 ~~under Kansas law and (2) is capable of supporting the recreational activ-~~
30 ~~ities of swimming, skin diving, water skiing, wind surfing, boating, mussel~~
31 ~~harvesting, wading or fishing.~~

32 (B) *If opposite sides of a classified stream segment would have dif-*
33 *ferent designated recreational uses due to differences in public access,*
34 *the designated use of the entire classified stream segment may be the*
35 *higher attainable use, notwithstanding that such designation does not*
36 *grant the public access to both sides of such segment.*

37 (C) *Recreational use designations shall not apply to stream segments*
38 *where the natural, ephemeral, intermittent or low flow conditions or wa-*
39 *ter levels prevent recreational activities.*

40 (d) *“Ephemeral stream” means streams that flow only in response to*
41 *precipitation and whose channel is at all times above the water table.*

42 (e) *“Secretary” means the secretary of health and environment.*

43 *New Sec. 2. The secretary of the Kansas department of health and*

1 environment shall develop and publish proposed rules and regulations to
2 incorporate the provisions of this act, in accordance with the rules and
3 regulations filing act, on or before July 1, 2003.

4 Sec. 3. K.S.A. 2002 Supp. 82a-2001 is hereby repealed.

5 Sec. 4. This act shall take effect and be in force from and after its
6 publication in the Kansas register.

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