

## HOUSE BILL No. 2353

By Committee on Agriculture and Natural Resources

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9 AN ACT concerning fills, levees and other water obstructions; relating  
10 to unconsolidated material storage stockpiles or safety berms; amend-  
11 ing K.S.A. 2006 Supp. 24-126 and repealing the existing section.  
12

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

14 Section 1. K.S.A. 2006 Supp. 24-126 is hereby amended to read as  
15 follows: 24-126. (a) It shall be unlawful for any person, corporation, drain-  
16 age or levee district, county, city or township, without first obtaining the  
17 approval of plans for the same by the chief engineer of the division of  
18 water resources, to construct, cause to be constructed, maintain or cause  
19 to be maintained, any levee or other such improvement on, along or near  
20 any stream of this state which is subject to floods, freshets or overflows,  
21 so as to control, regulate or otherwise change the flood waters of such  
22 stream. Any person, corporation, county, city, township or district violat-  
23 ing any provision of this act shall be deemed guilty of a misdemeanor,  
24 and upon conviction shall be punished by a fine of not less than \$100 nor  
25 more than \$1,000, or by imprisonment in the county jail for a period of  
26 not more than one year, or by both such fine and imprisonment. Each  
27 day any structure is maintained or caused to be maintained shall consti-  
28 tute a separate offense.

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

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

36 Type		Pre-	Construction
37		Construction	In Progress
38 Major	(Fill in defined floodway class C levee)	\$500	\$1000
39 Moderate	(Fill in flood plain without defined floodway		
40	class B levee)	\$300	\$600
41 Minor	(Fill in floodway fringe class A levee)	\$100	\$200

42 (2) The construction in progress fee shall be applicable for projects  
43 where construction began prior to approval by the chief engineer. Such

1 fee shall be in addition to any other penalty under law for unapproved  
2 fill or levee construction. Projects that require approval under both this  
3 act and obstructions in streams act, K.S.A. 82a-301 et seq., and amend-  
4 ments thereto, shall be required to pay only the greater of the two fees  
5 when seeking approval from the chief engineer.

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

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

37 (f) Prior to the adoption of a general plan of drainage and flood pro-  
38 tection, as provided in K.S.A. 24-901, and amendments thereto, and the  
39 commencement of construction in carrying such plan into effect, the chief  
40 engineer of the division of water resources may give temporary approval  
41 for the repair and maintenance of any levee or other drainage work in  
42 existence on May 28, 1929; but such approval for such temporary repair  
43 and maintenance shall be without prejudice to withdrawal of such ap-

1 proval when a general plan shall be adopted. Nothing contained in this  
2 section shall apply to any drainage district heretofore organized under  
3 K.S.A. 24-401 et seq., and amendments thereto, and having property of  
4 an assessed valuation of \$50,000,000 or more.

5 *(g) For purposes of this section, "levee or other such improvement"*  
6 *or "fill" shall not include unconsolidated material storage stockpiles or*  
7 *safety berms.*

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

10 ~~(h)~~ (i) All fees collected by the chief engineer pursuant to this section  
11 shall be remitted to the state treasurer as provided in K.S.A. 2006 Supp.  
12 82a-328, and amendments thereto.

13 Sec. 2. K.S.A. 2006 Supp. 24-126 is hereby repealed.

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