

SESSION OF 2002

SUPPLEMENTAL NOTE ON SENATE BILL NO. 436

As Amended by House Committee on Agriculture

Brief*

SB 436 would create the Water Structures Fund in the State Treasury and moneys from fees imposed under this bill would be deposited into the fund.

Among other items, the bill would institute new fees for persons wishing to construct fills or levees and would distinguish between the type of the project and whether construction began prior to the approval of the project by the Chief Engineer of the Division of Water Resources. The construction in progress fee would be for those projects where construction began prior to approval by the Chief Engineer. These fees would be in addition to any other penalty under law for unapproved fill or levee construction. Under the bill, the following fees would be charged.

<u>Type</u>	<u>Pre-construction Fee</u>	<u>Construction in Progress Fee</u>
Major	\$500	\$1,000
Moderate	\$300	\$600
Minor	\$100	\$200

In addition, the bill would establish a definition for "dam" to mean any artificial barrier including appurtenant works with the ability to impound water, wastewater, 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 of water. The bill also repeals KSA

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org/cgi-bin/fulltext/bills.cgi>

82a-304, which would have made any dam with a storage capacity of 30 acre feet or more regulated by the Division of Water Resources.

The bill also would allow persons wishing to construct a dam or water obstruction to have the application reviewed by a third-party licensed professional engineer approved by the Chief Engineer. If the third-party licensed professional engineer finds that the dam or water obstruction meets established standards for the structure, then the Chief Engineer could grant the application. The applicant would pay all costs associated with the review by the third-party licensed professional engineer.

In addition, new fees would be established for dams based upon whether the construction began prior to approval by the Chief Engineer. Fees for new dam or dam modifications would be \$200 for pre-construction and \$500 for those where construction is in progress.

New fees for stream obstructions or channel changes would be based upon drainage area and the stage of construction and are outlined below.

<u>Drainage Area Category</u>	<u>Pre-construction</u>	<u>Construction in Progress</u>
Major (greater than 50 sq. mi.)	\$500	\$1,000
Moderate (area 5 to 50 sq. mi.)	\$200	\$400
Minor (area less than 5 sq. mi.)	\$100	\$200
General Permit	\$100	\$200

Further, the bill would require the Chief Engineer to annually inspect any dam determined to be unsafe until it is in compliance with law. The bill would establish inspection fees for the safety inspection based on the class and size of the dam and as provided for by rules and regulations adopted by the Chief Engineer. The inspection fees would be as follows.

<u>Size of Dam</u>	<u>Inspection Fee</u>
Class 1	\$1,500
Class 2	\$1,500
Class 3	\$2,500
Class 4	\$4,000

The bill would require each hazard class C dam to have a safety inspection conducted by a licensed professional engineer qualified in design, construction, maintenance, and operation of dams once every three years. The same would be required of hazard class B dams, except the inspection would be required every five years. The qualified engineer would be required to report within 60 days of inspection to the Chief Engineer. If the inspection does not occur, then a mandatory inspection would occur and the costs for the inspection would be paid for by the owner, in addition to any other remedies provided for violations of the act. Failure to file a complete and timely report as required, or the failure to submit fees would be deemed a violation of the Stream Obstruction Act, and subject to the penalties in KSA 82a-305a.

The bill also would require the Secretary of Agriculture, on or before January 1, 2003, to submit and present a report to the House and Senate Agriculture Committees summarizing the Department's efforts to affect changes in the Water Structures Program, especially with respect to the recent performance audit report of the Legislative Division of Post Audit.

Finally, the bill would require the Secretary of Agriculture and the Chief Engineer to evaluate the Department of Agriculture's current policies and present a report on or before January 1, 2003, outlining the strengths and weaknesses of a watershed approach to the permitting of dams and other stream obstructions. The bill would require the Chief Engineer to consult with counties, cities, and other stakeholders as a component of the development of the report. The Chief Engineer would hold at least two public meetings. The Secretary and the Chief Engineer would make recommendations to the Legislature with regard to clarifying the program's obligations to upstream and downstream landowners.

Background

This bill was introduced at the request of the Secretary of Agriculture as one of the measure to enhance revenue to fund various programs within the agency.

The major amendments made to the bill by the Senate Committee on Agriculture included the following:

1. Repeal the provision of law that requires all dams with 30 acre feet or more of capacity to be included in the agency's program;
2. Provide that dams having a height of 25 feet or more or which is six feet or greater and has the capacity to impound 50 acre feet or more would be those covered under the Water Structures Program of the agency;
3. Modify the bill's original proposal with several size and hazard classifications with associated fees and make the dam fee either for pre-construction or for construction in progress;
4. Allow applicants to submit plans reviewed by licensed professional engineers in order to obtain a permit; and
5. Require that the Secretary of Agriculture report to the standing agriculture committees on the progress of the Water Structures Program.

The fiscal note on the original bill indicates that it would have generated \$164,950 in fees during FY 2003.

The Senate Committee of the Whole amended the bill to clarify that when an applicant for a permit for a dam or water obstruction has the plan reviewed by a licensed professional engineer, the review would be conducted by a "third-party" licensed professional engineer. In addition, the language dealing with outside review of these plans was modified to make it permissive rather than mandatory for the Chief Engineer to grant the consent or permit.

The House Committee on Agriculture amended the bill to require the Secretary of Agriculture and the Chief Engineer to 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 water obstructions on or before January 1, 2003. Recommendations are to be made to the Legislature with regard to clarifying the program's obligations to upstream and downstream landowners. Other amendments were technical.