

HOUSE BILL No. 2363

AN ACT concerning water; relating to wastewater regulations; relating to streams, dams and obstructions; amending K.S.A. 82a-307 and K.S.A. 2012 Supp. 82a-301, 82a-302, 82a-303b, 82a-326, 82a-734 and 82a-1901 and repealing the existing sections; also repealing K.S.A. 24-105, 24-107, 82a-312, 82a-313, 82a-314 and K.S.A. 2012 Supp. 24-106, 74-509, 82a-307a, 82a-326a and 82a-735.

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

New Section 1. (a) Subject to existing water rights and the principle of beneficial use, the chief engineer may grant, upon application made therefor, limited transfer permits to authorize the use of up to 4,000,000 gallons from an existing water right. The term of such limited transfer permit will be limited to a single calendar year. Each application submitted for a limited transfer permit shall be on a form prescribed by the chief engineer and accompanied by an application fee of \$200.

(b) (1) If the base water right is groundwater, the use of water can be transferred to another well within the same source of supply within two miles.

(2) If the base water right is surface water, the use can be transferred to another surface water use within the same surface water system.

(c) The chief engineer shall adopt rules and regulations to effectuate and administer the provisions of this section. Such rules and regulations shall require that there is no increase in consumptive use enabled by the transfer permit, prescribe necessary recordkeeping and reporting requirements, prevent impairment of existing rights and address any other matter deemed necessary by the chief engineer to protect the public interest.

(d) Nothing in this section shall be deemed to vest in the holder of any permit granted pursuant to provisions of this section any permanent right to appropriate water except as is provided by such permit.

(e) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 82a-731, and amendments thereto.

(f) This section shall be part of and supplemental to the Kansas water appropriation act.

New Sec. 2. Any rules and regulations adopted by the secretary of health and environment pursuant to K.S.A. 65-171d, and amendments thereto, shall not apply to land-based sand and gravel pits or aggregate mining operations utilizing washwater ponds if the only water or wastewater directed to the dredge pit or washwater pond consists of the following:

- (a) Dredge return flows;
- (b) flows generated from aggregate classification; or
- (c) flows from washing aggregate, if water used in such flows is returned to the dredge pit or washwater pond.

Sec. 3. K.S.A. 2012 Supp. 82a-734 is hereby amended to read as follows: 82a-734. (a) An operator shall notify the chief engineer of the location and area extent of any existing or proposed sand and gravel pit to be excavated, expanded or operated by the operator.

(b) The net evaporation of water exposed as the result of the opening or operation of sand and gravel pits shall be construed to be a beneficial use or diversion of water for the purposes of the Kansas water appropriation act, K.S.A. 82a-701 et seq., and amendments thereto, if the sand and gravel pit is opened or operated in a township where the average annual potential net evaporation is greater than 18 inches per year, as determined by the chief engineer.

(c) If the chief engineer determines that an existing or proposed sand and gravel pit operation is a beneficial use of water, the operator shall apply to the chief engineer for a permit to appropriate water in accordance with the Kansas water appropriation act or otherwise acquire ownership or control of sufficient water rights, or by other methods pursuant to rules and regulations adopted by the chief engineer, or both, to offset net evaporation for the operation. The chief engineer may reduce this required offset based on the estimated use of groundwater by the existing vegetation.

(d) (1) The permit shall authorize net evaporation as the primary use, and hydraulic dredging and sand washing as secondary uses of water if such secondary uses are located within the same source of supply and are associated with the operation. Any secondary uses shall use water in a manner in which there is no significant net consumptive use. The permit

shall not be subject to the installation of a water flow meter or administration of minimum desirable stream flow. *Where the average potential net evaporation is less than 18 inches per year as determined by the chief engineer, the chief engineer shall issue a single term permit for the life of the project, not to exceed 80 years, for such secondary uses.*

(2) The secondary uses shall be granted for the proposed life of the project or until the exhaustion of sand and gravel reserves. At the end of the industrial project, the owner shall file an application authorized by K.S.A. 82a-708b, and amendments thereto, to change the primary use made of water to recreational use to authorize the net evaporation use caused by the exposed groundwater.

(3) If a permit is denied, the chief engineer shall set forth all reasons for such denial.

(4) Any applicant who is denied a project permit by a final order of the chief engineer under this section may appeal such order in the manner provided by the Kansas judicial review act.

(5) Any application for a project permit shall be accompanied by a filing fee of \$500 and any request for modification shall be accompanied by a fee of \$250. Applicants for a project permit under this section shall not be required to pay fees pursuant to K.S.A. 82a-708a and 82a-708c, and amendments thereto, as part of such application.

(e) (1) The initial period of time allowed to complete construction of diversion works pursuant to an approved application to appropriate water for the purpose of net evaporation from a sand and gravel pit operation shall be reasonable and consistent with the proposed use. The chief engineer may allow extension of such period by not to exceed two 10-year extensions if it can be shown that the operation requires the additional time for the operator to satisfy the operator's market demand in the area. The two 10-year extensions may be granted at the same time, to run consecutively, if the applicant submits to the chief engineer a written development plan.

(2) The period of time allowed to perfect an approved application to appropriate water for the purpose of net evaporation from a sand and gravel pit operation shall be not less than 20 years and, for good cause shown, the chief engineer may allow one or more 10-year extensions of such period. The chief engineer shall consider the time needed until exhaustion of proven reserves, closure in accordance with the surface land reclamation and mining act, K.S.A. 49-601 et seq., and amendments thereto, and the availability of water for the proposed use, but in no case shall allow longer than 80 years for perfection.

(3) Nothing herein shall require an extension of time to construct diversion works or to perfect a water right if there is demonstrable impairment of a use under an existing water right from the same source of supply, as determined pursuant to K.S.A. 82a-711, and amendments thereto.

(4) Upon examination of the diversion works for sand and gravel operations, the chief engineer or the chief engineer's duly authorized representative shall, within 90 days of the examination, notify the applicant if there was a failure to construct the diversion works at the authorized location or any deficiency of the terms and conditions of the permit. This notice will provide steps necessary to gain compliance with state law. If the chief engineer fails to examine the diversion works within two years of the notice of completion for any sand and gravel operation diversion works, the applicant shall not be required to forfeit priority date as a result of failure to construct a diversion works at the authorized location or any deficiency of the terms and conditions of the permit.

(f) Net evaporation from sand and gravel pits, as calculated by the chief engineer, will be reported as an industrial use to the director of taxation for the purpose of assessing the water protection fee pursuant to K.S.A. 82a-954, and amendments thereto.

(g) This section shall be part of and supplemental to the Kansas water appropriations act.

Sec. 4. K.S.A. 2012 Supp. 82a-301 is hereby amended to read as follows: 82a-301. (a) *(1)* Except as provided in ~~subsection~~ *subsections (c) and (d)*, without the prior written consent or permit of the chief engineer of the division of water resources of the Kansas department of agriculture,

it shall be unlawful for any person, partnership, association, corporation or agency or political subdivision of the state government to: ~~(1)~~

~~(A)~~ Construct, *modify or add to* any dam or other water obstruction; ~~(2)(B)~~ make, construct, *modify or permit to be made or constructed* any change in any dam or other *add to any* water obstruction in a designated stream;

~~(3)~~ make or permit to be made any change in or addition to any existing water obstruction; or

~~(4)(C)~~ change or diminish the course, current, or cross section of any designated stream within this state.

(2) Any application for any permit or consent shall be made in writing in such form as specified by the chief engineer.

(3) ~~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:

(1) “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 a storage volume at the top of the emergency spillway elevation of 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 *measured from the lowest elevation of the streambed, downstream toe or outside limit of the dam to the elevation of the top of the dam.*

(2) “Designated stream” means a natural or man-made channel that conveys drainage or runoff from a watershed having an area of:

(A) One or more square miles in zone one, which includes all geographic points located in or east of Washington, Clay, Dickinson, Marion, Harvey, Sedgwick or Sumner counties;

(B) two or more square miles in zone two, which includes all geographic points located west of zone one and in or east of Smith, Osborne, Russell, Barton, Stafford, Pratt or Barber counties; or

(C) three or more square miles in zone three, which includes all geographic points located west of zone two.

(c) (1) The prior written consent or permit of the chief engineer shall not apply to water obstructions that meet the following requirements:

(A) *The change in the cross section of a designated stream is obstructed less than 5% and the water obstruction or change is contained within a land area measuring 25 feet or less along the stream length; or*

(B) (i) the water obstruction is not a dam as defined in subsection (b);

~~(B)(ii)~~ the water obstruction is not located within an incorporated area;

~~(C)(iii)~~ every part of the water obstruction, *and any water impounded by such obstruction,* is located more than 300 feet from any property boundary; and

~~(D)(iv)~~ the watershed area above the water obstruction is ~~640 acres~~ *five square miles* or less.

(2) If the water obstruction does not meet the requirements of subsection ~~(c)(1)(C)(c)(1)(B)(iii)~~, but meets all other requirements of subsection (c)(1)(B), such water obstruction may be exempted from the permitting requirements of subsection (a) if the chief engineer determines such water obstruction has minimal impact upon safety and property based upon a review of the information, to be provided by the owner, including:

~~(i)(A)~~ An aerial photo or topographic map depicting the location of the proposed project, the location of the stream, the layout of the water obstruction, the property lines and names and addresses of adjoining property owners; and

~~(ii)(B)~~ the principal dimensions of the project including, but not limited to, the height above streambed.

(3) Notwithstanding any other provision of this section, the chief engineer may require a permit for any water obstruction described in this

subsection if the chief engineer determines such permit is necessary for the protection of life or property.

(d) *The prior written consent or permit of the chief engineer shall not be required for construction or modification of a hazard class A dam that:*

(1) *Has a height of less than 30 feet and a storage volume at the top of the emergency spillway elevation of less than 125 acre feet, and the dam location and dimensions have been registered with the division of water resources in a written form prescribed by the chief engineer; or*

(2) *is a wastewater storage structure for a confined feeding facility that has been approved by the secretary of health and environment pursuant to K.S.A. 65-171d, and amendments thereto.*

Sec. 5. K.S.A. 2012 Supp. 82a-302 is hereby amended to read as follows: 82a-302. (a) *Except as otherwise provided for general permits, 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 construction, modification or additions-addition 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 Kansas judicial review act. Such applicant shall pay all costs associated with the review by the licensed professional engineer. The chief engineer shall adopt rules and regulations for the issuance of a general permit which may be issued for projects which require limited supervision and review.*

(b) (1) *The application fee for a permit to construct, modify or add to a dam shall be \$200. 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	
Pre-Construction	Construction In Progress
\$200	\$500

(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.~~

Drainage Area Category	Pre-Construction	Construction In Progress
Major (Drainage area greater than 50 square miles)	\$500	\$1000

Moderate (Drainage area 5 to 50 square miles)	\$200	\$400
Minor (Drainage area less than 5 square miles)	\$100	\$200
General Permit	\$100	\$200

(2) *The application fee for a permit to construct, modify, or add to a water obstruction or to change or diminish the course, current or cross section of a stream shall be based on the watershed area.*

<i>Watershed Area Above the Project</i>	<i>Permit Application Fee</i>
<i>Less than 5 square miles</i>	<i>\$100</i>
<i>Between 5 and 50 square miles</i>	<i>\$200</i>
<i>More than 50 square miles</i>	<i>\$500</i>

(3) *The application fee for a general permit shall be \$100.*

(c) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 2012 Supp. 82a-328, and amendments thereto.

Sec. 6. K.S.A. 2012 Supp. 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 through 82a-303, and amendments thereto, the chief engineer or an authorized representative of the chief engineer shall have the power and 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:

Size of Dam	Inspection fee
Class 1	\$1,500
Class 2	\$1,500
Class 3	\$2,500
Class 4	\$4,000

(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~~ *the* 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 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 K.S.A. 2012 Supp. 82a-328, and amendments thereto.

Sec. 7. K.S.A. 82a-307 is hereby amended to read as follows: 82a-307.

(a) Upon petition of ~~fifty (50)~~ taxpayers of any county of this state, owning land in the flood plain of any river in such county, *or upon enactment of a resolution by the county commission of such county*, the board of county commissioners of each county in this state are hereby authorized within their respective jurisdictions to clean and maintain the banks and channels of the streams and watercourses within definitely established bank lines, ~~as provided in K.S.A. 82a-307a~~, and to keep ~~said~~ *such* streams free of drift, trees and other ~~obstructions~~ *debris*, for the purpose of reducing floods and overflows, ~~and for the purposes aforesaid~~. *Upon such petition or resolution, the board of county commissioners may remove debris pursuant to this section, but shall not change or diminish the course, current or cross section of any stream.*

(b) ~~The said~~ board of county commissioners, *having obtained written permission from the landowner*, may enter upon private property, if necessary, to clean and maintain such streams, doing as little damage as possible thereto, ~~and when~~. *If material damage shall be* done to any property, ~~said~~ *the* commissioners shall allow reasonable compensation therefor, ~~when claimed by the owner thereof, if said the landowner presents a claim is presented in writing to said the board within ten (10) 60 days from the date of the removal of said obstruction, and that such alleged material damage.~~

(c) Nothing in this act shall be construed to permit the board of county commissioners of any county to remove or destroy any permanent improvement, including dams and bridges, in and over such streams, providing such improvements, dams or bridges have been lawfully placed thereon.

Sec. 8. K.S.A. 2012 Supp. 82a-326 is hereby amended to read as follows: 82a-326. When used in this act:

(a) "Water development project" means any project or plan which ~~may be allowed or permitted~~ *requires a permit* pursuant to K.S.A. 24-126, 24-1213, 82a-301 et seq., and amendments thereto, or the multi-purpose small lakes program act, ~~and amendments thereto~~;

(b) "environmental review agencies" means the:

- (1) Kansas department of wildlife, parks and tourism;
- (2) Kansas forest service;
- (3) state biological survey;
- (4) Kansas department of health and environment;
- (5) state historical society;
- (6) Kansas department of agriculture division of conservation; and
- (7) state corporation commission.

Sec. 9. K.S.A. 2012 Supp. 82a-1901 is hereby amended to read as follows: 82a-1901. (a) Orders of the chief engineer of the division of water resources of the department of agriculture pursuant to K.S.A. 42-703, 42-722, 42-722a, 82a-708b, 82a-711, 82a-718 and 82a-1038 *and K.S.A. 2012 Supp. 82a-1041*, and amendments thereto, and failure of the chief engineer to act pursuant to K.S.A. 82a-714, and amendments thereto, shall be subject to review in accordance with the provisions of the Kansas administrative procedure act.

Such review shall be conducted by the secretary of agriculture or a presiding officer from the office of administrative hearings within the department of administration. The secretary of agriculture shall not have the authority otherwise to designate a presiding officer to conduct such

review unless at the party's request pursuant to K.S.A. 75-37,121, and amendments thereto.

(b) The order of the secretary of agriculture or the administrative law judge or presiding officer upon review pursuant to subsection (a) shall be a final order under the Kansas administrative procedure act. Such order shall not be subject to reconsideration pursuant to K.S.A. 77-529, and amendments thereto, and shall be subject to review in accordance with the Kansas judicial review act.

(c) This act shall not affect any administrative proceeding pending before the chief engineer of the division of water resources of the department of agriculture, the secretary of agriculture or any administrative hearing officer on July 1, 1999, and such matter shall proceed as though no change in the law had been made with regard to such proceeding.

Sec. 10. K.S.A. 24-105, 24-107, 82a-307, 82a-312, 82a-313 and 82a-314 and K.S.A. 2012 Supp. 24-106, 74-509, 82a-301, 82a-302, 82a-303b, 82a-307a, 82a-326, 82a-326a, 82-734, 82a-735 and 82a-1901 are hereby repealed.

Sec. 11. 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 HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.