

STATE OF KANSAS

SENATE CHAMBER

MR. PRESIDENT:

I move to amend **SB 524**, on page 5, following line 39, by inserting:

"Sec. 2. K.S.A. 82a-301 is hereby amended to read as follows: 82a-301. (a) (1) Except as provided in 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:

(A) Construct, modify or add to any dam;  
(B) construct, modify or add to any water obstruction in a designated stream; or  
(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) Revetments for the purpose of stabilizing a caving bank ~~which~~ that 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) (A) "Dam" means any artificial barrier including appurtenant works with the ability to impound water, waste water or other liquids ~~that~~ and:

(i) For nonagriculture use, has a height of 25 feet or more; or has a height of six feet or ~~greater~~ more and a storage volume at the top of the emergency spillway elevation of 50 ~~or more~~ acre feet or more; or

(ii) for agriculture use, has a height of 30 feet or more or has a height of six feet or more and a storage volume at the top of the emergency spillway elevation of 125 acre feet or more and the primary purpose of which is for use in irrigation, livestock watering, commercial fish rearing and sale and the protection of agricultural land.

(B) The height of a dam or barrier shall be 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~~ including 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);

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

(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

(iv) the watershed area above the water obstruction is five square miles or less.

(2) If the water obstruction does not meet the requirements of subsection (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:

(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

(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.~~

(e) Any structure that means the provisions of subsection (b)(1) shall be considered a

water obstruction and not a dam if the primary purpose of the structure is to serve as a:

(1) Dry detention road fill for state, county or municipal government; or

(2) low head dam that has a maximum height below the lowest stream bank.

Sec. 3. K.S.A. 82a-305a is hereby amended to read as follows: 82a-305a. (a) Any person, partnership, association, corporation or agency or political subdivision of the state government who violates any provision of this act or of any rule and regulation or order issued pursuant thereto shall be deemed guilty of a class C misdemeanor. Each day that any such violation occurs after notice of the original violation is served upon the violator by the chief engineer by restricted mail shall constitute a separate offense.

(b) Upon request of the chief engineer, the attorney general shall bring suit in the name of the state of Kansas in any court of competent jurisdiction to enjoin:

(1) The unlawful construction, modification, operation or maintenance of any dam or other water obstruction; or

(2) the unlawful change or diminution of the course, current or cross section of a river or stream. Such court may require the removal or modification of any such dam or other water obstruction by mandatory injunction.

(c) In addition to any other penalty provided for by law, any person who commits a violation of K.S.A. 82a-301 et seq., and amendments thereto, or any rule and regulation adopted thereunder, may be subject to a civil penalty of not less than \$100 but not more than \$500 per violation. In the case of a continuing violation, each occasion when the chief engineer provides notice that a violation has occurred or is occurring and action to correct the violation as specified by the chief engineer is not taken within seven days of receipt of such notice shall be considered a separate violation. Such civil penalty may be assessed in addition to any other penalty provided by law.

(d) No civil penalty shall be imposed pursuant to this section except on the written order of the chief engineer or duly authorized agent of the chief engineer.

(e) Any person aggrieved by an order of the chief engineer or the chief engineer's duly authorized agent pursuant to this section may appeal to the district court in the manner provided by the Kansas judicial review act.

(f) All moneys collected by the chief engineer pursuant to this section shall be deposited in the state treasury in accordance with K.S.A. 75-4215, and amendments thereto, and shall be credited to the water structures fund pursuant to K.S.A. 82a-328, and amendments thereto.";

Also on page 5, in line 40, by striking "is" and inserting ", 82a-301 and 82a-305a are";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking all after "concerning"; in line 2, by striking all before the semicolon and inserting "water"; also in line 2, by striking "such" and inserting "irrigation district board of director"; in line 4, after "members" by inserting "; defining dam for both agriculture and nonagriculture use; clarifying structures that are water obstructions; providing a civil penalty for violations"; in line 5, after "42-706" by inserting ", 82a-301 and 82a-305a"; also in line 5, by striking "section" and inserting "sections"

Senator \_\_\_\_\_