

Substitute for HOUSE BILL No. 2114

AN ACT concerning water; relating to dams, levees and other water obstructions; clarifying which structures shall be considered water obstructions and not a dam; increasing application fees for a permit to construct, modify or add to a dam; requiring post-construction permit fees to construct, modify or add to a water obstruction or to change or diminish the course, current or cross section of a stream; requiring any licensed professional engineer who conducts inspections required by the act to be approved by the chief engineer or to be a certified intern engineer who is under the supervision of such a licensed professional engineer; adding a civil penalty of not less than \$100 or more than \$1,000 per violation; remitting civil penalty amounts to the state general fund; amending K.S.A. 82a-301, 82a-302, 82a-303b and 82a-305a and repealing the existing sections.

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

Section 1. 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) "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 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 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.

(3) *"Modification" means any action that the chief engineer determines would change the physical dimensions or hydraulic characteristics of any dam, stream obstruction or channel change that is under the jurisdiction of the chief engineer pursuant to this act.*

(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. Any structure that meets 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:~~

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

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

~~(3) 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 meets the requirements for a hazard class A dam as provided in this act shall be considered a water obstruction and not a dam if the structure meets the following additional criteria:~~

~~(1) The structure impounds water under a vested right, water right or permit to appropriate water for irrigation, stockwater or sediment control use pursuant to the Kansas water appropriation act, K.S.A. 82a-701 et seq., and amendments thereto, or is required to obtain a permit to appropriate water for irrigation, stockwater or sediment control use in order to lawfully impound water; and~~

~~(2) the structure 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.~~

Sec. 2. K.S.A. 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 construction, modification or addition proposed to be made, 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 adopt rules and regulations for the issuance of a general permit ~~which~~. A general permit may be issued for projects ~~which~~ that require limited supervision and review.

(b) (1) The application fee for a permit to construct, modify or add to a dam shall be ~~\$200~~:

(A) \$250 for a hazard class A dam that does not qualify for an

*exemption provided for in K.S.A. 82a-301(d) or (e), and amendments thereto;*

*(B) \$500 for a hazard class B dam; and*

*(C) \$1,000 for a hazard class C dam.*

*(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.*

*Watershed Area Above the*

<i>Project Permit Application Fee</i>	<i>Post-Construction Permit Fee</i>
<i>Less than 5 square miles \$100</i>	<i>\$200</i>
<i>Between 5 and 50 square miles \$200</i>	<i>\$400</i>
<i>More than 50 square miles \$500</i>	<i>\$800</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. 82a-328, and amendments thereto.*

*(d) The chief engineer shall prominently display an inundation map for each permitted dam on the department's website and provide copies of such inundation map to the zoning authority, or the county clerk if the county does not have a zoning authority, of each county where any land included on an inundation map is located. If additional funding is available, the chief engineer shall prepare or update the inundation maps of all permitted dams for which current inundation maps have not been provided to the chief engineer; display such inundation maps on the department's website and provide copies of such inundation maps to the respective county governments as provided for in this section.*

*(e) (1) On and after July 1, 2026, the owner of any land located in the inundation zone of a dam that is under the jurisdiction of the chief engineer pursuant to this act who sells, subdivides or otherwise transfers any land within such inundation zone separate from the dam shall file a notice of inundation zone with the register of deeds in the county or counties for each parcel of land sold, subdivided or otherwise transferred. The notice of inundation zone shall contain the following language:*

*On \_\_\_\_\_ this property is located in the inundation  
(date of sale, division or transfer)  
zone of a dam or structure located at \_\_\_\_\_  
(legal description of property)*

*(2) A landowner who fails to file a notice of inundation zone in accordance with paragraph (1) shall be responsible for paying the costs of inspection that are in excess of the inspection costs that would have been required by the dam's previous lower hazard classification if K.S.A. 82a-303b(a)(1)(D)(7), and amendments thereto, applies to such dam.*

*Sec. 3. K.S.A. 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,~~ (A) The chief engineer or an authorized representative of the chief engineer who is a licensed professional engineer approved by the chief engineer or an intern engineer who is certified pursuant to K.S.A. 74-7021(b), and amendment thereto, and is under the supervision of such a licensed professional engineer shall have the power and the duty to inspect any dam or other water obstruction.*

*(B) Upon a finding pursuant to K.S.A. 82a-303c(a), 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:*

*(i) Such dam 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*

*(ii) the dam is removed.*

*(C) ~~The safety inspection shall be conducted by the chief engineer~~*

~~or authorized representative and the cost shall be paid by the dam owner.~~ For the purpose of assessing inspection fees as provided for in this section, the class and size of a dam shall be defined by rules and regulations adopted by the chief engineer pursuant to K.S.A. 82a-303a, and amendments thereto.

~~(D) For inspections conducted by the chief engineer or the chief engineer's authorized representative, inspection fees are each inspection other than an inspection that a dam owner elects to have conducted at the dam owner's own expense as provided for in this act, the dam owner shall pay inspection fees to the department as follows:~~

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

(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 every three years.~~

(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 every five years.~~

(4) (A) Each hazard class A dam that does not qualify for an exemption provided for in K.S.A. 82a-301(d) or (e), and amendments thereto, shall be required to have a safety inspection conducted every 10 years.

(B) A watershed district organized pursuant to K.S.A. 24-1201 et seq., and amendments thereto, may enter into an agreement with the chief engineer that provides for such district to conduct limited safety inspections in lieu of the safety inspection required by subparagraph (A).

(5) Safety inspections required by this act shall be conducted by the chief engineer or an authorized representative of the chief engineer who is a licensed professional engineer approved by the chief engineer or an intern engineer who is certified pursuant to K.S.A. 74-7021(b), and amendment thereto, and under the supervision of a licensed professional engineer. A dam owner may elect to have any required safety inspection performed at the dam owner's own expense, provided that such inspection is performed by an engineer authorized to perform inspections in accordance with this act.

(6) A safety inspection shall not be required to be conducted for any dam that the dam owner has submitted an inundation map to the chief engineer that demonstrates that failure of the dam would only inundate real property or fixtures to real property owned by the dam owner.

(7) If the chief engineer reclassifies a dam to a higher hazard classification and the reclassification is not necessitated by any actions of the dam owner, the dam shall be subject to the inspection requirements for the higher hazard classification in accordance with this act, but the dam owner shall not be charged for inspections that are in excess of those that would have been required by the previous lower hazard classification.

(8) Within 60 days of the date of inspection, a report of the inspection shall be ~~provided to~~ issued by the chief engineer or provided to the chief engineer by the licensed professional engineer who conducted or supervised 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)(9) The failure to file provide a complete and timely report as required by the provisions of this act, or and the failure to submit the fees assessed for inspections conducted by the chief engineer or the chief engineer's authorized representative to the department as required by this section 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, *including any engineer authorized to perform inspections in accordance with this act*, shall have the right of access to private property. *Except for an instance when the chief engineer determines that emergency action pursuant to K.S.A. 82a-303c(b), and amendments thereto, is or may be necessary, the right of access to private property provided for in this subsection shall be conditioned on seven days' prior notice of the inspection having been provided to the dam owner.* Costs for any work ~~which~~ *that* may be required by the chief engineer ~~or the authorized representative~~ prior to or as a result of ~~the an~~ inspection of a dam or other water obstruction *required by this act* shall be paid by the owner, ~~governmental agency~~ or operator of such dam or other water obstruction *or by the department as provided for in this act.*

(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. 82a-328, and amendments thereto.

Sec. 4. 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 *intentionally* 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 or more than \$1,000 per violation. In the case of a continuing violation, each notice provided by the chief engineer of such continuing violation and the required corrective action thereof shall be considered a separate violation if such corrective action identified in the notice has not commenced within seven days of receiving such notice. 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.*

*(e) Any person aggrieved by an order of the chief engineer pursuant to this section may appeal to a district court of competent jurisdiction in the manner provided by the Kansas judicial review act.*

(f) All moneys collected by the chief engineer pursuant to this section, except civil penalties collected pursuant to subsection (c), 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.

(g) All moneys collected by the chief engineer pursuant to subsection (c) shall be deposited in the state treasury in accordance with K.S.A. 75-4215, and amendments thereto, and shall be credited to the state general fund.

Sec. 5. K.S.A. 82a-301, 82a-302, 82a-303b and 82a-305a are hereby repealed.

Sec. 6. 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.*