Session of 2025

HOUSE BILL No. 2153

By Committee on Water

Requested by Representative Hill

1-29

AN ACT concerning water; specifying when irrigation district board of director elections may be conducted by mail ballot; authorizing the board of directors to set the term for such elected members; defining dam for both agriculture and nonagriculture use; clarifying structures that are water obstructions; providing a civil penalty for violations; amending K.S.A. 42-706, 82a-301 and 82a-305a and repealing the existing sections.

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

Section 1. K.S.A. 42-706 is hereby amended to read as follows: 42-706. (a) The officers of ~~such~~ *an irrigation* district *established under K.S.A. 42-704, and amendments thereto,* shall be a board of directors consisting of three members who shall be persons entitled to vote as provided in subsection (g) and residents of a county in which ~~the~~ *such irrigation* district or a portion thereof is located, or *a* county adjoining a county in which such irrigation district or a portion thereof is located. Such members shall hold office for a period of two*, three* or four years, such term of office being established by the board of directors by passage of a resolution, and each shall serve until a successor has been elected and qualified. The members of the board of directors first elected after the creation of an irrigation district shall hold their respective offices until the next regular election for the election of directors as provided in subsection *(d),* (e) or (f) ~~of this section~~*,* except that the terms of the three directors shall be as provided in subsection *(d) or* (e) ~~of this section~~.

(b) The chief engineer of the division of water resources, after the incorporation of such irrigation district, shall establish and designate the polling place or places therein where the first election will be conducted and fix the time for such election within 60 days after the date of incorporation. In any irrigation district of more than 35,000 acres, the chief engineer of the division of water resources shall, prior to designating polling places, establish three voting areas within such district as equal as possible in acreage and shall designate the same as the first, second or third voting area. Such polling place or places may thereafter be changed by the board of directors, and the board may arrange for polling places outside the corporate boundaries of the district if such places are more

convenient than locations within the district. Prior to the holding of the first election in newly created districts, the chief engineer of the division of water resources shall appoint from the qualified electors of the district three persons for such election for each voting place who shall constitute boards of election for such district for such election. If the members appointed do not attend at the opening of the polls on the day of election, at the opening hour, the electors present at that hour shall elect from the electors present members of the election board necessary to fill the place of any absent member.

(c) The board of directors of every district of more than 35,000 acres ~~which~~ *that* was incorporated prior to the effective date of this act shall establish three voting areas within the district as equal as possible in acreage and designate the same as the first, second or third voting area. The board shall also establish and designate the polling place or places within each voting area*, or adopt a procedure for election by mail ballot pursuant to subsection (d)(5)*. At the first election held after the effective date of this act, a director shall be elected for the term length established by the board.

(d) (1) Except as provided in paragraph ~~(2)~~ *(5)*, all elections shall be conducted in accordance with the general election laws of the state except as otherwise provided in this act. Advance voting as provided in article 11 of chapter 25 of the Kansas Statutes Annotated, and amendments thereto, shall be provided for by the county election officers and boards of directors for those persons entitled to vote under subsection (g). The forms for the ballot envelope declaration as provided in K.S.A. 25-1120, and amendments thereto, and the applications for advance ballots as provided in K.S.A. 25-1122d, and amendments thereto, shall be modified to establish that such person is a qualified owner of irrigable land within the district. After polls are closed the election boards shall proceed to canvass the votes cast thereat, shall certify to the county election officer of the county in which all or the greater part of the population of the irrigation district is located and the chief engineer the result of such election. The clerks shall then securely wrap the ballots cast at such elections and shall express or mail the same by registered mail to the county election officer of the county in which all or the greater part of the population of the irrigation district is located. The county election officer shall canvass the ballots, verify the results and declare the person receiving the highest number of votes duly elected as director*,* except that at the first election after creation of a district the county election officer of the county in which all or the greater part of the population of the irrigation district is located shall declare the three persons receiving the highest number of votes duly elected as directors ~~except that in districts~~*, or, if such district is* divided into three voting areas, the person receiving the highest number of

votes in each voting area shall be *declared* duly elected as director. Such county election officer shall immediately mail, to each person elected to the office of director a certificate of election signed by such officer.

(2) The directors shall thereupon qualify and enter upon the duties of their office. Directors shall qualify by taking and subscribing to an oath of office of substantially the same tenor as oath of office prescribed for county officials. Each member of the board of directors shall execute an official bond in the sum of $1,000 which oath and bond shall be filed with the county election officer of the county in which all or the greater part of the population of the irrigation district is located. The treasurer of each irrigation district shall execute to the district a corporate surety bond in an amount at least equal to 125% of the amount, as near as can be ascertained, that shall be in such person's hands as treasurer at any one time. The amount and sufficiency of the bond of the treasurer shall be determined by the county election officer. Upon approval of the bond, the county election officer shall endorse such approval thereon and file the same in the office of the county election officer and shall immediately notify the county treasurer of the county in which the registered office of the irrigation district is located of such approval and filing.

(3) In the event of the breach of any condition of the treasurer's bond, the president and secretary of the board shall cause a suit to be commenced thereon in the name of the irrigation district. It shall not be necessary to include the treasurer as a party to the action and the money collected shall be applied to the use of the district, as the same should have been applied by the treasurer. Should the president and secretary neglect or refuse to prosecute such a suit, then any person entitled to vote as provided in subsection (g) may cause such suit to be instituted. Premiums on surety bonds for such directors and treasurers of irrigation districts shall be paid by the district out of its general funds.

(4) In case the office of any director shall become vacant the remaining members of the board shall fill the vacancy by appointment. A director appointed to fill a vacancy shall serve the unexpired term of the director whose term such person was appointed to fill.

~~(2)~~*(5)* For any election except the election required in subsection (b), the board of directors may adopt a procedure providing for the election of members by mail ballot *in an even-numbered or odd-numbered year*. Such procedure shall require the board to mail ballots to all persons entitled to vote, to receive and tabulate the ballots, to canvass the election and to certify the results to the county election officer. The irrigation district shall be responsible for the direct expenses of conducting the election. The ballot envelope used for mailing ballots shall contain a declaration establishing that the person who signs the declaration is a qualified owner of irrigable land within the district. *In the resolution providing for the*

election of members by mail ballot, the board of directors shall establish the term of such members to be a period of two, three or four years.

(e) *(1)* All regular elections of directors of irrigation districts shall be held the Tuesday following the first Monday in November in odd-numbered years.

(2) Any districts organized after the regular election shall hold its election at the next regular election following incorporation of the district and, at this election three directors shall be elected and the person receiving the highest number of votes shall serve for a term of four years, the persons receiving the second and third highest number of votes shall serve for a term of two years. In case the first election after creation of a district is held between June 1 of any year and the day preceding the Tuesday following the first Monday in November of the next succeeding odd-numbered year, the next regular election shall be held in the second succeeding odd-numbered year. At each subsequent regular election, ~~only one director~~ *directors* shall be elected ~~each year~~ for a term of four years.

(3) Any person desiring to be a candidate for election to the board of directors shall file a candidate's declaration of intention with the county election officer of the county in which all or the greater part of the population of the district is located. Such candidate's filing shall utilize the procedures provided in K.S.A. 25-21a03, and amendments thereto, and K.S.A. 25-205, and amendments thereto. The county election officer shall prepare the ballot, and place the names thereon in alphabetical order and shall supply election officials with necessary ballots and polling books at the irrigation district's expense. At least five days before any election, the county clerks of the various counties within which a portion of the district is located, shall cause to be ascertained the names of all persons entitled to vote as provided in subsection (g) and shall furnish lists thereof to each election board within such county and to the secretary of the board of directors of the district. Notice of the time and places of holding of the general election, shall be published by the county election officer in a newspaper of general circulation in the district in accordance with K.S.A. 25-105, and amendments thereto. The results of all special or bond elections shall be made available to the secretary of the district. All expenses of election, not otherwise provided for herein, shall be paid for out of the general funds of the irrigation district. Election officials shall receive the same compensation as provided under general election laws.

(4) The provisions of this subsection shall not apply to any election conducted pursuant to subsection (d)(5) or (f).

(f) In lieu of the election procedures provided in this section pertaining to regular elections of directors in accordance with the general election laws of the state, the board of directors of any irrigation district of less than 35,000 acres in size may call an annual meeting of all persons

entitled to vote as provided in subsection (g) for the purpose of electing directors. Such annual meeting shall be held on the first Tuesday in March. Notice of the time and place of holding said annual meeting shall be given in some newspaper or newspapers of general circulation in the district for one issue at least 30 days prior to date of such meeting. Elections at the annual meeting shall be by ballot, with absentee voting as provided under subsection (d) ~~of this section~~. All persons desiring to be voted upon as director shall at least 30 days before the day of holding the annual meeting file such person's name with the secretary of the board of directors of the district, affixed to a statement that such person desires such person's name to be placed on the ballot as a candidate for member of board of directors of the district. The board of directors shall appoint three owners of irrigable land in the district to serve as an election board at the annual meeting. After the votes are cast at the annual meeting the election board shall proceed to canvass the votes and shall certify to the county election officer of the county in which all or the greater part of the population of the irrigation district is located and the chief engineer the result of such election. All provisions of this section not inconsistent with the provisions of *this* subsection ~~(f)~~ shall apply to the election of directors at the annual meeting.

(g) *(1)* Until such time as assessments are made in the district pursuant to K.S.A. 42-715, and amendments thereto, those persons entitled to vote shall be "qualified owners of land" within the irrigation district, as such term is defined in K.S.A. 42-701, and amendments thereto, and who are otherwise qualified electors.

(2) After lands have been assessed in the district pursuant to K.S.A. 42-715, and amendments thereto, those persons entitled to vote shall be "qualified owners of land" within the irrigation district as such term is defined in K.S.A. 42-701, and amendments thereto, which has been assessed pursuant to K.S.A. 42-715, and amendments thereto, and who are otherwise qualified electors. For voting purposes, any person entitled to vote under this subsection who owns land in more than one voting area shall vote in the voting area ~~which~~ *that* includes the greatest portion of such person's land.

(h) As used in this section, the term "qualified electors" ~~shall include~~ *includes* a person who is the legal qualified owner of irrigable land or a person, who is authorized, in writing, to vote for a trust, corporation, association or partnership ~~which~~ *that* is the legal qualified owner of irrigable land. Such person is not required to be a resident of the district. Such trust, corporation, association or partnership shall be allowed only one vote. The person authorized by such entity to vote shall be someone who is not otherwise entitled to a vote under this section.

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.

Sec. 4. K.S.A. 42-706, 82a-301 and 82a-305a are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.