

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2867

By Committee on Environment

2-9

12 AN ACT concerning water and watercourses; relating to dams; amending
13 K.S.A. 82a-303c and K.S.A. 2005 Supp. 82a-303b and repealing the
14 existing sections.

15
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. K.S.A. 2005 Supp. 82a-303b is hereby amended to read
18 as follows: 82a-303b. (a) (1) In order to secure conformity with adopted
19 rules and regulations and to assure compliance with the terms, conditions
20 or restrictions of any consent or permit granted pursuant to the provisions
21 of K.S.A. 82a-301 through 82a-303, and amendments thereto, the chief
22 engineer or an authorized representative of the chief engineer shall have
23 the power and the duty to inspect any dam or other water obstruction.
24 Upon a finding pursuant to subsection (a) of K.S.A. 82a-303c, and amend-
25 ments thereto, by the chief engineer that a dam is unsafe, the chief en-
26 gineer shall order an annual inspection of the dam until it is either in
27 compliance with all applicable provisions of this act, any rules and regu-
28 lations promulgated pursuant to this act, permit conditions and orders of
29 the chief engineer; or the dam is removed. The safety inspection shall be
30 conducted by the chief engineer or authorized representative and the
31 cost shall be paid by the dam owner **[department of agriculture, di-**
32 **vision of water resources]**. ~~Except as provided in subsection (a)(4) of~~
33 ~~K.S.A. 82a-303b, and amendments thereto, the~~ **The** class and size of a
34 dam provided for by the provisions of this act shall be defined by rules
35 and regulations adopted by the chief engineer pursuant to K.S.A. 82a-
36 303a, and amendments thereto. Inspection fees are as follows:

37 Size of Dam	Inspection fee
38 Class 1	\$1,500
39 Class 2	\$1,500
40 Class 3	\$2,500
41 Class 4	\$4,000.

42 (2) ~~Except as provided in subsection (a)(5) of K.S.A. 82a-303b, and~~
43 ~~amendments thereto, each~~ **Each** hazard class C dam shall be required to

1 have a safety inspection conducted by a licensed professional engineer
 2 qualified in design, construction, maintenance and operation of dams
 3 once every three years, unless otherwise ordered by the chief engineer.

4 ~~(3) Except as provided in subsection (a)(5) of K.S.A. 82a-303b, and~~
 5 ~~amendments thereto, each~~ **Each** hazard class B dam shall be required to
 6 have a safety inspection conducted by a licensed professional engineer
 7 qualified in design, construction, maintenance and operation of dams
 8 once every five years unless otherwise ordered by the chief engineer.

9 ~~(4) (A) The chief engineer shall not change the size or hazard class~~
 10 ~~of any dam to a larger size class or higher hazard class after the dam has~~
 11 ~~been built, regardless of downstream development or construction, unless~~
 12 ~~the dam in question has been voluntarily structurally modified to a larger~~
 13 ~~size or impoundment after the downstream construction in question.~~

14 ~~—(B) Any dam in existence, prior to the passage of this act, that the~~
 15 ~~chief engineer has re-classified to a larger size or hazard class due to~~
 16 ~~downstream development or construction shall be re-classified to its as-~~
 17 ~~signed classification at the time of the dam's construction or its most recent~~
 18 ~~voluntary structural modification.~~

19 ~~—(C) The provisions of subsections (A) and (B) shall only apply after~~
 20 ~~the owner or operator of the dam in question has notified local emergency~~
 21 ~~management personnel of the presence of the dam.~~

22 ~~—(5) A dam is not required to have a safety inspection if the only lives~~
 23 ~~or property continuously endangered by the dam are the lives or property~~
 24 ~~of the dam owner or operator or their immediate family.~~

25 ~~(4) (6) (5)~~ Within 60 days of the date of inspection, a report of the
 26 inspection shall be provided to the chief engineer by the licensed pro-
 27 fessional engineer who conducted the inspection. The report shall doc-
 28 ument the physical condition of the dam, describing any deficiencies ob-
 29 served, an analysis of the capacity of the dam and its spillway works,
 30 compliance of the dam with approved plans and permit conditions,
 31 changes observed in the condition of the dam since the previous inspec-
 32 tion, an assessment of the hazard classification of the dam including a
 33 statement that the engineer either agrees or disagrees with the current
 34 classification, and any other information relevant to the safety of the dam
 35 or specifically requested by the chief engineer.

36 ~~(5) (7) (6) [(5)]~~ Upon failure of a dam owner to comply with the
 37 applicable inspection interval, the chief engineer or such chief engineer's
 38 authorized representative shall conduct a mandatory inspection of the
 39 dam and the costs as established by this act for the inspection shall be
 40 paid by the owner, in addition to any other remedies provided for viola-
 41 tions of this act.

42 ~~(6) (8) (7) [(6)]~~ The failure to file a complete and timely report as
 43 required by the provisions of this act, or the failure to submit the fees

1 assessed for inspections conducted by the chief engineer or such chief
2 engineer's authorized representative shall be deemed a violation of this
3 act and subject to the penalties provided by K.S.A. 82a-305a, and amend-
4 ments thereto.

5 (b) For the purpose of inspecting any dam or other water obstruction,
6 the chief engineer or an authorized representative of the chief engineer
7 shall have the right of access to private property. Costs for any work which
8 may be required by the chief engineer or the authorized representative
9 prior to or as a result of the inspection of a dam or other water obstruction
10 shall be paid by the owner, governmental agency or operator of such dam
11 or other water obstruction.

12 (c) All fees collected by the chief engineer pursuant to this section
13 shall be remitted to the state treasurer as provided in K.S.A. 2005 Supp.
14 82a-328, and amendments thereto.

15 **(d) To facilitate dam safety compliance and conduct accurate**
16 **dam risk analysis, the chief engineer shall utilize all maps available**
17 **from state or federal sources to create breach inundation maps for**
18 **existing dams.**

19 Sec. 2. K.S.A. 82a-303c is hereby amended to read as follows: 82a-
20 303c. (a) *Except as otherwise provided in subsection (b) of K.S.A. 82a-*
21 *303c, and amendments thereto*, whenever the chief engineer finds that:
22 (1) The construction, modification, operation or maintenance of a dam
23 or other water obstruction is in violation of adopted rules and regulations
24 or of terms, conditions or restrictions of a permit or consent granted by
25 the chief engineer or, (2) conditions exist in the construction, modifica-
26 tion, operation or maintenance of a dam or other water obstruction which
27 may present a hazard to the public's safety, he or she shall issue an order
28 to require the correction of any such violation or condition existing in the
29 construction, modification, operation or maintenance of a dam or other
30 water obstruction by the owner or operator thereof. An order may be
31 issued to require the removal of a dam or other water obstruction. The
32 order shall contain the chief engineer's findings concerning any violation
33 or conditions existing and shall prescribe the corrective action to be taken.

34 (b) [(1)] *The chief engineer shall inspect but not require the correc-*
35 *tion of any violation or condition existing in the construction, modifica-*
36 *tion, operation or maintenance of a dam or other water obstruction if the*
37 *only lives or property normally [regularly and frequently] endangered*
38 *in the breach inundation zone by the dam are the lives or property of*
39 *the dam owner or operator, or their immediate family. The chief engi-*
40 *neer shall obtain written certification that the dam owner acknowl-*
41 *edges the risk and accepts such risk. [The owner of such a dam*
42 *shall notify the buyer of such a dam of the condition of the dam*
43 *prior to transfer of ownership of the dam. Upon transfer of own-*

1 **ership of the dam, the new owner of the dam shall notify the chief**
2 **engineer of the transfer of ownership.**

3 **[(2) The results of the inspection in subsection (b)(1) shall be**
4 **filed with the register of deeds in the county in which the dam is**
5 **located. The register of deeds shall attach the results of the in-**
6 **spection to the title of any property affected by the dam.]**

7 ~~(b)~~ (c) Whenever the condition of any dam or other water obstruction
8 is so dangerous to the safety of life or property as not to permit time for
9 the issuance and enforcement of an order relative to construction, mod-
10 ification, maintenance or operation thereof, or, the passing of imminent
11 floods threaten the safety of any dam or other water obstruction, the chief
12 engineer shall immediately employ any remedial means necessary to pro-
13 tect the safety of life or property. The chief engineer shall continue in
14 full charge and control of any such dam or other water obstruction until
15 the same is rendered safe or the emergency occasioning the remedial
16 action has ceased.

17 Sec. 3. K.S.A. 82a-303c and K.S.A. 2005 Supp. 82a-303b are hereby
18 repealed.

19 Sec. 4. This act shall take effect and be in force from and after its
20 publication in the statute book.