

## MINUTES OF THE HOUSE AGRICULTURE & NATURAL RESOURCES COMMITTEE

The meeting was called to order by Chairman Larry Powell at 9:00 a.m. on January 11, 2011, in Room 783 in the Docking State Office Building.

All members were present except:

- Representative Dan Collins - Excused
- Representative Charlotte O'Hara - Excused
- Representative Michael Peterson - Excused
- Representative Ponka-We Victors - Excused

Committee staff present:

- Jill Wolters, Office of the Revisor of Statutes
- Sean Ostrow, Office of the Revisor of Statutes
- Raney Gilliland, Kansas Legislative Research Department
- Michael Wales, Kansas Legislative Research Department
- Kay Scarlett, Committee Assistant

Conferees appearing before the Committee:

Others attending:

See attached list.

Chairman Powell welcomed everyone to the first meeting of the House Agriculture & Natural Resources Committee of the 2011 Legislative Session and asked committee members, staff, and visitors to introduce themselves.

Greg A. Foley, Executive Director, State Conservation Commission, requested introduction of a committee bill relating to dam rehabilitation and safety. Seeing no objection, Chairman Powell stated that this request would be introduced as a committee bill. (Attachment 1)

Chairman Powell requested introduction of a committee bill concerning horizontal drilling as getting land leased for oil drilling can be a problem. There being no objection, this request will be introduced as a committee bill.

Representative Williams raised the issue of farmers operating farm vehicles across state lines without a commercial driver's license. He suggested hearing from Kansas Farm Bureau, Kansas Corporation Commission, and the trucking industry to identify the problem to determine if there is anything the committee can do to address the problem.

The meeting adjourned at 9:25 a.m. The next meeting of the House Agriculture & Natural Resources Committee is scheduled for January 12, 2011.

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DATE: JANUARY 11, 2011

[illegible]

1 AN ACT concerning the state conservation commission; relating to dam rehabilitation and safety;  
2 creating the Kansas dam rehabilitation program.  
3

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

5 **Kansas dam rehabilitation program created.** Subject to applicable appropriations therefor, the state  
6 conservation commission shall develop and administer the Kansas dam rehabilitation program in  
7 consultation with the chief engineer of the Kansas department of agriculture, division of water resources.

8 **Dam rehabilitation cost share fund** There is hereby created in the state treasury the Kansas dam  
9 rehabilitation cost share fund. All expenditures from such fund shall be made in accordance with  
10 appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers  
11 approved by the executive director of the state conservation commission or the executive director's  
12 designee. Money credited to the fund shall be used for the purpose of making cost share grants for dam  
13 rehabilitation pursuant to this act.

14 **Definitions:** As used in this act;

15 (1) "actual costs" are the costs to construct, rehabilitate or repair a dam or to complete any other project  
16 that is designed to remedy problems with or attempt to improve the safety of a dam or dam site in the  
17 state, excluding engineering costs that may be incurred for such project.

18 (2) "chief engineer" means the chief engineer of the division of water resources of the Kansas  
19 department of agriculture .

20 (2) "dam owner" means any person, partnership, association, corporation, agency or political  
21 subdivision of the state government or other entity who owns a dam permitted pursuant to K.S.A. 82a-  
22 301 through 305a, and amendments thereto.

23 (3) "dam" means, as used in K.S.A. 82a-301 et seq., and amendments thereto, any artificial barrier  
24 including appurtenant works with the ability to impound water, waste water or other liquids that has a  
25 height of 25 feet or more; or has a height of six feet or greater and also has the capacity to impound 50  
26 or more acre feet. The height of a dam or barrier shall be determined as follows: (A) A barrier or dam  
27 that extends across the natural bed of a stream or watercourse shall be measured from the downstream  
28 toe of the barrier or dam to the top of the barrier or dam; or (B) a barrier or dam that does not extend  
29 across a stream or watercourse shall be measured from the lowest elevation of the outside limit of the  
30 barrier or dam to the top of the barrier or dam.

31 (4) "breach inundation area" means the area that reasonable statistical or engineering analysis indicates  
32 may be inundated, submerged and / or covered with water in the event a dam would breach or in another  
33 manner fail, releasing water impounded by the dam.

34 (5) "unpermitted dam" means any dam which was constructed without the prior approval of the chief  
35 engineer and at the time of construction that approval was required by statute, and for which a permit  
36 has not yet been granted by the chief engineer. Dams that have been legally constructed without the  
37 need for a permit at the time of construction may also be eligible, if the executive director of the state  
38 conservation commission, in consultation with the chief engineer, finds that the dam is in need of repair  
39 and should be considered a priority under the program established in this act and the dam owner agrees  
40 to meet all requirements of the dam rehabilitation program created in this act.

41 **Cost share assistance grants for dam rehabilitation.** (a) Any dam owner may apply for cost-share  
42 assistance to (1) rehabilitate the dam to meet or exceed the minimum requirements of the chief engineer,  
43 (2) protect downstream facilities potentially affected by a failure of the dam by physical means  
44 sufficient to permit the chief engineer to reduce the hazard classification of the dam, (3) purchase, raze  
45 or relocate buildings downstream of a dam that are not owned by the dam owner, to reduce the hazard  
46 classification of the dam, (4) implement any other proposal that is approved by the chief engineer and

the executive director of the state conservation commission which results in the dam meeting the minimum requirements of the chief engineer for its hazard classification, (5) implement a combination of (1) through (4), or (6) remove the dam in a manner that meets the chief engineer's requirements. (b) any dam owner so applying for cost share assistance shall submit a rehabilitation plan to the chief engineer in a form prescribed by such chief engineer and, upon approval of the project by the chief engineer, enter into a contract for the project with the state conservation commission, (c) the rehabilitation plan shall comply with K.S.A. 82a-301 through 305a, as used in K.S.A. 82a-301 et seq., and amendments thereto and any rules and regulations adopted by the chief engineer, and any other specific requirements of the chief engineer. (d) cost-share assistance funds shall not be remitted until the rehabilitation is completed and the chief engineer and state conservation commission approve the rehabilitation; (e) if the rehabilitation plan includes purchasing, razing, or relocating residential structures in the breach inundation area of the dam, cost-share funding is eligible if: (1) An easement prohibiting future development for the breach inundation area is acquired and recorded with the register of deeds; and/or (2) there is sufficient evidence demonstrating that local ordinance(s) will prevent any future or further development of breach inundation area; and /or (3) that a reasonable review of the circumstances for the designated project indicates no development potential in the breach inundation area and /or (4) other information that the executive director of the state conservation commission may find justify the inclusion of the project in the cost share program, (f) The chief engineer shall assist the state conservation commission by reviewing and recommending a priority order for applications for participation in the program based on an the following criteria: (1) The highest severity of potential impacts of dam failure; (2) the greatest risk of failure due to the dam's deficiencies; and (3) the extent to which deficiencies resulted from downstream development beyond the control of the dam owner and (4) any other criteria for prioritization developed by SCC and the chief engineer. (g) Any dam owner may apply to the state conservation commission for cost-share assistance pursuant to this act for an amount not to exceed ninety (90) percent of the actual costs of the project. The maximum cost share for each project shall be determined annually by the state conservation commission. In addition, the state conservation commission may award additional cost share assistance for engineering costs related to the project, not to exceed an additional ten (10) percent of the actual costs of the project. (h) An applicant who is an owner of an unpermitted dam shall be eligible to receive cost-share assistance under the Kansas dam rehabilitation program subject to the issuance of a permit to construct a dam by the chief engineer. (i) Upon state conservation commission approval of a dam rehabilitation project application, the dam owner will be solely responsible: (1) for the submission of any and all reports as required by the state conservation commission, and any other permitting agencies, (2) to operate and maintain the dam structure and its appurtenant works as defined in the agreement, and (3) to comply with any associated rules and regulations regarding the dam project that is participating in the cost share program under this act. (j) any participant in the dam rehabilitation program, as a condition of receiving program cost share assistance, shall agree to the following: (1) Cooperate with staff from the state conservation commission and applicable permitting agencies.(2).Grant ongoing access to the structure or appurtenance during rehabilitation and as needed in the future for operation and maintenance inspections by the state conservation commission or the chief engineer and (3) furnish, upon request, plans, specifications, operating and maintenance data, or other information that is pertinent to the structure or appurtenance.

(k) Lack of funding for this program, a low priority for funding under this program or any other lack of cost-share assistance under this program shall not serve to relieve any dam owner of responsibility to maintain a dam in a condition satisfactory to the chief engineer under the laws of this state.

(l) this statute does not create, intend to create or assume any liability for damages against the state of Kansas or any of its agencies, employees or agents thereof, for any act or event caused by or arising out of any of the following: (1) The construction, maintenance, operation, or failure of a dam or appurtenant works during or following participation by the dam owner in the dam rehabilitation program created under this act. (2) The issuance and enforcement of an order or rule issued by any applicable regulatory agency.

(m) The state conservation commission may enter into agreements with other local, state and federal agencies to implement the Kansas dam rehabilitation program created under this act.

**Rules and regulations.** The state conservation commission shall adopt rules and regulations to implement the Kansas dam rehabilitation act.

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