

**Testimony in Opposition to House Bill 2153  
to the House Committee on Agriculture and Natural Resources  
by Josh McGinn, Assistant Secretary  
Kansas Department of Agriculture  
February 14, 2025**

Good afternoon, Chairman Rahjes and members of the committee. My name is Josh McGinn and I serve as the Assistant Secretary for the Kansas Department of Agriculture.

I appreciate the opportunity to testify in opposition to House Bill 2153, specifically Section 2. The agency takes no position on Section 1 and the components regarding irrigation district voting procedures on pages 1-5 of the bill. We are in support of the exemption for dry detention road fill dams in Section 2 on page 7, subsection (e), as it mirrors language that the agency is seeking in House Bill 2114, and we believe this is an appropriate regulatory framework for structures of that nature. We also appreciate the language that allows for civil penalties as reflected in Section 3, subsection (c), on page 8. We have suggested a higher civil penalty authority at \$1,000 as it is important that the penalty be high enough that there is a disincentive to violate the act.

We are, however, concerned with the definition of a dam as outlined in Section 2 of this bill, and the negative impacts that would have in Kansas, including concerns about safety risk as well as negative fiscal impacts both for the state and for dam owners.

The Water Structures Program of the Kansas Department of Agriculture Division of Water Resources (KDA–DWR) is charged with protecting property and public safety and is responsible for maintaining a safe inventory of dams in the state. In November 2024, the national inventory of dams counted 6,490 dams in the state of Kansas. Of those 6,490 dams, 2,531 are state-regulated, including 328 high potential hazard dams and 176 significant potential hazard dams. The safety of Kansas dams and the infrastructure and assets below the structure are of noteworthy concern for KDA–DWR. DWR believes that HB 2153 is problematic in Section 2 with regard to revisions of K.S.A. 82a-301 which changes the definition of a dam.

The national inventory of dams defines a dam as equal to or exceeding 25 feet in height and exceeding 15 acre-feet in storage or exceeding 6 feet in height and exceeding 50 acre-feet in storage. HB 2153 provides two definitions of a dam, one definition for nonagricultural use and one for agricultural use. This allows for two distinctly different regulatory requirements depending on the use of the dam. Two different regulatory standards can be confusing to the regulated community. The definition for agricultural use would result in Kansas having much larger structures with no engineering oversight based on accepted industry standards.

Kansas already has an exemption that requires less oversight for low hazard potential dams that have 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. This is enough water to cover the entire state Capitol grounds in

6 feet 4 inches of water. Alternatively, that is enough water to cover a football field 94.5 feet deep. So, even though failure of a dam that qualifies for the existing exemption should not harm life or critical infrastructure, it could cause significant downstream impacts. HB 2153 would remove all oversight of dams of this same size and would result in much higher consequences if they were to fail.

Engineering oversight of dams is critical for proper design, construction, maintenance, and inspections which are essential tools to ensure the integrity of the structure and help avert dam failures that could cause significant loss of life, property damage, and environmental disruption. Regular monitoring by engineers helps identify potential issues early on and allows for timely corrective action to be taken. Many dams were built in the middle of the last century. The average age of dams in Kansas is 54 years old. It is imperative that issues be caught early, to avoid expensive property or infrastructure damage or even loss of life. Most dams that fail in the United States are less than 50 feet in height. For example, the 2019 Spencer Dam failure in Nebraska that caused one death was only 26 feet tall.

The proposed definition would deregulate some of the most critical dams in the state. A High Hazard Potential Dam (HHPD) is by definition a dam that could result in extensive loss of life or critical infrastructure if it failed. A Significant Hazard Potential Dam (SHPD) means a few lives and less infrastructure could be endangered if the dam failed. This proposal would reduce oversight of HHPDs from 328 to 168 and reduce oversight of SHPDs from 176 to 100. These dams would be excluded and would have no oversight even though their failure may result in damage to downstream property — by stripping a neighbor's topsoil or causing a stream to scour out part of their field — or result in the loss of human life.

The proposed definition would have a fiscal impact for the state as well. Currently Kansas has 2,531 state-regulated dams. Based on our best estimates, the proposed definition for agricultural use would reduce state-regulated dams to 2,000. This would reduce National Dam Safety Program assistance by 17% or \$40,000 per year. The state already experienced a reduction in federal funding from \$490,000 to \$200,000 because the state decided 12 years ago to exempt approximately 3,000 dams from state permitting.

As a result of the existing exemption, it is likely that there are structures that could present a risk to human life or property that the state does not even know about. Expanding the existing exemption would lead to higher risk water structures becoming completely unregulated. Eventually one of these water structures is going to break and a downstream business, family, or even an entire community is going to suffer as a result.

The new definition would also impact dam owners fiscally. K.S.A 79-201g and K.S.A. 82a-405 allow for a tax reduction for qualified water structures. The proposed definition would not allow for this tax reduction. Furthermore, current law requires that the Chief Engineer must certify the dam was built in compliance with state requirements. If there is no oversight of these structures, this certification is not possible.

Thank you again for the opportunity to testify in opposition to HB 2153. I'm happy to stand for questions at the appropriate time.