

**HOUSE BILL No. 2526**

By Committee on Water

Requested by Earl Lewis

1-18

1 AN ACT concerning water; relating to watershed districts; authorizing the  
2 chief engineer to adopt rules and regulations under the watershed  
3 district act; relating to dams, levees and other water obstructions;  
4 removing an exception for the required consent or permit of the chief  
5 engineer to construct or modify a hazard class A dam; clarifying which  
6 structures shall be considered water obstructions and not a dam;  
7 increasing application fees for a permit to construct, modify or add to a  
8 dam; requiring preconstruction permit fees to construct, modify or add  
9 to a water obstruction or to change or diminish the course, current or  
10 cross section of a stream; requiring an annual registration fee for hazard  
11 class C and class B dams that are located on an owner's property;  
12 removing statutory fee amounts for inspections; requiring inspections  
13 of hazard dams to be conducted by the chief engineer or an authorized  
14 representative of the chief engineer; removing requirement for  
15 inspection fees to be remitted to the state treasurer; adding a civil  
16 penalty of not less than \$100 nor more than \$1,000 per violation;  
17 remitting civil penalty amounts to the water structures fund; amending  
18 K.S.A. 82a-301, 82a-302, 82a-303b and 82a-305a and repealing the  
19 existing sections.  
20

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

22 New Section 1. (a) The chief engineer may adopt rules and  
23 regulations as necessary to administer the provisions of the watershed  
24 district act, K.S.A. 24-1201 et seq., and amendments thereto.

25 (b) This section shall be a part of and supplemental to the watershed  
26 district act, K.S.A. 24-1201 et seq., and amendments thereto.

27 Sec. 2. K.S.A. 82a-301 is hereby amended to read as follows: 82a-  
28 301. (a) (1) Except as provided in subsections (c) and (d), without the prior  
29 written consent or permit of the chief engineer of the division of water  
30 resources of the Kansas department of agriculture, it shall be unlawful for  
31 any person, partnership, association, corporation or agency or political  
32 subdivision of the state government to:

33 (A) Construct, modify or add to any dam;

34 (B) construct, modify or add to any water obstruction in a designated  
35 stream; or

1 (C) change or diminish the course, current; or cross section of any  
 2 designated stream within this state.

3 (2) Any application for any permit or consent shall be made in  
 4 writing in such form as specified by the chief engineer.

5 (3) Revetments for the purpose of stabilizing a caving bank ~~which~~  
 6 *that* are properly placed shall not be construed as obstructions for the  
 7 purposes of this section.

8 (b) As used in K.S.A. 82a-301 et seq., and amendments thereto:

9 (1) "Dam" means any artificial barrier including appurtenant works  
 10 with the ability to impound water, waste water or other liquids that has a  
 11 height of 25 feet or more; or has a height of six feet or greater and a  
 12 storage volume at the top of the emergency spillway elevation of 50 or  
 13 more acre feet. The height of a dam or barrier shall be measured from the  
 14 lowest elevation of the streambed, downstream toe or outside limit of the  
 15 dam to the elevation of the top of the dam.

16 (2) "Designated stream" means a natural or man-made channel that  
 17 conveys drainage or runoff from a watershed having an area of:

18 (A) One or more square miles in zone one, which includes all  
 19 geographic points located in or east of Washington, Clay, Dickinson,  
 20 Marion, Harvey, Sedgwick or Sumner counties;

21 (B) two or more square miles in zone two, which includes all  
 22 geographic points located west of zone one and in or east of Smith,  
 23 Osborne, Russell, Barton, Stafford, Pratt or Barber counties; or

24 (C) three or more square miles in zone three, which includes all  
 25 geographic points located west of zone two.

26 (c) (1) The prior written consent or permit of the chief engineer shall  
 27 not apply to water obstructions that meet the following requirements:

28 (A) The change in the cross section of a designated stream is  
 29 obstructed less than 5% and the water obstruction or change is contained  
 30 within a land area measuring 25 feet or less along the stream length; or

31 (B) (i) the water obstruction is not a dam as defined in subsection (b);

32 (ii) the water obstruction is not located within an incorporated area;

33 (iii) every part of the water obstruction, and any water impounded by  
 34 such obstruction, is located more than 300 feet from any property  
 35 boundary; and

36 (iv) the watershed area above the water obstruction is five square  
 37 miles or less.

38 (2) If the water obstruction does not meet the requirements of  
 39 subsection (c)(1)(B)(iii), but meets all other requirements of subsection (c)  
 40 (1)(B), such water obstruction may be exempted from the permitting  
 41 requirements of subsection (a) if the chief engineer determines such water  
 42 obstruction has minimal impact upon safety and property based upon a  
 43 review of the information, to be provided by the owner, including:

1 (A) An aerial photo or topographic map depicting the location of the  
 2 proposed project, the location of the stream, the layout of the water  
 3 obstruction, the property lines and names and addresses of adjoining  
 4 property owners; and

5 (B) the principal dimensions of the project including, but not limited to,  
 6 the height above streambed.

7 (3) Notwithstanding any other provision of this section, the chief  
 8 engineer may require a permit for any water obstruction described in this  
 9 subsection if the chief engineer determines such permit is necessary for the  
 10 protection of life or property.

11 (d) The prior written consent or permit of the chief engineer shall not  
 12 be required for construction or modification of a hazard class A dam that:

13 ~~(1) Has a height of less than 30 feet and a storage volume at the top of~~  
 14 ~~the emergency spillway elevation of less than 125 acre feet, and the dam~~  
 15 ~~location and dimensions have been registered with the division of water~~  
 16 ~~resources in a written form prescribed by the chief engineer; or~~

17 ~~(2) is a wastewater storage structure for a confined feeding facility~~  
 18 ~~that has been approved by the secretary of health and environment~~  
 19 ~~pursuant to K.S.A. 65-171d, and amendments thereto.~~

20 (e) *Any structure that meets the provisions of subsection (b)(1) shall*  
 21 *be considered a water obstruction and not a dam if the primary purpose of*  
 22 *the structure is to serve as a:*

23 (1) *Dry detention road fill for state, county or municipal government;*  
 24 *or*

25 (2) *low head dam that has a maximum height below the lowest*  
 26 *stream bank.*

27 Sec. 3. K.S.A. 82a-302 is hereby amended to read as follows: 82a-  
 28 302. (a) Except as otherwise provided for general permits, each application  
 29 for the consent or permit required by K.S.A. 82a-301, and amendments  
 30 thereto, shall be accompanied by complete maps, plans, profiles and  
 31 specifications of such construction, modification or addition proposed to  
 32 be made, the required application fee as provided in subsection (b) unless  
 33 otherwise exempted, and such other data and information as the chief  
 34 engineer may require. The chief engineer shall adopt rules and regulations  
 35 for the issuance of a general permit ~~which~~. *A general permit* may be issued  
 36 for projects ~~which~~ *that* require limited supervision and review.

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

39 (A) *\$5,000 for a hazard class C dam;*

40 (B) *\$3,000 for a hazard class B dam; and*

41 (C) *\$1,500 for a hazard class A dam that does not qualify for the*  
 42 *exemption provided for in K.S.A. 82a-301(d), and amendments thereto, or*  
 43 *meet the requirements of K.S.A. 82a-301(e)(1) or (2), and amendments*

1 *thereto.*

2 (2) *The application fee for a permit to modify or add to a dam shall*  
3 *be:*

4 (A) *\$3,000 for a hazard class C dam;*

5 (B) *\$2,000 for a hazard class B dam; and*

6 (C) *\$1,000 for a hazard class A dam that does not qualify for the*  
7 *exemption provided for in K.S.A. 82a-301(d), and amendments thereto, or*  
8 *meet the requirements of K.S.A. 82a-301(e)(1) or (2), and amendments*  
9 *thereto.*

10 (3) *The application fee for a permit to construct, modify; or add to a*  
11 *water obstruction or to change or diminish the course, current or cross*  
12 *section of a stream shall be based on the watershed area.*

13 *Watershed Area Above the Project Permit Application Fee Post-*  
14 *Construction Permit Fee*

15 Less than 5 square miles	\$100	\$200
16 Between 5 and 50 square miles	\$200	\$400
17 More than 50 square miles	\$500	\$1,000

18 ~~(3)~~(4) *The application fee for a general permit shall be \$100.*

19 (c) (1) *The registration fee for each hazard class C dam shall be*  
20 *\$1,500 annually.*

21 (2) *The registration fee for each hazard class B dam shall be \$1,000*  
22 *annually, except that an individual dam owner shall not be required to pay*  
23 *more than \$10,000 in registration fees annually.*

24 (d) *All fees collected by the chief engineer pursuant to this section*  
25 *shall be remitted to the state treasurer as provided in K.S.A. 82a-328, and*  
26 *amendments thereto.*

27 Sec. 4. K.S.A. 82a-303b is hereby amended to read as follows: 82a-  
28 303b. (a) (1) In order to secure conformity with adopted rules and  
29 regulations and to assure compliance with the terms, conditions or  
30 restrictions of any consent or permit granted pursuant to the provisions of  
31 K.S.A. 82a-301 through 82a-303, and amendments thereto, the chief  
32 engineer or an authorized representative of the chief engineer shall have  
33 the power and the duty to inspect any dam or other water obstruction.  
34 Upon a finding pursuant to K.S.A. 82a-303c(a), and amendments thereto,  
35 by the chief engineer that a dam is unsafe, the chief engineer shall order an  
36 annual inspection of the dam until it is either in compliance with all  
37 applicable provisions of this act, any rules and regulations promulgated  
38 pursuant to this act, permit conditions and orders of the chief engineer; or  
39 the dam is removed. The safety inspection shall be conducted by the chief  
40 engineer or authorized representative and the cost shall be paid by the dam  
41 owner. The class and size of a dam shall be defined by rules and  
42 regulations adopted by the chief engineer pursuant to K.S.A. 82a-303a,  
43 and amendments thereto. ~~For inspections conducted by the chief engineer~~

1 or the chief engineer's authorized representative, inspection fees are as  
2 follows:

	Size of Dam	Inspection fee
4	Class 1	\$1,500
5	Class 2	\$1,500
6	Class 3	\$2,500
7	Class 4	\$4,000

8 (2) Each hazard class C dam shall be required to have a safety  
9 inspection conducted by a licensed professional engineer qualified in  
10 design, construction, maintenance and operation of dams once every three  
11 years, unless otherwise ordered by the chief engineer or an authorized  
12 representative of the chief engineer at least every three years.

13 (3) Each hazard class B dam shall be required to have a safety  
14 inspection conducted by a licensed professional engineer qualified in  
15 design, construction, maintenance and operation of dams once every five  
16 years unless otherwise ordered by the chief engineer or an authorized  
17 representative of the chief engineer at least every five years.

18 (4) Each hazard class A dam that does not qualify for the exemption  
19 provided for in K.S.A. 82a-301(d), and amendments thereto, or meet the  
20 requirements of K.S.A. 82a-301(e)(1) or (2), and amendments thereto,  
21 shall be required to have a safety inspection conducted by the chief  
22 engineer or an authorized representative of the chief engineer at least  
23 every 10 years.

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

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

40 (6) The failure to file a complete and timely report as required by the  
41 provisions of this act, or the failure to submit the fees assessed for  
42 inspections conducted by the chief engineer or the chief engineer's  
43 authorized representative shall be deemed a violation of this act and

1 subject to the penalties provided by K.S.A. 82a-305a, and amendments  
2 thereto.

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

10 (e) ~~All fees collected by the chief engineer pursuant to this section~~  
11 ~~shall be remitted to the state treasurer as provided in K.S.A. 82a-328, and~~  
12 ~~amendments thereto.~~

13 Sec. 5. K.S.A. 82a-305a is hereby amended to read as follows: 82a-  
14 305a. (a) Any person, partnership, association, corporation or agency or  
15 political subdivision of the state government who violates any provision of  
16 this act or of any rule and regulation or order issued pursuant thereto shall  
17 be deemed guilty of a class C misdemeanor. Each day that any such  
18 violation occurs after notice of the original violation is served upon the  
19 violator by the chief engineer by restricted mail shall constitute a separate  
20 offense.

21 (b) Upon request of the chief engineer, the attorney general shall  
22 bring suit in the name of the state of Kansas in any court of competent  
23 jurisdiction to enjoin (1) the unlawful construction, modification,  
24 operation or maintenance of any dam or other water obstruction, or (2) the  
25 unlawful change or diminution of the course, current or cross section of a  
26 river or stream. Such court may require the removal or modification of any  
27 such dam or other water obstruction by mandatory injunction.

28 (c) *In addition to any other penalty provided for by law, any person*  
29 *who commits a violation of K.S.A. 82a-301 et seq., and amendments*  
30 *thereto, or any rule and regulation adopted thereunder, may be subject to*  
31 *a civil penalty not less than \$100 nor more than \$1,000 per violation. In*  
32 *the case of a continuing violation, each occasion when the chief engineer*  
33 *provides notice that a violation has occurred or is occurring and action to*  
34 *correct the violation as specified by the chief engineer is not taken within*  
35 *seven days of receipt of such notice shall be considered a separate*  
36 *violation. Such civil penalty may be assessed in addition to any other*  
37 *penalty provided by law.*

38 (d) *No civil penalty shall be imposed pursuant to this section except*  
39 *on the written order of the chief engineer or duly authorized agent of the*  
40 *chief engineer.*

41 (e) *Any person aggrieved by an order of the chief engineer, or the*  
42 *chief engineer's duly authorized agent, pursuant to this section may*  
43 *appeal to the district court in the manner provided by the Kansas judicial*

1 *review act.*

2 *(f) All moneys collected by the chief engineer pursuant to this section*  
3 *shall be deposited in the state treasury in accordance with K.S.A. 75-4215,*  
4 *and amendments thereto, and shall be credited to the water structures fund*  
5 *pursuant to K.S.A. 82a-328, and amendments thereto.*

6 Sec. 6. K.S.A. 82a-301, 82a-302, 82a-303b and 82a-305a are hereby  
7 repealed.

8 Sec. 7. This act shall take effect and be in force from and after its  
9 publication in the statute book.