

HOUSE BILL No. 2109

By Committee on Agriculture and Natural Resources

1-26

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

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

5 Section 1. Subject to applicable appropriations therefor, the state
6 conservation commission shall develop and administer the Kansas dam
7 rehabilitation program in consultation with the chief engineer of the
8 division of water resources of the Kansas department of agriculture.

9 Sec. 2. There is hereby created in the state treasury the Kansas dam
10 rehabilitation cost share fund. All expenditures from such fund shall be
11 made in accordance with appropriation acts upon warrants of the director
12 of accounts and reports issued pursuant to vouchers approved by the
13 executive director of the state conservation commission or the executive
14 director's designee. Money credited to the fund shall be used for the
15 purpose of making cost share grants for dam rehabilitation pursuant to
16 this act.

17 Sec. 3. As used in this act:

18 (1) "Actual costs" means the costs to construct, rehabilitate or repair
19 a dam or to complete any other project that is designed to remedy
20 problems with or attempt to improve the safety of a dam or dam site in
21 the state, excluding any engineering costs that may be incurred for such
22 project;

23 (2) "breach inundation area" means an area that reasonable statistical
24 or engineering analysis indicates may be inundated submerged or covered
25 with water in the event a dam would breach or in another manner fail,
26 releasing water impounded by the dam;

27 (3) "chief engineer" means the chief engineer of the division of
28 water resources of the Kansas department of agriculture;

29 (4) "commission" means the state conservation commission;

30 (5) "dam" means any artificial barrier, including appurtenant works,
31 with the ability to impound water, waste water or other liquids that has a
32 height of 25 feet or more; or has a height of six feet or greater and also
33 has the capacity to impound 50 or more acre feet. The height of a dam
34 shall be determined as follows:

35 (A) A dam that extends across the natural bed of a stream or
36 watercourse shall be measured from the downstream toe of the dam to the

1 top of a dam; and

2 (B) a dam that does not extend across a stream or watercourse shall
3 be measured from the lowest elevation of the outside limit of the dam to
4 the top of the dam;

5 (6) "dam owner" means any person, partnership, association,
6 corporation, agency or political subdivision of the state government or
7 any other entity who owns a dam permitted under K.S.A. 82a-301
8 through 305a, and amendments thereto;

9 (7) "executive director" means the executive director of the state
10 conservation commission;

11 (8) "hazard classification" means the classification given to a dam
12 pursuant to rules and regulations adopted by the chief engineer,
13 subjecting such dam to inspection as described in K.S.A. 82a-303b, and
14 amendments thereto;

15 (9) "program" means the Kansas dam rehabilitation program;

16 (10) "project" means an eligible plan and undertaking under the
17 Kansas dam rehabilitation program; and

18 (11) "unpermitted dam" means a dam constructed without the prior
19 required approval of the chief engineer and for which a permit has not
20 been granted.

21 Sec. 4. (a) Any dam owner may apply for cost share assistance to:

22 (1) Rehabilitate a dam to meet or exceed the minimum requirements
23 of the chief engineer;

24 (2) protect downstream facilities potentially affected by a failure of
25 a dam, by physical means sufficient to permit the chief engineer to reduce
26 the hazard classification of such dam;

27 (3) purchase, raze or relocate buildings downstream of a dam that
28 are not owned by such dam owner to reduce the hazard classification of
29 such dam;

30 (4) implement any other proposal that is approved by the chief
31 engineer and the executive director which results in the dam meeting or
32 exceeding the minimum requirements of the chief engineer for its hazard
33 classification;

34 (5) implement any combination of (1) through (4); or

35 (6) remove the dam in a manner that meets the chief engineer's
36 requirements.

37 (b) A dam owner applying for cost share assistance shall submit a
38 rehabilitation plan to the chief engineer in a form prescribed by such chief
39 engineer. Upon approval of the project by the chief engineer, such dam
40 owner may enter into a contract for such project with the state
41 conservation commission.

42 (c) A project shall comply with K.S.A. 82a-301 through 82a-305a,
43 and amendments thereto, rules and regulations adopted by the chief

1 engineer and any other specific requirements of the chief engineer.

2 (d) Cost share assistance funds shall not be remitted until the
3 rehabilitation is completed and the chief engineer and executive director
4 approve the rehabilitation.

5 (e) If a project includes purchasing, razing or relocating residential
6 structures in the breach inundation area of a dam, cost share funding shall
7 be eligible only if:

8 (1) An easement prohibiting future development of the breach
9 inundation area is acquired and recorded with the register of deeds;

10 (2) there is sufficient evidence demonstrating the local ordinance
11 development of the breach inundation area;

12 (3) a reasonable review of such project indicates no development
13 potential in the breach inundation area; or

14 (4) the executive director finds other information that justifies the
15 inclusion of such project in the program.

16 (f) The chief engineer shall assist the commission by reviewing and
17 recommending a priority order for program applications based on the
18 following criteria:

19 (1) The severity of potential impacts of dam failure;

20 (2) the risk of failure due to the dam's deficiencies;

21 (3) the extent to which deficiencies resulted from downstream
22 development beyond the control of a dam owner; and

23 (4) any other criteria for prioritization developed by the commission
24 and the chief engineer.

25 (g) A dam owner may apply to the commission for cost share
26 assistance of an amount not to exceed 90% of the actual costs of such
27 project. The maximum cost share for each project shall be determined
28 annually by the commission. The commission may award additional cost
29 share assistance for engineering costs related to the project, not to exceed
30 an additional 10% of the actual costs of the project.

31 (h) No owner of an unpermitted dam shall be eligible to receive cost
32 share assistance under the program without the prior issuance of a permit
33 by the chief engineer. A dam that was constructed prior to permitting
34 requirements may also be eligible if the executive director, in
35 consultation with the chief engineer, finds that such dam is in need of
36 repair and should be considered a priority under the program and the dam
37 owner agrees to meet all requirements of the program.

38 (i) Upon the commission's approval of a program application, a dam
39 owner will be solely responsible for:

40 (1) The submission of all reports required by the commission and
41 any other applicable agency;

42 (2) the operation and maintenance of a dam as defined in the
43 contract; and

- 1 (3) compliance with all rules and regulations regarding the program.
- 2 (j) A dam owner, as a condition of receiving program cost share
- 3 assistance, shall agree to:
- 4 (1) Cooperate with staff from the commission and any other
- 5 applicable agency;
- 6 (2) grant ongoing access to a dam during the project and as needed
- 7 in the future for operation and maintenance inspections by the
- 8 commission or the chief engineer; and
- 9 (3) furnish, upon request, plans, specifications, operating and
- 10 maintenance data and other information pertinent to such dam.
- 11 (k) No dam owner shall be relieved of the duty to maintain a dam in
- 12 satisfactory condition, as determined by the chief engineer, because of
- 13 lack of program funding, low priority for funding under the program, or
- 14 lack of cost sharing assistance under the program.
- 15 (l) This act does not create, intend to create or assume any liability
- 16 for damages against the state of Kansas or any of its agencies, employees
- 17 or agents thereof, for any act or event caused by or arising out of:
- 18 (1) The construction, maintenance, operation, or failure of a dam
- 19 prior to, during or following participation by the dam owner in the
- 20 program; or
- 21 (2) the issuance and enforcement of an order or rule issued by any
- 22 applicable agency.
- 23 (m) The commission may enter into agreements with other local,
- 24 state and federal agencies to implement the program.
- 25 Sec. 5. The commission shall adopt rules and regulations to
- 26 implement the program.
- 27 Sec. 6. This act shall take effect and be in force from and after its
- 28 publication in the statute book.
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