

24-126. Unlawful to construct fills and levees without prior approval of chief engineer, penalty; plans for levee, contents; approval of levee plans, considerations; fees; injunctions; rules and regulations. (a) It shall be unlawful for any person, corporation, drainage or levee district, county, city or township, without first obtaining the approval of plans for the same by the chief engineer of the division of water resources, to construct, cause to be constructed, maintain or cause to be maintained, any levee or other such improvement on, along or near any stream of this state which is subject to floods, freshets or overflows, so as to control, regulate or otherwise change the flood waters of such stream. Any person, corporation, county, city, township or district violating any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment in the county jail for a period of not more than one year, or by both such fine and imprisonment. Each day any structure is maintained or caused to be maintained shall constitute a separate offense.

(b) Subject to the provisions of subsection (e), plans submitted for approval shall include maps, profiles, cross sections, data and information as to the effect upon upstream and downstream areas resulting from the proposed levee or other such improvement, the required fee as provided in subsection (c) and such other data and information as the chief engineer of the division of water resources may require.

(c) (1) Fill and levee approval fees shall be as follows:

Type Pre- Construction Construction In Progress

Major (Fill in defined floodway class C levee) \$500 \$1000

Moderate (Fill in floodplain without defined floodway class B levee) \$300 \$600

Minor (Fill in floodway fringe class A levee) \$100 \$200

(2) The construction in progress fee shall be applicable for projects where construction began prior to approval by the chief engineer. Such fee shall be in addition to any other penalty under law for unapproved fill or levee construction. Projects that require approval under both this act and obstructions in streams act, K.S.A. 82a-301 et seq., and amendments thereto, shall be required to pay only the greater of the two fees when seeking approval from the chief engineer.

(d) If the chief engineer finds from an examination of such plans and pertinent information that the construction of the proposed levee or other such improvement is feasible and not adverse to the public interest, the chief engineer shall approve the proposed levee or other such improvement. In determining whether or not the construction of any proposed levee or other such improvement designed so as to reduce flood risks to a chance of occurrence in any one year of 1% or less is adverse to the public interest, the chief engineer shall consider the following: (1) The effect upon areas downstream or upstream as a result of the construction of such proposed levee or other such improvement; and (2) the effect of the proposed levee or other such improvement and any other existing or proposed levees or other such improvements upon downstream and upstream areas. In the event any such levee or other such improvement is about to be constructed, is constructed or maintained by any person, corporation, county, city, township or district without approval of plans by the chief engineer, it shall be the duty of the attorney general, to file suit in a court of competent jurisdiction, to enjoin the construction or maintenance of such levee or other such improvement.

(e) For fills other than levees located in the floodway fringe within a participating community as defined and identified in the national flood insurance act, all required data and information shall be specified by rules and regulations adopted by the chief engineer. Within 90 days of receipt of plans and such data and information as required by the chief engineer for fills other than levees located in the floodway fringe within a participating community as defined and identified by the national flood insurance act, the chief engineer shall approve or disapprove the plans for such fills. If the chief engineer fails to approve or disapprove a plan within the 90-day period required by this section, such plan shall be deemed approved. The chief engineer shall provide, in writing, specific reasons for any disapproval which shall include any hydrologic and hydraulic analyses or other data upon which such disapproval is based.

(f) Prior to the adoption of a general plan of drainage and flood protection, as provided in K.S.A. 24-901, and amendments thereto, and the commencement of construction in carrying such plan into effect, the chief engineer of the division of water resources may give temporary approval for the repair and maintenance of any levee or other drainage work in existence on May 28, 1929; but such approval for such temporary repair and maintenance shall be without prejudice to withdrawal of such approval when a general plan shall be adopted. Nothing contained in this section shall apply to any drainage district heretofore organized under K.S.A. 24-401 et seq., and amendments thereto, and having property of an assessed valuation of \$50,000,000 or more.

(g) The chief engineer shall adopt such rules and regulations deemed necessary to administer and enforce the provisions of this section.

(h) All fees collected by the chief engineer pursuant to this section shall be remitted to the state treasurer as provided in K.S.A. 2016 Supp. 82a-328, and amendments thereto.

History: L. 1929, ch. 176, § 71; L. 1951, ch. 261, § 2; L. 1981, ch. 397, § 1; L. 1991, ch. 56, § 27; L. 2002, ch. 138, § 1; July 1.