

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

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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

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

93 (k) Lack of funding for this program, a low priority for funding under this program or any other lack of
94 cost-share assistance under this program shall not serve to relieve any dam owner of responsibility to
95 maintain a dam in a condition satisfactory to the chief engineer under the laws of this state.
96 (l) this statute does not create, intend to create or assume any liability for damages against the state of
97 Kansas or any of its agencies, employees or agents thereof, for any act or event caused by or arising out
98 of any of the following: (1) The construction, maintenance, operation, or failure of a dam or appurtenant
99 works during or following participation by the dam owner in the dam rehabilitation program created
100 under this act. (2) The issuance and enforcement of an order or rule issued by any applicable regulatory
101 agency.
102 (m) The state conservation commission may enter into agreements with other local, state and federal
103 agencies to implement the Kansas dam rehabilitation program created under this act.
104 **Rules and regulations.** The state conservation commission shall adopt rules and regulations to
105 implement the Kansas dam rehabilitation act.
106 **Effect.** This act shall take effect and be in force from and after its publication in the statute book.