

MEMORANDUM

To: Chairperson Burgess and members of the Committee on Government Efficiency
From: Jim Wilson, First Assistant Revisor
Date: February 15, 2012
Subject: HB 2649 – Repealing K.S.A. 24-105, 82a-312, 82a-313 and 82a-314 and K.S.A. 2011 Supp. 82a-735; concerning water

HB 2704 would repeal five statutes concerning water. The current statutes and Histories are listed below. The David Barfield, Chief Engineer of the Division of Water Resources of the Kansas Department of Agriculture, has concise, detailed written testimony available for the committee.

These sections were recommended to the Office of Repealer and Chris Wilson, Deputy Secretary and Chief Counsel of the Kansas Department of Agriculture, is listed as resource contact.

The act would take effect upon publication in the statute book.

24-105. Obstructing flow of surface water; application to build levee; contents; examination by engineer; permit. It shall be unlawful for a landowner or proprietor to construct or maintain a dam or levee which has the effect of obstructing or collecting and discharging with increased force and volume the flow of surface water to the damage of the adjacent owner or proprietor; but nothing herein shall be construed as preventing an owner of land from constructing a dike or levee along the bank of a natural watercourse to repel flood waters from such natural watercourse if plans therefor have been approved as required in K.S.A. 24-126, as amended: Provided, That the provisions of this section shall apply only to lands used for agricultural purposes and highways lying wholly outside the limits of any incorporated city: Provided further, That where such surface water is the overflow of a watercourse on the premises of an upper landowner and such upper landowner has not constructed or maintained a levee along the bank of such watercourse to prevent the overflow, any landowner may make application to the chief engineer of the division of water resources stating in such application that an upper landowner, or landowners, if more than one, whose name and address is given in the petition, has not constructed a levee on his land to prevent the overflow from the stream, and requesting permission to build a levee on his own land to repel such flood water.

Each application shall be accompanied by maps, profiles, cross sections and such other data and information as the chief engineer of the division of water resources may require. The chief engineer of the division of water resources shall then set a day to examine the location of the proposed levee and shall notify the landowners whose names and addresses are given in said petition. If he finds from an examination of the location of the proposed levee and the submitted plans that the construction of the proposed levee is feasible, not adverse to the public interest and should be built, he may then grant permission for its construction.

History: L. 1911, ch. 175, § 1; L. 1917, ch. 176, § 1; R.S. 1923, 24-105; L. 1931, ch. 184, § 1; L. 1951, ch. 261, § 1; April 2.

82a-312. Dams built under federal agricultural program; approval by chief engineer. Any landowner or operator who desires to construct, or who has constructed a dam, for agricultural purposes on his or her

own land or land operated by him or her, as a part of the federal agricultural conservation program without complying with the provisions of K.S.A. 82a-301 to 82a-305, both sections inclusive, may make application to the chief engineer of the division of water resources for approval of the construction of such dams. History: L. 1939, ch. 354, § 1; March 14.

82a-313. Same; plans to accompany application. Each application for such approval shall be accompanied by plans of the dam that has been built or shall be built showing the area of the drainage basin above the dam, a cross section of the dam site, a cross section, plan and elevation of the dam, a plan of the spillway and such other data and information as the chief engineer of the division of water resources may require. History: L. 1939, ch. 354, § 2; March 14.

82a-314. Same; revision of plans. If the plans are found to be satisfactory and upon examination, the dam is found to be constructed in accordance with such plans, the chief engineer shall approve the plans and the construction of the dam. If the plans fail to meet the requirements of the chief engineer, the owner shall make such changes in or additions to the dam as may be required and submit revised plans. If such revised plans are satisfactory and the dam is found to be constructed in accordance with them, the chief engineer shall approve such revised plans and construction. History: L. 1939, ch. 354, § 3; March 14.

82a-735. Sunflower ammunition plant water rights. (a) The state of Kansas shall have the sole authority to enter into negotiations, agreements and contracts with the federal government regarding water rights, file number 37 and file number 38, appurtenant to federal property located in Johnson county. The Kansas water office, on behalf of the state, shall enter into such negotiations, agreements and contracts when the Kansas water office deems it necessary for the achievement of policies of the state relative to the water resources of the state. Such negotiations, agreements and contracts shall be for the purpose of:

(1) The return of such water rights to the state, in which case the rights shall be terminated and their priority forfeited; or

(2) the acquisition of such water rights by the state.

(b) Any agreement or contract entered into pursuant to this section shall be binding on the state only upon adoption by the legislature of a concurrent resolution approving such agreement or contract.

(c) If water rights are acquired by the state pursuant to this section:

(1) The Kansas water office, on behalf of the state, shall accept and hold such water rights in trust;

(2) the Kansas water office shall have no authority to assign, transfer or otherwise dispose of such water rights;

(3) all contractual agreements associated with such water rights shall remain in effect and the provisions of K.S.A. 82a-718 and amendments thereto shall not apply to such water rights while held by the Kansas water office; and

(4) the Kansas water office shall make all annual payments associated with such acquired water rights to any water assurance district under the provisions of the water assurance program act until such time as such water rights are transferred to another person or entity.

(d) Changes to any water rights acquired by the state pursuant to this section shall be in accordance with the Kansas water appropriation act, including the provisions of K.S.A. 82a-708b and amendments thereto. History: L. 1999, ch. 122, § 2; July 1.