

**SENATE BILL No. 152**

By Committee on Agriculture and Natural Resources

2-12

1 AN ACT concerning the department of health and environment; relating to  
2 fees; underground injection control program; water well license and  
3 construction program; amending K.S.A. 65-166b, 65-171d and 65-4514  
4 and K.S.A. 2018 Supp. 82a-1206 and repealing the existing sections.  
5

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

7 Section 1. K.S.A. 65-166b is hereby amended to read as follows: 65-  
8 166b. (a) There is hereby created in the state treasury the water program  
9 management fund. The secretary shall remit to the state treasurer, in  
10 accordance with the provisions of K.S.A. 75-4215, and amendments  
11 thereto, all moneys collected or received by the secretary from the  
12 following sources:

13 (1) Water pollution control permit system fees imposed pursuant to  
14 K.S.A. 65-166a, and amendments thereto;

15 (2) *water well contractor application and license fees imposed*  
16 *pursuant to K.S.A. 82a-1206, and amendments thereto;*

17 (3) *class 1 underground injection control well permitting, monitoring,*  
18 *testing, inspection and regulation fees pursuant to K.S.A. 65-171d(p), and*  
19 *amendments thereto;*

20 (4) *water supply system and wastewater treatment facility fees*  
21 *pursuant to K.S.A. 65-4513, and amendments thereto;*

22 (5) interest attributable to investment of moneys in the water program  
23 management fund;

24 ~~(3)~~(6) gifts, grants, reimbursements or appropriations intended to be  
25 used for the purposes of the fund, but excluding federal grants and  
26 cooperative agreements; and

27 ~~(4)~~(7) any other moneys provided by law.

28 Upon receipt of each such remittance, the state treasurer shall deposit in  
29 the state treasury any amount remitted pursuant to this subsection to the  
30 credit of the water program management fund.

31 (b) Moneys in the water program management fund shall be  
32 expended for the following purposes:

33 (1) Monitoring and investigating the quality of waters of the state;

34 (2) payment of the state's share of the clean water act matching costs,  
35 as required by the federal clean water act, 33 U.S.C. § 1256(d);

36 (3) payment for emergency action by the secretary as necessary or

1 appropriate to assure that the public health or safety is not threatened  
2 whenever there is a release from a wastewater treatment facility;

3 (4) payment of the administrative, technical and legal costs incurred  
4 by the secretary in carrying out the provisions of K.S.A. 65-159 through  
5 65-171y, *65-4501 through 65-4517 and 82a-1206 through 82a-1219*, and  
6 amendments thereto, including the cost of any additional employees or  
7 increased general operating costs of the department attributable therefore;  
8 and

9 (5) development of educational materials and programs for informing  
10 the public about water issues.

11 (c) Expenditures from the water program management fund shall be  
12 made in accordance with appropriation acts upon warrants of the director  
13 of accounts and reports issued pursuant to vouchers approved by the  
14 secretary or a person designated by the secretary.

15 (d) On or before the 10<sup>th</sup> of each month, the director of accounts and  
16 reports shall transfer from the state general fund to the water program  
17 management fund interest earnings based on:

18 (1) The average daily balance of moneys in the water program  
19 management fund for the preceding month; and

20 (2) the net earnings rate of the pooled money investment portfolio for  
21 the preceding month.

22 (e) The water program management fund shall be used for the  
23 purposes set forth in this act and for no other governmental purposes. It is  
24 the intent of the legislature that the fund shall remain intact and inviolate  
25 for the purposes set forth in this act, and moneys in the fund shall not be  
26 subject to the provisions of K.S.A. 75-3722, 75-3725a and 75-3726a, and  
27 amendments thereto.

28 (f) The secretary shall prepare and deliver to the legislature on or  
29 before the first day of each regular legislative session, a report which  
30 summarizes all expenditures from the water program management fund,  
31 fund revenues and recommendations regarding the adequacy of the fund to  
32 support necessary water program management programs.

33 Sec. 2. K.S.A. 65-171d is hereby amended to read as follows: 65-  
34 171d. (a) For the purpose of preventing surface and subsurface water  
35 pollution and soil pollution detrimental to public health or to the plant,  
36 animal and aquatic life of the state, and to protect designated uses of the  
37 waters of the state and to require the treatment of sewage predicated upon  
38 technologically based effluent limitations, the secretary of health and  
39 environment shall make such rules and regulations, including registration  
40 of potential sources of pollution, as may in the secretary's judgment be  
41 necessary to: (1) Protect the soil and waters of the state from pollution  
42 resulting from underground storage of liquid petroleum gas and  
43 hydrocarbons, other than underground porosity storage of natural gas; (2)

1 control the disposal, discharge or escape of sewage as defined in K.S.A.  
2 65-164, and amendments thereto, by or from municipalities, corporations,  
3 companies, institutions, state agencies, federal agencies or individuals and  
4 any plants, works or facilities owned or operated, or both, by them; and (3)  
5 establish water quality standards for the waters of the state to protect their  
6 designated uses, including establishment of water quality standards  
7 variances that may apply to specified pollutants, permittees, or waterbody  
8 segments that reflect the highest attainable condition during the specified  
9 time period for the variance. In no event shall the secretary's authority be  
10 interpreted to include authority over the beneficial use of water, water  
11 quantity allocations, protection against water use impairment of a  
12 beneficial use, or any other function or authority under the jurisdiction of  
13 the Kansas water appropriation act, K.S.A. 82a-701, and amendments  
14 thereto.

15 (b) The secretary of health and environment may adopt by reference  
16 any regulation relating to water quality and effluent standards promulgated  
17 by the federal government pursuant to the provisions of the federal clean  
18 water act, and amendments thereto, as in effect on January 1, 1989, which  
19 the secretary is otherwise authorized by law to adopt.

20 (c) For the purposes of this act, including K.S.A. 65-161 through 65-  
21 171h and ~~K.S.A. 65-1,178~~ through 65-1,198, and amendments thereto, and  
22 rules and regulations adopted pursuant thereto:

23 (1) "Pollution" means: (A) Such contamination or other alteration of  
24 the physical, chemical or biological properties of any waters of the state as  
25 will or is likely to create a nuisance or render such waters harmful,  
26 detrimental or injurious to public health, safety or welfare, or to the plant,  
27 animal or aquatic life of the state or to other designated uses; or (B) such  
28 discharge as will or is likely to exceed state effluent standards predicated  
29 upon technologically based effluent limitations.

30 (2) "Confined feeding facility" means any building, lot, pen, pool or  
31 pond: (A) That is used for the confined feeding of animals or fowl for  
32 food, fur or pleasure purposes; (B) that is not normally used for raising  
33 crops; and (C) in which no vegetation intended for animal food is growing.

34 (3) (A) "Animal unit" means a unit of measurement calculated by  
35 adding the following numbers: The number of beef cattle weighing more  
36 than 700 pounds multiplied by 1.0; plus the number of cattle weighing less  
37 than 700 pounds multiplied by 0.5; plus the number of mature dairy cattle  
38 multiplied by 1.4; plus the number of swine weighing more than 55  
39 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds or  
40 less multiplied by 0.1; plus the number of sheep or lambs multiplied by  
41 0.1; plus the number of horses multiplied by 2.0; plus the number of  
42 turkeys multiplied by 0.018; plus the number of laying hens or broilers, if  
43 the facility has continuous overflow watering, multiplied by 0.01; plus the

1 number of laying hens or broilers, if the facility has a liquid manure  
2 system, multiplied by 0.033; plus the number of laying hens or broilers, if  
3 the facility has a dry manure system, multiplied by 0.003; plus the number  
4 of ducks multiplied by 0.2. However, each head of cattle will be counted  
5 as one full animal unit for the purpose of determining the need for a  
6 federal permit. A chicken facility using a dry manure system shall obtain a  
7 federal permit if 125,000 or more broilers, or 82,000 or more laying hens,  
8 are confined.

9 (B) "Animal unit" also includes the number of swine weighing 55  
10 pounds or less multiplied by 0.1 for the purpose of determining applicable  
11 requirements for new construction of a confined feeding facility for which  
12 a permit or registration has not been issued before January 1, 1998, and for  
13 which an application for a permit or registration and plans have not been  
14 filed with the secretary of health and environment before January 1, 1998,  
15 or for the purpose of determining applicable requirements for expansion of  
16 such facility.

17 (C) Except as otherwise provided, animal units for public livestock  
18 markets shall be determined by using the average annual animal units sold  
19 by the market during the past five calendar years divided by 365. Such  
20 animal unit determination may be adjusted by the department if the public  
21 livestock market submits documentation that demonstrates that such  
22 adjustment is appropriate based on the amount of time in 24-hour  
23 increments or partials thereof that animals are at the market.

24 (4) "Animal unit capacity" means the maximum number of animal  
25 units that a confined feeding facility is designed to accommodate at any  
26 one time.

27 (5) "Habitable structure" means any of the following structures that  
28 are occupied or maintained in a condition that may be occupied and, in the  
29 case of a confined feeding facility for swine, are owned by a person other  
30 than the operator of such facility: A dwelling, church, school, adult care  
31 home, medical care facility, child care facility, library, community center,  
32 public building, office building or licensed food service or lodging  
33 establishment.

34 (6) "Wildlife refuge" means Cheyenne Bottoms wildlife management  
35 area, Cheyenne Bottoms preserve and Flint Hills, Quivera, Marais des  
36 Cygnes and Kirwin national wildlife refuges.

37 (d) In adopting rules and regulations, the secretary of health and  
38 environment, taking into account the varying conditions that are probable  
39 for each source of sewage and its possible place of disposal, discharge or  
40 escape, may provide for varying the control measures required in each  
41 case to those the secretary finds to be necessary to prevent pollution. If a  
42 freshwater reservoir or farm pond is privately owned and where complete  
43 ownership of land bordering the reservoir or pond is under common

1 private ownership, such freshwater reservoir or farm pond shall be exempt  
2 from water quality standards except as it relates to water discharge or  
3 seepage from the reservoir or pond to waters of the state, either surface or  
4 groundwater, or as it relates to the public health of persons using the  
5 reservoir or pond or waters therefrom.

6 (e) (1) Whenever the secretary of health and environment or the  
7 secretary's duly authorized agents find that storage or disposal of salt water  
8 not regulated by the state corporation commission or refuse in any surface  
9 pond not regulated by the state corporation commission is causing or is  
10 likely to cause pollution of soil or waters of the state, the secretary or the  
11 secretary's duly authorized agents shall issue an order prohibiting such  
12 storage or disposal of salt water or refuse. Any person aggrieved by such  
13 order may within 15 days of service of the order request in writing a  
14 hearing on the order.

15 (2) Upon receipt of a timely request, a hearing shall be conducted in  
16 accordance with the provisions of the Kansas administrative procedure act.

17 (3) Any action of the secretary pursuant to this subsection is subject  
18 to review in accordance with the Kansas judicial review act.

19 (f) The secretary may adopt rules and regulations establishing fees for  
20 plan approval, monitoring and inspecting underground or buried petroleum  
21 products storage tanks, for which the annual fee shall not exceed \$5 for  
22 each tank in place.

23 (g) (1) Prior to any new construction of a confined feeding facility  
24 with an animal unit capacity of 300 or more, such facility shall register  
25 with the secretary of health and environment. Such registration shall be  
26 accompanied by a \$25 fee. The secretary shall acknowledge the receipt of  
27 the registration in a form as designated by the secretary and publish a  
28 notice of such receipt.

29 (2) Such registration shall indicate that the proposed construction will  
30 occur within the prescribed tract of land and that the separation distances  
31 from the tract boundaries or proposed facility footprint comply with the  
32 requirements described in subsections (j), (l) and (m) or exceptions  
33 described in (k).

34 (3) Within 30 days of receipt of such registration, the department of  
35 health and environment shall identify any significant water pollution  
36 potential or separation distance violations pursuant to subsection (j).

37 (A) (i) If the proposed facility has an animal unit capacity of 1,000 or  
38 more, or if a significant water pollution potential is identified for a facility  
39 of less than 1,000 but more than 300, such facility shall be required to  
40 obtain a permit from the secretary.

41 (ii) If there is no identified water pollution potential posed by a  
42 facility with an animal unit capacity of 300 or more but less than 1,000,  
43 the secretary shall certify that no permit is required.

1 (B) If the secretary certifies that no permit is necessary pursuant to  
2 subsection (g)(3)(A)(ii), the secretary shall take the following action in  
3 regard to separation distances of such facility:

4 (i) If the separation distances comply with the requirements for  
5 separation distances, the secretary shall certify the registration; or

6 (ii) if the separation distances do not comply with the requirements  
7 for separation distances, the secretary:

8 (a) May reduce the separation distance requirements pursuant to  
9 subsection (k) and certify the registration based on such reduction of  
10 separation distances; or

11 (b) shall report the conditions necessary to receive certification to the  
12 registrant.

13 (h) (1) Facilities with a capacity of less than 300 animal units may  
14 register with the secretary of health and environment. Such registration  
15 shall be accompanied by a \$25 fee.

16 (2) Within 30 days of receipt of such registration, the department of  
17 health and environment shall identify any significant water pollution  
18 potential. If there is identified a significant water pollution potential, such  
19 facility shall be required to obtain a permit from the secretary. If there is  
20 no water pollution potential posed by such facility, the secretary may  
21 certify that no permit is required.

22 (i) (1) If a facility requires a permit pursuant to subsection (g)(3) or  
23 (h)(2), the registrant shall submit an application for such permit not later  
24 than 18 months after the date of receipt of registration or the registration  
25 shall expire.

26 (2) Upon petition by the registrant, the secretary may extend the  
27 application period, by no more than an additional 18 months, if the  
28 secretary believes such an extension is reasonable under the  
29 circumstances.

30 (3) Within 30 days of receipt of an application, the secretary shall  
31 notify the registrant of whether the application is complete or incomplete.  
32 If the application is incomplete, such notice shall state the reasons why  
33 such application is incomplete. Once such registrant submits an  
34 application properly addressing each reason listed as a basis for the  
35 determination that the application is incomplete, the secretary shall issue  
36 an acknowledgment of receipt of the completed application within 30 days  
37 of properly addressing such reasons.

38 (4) Upon expiration of the application period or any extension  
39 thereof, the secretary shall not accept any further registrations pertaining to  
40 the same location for a period of not less than 180 days.

41 (j) (1) Any new construction or new expansion of a confined feeding  
42 facility, other than a confined feeding facility for swine, shall meet or  
43 exceed the following requirements in separation distances from any

1 habitable structure in existence when the registration is received:

2 (A) 1,320 feet for facilities with an animal unit capacity of 300 to  
3 999; and

4 (B) 4,000 feet for facilities with an animal unit capacity of 1,000 or  
5 more.

6 (2) A confined feeding facility for swine shall meet or exceed the  
7 following requirements in separation distances from any habitable  
8 structure or city, county, state or federal park in existence when the  
9 registration is received:

10 (A) 1,320 feet for facilities with an animal unit capacity of 300 to  
11 999;

12 (B) 4,000 feet for facilities with an animal unit capacity of 1,000 to  
13 3,724;

14 (C) 4,000 feet for expansion of existing facilities to an animal unit  
15 capacity of 3,725 or more if such expansion is within the perimeter from  
16 which separation distances are determined pursuant to subsection (m) for  
17 the existing facility; and

18 (D) 5,000 feet for: (i) Construction of new facilities with an animal  
19 unit capacity of 3,725 or more; or (ii) expansion of existing facilities to an  
20 animal unit capacity of 3,725 or more if such expansion extends outside  
21 the perimeter from which separation distances are determined pursuant to  
22 subsection (m) for the existing facility.

23 (3) Any construction of new confined feeding facilities for swine  
24 shall meet or exceed the following requirements in separation distances  
25 from any wildlife refuge:

26 (A) 10,000 feet for facilities with an animal unit capacity of 1,000 to  
27 3,724; and

28 (B) 16,000 feet for facilities with an animal unit capacity of 3,725 or  
29 more.

30 (k) (1) The separation distance requirements of subsections (j)(1) and  
31 (2) shall not apply if the registrant obtains a written agreement from all  
32 owners of habitable structures that are within the separation distance  
33 stating such owners are aware of the construction or expansion and have  
34 no objections to such construction or expansion. The written agreement  
35 shall be filed in the register of deeds office of the county in which the  
36 habitable structure is located.

37 (2) (A) The secretary may reduce the separation distance  
38 requirements of subsection (j)(1) if: (i) No substantial objection from  
39 owners of habitable structures within the separation distance is received in  
40 response to public notice; or (ii) the board of county commissioners of the  
41 county where the confined feeding facility is located submits a written  
42 request seeking a reduction of separation distances.

43 (B) The secretary may reduce the separation distance requirements of

1 subsection (j)(2)(A) or (B) if: (i) No substantial objection from owners of  
2 habitable structures within the separation distance is received in response  
3 to notice given in accordance with subsection (n); (ii) the board of county  
4 commissioners of the county where the confined feeding facility is located  
5 submits a written request seeking a reduction of separation distances; or  
6 (iii) the secretary determines that technology exists that meets or exceeds  
7 the effect of the required separation distance and the facility will be using  
8 such technology.

9 (C) The secretary may reduce the separation distance requirements of  
10 subsection (j)(2)(C) or (D) if: (i) No substantial objection from owners of  
11 habitable structures within the separation distance is received in response  
12 to notice given in accordance with subsection (l); or (ii) the secretary  
13 determines that technology exists that meets or exceeds the effect of the  
14 required separation distance and the facility will be using such technology.

15 (l) (1) The separation distances required pursuant to subsection (j)(1)  
16 shall not apply to:

17 (A) Confined feeding facilities that were permitted or certified by the  
18 secretary on July 1, 1994;

19 (B) confined feeding facilities that existed on July 1, 1994, and  
20 registered with the secretary before July 1, 1996; or

21 (C) expansion of a confined feeding facility, including any expansion  
22 for which an application was pending on July 1, 1994, if: (i) In the case of  
23 a facility with an animal unit capacity of 1,000 or more prior to July 1,  
24 1994, the expansion is located at a distance not less than the distance  
25 between the facility and the nearest habitable structure prior to the  
26 expansion; or (ii) in the case of a facility with an animal unit capacity of  
27 less than 1,000 prior to July 1, 1994, the expansion is located at a distance  
28 not less than the distance between the facility and the nearest habitable  
29 structure prior to the expansion and the animal unit capacity of the facility  
30 after expansion does not exceed 2,000.

31 (2) The separation distances required pursuant to subsections (j)(2)  
32 (A) and (B) shall not apply to:

33 (A) Confined feeding facilities for swine which were permitted or  
34 certified by the secretary on July 1, 1994;

35 (B) confined feeding facilities for swine which existed on July 1,  
36 1994, and registered with the secretary before July 1, 1996; or

37 (C) expansion of a confined feeding facility which existed on July 1,  
38 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000  
39 or more prior to July 1, 1994, the expansion is located at a distance not less  
40 than the distance between the facility and the nearest habitable structure  
41 prior to the expansion; or (ii) in the case of a facility with an animal unit  
42 capacity of less than 1,000 prior to July 1, 1994, the expansion is located at  
43 a distance not less than the distance between the facility and the nearest



1 habitable structure prior to the expansion and the animal unit capacity of  
2 the facility after expansion does not exceed 2,000.

3 (3) The separation distances required pursuant to subsections (j)(2)  
4 (C) and (D) and (h)(3) shall not apply to the following, as determined in  
5 accordance with ~~subsections~~ K.S.A. 65-1,178(a), (e) and (f), and  
6 amendments thereto:

7 (A) Expansion of an existing confined feeding facility for swine if an  
8 application for such expansion has been received by the department before  
9 March 1, 1998; and

10 (B) construction of a new confined feeding facility for swine if an  
11 application for such facility has been received by the department before  
12 March 1, 1998.

13 (m) The separation distances required by this section for confined  
14 feeding facilities for swine shall be determined from the exterior perimeter  
15 of any buildings utilized for housing swine, any lots containing swine, any  
16 swine waste retention lagoons or ponds or other manure or wastewater  
17 storage structures and any additional areas designated by the registrant for  
18 future expansion. Such separation distances shall not apply to offices,  
19 dwellings and feed production facilities of a confined feeding facility for  
20 swine.

21 (n) The registrant shall give the notice required by subsections (k)(2)  
22 (B) and (C) by certified mail, return receipt requested, to all owners of  
23 habitable structures within the separation distance. The registrant shall  
24 submit to the department evidence, satisfactory to the department, that  
25 such notice has been given.

26 (o) All plans and specifications submitted to the department for new  
27 construction or new expansion of confined feeding facilities may be, but  
28 are not required to be, prepared by a professional engineer or a consultant,  
29 as approved by the department. Before approval by the department, any  
30 consultant preparing such plans and specifications shall submit to the  
31 department evidence, satisfactory to the department, of adequate general  
32 commercial liability insurance coverage.

33 (p) *The secretary shall adopt rules and regulations to establish fees*  
34 *for permitting, monitoring, testing, inspecting and regulating class 1*  
35 *underground injection control wells. The secretary shall remit all moneys*  
36 *collected from such fees to the state treasurer in accordance with the*  
37 *provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of*  
38 *each such remittance, the state treasurer shall deposit the entire amount in*  
39 *the state treasury to the credit of the water program management fund*  
40 *established pursuant to K.S.A. 65-166b, and amendments thereto.*

41 Sec. 3. K.S.A. 65-4514 is hereby amended to read as follows: 65-  
42 4514. (a) The secretary shall remit all moneys received by or for the  
43 secretary from fees, charges or penalties to the state treasurer in

1 accordance with the provisions of K.S.A. 75-4215, and amendments  
2 thereto. Upon receipt of each such remittance, the state treasurer shall  
3 deposit the entire amount in the state treasury to the credit of the ~~state~~  
4 ~~general fund~~ *water program management fund established pursuant to*  
5 *K.S.A. 65-166b, and amendments thereto.*

6 (b) On July 1, 1983, the director of accounts and reports shall transfer  
7 all moneys in the certification of operators of water supply systems and  
8 wastewater treatment facilities fee fund to the state general fund. All  
9 liabilities of the certification of operators of water supply systems and  
10 wastewater treatment facilities fee fund are hereby transferred to and  
11 imposed upon the state general fund. The certification of operators of  
12 water supply systems and wastewater treatment facilities fee fund is  
13 hereby abolished.

14 Sec. 4. K.S.A. 2018 Supp. 82a-1206 is hereby amended to read as  
15 follows: 82a-1206. (a) Every well contractor desiring to engage in the  
16 business of constructing, reconstructing or treating water wells in this state  
17 shall make initial application for a license to the secretary. Every  
18 contractor making such application shall set out such information as may  
19 be required upon forms to be adopted and furnished by the secretary. The  
20 secretary shall charge an application fee as established by rules and  
21 regulations for the filing of such initial application by a contractor, and the  
22 secretary shall not act upon any application until such application fee has  
23 been paid.

24 (b) All application fees and license fees collected hereunder shall be  
25 remitted to the state treasurer in accordance with the provisions of K.S.A.  
26 75-4215, and amendments thereto. Upon receipt of each such remittance,  
27 the state treasurer shall deposit the entire amount in the state treasury to  
28 the credit of the ~~state general fund~~. ~~On July 1, 1983, the director of~~  
29 ~~accounts and reports shall transfer all moneys in the water well contractors~~  
30 ~~licensing fund to the state general fund~~. ~~All liabilities of the water well~~  
31 ~~contractors licensing fund are hereby transferred to and imposed upon the~~  
32 ~~state general fund~~. ~~The water well contractors licensing fund is hereby~~  
33 ~~abolished~~ *water program management fund established pursuant to K.S.A.*  
34 *65-166(b), and amendments thereto.*

35 (c) A license to construct water wells shall be issued to any applicant  
36 if, under the standards set forth in K.S.A. 82a-1207, and amendments  
37 thereto, the secretary shall determine such applicant is qualified to conduct  
38 water well construction operations. In the granting of such licenses due  
39 regard shall be given to the interest of the state of Kansas in the protection  
40 of its underground water resources. Application fees paid hereunder shall  
41 be retained by the secretary whether such initial license is issued or denied,  
42 but if denied, the license fee shall be refunded.

43 (d) Applicants for licenses hereunder who are engaged in business as

1 water well contractors in this state, if incorporated, shall submit evidence  
2 of current good standing with the registration requirements for  
3 corporations of the secretary of state.

4 Sec. 5. K.S.A. 65-166b, 65-171d and 65-4514 and K.S.A. 2018 Supp.  
5 82a-1206 are hereby repealed.

6 Sec. 6. This act shall take effect and be in force from and after its  
7 publication in the statute book.