

SENATE BILL No. 405

By Committee on Ways and Means

2-7

1 AN ACT concerning the department of health and environment; relating to
2 animal conversion units; poultry facilities; amending K.S.A. 2017
3 Supp. 65-171d and repealing the existing section.
4

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

6 Section 1. K.S.A. 2017 Supp. 65-171d is hereby amended to read as
7 follows: 65-171d. (a) For the purpose of preventing surface and subsurface
8 water pollution and soil pollution detrimental to public health or to the
9 plant, animal and aquatic life of the state, and to protect designated uses of
10 the waters of the state and to require the treatment of sewage predicated
11 upon technologically based effluent limitations, the secretary of health and
12 environment shall make such rules and regulations, including registration
13 of potential sources of pollution, as may in the secretary's judgment be
14 necessary to: (1) Protect the soil and waters of the state from pollution
15 resulting from underground storage of liquid petroleum gas and
16 hydrocarbons, other than underground porosity storage of natural gas; (2)
17 control the disposal, discharge or escape of sewage as defined in K.S.A.
18 65-164, and amendments thereto, by or from municipalities, corporations,
19 companies, institutions, state agencies, federal agencies or individuals and
20 any plants, works or facilities owned or operated, or both, by them; and (3)
21 establish water quality standards for the waters of the state to protect their
22 designated uses, including establishment of water quality standards
23 variances that may apply to specified pollutants, permittees, or waterbody
24 segments that reflect the highest attainable condition during the specified
25 time period for the variance. In no event shall the secretary's authority be
26 interpreted to include authority over the beneficial use of water, water
27 quantity allocations, protection against water use impairment of a
28 beneficial use, or any other function or authority under the jurisdiction of
29 the Kansas water appropriation act, K.S.A. 82a-701, and amendments
30 thereto.

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

36 (c) For the purposes of this act, including K.S.A. 65-161 through 65-

1 171h and K.S.A. 65-1,178 through 65-1,198, and amendments thereto, and
2 rules and regulations adopted pursuant thereto:

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

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

14 (3) (A) "Animal unit" means a unit of measurement calculated by
15 adding the following numbers: The number of beef cattle weighing more
16 than 700 pounds multiplied by 1.0; plus the number of cattle weighing less
17 than 700 pounds multiplied by 0.5; plus the number of mature dairy cattle
18 multiplied by 1.4; plus the number of swine weighing more than 55
19 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds or
20 less multiplied by 0.1; plus the number of sheep or lambs multiplied by
21 0.1; plus the number of horses multiplied by 2.0; plus the number of
22 turkeys multiplied by 0.018; plus the number of laying hens or broilers, if
23 the facility has continuous overflow watering, multiplied by 0.01; plus the
24 number of laying hens or broilers, if the facility has a liquid manure
25 system, multiplied by 0.033; *plus the number of laying hens or broilers, if*
26 *the facility has a dry manure system, multiplied by 0.003*; plus the number
27 of ducks multiplied by 0.2. However, each head of cattle will be counted
28 as one full animal unit for the purpose of determining the need for a
29 federal permit. *A chicken facility using a dry manure system shall obtain a*
30 *federal permit if 125,000 or more broilers, or 82,000 or more laying hens,*
31 *are confined.*

32 (B) "Animal unit" also includes the number of swine weighing 55
33 pounds or less multiplied by 0.1 for the purpose of determining applicable
34 requirements for new construction of a confined feeding facility for which
35 a permit or registration has not been issued before January 1, 1998, and for
36 which an application for a permit or registration and plans have not been
37 filed with the secretary of health and environment before January 1, 1998,
38 or for the purpose of determining applicable requirements for expansion of
39 such facility.

40 (C) Except as otherwise provided, animal units for public livestock
41 markets shall be determined by using the average annual animal units sold
42 by the market during the past five calendar years divided by 365. Such
43 animal unit determination may be adjusted by the department if the public

1 livestock market submits documentation that demonstrates that such
2 adjustment is appropriate based on the amount of time in 24-hour
3 increments or partials thereof that animals are at the market.

4 (4) "Animal unit capacity" means the maximum number of animal
5 units ~~which~~*that* a confined feeding facility is designed to accommodate at
6 any one time.

7 (5) "Habitable structure" means any of the following structures ~~which~~
8 *is that are* occupied or maintained in a condition ~~which~~*that* may be
9 occupied and ~~which~~, in the case of a confined feeding facility for swine, ~~is~~
10 *are* owned by a person other than the operator of such facility: A dwelling,
11 church, school, adult care home, medical care facility, child care facility,
12 library, community center, public building, office building or licensed food
13 service or lodging establishment.

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

17 (d) In adopting rules and regulations, the secretary of health and
18 environment, taking into account the varying conditions that are probable
19 for each source of sewage and its possible place of disposal, discharge or
20 escape, may provide for varying the control measures required in each
21 case to those the secretary finds to be necessary to prevent pollution. If a
22 freshwater reservoir or farm pond is privately owned and where complete
23 ownership of land bordering the reservoir or pond is under common
24 private ownership, such freshwater reservoir or farm pond shall be exempt
25 from water quality standards except as it relates to water discharge or
26 seepage from the reservoir or pond to waters of the state, either surface or
27 groundwater, or as it relates to the public health of persons using the
28 reservoir or pond or waters therefrom.

29 (e) (1) Whenever the secretary of health and environment or the
30 secretary's duly authorized agents find that storage or disposal of salt water
31 not regulated by the state corporation commission or refuse in any surface
32 pond not regulated by the state corporation commission is causing or is
33 likely to cause pollution of soil or waters of the state, the secretary or the
34 secretary's duly authorized agents shall issue an order prohibiting such
35 storage or disposal of salt water or refuse. Any person aggrieved by such
36 order may within 15 days of service of the order request in writing a
37 hearing on the order.

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

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

42 (f) The secretary may adopt rules and regulations establishing fees for
43 plan approval, monitoring and inspecting underground or buried petroleum

1 products storage tanks, for which the annual fee shall not exceed \$5 for
2 each tank in place.

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

9 (2) Such registration shall indicate that the proposed construction will
10 occur within the prescribed tract of land and that the separation distances
11 from the tract boundaries or proposed facility footprint comply with the
12 requirements described in subsections (j), (l) and (m) or exceptions
13 described in (k).

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

17 (A) (i) If the proposed facility has an animal unit capacity of 1,000 or
18 more, or if ~~there is identified~~ a significant water pollution potential *is*
19 *identified* for a facility of less than 1,000 but more than 300, such facility
20 shall be required to obtain a permit from the secretary.

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

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

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

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

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

34 (b) shall report the conditions necessary to receive certification to the
35 registrant.

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

39 (2) Within 30 days of receipt of such registration, the department of
40 health and environment shall identify any significant water pollution
41 potential. If there is identified a significant water pollution potential, such
42 facility shall be required to obtain a permit from the secretary. If there is
43 no water pollution potential posed by such facility, the secretary may

1 certify that no permit is required.

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

6 (2) Upon petition by the registrant, the secretary may extend the
7 application period, by no more than an additional 18 months, if the
8 secretary believes such an extension is reasonable under the
9 circumstances.

10 (3) Within 30 days of receipt of an application, the secretary shall
11 notify the registrant of whether the application is complete or incomplete.
12 If the application is incomplete, such notice shall state the reasons why
13 such application is incomplete. Once such registrant submits an
14 application properly addressing each reason listed as a basis for the
15 determination that the application is incomplete, the secretary shall issue
16 an acknowledgment of receipt of the completed application within 30 days
17 of properly addressing such reasons.

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

21 (j) (1) Any new construction or new expansion of a confined feeding
22 facility, other than a confined feeding facility for swine, shall meet or
23 exceed the following requirements in separation distances from any
24 habitable structure in existence when the registration is received:

25 (A) 1,320 feet for facilities with an animal unit capacity of 300 to
26 999; and

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

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

33 (A) 1,320 feet for facilities with an animal unit capacity of 300 to
34 999;

35 (B) 4,000 feet for facilities with an animal unit capacity of 1,000 to
36 3,724;

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

41 (D) 5,000 feet for: (i) Construction of new facilities with an animal
42 unit capacity of 3,725 or more; or (ii) expansion of existing facilities to an
43 animal unit capacity of 3,725 or more if such expansion extends outside

1 the perimeter from which separation distances are determined pursuant to
2 subsection (m) for the existing facility.

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

6 (A) 10,000 feet for facilities with an animal unit capacity of 1,000 to
7 3,724; and

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

10 (k) (1) The separation distance requirements of subsections (j)(1) and
11 (2) shall not apply if the registrant obtains a written agreement from all
12 owners of habitable structures ~~which~~*that* are within the separation distance
13 stating such owners are aware of the construction or expansion and have
14 no objections to such construction or expansion. The written agreement
15 shall be filed in the register of deeds office of the county in which the
16 habitable structure is located.

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

23 (B) The secretary may reduce the separation distance requirements of
24 subsection (j)(2)(A) or (B) if: (i) No substantial objection from owners of
25 habitable structures within the separation distance is received in response
26 to notice given in accordance with subsection (n); (ii) the board of county
27 commissioners of the county where the confined feeding facility is located
28 submits a written request seeking a reduction of separation distances; or
29 (iii) the secretary determines that technology exists that meets or exceeds
30 the effect of the required separation distance and the facility will be using
31 such technology.

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

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

40 (A) Confined feeding facilities ~~which~~*that* were permitted or certified
41 by the secretary on July 1, 1994;

42 (B) confined feeding facilities ~~which~~*that* existed on July 1, 1994, and
43 registered with the secretary before July 1, 1996; or

1 (C) expansion of a confined feeding facility, including any expansion
2 for which an application was pending on July 1, 1994, if: (i) In the case of
3 a facility with an animal unit capacity of 1,000 or more prior to July 1,
4 1994, the expansion is located at a distance not less than the distance
5 between the facility and the nearest habitable structure prior to the
6 expansion; or (ii) in the case of a facility with an animal unit capacity of
7 less than 1,000 prior to July 1, 1994, the expansion is located at a distance
8 not less than the distance between the facility and the nearest habitable
9 structure prior to the expansion and the animal unit capacity of the facility
10 after expansion does not exceed 2,000.

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

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

15 (B) confined feeding facilities for swine which existed on July 1,
16 1994, and registered with the secretary before July 1, 1996; or

17 (C) expansion of a confined feeding facility which existed on July 1,
18 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000
19 or more prior to July 1, 1994, the expansion is located at a distance not less
20 than the distance between the facility and the nearest habitable structure
21 prior to the expansion; or (ii) in the case of a facility with an animal unit
22 capacity of less than 1,000 prior to July 1, 1994, the expansion is located at
23 a distance not less than the distance between the facility and the nearest
24 habitable structure prior to the expansion and the animal unit capacity of
25 the facility after expansion does not exceed 2,000.

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

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

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

36 (m) The separation distances required by this section for confined
37 feeding facilities for swine shall be determined from the exterior perimeter
38 of any buildings utilized for housing swine, any lots containing swine, any
39 swine waste retention lagoons or ponds or other manure or wastewater
40 storage structures and any additional areas designated by the registrant for
41 future expansion. Such separation distances shall not apply to offices,
42 dwellings and feed production facilities of a confined feeding facility for
43 swine.

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

6 (o) All plans and specifications submitted to the department for new
7 construction or new expansion of confined feeding facilities may be, but
8 are not required to be, prepared by a professional engineer or a consultant,
9 as approved by the department. Before approval by the department, any
10 consultant preparing such plans and specifications shall submit to the
11 department evidence, satisfactory to the department, of adequate general
12 commercial liability insurance coverage.

13 Sec. 2. K.S.A. 2017 Supp. 65-171d is hereby repealed.

14 Sec. 3. This act shall take effect and be in force from and after its
15 publication in the statute book.