

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; ***{confined feeding***
3 ***facilities;}*** amending K.S.A. 2017 Supp. 65-171d and repealing the
4 existing section.

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

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

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

1 (c) For the purposes of this act, including K.S.A. 65-161 through 65-
2 171h and K.S.A. 65-1,178 through 65-1,198, and amendments thereto, and
3 rules and regulations adopted pursuant thereto:

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

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

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

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

42 (C) Except as otherwise provided, animal units for public livestock
43 markets shall be determined by using the average annual animal units sold

1 by the market during the past five calendar years divided by 365. Such
2 animal unit determination may be adjusted by the department if the public
3 livestock market submits documentation that demonstrates that such
4 adjustment is appropriate based on the amount of time in 24-hour
5 increments or partials thereof that animals are at the market.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (b) shall report the conditions necessary to receive certification to the
37 registrant.

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

41 (2) Within 30 days of receipt of such registration, the department of
42 health and environment shall identify any significant water pollution
43 potential. If there is identified a significant water pollution potential, such

1 facility shall be required to obtain a permit from the secretary. If there is
2 no water pollution potential posed by such facility, the secretary may
3 certify that no permit is required.

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

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

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

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

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

27 (A) 1,320 feet for facilities with an animal unit capacity of 300 to
28 999; and

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

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

35 (A) 1,320 feet for facilities with an animal unit capacity of 300 to
36 999;

37 (B) 4,000 feet for facilities with an animal unit capacity of 1,000 to
38 3,724;

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

43 (D) 5,000 feet for: (i) Construction of new facilities with an animal

1 unit capacity of 3,725 or more; or (ii) expansion of existing facilities to an
2 animal unit capacity of 3,725 or more if such expansion extends outside
3 the perimeter from which separation distances are determined pursuant to
4 subsection (m) for the existing facility.

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

8 (A) 10,000 feet for facilities with an animal unit capacity of 1,000 to
9 3,724; and

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

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

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

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

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

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

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

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

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

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

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

17 (B) confined feeding facilities for swine which existed on July 1,
18 1994, and registered with the secretary before July 1, 1996; or

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

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

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

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

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

1 dwellings and feed production facilities of a confined feeding facility for
2 swine.

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

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

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

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