

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 10th 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.