

SENATE BILL No. 265

By Committee on Federal and State Affairs

2-15

9 AN ACT concerning confined feeding facilities; relating to construction
10 thereof; requiring licensed professional engineer; amending K.S.A.
11 2004 Supp. 65-171d and repealing the existing section.
12

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

14 Section 1. K.S.A. 2004 Supp. 65-171d is hereby amended to read as
15 follows: 65-171d. (a) For the purpose of preventing surface and subsur-
16 face water pollution and soil pollution detrimental to public health or to
17 the plant, animal and aquatic life of the state, and to protect designated
18 uses of the waters of the state and to require the treatment of sewage
19 predicated upon technologically based effluent limitations, the secretary
20 of health and environment shall make such rules and regulations, includ-
21 ing registration of potential sources of pollution, as may in the secretary's
22 judgment be necessary to: (1) Protect the soil and waters of the state from
23 pollution resulting from underground storage of liquid petroleum gas and
24 hydrocarbons, other than underground porosity storage of natural gas; (2)
25 control the disposal, discharge or escape of sewage as defined in K.S.A.
26 65-164 and amendments thereto, by or from municipalities, corporations,
27 companies, institutions, state agencies, federal agencies or individuals and
28 any plants, works or facilities owned or operated, or both, by them; and
29 (3) establish water quality standards for the waters of the state to protect
30 their designated uses. In no event shall the secretary's authority be in-
31 terpreted to include authority over the beneficial use of water, water
32 quantity allocations, protection against water use impairment of a bene-
33 ficial use, or any other function or authority under the jurisdiction of the
34 Kansas water appropriation act, K.S.A. 82a-701, and amendments thereto.

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

40 (c) For the purposes of this act, including K.S.A. 65-161 through 65-
41 171h and K.S.A. 65-1,178 through 65-1,198, and amendments thereto,
42 and rules and regulations adopted pursuant thereto:

43 (1) "Pollution" means: (A) Such contamination or other alteration of

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

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

11 (3) "Animal unit" means a unit of measurement calculated by adding
12 the following numbers: The number of beef cattle weighing more than
13 700 pounds multiplied by 1.0; plus the number of cattle weighing less
14 than 700 pounds multiplied by 0.5; plus the number of mature dairy cattle
15 multiplied by 1.4; plus the number of swine weighing more than 55
16 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds
17 or less multiplied by 0.1; plus the number of sheep or lambs multiplied
18 by 0.1; plus the number of horses multiplied by 2.0; plus the number of
19 turkeys multiplied by 0.018; plus the number of laying hens or broilers,
20 if the facility has continuous overflow watering, multiplied by 0.01; plus
21 the number of laying hens or broilers, if the facility has a liquid manure
22 system, multiplied by 0.033; plus the number of ducks multiplied by 0.2.
23 However, each head of cattle will be counted as one full animal unit for
24 the purpose of determining the need for a federal permit. "Animal unit"
25 also includes the number of swine weighing 55 pounds or less multiplied
26 by 0.1 for the purpose of determining applicable requirements for new
27 construction of a confined feeding facility for which a permit or registra-
28 tion has not been issued before January 1, 1998, and for which an appli-
29 cation for a permit or registration and plans have not been filed with the
30 secretary of health and environment before January 1, 1998, or for the
31 purpose of determining applicable requirements for expansion of such
32 facility. However, each head of swine weighing 55 pounds or less shall be
33 counted as 0.0 animal unit for the purpose of determining the need for
34 a federal permit. Except as otherwise provided, animal units for public
35 livestock markets shall be determined by using the average annual animal
36 units sold by the market during the past five calendar years divided by
37 365. Such animal unit determination may be adjusted by the department
38 if the public livestock market submits documentation that demonstrates
39 that such adjustment is appropriate based on the amount of time in 24-
40 hour increments or partials thereof that animals are at the market.

41 (4) "Animal unit capacity" means the maximum number of animal
42 units which a confined feeding facility is designed to accommodate at any
43 one time.

1 (5) “Habitable structure” means any of the following structures which
2 is occupied or maintained in a condition which may be occupied and
3 which, in the case of a confined feeding facility for swine, is owned by a
4 person other than the operator of such facility: A dwelling, church, school,
5 adult care home, medical care facility, child care facility, library, com-
6 munity center, public building, office building or licensed food service or
7 lodging establishment.

8 (6) “Wildlife refuge” means Cheyenne Bottoms wildlife management
9 area, Cheyenne Bottoms preserve and Flint Hills, Quivera, Marais des
10 Cygnes and Kirwin national wildlife refuges.

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

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

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

35 (3) Any action of the secretary pursuant to this subsection is subject
36 to review in accordance with the act for judicial review and civil enforce-
37 ment of agency actions.

38 (f) The secretary may adopt rules and regulations establishing fees
39 for plan approval, monitoring and inspecting underground or buried pe-
40 troleum products storage tanks, for which the annual fee shall not exceed
41 \$5 for each tank in place.

42 (g) Prior to any new construction of a confined feeding facility with
43 an animal unit capacity of 300 to 999, such facility shall register with the

1 secretary of health and environment. Facilities with a capacity of less than
2 300 animal units may register with the secretary. Any such registration
3 shall be accompanied by a \$25 fee. Within 30 days of receipt of such
4 registration, the department of health and environment shall identify any
5 significant water pollution potential or separation distance violations pur-
6 suant to subsection (h). If there is identified a significant water pollution
7 potential, such facility shall be required to obtain a permit from the sec-
8 retary. If there is no water pollution potential posed by a facility with an
9 animal unit capacity of less than 300, the secretary may certify that no
10 permit is required. If there is no water pollution potential nor any viola-
11 tion of separation distances posed by a facility with an animal unit capacity
12 of 300 to 999, the secretary shall certify that no permit is required and
13 that there are no certification conditions pertaining to separation dis-
14 tances. If a separation distance violation is identified, the secretary may
15 reduce the separation distance in accordance with subsection (i) and shall
16 certify any such reduction of separation distances.

17 (h) (1) Any new construction or new expansion of a confined feeding
18 facility, other than a confined feeding facility for swine, shall meet or
19 exceed the following requirements in separation distances from any hab-
20 itable structure in existence when the application for a permit is
21 submitted:

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

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

26 (2) A confined feeding facility for swine shall meet or exceed the
27 following requirements in separation distances from any habitable struc-
28 ture or city, county, state or federal park in existence when the applica-
29 tion for a permit is submitted:

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

31 (B) 4,000 feet for facilities with an animal unit capacity of 1,000 to
32 3,724;

33 (C) 4,000 feet for expansion of existing facilities to an animal unit
34 capacity of 3,725 or more if such expansion is within the perimeter from
35 which separation distances are determined pursuant to subsection (k) for
36 the existing facility; and

37 (D) 5,000 feet for: (i) Construction of new facilities with an animal
38 unit capacity of 3,725 or more; or (ii) expansion of existing facilities to an
39 animal unit capacity of 3,725 or more if such expansion extends outside
40 the perimeter from which separation distances are determined pursuant
41 to subsection (k) for the existing facility.

42 (3) Any construction of new confined feeding facilities for swine shall
43 meet or exceed the following requirements in separation distances from

1 any wildlife refuge:

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

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

6 (i) (1) The separation distance requirements of subsections (h)(1)
7 and (2) shall not apply if the applicant for a permit obtains a written
8 agreement from all owners of habitable structures which are within the
9 separation distance stating such owners are aware of the construction or
10 expansion and have no objections to such construction or expansion. The
11 written agreement shall be filed in the register of deeds office of the
12 county in which the habitable structure is located.

13 (2) (A) The secretary may reduce the separation distance require-
14 ments of subsection (h)(1) if: (i) No substantial objection from owners of
15 habitable structures within the separation distance is received in response
16 to public notice; or (ii) the board of county commissioners of the county
17 where the confined feeding facility is located submits a written request
18 seeking a reduction of separation distances.

19 (B) The secretary may reduce the separation distance requirements
20 of subsection (h)(2)(A) or (B) if: (i) No substantial objection from owners
21 of habitable structures within the separation distance is received in re-
22 sponse to notice given in accordance with subsection (1); (ii) the board of
23 county commissioners of the county where the confined feeding facility
24 is located submits a written request seeking a reduction of separation
25 distances; or (iii) the secretary determines that technology exists that
26 meets or exceeds the effect of the required separation distance and the
27 facility will be using such technology.

28 (C) The secretary may reduce the separation distance requirements
29 of subsection (h)(2)(C) or (D) if: (i) No substantial objection from owners
30 of habitable structures within the separation distance is received in re-
31 sponse to notice given in accordance with subsection (1); or (ii) the sec-
32 retary determines that technology exists that meets or exceeds the effect
33 of the required separation distance and the facility will be using such
34 technology.

35 (j) (1) The separation distances required pursuant to subsection
36 (h)(1) shall not apply to:

37 (A) Confined feeding facilities which were permitted or certified by
38 the secretary on July 1, 1994;

39 (B) confined feeding facilities which existed on July 1, 1994, and reg-
40 istered with the secretary before July 1, 1996; or

41 (C) expansion of a confined feeding facility, including any expansion
42 for which an application was pending on July 1, 1994, if: (i) In the case
43 of a facility with an animal unit capacity of 1,000 or more prior to July 1,

1 1994, the expansion is located at a distance not less than the distance
2 between the facility and the nearest habitable structure prior to the ex-
3 pansion; or (ii) in the case of a facility with an animal unit capacity of less
4 than 1,000 prior to July 1, 1994, the expansion is located at a distance not
5 less than the distance between the facility and the nearest habitable struc-
6 ture prior to the expansion and the animal unit capacity of the facility
7 after expansion does not exceed 2,000.

8 (2) The separation distances required pursuant to subsections
9 (h)(2)(A) and (B) shall not apply to:

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

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

14 (C) expansion of a confined feeding facility which existed on July 1,
15 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000
16 or more prior to July 1, 1994, the expansion is located at a distance not
17 less than the distance between the facility and the nearest habitable struc-
18 ture prior to the expansion; or (ii) in the case of a facility with an animal
19 unit capacity of less than 1,000 prior to July 1, 1994, the expansion is
20 located at a distance not less than the distance between the facility and
21 the nearest habitable structure prior to the expansion and the animal unit
22 capacity of the facility after expansion does not exceed 2,000.

23 (3) The separation distances required pursuant to subsections
24 (h)(2)(C) and (D) and (h)(3) shall not apply to the following, as deter-
25 mined in accordance with subsections (a), (e) and (f) of K.S.A. 65-1,178
26 and amendments thereto:

27 (A) Expansion of an existing confined feeding facility for swine if an
28 application for such expansion has been received by the department be-
29 fore March 1, 1998; and

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

33 (k) The separation distances required by this section for confined
34 feeding facilities for swine shall be determined from the exterior perim-
35 eter of any buildings utilized for housing swine, any lots containing swine,
36 any swine waste retention lagoons or ponds or other manure or waste-
37 water storage structures and any additional areas designated by the ap-
38 plicant for future expansion. Such separation distances shall not apply to
39 offices, dwellings and feed production facilities of a confined feeding fa-
40 cility for swine.

41 (l) The applicant shall give the notice required by subsections
42 (i)(2)(B) and (C) by certified mail, return receipt requested, to all owners
43 of habitable structures within the separation distance. The applicant shall

1 submit to the department evidence, satisfactory to the department, that
2 such notice has been given.

3 (m) All plans and specifications submitted to the department ~~for new~~
4 ~~construction or new expansion after July 1, 2005, for analysis, construc-~~
5 ~~tion or expansion~~ of confined feeding facilities ~~may be, but are not re-~~
6 ~~quired to be, shall be~~ prepared by a *licensed* professional engineer ~~or a~~
7 ~~consultant, as approved by the department. Before approval by the de-~~
8 ~~partment, any consultant preparing such plans and specifications shall~~
9 ~~submit to the department evidence, satisfactory to the department, of~~
10 ~~adequate general commercial liability insurance coverage.~~

11 Sec. 2. K.S.A. 2004 Supp. 65-171d is hereby repealed.

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