

## HOUSE BILL No. 2303

By Committee on Appropriations

2-11

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1 AN ACT concerning the department of health and environment; relating to  
2 water and soil pollution; amending K.S.A. 2014 Supp. 65-171d and  
3 repealing the existing section.  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2014 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 variances to water quality*  
23 *standards 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 is used for the confined feeding of animals or fowl for food, fur or  
12 pleasure purposes; (B) which is not normally used for raising crops; and  
13 (C) in which no vegetation intended for animal food is growing.

14 (3) "Animal unit" means a unit of measurement calculated by adding  
15 the following numbers: The number of beef cattle weighing more than 700  
16 pounds multiplied by 1.0; plus the number of cattle weighing less than 700  
17 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 ducks multiplied by 0.2.  
26 However, each head of cattle will be counted as one full animal unit for  
27 the purpose of determining the need for a federal permit. "Animal unit"  
28 also includes the number of swine weighing 55 pounds or less multiplied  
29 by 0.1 for the purpose of determining applicable requirements for new  
30 construction of a confined feeding facility for which a permit or  
31 registration has not been issued before January 1, 1998, and for which an  
32 application for a permit or registration and plans have not been filed with  
33 the secretary of health and environment before January 1, 1998, or for the  
34 purpose of determining applicable requirements for expansion of such  
35 facility. Except as otherwise provided, animal units for public livestock  
36 markets shall be determined by using the average annual animal units sold  
37 by the market during the past five calendar years divided by 365. Such  
38 animal unit determination may be adjusted by the department if the public  
39 livestock market submits documentation that demonstrates that such  
40 adjustment is appropriate based on the amount of time in 24-hour  
41 increments or partials thereof that animals are at the market.

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

1 one time.

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

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

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

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

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

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

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

41 (g) (1) Prior to any new construction of a confined feeding facility  
42 with an animal unit capacity of 300 or more, such facility shall register  
43 with the secretary of health and environment. Such registration shall be

1 accompanied by a \$25 fee. The secretary shall acknowledge the receipt of  
2 the registration in a form as designated by the secretary and publish a  
3 notice of such receipt.

4 (2) Such registration shall indicate that the proposed construction will  
5 occur within the prescribed tract of land and that the separation distances  
6 from the tract boundaries or proposed facility footprint comply with the  
7 requirements described in subsections (j), (l) and (m) or exceptions  
8 described in (k).

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

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

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

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

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

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

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

29 (b) shall report the conditions necessary to receive certification to the  
30 registrant.

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

34 (2) Within 30 days of receipt of such registration, the department of  
35 health and environment shall identify any significant water pollution  
36 potential. If there is identified a significant water pollution potential, such  
37 facility shall be required to obtain a permit from the secretary. If there is  
38 no water pollution potential posed by such facility, the secretary may  
39 certify that no permit is required.

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

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

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

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

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

20 (A) 1,320 feet for facilities with an animal unit capacity of 300 to  
21 999; and

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

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

28 (A) 1,320 feet for facilities with an animal unit capacity of 300 to  
29 999;

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

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

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

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

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

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

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

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

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

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

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

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

37 (B) confined feeding facilities which existed on July 1, 1994, and  
38 registered with the secretary before July 1, 1996; or

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

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

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

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

10 (B) confined feeding facilities for swine which existed on July 1,  
11 1994, and registered with the secretary before July 1, 1996; or

12 (C) expansion of a confined feeding facility which existed on July 1,  
13 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000  
14 or more prior to July 1, 1994, the expansion is located at a distance not less  
15 than the distance between the facility and the nearest habitable structure  
16 prior to the expansion; or (ii) in the case of a facility with an animal unit  
17 capacity of less than 1,000 prior to July 1, 1994, the expansion is located at  
18 a distance not less than the distance between the facility and the nearest  
19 habitable structure prior to the expansion and the animal unit capacity of  
20 the facility after expansion does not exceed 2,000.

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

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

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

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

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

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

8       Sec. 2. K.S.A. 2014 Supp. 65-171d is hereby repealed.

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