

Approved January 31, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON ENERGY AND NATURAL RESOURCES

The meeting was called to order by Representative Dennis Spaniol at
Chairperson

3:30 ~~xxx~~ p.m. on January 26, 1989 in room 526-S of the Capitol.

All members were present except:

Representative Grotewiel (excused)

Committee staff present:

Raney Gilliland, Legislative Research
Paul West, Legislative Research
Mary Torrence, Revisor of Statutes' Office
Betty Ellison, Committee Secretary

Conferees appearing before the committee:

Robert L. Meinen, Secretary, Department of Wildlife and Parks
Darrel Montei, Legislative Liaison, Department of Wildlife and Parks
Spencer Tomb, Conservation Vice President, Kansas Wildlife Federation

House Bill 2005 - Recodification relating to consolidation of fish and game commission and park and resources authority into department of wildlife and parks. Re Proposal No. 18.

Chairman Dennis Spaniol called the meeting to order and explained that House Bill 2005 came about as a result of Executive Reorganization Order 22 which combined the Fish and Game Commission and the Kansas Parks and Resources Authority into the Kansas Department of Wildlife and Parks in 1987. This bill recodifies all of the rules, regulations and statutes for the two departments, some of which date back to the 1920's and 1930's.

Secretary Meinen discussed the purpose and format of the recodification. He pointed out that this bill contained no new policy issues or initiatives, but attempted to meld and redefine existing code and link it together in modern terms. Mr. Meinen noted that any policy issues that the Department or the interim committee wanted to address would be addressed in separate bills. Further explanation of the recodification may be found in his written testimony, Attachment 1.

Secretary Meinen and Darrel Montei alternated reading and discussing 62 recodification points with reference to the actual page in the bill to which each point applied. Attachment 2. Also provided for the committee was a table of contents of the recodification project. Attachment 3.

Committee members asked questions as the discussion proceeded. Possible amendments were noted and would all be made at one time.

Spencer Tomb represented the Kansas Wildlife Federation, testifying in support of House Bill 2005. His written testimony was accompanied by a copy of a resolution by his group. Attachments 4 and 5.

The meeting was adjourned at 5:02 p.m.

The next meeting of the House Energy and Natural Resources Committee will be held at 3:30 p.m. on January 30, 1989 in Room 526-S.

H.B. 2005

Testimony Provided to House Energy & Natural Resources Committee
January 26, 1989

By Kansas Department of Wildlife and Parks

This overview of H.B. 2005 (recodification) is provided for the convenience of the committee and to facilitate our presentation of the recodification effort. We have attempted to bring forth those items in our presentation that may be of interest to this committee.

The task of blending all statutes of the Fish and Game Commission and the Park and Resources Authority has been an interesting effort, providing an unique opportunity to modernize and consolidate the statutes governing a major state agency. The primary statutes of the former two agencies are scattered through several chapters and articles of law including: chapter 74, articles 33 and 45; chapter 32, articles 1 through 6; and chapter 82a, article 8. E.R.O. #22 has been codified into chapter 75, article 39. Directives established under E.R.O. #22 have been followed in recodification.

Statutes impacting or referencing the former agencies are included in the recodification document. Many of the recommended amendments are name changes only, i.e., Commission or Authority to Department or Secretary or Director to Secretary. Several of the statutes of the former agencies were quite similar or identical. These statutes have been blended together, thus providing for repeal of some statutes. Such blending has also been performed into one authority when conflicting authorities existed, allowing for repeal of more statutes. A large number of statutes are recommended for repeal simply because they are no longer needed. In addition, recodification accomplishes the following general items:

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- Creates a definition section
- Consolidates several policy statements into one statement of policy for the department
- Standardizes language used throughout
- Treats all licenses, stamps, permits and other department issues as nearly alike as possible
- Consolidates exemptions currently scattered throughout law into just several sections
- Unlawful acts which are presently listed in most statutes are consolidated into just several sections
- Consolidates the many and varied penalty clauses currently scattered throughout law into one primary penalty section
- Provides for setting of most Department fees by rule and regulation within statutory limitations and for rule and regulation authority involving current statutory items that are of a regulatory nature
- Organizes statutes by general subject matter, thus providing improved efficiency and ease of reference

The effort contained in the recodification document goes beyond simple name changes which would only superficially merge the two former agencies. It is a carefully prepared document designed to truly create a Department of Wildlife and Parks capable of providing quality natural resource management and outdoor recreational opportunity and experience for our citizens and for visitors to our state.

H.B. 2005
RECODIFICATION POINTS

1. Consolidates various definitions scattered throughout current law into a definition section. pg. 2
2. Blends several policy-type laws of the former two agencies into one statement of policy under which the department would function. pg. 4
3. Sets out qualifications for the Secretary and Assistant Secretary positions. pg. 4
4. Provides for appointment of Commissioners to fill an expired term, for Commissioner oath before taking office, and for removal of a Commissioner. pg. 9
5. Throughout current law, reference is made to many types of lands, waters and facilities. These have been standardized as: state parks, state lakes, recreational grounds, wildlife areas and sanctuaries, fish hatcheries, natural areas, historic sites and other lands, waters and facilities under the control of the Secretary. Reference to lands, waters and facilities under control of the Secretary as used in the recodification bill means all items listed above unless specifically addressed otherwise. pg. 11
6. Throughout the laws, varying references are made regarding classes of animals, i.e. wild birds, game birds, fish, furbearers, etc. In places, these differing class listings have been maintained, but where desirable, reference to wildlife is used. (general)
7. Would provide authority to use PL 89-72 funds on ElDorado and Hillsdale project lands rather than just the state parks on ElDorado and Hillsdale. pg. 12
8. Clarifies the department's authority to enter onto private land for purposes of capturing wildlife for emergency purposes when the public health or welfare is threatened. pg. 14
9. Authorizes the Secretary to adopt rules and regulations determining the effective period for any license, stamp, permit, registration or other issue of the department provided the effective period has not otherwise been established by law. Authorizes the Secretary to adjust the effective date of any issued item if in the public good. pg. 14

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10. Uses F&G statute on a law enforcement service, criteria and authority. Performs a name change to "wildlife and parks conservation service" and all officers would be "conservation officers." pg. 15
11. Authorizes the Secretary to appoint fully qualified law enforcement officers to enforce department laws and rules and regulations. The appointments would be conditioned for a specific time period. pg. 15
12. Does away with the varied lists of specific enforcement officers authorized to enforce Wildlife and Parks laws and regulations and provides instead that any officer duly authorized to enforce the laws of Kansas is authorized to enforce Wildlife and Parks laws and regulations. pg. 16
13. Adds "parking areas" to the list of activities KDOT can do on department lands. pg. 21
14. Maintains current listing of state parks by statute. It would require legislative approval to remove a state park from the list. New state parks could be added by regulations. pg. 24
15. There are three series of statutes that deal with bonding authority of the former two agencies. Two deal with state parks--one covers general bonding authority and one covers resorts. The other bonding authority covers the fish hatchery. Language in these statutes is updated to reflect the Department of Wildlife and Parks. Other changes include: authorizes use of dedicated revenue sources for bond projects, removes the acreage limitation on a resort site, and clarifies that more than one resort site is authorized. pgs. 25, 34, 36
16. Oil and gas leasing authority would apply to all lands of the department. pg. 41
17. Park permits for the handicapped would be based on display of handicapped license plates or placards as provided under K.S.A. 8-1125. pg. 44
18. Currently, exemptions from various licenses, stamps, permits and other issues of the department are scattered throughout law. These exemptions are consolidated into several sections for easier reference. pgs. 44, 48, 50, 52
19. Removes the 1989 "sunset" clause for free daily park use days and fishing days. pgs. 44, 49
20. Removes reference to "certificate of competency and safety in the handling of firearms" from the hunter education section and instead, it now refers to a "certificate of completion of an approved hunter education" course. No

change in course subject matter is proposed. The change is in response to liability issues for the department and the volunteer instructors. pg. 53

21. Makes ten hours as minimum for hunter education instead of the present four hour minimum. pg. 54
22. Holders of lifetime fishing licenses who move from the state would not be eligible for big game permits after July 1, 1989. Persons having purchased a lifetime fishing license prior to that date would continue to be eligible. pg. 57
23. Fishing and hunting permits authorizing handicapped persons to fish or hunt from vehicles would no longer be issued as a lifetime permit. The time period could be set by regulation. Removes the requirement for a "specially designed vehicle." pg. 58
24. Clarifies nonresident landowner deer hunting by authorizing the department to issue deer hunting permits to those landowners. The deer hunting permits would be restricted to only lands owned by the nonresident landowners. pg. 60
25. Authorizes the department to issue big game permits to persons who have not attained the lawful minimum age, but specifies that such permits are not valid until the minimum age has been attained. pg. 61
26. Provides for a commercial harvest permit to take wildlife on a commercial basis. It does not apply to furharvest and furdealer licensed activities nor to private water fishing impoundments. Provides for rule and regulation authority over commercial harvest. pg. 63
27. Changes name of "Game Bird Breeding and Controlled Shooting Area" to "Controlled Shooting Area." pg. 66
 - 1) Changes expiration date of C.S.A. licenses from the current March 31 to June 30.
 - 2) Repeals several statutes that cover items that are regulatory in nature (signs, tagging and banding, harvest restrictions, release requirements, reporting requirements).
28. Removes the "wholly enclosed preserve" provision from the "game breeder" requirements. pg. 69
29. Provides for wildlife rehabilitation through a permit system. pg. 71
30. Provides for a fee for special permits issued pursuant to threatened or endangered species statutes. pg. 80

31. Provides for a fee for wildlife import permits. pg. 81
32. Current law covering use of lethal methods for addressing wildlife damage control through poisons, poisonous gasses, etc. is unclear and conflicting. Amended language attempts to clarify and stresses cooperation with extension service approaches to controlling problem wildlife. Provides for a fee for wildlife damage control permits. pg. 82
33. Authorizes any person who was a Kansas resident prior to active duty in any branch of the armed services to purchase licenses, stamps, permits, etc. of the department under the same conditions as a Kansas resident as long as on active duty. pg. 82
34. Provides for a fee for duplicates of any department issue and consolidates language involving duplicates. pg. 83
35. County clerk and vendor involvement regarding public purchase, selling, depositing of revenues, vendor bonding, refunding, have been consolidated and worded to include licenses, stamps and permits or other issues of the agency. pg. 84
36. Concerning lost licenses, stamps, permits or other issues of the department or any fees from same that are lost by an employee by a cause within that employee's control, the Secretary may hold the employee liable. Current law says the employee shall be held liable. pg. 86
37. Provides a new maximum fee structure for certain issues of the department, provides a fee structure for certain issues currently set by law, for certain new issues and for certain issues for which there is no current fee structure. pg. 91
 - a) Issues currently set by law:
 - Institutional group fishing license
 - Lifetime hunting, fishing and combination hunting and fishing licenses and installment payment
 - State migratory waterfowl habitat stamp
 - Controlled shooting area operator license
 - Five-day nonresident fishing license
 - b) New issues:
 - Nonresident combination hunting and fishing license
 - Commercial harvest permits
 - Special events on department lands or waters
 - Special department services, materials or supplies

- c) Issues for which there are no current fee structures:
- Raptor propagation permit
 - Rehabilitation permit
 - Wildlife damage control permit
 - Wildlife importation permit
 - Special permits authorized by threatened or endangered statutes
38. Service fees for licenses, permits, stamps or other issues of the department sold by county clerks, vendors, and the department would be \$.50. Currently it is \$.50 for issues of the former Fish and Game Commission and \$.25 for certain issues of the former Park Authority. The Park Authority did not have the authority to charge a service fee. pg. 93
39. Creates a "wildlife" fee fund and a "park" fee fund. pgs. 94, 95
40. Specifies for what purposes those funds can be used. pgs. 94, 95
41. Changes name of lifetime license fund from fish and game conservation fund to wildlife conservation fund. pg. 96
42. Unlawful acts, and unlawful activity clauses within laws, have been consolidated into several sections instead of scattered throughout law as is the present situation. pg. 99
- a) Requires possession of proper issue if engaging in any activity requiring that issue (unless exempt).
 - b) Unless exempt from possession or carrying the issue, requires carrying of the issue while engaged in the activity.
 - c) Requires production of issue upon demand by department or any officer and continues dismissal of failure-to-possess charges if produced to officer or court.
 - d) Misrepresentation to secure an issue is continued as an unlawful act.
43. By definition, grouse, hares, partridge, pheasants, prairie chicken, quail, rabbits and squirrels are small game. The taking, selling, shipping, etc. of small game would be established by rule and regulation. Several items such as shooting hours, legal equipment and the trapping and shipping of rabbits and hares currently provided for by statute would be addressed through rules and regulations. pg. 101
44. It would be illegal to possess illegal equipment for the purpose of taking wildlife, except as authorized by regulation. pg. 101

45. Continues landowner and legal occupant of land authority to kill animals in and around buildings or when causing damage, but conditions that authority as follows: pg. 101
 - a) cannot possess the killed animal for use unless authorized by regulation
 - b) requires reasonable attempts to control by other methods first
 - c) excludes state and federal threatened and endangered species.
46. It would be unlawful to take any game animal or fur bearing animal from a motor boat, airplane, motor car or other vehicle. Currently, this applies to only game animals. pg. 102
47. It would be unlawful to use radios or other mechanical devices to provide or receive information on the location of any game animal or fur bearing animal for purposes of taking such animals. Currently, this provision only applies during a firearms deer season. pg. 102
48. It would be unlawful to ship any illegally taken or possessed wildlife by highway, rail or air. The amendment shifts responsibility from commercial carriers to the person shipping. pg. 103
49. Maintains but clarifies the "inspection" authority for law enforcement. It addresses: pg. 103
 - a) inspection of any wildlife in possession including places of commercial storage and processing.
 - b) inspection of any equipment used in taking wildlife
50. Clarifies pursuit of a wounded animal on lands posted to "trespass by written permission." pg. 106
51. Wearing of clothing of a highly visible color while deer or elk hunting would apply to those hunting big game in an area where a big game firearms season is occurring. Color, amounts to be worn and locations on body for wearing the color would be set by regulations. pg. 107
52. Creates one penalty law--fish, wildlife, park, and boating law violations or violations of Department regulations would be Class C misdemeanors unless otherwise specified by law. All laws having more severe penalties than Class C misdemeanor have maintained the more severe penalties. Currently, penalty clauses are varied and scattered throughout the statutes. pg. 108
53. A judge's authority pertaining to license revocation has been expanded to cover permits, stamps, and other Department issues (this would include state park permits, big game

permits, etc.). The court would also have the authority to revoke such issue for longer than one year and to order a person to refrain from certain activities for longer than one year. pg. 109

54. Seized items resulting from unlawful acts could be retained by the Department and used for educational, scientific or operational purposes. pg. 112
55. Removes a \$25 prosecution fee for court appointed attorneys and references state law for establishing that fee. pg. 116
56. Raises the minimum reporting level for boating accidents from \$100 to \$200. This change complies with recent Coast Guard changes. pgs. 117, 129
57. Sailboards are defined. Sailboards would still be considered a vessel, thus registration would be required. Through rules and regulations, a more appropriate numbering system would be developed for sailboards. pg. 118
58. Amends the statute authorizing water events (races, regattas, etc.) by allowing more flexibility to administer water events by rule and regulation. pg. 130
59. Creates a boating fee fund rather than a boating account within the fee fund. Purposes for which those funds can be used are maintained as under current law. pg. 131
60. Authorizes the setting of boat registration and duplicate fees by rule and regulation within a framework set by statute. Currently, registration and duplicate fees are set by statute. Setting of fees for special department services, materials, and supplies would be authorized. pg. 133
61. Provides for maintenance of department rules and regulations in effect prior to the effective date of recodification to remain in effect until amended or revoked. pg. 168
62. Provides for any fees set by law and in effect on June 30, 1989, to remain in effect until addressed by department regulation. pg. 168

NOTE! Throughout H.B. 2005, the Secretary's authority to adopt rules and regulations has been referenced to K.S.A. 75-3905. That statute from E.R.O. #22 empowers the Commission to approve, amend and approve, or reject proposed rules and regulations of the Department. Rules and regulations so approved by the Commission shall be adopted by the Secretary.

RECODIFICATION PROJECT

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Wildlife Federation Presentation on the Recodification of Wildlife and Parks statutes (HB2005)

by
Spencer Tomb
KWF Conservation Vice President

Mr. Chairman, members of the Committee, my name is Spencer Tomb. I am from Manhattan and currently serve as Conservation Vice President of KWF.

The Kansas Wildlife Federation is a not-for-profit wildlife and natural resources conservation and education organization. Our 8000 volunteer members, and the 10,000 Kansas members of our national affiliate, The National Wildlife Federation, are dedicated to the proper use, management and funding for our vital soil, water, air, plant and animal resources.

KWF has been following the recodification process since it started. A four member ad hoc committee was formed to read the entire document. Our specific comments and questions have been discussed with the Wildlife and Parks Commission and Darrell Montei. We had several areas of concern with the previous document. These concerns were resolved.

The new cabinet level status for wildlife and parks has taken a bit of getting used to, but we feel that we have opened lines of communication with Secretary Meinen, the agency and the new Commission. We have high expectations of the new agency. We can see that the roles of the legislature, the Commission, the Secretary and the Governor are still evolving. The Kansas Wildlife Federation looks upon ERO 22 as a blueprint and the Kansas Legislature as the architect and builder of this new state agency. Our primary concern is that the Kansas Department of Wildlife and Parks be able to manage the states wildlife and parks in a scientific and professional manner for the benefit of all Kansans. This will be best accomplished by carefully following what was proposed by ERO 22. The professional qualifications for the Secretary and under secretaries are important parts of HB2005. We are considering asking for modifications of certain statutes but we do not see them as part of the recodification process.

The Wildlife and Parks Commission has to retain authority of setting fees, and rules and regulations. We want the Legislature to continue its broad oversight role as they would for any state agency. The sportsmen of the state appreciate your efforts in the review of the reorganization of the two former agencies into the Kansas Department of Wildlife and Parks and your work on recodifying the Wildlife & Parks statutes.

In conclusion, the Kansans who pay for the hunting, fishing & fur harvesting licenses, permits and stamps want and deserve the best possible professional management of Kansas wildlife and natural resource. It is for this reason that we ask you to pass on HB2005 to the House with a positive recommendation.

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Attachment 4

Resolution 1988-9

RECODIFICATION OF WILDLIFE AND PARKS LAWS

WHEREAS, The Kansas Fish and Game Commission and the Kansas Parks and Resources Authority were combined into the Kansas Department of Wildlife and Parks in 1987; and

WHEREAS, the 1989 Kansas Legislature will recodify the laws of these former agencies into one set of statutes; and

WHEREAS, this process may result in significant changes to the statutes of the Department;

NOW, THEREFORE, BE IT RESOLVED that KWF, Inc. in annual meeting assembled on October 30, 1988, in Lawrence, Kansas, supports this process of recodifying the laws of the former agencies into one set of statutes as long as there is no attempt to weaken the authority and scope.

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Attachment 5