

Approved March 16, 1989  
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Ross Doyen at  
Chairperson

8:07 a.m./p.m. on March 1, 1989 in room 423-S of the Capitol.

All members were present except: quorum was present.

Committee staff present:

Don Hayward, Revisor  
Raney Gilliland, Research  
Lila McClaflin, Committee secretary

Conferees appearing before the committee:

Dennis Murphey, Department of Health and Environment  
Bob Meinen, Secretary, Wild Life and Parks  
Darrell Montei, Kansas Department of Wildlife and Parks  
Spencer Tomb, Conservation Vice President of Kansas Wildlife Federation,  
Inc.  
Joyce Wolf, Kansas Audubon Council

Chairman Doyen called on Dennis Murphey to brief the committee regarding the proposed amendments.

Mr. Murphey distributed a balloon copy of the bill and addressed the amendments (Attachment I).

A motion was made by Senator Langworthy to adopt the proposed amendments. The motion was seconded by Senator Daniels, and the motion carried.

A motion was made by Senator Langworthy to pass as amended (proposed) Sub. S.B. 94. The motion was seconded by Senator Martin.

Concern was expressed by several senators with including the above ground storage tanks in the legislation, and this was briefly discussed. The vote was taken, and the motion carried.

Chairman Doyen called on Bob Meinen to give an overview of H.B. 2005. H.B. 2005 recodifies the statutes relating to the former Fish and Game Commission and the State Park and Resources Authority in order to properly reflect the roles of the Department of Wildlife and Parks and the Wildlife and Parks Commission in regulating the use of the state's natural resources

Darrell Montei and Mr. Meinen responded to questions. They distributed a list of recodification points that they would like to have considered (Attachment II). + III

Spencer Tomb presented written testimony supporting H.B. 2005 (Attachment IV).

Joyce Wolf spoke in support of H.B. 2005. Her written testimony is (Attachment V).

The hearing was closed. Action and discussion on the bill will be taken up at a later time.

The meeting adjourned. The date for the next meeting was not available.

1989 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date February 28, 1989

PLEASE PRINT

GUEST LIST

<u>NAME</u>	<u>REPRESENTING</u>
DAN STEVENS	TEXACO
Jerry D. Brummer	TEXACO
DAVID L. KOTNER	TEXACO
Patti Morgan	TOTAL PETROLEUM.
BOB ANDERSON	KOMIA
Dennis Murphy	KDHE
Steve Cohrs	Farmland Ind.
FRANCES KASTNER	Ks Food Dealers Assn
Charles Pauls	National Cooperative Refinery Association
FRED PIERCE	"
DEBBIE McCASKILL	KS DEPT. OF COMMERCE
Kathy Allen Duncan	League of Women Voters/Ks.
ROSS MARTIN	KPC
Tom Tunnell	KANSAS FERT & CHEM ASSN.
Chris Wilson	"
Dee Cole	
Lina Bowman	Farmland Industries
Walt Hum	Eastern K. Assn
Charles L. Stuart	U.S.A.

1989 SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

Date March 1, 1989

PLEASE PRINT GUEST LIST

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NAME

REPRESENTING

Dick Koerth

Budget

Anne Smith

Heinrich Ebert - Mesa

SE&NR  
3/1/89  
Attachment I

119 (y) "trade secret" means, but is not limited to, any customer  
120 lists, any formula, compound, production data or compilation of in-  
121 formation which is not patented and which is known only to certain  
122 individuals within a commercial concern using it to fabricate, produce  
123 or compound an article of trade, or any service having commercial  
124 value, which gives its user an opportunity to obtain a business ad-  
125 vantage over competitors who do not know or use it;

126 (z) "underground storage tank" means any storage tank in which  
127 10% or more of the tank volume, including volume of the piping,  
128 is below the surface of the ground;

129 (aa) "underground storage tank contractor" or "contractor" means  
130 a business which hold itself out as being qualified to install, repair  
131 or remove underground storage tanks; and

132 (bb) "underground storage tank installer" or "installer" means an  
133 individual who has an ownership interest or exercises a management  
134 or supervisory position with an underground storage tank contractor.  
135 The term shall include the crew chief, expediter, engineer, super-  
136 visor, leadman or foreman in charge of a tank installation project.

137 Sec. 3. Except as provided in paragraph 13 of subsection (a) of  
138 section 5 and section 19, this act shall not apply to:

139 (a) Farm or residential tanks of 1,100 gallons or less capacity used  
140 for storing motor fuel for noncommercial purposes;

141 (b) tanks used for storing heating oil for consumptive use on a  
142 single family residential premise where stored;

143 (c) a pipeline facility, including gathering lines, regulated under:

144 (1) The Natural Gas Pipeline Safety Act of 1968; and

145 (2) the Hazardous Liquid Pipeline Safety Act of 1979; or

146 (3) state laws relating to intrastate pipelines comparable to the  
147 provisions of law referred to in subparagraphs (1) and (2);

148 (d) surface impoundments, pits, ponds, septic tanks or lagoons;

149 (e) storm water or waste water collection systems;

150 (f) flow-through process tanks;

151 (g) liquid traps, storage tanks or associated gathering lines directly  
152 related to oil or gas production and gathering operations;

153 (h) storage tanks situated in an underground area, such as a  
154 basement, cellar, mine working, drift, shaft or tunnel, if the storage  
155 tank is situated upon or above the surface of the floor; and

of agricultural materials

; and

(j) above ground storage tanks located at a petroleum refining facility.

156 (i) above ground storage tanks ~~registered with and~~ regulated by  
157 the state board of agriculture.

158 Sec. 4. (a) Each owner of a storage tank shall notify the de-  
159 partment of the tank's existence, including age, size, type, location,  
160 associated equipment and uses.

161 (b) In addition and to the extent known, each owner of an un-  
162 derground storage tank which has not been removed, but was taken  
163 out of service after January 1, 1974 and prior to May 8, 1986, shall  
164 notify the department of the date the tank was taken out of operation,  
165 the age of the tank on the date taken out of operation, the capacity,  
166 type and location of the tank, and the type and quantity of substances  
167 stored in the tank on the date taken out of operation.

168 (c) Notice shall be made on an approved form provided by the  
169 department.

170 Sec. 5. (a) The secretary is authorized and directed to adopt rules  
171 and regulations necessary to administer and enforce the provisions  
172 of this act. Any rules and regulations so adopted shall be reasonably  
173 necessary to preserve, protect and maintain the waters and other  
174 natural resources of this state, and reasonably necessary to provide  
175 for the prompt investigation and cleanup of sites contaminated by a  
176 release from a storage tank. In addition, any rules and regulations  
177 or portions thereof which pertain to under ground storage tanks or  
178 the owners and operators thereof shall be adopted for the purpose  
179 of enabling the secretary and the department to implement the  
180 federal act, and such rules and regulations so adopted shall be con-  
181 sistent with the federal act. Consistent with these purposes, the  
182 secretary shall adopt rules and regulations:

183 (1) Establishing performance standards for underground storage  
184 tanks first brought into use on or after the effective date of this act.  
185 The performance standards for new underground storage tanks shall  
186 include, but are not limited to, design, construction, installation,  
187 release detection and product compatibility standards;

188 (2) establishing performance standards for above ground storage  
189 tanks brought into use after the effective date of this act. The per-  
190 formance standards for new above ground storage tanks shall include,  
191 but are not limited to, design, construction, installation, release  
192 detection and product compatibility standards;

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193 (3) establishing performance standards for the inground repair of  
194 underground storage tanks. The performance standards shall include,  
195 but are not limited to, specifying under what circumstances an un-  
196 derground storage tank may be repaired and specifying design, con-  
197 struction, installation, release detection, product compatibility  
198 standards and warranty;

199 (4) establishing performance standards for maintaining spill and  
200 overfill equipment, leak detection systems and comparable systems  
201 or methods designed to prevent or identify releases. In addition,  
202 the secretary shall establish standards for maintaining records and  
203 reporting leak detection monitoring, inventory control and tank test-  
204 ing or comparable systems;

205 (5) establishing requirements for reporting a release and for re-  
206 porting and taking corrective action in response to a release;

207 (6) establishing requirements for maintaining evidence of financial  
208 responsibility to be met by owners and operators of underground  
209 storage tanks;

210 (7) establishing requirements for the closure of underground stor-  
211 age tanks including the removal and disposal of underground storage  
212 tanks and regulated substance residues contained therein to prevent  
213 future releases of regulated substances into the environment;

214 (8) for the approval of tank tightness testing methods, including  
215 determination of the qualifications of persons performing or offering  
216 to perform such testing;

217 (9) establishing site selection and clean-up criteria regarding cor-  
218 rective actions related to a release and which address the following:  
219 The physical and chemical characteristics of the released substance,  
220 including toxicity, persistence and potential for migration; the hy-  
221 drogeologic characteristics of the release site and the surrounding  
222 land; the proximity, quality and current and future uses of ground-  
223 water; an exposure assessment; the proximity, quality and current  
224 and future use of surface water; and the level of the released sub-  
225 stance allowed to remain on the facility following cleanup;

226 (10) prescribing fees for the registration of storage tanks, the  
227 issuance of permits, the approval of plans for new installations and  
228 the conducting of inspections. The total amount of fees shall no  
229 exceed the amount of revenue required for the proper administration

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230 of the provisions of this act. All fees shall be deposited in the state  
231 general fund;

232 (11) for determining the qualifications, adequacy of performance  
233 and financial responsibility of persons desiring to be licensed as  
234 underground storage tank installers or contractors. In adopting rules  
235 and regulations, the secretary may specify classes of specialized ac-  
236 tivities, such as the installation of corrosion protection devices or  
237 inground relining of underground storage tanks, and may require  
238 persons wishing to engage in such activities to demonstrate additional  
239 qualifications to perform these services;

240 (12) prescribing fees for the issuance of licenses to underground  
241 storage tank installers and contractors. The fees shall not exceed the  
242 amount of revenue determined by the secretary to be required for  
243 administration of the provisions of section 10; and

244 (13) requiring the registration with the department of any class  
245 of storage tank otherwise exempted from regulation by this act except  
246 tanks specified in subsection (i) of section 3 and crude oil storage  
247 tanks located on oil and gas production leases. Such registration shall  
248 not require the payment of any registration fee.

subsections  
and (j)

249 (14) adopting schedules requiring the retrofitting of storage tanks  
250 in existence on the effective date of this act and for the retirement  
251 from service of underground storage tanks placed in service prior to  
252 the effective date of this act. Such schedules shall be based on the  
253 age and location of the storage tank and the type of substance stored.  
254 Such retrofitting shall include secondary containment, corrosion pro-  
255 tection, linings, leak detection equipment and spill and overfill  
256 equipment.

257 (b) In adopting rules and regulations under this section, the sec-  
258 retary shall take notice of rules and regulations pertaining to fire  
259 prevention and safety adopted by the state fire marshal pursuant to  
260 K.S.A. 31-133(a)(1), and amendments thereto.

261 (c) Nothing in this section shall interfere with the right of a city  
262 or county having authority to adopt a building or fire code from  
263 imposing requirements more stringent than those adopted by the  
264 secretary pursuant to paragraphs (1), (2), (3), (7) and (14) of subsection  
265 (a), or affect the exercise of powers by cities, counties and townships  
266 regarding the location of storage tanks and the visual compatibility

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267 of above ground storage tanks with surrounding property.

268 Sec. 6. (a) On and after the effective date of this act, no person  
269 shall construct, modify or operate an underground storage tank unless  
270 a permit or other approval is obtained from the secretary. On and  
271 after January 1, 1990, no person shall construct, modify or operate  
272 an above ground storage tank unless a permit or other approval is  
273 obtained from the secretary. Applications for permits shall include  
274 proof that the required performance standards will be met and evi-  
275 dence of financial responsibility. For purposes of administering this  
276 section, any storage tank registered with the department on the  
277 effective date of this act shall be deemed to be a permitted storage  
278 tank so long as the owner or operator shall comply with all applicable  
279 provisions of this act.

280 (b) Permits may be transferred upon acceptance of the permit  
281 obligations by the person who is to assume the ownership or op-  
282 erational responsibility of the storage tank from the previous owner  
283 or operator. The department shall furnish a transfer of permit form  
284 providing for acceptance of the permit obligations. A transfer of  
285 permit form shall be submitted to the department not less than  
286 seven days prior to the transfer of ownership or operational respon-  
287 sibility of the storage tank.

288 (c) The secretary may deny, suspend or revoke any permit issued  
289 or authorized pursuant to this act if the secretary finds, after notice  
290 and the opportunity for a hearing conducted in accordance with the  
91 Kansas administrative procedure act, that the person has:

292 (1) Fraudulently or deceptively obtained or attempted to obtain  
293 a storage tank permit;

294 (2) failed at any time to maintain the storage tank in accordance  
295 with the requirements of this act or any rule and regulation pro-  
296 mulgated hereunder;

297 (3) failed at any time to comply with the requirements of this  
298 act or any rule and regulation promulgated hereunder; or

299 (4) failed at any time to make any retrofit or improvement to a  
300 storage tank which is required by this act or any rule and regulation  
301 promulgated hereunder.

(d) Any person aggrieved by an order of the secretary may appeal  
the order in accordance with provisions of the act for judicial review



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38 substance may present a hazard to the health of persons or to the  
39 environment, may take such action as the secretary determines to  
40 be necessary to protect the health of such persons or the environ-  
41 ment. The action the secretary may take shall include, but is not  
42 limited to:

43 (1) Issuing an order, subject to review pursuant to the Kansas  
44 administrative procedure act, directing the owner or operator of the  
45 storage tank, or the custodian of the regulated substance which  
46 constitutes such hazard, to take such steps as are necessary to prevent  
47 the act, to eliminate the practice which constitutes such hazard, to  
48 investigate the extent of and remediate any pollution resulting from  
49 the storage or release. Such order may include, with respect to a  
50 facility or site, permanent or temporary cessation of operation.

51 (2) Issuing an order, subject to review pursuant to the Kansas  
52 administrative procedure act, directing an owner, tenant or holder  
53 of any right of way or easement of any real property affected by a  
54 known release from a storage tank to permit entry on to and egress  
55 from that property, by officers, employees, agents or contractors of  
56 the department or of the person responsible for the regulated sub-  
57 stance or the hazard, for the purposes of monitoring the release or  
58 to perform such measures to mitigate the release as the secretary  
59 shall specify in the order.

60 (3) Commencing an action to enjoin acts or practices specified  
61 in this subsection or requesting the attorney general or appropriate  
62 county or district attorney to commence an action to enjoin those  
63 acts or practices. Upon a showing that a person has engaged in those  
64 acts or practices, a permanent or temporary injunction, restraining  
65 order or other order may be granted by any court of competent  
66 jurisdiction. An action for injunction under this subsection shall have  
67 precedence over other cases in respect to order of trial.

68 (4) Applying to the appropriate district court for an order of that  
69 court directing compliance with the order of the secretary pursuant  
70 to the act for judicial review and civil enforcement of agency actions.  
71 Failure to obey the court order shall be punishable as contempt of  
72 the court issuing the order. The application under this subsection  
73 shall have precedence over other cases in respect to order of trial.

174 ~~(f) In any civil action brought pursuant to this section in which~~

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75 ~~a temporary restraining order, preliminary injunction or permanent~~  
 76 ~~injunction is sought, it shall not be necessary to allege or prove at~~  
 77 ~~any stage of the proceeding that irreparable damage will occur should~~  
 78 ~~the temporary restraining order, preliminary injunction or permanent~~  
 79 ~~injunction not be issued or that the remedy at law is inadequate,~~  
 80 ~~and the temporary restraining order, preliminary or permanent in-~~  
 81 ~~junction shall issue without such allegations and without such proof.~~

82 Sec. 14. (a) There is hereby established as a segregated fund in  
 83 the state treasury the petroleum storage tank release trust fund, to  
 84 be administered by the secretary. Revenue from the following  
 85 sources shall be deposited in the state treasury and credited to the  
 86 fund:

87 (1) The proceeds of the environmental assurance fee imposed by  
 88 this act;

89 (2) any moneys recovered by the state under the provisions of  
 90 this act, including administrative expenses, civil penalties and mon-  
 91 eys paid under an agreement, stipulation or settlement;

92 (3) interest attributable to investment of moneys in the fund; and

93 (4) moneys received by the secretary in the form of gifts, grants,  
 94 reimbursements or appropriations from any source intended to be  
 95 used for the purposes of the fund, but excluding federal grants and  
 96 cooperative agreements.

97 (b) The fund shall be administered so as to assist owners and  
 98 operators of petroleum storage tanks in providing evidence of finan-  
 99 cial responsibility for corrective action required by a release from  
 100 any such tank. Moneys deposited in the fund may be expended for  
 101 the purpose of reimbursing owners and operators for the costs of  
 102 corrective action, subject to the conditions and limitations prescribed  
 103 by this act, but moneys in the fund shall not be used for compen-  
 104 sating third parties for bodily injury or property damage caused by  
 105 a release from a petroleum storage tank, other than property damage  
 106 included in a corrective action plan approved by the secretary. In  
 107 addition, moneys deposited in the fund may be expended for the  
 108 following purposes:

109 (1) To permit the secretary to take whatever emergency action  
 0 is necessary or appropriate to assure that the public health or safety  
 111 is not threatened whenever there is a release from a petroleum

(f) In any civil action brought pursuant to this section in which a temporary restraining order, preliminary injunction or permanent injunction is sought it shall be sufficient to show that a violation of the provisions of this act, or the rules and regulations adopted thereunder has occurred or is imminent. It shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction or permanent injunction not be issued or that the remedy at law is inadequate.

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223 In addition thereto, there is hereby imposed upon all amounts of  
224 such fees remaining due and unpaid after such due date a penalty  
225 in the amount of 5% thereof. Such penalty shall be added to and  
226 collected as a part of such fees by the secretary of revenue.

227 (e) The secretary of revenue is hereby authorized to adopt such  
228 rules and regulations as may be necessary to carry out the respon-  
229 sibilities of the secretary of revenue under this section.

230 Sec. 18. (a) Whenever the secretary has reason to believe that  
231 there is or has been a release into the environment from a petroleum  
232 storage tank, and has reason to believe that such release poses a  
233 danger to human health or the environment, the secretary shall  
234 obtain corrective action for such release from the owner or operator,  
235 or both, or from any past owner or operator who has contributed  
236 to such release. Such corrective action shall be performed in ac-  
237 cordance with a plan approved by the secretary. Upon approval of  
238 such plan, the owner or operator shall obtain and submit to the  
239 secretary at least three bids from persons qualified to perform the  
240 corrective action.

except that, the secretary may waive this requirement upon a showing that the owner or operator has made a good faith effort but has not been able to obtain three bids from qualified bidders

241 (b) If the owner or operator is unable or unwilling to perform  
242 corrective action as provided for in subsection (a) or no owner or  
243 operator can be found, the secretary may undertake appropriate  
244 corrective action utilizing funds from the petroleum storage tank  
245 release trust fund. Costs incurred by the secretary in taking a cor-  
246 rective action, including administrative and legal expenses, are re-  
247 coverable from the responsible party and may be recovered in a civil  
248 action in district court brought by the secretary. Corrective action  
249 costs recovered under this section shall be deposited in the petro-  
250 leum storage tank release trust fund. Corrective action taken by the  
251 secretary under this subsection need not be completed in order to  
252 seek recovery of corrective action costs, and an action to recover  
253 such costs may be commenced at any stage of a corrective action.

254 (c) An owner or operator shall be liable for all costs of corrective  
255 action incurred by the state of Kansas as a result of a release from  
256 a petroleum storage tank, unless the owner or operator, or both,  
257 enter into a consent agreement with the secretary in the name of  
the state within a reasonable period of time, which time period may  
be specified by regulation. At a minimum, the owner or operator,

297 (9) other costs identified by the secretary as necessary for proper  
298 investigation, corrective action planning and corrective action activ-  
299 ities to meet the requirements of this act.

300 Sec. 19. (a) An owner or operator of a petroleum storage tank,  
301 other than the United States government or any of its agencies, who  
302 is in substantial compliance, as provided in subsections (c) and (d),  
303 and who undertakes corrective action, either through personnel of  
304 the owner or operator or through response action contractors or  
305 subcontractors, is entitled to reimbursement of reasonable corrective  
306 action costs from the fund, subject to the following provisions:

307 (1) The owner or operator of not more than 12 petroleum storage  
308 tanks shall be liable for the first \$5,000 of costs of corrective action  
309 taken in response to a release from any such petroleum storage tank;

310 (2) the owner or operator of at least 13 and not more than 99  
311 petroleum storage tanks shall be liable for the first \$10,000 of costs  
312 of corrective action taken in response to a release from any such  
313 petroleum storage tank;

314 (3) the owner or operator of more than 99 petroleum storage  
315 tanks shall be liable for the first \$30,000 of costs of corrective action  
316 taken in response to a release from any such petroleum storage tank;

317 (4) the owner or operator must submit to and receive from the  
318 secretary approval of the proposed corrective action plan, together  
319 with projected costs of the corrective action;

320 (5) the owner or operator or any agents thereof shall keep and  
321 preserve suitable records demonstrating compliance with the ap-  
322 proved corrective action plan and all invoices and financial records  
323 associated with costs for which reimbursement will be requested;

324 (6) within 30 days of receipt of a complete corrective action plan,  
325 the secretary shall make a determination and provide written notice  
326 as to whether the owner or operator responsible for corrective action  
327 is eligible or ineligible for reimbursement of corrective action costs,  
328 and should the secretary determine the owner or operator is inel-  
329 igible, the secretary shall include in the written notice an explanation  
330 setting forth in detail the reasons for the determination;

331 (7) the owner or operator shall submit to the secretary a written  
332 notice that corrective action has been completed within 30 days of  
333 completing corrective action;

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or the owner or operator of any above ground  
storage tank specified in subsection (g) or (j)  
of section 3

H.B. 2005

Testimony Provided to Senate Energy & Natural Resources Committee

March 1, 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.

SE+NR  
3/1/89  
Attachment II

Bob Meinen  
A II

- 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
- 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.

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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 position. pg. 4
4. Provides for appointment of Commissioners to fill an unexpired 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 El Dorado and Hillsdale project lands rather than just the state parks on El Dorado 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
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. 16

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. 16
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. 22
14. 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, 37
15. Oil and gas leasing authority would apply to all lands of the department. pg. 42
16. 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
17. 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, 49, 51, 53
18. Removes the 1989 "sunset" clause for free daily park use days and fishing days. pgs. 45, 50
19. 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. 54
20. Specifies ten hours as minimum for hunter education instead of the present four hour minimum. pg. 55

21. 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. 58
22. 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. 59
23. 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. 61
24. 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. 62
25. 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. 65
26. Changes name of "Game Bird Breeding and Controlled Shooting Area" to "Controlled Shooting Area." pg. 67
  - 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).
27. Removes the "wholly enclosed preserve" provision from the "game breeder" requirements. pg. 71
28. Provides for wildlife rehabilitation through a permit system. pg. 73
29. Provides for a fee for special permits issued pursuant to threatened or endangered species statutes. pg. 81
30. Provides for a fee for wildlife import permits. pg. 83
31. 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. 83

32. 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. 84
33. Provides for a fee for duplicates of any department issue and consolidates language involving duplicates. pg. 85
34. 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. 86
35. 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. 88
36. 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. 94
  - 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
37. 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. 94
  38. Creates a "wildlife" fee fund and a "park" fee fund. pgs. 97, 98
  39. Specifies for what purposes those funds can be used. pgs. 97, 99
  40. Changes name of lifetime license fund from fish and game conservation fund to wildlife conservation fund. pg. 99
  41. 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. 102
    - 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.
  42. 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. 104
  43. It would be illegal to possess illegal equipment for the purpose of taking wildlife, except as authorized by regulation. pg. 104
  44. 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. 105

- 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.
45. 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. 105
46. 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. 105
47. 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. 106
48. Maintains but clarifies the "inspection" authority for law enforcement. It addresses: pg. 106
- a) inspection of any wildlife in possession including places of commercial storage and processing.
  - b) inspection of any equipment used in taking wildlife
49. Clarifies pursuit of a wounded animal on lands posted to "trespass by written permission." pg. 110
50. 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. 111
51. 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. 111
52. 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. 113

53. Seized items resulting from unlawful acts could be retained by the Department and used for educational, scientific or operational purposes. pg. 116
54. Removes a \$25 prosecution fee for court appointed attorneys and references state law for establishing that fee. pg. 119
55. Raises the minimum reporting level for boating accidents from \$100 to \$200. This change complies with recent Coast Guard changes. pgs. 121, 133
56. 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. 121
57. Amends the statute authorizing water events (races, regattas, etc.) by allowing more flexibility to administer water events by rule and regulation. pg. 133
58. 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. 135
59. 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. 137
60. 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. 172
61. Provides for any fees set by law and in effect on June 30, 1989, to remain in effect until addressed by department regulation. pg. 172

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.

# Kansas Wildlife Federation, Inc.

200 S.W. 30th, Suite 101 • P.O. Box 5715 • Topeka, KS 66605

February 28, 1989

Kansas 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.

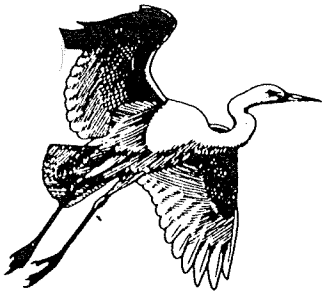
The new cabinet level status for wildlife and parks has taken a bit of getting used to, but we feel that we have opened lines of communication with Secretary Meinen, the agency and the new Commission. We have high expectations of the new agency. We can see that the roles of the legislature, the Commission, 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 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 for 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 stat 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 and 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 Senate with a positive recommendation.

SE+NR  
3/1/89  
Attachment IV  
AIV





# Kansas Audubon Council

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March 1, 1989

SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

My name is Joyce Wolf and I represent the 5,000 Kansas members of the National Audubon Society. The Kansas Audubon Council, which met on January 28th in Emporia, asked me to reaffirm my previous testimony on recodification which was offered during the interim session.

We want to express our appreciation and endorsement of the Kansas Department of Wildlife and Parks' increasing emphasis on non-game wildlife, in particular by their placing it in a position of equal status with game species through the definition section of HB 2005. Additionally, we support those parts of the recodification document which give the department direction to move more aggressively into areas of promotion of tourism within the state. For too long the beauties and value of Kansas' natural and historic areas have gone unappreciated.

The Audubon Society believes that a comprehensive system of lands managed by the Kansas Department of Wildlife and Parks, which focuses attention on the natural, historic, cultural and recreational resources within the state, should be the cornerstone of our long-term economic development and for promotion of tourism.

According to department data the number of annual park permits being sold has increased dramatically in recent years. In 1987 nearly 250,000 state park permits were sold; this figure translates to nearly 5,000,000 visitations to our park system. With the increasing pressures on Kansas' current facilities and the recognition of the need to provide added tourism attractions and resources, we feel it is vitally important that the department continue to have the authority to acquire lands necessary for wildlife management, and to provide recreational or cultural opportunities and facilities for the public. Additionally the department should have the ability to take the necessary measures to protect critical habitat for endangered or threatened species.

The Audubon Council believes that any diminution of the authority to acquire lands would seriously jeopardize the department's ability to effectively preserve, protect and defend the wildlife and natural areas of the state. Thus, we wholeheartedly support those sections of HB 2005 which grant that authority. We truly believe that publicly owned land is a state asset whose worth cannot be overemphasized, for it promotes pride in our state and a feeling of stewardship among our citizens.

SE+NR

3/1/89

Attachment V