

Approved

Ken Grotewiel

Date 3/3/92

MINUTES OF THE HOUSE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Representative Ken Grotewiel at
Chairperson

3:37 ~~am~~/p.m. on February 24, 1992 in room 526-S of the Capitol.

All members were present except:

Representative Gatlin, excused
Representative Charlton, excused

Representative Hendrix, excused
Representative Thompson, excused

Committee staff present:

Pat Mah, Legislative Research Department
Lenore Olson, Committee Secretary

Conferees appearing before the committee:

Jack Lacey, Secretary of Wildlife and Parks Department

The Chair opened the hearing on HB 2911.

HB 2911 - An act repealing KSA 1991 Supp. 32-976, relating to stocking or restocking of private water fishing impoundments.

Jack Lacey, Secretary of Wildlife and Parks, testified in support of HB 2911. He stated that repeal of KSA 32-976 will enable the Department to again become active in farm pond management in Kansas. Mr. Lacey then responded to questions from the Committee. (Attachment 1)

Chairperson Grotewiel closed the hearing on HB 2911.

The Chair distributed information on HB 2801 (solid waste management) which was provided by Ron Hammerschmidt, KDHE, upon request by the Committee. (Attachment 2)

The Chair opened the hearing on HB 2912.

HB 2912 - An act concerning wildlife and parks; amending KSA 1991 Supp. 32-701, 32-808, 32-945, 32-1001, 32-1002, 32-1003, 32-1004, 32-1047, 32-1051, 32-1102, 32-1111, 32-1113 and 32-1177 and repealing the existing sections.

Jack Lacey, Secretary of Wildlife and Parks, testified in support of HB 2912. He stated that this bill was requested by the Department and is primarily housekeeping in nature. Mr. Lacey reviewed twelve amendments and requested two other amendments relating to black-footed ferrets and on enforcing infractions on lands other than Department lands and waters. Mr. Lacey then responded to Committee questions. (Attachment 3)

The Chair closed the hearing on HB 2912.

A motion was made by Representative McClure, seconded by Representative McKechnie, to introduce a bill on the Underground Storage Tank Act. The motion carried.

A motion was made by Representative McKechnie, seconded by Representative Glasscock, to approve the minutes of February 18, 19, and 20, 1992. The motion carried.

The meeting adjourned at 4:30 p.m.

H.B. 2911

TESTIMONY PROVIDED TO: HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE

PROVIDED BY: KANSAS DEPARTMENT OF WILDLIFE AND PARKS

DATE: FEBRUARY 24, 1992

H.B. 2911 was requested by the department and would repeal K.S.A. 32-976. That statute was enacted in 1990 and prohibits the department from stocking fish in private waters. The restriction does not apply to waters operated by governmental agencies or to private waters opened to public access.

Farm ponds are a major aquatic and fishing resource in Kansas and they are preferred fishing spots for about 25% of our residents. Their benefits to the Kansas angler are too important for this department to ignore. Because of the restrictions in 1991, only about 20% of the pond owners who requested fish from the department actually secured fish from other sources for stocking when informed that we could no longer supply fish to them.

Repeal of K.S.A. 32-976 will enable the department to again become active in farm pond management in Kansas. As drought conditions improve, the department is anticipating increased demand for farm pond management and stocking. If the department is not allowed to participate, potential benefits of this resource will not be realized.

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Attachment 1

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Division of Environment

M E M O R A N D U M

TO: Rep. Ken Groetwiel, Chairman
House Energy and Natural Resources Committee

FROM: Ron Hammerschmidt, Ph.D.
Deputy Director

SUBJECT: Analysis of HB 2801 and Federal Solid Waste
Requirements

DATE: February 20, 1992

At the request of the Energy and Natural Resources Committee, in particular Representative Shore, we have examined the provisions of HB 2801 and the relationship of these provisions to the federal solid waste regulatory requirements. There are two federal regulation packages which were examined in the performance of this analysis. The first was 40 CFR Parts 257 and 258, commonly known as the Subtitle D requirements. The second is the companion EPA State Implementation Rules (SIR), which should be released for public comment sometime this spring or early summer.

The Subtitle D regulations in 40 CFR 257 and 258 apply to Municipal Solid Waste Landfills (MSWLF). They are written to regulate the siting, design, operation, closure, and post-closure care of landfills. The details in these Subtitle D regulations deal with specifics directly related to these items. These Subtitle D regulations do contain reference to authorities and options available to an approved state and the Director of an Approved State. An approved state is allowed some flexibility in the application of some provisions of the regulations that are not available to facilities in nonapproved states. Landfill operations in nonapproved states are subject to the self-implementation provisions of the Subtitle D regulations.

The designation of a state program as an approved state is subject to the provisions of the State Implementation Rule. A draft of this rule has been reviewed by KDHE. There are several requirements that the state must meet in order to gain approved state status. These requirements include:

Demonstration of appropriate jurisdiction and regulatory responsibilities.

Ability to issue permits for landfills which ensure compliance with Subtitle D requirements.

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Authority to inspect and monitor landfills.

Authority for injunctions, restraining orders and civil penalty authority.

Authority to enforce all Subtitle D and state regulations related to landfills.

Identification of staff resources to carry out the duties of an approved state.

The approval of a state program for status as an approved state is granted by the regional administrator. The current draft of the SIR regulations require that eligible states submit a completed application for program approval within 12 months of the adoption of the SIR rules. Since this promulgation is expected this summer, the state would need to have resources, revised rules and regulations, and other necessary items ready for submission by the spring or early summer of 1993.

To specifically respond to the request the following sections of HB 2801 are required by the Subtitle D regulations and the draft SIR rules. Please note that Subtitle D requirements are followed by a (Subtitle D) designation and draft SIR requirements by (SIR rules).

Section One

Definition of "closure", page 2 line 24, and "post closure", page 2 line 28. (Subtitle D)

Section Three

Explicit permitting language, section (l) page 6 line 40. (Subtitle D)

Change in post closure requirement from 10 years to 30 years, amended section (r), page 7 line 16. (Subtitle D)

Section Four

Civil and criminal background checks, page 8 line 21 to page 9 line 13. (SIR rule)

Additional mechanisms for financial assurance, page 9 line 38. (Subtitle D)

Requirement for coverage for sudden occurrences, page 10 line 1. (SIR rule)

Added requirement for financial assurance for "operational activities", page 10 line 3. (Subtitle D)

Amended section (i) that permits are not transferrable, page 10 line 25. (SIR rule)

Section (i) strengthened in enforcement, page 10 line 31. (Subtitle D)

Section Six

Increase in civil penalty from \$50 to \$5,000, page 11 line 41.
(Subtitle D)

Addition of "threatened or actual violations" as basis for administrative actions, page 12 line 25 and line 32. (SIR rule)

Modification of injunctive and other legal authorities, page 12 line 38 to page 13 line 17. (SIR rule)

Both the Subtitle D and SIR rule anticipate that each approved state will have sufficient funding and resources to perform the necessary technical assistance, inspection, enforcement, and other administrative functions. We have been informed verbally by EPA staff that the current Kansas staffing and resources are thought to be inadequate to perform the tasks imposed by Subtitle D and the SIR rule. The provisions of section seven and section eight were drafted to develop a stable funding source for the regulatory and remedial oversight functions required by these federal regulations. It should be noted that Missouri has 42 FTEs and Iowa 23 FTEs in their state solid waste program at present.

There are a number of sections in HB 2801 which are not required by the Subtitle D and SIR regulations. These include inclusion of recycling facilities as solid waste processing facilities; the planning provisions; grants to counties and regions; waste reduction goals; market development and recycling; and remedial contract funds. We have discussed the necessity for these components in the agency testimony on HB 2801. I would reiterate the need for funding for these elements to develop an effective solid waste program.

In addition to the statewide tipping fee, there are three fees authorized by HB 2801. The application fee and annual renewal fee for solid waste disposal facilities were proposed by the department in response to directives received during the appropriation process. It was our intention to build a fee schedule through the rule and regulation process which would recover the cost of reviewing and approving the applications and performing periodic inspections and other permit related activities.

The third fee provision is the authority for a region to collect out-of-region tipping fees. This authority was proposed to create a mechanism for regions to control the flow of solid waste. This out-of-region waste may originate in other Kansas locales or in more populated areas of the United States. The fee would apply uniformly to all out-of-region waste whether interstate or intrastate.

Please contact me at 296-1535 if there are additional questions.

copy: Dr. Azzie Young
Charles Jones
John Irwin
Bob Eye
Pat Casey

H.B. 2912

TESTIMONY PROVIDED TO: HOUSE ENERGY & NATURAL RESOURCES COMMITTEE

PROVIDED BY: KANSAS DEPARTMENT OF WILDLIFE AND PARKS

DATE: FEBRUARY 24, 1992

H.B. 2912 was requested by the department and is primarily housekeeping in nature. In 1989, all statutes affecting the department were recodified in response to the merger which occurred in 1987. The department is recommending the following amendments to the several statutes involved.

1. Narrow the definition of "wildlife" by excluding cattle, swine, sheep, goats, horses, mules, and other equines; and domestic chickens, turkeys and guinea fowl. This amendment will clarify that agricultural livestock and poultry are not issues with which the department has authority. Such authority already properly rests with other state agencies.
2. Authorize the department to enforce traffic infractions on department lands and waters. Such authority existed with both former agencies and with the merged department of Wildlife and Parks for a brief time. That authority was removed when traffic violations became infractions instead of misdemeanors. The department is authorized to enforce laws and regulations, but infractions are not included.
3. Remove the \$2,000 bond requirement for controlled shooting areas. This requirement necessitates Controlled Shooting Area operators to purchase a bond, but no bond forfeiture has ever been required for purposes as stated in the statute. It represents an unnecessary expense on the part of operators.
4. Clarify that the late payment provision (\$5) of K.S.A. 32-1001 applies to vehicle and camping permits only. As currently written, the late payment fee could also pertain to any permit for use of department lands and

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- waters. Using a broad application for any permit defeats the purpose of several permits, which are designed to manage or protect public use.
5. Currently, animals legally taken from outside this state are exempt from restrictions of K.S.A. 32-1002. An amendment is offered to stop the sale of big game meat and provides authority to impose other restrictions by regulation.
 6. K.S.A. 32-1003 provides that it is illegal to spotlight while carrying a firearm, except it is legal to take furbearers with a light and to carry a firearm (or other implement) while taking furbearers with a light. The wording is very poor and can be interpreted as allowing a spotlight and firearm for any species. The proposed amendment would make it illegal to spotlight with a firearm (or other implement) in possession. Allowing the pursuit of furbearers with a light and firearm would be dealt with by regulation and authority to do so already exists in K.S.A. 32-1003.
 7. K.S.A. 32-1004 makes a number of actions unlawful except animals legally taken from outside the state are exempt. The proposed amendment would omit the exemption.
 8. Authorize the department to deal with property abandoned on department lands and waters. Procedures for dealing with abandoned vehicles or boats is specifically addressed by statute. However, processing other types of abandoned property is difficult. This amendment would establish a procedure for the department to follow.
 9. Clarify that officers are authorized to use warning tickets.
 10. Change definition of vessel to be the same as the U.S. Coast Guard definition.
 11. Remove the \$200 requirement for filing a boating accident report and instead provides for the amount to be established by regulation. The \$200 was based on the

U.S. Coast Guard requirement. However, the threshold amount has changed twice in the past several years and the Coast Guard has increased the amount again to \$500. It will be easier to keep pace with the changes by regulation.

12. Reduce the amount of time a vessel can be in Kansas without obtaining a Kansas registration from the current 90 days to 60 days. This change will be in line with our 60-day requirement to be considered a resident. The U.S. Coast Guard also uses a 60-day requirement for registration.

The department is proposing two amendments to H.B. 2912. The first amendment would strike black-footed ferrets from the list of furbearers. These ferrets are adequately protected through both federal and state threatened and endangered statutes. Removing them from the list will also allow nongame checkoff funds to be used for any ferret work.

The second amendment would allow the department to enforce infractions on lands other than department lands and waters. Any citation issued would be treated the same as arrests for violations of laws or regulations that are not department laws or regulations. The citation would be turned over to the law enforcement jurisdiction in which the infraction occurred.

1 basis and shall expire on December 31 following the date of any
2 such appointment.

3 (b) The department shall provide a minimum of 40 hours' internal
4 law enforcement training prior to certification of deputy conservation
5 officers.

6 (c) Conservation officers, deputy conservation officers and any
7 other law enforcement officers authorized to enforce the laws of the
8 state of Kansas shall have the power and authority to:

9 (1) Enforce all the wildlife and parks laws of the state and, the
10 rules and regulations of the secretary and, on department lands and
11 waters, the uniform act regulating traffic on highways. In addition,
12 ~~any conservation officer who has completed the required course of~~
13 ~~instruction for law enforcement officers approved by the law en-~~
14 ~~forcement training center, upon display of proper credentials, may~~
15 ~~assist an officer of a law enforcement agency in the making of an~~
16 ~~arrest at the request of the agency.~~ Such a conservation officer may
17 arrest a person when (A) the conservation officer has a warrant
18 commanding that the person be arrested, (B) the conservation officer
19 has probable cause to believe the person is committing or has com-
20 mitted a felony, (C) the conservation officer has probable cause to
21 believe that the person is committing or has committed a misde-
22 meanor under the circumstances specified in K.S.A. 22-2401 and
23 amendments thereto or (D) a felony or misdemeanor is being com-
24 mitted by the person in the conservation officer's view. If the con-
25 servation officer makes an arrest without the presence of an officer
26 of a law enforcement agency, the conservation officer shall cause the
27 person arrested to be delivered to the sheriff, chief of police or the
28 sheriff's or chief's designee in the jurisdiction where the arrest is
29 made, along with the documents and reports pertaining to the arrest
30 and shall be available as a witness. ~~A conservation officer acting~~
31 ~~under authority of this subsection shall be considered an employee~~
32 ~~of the department and shall be subject to its direction, benefits and~~
33 ~~legal protection.~~

34 ~~(2)~~ (2) Serve warrants and subpoenas issued for the examination,
35 investigation or trial of all offenses against the wildlife and parks
36 laws and rules and regulations of the secretary and of violations, on
37 department lands and waters, of the uniform act regulating traffic
38 on highways.

39 ~~(3)~~ (3) Carry firearms or weapons, concealed or otherwise, in the
40 performance of their duties but only if the officer has completed the
41 required course of instruction for law enforcement officers at the law
42 enforcement training center, unless otherwise qualified pursuant to
43 K.S.A. 74-5608a and amendments thereto.

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(2) Upon display of proper credentials, assist an officer of a law enforcement agency in the issuance of a traffic citation at the request of the agency, if the conservation officer has completed the required course of instruction for law enforcement officers approved by the law enforcement training center. Such citation may be issued if the conservation officer stops a person for any violation for which a traffic citation may be issued pursuant to law. If the conservation officer issues such citation without the presence of an officer of a law enforcement agency, the conservation officer shall issue the citation and take bond in the manner provided by the uniform act regulating traffic on highways.

(3) Upon display of proper credentials, assist an officer of a law enforcement agency in the making of an arrest at the request of the agency, if the conservation officer has completed the required course of instruction for law enforcement officers approved by the law enforcement training center.

(4)

(5)

(6) A conservation officer acting under authority of this subsection (c) shall be considered an employee of the department and shall be subject to its direction, benefits and legal protection.