

Approved: 2-7-97
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY & NATURAL RESOURCES

The meeting was called to order by Chairperson David Corbin at 8:00 a.m. on February 6, 1997 in Room 254-E of the Capitol.

All members were present.

Committee staff present: Rane Gilliland, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Lila McClafin, Committee Secretary

Conferees appearing before the committee:
Karl Mueldener, Director, Bureau of Water, Kansas Department Health and Environment
Don Carlson, Kansas Department of Health and Environment
Mike Jensen, Kansas Pork Producers
Spencer Tomb, Kansas Wildlife Federation, Inc.

Others attending: See attached list

The minutes of January 30 and February 5 were presented for adoption. Senator Tyson moved their adoption. The motion was seconded by Senator Schraad. Motion carried.

SB 120: Regulation of feedlot sewage discharges; swine weighing 55 pounds or less.

Karl Mueldener, Director, Bureau of Water, Kansas Department Health and Environment supported the bill. He said the bill was introduced to close a loophole created by **SB 800** from the 1994 legislative session. **SB 120** would regulate swine rearing nursery facilities of significant size and have an environmental impact (Attachment 1). Mr. Mueldener and Don Carlson responded to questions regarding animal units, and how they arrived at the proposed 0.1 conversion factor for swine weighing less than 55 pounds. In responding to a question the reply was that the legislation applies to one contiguous facility.

Mike Jensen, Kansas Pork Producers, stated he was a qualified proponent, as a fairness issue for their producers, he submitted an amendment to the bill that would establish a reverse setback for any permitted livestock operation. He used his separation distance example on page two of his attachment as an example to explain what a reverse setback was, and why it was important (Attachment 2).

Chairperson Corbin asked Mr. Jensen to provide language for the proposed amendment.

The hearing was closed.

Committee discussion was opened on **SB 110**. Written testimony from Spencer Tomb opposing **SB 110** was distributed (Attachment 3). Mr. Tomb briefly stated he would oppose the bill and work against its passage.

Senator Tyson explained a balloon copy of **SB 110** that he and the department had worked out as the chairperson had requested. Senator Harrington moved to adopted the proposed amendments as drawn in the ballon. Senator Huelskamp seconded the motion. Motion carried. Senator Harrington then moved that the bill be passed as amended. Senator Schraad seconded the motion. Several members expressed opposition to the bill as they thought it would be difficult for the conservation officers to enforce. On a five to three vote the bill was passed out of committee.

The meeting adjourned at 8:56 a.m.

The next meeting is scheduled for February 7, 1997.

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to
Senate Energy and Natural Resources Committee
by
The Kansas Department of Health and Environment
Senate Bill 120

Current state statutes now have a loophole whereby nursery facilities for swine rearing can be of significant size and have an environmental impact but escape state statutes and regulations. KDHE does not believe this was the intent of the Legislature when consideration of SB 800 took place in 1994. The loophole involves K.S.A. 1995 Supp. 65-171d which revolves around "small" pigs (pigs weighing less than 55 pounds) and the statute's provisions relating to the definition of "animal unit," the definition of "animal unit capacity," registration requirements, and separation distance provisions between the livestock facilities and habitable structures (homes or residences).

This loophole is a remnant of SB 800 from the 1994 legislative session. KDHE does not believe it was the Legislature's intention to exempt nursery units or other swine operations involving large numbers of "small pigs" from the registration or separation distance provisions of SB 800. The recent influx of large swine operations in Kansas has created a situation where nursery units containing 9600 head of "small pigs" could be developed and the facility would have a design animal unit capacity of zero animal units which exempts it from both mandatory registration based on size and separation distance requirements.

The proposed legislation would amend K.S.A. 1995 Supp. 65-171d(c)(3) which defines the term "animal unit" to close the loophole whereby large swine facilities with "small pits" are classified as containing zero animal units for regulatory purposes. Many of these large facilities generate a significant amount of wastewater and need to be regulated for water pollution control regardless of the fact the water is generated from swine weighing less than 55 pounds. The proposed bill would require the registration of these facilities and would subject them to the established separation distance requirements. Currently, facilities with design capacities of less than 300 animal units are exempt from any registration or separation distance requirements.

*Energy & Nat Resc
Attachment 1
2-6-97*

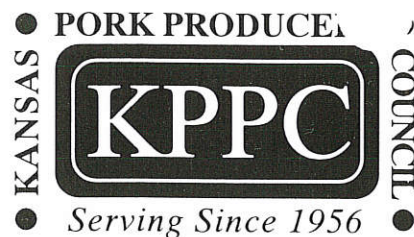
The need for a permit or pollution controls remains unchanged per the provisions of SB 800. The design of the pollution controls, both pre and post SB 800, have accounted for the waste production of the "small pigs." The proposed 0.1 conversion factor for swine weighing less than 55 pounds is based on comparative waste production by small pigs.

A number of swine facilities operated by Seaboard would statutorily fall under the revised language. To Seaboard's credit, the facilities were intentionally built as if the loophole did not exist, that is the facilities meet or exceed KDHE's requirements related to separation distances. It is possible that future facilities by other corporations or operations might fall under this same loophole and the owner might feel compelled to meet KDHE's standards.

The proposed bill would not impact other state agencies. The proposed bill would not create any fiscal impacts on KDHE. We estimate there are six Seaboard facilities that would be fiscally impacted by an increase in their annual permit fees. Fees for four facilities would increase from \$25/year to \$100/year. One annual permit fee would increase from \$100/year to \$200/year with the remaining facility's fee increasing from \$200/year to \$400/year. Total increase in annual permit fees for the six Seaboard operations would be \$600/year which would be directed to the State General Fund. currently, KDHE's database does not contain data on the number of swine weighing less than 55 pounds at each facility. We believe there will be little or no fiscal impact on the majority of the permitted swine operations.

Testimony presented by: Karl Muedener
Director, Bureau of Water
Division of Environment
February 6, 1997

Testimony to
Senate Energy & Natural Resources Committee
on Senate Bill 120



Mr. Chairman and members of the committee, I am Mike Jensen.
I serve as Executive Vice President of the Kansas Pork Producers Council.
Our organization represents the majority of pork production operations across Kansas.

I am here today as a qualified proponent of SB 120. A small amount of historical background might be of benefit. The "Animal Unit" designation was incorporated into statute by SB 800 in 1994. The numbers assigned to the different species are the same numbers that the EPA uses for their NPDES permit process (with the exception of under 700-pound beef cattle being counted as 0.5). When EPA originally developed these numbers, swine were raised primarily in farrow-to-finish (birth to market) operations. The pigs were not weaned until approximately 40 pounds at eight weeks of age. Today, many operations are utilizing multiple-site production. Sows are housed at gestation/breeding/farrowing complexes. These facilities produce 10-pound pigs which are moved to a separate site "hot nursery" until about 50 pounds, and finally to a third site for finishing to 260 pounds.

SB 120 addresses the apparent dilemma of any number of pigs at one site, effectively counting as 0, for the purpose of number of animal units. It is important to point out that irregardless of the number of animal units, these units **still must** comply with all pollution prevention requirements of both the KDHE and EPA. The **only** impact of raising from 0 to .1 will be in regards to separation distances and permit fees. Essentially, this is a public relations reaction to a perceived public relations problem. This bill does nothing in regards to any perceived environmental threat. However, if the public feels "threatened" by these small pigs, we have no problem in supporting legislation changing their designation.

We would respectfully ask the committee to add an amendment to this bill. In concept, this amendment would establish a "reverse setback" for any permitted livestock operation. Society has effectively imposed what activities our producers may do on their own land by the actions of individuals who might not even be contiguous landowners. Our operators believe it is only fair, to prevent "in reverse" encroachments into their own setback areas. We would propose that this amendment also encompass livestock operations as well as homes. Our operators would also have the right to grant a waiver themselves to a potential homebuilder or livestock operation if they so chose.

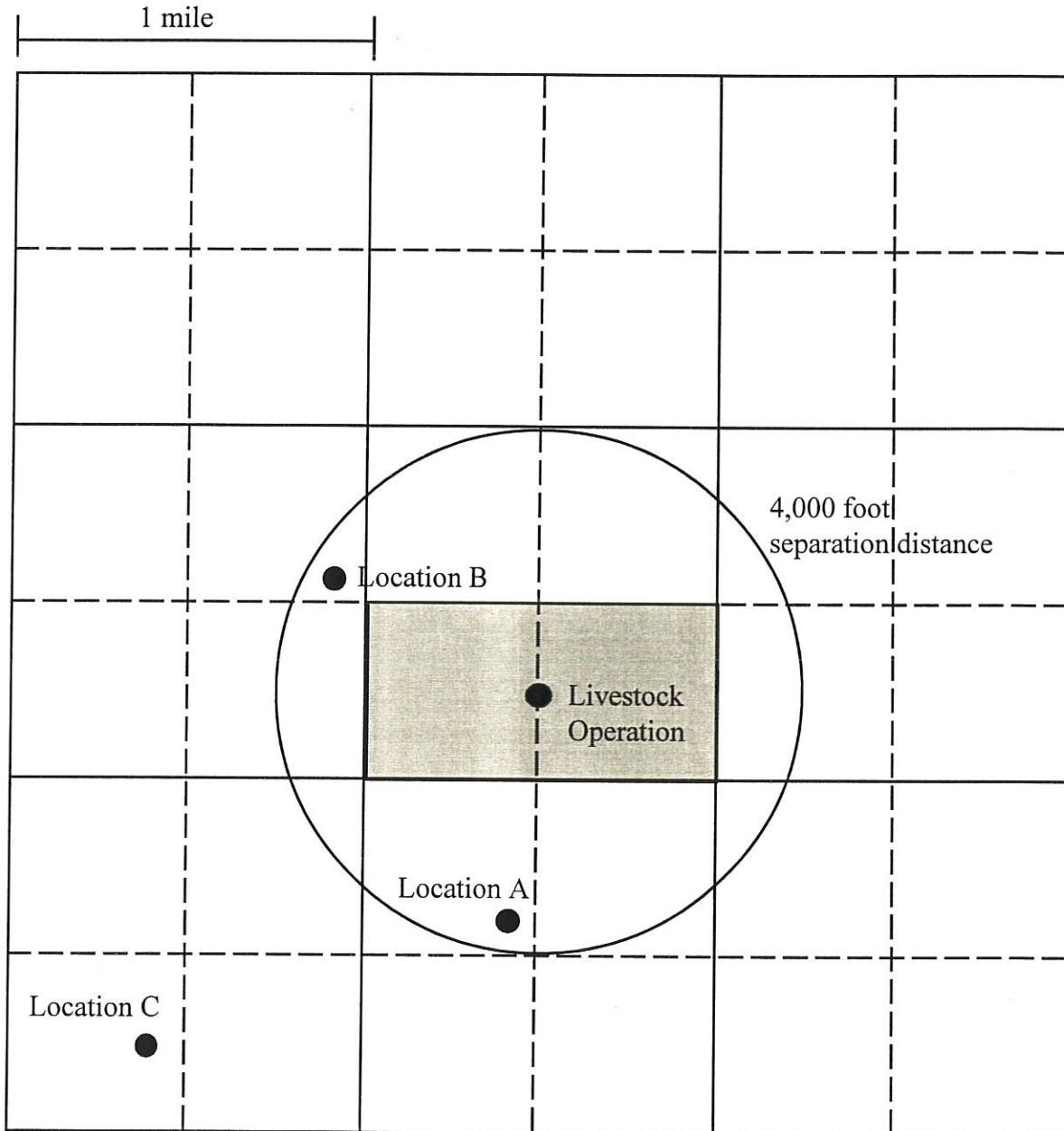
As one of my board members summed up the issue, "Public policy has pushed our industry into operating in a island atmosphere. It's time we had some protection for our island." Public policy has increasingly been imposing restrictions on what our producers may do on their own property. Quite frankly, this is a fairness issue. We would only like the same respect (laws) that govern our activities to, in turn, protect the ability of our producers to pursue agricultural activities that meet or exceed all governmental standards.

2601 Farm Bureau Road • Manhattan, Kansas 66502 • 913/776-0442 • FAX 913/776-9897

Energy & Nat Res
attachment 2
2-4-97 2-1

Separation Distance example:

The Livestock Operation's owner has 320 acres around his operation. Location A is a home which preceded the livestock operation. The owner of the livestock operation would need to secure a waiver from this person before building. Location B is a potential homesite. This landowner would need to secure a waiver from the livestock operation's owner after the operation secures its operating permit from KDHE.



SE & NR

Kansas Pork Industry Facts

Kansas recently rose to the number 8 state in hog and pig inventory

• In the last year, Kansas producers marketed:

2,103,833 market hogs
123,959 feeder pigs
26,953 seedstock
<hr/>
2,254,745 total

- 1995 gross market value was \$291,138,681.47
- Kansas' sow inventory rose 27% in the last year to 190,000 head or 2.85% of the U.S total.
- Kansas swine consume over 24 million bushels of grain, primarily Kansas-grown dryland milo.
- Approximately 500 Kansas operations:
 - market 77.5% of our swine
 - have the equivalent of a 50-sow operation
 - average above \$10,000 net income annually from swine

* The Kansas swine industry annually spends about:

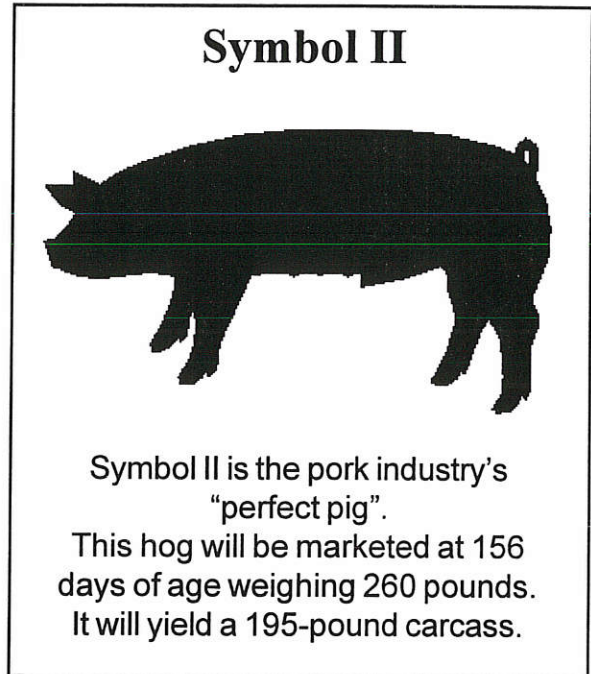
- \$170 million for feed grains
- \$6 million for veterinary care
- \$7 million for utilities (gas, propane & electric)
- \$7 million for trucking costs (hog marketing only, no grain)
- \$6 million in interest
- \$27 million in construction
- \$15 million in supplies

Geographically, the northcentral and northeast part of the state have the most hog operations. Washington county has the most hogs in the state with Nemaha in second and Clay in third. There are also some large operations in the southwest corner of the state.

Numbers as of January 1, 1997



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Kansas Wildlife Federation, Inc.

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An Affiliate of the National Wildlife Federation

February 6, 1997

Position Statement

on

Senate Bill 110

The Kansas Wildlife Federation is a non profit, conservation and education organization dedicated to natural resource and wildlife conservation and appropriate uses of these resources that will assure their availability for future generations. We are the Kansas affiliate of the National Wildlife Federation.

We have serious reservations about this bill. The current Kansas statute that prohibits spotlighting of deer is a strong statute. It has stood the test of time and has stopped trespassing and the nighttime poaching of wildlife especially deer and fur bearers. This law has not prevented landowners from protecting their property because the Conservation Officers consistently been reasonable and thoughtful in their application of the statute.

We think that Kansas Conservation Officers need this statute the way it is to be able to stop poachers. The spotlight section of the law was not intended to restrict the rights of landowners to protect their livestock and other property. Conservation Officers have encountered landowners using lights at night to check livestock and we know of no examples of landowners, operators or employees being charged with spotlighting with out substantial additional evidence or a history of wildlife violations.

If it is the decision of the Committee to go further with this bill, we suggest the following changes.

1. The term nonprotected wildlife is misleading as all wildlife of Kansas is protected by statute except the starling, the house sparrow, and the pigeon.
2. What species are intended to be shot? The problem species should be listed or you will open the season on all wildlife.
3. The term hunting should be removed in the changed part of the bill. Using a vehicle and an artificial light to shoot animals at night is not hunting.

In conclusion we are sympathetic to the needs of landowners to have firearms in their vehicles, to protect their property, and to have a means of taking problem wildlife even at night with artificial light if that is needed. We think that changing this section of the current law will increase poaching and trespass problems because Conservation Officers will not pursue spotlighters as vigorously if this huge loophole is put into the law.

(This position statement was prepared by KWF Vice President Spencer Tomb for the Conservation Issues and Actions Committee. Dr. Tomb can be reached at 913 537-8265 or 532-6640 or Email astomb@ksu.edu .)

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Attachment 3
2-6-97*