

Approved: 2-13-97
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 13, 1997 in Room -254-E of the Capitol.

All members were present.

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

Conferees appearing before the committee:
Yvonne Anderson, Director, Legal Office, Department of Health and Environment
Ronald F. Hammerschmidt, Director, Division of Environment, Department of Health and Environment

Others attending: See attached list

Chairperson Corbin opened the hearing on SB 123.

SB 123: Review of certain agency actions regarding regulation of sewage discharges.

Fiscal note was distributed that reads, SB 123 could result in a workload increase, however any fiscal impact would be negligible.

Yvonne Anderson, Director, Legal Office, Department of Health and Environment said they asked to have the bill introduced. She said it would subject sewage discharges complaints to the same provisions of the Kansas Administrative Procedure Act Program that is available to most other state agency actions, and it provides for review by an independent hearing officer at the agency level. It further provides for a complete record for judicial review should the issue be appealed to the courts. Last session when a bill was sponsored by the Judicial Council the statutes for this area were not included (Attachment 1). Ms. Anderson responded to questions.

Staff was asked for clarification regarding the intent of the bill.

In responses to a question, Ron Hammerschmidt said individuals with feedlot lagoon complaints could go through the administrative process to see if the complaint could be resolved before they would go to district court. If they did go to court there would be a paper trail for the judge to review.

The hearing was closed.

A motion was made by Senator Biggs that SB 123 be passed. Senator Schraad seconded the motion. Motion carried.

The meeting adjourned at 8:38 a.m.

The next meeting is scheduled for February 14, 1997.

**SENATE ENERGY & NATURAL RESOURCES
COMMITTEE GUEST LIST**

DATE: 2-13-97

NAME	REPRESENTING
Therese Anderson	KDHE
Paul Hattlaus	Water Resources
Ron Gammert	KDHE
Nancy Jackson	Sierra
Bill Jackson	Wolf River Environmental Society
Greg Bryant	KS. Sierra, MO. River Coalition
Joanne Brier	Ks Aud Council
Carol Hoogheem	No. Flint Hills Audubon
Theresa L. Hoogheem	N. Flint Hills Audubon
Chris Lokins	Ks Audubon Council
Cynthia Abbott	Ks. Audubon Council
Janice Jenk	National Audubon Society
Alan Myers	Burroughs Audubon Society
Matthew C. Nowak	Leavenworth Audubon Soc.
Jessie Strambler	Jo Co. Wastewater District
Charles Benjamin	KWRC / Sierra Club
Edward Rowe	LWW Ks

Testimony presented to

Senate Energy and Natural Resources Committee

by

The Kansas Department of Health and Environment

Senate Bill 123

The proposed legislation makes K.S.A. 65-164 and 65-165, water pollution order and permitting actions, subject to the provisions of the Kansas administrative procedure act (KAPA), K.S.A. 77-501 et seq. These amendments are consistent with other environmental programs which provide for administrative appeals of agency orders and permitting actions as well as with current administrative practice which is to allow for administrative appeals of agency actions prior to court review.

The benefits of such administrative proceedings are that they allow the respondent to the agency action or the permittee a full opportunity to challenge the agency action and have it fully reviewed by an independent hearing officer at the agency level. Resolution of issues at this level saves the public and the agency significant resources otherwise expended for civil actions. It also provides for a full and complete record for judicial review should the matter be appealed to the courts. Last year a trailer bill was sponsored by the Judicial Council bringing most other state agency actions under KAPA.

Although the National Pollutant Discharge Elimination System permitting program was approved by EPA without provisions for administrative appeals, such provisions are consistent with the federal NPDES program. KAPA provisions serve to keep permits in place and enforceable when the permittee has filed a timely and sufficient application for renewal. It also allows for further public participation in the administrative process.

As the agency has a policy of granting administrative appeal rights in its orders, the statutory inclusion of KAPA into 65-164 and 65-165 should have limited impact on agency resources.

The department recommends that the amendments be passed as written.

Testimony presented by:

Yvonne Anderson
Director, Office of Legal Services
February 13, 1997

*Sen Energy + Nat Res
attachment 1
2-13-97*