

Approved: 2-24-97
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson David Corbin at 8:00 a.m. on February 20, 1997 in Room 254-E of the Capitol.

All members were present accept:

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

Conferees appearing before the committee:

Dwight F. Metzler, former Secretary, Kansas Department of Health and Environment
Melville Gray, former Director of Environment, Kansas Department of Health and Environment
James O'Connell, Secretary, Kansas Department of Health and Environment
Charles Benjamin, Kansas Chapter of Sierra Club and Kansas Natural Resources Council

Others attending: See attached list

SB 279 - Qualifications of director of Division of Environment of Department of Health and Environment.

Dwight F. Metzler, former secretary, Department of Health and Environment, gave a brief overview of why he supported the bill. He believes that engineering skills are required in water issues, solid and hazardous waste control and air quality to design and manage systems to protect the citizenry, animals and fish of the state, and do so in a cost-effective way (Attachment 1). He responded to questions.

Melville Gray, former Director of Environment, KDHE, spoke in support of the bill. As he believes the director of the division needs to be an individual with the qualifications listed in the bill if the state is to get the maximum benefit for our dollars (Attachment 2). Mr. Gray suggested the language be changed to reflect that any person when first appointed to the position of Director of Environment, shall be appointed for four years and subject to the approval of the Senate, and in line 32, "division of health", should be changed to "division of environment." He responded to questions.

A fax from the city of Great Bend supporting **SB 279** was distributed (Attachment 3)

James O'Connell, Secretary, Kansas Department of Health and Environment, opposed the bill as there did not appear to be justification for arbitrarily restricting the choice of director for the division, and it would place an unnecessary restriction on future candidates for the position (Attachment 4). Secretary O'Connell responded to questions regarding what background and skills he would consider for the individual holding this position. He called on Ron Hammerschmidt to answer a question regarding his qualifications and education.

Charles Benjamin, Kansas Chapter of Sierra Club and Kansas Natural Resource Council, opposed the bill as they believe it is too narrowly focused, and should not be restricted to one area of expertise (Attachment 5).

Mr. Benjamin distributed written testimony opposing **SB 279**, from Dr. Kate Shaw, Editor and Environmental Concerns Chairperson for the Kansas Chapter of American Fisheries Society (Attachment 6)

Chairperson Corbin said the water quality standards have been changed enough so they can no longer be obtained. It appears that this is where the problem lies, but that really is not what the bill before us is about.

Dwight Metzler was granted a request for a few minutes for closing remarks. He said the standards have been set with no regard for cost, and there has been no leadership in KDHE for several years, and it is driving business from Kansas.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 254-E Statehouse, at 8:00 a.m. on February 20, 1997.

The hearing was closed.

SB 120 - concerning livestock; relating to confined feeding facilities.

A balloon draft of the amendments proposed by the Kansas Pork Producers was distributed (Attachment 7). The Chairperson called on staff for a briefing regarding the proposed amendments. Questions were asked regarding the ability of a facility to expand, and how the set backs were figured. Ron Hammerschmidt responding to a question regarding a spill, said this bill would not affect any clean up procedures.

The meeting adjourned at 8:58 a.m.

The next meeting is scheduled for February 21, 1997.

Statement to Committee on Energy and Natural Resources

Senator Dave Corbin, Chair

by

Dwight F. Metzler, P. E.

Thank you for this opportunity. I am here to support Senator Salisbury's bill 279 to require minimum qualifications for the Director of Environment, KDHE. You did this for the Director of Health in 1993.

In a nutshell, the environmental programs at KDHE suffer from fragmented decision-making, brought about by the lack of leadership. This lack is costing us dearly. It costs both we who are here and those who would like to come to employ our productive work force and use our abundant energy.

But first, a bit of history. In 1907 Dr. Crumbine asked the legislature to make Kansas waters safe for man's use and for fish. The director of the Division of Sanitation was required to be a K. U. engineering faculty member. The close relationship between the University and the State Board of Health made Kansas a pioneering state in the safety of drinking water and protection of its streams.

By 1972 the relationship had weakened, and the Federal Clean Water Act was passed. At that point most Kansas waste dischargers were providing secondary treatment, and directors--all chief engineers--each served an average of fifteen years. Since the beginning of Governor Carlin's second term we've had a dozen or so persons, none of whom had time to plan a program and carry it out. Frequent policy changes caused confusion on the part of cities and industries.

The federal act of 1972 set zero discharge for industrial wastes as a *future* goal. The Office of Science and Service (OSS) went further by promoting a plan to prohibit pollutants from reaching surface or ground water.

This was done with little debate in KDHE, and with none in public. The systems and concepts to attain zero discharge are unknown. Is zero discharge environmentally superior? Is it economically feasible? For Kansas to answer these questions requires study and debate.

Federal law requires each state to adopt revised water quality standards each third year. When OSS failed for six years in this mission, Secretary Robert Harder assigned the task to Karl Mueldener, Director of Bureau of Water. He completed the task in three months. However, due to earlier actions of OSS and those of EPA, very strict limits for ammonia, nitrates and heavy metals were forced on the state. This, in combination with OSS' insistence that 87% of surface water be swimmable, has resulted in Kansas having the highest failure rate of any state in meeting its standards. Some of you are familiar with this history, but I've included it as an example of the need for engineering leadership.

The Division Director supervises staff which advises cities, industries and their engineers on methods to reduce water, air and soil pollution. The staff reviews preliminary reports, and later the engineering plans and specifications. They inspect the finished work, and along with the consulting engineer, recommend methods of operation. On a regular basis, the engineers in the Division inspect the facilities to assure that they are performing as designed and built.

In summary, this is a very specialized society. Engineering skills are required in water supply, waste water, solid and hazardous waste control, in air pollution abatement and in the other programs of the Division. The Division's primary purpose is to use engineering and scientific procedures to reduce the amount of pollutants generated, and to design and manage systems to reduce pollution so it is not harmful to man, fish or animals. The management of these systems requires an engineer as described in Senate Bill 279.

*Sen Energy + Nat Res.
Attachment 1
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MELVILLE W. GRAY, PE
3696 Linn Rd.
Perry, KS. 66073
(913) 597-5671

THE KANSAS SENATE
ENERGY & NATURAL RESOURCES COMMITTEE
SENATOR DAVID CORBIN, Chairman

Testimony on SB No. 279
20 February 1997

My name is Melville W. Gray, I reside in rural Jefferson County, Kansas. I was formerly Director of Environment in Kansas for approximately 12 years. I have been retired from the workplace for almost 11 years.

The Division of Environment has Programs that touch and regulate virtually every citizen in Kansas. These Programs widely vary as to subject content running from water pollution, water supply, solid waste, hazardous waste, air quality, etc. The Division Director has the responsibility to develop regulations and to implement same for individuals, industry, municipalities, state and federal agencies, and, farmers and ranchers. The regulatory programs covering these areas are principally technical in nature.

The impact of regulatory enforcement can be time consuming, technical, and costly for those regulated. Actions of the program enforcement result in 100's of millions of dollars expended by those regulated. There is a tendency on the part of regulators, to establish all individual environmental programs on a FIRST priority for implementation. Many cities and industries having multiple controls required simultaneously can be financially overwhelmed. There is starting to be a feeling in the Congress that priorities need to be established so that the regulated, on an individual basis, can develop required controls on a scheduled basis within their funding means.

I have been long concerned by the lack of specific training and experience requirements for the Director of Environment. The existing language of requirements is very loose and has been interpreted to suit the whims of the appointing authority.

The intent of the language in SB 279 is a significant improvement over existing language and requirements. A Registered Professional Engineer has met specific educational and experience minimums under requirements of law. The specifics of graduate education in environmental engineering and management experience add to the quality of the position so that with good judgement, the appointing authority can get a well qualified director who can intelligently implement programs described above.

The Environmental Engineer is particularly well qualified for the position under discussion because of technical training in treatment development and cost determinations. These two factors are imperative if we are to get maximum benefit for our dollars.

*Sen Energy & Nat Res
Attachment 2
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The engineer is particularly suited to provide leadership and direction to the large numbers of engineers and technical professionals in the Division of Environment I would submit, as any business owner-operator will verify, that it is an asset and provides efficiency to have a knowledgeable individual at the helm. The engineer is also attuned to the principle of keeping paper-work to the amount necessary rather than the dubious thrill of making a mountain out of it. Detailed program knowledge is very desirable if the governor and legislature are adequately informed so they can provide proper program direction.

Finally, I would like to call your attention to the new language in lines 26 through 31. The proposed language provides for an appointment of four years for the first person appointed under this act. I would suggest the language be changed so that any person when first appointed to the position of Director of Environment, shall have such appointment made for four years and subject to the approval of the Senate. It will be difficult to obtain a qualified professional without so doing.

On line 32, there appears to be a typo in that "division of health" should be changed to "division of environment".

I thank you for the opportunity to appear before you and if you should have any questions I would be pleased to try and answer them for you.

Mel Gray



THE CITY OF GREAT BEND

George F. Drake, Mayor

February 19, 1997

To: Senator Alicia L. Salisbury 1205

From: Howard D. Partington

Re: SB 279

The City of Great Bend supports your efforts to assure that professionalism is ensured for the position of Director of the Division of Environment for the Kansas Department of Health and Environment. The text contained in SB 279 seems logical.

We would appreciate your passing along to the appropriate committee our support for SB 279.

*Sen Energy & Nat Res
attachment 3
2-20-97*

State of Kansas

Bill Graves



Governor

Department of Health and Environment

James J. O'Connell, Secretary

Testimony presented to

Senate Energy & Natural Resources Committee

by

The Kansas Department of Health and Environment

Senate Bill 279

Good morning Chairman Corbin and members of the Committee. I am James O'Connell the Secretary of the Department of Health and Environment. I am here today to oppose Senate Bill 279. This bill if passed would require the Director of the Division of Environment within KDHE to be a professional engineer with a master's degree. This requirement would place an unnecessary restriction on the future candidate pool for this position. It would eliminate consideration of qualified and competent individuals. A number of different disciplines have the background and experience to be an effective director of the Division of Environment. These include chemists, geologists, biologists, hydrogeologists and engineers among others. Even attorneys with experience and interest in environmental law are legitimate candidates. The range of environmental activities and the variety of disciplines involved do not support the concept that only an engineer is competent to direct the Division. I certainly have no bias against engineers, nor am I opposed to enhanced career opportunities for them. In fact, my son is a senior with a Mechanical Engineering major and I desperately want him to be gainfully employed soon!

However, I do not believe other persons with ^{not} competencies relevant to the Division of Environment should be arbitrarily eliminated from consideration, nor do I believe future Secretaries should have their assessment of needs, priorities, skills and competencies circumscribed in this manner.

Of the current workforce in the Division, only 9.5 percent of total positions are Professional Engineers and an additional 8.5 percent are Engineering Associate positions. This 18 percent total compares to the 32 percent of total workforce that is made up of Environmental Geology and Environmental Scientist positions.

*Sen Energy & Nat Res
Attachment 4*

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We did a quick survey of other states and were unable to find any stated qualifications for the environmental agency head in 17 states. However, 30 states have the same type of general experience and education requirements in the field of environment as are provided in the current statute. Positions in two (2) other states required Professional Engineer credentials, but these do not appear to be comparable to the Division Director job. Ohio's Department of Natural Resources has a Chief Engineer in addition to the Director and Tennessee has a Director of Water Resources, both of whom must be Professional Engineers. Conversely, Mississippi's Office of Geology and Energy requires a geologist. A number of state agencies do have engineers as the director, as has been the case in Kansas in the past, but the appointing authority in those states is not prohibited by law from considering other qualified candidates.

There is no real justification for arbitrarily restricting the choice of Director for a Division with a broad and diverse set of disciplines and skills in its operations. In fact, the Division is not unlike many successful high tech companies that employ a wide range of technical and professional personnel. Many of these companies are directed by professional managers who have little or no scientific background. The selection of a Director should be based on the agency head's assessment of the needs and priorities of Kansas and the agency at the time of the appointment.

I recommend the Committee reject SB 279 because of its inappropriate and unsupportable restrictions. If enacted, these restrictions will prove to be not only unfair to future Secretaries, but also to professionals other than engineers who should not be foreclosed from consideration for the Director's post. Thank you.

Testimony presented by: James J. O'Connell
Secretary
KS Department of Health and Environment

February 20, 1997

Testimony of Charles M. Benjamin, Ph.D., J.D.
Legislative Coordinator
Kansas Chapter of Sierra Club
Kansas Natural Resource Council

Before the Kansas Senate Energy and Natural Resources Committee
Re: S.B. 279
February 20, 1997

Mr. Chairman, members of the Committee, thank you for the opportunity to testify in opposition to this bill that would require the KDHE director of the division of environment to be a licensed engineer and hold a masters degree in environmental engineering.

I am speaking today from two points of view. One is as someone who has several advanced degrees (M.A., Ph.D. and J.D.). The second is as someone whose job it is to advocate for public policy that is sensitive to the environment and the conservation of natural resources. I realize the importance of advanced education, specialization, experience and training. We live in a complex world that requires us to have the intellectual skills to not only be generalists but also requires us to specialize, and subspecialize, in a particular field of expertise. However, I think that one can also over specialize in such a way as to have blinders to the complexities of public policy. Nowhere is this more so than in the area of environmental public policy. The members of this Senate committee know, perhaps more so than other Senators, that environmental policy is a complex mixture of several different natural sciences, economics, politics, and law. To require the division head of KDHE, who the Secretary, the Governor, the Legislature and the public rely on for sound advice in all these areas, to narrowly focus his/her academic expertise to engineering runs the risk of applying one set of solutions to many different environmental problems. It is sometimes said that when you have a hammer in your hand, everything starts looking like a nail. So it is for those of us in the environmental community. We believe that narrowing the background of the division director of environment to engineering runs the risk of having someone apply an engineering solution to all environmental problems. We think there are many individuals with backgrounds other than engineering that would make excellent division directors of environment. Let's not unilaterally restrict ourselves to that one area of expertise to the exclusion of others.

Thank you for your time and attention.

*Sen Energy + Nat Res
Attachment 5
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Kansas Chapter of the American Fisheries Society

TESTIMONY ON SENATE BILL NO. 279, AN ACT CONCERNING THE DIRECTOR OF THE DIVISION OF ENVIRONMENT, BY THE KANSAS CHAPTER OF THE AMERICAN FISHERIES SOCIETY:

The Kansas Chapter of the American Fisheries Society, a professional society of more than 130 of Kansas' fishery biologists, ichthyologists, and students and an affiliate of the American Fisheries Society, supports the mission and oversight of the Kansas Department of Health and Environment. We believe that these are necessary and desirable for conserving our wildlife legacy for future generations.

Our society has passed numerous resolutions supporting the conservation of the state's natural resources. These included support of: protection of rare fishes such as the Topeka Shiner, the moratorium on gravel dredging to protect the designated critical habitat of the threatened Neosho Madtom, and nongame wildlife programs in the state. Although many of our members concentrate on sportfishes such as largemouth bass, by vote, the chapter has supported the conservation of all fishes and aquatic ecosystems in Kansas. Our student subchapter has increased public awareness of the need to conserve rare species and raised funds to send students to professional meetings. Meetings that will increase their understanding and knowledge of aquatic systems and benefit us all in the future. The students are the future of our society and they have shown a special interest in environmental issues.

Please do not narrow the scope of the Division of Environment within the Kansas Department of Health and Environment by limiting the director to training in environmental engineering alone. The continued health of our environment is essential to the health of each one of us and the survival of our children. To restrict the director's qualifications to those of a professional engineer seems both unnecessary and unduly exclusive. Many other types of professionals could potentially have the training and expertise to wisely administer environmental programs. Other professionals, including ecosystem biologists may be better qualified to judge or predict the consequences and impacts of our society on local environments.

As fisheries biologists, we can show that the environment is a complex web of interrelationships. Unfortunately, especially for aquatic ecosystems, the details of many of these relationships are currently unknown (or poorly known). However, experience tells us that "tinkering" with the environment can easily upset the balance of these relationships. To envision the environment as something that can be engineered, may leave us in the position of attempting to re-create or gratuitously "improve" our ecosystems or to set standards that are adequate for people but detrimental to our wildlife. In virtually every case, history has shown us that people's

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efforts to modify the environment have never produced the results they originally envisioned. Nature is far more complex and subtle.

These issues potentially affect everyone who considers the state home, including vertebrates such as fishes and invertebrates such as fresh-water mussels, in addition to people. To restrict the position of the Director to an environmental engineer seems overly circumscriptive and may not serve in the best interests of all Kansans, including our native fauna. Someone must speak for those Kansans who have no voices of their own (like the fishes) and for our children. We hope that the Director of the Division of the Environment will have the technical expertise to do so, although we doubt that this would be true of a professional engineer.

We believe this bill could be destructive to the native fauna in Kansas. We pray that you turn down this bill as worded and hope, that if it is rewritten that you provide reasonable opportunity for public input, including the Kansas Chapter of the American Fisheries Society. Thank you for providing us this opportunity to submit written testimony. We regret that the short notice of this hearing did not facilitate our appearance in front of your committee. If you need additional information or review, please feel free to contact us.

Sincerely,



Dr. Kate Shaw, Editor and Environmental Concerns Chairperson
Kansas Chapter of the American Fisheries Society

1 (2) "Confined feeding facility" means any lot, pen, pool or pond: (A)
 2 Which is used for the confined feeding of animals or fowl for food, fur
 3 or pleasure purposes; (B) which is not normally used for raising crops;
 4 and (C) in which no vegetation intended for animal food is growing.

5 (3) "Animal unit" means a unit of measurement calculated by adding
 6 the following numbers: The number of beef cattle weighing more than
 7 700 pounds multiplied by 1.0; plus the number of cattle weighing less
 8 than 700 pounds multiplied by 0.5; plus the number of mature dairy cattle
 9 multiplied by 1.4; plus the number of swine weighing more than 55
 10 pounds multiplied by 0.4; *plus the number of swine weighing 55 pounds*
 11 *or less multiplied by 0.1*; plus the number of sheep or lambs multiplied
 12 by 0.1; plus the number of horses multiplied by 2.0; plus the number of
 13 turkeys multiplied by 0.018; plus the number of laying hens or broilers,
 14 if the facility has continuous overflow watering, multiplied by 0.01; plus
 15 the number of laying hens or broilers, if the facility has a liquid manure
 16 system, multiplied by 0.033; plus the number of ducks multiplied by 0.2.
 17 However, each head of cattle will be counted as one full animal unit *and*
 18 *each head of swine weighing* ~~more than 55 pounds will be counted as 0.4~~ — 55 pounds or less will be counted as 0.0
 19 animal unit for the purpose of determining the need for a federal permit.

20 (4) "Animal unit capacity" means the maximum number of animal
 21 units which a confined feeding facility is designed to accommodate at any
 22 one time.

23 (5) "Habitable structure" means any of the following structures which
 24 is occupied or maintained in a condition which may be occupied: A dwell-
 25 ing, church, school, adult care home, medical care facility, child care
 26 facility, library, community center, public building, office building or li-
 27 censed food service or lodging establishment.

28 (d) In adopting rules and regulations, the secretary of health and en-
 29 vironment, taking into account the varying conditions that are probable
 30 for each source of sewage and its possible place of disposal, discharge or
 31 escape, may provide for varying the control measures required in each
 32 case to those the secretary finds to be necessary to prevent pollution. If
 33 a freshwater reservoir or farm pond is privately owned and where com-
 34 plete ownership of land bordering the reservoir is under common private
 35 ownership, such freshwater reservoir or farm pond shall be exempt from
 36 water quality standards except as it relates to water discharge or seepage
 37 from the reservoir to waters of the state, either surface or groundwater,
 38 or as it relates to the public health of persons using the reservoir or pond
 39 or waters therefrom.

40 (e) (1) Whenever the secretary of health and environment or the
 41 secretary's duly authorized agents find that the soil or waters of the state
 42 are not being protected from pollution resulting from underground stor-
 43 age reservoirs of hydrocarbons and liquid petroleum gas or that storage

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1 (1) 1320 feet for facilities with an animal unit capacity of 300 to 999;
2 and

3 (2) 4000 feet for facilities with an animal unit capacity of 1,000 or
4 more.

5 ~~(i) The separation distance requirements of subsection (h) shall not
6 apply if such person newly constructing or newly expanding a confined
7 feeding facility obtains a written agreement from all owners of habitable
8 structures which are within the separation distance stating such owners
9 are aware of such construction or expansion and have no objections to
10 such construction or expansion. The written agreement shall be filed in
11 the register of deeds office of the county in which the habitable structure
12 is located. The secretary may reduce separation distance requirements if:
13 (1) No substantial objection from owners of habitable structures within
14 the separation distance is received in response to public notice; or (2) the
15 board of county commissioners of the county where the confined feeding
16 facility is located submits a written request seeking a reduction of sepa-
17 ration distances.~~

18 (j) The separation distances required pursuant to subsection (h) shall
19 not apply to:

20 (1) Confined feeding facilities which are permitted or certified by the
21 secretary on the effective date of this act;

22 (2) confined feeding facilities which exist on the effective date of this
23 act and register with the secretary before July 1, 1996; or

24 (3) expansion of a confined feeding facility, including any expansion
25 for which an application is pending on the effective date of this act, if:

26 (A) In the case of a facility with an animal unit capacity of 1,000 or more
27 prior to the effective date of this act, the expansion is located at a distance
28 not less than the distance between the facility and the nearest habitable
29 structure prior to the expansion; or (B) in the case of a facility with an
30 animal unit capacity of less than 1,000 prior to the effective date of this
31 act and, the expansion is located at a distance not less than the distance
32 between the facility and the nearest habitable structure prior to the ex-
33 pansion the animal unit capacity of the facility after expansion does not
34 exceed 2,000.

35 Sec. 2. K.S.A. 1996 Supp. 65-171d is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its
37 publication in the Kansas register.

(i)(1) The separation distance requirements of subsection (h) shall not apply to new construction of a confined feeding facility if the facility obtains a written agreement from all owners of habitable structures that are within the separation distance stating such owners are aware of and have no objections to the construction.

(2) The separation distance requirements of subsection (h) shall not apply to expansion of an existing confined feeding facility if the facility obtains a written agreement from all owners of habitable structures that were in existence at the time that the facility was constructed and are within the separation distance stating such owners are aware of and have no objections to the expansion.

(3) No habitable structure, and no confined feeding facility that is required to be registered or obtain a permit pursuant to this section, shall be newly constructed or located within the applicable separation distance from an existing confined feeding facility unless the person proposing to so construct or locate the structure or facility first obtains a written agreement from the facility stating that the facility is aware of and has no objections to the construction or location of the structure.

(4) All written agreements required by subsections (i)(1), (2), and (3) shall be filed in the register of deeds office of the county in which the habitable structure is located.

(5) The secretary may reduce separation distance requirements if: (A) No substantial objection from owners of habitable structures within the separation distance is received in response to public notice; or (B) the board of county commissioners of the county where the confined feeding facility is located submits a written request seeking a reduction of separation distances.

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