

Approved: 3-6-97  
Date

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES.

The meeting was called to order by Chairperson David Corbin at 8:38 a.m. on February 24, 1997 in Room 254-E of the Capitol.

All members were present except: Quorum was present.

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

Conferees appearing before the committee:  
Jamie Clover Adams, Governor's Office

Others attending: See attached list

**SB 120 - Concerning livestock; relating to confined feeding facilities.**

Chairperson opened the meeting and referred the committees attention to SB 120 that was being discussed when the meeting adjourned on February 22. He called on Senator Morris to explain his proposed amendment.

Senator Morris reviewed his amendment which would add a new section (k) on page 4 of the bill. Under the amendment all plans and specifications submitted to the department for new construction or new expansion of confined feeding facilities with an animal unit capacity of 1,000 or more may be prepared by a professional engineer or qualified consultant (Attachment 1). Senator Morris moved the amendment be adopted. The motion was seconded by Senator Schraad. Motion carried.

Chairperson Corbin referred to an amendment that was distributed on February 20, (Attachment 7) of the minutes of that day. On page 2 "line 18" this would be amended from 0.4 to "0.0", the weight count for the federal permits, which would make state law consistent with federal law, and on page 4 of the bill there were amendments concerning the separation distance requirements. Chairperson Corbin asked for staff to review the amendments. Senator Karr moved to adopt the technical cleanup amendments on page 2, line 18 of the bill. The motion was seconded by Senator Schraad. The motion carried. Senator Schraad moved the bill be passed as amended. Senator Morris seconded the motion. The motion carried.

**SB 309 - Concerning nongame, threatened and endangered species; relating to listing of and recovery plans for such species; allowing tax credits for certain taxes and assessments.**

Testimony from Charles M. Benjamin, Kansas Natural Resource Council and Kansas Chapter of Sierra Club supporting **SB 309** was distributed (Attachment 2).

**HB 2361** as amended by the House Environment Committee was distributed, this bill is the house version of **SB 309**, and it contains the amendments supported by the task force. In responding to a questions whether all members of the task force members supported the amendments to **HB 2361** that were made in the House. Representatives of Wildlife and Parks, The Audubon Society, and Kansas Farm Bureau all said they supported the amendments. The amendments were for language on page 2, that was stricken when the bill was drafted, on page 3, line 25, "in accordance with K.S.A. 32-805 and amendments thereto" would be added, and on page 4, an amendment requested by the building industry relating to development of residential and commercial property on privately owned property financed with private funds. A motion was made by Senator Karr to adopted the amendments. The motion was seconded by Senator Biggs. Motion carried. Senator Karr then moved the bill be passed as amended. Senator Biggs seconded the motion. The motion carried.

**SB 276 - Enacting the voluntary cleanup and property redevolpment act concerning remediation of contaminated property.**

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, Room 254-E Statehouse, at 8:30 a.m. on February 24, 1997.

Chairperson Corbin called on Jamie Clover Adams to review the amendments on **SB 276** that were suggested by Charles M. Benjamin, Kansas Natural Resource Council and Kansas Chapter of Sierra Club. She said the Governor's office disagreed with several of the suggested amendments. The balloon of the amendments was not available, therefore the discussion on **SB 276** was postponed until February 25.

Senator Huelskamp moved to adopt the minutes of February 19 and 20. Senator Karr seconded the motion. Motion carried.

The meeting adjourned at 8:55 a.m.

The next meeting is scheduled for February 25, 1997

SENATE ENERGY & NATURAL RESOURCES  
COMMITTEE GUEST LIST

DATE: 2-24-97

NAME	REPRESENTING
<i>Clipboard did not get passed</i>	

## SENATE BILL No. 120

By Committee on Energy and Natural Resources

1-28

9 AN ACT concerning livestock; relating to confined feeding facilities;  
10 amending K.S.A. 1996 Supp. 65-171d and repealing the existing  
11 section.

12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 1996 Supp. 65-171d is hereby amended to read as  
15 follows: 65-171d. (a) For the purpose of preventing surface and subsur-  
16 face water pollution and soil pollution detrimental to public health or to  
17 the plant, animal and aquatic life of the state, and to protect beneficial  
18 uses of the waters of the state and to require the treatment of sewage  
19 predicated upon technologically based effluent limitations, the secretary  
20 of health and environment shall make such rules and regulations, includ-  
21 ing registration of potential sources of pollution, as may in the secretary's  
22 judgment be necessary to: (1) Protect the soil and waters of the state from  
23 pollution resulting from underground storage reservoirs of hydrocarbons  
24 and liquid petroleum gas; (2) control the disposal, discharge or escape of  
25 sewage as defined in K.S.A. 65-164 and amendments thereto, by or from  
26 municipalities, corporations, companies, institutions, state agencies, fed-  
27 eral agencies or individuals and any plants, works or facilities owned or  
28 operated, or both, by them; and (3) establish water quality standards for  
29 the waters of the state to protect their beneficial uses.

30 (b) The secretary of health and environment may adopt by reference  
31 any regulation relating to water quality and effluent standards promul-  
32 gated by the federal government pursuant to the provisions of the federal  
33 clean water act and amendments thereto, as in effect on January 1, 1989,  
34 which the secretary is otherwise authorized by law to adopt.

35 (c) For the purposes of this act, including K.S.A. 65-161 through 65-  
36 171h and amendments thereto, and rules and regulations adopted pur-  
37 suant thereto: (1) "Pollution" means: (A) Such contamination or other  
38 alteration of the physical, chemical or biological properties of any waters  
39 of the state as will or is likely to create a nuisance or render such waters  
40 harmful, detrimental or injurious to public health, safety or welfare, or to  
41 the plant, animal or aquatic life of the state or to other designated ben-  
42 efitial uses; or (B) such discharge as will or is likely to exceed state effluent  
43 standards predicated upon technologically based effluent limitations.

*Sen Energy & Nat Res*  
*2-24-97*  
*Attachment 1*  
*1-1*

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*  
 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

1-2

1 or disposal of salt water not regulated by the state corporation commission  
 2 or refuse in any surface pond is causing or is likely to cause pollution of  
 3 soil or waters of the state, the secretary or the secretary's duly authorized  
 4 agents shall issue an order prohibiting such underground storage reservoir  
 5 or surface pond. Any person aggrieved by such order may within 15 days  
 6 of service of the order request in writing a hearing on the order.

7 (2) Upon receipt of a timely request, a hearing shall be conducted in  
 8 accordance with the provisions of the Kansas administrative procedure  
 9 act.

10 (3) Any action of the secretary pursuant to this subsection is subject  
 11 to review in accordance with the act for judicial review and civil enforce-  
 12 ment of agency actions.

13 (f) The secretary may adopt rules and regulations establishing fees  
 14 for the following services:

15 (1) Plan approval, monitoring and inspecting underground or buried  
 16 petroleum products storage tanks, for which the annual fee shall not ex-  
 17 ceed \$5 for each tank in place;

18 (2) permitting, monitoring and inspecting salt solution mining oper-  
 19 ators, for which the annual fee shall not exceed \$1,950 per company; and

20 (3) permitting, monitoring and inspecting hydrocarbon storage wells  
 21 and well systems, for which the annual fee shall not exceed \$1,875 per  
 22 company.

23 (g) Prior to any new construction of a confined feeding facility with  
 24 an animal unit capacity of 300 to 999, such facility shall register with the  
 25 secretary of health and environment. Facilities with less than 300 animal  
 26 units may register with the secretary. Any such registration shall be ac-  
 27 companied by a \$25 fee. Within 30 days of receipt of such registration,  
 28 the department of health and environment shall identify any significant  
 29 water pollution potential or separation distance violations pursuant to sub-  
 30 section (h). If there is identified a significant water pollution potential,  
 31 such facility shall be required to obtain a permit from the secretary. If  
 32 there is no water pollution potential posed by a facility with an animal  
 33 unit capacity of less than 300, the secretary may certify that no permit is  
 34 required. If there is no water pollution potential nor any violation of  
 35 separation distances posed by a facility with an animal unit capacity of  
 36 300 to 999, the secretary shall certify that no permit is required and that  
 37 there are no certification conditions pertaining to separation distances. If  
 38 a separation distance violation is identified, the secretary may reduce the  
 39 separation distance in accordance with subsection (i) and shall certify any  
 40 such reduction of separation distances.

41 (h) Any new construction or new expansion of a confined feeding  
 42 facility shall meet or exceed the following requirements in separation  
 43 distances from any habitable structure:

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 separa-  
17 tion 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.

(k) All plans and specifications submitted to the department for new construction or new expansion of confined feeding facilities with an animal unit capacity of 1,000 or more shall be prepared by a professional engineer or qualified consultant. Soil permeability tests or seepage tests for waste water retention structures shall be performed by a professional engineer or qualified soil scientist.

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

Re: S.B. 309

Before the Kansas Senate  
Energy and Natural Resources Committee

February 20, 1997

Thank you for the opportunity to testify in favor of S.B. 309 concerning nongame, threatened and endangered species. It is a pleasure to take this job at a time when supposedly adversarial interests such as environmentalists, farmers, conservationists, livestock operators, scientists, and government officials can come together on a contentious issue such as endangered species. The task force crafted a proposal, now a proposed law, that accomplishes two positive public policy goals. First of all, the process of listing potential endangered species is opened up to public participation earlier than before. Secondly, tax-based incentives to landowners to provide habitat in a way that is not a drain on the state treasury is provided. All of this is done in a way that hopefully will accomplish the preservation of as many species as possible in the state of Kansas.

We must remember that we humans do not inhabit this state alone. The many species of mammals, reptiles, amphibians, fishes, insects and plants that grace Kansas are all part of God's creation. Part of our responsibility as human beings is to preserve and protect plant and animal species that are threatened by human activity. I think this bill takes a small step forward in accomplishing that goal. Now it is up to the citizens of Kansas to use the tools that the legislature, in its wisdom, gives them to preserve this state's bounty.

Finally, I want to express my appreciation to the people who served on the task force and the professional staff who assisted them in the process of crafting this legislation. I think we ought to give special thanks to the volunteers on this task force who took time away from their families, businesses and professions to give of their expertise. I am proud to live in a state where we have so many talented people so willing to give back to their community and their state. I urge the passage of S.B. 309 in its present form. Thank you for your time and attention.

*Sen Energy & Nat Res*  
*2-24-97*  
*Attachment 2*