

Approved: 2-24-98
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, 1998 in Room 254-E of the Capitol.

All members were present except:

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

Conferees appearing before the committee:
Gary Mitchell, Secretary, Kansas Department of Health and Environment (KDHE)
Rich McKee, Executive Secretary, Kansas Livestock Association
Mike Jensen, Executive Vice President, Kansas Pork Producers

Others attending: See attached list

Chairperson David Corbin called for action on the minutes of February 18 and 19, 1998. A motion was made by Senator Huelskamp with a second by Senator Schradd to approve the minutes. The motion carried.

SB 664 - Concerning water pollution control permits for confined feeding facilities; relating to grounds for rejecting a permit application or denying issuance of a permit.

The hearing was opened and Chairperson Corbin called on Secretary Gary Mitchell.

Secretary Gary Mitchell, KDHE, said they requested the bill be introduced. The bill authorized the Secretary of the KDHE to reject an application or deny issuance of a water pollution control permit for a confined feeding operation under a number of specific conditions. This bill has been called the "bad actor" bill as the provisions relates to an individual or operation that has shown a disregard for complying with state and federal environmental laws. He suggested an amendment to clarify on page 1, line 18 after issuance, the language "or renewal" be inserted and on page 2, line 10 after the word issuance, the language "or renewal" be inserted (Attachment 1). Secretary Mitchell responded to many questions regarding what would determine when someone would be designated a "bad actor", and concern was expressed that the bill might give the Secretary too much authority.

The hearing for the proponents was closed.

Rich McKee expressed concern with the broad authority to deny individuals the right to raise livestock. They oppose the language in lines 31 through 33 on page one which gives the Secretary of KDHE the power to reject a permit based on his/her opinion of the character and competency of the applicant. If this language was struck they probably could support the bill. They did have some concern with the language in lines 20 through 23 on page one that grants KDHE the power to deny a permit based on a completely separate operation that the applicant has no control over (Attachment 2). Attached to his testimony was a brochure titled Kansas Livestock the Big Picture.

Mike Jensen presented written testimony opposing the bill. He thought to statutorily impose that the Secretary must justify an operator's "good character" is simply bad government. Their organization does support reasonable sanctions against operators guilty of environmental infractions (Attachment 3). He thought the House was currently working on legislation that would include guidelines for KDHE to utilize. He would be willing to work with the Department to determine language that they could approve (Attachment 3).

The hearing on **SB 664** was closed.

Chairperson Corbin announced **SB 594** would be heard at the next meeting on Tuesday, February 24, 1998.

The meeting adjourned at 8:50 a.m.



KANSAS
DEPARTMENT OF HEALTH & ENVIRONMENT
BILL GRAVES, GOVERNOR
Gary R. Mitchell, Secretary

Testimony presented to

Senate Energy and Natural Resources Committee

February 20, 1998

by

Gary R. Mitchell
Secretary of Health and Environment

Senate Bill 664

Senate Bill 664 as proposed authorizes the Secretary of the Kansas Department of Health and Environment (KDHE) to reject an application or deny issuance of a water pollution control permit for a confined feeding operation under a number of specific conditions. These conditions can generally be termed as "bad actor" provisions as they relate to an individual or operation that has shown a disregard for complying with state and federal environmental laws. At this time, KDHE does not have authority to deny or revoke confined feeding operation permits whenever we encounter a "bad actor."

In the draft regulations for our livestock waste management program, currently under consideration by the agency, we had proposed similar requirements in a new regulation K.A.R. 28-18-4. A copy of the text of this proposed regulation is attached for your reference. Many of the same provisions are addressed in both the bill and the draft regulation. While we do not believe these provisions will be utilized very often, we feel it is important the agency have the authority to address these situations when they come to light.

We support the bill with an amendment to clarify it is applicable to renewals for existing facilities.

Senate Energy & Natural Resources

Attachment: /

Date: 2-20-98

DRAFT

December 9, 1997

Kansas Department of Health and Environment
Proposed Amended Regulation

Article 18. - ~~AGRICULTURAL AND RELATED WASTE CONTROL~~ ANIMAL WASTE MANAGEMENT CONTROL

28-18-4. Operation of facilities. ~~(a) The water pollution control facilities shall be operated and maintained so as to prevent water pollution and to protect the public health and the beneficial uses of the waters of the state.~~

~~— (b) Waste discharges from retention ponds, lagoons, or waste treatment facilities into any watercourse shall be in conformance with the water quality requirements of the appropriate river basin criteria as set forth in chapter 28, article 16 of regulations adopted by the Kansas state board of health and regulation 28-18-3.~~

~~— (c) Waste materials removed from retention ponds, waste treatment facilities, and/or confined feeding areas shall be disposed of or stockpiled in a manner which will not contribute to water pollution. Wastes may be used for irrigation or spread on land surface and mixed with the soil in a manner which will prevent runoff of wastes. Other methods of disposal of wastes from retention ponds, retention lagoons, waste treatment facilities, and/or confined feeding areas shall be evaluated and permitted if in the judgement of the department effective water pollution control will be accomplished.~~

Filing of applications and payment of fees. (a) Applications shall be filed consistent with the provisions and requirements of K.A.R. 28-16-59.

(b) For the purpose of providing adequate public notice regarding a permit for any proposed new construction or proposed new expansion of a confined feeding facility, the operator shall provide to the department, the names and mailing address of the United States post office or offices serving the immediate area of the confined feeding facility, any owner of a habitable structure located within one mile of the facility boundary, and any property owner with property located within one mile of the facility boundary.

(c) Operators are responsible for requesting and assuring permit renewal applications are

submitted, to the department, a minimum of 180 days before the expiration date of the permit consistent with the provisions of K.A.R. 28-16-62.

(d) Without further action on the part of the department, a permit shall become void and without effect on its expiration date unless a completed application is filed with the department a minimum of 180 days before the expiration date of the permit.

(e) If an application is received that is not administratively or technically complete, the department shall notify the operator of the deficiencies. If the additional requested information is not received or the deficiencies corrected within 90 calendar days of the deficiency notice, the department shall return the application to the operator. Fees accompanying any application returned to the operator are not refunded. The operator may resubmit the application and appropriate fee at a later date at which time the department shall consider the submission to be a new application for the purpose of these regulations.

(f) The secretary may require the revocation of the permit, removal of the animals, and closure of the facility for failure to pay an annual permit fee within 90 days of notification.

(g) The secretary may reject the application without reviewing the merits of the application or deny issuance of a permit if one of the following requirements are met:

(1) The operator currently holds, or in the past has held, a permit under either article 16 or article 18 of the Kansas water pollution control regulations, and that while the applicant held a permit under either article violated provisions of either K.S.A. 65-167 or K.S.A. 65-169, and amendments;

(2) the operator previously held a permit under either article 16 or article 18 of the Kansas water pollution control regulations and that permit was revoked by the secretary;

(3) the operator failed or continues to fail to comply with any of the provisions of the air, water or waste statutes, including regulations issued thereunder, relating to environmental protection or the protection of public health in this or any other state or federal government of the United States, or any condition of any permit or license issued by the secretary;

(4) if the secretary finds that the applicant has shown a lack of ability or intention to

comply with any provision of any law referred to in this article or any regulation adopted, order, or permit issued pursuant to any such law as indicated by past or continuing violations:

(5) The department currently has an enforcement action with the operator that remains unresolved:

(6) The operator has three or more significant violations of department statutes, regulations or permits in a five year period; or

(7) The secretary may reject the application or deny issuance of the permit if the secretary finds that the operator, applicant or any person who holds an interest in, or exercises total or partial control of, or conducts business with the applicant or a principal of the corporation was a principal of another corporation which would not be eligible to receive a permit because of the provisions of this regulation.

(h) The secretary may reject the application without reviewing the merits of the application, deny issuance of a permit or certification, or revoke a permit or certification if the secretary finds:

(1) The operator to be a corporation operating or proposing a confined swine or dairy facility in a county that has voted to not allow such operations pursuant to K.S.A. 17-5901 et seq.; or

(2) the operator is alleged to be a corporation subject to the provisions of K.S.A. 17-5901 et seq. until such time as a formal decision regarding the matter is rendered by either the state attorney general or the district or county attorney for the county in which the facility or proposed facility is located. (Authorized by K.S.A. 65-164, as amended by L. 1997, ch. 92, sec.1; and K.S.A. 1996 Supp. 65-171d, as amended by L. 1997, ch. 139, sec.2; 65-171f; K.S.A. 1967 Supp. 65-165, 65-166, 65-167, 65-171d, 65-171h; implementing K.S.A. 65-164, as amended by L. 1997, ch. 92, sec. 1; K.S.A. 65-166, K.S.A. 1996 Supp. 65-166a; K.S.A. 65-167; K.S.A. 65-169, 65-170, 65-170b, 65-170c, 65-170d, 65-170g, 65-171a, K.S.A. 1996 Supp. 65-171d, as amended by L. 1997, ch. 139, sec. 2; K.S.A. 65-171f, 65-171h, 65-171i; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended P- _____.)

2/14

SENATE BILL No. 664

By Committee on Energy and Natural Resources

2-13

9 AN ACT concerning water pollution control permits for confined feeding
10 facilities; relating to grounds for rejecting a permit application or de-
11 nying issuance of a permit.
12

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

14 Section 1. (a) As used in this section, terms have the meanings pro-
15 vided by K.S.A. 65-171d and amendments thereto.

16 (b) The secretary of health and environment may reject an applica-
17 tion for a water pollution control permit for a confined feeding facility
18 without reviewing the merits of the application or may deny issuance of
19 such a permit if the secretary makes a specific finding that: *or renewal*

20 (1) The applicant is unsuited or unqualified to perform the obliga-
21 tions of a permit holder, based upon a finding that the applicant or any
22 officer, director, partner or resident general manager of the facility for
23 which the application is made:

24 (A) Has intentionally misrepresented a material fact in applying for
25 a permit;

26 (B) has habitually and intentionally committed violations of the en-
27 vironmental laws of any state or the United States and the violations have
28 caused significant and material environmental damage;

29 (C) has had any permit revoked under the environmental laws of any
30 state or the United States; or

31 (D) has otherwise demonstrated by previous actions that the appli-
32 cant lacks the necessary good character and competency to reliably carry
33 out the obligations imposed by law upon a permit holder; or

34 (2) the application substantially duplicates an application by the same
35 applicant that was denied within the past five years and the denial of
36 which has not been reversed by a court of competent jurisdiction.

37 (c) Nothing in subsection (b)(2) shall be construed to prohibit an
38 applicant from submitting a new application for a permit previously de-
39 nied if the new application represents a good faith attempt by the appli-
40 cant to correct the deficiencies that served as the basis for the denial of
41 the original application.

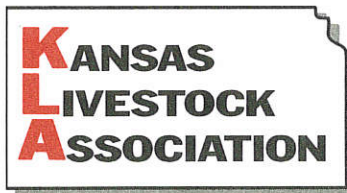
42 (d) All applications for water pollution control permits for a confined
43 feeding facility shall include a certification, sworn to under oath and

1-5

1 signed by the applicant, that the applicant is not disqualified by reason of
2 this section from obtaining a permit. In the absence of evidence to the
3 contrary, such certification shall constitute a prima facie showing of the
4 suitability and qualification of the applicant. If at any point in the appli-
5 cation review, recommendation or hearing process, the secretary of health
6 and environment finds the applicant has intentionally made any material
7 misrepresentation of fact in regard to such certification, consideration of
8 the application may be suspended and the application may be rejected or
9 issuance of the permit may be denied as provided by this section.

10 (e) Rejection of an application or denial of issuance ^{or renewal} of a permit pur-
11 suant to this section constitutes final agency action subject to review pur-
12 suant to the act for judicial review and civil enforcement of agency actions.

13 Sec. 2. This act shall take effect and be in force from and after its
14 publication in the statute book.



Since 1894

Testimony

presented by

Rich McKee

Executive Secretary, Feedlot Division

regarding

Senate Bill 664

before the

Senate Committee on Energy and Natural Resources

February 20, 1998

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 7,400 members on legislative and regulatory issues. KLA members are involved in all segments of the livestock industry including cow-calf, feedlot, seedstock, swine, dairy and sheep. In 1996 cash receipts from agriculture products totaled over \$7.8 billion, with nearly sixty percent of that coming from the sale of livestock. Cattle represent the largest share of cash receipts, representing approximately ninety percent of the livestock and poultry marketings.

Senate Energy & Natural Resources

Attachment: 2

Date: 2-20-98

Chairperson Corbin and members of the Senate Committee on Energy and Natural Resources, thank you for the opportunity to testify. My name is Rich McKee and I am representing the Kansas Livestock Association.

We have some serious concerns with Senate Bill 664. This measure would give state government, specifically the Kansas Department of Health and Environment (KDHE), broad authority to deny individuals the right to raise livestock. For example, lines 31 through 33 on page one gives the Secretary of KDHE the power to reject a permit based on his or her opinion of the character and competency of the applicant.

Please know livestock operations may have several stockholders that have an interest in more than one facility. Lines 20 through 23 on page one grant KDHE the power to deny a permit based on a completely separate operation that the applicant has no control over.

Also, I would remind the committee livestock operations have been in Kansas for decades. Based on these years of experience has there been a need for this kind of legislation? If so, we should ask who KDHE would have prevented from having a permit?

We appreciate the intent of this legislation. However, the broad and subjective power this bill gives KDHE is not justified.



February 20, 1998

Testimony to Senate Energy and Natural Resources Committee

Opposition to Senate Bill 664

Prepared by Mike Jensen, Executive Vice President

The language represented in this bill is simply too broad for our members' comfort. They believe that at some point in time, a KDHE Secretary might invoke these powers in an emotional response to outside pressures. To statutorily impose that the Secretary must justify an operator's "good character" is quite simply - bad government.

Our organization does support reasonable sanctions against operators guilty of environmental infractions. We would also support the scrutiny by the Secretary of a habitual offender.

The comprehensive environmental bill currently moving through the House has reasonable guidelines for the KDHE to utilize.

Senate Energy & Natural Resources

Attachment: 3

Date: 2-20-98