

Journal of the House

FORTY-FOURTH DAY

HALL OF THE HOUSE OF REPRESENTATIVES,
TOPEKA, KS, Wednesday, March 18, 2015, 11:00 a.m.

The House met pursuant to adjournment with Speaker Merrick in the chair.

The roll was called with 121 members present.

Rep. Victors was excused on legislative business.

Reps. W. Carpenter and Kelley were excused on excused absence by the Speaker.

Prayer by Chaplain Brubaker:

Our Heavenly Father,
We begin today's session pausing to
thank You for the gift of life and this day.
As our leaders continue their work
on the various bills,
I pray that as leaders they will
bring people together – not cause more division;
dare to take risks – not settle for the path of least resistance.
May they encourage questions – not resent them.
May they keep an open mind – not be reticent in their thinking.
Help them to lead by example and motivate with respect.
Help them harness their zeal to make a difference
so as not to be antagonistic.
Help them to value everyone's input
as much as they value their own.
And God, I ask that they seek first Your wisdom,
Your will and Your truth—
For as Your Word tells us,
“...the foolishness of God is wiser than human wisdom,
and the weakness of God is stronger than human strength.”
This I pray in Christ's Name,
Amen.

The Pledge of Allegiance was led by Rep. Carlin.

REFERENCE OF BILLS AND CONCURRENT RESOLUTIONS

The following bills were referred to committees as indicated:

Energy and Environment: **HB 2414**.

Taxation: **HB 2415**.

CHANGE OF REFERENCE

Speaker Merrick announced the withdrawal of **HB 2200** from the Calendar under the heading General Orders and rereferral to Committee on Commerce, Labor and Economic Development.

Also, the withdrawal of **HB 2182**, **HB 2213**, **HB 2215**, **HB 2315** from Committee on Appropriations and rereferral to Committee on Elections.

Also, the withdrawal of **SB 91** from Committee on Appropriations and rereferral to Committee on Energy and Environment.

Also, the withdrawal of **HB 2341** from Committee on Appropriations and referral to Committee on Judiciary.

Also, the withdrawal of **SB 244** from Committee on Commerce, Labor and Economic Development and rereferral to Committee on Local Government.

INTRODUCTION OF ORIGINAL MOTIONS AND HOUSE RESOLUTIONS

On emergency motion of Rep. Barton, **HR 6020**, by Reps. Barton, Alcala, Alford, Anthimides, Ballard, Barker, Barton, Becker, Billinger, Boldra, Bollier, Bradford, Bridges, Bruchman, Brunk, Burroughs, Campbell, Carlin, B. Carpenter, W. Carpenter, Claeys, Clark, Clayton, Concannon, Corbet, Couture-Lovelady, Curtis, Davis, DeGraaf, Dierks, Doll, Dove, Edmonds, Esau, Estes, Ewy, Finch, Finney, Francis, Frownfelter, Gallagher, Garber, Goico, Gonzalez, Grosserode, Hawkins, Hedke, Hemsley, Henderson, Henry, Hibbard, Highberger, Highland, Hildabrand, Hill, Hineman, Hoffman, Houser, Houston, Huebert, Hutchins, Hutton, Jennings, Johnson, D. Jones, K. Jones, Kahrs, Kelley, Kelly, Kiegerl, Kleeb, Kuether, Lane, Lunn, Lusk, Lusker, Macheers, Mason, Mast, McPherson, Merrick, Moxley, O'Brien, Osterman, Ousley, Patton, Pauls, Peck, Phillips, Powell, Proehl, Read, Rhoades, Rooker, Rubin, Ruiz, Ryckman, Ryckman, Sr., Sawyer, Scapa, Schroeder, Schwab, Schwartz, Seiwert, Sloan, Smith, Suellentrop, Sutton, Swanson, Thimesch, Thompson, Tietze, Todd, Trimmer, Vickrey, Victors, Ward, Waymaster, Whipple, Whitmer, Williams, Wilson, Winn and Wolfe Moore, as follows, was introduced and adopted:

HR 6020— A RESOLUTION commending the ministers, pastors, priests and rabbis of Kansas for their leadership and commitment to improving lives.

WHEREAS, There are hosts of ministers, pastors, priests and rabbis serving throughout Kansas; and

WHEREAS, They produce God-honoring and prosperous families that help to nurture the spirits of future generations; and

WHEREAS, They preach and teach in ways that impact and enrich lives – causing many to live in more fulfilling ways; and

WHEREAS, As shepherds, who are to protect, they correct wrongs, reflect justice and seek fairness in organizations, families and government; and

WHEREAS, They provide creative approaches to challenges – resulting in better

practices; and

WHEREAS, They pioneer the creation of new programs, policies and services; and

WHEREAS, They help cultivate people's strengths and challenge them to step up and step out in communities: Now, therefore,

Be it resolved by the House of Representatives of the State of Kansas: That we commend our ministers, pastors, priests and rabbis for their leadership in villages, counties, cities and our state and their priceless commitment to improving lives. We thank God for each one of them; and

Be it further resolved: That the Chief Clerk of the House of Representatives shall send an enrolled copy of this resolution to Representative Barton.

Rep. Barton recognized the clergy members who were present.

CONSENT CALENDAR

No objection was made to **SB 43**, **SB 47** appearing on the Consent Calendar for the first day.

FINAL ACTION ON BILLS AND CONCURRENT RESOLUTIONS

HB 2268, AN ACT authorizing the state historical society to accept conveyance of certain real property on behalf of the state, was considered on final action.

On roll call, the vote was: Yeas 120; Nays 1; Present but not voting: 0; Absent or not voting: 3.

Yeas: Alcalá, Alford, Anthimides, Ballard, Barker, Barton, Becker, Billinger, Boldra, Bollier, Bradford, Bridges, Bruchman, Brunk, Burroughs, Couture-Lovelady, Campbell, Carlin, Carmichael, B. Carpenter, Claeys, Clark, Clayton, Concannon, Corbet, Curtis, Davis, DeGraaf, Dierks, Doll, Dove, Edmonds, Esau, Estes, Ewy, Finch, Finney, Francis, Frownfelter, Gallagher, Garber, Goico, Gonzalez, Grosserode, Hawkins, Hedke, Hemsley, Henderson, Henry, Hibbard, Highberger, Highland, Hildabrand, Hill, Hineman, Hoffman, Houser, Houston, Huebert, Hutchins, Hutton, Jennings, Johnson, D. Jones, K. Jones, Kahrs, Kelly, Kiegerl, Kleeb, Kuether, Lane, Lunn, Lusk, Lusker, Macheers, Mason, Mast, Merrick, Moxley, O'Brien, Osterman, Ousley, Patton, Pauls, Peck, Phillips, Powell, Proehl, Read, Rhoades, Rooker, Rubin, Ruiz, Ryckman, Ryckman Sr., Sawyer, Scapa, Schroeder, Schwab, Schwartz, Seiwert, Sloan, Smith, Suellentrop, Sutton, Swanson, Thimesch, Thompson, Tietze, Todd, Trimmer, Vickrey, Ward, Waymaster, Whipple, Whitmer, Williams, Wilson, Winn, Wolfe Moore.

Nays: McPherson.

Present but not voting: None.

Absent or not voting: W. Carpenter, Kelley, Victors.

The bill passed.

HB 2382, AN ACT concerning the department of corrections; relating to juveniles in custody; placement; amending K.S.A. 2014 Supp. 38-2366 and repealing the existing section, was considered on final action.

On roll call, the vote was: Yeas 115; Nays 6; Present but not voting: 0; Absent or not voting: 3.

Yeas: Alford, Anthimides, Ballard, Barker, Barton, Becker, Billinger, Boldra, Bollier,

Bradford, Bruchman, Brunk, Couture-Lovelady, Campbell, Carlin, Carmichael, B. Carpenter, Claeys, Clark, Clayton, Concannon, Corbet, Davis, DeGraaf, Dierks, Doll, Dove, Edmonds, Esau, Estes, Ewy, Finch, Finney, Francis, Frownfelter, Gallagher, Garber, Goico, Gonzalez, Grosserode, Hawkins, Hedke, Hemsley, Henderson, Henry, Hibbard, Highberger, Highland, Hildabrand, Hill, Hineman, Hoffman, Houser, Houston, Huebert, Hutchins, Hutton, Jennings, Johnson, D. Jones, K. Jones, Kahrs, Kelly, Kiegerl, Kleeb, Kuether, Lunn, Lusk, Lusker, Macheers, Mason, Mast, McPherson, Merrick, Moxley, O'Brien, Osterman, Ousley, Patton, Pauls, Peck, Phillips, Powell, Proehl, Read, Rhoades, Rooker, Rubin, Ruiz, Ryckman, Ryckman Sr., Sawyer, Scapa, Schroeder, Schwab, Schwartz, Seiwert, Sloan, Smith, Suellentrop, Sutton, Swanson, Thimesch, Thompson, Tietze, Todd, Trimmer, Vickrey, Waymaster, Whipple, Whitmer, Williams, Wilson, Winn, Wolfe Moore.

Nays: Alcalá, Bridges, Burroughs, Curtis, Lane, Ward.

Present but not voting: None.

Absent or not voting: W. Carpenter, Kelley, Victors.

The bill passed, as amended.

SB 113, AN ACT concerning the department of wildlife, parks and tourism; relating to licenses, permits, stamps and other issues of the department; citations; amending K.S.A. 2014 Supp. 32-1001, 32-1041 and 32-1049 and repealing the existing sections, was considered on final action.

On roll call, the vote was: Yeas 121; Nays 0; Present but not voting: 0; Absent or not voting: 3.

Yeas: Alcalá, Alford, Anthimides, Ballard, Barker, Barton, Becker, Billinger, Boldra, Bollier, Bradford, Bridges, Bruchman, Brunk, Burroughs, Couture-Lovelady, Campbell, Carlin, Carmichael, B. Carpenter, Claeys, Clark, Clayton, Concannon, Corbet, Curtis, Davis, DeGraaf, Dierks, Doll, Dove, Edmonds, Esau, Estes, Ewy, Finch, Finney, Francis, Frownfelter, Gallagher, Garber, Goico, Gonzalez, Grosserode, Hawkins, Hedke, Hemsley, Henderson, Henry, Hibbard, Highberger, Highland, Hildabrand, Hill, Hineman, Hoffman, Houser, Houston, Huebert, Hutchins, Hutton, Jennings, Johnson, D. Jones, K. Jones, Kahrs, Kelly, Kiegerl, Kleeb, Kuether, Lane, Lunn, Lusk, Lusker, Macheers, Mason, Mast, McPherson, Merrick, Moxley, O'Brien, Osterman, Ousley, Patton, Pauls, Peck, Phillips, Powell, Proehl, Read, Rhoades, Rooker, Rubin, Ruiz, Ryckman, Ryckman Sr., Sawyer, Scapa, Schroeder, Schwab, Schwartz, Seiwert, Sloan, Smith, Suellentrop, Sutton, Swanson, Thimesch, Thompson, Tietze, Todd, Trimmer, Vickrey, Ward, Waymaster, Whipple, Whitmer, Williams, Wilson, Winn, Wolfe Moore.

Nays: None.

Present but not voting: None.

Absent or not voting: W. Carpenter, Kelley, Victors.

The bill passed, as amended.

On motion of Rep. Vickrey, the House resolved into the Committee of the Whole, with Rep. Lunn in the chair.

COMMITTEE OF THE WHOLE

On motion of Rep. Lunn, Committee of the Whole report, as follows, was adopted:

Recommended that **HB 2191** be passed.

Committee report to **HB 2223** be adopted; and the bill be passed as amended.

Committee report to **HB 2331** be adopted; also, on motion of Rep. Hildabrand be amended on page 1, following line 6, by inserting:

"Section 1. K.S.A. 2014 Supp. 41-104 is hereby amended to read as follows: 41-104. No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish or possess any alcoholic liquor for beverage purposes, except as specifically provided in this act, the club and drinking establishment act or article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto, except that nothing contained in this act shall prevent:

(a) The possession and transportation of alcoholic liquor for the personal use of the possessor, the possessor's family and guests except that the provisions of K.S.A. 41-407, and amendments thereto, shall be applicable to all persons;

(b) the making of wine, cider or beer by a person from fruits, vegetables or grains, or the product thereof, by simple fermentation and without distillation, if it is made solely for the use of the maker, the maker's family, guests and judges at a contest or competition of such beverages, provided, the maker receives no compensation for producing such beverages or for allowing the consumption thereof;

(c) any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of the medical or dental profession;

(d) any hospital or other institution caring for sick and diseased persons, from possessing and using alcoholic liquor for the treatment of bona fide patients of such hospital or institution;

(e) any drugstore employing a licensed pharmacist from possessing and using alcoholic liquor in the compounding of prescriptions of duly licensed physicians;

(f) the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church;

(g) the sale of wine to a consumer in this state by a person which holds a valid license authorizing the manufacture of wine in this or another state and the shipment of such wine directly to such consumer, subject to the following: (1) The consumer must be at least 21 years of age; (2) the consumer must purchase the wine while physically present on the premises of the wine manufacturer; (3) the wine must be for the consumer's personal consumption and not for resale; and (4) the consumer shall comply with the provisions of K.S.A. 41-407, and amendments thereto, by payment of all applicable taxes within such time after purchase of the wine as prescribed by rules and regulations adopted by the secretary;

(h) the serving of complimentary alcoholic liquor or cereal malt beverages at fund raising activities of charitable organizations as defined by K.S.A. 17-1760, and amendments thereto, and as qualified pursuant to 26 U.S.C.A. § 501(c) and by committees formed pursuant to K.S.A. 25-4142 et seq., and amendments thereto. The serving of such alcoholic liquor at such fund raising activities shall not constitute a sale pursuant to this act, the club and drinking establishment act or article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto. Any such fund raising activity shall not be required to obtain a license or a temporary permit pursuant to this act, the club and drinking establishment act or article 27 of chapter 41 of the Kansas Statutes Annotated, and amendments thereto; ~~or~~

(i) the serving of complimentary alcoholic liquor or cereal malt beverage on the unlicensed premises of a business by the business owner or owner's agent at an event sponsored by a nonprofit organization promoting the arts and which has been approved by ordinance or resolution of the governing body of the city, county or township wherein the event will take place and whereby the director of the alcoholic beverage control has been notified thereof no less than 10 days in advance; or

(j) any unlicensed business from authorizing the possession and consumption of alcoholic liquor or cereal malt beverage by patrons of such business on private property owned or leased by such business when such alcoholic liquor or cereal malt beverage is in the personal possession of the patron and is not sold, offered for sale or given away by the owner of such business or any employees thereof.

(k)(1) For purposes of subsection (b), the term "guest" means a natural person who is known to the host and receives a personal invitation to an event conducted by the host. The term "guest" shall not mean a natural person who receives an invitation to an event conducted by the host when such invitation has been made available to the general public.

(2) For purposes of subsection (j), "patron" means a natural person who is a customer of an unlicensed business."

On page 5, in line 24, after "Supp." by inserting "41-104 and";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking all after the semicolon; in line 2, by striking all before "consumption" and inserting "permitting"; in line 3, after "events" by inserting "and by patrons on unlicensed premises"; also in line 3, after "Supp." by inserting "41-104 and";

Also, on motion of Rep. Schwartz, **HB 2331** be amended on page 5, following line 23, by inserting:

"Sec. 3. K.S.A. 2014 Supp. 41-710 is hereby amended to read as follows: 41-710.

(a) No retailer's license shall be issued for premises unless such premises comply with all applicable zoning regulations.

(b) No microbrewery license, microdistillery license or farm winery license shall be issued for premises which are zoned for any purpose except agricultural, commercial or business purposes.

(c) No retailer's, microbrewery, microdistillery or farm winery license shall be issued for premises which:

(1) Are located within 200 feet of any public or parochial school or college or church, except that if any such school, college or church is established within 200 feet of any licensed premises after the premises have been licensed, the premises shall be an eligible location for retail licensing; or

(2) do not conform to all applicable building regulations.

(d) Any city, by ordinance, may allow a retailer, microbrewery, microdistillery or farm winery to be located within a core commercial district as defined by K.S.A. 2014 Supp. 12-17,122, and amendments thereto, which does not meet the distance requirements established by subsection (c)(1)."

Also on page 5, in line 24, after "Supp." by inserting "41-710 and";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking all after "beverages;"; by striking all in line 2; in line 3, by striking all before "amending"; also in line 3, after "Supp." by

inserting "41-710, and";

Also, on motion of Rep. Schwab, **HB 2331** be amended on page 5, following line 23, by inserting:

"Sec. 3. K.S.A. 2014 Supp. 41-2645 is hereby amended to read as follows: 41-2645. (a) A temporary permit shall allow the permit holder to offer for sale, sell and serve alcoholic liquor for consumption on unlicensed premises, which may be open to the public, subject to the terms of such permit.

(b) The director may issue a temporary permit to any one or more persons or organizations applying for such a permit, in accordance with rules and regulations of the secretary. The permit shall be issued in the names of the persons or organizations to which it is issued.

(c) Applications for temporary permits shall be required to be filed with the director not less than 14 days before the event for which the permit is sought unless the director waives such requirement for good cause. Each application shall state the purposes for which the proceeds of the event will be used. The application shall be upon a form prescribed and furnished by the director and shall be filed with the director in duplicate. Each application shall be accompanied by a permit fee of \$25 for each day for which the permit is issued, which fee shall be paid by a certified or cashier's check of a bank within this state, United States post office money order or cash in the full amount thereof. All permit fees collected by the director pursuant to this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

(d) Temporary permits shall specify the premises for which they are issued and shall be issued only for premises where the city, county or township zoning code allows use for which the permit is issued. No temporary permit shall be issued for premises which are not located in a county where the qualified electors of the county:

(1) (A) Approved, by a majority vote of those voting thereon, to adopt the proposition amending section 10 of article 15 of the constitution of the state of Kansas at the general election in November, 1986; or (B) have approved a proposition to allow the sale of liquor by the individual drink in public places within the county at an election pursuant to K.S.A. 41-2646, and amendments thereto; and

(2) have not approved a proposition to prohibit such sales of alcoholic liquor in such places at a subsequent election pursuant to K.S.A. 41-2646, and amendments thereto.

(e) (1) A temporary permit may be issued for the consumption of alcoholic liquor on a city, county or township street, alley, road, sidewalk or highway for a special event; provided, that such street, alley, road, sidewalk or highway is closed to motor vehicle traffic by the governing body of such city, county or township for such special event, a written request for such consumption and possession of such alcoholic liquor has been made to the local governing body and the special event is approved by the governing body of such city, county or township by ordinance or resolution. The boundaries of such special event shall be clearly marked by signs, a posted map or other means which reasonably identify the area in which alcoholic liquor may be possessed or consumed at such special event.

(2) Drinking establishments that are immediately adjacent to, or located within the licensed premises of a special event, for which a temporary permit has been issued and

the consumption of alcoholic liquor on public property has been approved, may request that the drinking establishment's licensed premises be extended into and made a part of the licensed premises of the special event for the duration of the temporary permit issued for such special event.

(3) Each licensee selling alcoholic liquor for consumption on the premises of a special event for which a temporary permit has been issued shall be liable for violations of all laws governing the sale and consumption of alcoholic liquor.

(4) For the purposes of this section, "special event" shall have the same meaning given that term in K.S.A. 41-719, and amendments thereto.

(f) (1) Except as otherwise provided in this subsection, a temporary permit shall be issued for a period of time not to exceed three consecutive days, the dates and hours of which shall be specified in the permit. Not more than four temporary permits may be issued to any one applicant in a calendar year.

(2) The director may issue ~~one a~~ temporary permit, valid for the entire period of time of the Kansas state fair, which authorizes the sale of wine or beer, or both, in its original, unopened container and the serving by the drink of ~~only~~ wine or beer, or both, on the state fairgrounds on premises specified in the temporary permit, by a person who has entered into an agreement with the state fair board for that purpose. Nothing in this subsection (f)(2) shall be construed to limit the number of temporary permits the director may issue for the sale of wine or beer, or both, on the state fairgrounds.

(3) The director may issue a temporary permit for a special event approved by the governing body of a city, county or township pursuant to subsection (e)(1), which may, at the director's discretion, be valid for the entire period of such special event, but in no event shall such permit be issued for a period of time that exceeds 30 consecutive days.

(g) All proceeds from an event for which a temporary permit is issued shall be used only for the purposes stated in the application for such permit.

(h) Upon written permission from the director and within three business days after the end of an event conducted pursuant to a temporary permit, the holder of a temporary permit may sell back to the licensee from whom alcoholic liquor was purchased any alcoholic liquor sold to the holder of the temporary permit for such event.

(i) A temporary permit shall not be transferable or assignable.

(j) The director may refuse to issue a temporary permit to any person or organization which has violated any provision of the Kansas liquor control act, the drinking establishment act or K.S.A. 79-41a01 et seq., and amendments thereto.";

Also on page 5, in line 24, before "are" by inserting "and 41-2645";

On page 1, in the title, in line 3, after "events;"; by inserting "temporary permits for the Kansas state fair;"; in line 3, after "41-719" by inserting "and 41-2645"; and **HB 2331** be passed as amended.

Committee report to **HB 2125** be adopted; and the bill be passed as amended.

On motion of Rep. Claeys to amend **HB 2089**, the motion did not prevail; and the bill be passed.

REPORTS OF STANDING COMMITTEES

Committee on **Agriculture and Natural Resources** recommends **SB 52** be amended on page 1, in line 23, by striking all after "(2)"; in line 24, by striking all before "allow";

On page 2, following line 4, by inserting:

"Sec. 2. K.S.A. 2014 Supp. 82a-708c is hereby amended to read as follows: 82a-

708c. (a) A term permit is a permit to appropriate water for a limited specified period of time in excess of six months. At the end of the specified time, or any authorized extension approved by the chief engineer, the permit shall be automatically dismissed, and any priority it may have had shall be forfeited. No water right shall be perfected pursuant to a term permit.

(b) Each application for a term permit to appropriate water shall be made on a form prescribed by the chief engineer and shall be accompanied by an application fee fixed by this section for the appropriate category of acre feet in accordance with the following:

Acre Feet.....	Fee
0 to 100	\$200
101 to 320.....	\$300
More than 320.....	\$300 + \$20
	for each additional 100
	acre feet or any part thereof

On and after July 1, 2018, the application fee shall be set forth in the schedule below:

Acre Feet.....	Fee
0 to 100.....	\$100
101 to 320.....	\$100
More than 320.....	\$150 + \$10
	for each additional 100
	acre feet or any part thereof

The chief engineer shall render a decision on such term permit applications within 150 days of receiving a complete application except when the application cannot be processed due to the standards established in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of receipt of a complete application, the application fee is subject to refund upon request.

(c) Each application for a term permit to appropriate water for storage, except applications for permits for domestic use, shall be accompanied by an application fee fixed by this section for the appropriate category of storage-acre feet in accordance with the following:

Storage-Acre Feet.....	Fee
0 to 250.....	\$200
More than 250.....	\$200 + \$20
	for each additional 250
	acre feet or any part thereof

On and after July 1, 2018, the application fee shall be set forth in the schedule below:

Storage-Acre Feet.....	Fee
0 to 250.....	\$100
More than 250.....	\$100 + \$10
	for each additional 250
	acre feet or any part thereof

The chief engineer shall render a decision on such term permit applications within

150 days of receiving a complete application except when the application cannot be processed due to the standards established in K.A.R. 5-3-4c. Upon failure to render a decision within 180 days of receipt of a complete application, the application fee is subject to refund upon request.

(d) Each application for a term permit pursuant to K.S.A. 2014 Supp. 82a-736, and amendments thereto, shall be accompanied by an application fee established by rules and regulations adopted by the chief engineer in an amount not to exceed \$400 for the five-year period covered by the permit.

(e) Notwithstanding the provisions of K.S.A. 82a-714, and amendments thereto, the applicant is not required to file a notice of completion of diversion works nor pay a field inspection fee. The chief engineer shall not conduct a field inspection of the diversion works required by statute for purposes of certification nor issue a certificate of appropriation for a term permit.

(f) A request to extend the term of a term permit in accordance with the rules and regulations adopted by the chief engineer shall be accompanied by the same filing fee applicable to other requests for extensions of time as set forth in K.S.A. 82a-714, and amendments thereto.

(g) An application to change the place of use, point of diversion, use made of water, or any combination thereof, pursuant to K.S.A. 82a-708b, and amendments thereto, shall not be approved for a term permit, except a change in place of use for a term permit approved pursuant to K.S.A. 82a-736, and amendments thereto, for irrigation use may be approved by the chief engineer for an increase of up to 10 acres or 10% of the authorized place of use whichever is less.

(h) The chief engineer shall adopt rules and regulations to effectuate and administer the provisions of this section.

Sec. 3. K.S.A. 2014 Supp. 82a-736 is hereby amended to read as follows: 82a-736.

(a) It is hereby recognized that an opportunity exists to improve water management by enabling multi-year flexibility in the use of water authorized to be diverted under a groundwater water right, provided, that such flexibility neither impairs existing water rights, nor increases the total amount of water diverted, so that such flexibility has no long-term negative effect on the source of supply. It is therefore declared necessary and advisable to permit the establishment of multi-year flex accounts for groundwater water rights, together with commensurate protections for existing water rights and their source of supply.

(b) As used in this section:

(1) "Base water right" means a water right under which an applicant applies to the chief engineer to establish a multi-year flex account and where all of the following conditions exist:

(A) The authorized source of supply is groundwater; and

(B) the water right has not been the subject of a change approval to implement the provisions of K.A.R. 5-5-9(a)(2), K.A.R. 5-5-11(b)(2) or K.A.R. 5-5-11(b)(3), in effect upon the effective date of this act.

(2) "Multi-year flex account" means a term permit which suspends a base water right during its term, except when the term permit may be no longer exercised because of an order of the chief engineer, and is subject to the terms and conditions as provided in subsection (e).

(3) "Base average usage" means: (A) The average amount of water actually

diverted for a beneficial use under the base water right during calendar years 2000 through 2009, excluding any amount diverted in any such year that exceeded the maximum annual quantity of water authorized by the base water right; or (B) if the holder of the base water right shows to the satisfaction of the chief engineer that water conservation reduced water use under the base water right during calendar years 2000 through 2009, then the average amount of water actually diverted for a beneficial use under the base water right during the five calendar years immediately before the calendar year when water conservation began, excluding any amount used in any such year that exceeded the amount authorized by the base water right.

(4) "Chief engineer" means the chief engineer of the division of water resources of the department of agriculture.

(5) "Flex account acreage" means the maximum number of acres lawfully irrigated during a calendar year when no term, condition or limitation of the base water right has been violated and either of the following conditions is met:

(A) The calendar year is 2000 through 2009; or

(B) if water conservation reduced water use under the base water right during calendar years 2000 through 2009, the calendar year is a year within the five calendar years immediately prior to the calendar year when water conservation began.

(6) "Net irrigation requirement" means the net irrigation requirement for 50% chance rainfall of the county that corresponds with the location of the authorized place of use of the base water right as provided in K.A.R. 5-5-12, on the effective date of this act.

(c) (1) Any holder of a base water right that has not been deposited or placed in a safe deposit account in a chartered water bank may establish a multi-year flex account where the holder may deposit, in advance, the authorized quantity of water from such water right for any five consecutive calendar years, subject to all of the following:

(A) The water right must be vested or shall have been issued a certificate of appropriation;

(B) the withdrawal of water pursuant to the water right shall be properly and adequately metered;

(C) the water right is not deemed abandoned and is in compliance with the terms and conditions of its certificate of appropriation, all applicable provisions of law and orders of the chief engineer;

(D) the amount of water deposited in the multi-year flex account shall not exceed the greatest of the following:

(i) 500% of the base average usage;

(ii) 500% of the product of the annual net irrigation requirement multiplied by the flex account acreage, multiplied by 110%, but not greater than five times the maximum annual quantity authorized by the base water right; ~~or~~

(iii) if the authorized place of use is located wholly within the boundaries of a groundwater management district, an amount that shall not increase the long-term average use of the groundwater right as specified by rule or regulation promulgated pursuant to ~~subsection (e)~~ of K.S.A. 82a-1028(o), and amendments thereto; ~~and or~~

(iv) pursuant to subparagraph (E), the amount computed in (i), (ii) or (iii) plus any deposited water remaining in a multi-year flex account up to 100% of the base average usage;

(E) any deposited water remaining in a multi-year flex account up to 100% of the

base average usage may be added to the deposit amount calculated in subparagraph (D) if the base water right is enrolled in another multi-year flex account during the calendar year in which the existing multi-year flex account expires. The total amount of water deposited in any multi-year flex account shall not exceed 500% of the authorized quantity of the base water right; and

(F) notwithstanding any other provisions of this subsection, except when the base water right is suspended due to the issuance of a two-year term permit in a designated drought emergency area for 2011 and 2012, the quantity of water deposited into a multi-year flex account shall be reduced by the quantity of water used in excess of the maximum annual quantity of the base water right during 2011 if the application for a multi-year flex account is filed with the chief engineer on or before July 15, 2012.

(2) The provisions of K.A.R. 5-5-11 are limited to changes in annual authorized quantity and shall not apply to this subsection.

(d) The chief engineer shall implement a program providing for the issuance of term permits to holders of groundwater water rights who have established flex accounts in accordance with this section. Such term permits shall authorize the use of water in a flex account at any time during the five consecutive calendar years for which the application for the term permit authorizing a multi-year flex account is made, without annual limits on such use.

(e) Term permits provided for by this section shall be subject to the following:

(1) A separate term permit shall be required for each point of diversion authorized by the base water right.

(2) The quantity of water authorized for diversion shall be limited to the amount deposited pursuant to subsection (c)(1)(D).

(3) The rate of diversion for each point of diversion authorized under the term permit shall not exceed the rate of diversion for each point of diversion authorized under the base water right.

(4) The authorized place of use shall be the place of use or a subdivision of the place of use for the base water right.

(5) The point of diversion authorized by the term permit shall be specified by referencing one point of diversion authorized by the base water right at the time the multi-year flex account term permit application is filed with the chief engineer or at the time any approvals changing such referenced point of diversion of the base water right are approved during the multi-year flex account period. For a base water right with multiple points of diversion, each point of diversion authorized by a term permit shall receive a specific assignment of a maximum authorized quantity of water, assigned proportionately to the authorized annual quantities of the respective points of diversion under the base water right.

(6) The chief engineer may establish, by rules and regulations, criteria for such term permits.

(7) Except as explicitly provided for by this section, such term permits shall be subject to all provisions of the Kansas water appropriation act, and rules and regulations adopted under such act, and nothing in this section shall authorize impairment of any vested right or prior appropriation right by the exercise of such term permit.

(f) An application for a multi-year flex account shall be filed with the chief engineer on or before October 1 of the first year of the multi-year flex account term for which the application is being made.

(g) All costs of administration of this section shall be paid from fees for term permits provided for by this section. Any appropriation or transfer from any fund other than the water appropriation certification fund for the purpose of paying such costs shall be repaid to the fund from which such appropriation or transfer is made. At the time of repayment, the secretary of agriculture shall certify to the director of accounts and reports the amount to be repaid and the fund to be repaid. Upon receipt of such certification, the director of accounts and reports shall promptly transfer the amount certified to the specified fund.

(h) The fee for a multi-year flex account term permit shall be the same as specified for other term permits in K.S.A. 82a-708c, and amendments thereto, except as follows:

(1) If the base water right is currently suspended due to the issuance of a two-year term permit in a designated drought emergency area for 2011 and 2012, then a holder of such term permit shall be subject to a \$200 application fee for a multi-year flex account term permit if the application is filed on or before July 15, 2012; or

(2) if water use under the authority of the base water right exceeded the maximum annual quantity authorized by the base water right during 2011 and the holder of the base water right files an application for approval of a multi-year flex account term permit on or before July 15, 2012, then the application fee shall be \$600.

(i) The chief engineer shall have full authority pursuant to K.S.A. 82a-706c, and amendments thereto, to require any additional measuring devices and any additional reporting of water use for term permits issued pursuant to this section. Failure to comply with any measuring or reporting requirement may result in a penalty, up to and including the revocation of the term permit and the suspension of the base water right for the duration of the term permit period.

(j) The chief engineer shall submit a written report on the implementation of this section to the house standing committee on agriculture and natural resources and the senate standing committee on natural resources on or before February 1 of each year.

(k) This section shall be part of and supplemental to the Kansas water appropriation act.

Sec. 4. K.S.A. 2014 Supp. 82a-1041 is hereby amended to read as follows: 82a-1041. (a) Whenever a groundwater management district recommends the approval of a local enhanced management plan within the district to address any of the conditions set forth in ~~subsections (a) through (d)~~ of K.S.A. 82a-1036(a) through (d), and amendments thereto, the chief engineer shall review the local enhanced management plan submitted by the groundwater management district. The chief engineer's review shall be limited to whether the plan:

- (1) Proposes clear geographic boundaries;
- (2) pertains to an area wholly within the groundwater management district;
- (3) proposes goals and corrective control provisions as provided in subsection (f) adequate to meet the stated goals;
- (4) gives due consideration to water users who already have implemented reductions in water use resulting in voluntary conservation measures;
- (5) includes a compliance monitoring and enforcement element; and
- ~~(5)-(6)~~ is consistent with state law.

If, based on such review, the chief engineer finds that the local enhanced management plan is acceptable for consideration, the chief engineer shall initiate, as soon as practicable thereafter, proceedings to designate a local enhanced management

area.

(b) In any case where proceedings to designate a local enhanced management area are initiated, the chief engineer shall conduct an initial public hearing on the question of designating such an area as a local enhanced management area according to the local enhanced management plan. The initial public hearing shall resolve the following findings of fact:

(1) Whether one or more of the circumstances specified in ~~subsection (a) through (d)~~ of K.S.A. 82a-1036(a) through (d), and amendments thereto, exist;

(2) whether the public interest of K.S.A. 82a-1020, and amendments thereto, requires that one or more corrective control provisions be adopted; and

(3) whether the geographic boundaries are reasonable.

The chief engineer shall conduct a subsequent hearing or hearings only if the initial public hearing is favorable on all three issues of fact and the expansion of geographic boundaries is not recommended. At least 30 days prior to the date set for any hearing, written notice of such hearing shall be given to every person holding a water right of record within the area in question and by one publication in any newspaper of general circulation within the area in question. The notice shall state the question and shall denote the time and place of the hearing. At every such hearing, documentary and oral evidence shall be taken and a complete record of the same shall be kept.

(c) The subject matter of the hearing or hearings set forth in subsection (b) shall be limited to the local enhanced management plan that the chief engineer previously reviewed pursuant to subsection (a) and set for hearing.

(d) Within 120 days of the conclusion of the final public hearing set forth in subsections (b) and (c), the chief engineer shall issue an order of decision:

(1) Accepting the local enhanced management plan as sufficient to address any of the conditions set forth in ~~subsections (a) through (d)~~ of K.S.A. 82a-1036(a) through (d), and amendments thereto;

(2) rejecting the local enhanced management plan as insufficient to address any of the conditions set forth in ~~subsections (a) through (d)~~ of K.S.A. 82a-1036(a) through (d), and amendments thereto;

(3) returning the local enhanced management plan to the groundwater management district, giving reasons for the return and providing the district with the opportunity to resubmit a revised plan for public hearing within 90 days of the return of the deficient plan; or

(4) returning the local enhanced management plan to the groundwater management district and proposing modifications to the plan, based on testimony at the hearing or hearings, that will improve the administration of the plan, but will not impose reductions in groundwater withdrawals that exceed those contained in the plan. If the groundwater management district approves of the modifications proposed by the chief engineer, the district shall notify the chief engineer within 90 days of receipt of return of the plan. Upon receipt of the groundwater management district's approval of the modifications, the chief engineer shall accept the modified local management plan. If the groundwater management district does not approve of the modifications proposed by the chief engineer, the local management plan shall not be accepted.

(e) In any case where the chief engineer issues an order of decision accepting the local enhanced management plan pursuant to subsection (d), the chief engineer, within a reasonable time, shall issue an order of designation that designates the area in question

as a local enhanced management area.

(f) The order of designation shall define the boundaries of the local enhanced management area and shall indicate the circumstances upon which the findings of the chief engineer are made. The order of designation may include any of the following corrective control provisions set forth in the local enhanced management plan:

(1) Closing the local enhanced management area to any further appropriation of groundwater. In which event, the chief engineer shall thereafter refuse to accept any application for a permit to appropriate groundwater located within such area;

(2) determining the permissible total withdrawal of groundwater in the local enhanced management area each day, month or year, and, insofar as may be reasonably done, the chief engineer shall apportion such permissible total withdrawal among the valid groundwater right holders in such area in accordance with the relative dates of priority of such rights;

(3) reducing the permissible withdrawal of groundwater by any one or more appropriators thereof, or by wells in the local enhanced management area;

(4) requiring and specifying a system of rotation of groundwater use in the local enhanced management area; or

(5) any other provisions making such additional requirements as are necessary to protect the public interest.

The chief engineer is hereby authorized to delegate the enforcement of any corrective control provisions ordered for a local enhanced management area to the groundwater management district in which that area is located, upon written request by the district.

(g) The order of designation shall follow, insofar as may be reasonably done, the geographical boundaries recommended by the local enhanced management plan.

(h) Except as provided in subsection (f), the order of designation of a local enhanced management area shall be in full force and effect from the date of its entry in the records of the chief engineer's office unless and until its operation shall be stayed by an appeal from an order entered on review of the chief engineer's order pursuant to K.S.A. 2014 Supp. 82a-1901, and amendments thereto, and in accordance with the provisions of the Kansas judicial review act. The chief engineer upon request shall deliver a copy of such order to any interested person who is affected by such order and shall file a copy of the same with the register of deeds of any county within which any part of the local enhanced management area lies.

(i) If the holder of a groundwater right within the local enhanced management area applies for review of the order of designation pursuant to K.S.A. 2014 Supp. 82a-1901, and amendments thereto, the provisions of the order with respect to the inclusion of the holder's water right within the area may be stayed in accordance with the Kansas administrative procedure act.

(j) Unless otherwise specified in the proposed enhanced management plan and included in the order of designation, a public hearing to review the designation of a local enhanced management area shall be conducted by the chief engineer within seven years after the order of designation is final. A subsequent review of the designation shall occur within 10 years after the previous public review hearing or more frequently as determined by the chief engineer. Upon the request of a petition signed by at least 10% of the affected water users in a local enhanced management area, a public review hearing to review the designation shall be conducted by the chief engineer. This requested public review hearing shall not be conducted more frequently than every four

years.

(k) The chief engineer shall adopt rules and regulations to effectuate and administer the provisions of this section.

(l) The provisions of this section shall be part of and supplemental to the provisions of K.S.A. 82a-1020 through K.S.A. 82a-1040, and amendments thereto.

New Sec. 5. (a) The chief engineer shall give due consideration to water management or conservation measures previously implemented by a water right holder when implementing any further limitations on a water right pursuant to any program established or implemented on and after July 1, 2015. The chief engineer shall take into account reductions in water use, changes in water management practices and other measures undertaken by such water right holder.

(b) This section shall be part of and supplemental to the Kansas water appropriation act.;

Also on page 2, in line 5, by striking "is" and inserting "and K.S.A. 2014 Supp. 82a-708c, 82a-736 and 82a-1041 are";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking "related" and inserting "relating"; in line 2, after "engineer;" by inserting "multi-year flex accounts; local enhanced management areas;"; also in line 2, after "82a-706b" by inserting "and K.S.A. 2014 Supp. 82a-708c, 82a-736 and 82a-1041"; in line 3, by striking "section" and inserting "sections"; and the bill be passed as amended.

Committee on **Agriculture and Natural Resources** recommends **SB 124** be amended on page 1, following line 5, by inserting:

"Section 1. K.S.A. 48-1603 is hereby amended to read as follows: 48-1603. As used in this act:

(a) "By-product material" means: (1) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; ~~and~~

(2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content;

(3) (A) any discrete source of radium-226 that is produced, extracted or converted after extraction for use for a commercial, medical or research activity; or

(B) any material that:

(i) Has been made radioactive by use of a particle accelerator; and

(ii) is produced, extracted or converted after extraction for use for a commercial, medical or research activity; or

(4) any discrete source of naturally occurring radioactive material, other than source material, that:

(A) The secretary declares by order would pose a threat to the public health and safety or the common defense and security similar to the threat posed by a discrete source of radium-226 after the United States nuclear regulatory commission, or any successor thereto, determines the same; and

(B) is extracted or converted after extraction for use in a commercial, medical or research activity.

(b) "Department" means the Kansas department of health and environment.

(c) "Civil penalty" means any monetary penalty levied on a licensee or registrant because of violations of statutes, regulations, licenses or registration certificates, but

does not include criminal penalties.

(d) "Closure" or "site closure" means all activities performed at a waste disposal site, such as stabilization and contouring, to assure that the site is in a stable condition so that only minor custodial care, surveillance and monitoring are necessary at the site following termination of licensed operation.

(e) "Decommissioning" means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material and to carry out any other activities to prepare the site for postoperational care.

(f) "Disposal of low-level radioactive waste" means the isolation of such waste from the biosphere.

(g) "Electronic product" means any manufactured or assembled: (1) Product which, when in operation, contains or acts as part of an electronic circuit and emits, or in the absence of effective shielding or other controls would emit, electronic product radiation; ~~or any manufactured or assembled~~ (2) article which is intended for use as a component part, or accessory of a product described in this subsection and which in operation emits, or in the absence of effective shielding or other controls would emit, such radiation.

(h) "Electronic product radiation" means any ionizing or nonionizing, electromagnetic or particulate radiation, or any sonic, infrasonic, or ultrasonic wave, which is emitted from an electronic product as the result of the operation of an electronic circuit in such product.

(i) "General license" means a license effective pursuant to rules and regulations promulgated by the secretary of health and environment, without the filing of an application to transfer, acquire, own, possess or use quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(j) "High-level radioactive waste" means: (1) Irradiated reactor fuel; (2) liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for uranium processing irradiated reactor fuel; and (3) solids into which such liquid wastes have been converted.

(k) "Low-level radioactive waste" means radioactive waste not classified as:
(1) NORM waste or TENORM waste at concentrations and from sources established in rules and regulations adopted by the secretary on or before July 1, 2016;
(2) high-level radioactive waste;
(3) transuranic waste;
(4) spent nuclear fuel; or
(5) by-product material as defined in subsection (a)(2).

(l) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or any other state or political subdivision or agency thereof, and any legal successor, representative, agency, or agency of the foregoing, other than the United States nuclear regulatory commission, or any successor thereto, and other than federal government agencies licensed by the United States nuclear regulatory commission, or any successor thereto.

(m) "Radiation" means: (1) Ionizing radiation including gamma rays, X-rays, alpha

particles, beta particles, and including neutrons; (2) any electromagnetic radiation other than ionizing radiation which is generated during the operation of an electronic product; or (3) any sonic, ultrasonic, or infrasonic wave which is emitted from an electronic product as a result of the operation of an electronic circuit in such product.

(n) "Radioactive material" means any material, solid, liquid or gas, which emits ionizing radiation spontaneously. It includes accelerator produced, by-product, naturally occurring, source and special nuclear materials.

(o) "Secretary" means the secretary of the Kansas department of health and environment.

(p) "Source material" means: (1) Uranium, thorium, or any other material which the secretary declares by order to be source material after the United States nuclear regulatory commission, or any successor thereto, has determined the material to be such; or (2) ores containing one or more of the foregoing materials, in such concentration as the secretary declares by order to be source material after the United States nuclear regulatory commission, or any successor thereto, has determined the material in such concentration to be source material.

(q) "Source material mill tailings" means the tailings or waste produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from underground solution extraction processes but not including underground ore bodies depleted by such solution extraction process.

(r) "Source material milling" means any processing of ore, including underground solution extraction of unmined ore, primarily for the purpose of extracting or concentrating uranium or thorium therefrom and which results in the production of source material mill tailings.

(s) "Sources of radiation" means, collectively, radioactive material and radiation generating equipment.

(t) "Special nuclear material" means: (1) Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the secretary declares by order to be special nuclear material after the United States nuclear regulatory commission, or any successor thereto, has determined the material to be such, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.

(u) "Specific license" means a license issued after application, to use, manufacture, produce, transfer, receive, acquire, own or possess quantities of, or devices or equipment utilizing by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(v) "Spent nuclear fuel" means irradiated nuclear fuel that has undergone at least one year's decay since being used as a source of energy in a power reactor. Spent nuclear fuel includes the special nuclear material, by-product material, source material and other radioactive material associated with fuel assemblies.

(w) "Transuranic waste" means radioactive waste containing alpha emitting transuranic elements, with radioactive half-lives greater than five years, in excess of 10 nanocuries per gram.

(x) "Naturally occurring radioactive material" or "NORM" means any nuclide that is radioactive in the nuclide's natural physical state. "NORM" does not include accelerator produced, by-product, source or special nuclear material.

(y) "NORM waste" means solid waste as defined in K.S.A. 65-3402, and amendments thereto, that is contaminated with NORM.

(z) "Technologically enhanced NORM" or "TENORM" means NORM whose radionuclide concentrations are increased by or as a result of past or present human practices. "TENORM" does not include accelerator produced, by-product, source or special nuclear material.

(aa) "TENORM waste" means solid waste as defined in K.S.A. 65-3402, and amendments thereto, that is contaminated with TENORM.

Sec. 2. K.S.A. 48-1620 is hereby amended to read as follows: 48-1620. ~~The hazardous waste disposal facility approval board secretary~~ shall review and grant or deny final approval for each low-level radioactive waste disposal facility license in the same manner as provided in K.S.A. 65-3433 et seq., and amendments thereto. ~~The board secretary~~ shall not approve any such license which would permit the disposal of low-level radioactive waste below the natural level of the disposal site unless ~~the board secretary~~, subject to legislative approval, has determined that below grade disposal provides greater protection than above grade disposal for the environment and public health for the period of time for which such low-level radioactive waste may continue to pose a hazard to the environment and public health.";

On page 3, in line 32, after "occurred" by inserting "within the previous three years"; in line 34, after "property" by inserting "prior to closing";

On page 4, in line 9, after "commission" by inserting ", in coordination with the Kansas department of health and environment,"; by striking all in line 16; following line 29, by inserting:

"Sec. 4. K.S.A. 2014 Supp. 65-171d is hereby amended to read as follows: 65-171d. (a) For the purpose of preventing surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, and to protect designated uses of the waters of the state and to require the treatment of sewage predicated upon technologically based effluent limitations, the secretary of health and environment shall make such rules and regulations, including registration of potential sources of pollution, as may in the secretary's judgment be necessary to: (1) Protect the soil and waters of the state from pollution resulting from underground storage of liquid petroleum gas and hydrocarbons, other than underground porosity storage of natural gas; (2) control the disposal, discharge or escape of sewage as defined in K.S.A. 65-164, and amendments thereto, by or from municipalities, corporations, companies, institutions, state agencies, federal agencies or individuals and any plants, works or facilities owned or operated, or both, by them; and (3) establish water quality standards for the waters of the state to protect their designated uses, including establishment of water quality standards variances that may apply to specified pollutants, permittees, or waterbody segments that reflect the highest attainable condition during the specified time period for the variance. In no event shall the secretary's authority be interpreted to include authority over the beneficial use of water, water quantity allocations, protection against water use impairment of a beneficial use, or any other function or authority under the jurisdiction of the Kansas water appropriation act, K.S.A. 82a-701, and amendments thereto.

(b) The secretary of health and environment may adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal clean water act, and amendments thereto, as in

effect on January 1, 1989, which the secretary is otherwise authorized by law to adopt.

(c) For the purposes of this act, including K.S.A. 65-161 through 65-171h and K.S.A. 65-1,178 through 65-1,198, and amendments thereto, and rules and regulations adopted pursuant thereto:

(1) "Pollution" means: (A) Such contamination or other alteration of the physical, chemical or biological properties of any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the state or to other designated uses; or (B) such discharge as will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

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

(3) "Animal unit" means a unit of measurement calculated by adding the following numbers: The number of beef cattle weighing more than 700 pounds multiplied by 1.0; plus the number of cattle weighing less than 700 pounds multiplied by 0.5; plus the number of mature dairy cattle multiplied by 1.4; plus the number of swine weighing more than 55 pounds multiplied by 0.4; plus the number of swine weighing 55 pounds or less multiplied by 0.1; plus the number of sheep or lambs multiplied by 0.1; plus the number of horses multiplied by 2.0; plus the number of turkeys multiplied by 0.018; plus the number of laying hens or broilers, if the facility has continuous overflow watering, multiplied by 0.01; plus the number of laying hens or broilers, if the facility has a liquid manure system, multiplied by 0.033; plus the number of ducks multiplied by 0.2. However, each head of cattle will be counted as one full animal unit for the purpose of determining the need for a federal permit. "Animal unit" also includes the number of swine weighing 55 pounds or less multiplied by 0.1 for the purpose of determining applicable requirements for new construction of a confined feeding facility for which a permit or registration has not been issued before January 1, 1998, and for which an application for a permit or registration and plans have not been filed with the secretary of health and environment before January 1, 1998, or for the purpose of determining applicable requirements for expansion of such facility. Except as otherwise provided, animal units for public livestock markets shall be determined by using the average annual animal units sold by the market during the past five calendar years divided by 365. Such animal unit determination may be adjusted by the department if the public livestock market submits documentation that demonstrates that such adjustment is appropriate based on the amount of time in 24-hour increments or partials thereof that animals are at the market.

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

(5) "Habitable structure" means any of the following structures which is occupied or maintained in a condition which may be occupied and which, in the case of a confined feeding facility for swine, is owned by a person other than the operator of such facility: A dwelling, church, school, adult care home, medical care facility, child care facility, library, community center, public building, office building or licensed food service or lodging establishment.

(6) "Wildlife refuge" means Cheyenne Bottoms wildlife management area,

Cheyenne Bottoms preserve and Flint Hills, Quivera, Marais des Cygnes and Kirwin national wildlife refuges.

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

(e) (1) Whenever the secretary of health and environment or the secretary's duly authorized agents find that storage or disposal of salt water not regulated by the state corporation commission or refuse in any surface pond not regulated by the state corporation commission is causing or is likely to cause pollution of soil or waters of the state, the secretary or the secretary's duly authorized agents shall issue an order prohibiting such storage or disposal of salt water or refuse. Any person aggrieved by such order may within 15 days of service of the order request in writing a hearing on the order.

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

(3) Any action of the secretary pursuant to this subsection is subject to review in accordance with the Kansas judicial review act.

(f) The secretary may adopt rules and regulations establishing fees for plan approval, monitoring and inspecting underground or buried petroleum products storage tanks, for which the annual fee shall not exceed \$5 for each tank in place.

(g) (1) Prior to any new construction of a confined feeding facility with an animal unit capacity of 300 or more, such facility shall register with the secretary of health and environment. Such registration shall be accompanied by a \$25 fee. The secretary shall acknowledge the receipt of the registration in a form as designated by the secretary and publish a notice of such receipt.

(2) Such registration shall indicate that the proposed construction will occur within the prescribed tract of land and that the separation distances from the tract boundaries or proposed facility footprint comply with the requirements described in subsections (j), (l) and (m) or exceptions described in (k).

(3) Within 30 days of receipt of such registration, the department of health and environment shall identify any significant water pollution potential or separation distance violations pursuant to subsection (j).

(A) (i) If the proposed facility has an animal unit capacity of 1,000 or more, or if there is identified a significant water pollution potential for a facility of less than 1,000 but more than 300, such facility shall be required to obtain a permit from the secretary.

(ii) If there is no identified water pollution potential posed by a facility with an animal unit capacity of 300 or more but less than 1,000, the secretary shall certify that no permit is required.

(B) If the secretary certifies that no permit is necessary pursuant to subsection (g) (3)(A)(ii), the secretary shall take the following action in regard to separation distances

of such facility:

(i) If the separation distances comply with the requirements for separation distances, the secretary shall certify the registration; or

(ii) if the separation distances do not comply with the requirements for separation distances, the secretary:

(a) May reduce the separation distance requirements pursuant to subsection (k) and certify the registration based on such reduction of separation distances; or

(b) shall report the conditions necessary to receive certification to the registrant.

(h) (1) Facilities with a capacity of less than 300 animal units may register with the secretary of health and environment. Such registration shall be accompanied by a \$25 fee.

(2) Within 30 days of receipt of such registration, the department of health and environment shall identify any significant water pollution potential. If there is identified a significant water pollution potential, such facility shall be required to obtain a permit from the secretary. If there is no water pollution potential posed by such facility, the secretary may certify that no permit is required.

(i) (1) If a facility requires a permit pursuant to subsection (g)(3) or (h)(2), the registrant shall submit an application for such permit not later than 18 months after the date of receipt of registration or the registration shall expire.

(2) Upon petition by the registrant, the secretary may extend the application period, by no more than an additional 18 months, if the secretary believes such an extension is reasonable under the circumstances.

(3) Within 30 days of receipt of an application, the secretary shall notify the registrant of whether the application is complete or incomplete. If the application is incomplete, such notice shall state the reasons why such application is incomplete. Once such registrant submits an application properly addressing each reason listed as a basis for the determination that the application is incomplete, the secretary shall issue an acknowledgment of receipt of the completed application within 30 days of properly addressing such reasons.

(4) Upon expiration of the application period or any extension thereof, the secretary shall not accept any further registrations pertaining to the same location for a period of not less than 180 days.

(j) (1) Any new construction or new expansion of a confined feeding facility, other than a confined feeding facility for swine, shall meet or exceed the following requirements in separation distances from any habitable structure in existence when the registration is received:

(A) 1,320 feet for facilities with an animal unit capacity of 300 to 999; and

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

(2) A confined feeding facility for swine shall meet or exceed the following requirements in separation distances from any habitable structure or city, county, state or federal park in existence when the registration is received:

(A) 1,320 feet for facilities with an animal unit capacity of 300 to 999;

(B) 4,000 feet for facilities with an animal unit capacity of 1,000 to 3,724;

(C) 4,000 feet for expansion of existing facilities to an animal unit capacity of 3,725 or more if such expansion is within the perimeter from which separation distances are determined pursuant to subsection (m) for the existing facility; and

(D) 5,000 feet for: (i) Construction of new facilities with an animal unit capacity of

3,725 or more; or (ii) expansion of existing facilities to an animal unit capacity of 3,725 or more if such expansion extends outside the perimeter from which separation distances are determined pursuant to subsection (m) for the existing facility.

(3) Any construction of new confined feeding facilities for swine shall meet or exceed the following requirements in separation distances from any wildlife refuge:

(A) 10,000 feet for facilities with an animal unit capacity of 1,000 to 3,724; and

(B) 16,000 feet for facilities with an animal unit capacity of 3,725 or more.

(k) (1) The separation distance requirements of subsections (j)(1) and (2) shall not apply if the registrant obtains a written agreement from all owners of habitable structures which are within the separation distance stating such owners are aware of the construction or expansion and have no objections to such construction or expansion. The written agreement shall be filed in the register of deeds office of the county in which the habitable structure is located.

(2) (A) The secretary may reduce the separation distance requirements of subsection (j)(1) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to public notice; or (ii) 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.

(B) The secretary may reduce the separation distance requirements of subsection (j) (2)(A) or (B) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to notice given in accordance with subsection (n); (ii) 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; or (iii) the secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the facility will be using such technology.

(C) The secretary may reduce the separation distance requirements of subsection (j) (2)(C) or (D) if: (i) No substantial objection from owners of habitable structures within the separation distance is received in response to notice given in accordance with subsection (l); or (ii) the secretary determines that technology exists that meets or exceeds the effect of the required separation distance and the facility will be using such technology.

(l) (1) The separation distances required pursuant to subsection (j)(1) shall not apply to:

(A) Confined feeding facilities which were permitted or certified by the secretary on July 1, 1994;

(B) confined feeding facilities which existed on July 1, 1994, and registered with the secretary before July 1, 1996; or

(C) expansion of a confined feeding facility, including any expansion for which an application was pending on July 1, 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000 or more prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion; or (ii) in the case of a facility with an animal unit capacity of less than 1,000 prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion and the animal unit capacity of the facility after expansion does not exceed 2,000.

(2) The separation distances required pursuant to subsections (j)(2)(A) and (B) shall not apply to:

(A) Confined feeding facilities for swine which were permitted or certified by the secretary on July 1, 1994;

(B) confined feeding facilities for swine which existed on July 1, 1994, and registered with the secretary before July 1, 1996; or

(C) expansion of a confined feeding facility which existed on July 1, 1994, if: (i) In the case of a facility with an animal unit capacity of 1,000 or more prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion; or (ii) in the case of a facility with an animal unit capacity of less than 1,000 prior to July 1, 1994, the expansion is located at a distance not less than the distance between the facility and the nearest habitable structure prior to the expansion and the animal unit capacity of the facility after expansion does not exceed 2,000.

(3) The separation distances required pursuant to subsections (j)(2)(C) and (D) and (h)(3) shall not apply to the following, as determined in accordance with subsections ~~(a), (e) and (f)~~ of K.S.A. 65-1,178~~(a), (e) and (f)~~, and amendments thereto:

(A) Expansion of an existing confined feeding facility for swine if an application for such expansion has been received by the department before March 1, 1998; and

(B) construction of a new confined feeding facility for swine if an application for such facility has been received by the department before March 1, 1998.

(m) The separation distances required by this section for confined feeding facilities for swine shall be determined from the exterior perimeter of any buildings utilized for housing swine, any lots containing swine, any swine waste retention lagoons or ponds or other manure or wastewater storage structures and any additional areas designated by the registrant for future expansion. Such separation distances shall not apply to offices, dwellings and feed production facilities of a confined feeding facility for swine.

(n) The registrant shall give the notice required by subsections (k)(2)(B) and (C) by certified mail, return receipt requested, to all owners of habitable structures within the separation distance. The registrant shall submit to the department evidence, satisfactory to the department, that such notice has been given.

(o) All plans and specifications submitted to the department for new construction or new expansion of confined feeding facilities may be, but are not required to be, prepared by a professional engineer or a consultant, as approved by the department. Before approval by the department, any consultant preparing such plans and specifications shall submit to the department evidence, satisfactory to the department, of adequate general commercial liability insurance coverage.";

Also on page 4, in line 30, before "K.S.A." by inserting "K.S.A. 48-1603 and 48-1620 and"; also in line 30, after "Supp." by inserting "65-171d and"; also in line 30, by striking "is" and inserting "are";

And by renumbering sections accordingly;

On page 1, in line 1, after "concerning" by inserting "the department of health and environment; relating to radioactive materials; by-product material; low-level radioactive waste; naturally occurring radioactive material; water and soil pollution;"; also in line 1, by striking "relating to"; in line 2, after "amending" by inserting "K.S.A. 48-1603 and 48-1620 and"; also in line 2, after "Supp." by inserting "65-171d and"; in line 3, by striking "section" and inserting "sections"; and the bill be passed as amended.

Committee on **Federal and State Affairs** recommends **SB 45** be amended on page 7, in line 13, by striking "or" and inserting a comma; also in line 13, before "is" by inserting "or (a)(4)"; in line 15, by striking "(a)(4)" and inserting "(a)(5)";

On page 8, in line 22, by striking "(a)(4)" and inserting "(a)(5)"; in line 33, by striking "(a)(4)" and inserting "(a)(5)"; and the bill be passed as amended.

Committee on **Judiciary** recommends **SB 34** be passed.

Committee on **Judiciary** recommends **SB 23** be amended on page 1, following line 5, by inserting:

"Section 1. K.S.A. 2014 Supp. 8-262 is hereby amended to read as follows: 8-262. (a) (1) Any person who drives a motor vehicle on any highway of this state at a time when such person's privilege so to do is canceled, suspended or revoked or while such person's privilege to obtain a driver's license is suspended or revoked pursuant to K.S.A. 8-252a, and amendments thereto, shall be guilty of a class B nonperson misdemeanor on the first conviction and a class A nonperson misdemeanor on the second or subsequent conviction. Except as otherwise provided in subsection (a)(4) or (c), for the purposes of determining whether a conviction is a first, second or subsequent conviction in sentencing under this section, only convictions occurring in the immediately preceding five years, including prior to July 1, 2015, shall be taken into account.

(2) No person shall be convicted under this section if such person was entitled at the time of arrest under K.S.A. 8-257, and amendments thereto, to the return of such person's driver's license.

(3) Except as otherwise provided by subsection (a)(4) or (c), every person convicted under this section shall be sentenced to at least five days' imprisonment and fined at least \$100 and upon a second conviction shall not be eligible for parole until completion of five days' imprisonment.

(4) Except as otherwise provided by subsection (c), if a person: (A) Is convicted of a violation of this section, committed while the person's privilege to drive or privilege to obtain a driver's license was suspended or revoked for a violation of K.S.A. 8-2,144 or 8-1567 or K.S.A. 2014 Supp. 8-1025, and amendments thereto, or any ordinance of any city or resolution of any county or a law of another state, which ordinance or resolution or law prohibits the acts prohibited by those statutes; and (B) is or has been also convicted of a violation of K.S.A. 8-2,144 or 8-1567 or K.S.A. 2014 Supp. 8-1025, and amendments thereto, or any ordinance of any city or resolution of any county or law of another state, which ordinance or resolution or law prohibits the acts prohibited by those statutes, committed while the person's privilege to drive or privilege to obtain a driver's license was so suspended or revoked, the person shall not be eligible for suspension of sentence, probation or parole until the person has served at least 90 days' imprisonment, and any fine imposed on such person shall be in addition to such a term of imprisonment. For the purposes of determining whether a conviction is a first, second or subsequent conviction in sentencing under this paragraph, all convictions occurring during a person's lifetime shall be taken into account.

(b) The division, upon receiving a record of the conviction of any person under this section, or any ordinance of any city or resolution of any county or a law of another state which is in substantial conformity with this section, upon a charge of driving a vehicle while the license of such person is revoked or suspended, shall extend the period of such suspension or revocation for an additional period of 90 days.

(c) (1) The person found guilty of a class A nonperson misdemeanor on a third or

subsequent conviction of this section shall be sentenced to not less than 90 days' imprisonment and fined not less than \$1,500 if such person's privilege to drive a motor vehicle is canceled, suspended or revoked because such person:

~~(A) Refused to submit and complete any test of blood, breath or urine requested by law enforcement excluding the preliminary screening test as set forth in K.S.A. 8-1012, and amendments thereto;~~

~~(B) was convicted of violating the provisions of K.S.A. 40-3104, and amendments thereto, relating to motor vehicle liability insurance coverage; For the purposes of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this paragraph, only convictions occurring on or after July 1, 2001, shall be taken into account.~~

~~(C)(2) The person found guilty of a class A nonperson misdemeanor on a third or subsequent conviction of this section shall be sentenced to not less than 90 days' imprisonment and fined not less than \$1,500 if such person's privilege to drive a motor vehicle is canceled, suspended or revoked because such person:~~

~~(A) Refused to submit and complete any test of blood, breath or urine requested by law enforcement, excluding the preliminary screening test as set forth in K.S.A. 8-1012, and amendments thereto;~~

~~(B) was convicted of vehicular homicide, K.S.A. 21-3405, prior to its repeal, or K.S.A. 2014 Supp. 21-5406, and amendments thereto, involuntary manslaughter while driving under the influence of alcohol or drugs, K.S.A. 21-3442, prior to its repeal, or involuntary manslaughter as defined in subsection (a)(3) of K.S.A. 2014 Supp. 21-5405(a)(3), and amendments thereto, or any other murder or manslaughter crime resulting from the operation of a motor vehicle; or~~

~~(D)(C) was convicted of being a habitual violator, K.S.A. 8-287, and amendments thereto. For the purposes of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this paragraph, all convictions occurring during a person's lifetime shall be taken into account.~~

~~(2)(3) The person convicted shall not be eligible for release on probation, suspension or reduction of sentence or parole until the person has served at least 90 days' imprisonment. The 90 days' imprisonment mandated by this subsection may be served in a work release program only after such person has served 48 consecutive hours' imprisonment, provided such work release program requires such person to return to confinement at the end of each day in the work release program. The court may place the person convicted under a house arrest program pursuant to K.S.A. 2014 Supp. 21-6609, and amendments thereto, or any municipal ordinance to serve the remainder of the minimum sentence only after such person has served 48 consecutive hours' imprisonment.~~

(d) For the purposes of determining whether a conviction is a first, second, third or subsequent conviction in sentencing under this section, "conviction" includes a conviction of a violation of any ordinance of any city or resolution of any county or a law of another state which is in substantial conformity with this section.;

On page 4, in line 13, after "Supp." by inserting "8-262 and"; also in line 13, by striking "is" and inserting "are";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, after "to" by inserting "driving while license is canceled, suspended or revoked;"; in line 2, after "Supp." by inserting "8-262 and"; in

line 3 by striking "section" and inserting "sections"; and the bill be passed as amended.

Committee on **Transportation** recommends **SB 73** be passed.

Committee on **Transportation** recommends **SB 126** be amended on page 1, in line 10, by striking "purpose" and inserting "purposes"; in line 13, by striking "a test track" and inserting "one or more test tracks"; and the bill be passed as amended.

COMMITTEE ASSIGNMENT CHANGES

Speaker Merrick announced the appointment of Rep. Burroughs to replace Rep. Frownfelter on Committee on Commerce, Labor and Economic Development on March 18 and 19.

Also, Rep. Ruiz to replace Rep. Frownfelter on Committee on Financial Institutions on March 19.

Also, Rep. Ward to replace Rep. Highberger on Committee on Children and Seniors on March 19.

REPORT ON ENGROSSED BILLS

HB 2382 reported correctly engrossed March 17, 2015.

HB 2053 reported correctly re-engrossed March 17, 2015.

REPORT ON ENROLLED RESOLUTIONS

HR 6017, HR 6018 reported correctly enrolled and properly signed on March 18, 2015.

On motion of Rep. Vickrey, the House adjourned until 11:00 a.m., Thursday, March 19, 2015.

CHARLENE SWANSON, *Journal Clerk*.

SUSAN W. KANNARR, *Chief Clerk*.

