

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairperson Garrett Love at 8:33am on Tuesday, February 10, 2015, 159-S of the Capitol.

All members were present

Committee staff present:

Heather O'Hara, Legislative Research Department
Sara Leavitt, Kansas Legislative Committee Assistant
Mark Savoy, Legislative Research Department
Natalie Scott, Office of Revisor of Statutes
David Wiese, Office of Revisor of Statutes

Conferees appearing before the Committee:

Chad Bontrager, Deputy Secretary, Kansas Department of Agriculture
Dennis Peterson, Director, Riley County Noxious Weed Department/Vice President of the County Weed Director's Association of Kansas
Leslie Kaufman, President/CEO, Kansas Cooperative Council
Randall Allen, Executive Director, Kansas Association of Counties
Paul Johnson, Policy Advisor, Kansas Rural Center

Others in attendance:

[See Attached List](#)

Hearing and possible action on:

After calling the meeting to order, Chairperson Love asked for a motion to approve the minutes for the meetings held on January 13, January 20, January 27, and February 2. The minutes had previously been distributed to the committee for their review. Senator Powell moved to approve the minutes as written. Senator Kerschen seconded the motion. Motion carried.

Chairperson Love then opened the hearing on **SB134 - Amendments to the Kansas Noxious Weed Law**. He gave the floor to David Wiese, Office of the Revisor of Statutes, who gave a brief on the bill. [\(Attachment 1\)](#) In summary, **SB134** makes a number of changes to the law, principally: establishing a state advisory committee, allowing for more flexibility in determining what is considered a noxious weed, allowing for more flexibility in funding noxious weed control, and requiring that all hay and straw used on state-managed lands be certified noxious weed free.

SB134 creates five new sections of the law, Kansas Statutes Annotated Chapter 2 Article 13. Section 1 includes definitions, Section 2 allows for emergency declaration of a noxious weed by the Secretary of Agriculture, Section 3 creates the 11-member state noxious weed advisory committee (the Secretary of or a duly appointed representative of the Secretary will serve as a non-voting *ex officio* member) and details committee member terms and duties, Section 4 describes new unlawful actions related to noxious weeds, and Section 5 sets the requirement that grounds owned or managed by the state or state agencies be certified noxious weed free.

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Section 6, which starts the amendatory sections, sunsets the current statutory list of weeds effective on July 1, 2016, and allows the Secretary of Agriculture to develop a new list of noxious weeds through rules and regulations. It allows county commissioners, with approval from the Secretary, to publish a county-specific list of noxious weeds. It also allows for cost-shared chemicals. Sections 7-19 include a variety of further amendments and vests responsibility for the enforcement of the provisions of the act in county commissioners. The bill allows for more flexibility in terms of funding. It changes legal notice requirements from specific statutes to rules and regulations determined by the Secretary.

At the end of the bill brief, Chairperson Love opened the floor for questions to Mr. Wiese.

Senator Kerschen asked for clarification on the time line referred to in new section (e) on page 8 of the bill. Conferees explained that the annual report mentioned must be approved by the county commissioners and submitted to the Kansas Department of Agriculture (KDA) by March 15 each year, replacing the currently deadline of February 15 annually.

Senator Ostmeyer, referring to page 5 of the bill, subsection (b), clarified that by defining noxious weeds through rules and regulations rather than through statute, KDA and counties would not have to go through the legislature to determine noxious weeds. Mr. Wiese confirmed the statement.

Chad Bontrager, Deputy Secretary of the Kansas Department of Agriculture, gave testimony as a proponent of the bill. ([Attachment 2](#)) Mr. Bontrager noted that KDA is responsible for administering the Noxious Weed Act. In particular, this **SB134** targets 3 areas: it creates an advisory committee and puts the weed list in rules and regulations, it streamlines administration of the law by KDA and county weed departments, and it addresses outdated and unused provisions. He also submitted written testimony to the committee showing line by line amendments to the bill. ([Attachment 3](#))

There are currently 12 weeds that are considered noxious weeds in the state. When determining noxious weeds, things such as degree of invasiveness, length of lifespan, reproductive process, whether the plant is a host for pests, and effects on native species are usually considered, but this is not currently required. The department would like to see a more rigorous scientific and objective classification of noxious weeds. Once a weed has been declared noxious, it sets in motion a whole series of actions toward eradication.

Mr. Bontrager described the formulation of the advisory committee as outlined in the bill. The 11 voting members of the committee will be appointed by the Secretary of Agriculture based on recommendations from heads of the corresponding associations as follows:

- 1 natural resource management professional from the Kansas Department of Wildlife, Parks, and Tourism
- 2 weed specialists from the KSU College of Agriculture or K-State Research & Extension
- 1 county commissioner

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

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- 3 private landowners
- 2 county weed directors
- 2 representatives from agricultural industries in the state.

Individuals who have extensive experience in weed management will be selected from the different geographic areas of the state. They will perform a thorough evaluation of the weeds under consideration, review the expenditure of state funds, and make recommendations to the Secretary, who can then change regulations as necessary based on the advice of the committee. Mr. Bontrager referred to the graph of the invasive species curve on page 3 of Attachment 2. He stated that the formation of the advisory committee and the ability to designate noxious weeds through rules and regulations are important because they will allow weeds to be treated more rapidly and hopefully eradicated before they become out of control.

The KDA worked with stakeholders when formulating this bill, and they believe the amendments included will make the law easier to administer. Both proverbial carrots and sticks are included to encourage compliance.

For example, cooperating landowners can buy chemicals at a reduced cost, and counties can take control action and then charge landowners for the cost of that action if landowners choose not to treat noxious weeds themselves. Currently, counties must recoup the cost of treatment through tax rolls, which drags out over time and can be a deterrent to counties to provide required treatment. This bill allows counties to recoup up to 50% of the cost of treatment per year, though landowners can set up alternate payment plans with counties. Counties will have the ability to designate county-specific noxious weeds, influenced by local ecosystems and nearby state borders. Counties cannot opt out of statewide noxious weeds.

Counties will be able to manage money for noxious weeds through the county general fund rather than strictly requiring a noxious weed fund. Other updates include removing references to the Division of Noxious Weeds and the creation of sericea lespedeza disaster areas (since sericea lespedeza is now listed as a noxious weed). The bill removes county commissioners' obligation to submit an annual report and allows KDA to communicate with stakeholders via electronic means.

At the conclusion of his testimony, Mr. Bontrager stood for questions.

Senator Ostmeyer noted that counties have always been responsible for weed management, and wondered with these amendments if it is a mandate that the advisory board will come in and take over if the counties are not doing their job. He is concerned about KDA playing the big brother role, and what that may do to small counties. He doesn't want to put county commissioners in a corner and create conflicts with landowners. Mr. Bontrager assured Senator Ostmeyer that this aspect of the law would not change with the adoption of this bill. Counties will still have responsibility for noxious weed management.

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Senator Kerschen asked if a sericea lespedeza disaster area has ever been declared. Mr. Bontrager responded that yes, there had, but that was prior to sericea lespedeza officially being declared a state noxious weed. That was a temporary designation for weeds that weren't on the official list yet.

Senator Francisco asked if there are any herbicides that are allowed for use that will have adverse effects on non-traditional crops, and who will represent those interests on the advisory committee. Mr. Bontrager responded that yes, some herbicides do have an effect on those crops, and that those interests would be represented in the landowner category. Senator Francisco agreed that those interests could fit into the landowner category, but is concerned that they could also easily be left out.

Dennis Peterson, Director of the Riley County Noxious Weed Department and Vice President of the County Weed Director's Association of Kansas, gave testimony as a proponent of the bill. ([Attachment 4](#)) He stated that they have been working with the KDA legislative committee for two years, and are satisfied with the language presented in the **SB134**. They support weeds being listed under regulation, as well as the advisory committee and the risk assessment management plan. CWDK is of the opinion that noxious weeds have a direct impact on the state's agricultural economy and they support the use of scientific research to see which weeds will really have an impact on agriculture. They also appreciate the 18-month emergency plan in order to address small infestations before they grow into large infestations. For example, sericea lespedeza stayed on the county optional noxious weed list for 8 years, and in the meantime it exploded in many areas. The amendments in this bill could prevent that kind of situation, as well as allowing counties to address species in neighboring states that they worry about crossing local borders.

This bill also addresses funding of county weed departments. In Riley County and other counties the weed department is funded under the general fund, which will now be officially allowed. As counties have cut back on their budgets, the weed departments have taken on more roles, and counties need more flexibility to manage their budgets. Mr. Peterson expressed support for the manner in which counties will be able to collect funds with the adoption of this bill. Weed treatment that has been forced upon landowners often remains largely unpaid, and counties have to collect those fees over time through taxes. With this bill they will be able to collect 50% in a year, or landowners will be able to develop payment plans with counties, as the responsibility for noxious weed management lies with landowners rather than with counties.

Leslie Kaufman, President/CEO of the Kansas Cooperative Council, gave testimony as a proponent of the bill. ([Attachment 5](#)) She explained that KCC represents all types of cooperatives, with a large focus on agricultural cooperatives, including grain and chemicals. She also noted that all cotton grown and ginned in Kansas is done so through cooperatives. KCC supports **SB134**. Generally they have advocated for leaving legislation in the statutory realm rather than making it regulatory, but this is an exception. They support moving toward a more science-based system and having agribusiness representatives on the board. However, as the bill was introduced, both agribusiness representatives are based on recommendations from the Kansas Agribusiness Retailers Association (KARA). KCC would

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like to offer a balloon amendment (see Attachment 5, page 4) reserving one of those recommendations for KARA while transferring one to the cooperatives. No one that Ms. Kaufman is aware of has registered an objection to this amendment.

Randall Allen, Executive Director of the Kansas Association of Counties (KAC), gave testimony as a proponent of the bill. ([Attachment 6](#)) He appreciates the positive and constructive way that KDA has reached out to stakeholders. Any time that changes are considered to the Noxious Weed Law, the counties take that seriously as Section 9 of **SB134** vests responsibility for its enforcement in the board of county commissioners. He stated that it is unlikely he would have offered support of a rules and regulations system 15 years ago, but the noxious weed situation has come to that point. KAC took a vote at its membership meeting in November regarding listing noxious weeds through rules and regulations rather than through statutory enactment. The membership approved this change in association policy with no dissension. They feel that a science-based approach makes sense, and they like that an elected county commissioner will be on the advisory committee. They feel that everyone else involved makes sense. Mr. Allen expressed agreement with Mr. Peterson's previous testimony. As a former county budget director, he appreciates the willingness of KDA to acknowledge that the county budget process has changed over the years, and now noxious weed budgets are often taken out of the general fund. There are no significant changes in this bill that will affect weed owners, but the bill does reflect reality.

Ron Seeber, Senior Vice President for Government Affairs for the Kansas Agribusiness Retailers Association (KARA), provided written-only testimony as a proponent of the bill. ([Attachment 7](#))

At the termination of proponent testimony, Chairperson Love opened the floor for questions to proponent conferees.

Senator Abrams asked if there is an instance of KDA wanting to add a plant to the noxious weed list, or wanting to take a weed off the list because it had been eradicated. Mr. Bontrager replied that there have been none that they have wanted to add, but at least 10 are being closely considered. There are one or two plants that fall into the suppression area under the invasive species invasion curve, while several others fall under the eradication and prevention zones. There is only one plant that would fit into the eradicated category: pignut, which is present only in two counties and is close to the point of eradication.

Senator Abrams continued, asking for clarification on whether counties can charge landowners for certain things. Mr. Bontrager responded that there are two pieces that deal with charging landowners. If a landowner voluntarily enters into an agreement with the county to treat noxious weeds and then does not pay, the bill spells out the methodology by which a county can collect what they are owed. If a landowner is not treating noxious weeds and are subject to involuntary treatment of noxious weeds by the county, after notification, there is a process by which the county can recover their costs.

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Senator Abrams asked if Kansas is in talks to work together with other states. He gave the example of johnsongrass in Oklahoma, which is becoming a big problem for roads in Caley county, to the point of seeming impossible to eradicate. Mr. Bontrager replied that they do work extensively with other states, but that they have no authority over what other states consider as noxious weeds. That is the principal reason they favor giving counties the ability to declare county-specific noxious weeds so they can consider the situation in neighboring states that may not yet affect Kansas overall. For example, Oklahoma only has 4 noxious weeds declared and they do not include johnsongrass.

Chairperson Love asked if the county-specific weed lists will continue to be in effect. Mr. Bontrager responded that the previous bill spelled out what could be county-specific, whereas now each county can declare what will be on their county noxious weed list in addition to the statewide list.

Senator Powell asked if any noxious weed in the state had been eradicated. Mr. Bontrager stated that the short answer is "no." Field bindweed was the first noxious weed declared in Kansas many years ago, and it is currently considered in containment. In 2013 there were over 1.7 million acres in the state infested with field bindweed, and that has stayed pretty steady from year to year.

Senator Powell expressed the opinion that **SB134** takes the responsibility for noxious weed management away from farmers and gives it to so-called experts. He wanted to know what makes a person an expert on noxious weeds. Mr. Bontrager replied that the bill does not take responsibility away from landowners. The idea with the committee is people that deal with weeds every day, the spread of weeds, the control of weeds, and the risks that they pose.

Senator Powell wondered how many people on the advisory committee will have a vested interest in maintaining a noxious weed list. Mr. Bontrager responded that all those who work in control of those weeds listed as noxious have an interest, whether they are in the chemical supply industry or county weed directors, so 4 out of 11. The wildlife and parks representative, the 2 KSU noxious weed specialists, the 3 landowners, and the county commissioner would not have a vested interest.

As there were neither further questions for the proponents, nor opponent testimony registered, Chairperson Love opened the floor for neutral testimony.

Paul Johnson, Policy Advisor for the Kansas Rural Center (KRC), gave testimony raising a number of questions and concerns about **SB134**. ([Attachment 8](#)) He stated that the advisory committee needs to be more balanced and diversified, including 1 representative from the environmental organizations in the state and 1 landowner who is a specialty crop producer. Mr. Johnson wondered why there were 2 representatives on the proposed advisory committee based on the recommendation of KARA - what is their vested interest? He also asked if a landowner will have a statutory right to post a no-spray zone if the noxious weed situation is under control on their property. KRC is also concerned about the implications of chemicals drifting onto adjoining property.

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Mr. Johnson noted that with just the approval of the Secretary of Agriculture a county can publish a noxious weed list and then use any chemical they desire to eradicate that plant in the county; they can use any chemical along streets and road ditches even on weeds that are not declared noxious. He also noted that Section 14 of the bill states that the governing body shall keep an itemized record of material sales and equipment use. He wondered if they will list the date, time, and exact location of equipment and chemical use. KRC maintains that the Kansas Noxious Weed Law needs some minimal provisions for using the safest and least toxic chemicals in regard to human and animal health. Mr. Johnson stated that there are many unanswered questions as to the potential impact of this bill. He wondered how other states address noxious weeds, and recommended sending **SB134** to an interim legislative committee for adequate debate and consideration.

At the termination of neutral testimony, Chairperson Love opened the floor for questions to the conferee.

Senator Francisco asked Mr. Johnson if he was familiar with any definitions for chemicals that might be more appropriate, or if he had a recommendation for a source for that information. He replied that he would have to get back to her with the specifics.

Senator Francisco continued by asking if there is any way to address issues of regional concern other than by allowing county commissioners to identify noxious weeds with the Secretary. Mr. Johnson responded that there should be some kind of criteria defined for what constitutes a noxious weed infestation, for what constitutes a potential economic problem for a county. He stated that the bill is too vague and he believes we can do better.

There being no further questions for Mr. Johnson, Chairperson Love opened the floor to general questions.

Senator Knox stated that this looks like it is giving the government a lot of authority on something that will be a primary concern for landowners. He gave the example of johnsongrass, which can be a big problem on cultivated ground but is not an issue where animals are pastured. He also asked about the possibility of more unorthodox means of noxious weed control, such as grazing goats or cattle. In instances when a county declares war on something like sericea lespedeza they could use goats rather than chemicals. How will that be considered? Mr. Bontrager responded that KDA is not concerned about how a noxious weed is controlled, only about whether it is under control. If it is under control, the county won't need to take action. Senator Knox asked if that will be spelled out in the rules and regulations.

There being no further questions, Chairperson Love closed the hearing on SB134. The committee decided to postpone final action on the bill.

There being no further business, the meeting was adjourned at 9:28am.

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